

**CHAPTER 1****(HB 43)**

AN ACT relating to tourism development and declaring an emergency.

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

Section 1. KRS 154.29-010 is amended to read as follows:

As used in KRS 139.536 and KRS 154.29-010 to 154.29-060, unless the context clearly indicates otherwise:

- (1) "Agreement" means a tourism attraction agreement entered into, pursuant to KRS 154.29-050, on behalf of the authority and an approved company on or before June 30, 2002, with respect to a tourism attraction project;
- (2) "Approved company" means any eligible company approved by the secretary of the Tourism Development Cabinet and the authority pursuant to KRS 154.29-050 that is seeking to undertake a tourism attraction project;
- (3) "Approved costs" means:
  - (a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a tourism attraction project;
  - (b) The costs of acquiring real property or rights in real property and any costs incidental thereto;
  - (c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a tourism attraction project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;
  - (d) All costs of architectural and engineering services, including, but not limited to: estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a tourism attraction project;
  - (e) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a tourism attraction project;
  - (f) All costs required for the installation of utilities, including but not limited to: water, sewer, sewer treatment, gas, electricity and communications, and including off-site construction of the facilities paid for by the approved company; and
  - (g) All other costs comparable with those described in this subsection;
- (4) "Authority" means the Kentucky Economic Development Finance Authority as set forth in KRS 154.20-010;
- (5) "Crafts and products center" means a facility primarily devoted to the display, promotion, and sale of Kentucky products, and at which a minimum of eighty percent (80%) of the sales occurring at the facility are of Kentucky arts, crafts, or agricultural products;
- (6) "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity operating or intending to operate a tourism attraction project, whether owned or leased, within the Commonwealth that meets the standards promulgated by the secretary of the Tourism Development Cabinet pursuant to KRS 154.29-030. An eligible company may operate or intend to operate directly or indirectly through a lessee;
- (7) "Entertainment destination center" means a facility containing a minimum of two hundred thousand (200,000) square feet of building space adjacent or complementary to an existing tourism attraction, an approved tourism attraction project, or a major convention facility, and which provides a variety of entertainment and leisure options that contain at least one (1) major themed restaurant and at least three (3) additional entertainment venues, including, but not limited to, live entertainment, multiplex theaters, large format theaters, motion simulators, family entertainment centers, concert halls, virtual reality or other interactive games, museums, exhibitions, or other cultural and leisure time activities. Entertainment and food and drink options shall occupy a minimum of sixty percent (60%) of total gross area available for lease, and other retail stores shall occupy no more than forty percent (40%) of the total gross area available for lease;
- (8) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under KRS 139.536 and KRS 154.29-010 to 154.29-060;

- (9) "Inducements" means the Kentucky sales tax refund as prescribed in KRS 139.536;
- (10) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements of KRS 139.536 and KRS 154.29-010 to 154.29-060;
- (11) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.005, or any board, commission, institution, or division exercising any function of the state that is not an independent municipal corporation or political subdivision;
- (12) "Tourism attraction" means a cultural or historical site, a recreation or entertainment facility, an area of natural phenomenon or scenic beauty, a Kentucky crafts and products center, or an entertainment destination center. A tourism attraction shall not include any of the following:
  - (a) Lodging facilities, unless:
    - 1. The facilities constitute a portion of a tourism attraction project and represent less than fifty percent (50%) of the total approved cost of the tourism attraction project, or the facilities are to be located on recreational property owned or leased by the Commonwealth or federal government and the facilities have received prior approval from the appropriate state or federal agency; *or*
    - 2. *The facilities involve the restoration or rehabilitation of a structure that is listed individually in the National Register of Historic Places or are located in a National Register Historic District and certified by the Kentucky Heritage Council as contributing to the historic significance of the district, and the rehabilitation or restoration project has been approved in advance by the Kentucky Heritage Council;*
  - (b) Facilities that are primarily devoted to the retail sale of goods, other than an entertainment destination center, a Kentucky crafts and products center, or a tourism attraction where the sale of goods is a secondary and subordinate component of the attraction; and
  - (c) Recreational facilities that do not serve as a likely destination where individuals who are not residents of the Commonwealth would remain overnight in commercial lodging at or near the tourism attraction project; and
- (13) "Tourism attraction project" or "project" means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten (10) years, construction, and equipping of a tourism attraction; the construction, and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction, including but not limited to surveys; installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that shall allow the approved company to attract persons.

Section 2. Whereas the restoration or rehabilitation of historic structures in the Commonwealth is of utmost importance to preserve our cultural heritage, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved February 7, 2000**

## **CHAPTER 2**

**(HB 97)**

AN ACT relating to reorganization.

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

Section 1. KRS 12.023 is amended to read as follows:

The following organizational units and administrative bodies shall be attached to the Office of the Governor:

- (1) Council on Postsecondary Education;
- (2) Department of Military Affairs;

- (3) Department for Local Government;
- (4) Kentucky Commission on Human Rights;
- (5) Kentucky Commission on Women;
- (6) Kentucky Commission on Military Affairs;
- (7) ***Kentucky Coal Council***~~[Coal Marketing and Export Council]~~;
- (8) Governor's Office of Child Abuse and Domestic Violence Services;
- (9) Office of the Chief Information Officer; and
- (10) Office of Coal Marketing and Export.

Section 2. KRS 132.020 is amended to read as follows:

- (1) An annual ad valorem tax for state purposes of thirty-one and one-half cents (\$0.315) upon each one hundred dollars (\$100) of value of all real property directed to be assessed for taxation, and one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all privately-owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 directed to be assessed for taxation, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing, and one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all tobacco directed to be assessed for taxation, and twenty-five cents (\$0.25) upon each one hundred dollars (\$100) of value of all money in hand, shares of stock, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, except as otherwise provided in subsection (2) of this section, and one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of unmanufactured agricultural products, one-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operations, one-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all livestock and domestic fowl, one-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all tangible personal property located in a foreign trade zone as designated under 19 U.S.C. sec. 81, fifteen cents (\$0.15) upon machinery actually engaged in manufacturing, fifteen cents (\$0.15) upon commercial radio, television and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna, fifteen cents (\$0.15) upon property which has been certified as a pollution control facility as defined in KRS 224.01-300, one-tenth of one cent (\$0.001) upon property which has been certified as an alcohol production facility as defined in KRS 247.910, or as a fluidized bed energy production facility as defined in KRS 211.390, twenty-five cents (\$0.25) upon each one hundred dollars (\$100) of value of motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043, and forty-five cents (\$0.45) upon each one hundred dollars (\$100) of value of all other property directed to be assessed for taxation shall be paid by the owner or person assessed, except as provided in subsection (2) of this section and KRS 132.030, 132.050, 132.200, 136.300, 136.320, and other sections providing a different tax rate for particular property.
- (2) (a) An annual ad valorem tax for state purposes of one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value shall be paid upon the following classes of intangible personal properties, when the intangible personal properties have not acquired a taxable situs without this state:
  - 1. Accounts receivable, notes, bonds, credits, and any other intangible property rights arising out of or created in the course of regular and continuing business transactions substantially performed outside this state;
  - 2. Patents, trademarks, copyrights, and licensing or royalty agreements relating to these;
  - 3. Shares of capital stock of any affiliated company as defined in subsection (3) of this section and notes, bonds, accounts receivable, and all other intercompany intangible personal property due from the company; and
  - 4. Tobacco base allotments.
- (b) An annual ad valorem tax for state purposes of one-thousandth of one percent (0.001%) shall be paid upon money in hand, shares of stock, notes, bonds, accounts, credits, and other intangible assets,

whether by mortgage, pledge, or otherwise, or unsecured, of financial institutions, as defined in KRS 136.500.

- (3) "Affiliated company" shall mean a parent corporation or subsidiary corporation, and any corporation principally engaged in business outside the United States in which the owner or the person assessed directly or indirectly owns or controls not less than ten percent (10%) of the outstanding voting stock.
- (4) With respect to the intangible properties taxed pursuant to subsection (2) of this section, no other ad valorem tax shall be levied by the state or any county, city, school, or other taxing district on the intangible properties, or directly or indirectly against the owner.
- (5) Thirty cents (\$0.30) of the thirty-one and one-half cents (\$0.315) state tax rate on real property and thirty cents (\$0.30) of the forty-five cents (\$0.45) state tax on tangible personalty subject to local taxation shall be considered as local school district tax levies for purposes of computing any direct payments of state or federal funds to said districts as replacement for ad valorem taxes lost on property acquired by a governmental agency. Should the equivalency ever be less than thirty cents (\$0.30), as certified by the Department of Education, the direct payments shall be reduced proportionately.
- (6) The provisions of subsection (1) of this section notwithstanding, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that the increase exceeds the preceding year's assessment by more than four percent (4%). In any year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.
- (7) By July 1 each year, the cabinet shall compute the state tax rate applicable to real property for the current year in accordance with the provisions of subsection (5) of this section and certify the rate to the county clerks for their use in preparing the tax bills. If the assessments for all counties have not been certified by July 1, the cabinet shall, when either real property assessments of at least seventy-five percent (75%) of the total number of counties of the Commonwealth have been determined to be acceptable by the cabinet, or when the number of counties having at least seventy-five percent (75%) of the total real property assessment for the previous year have been determined to be acceptable by the cabinet, make an estimate of the real property assessments of the uncertified counties and compute the state tax rate.
- (8) If the tax rate set by the cabinet as provided in subsection (6) of this section produces more than a four percent (4%) increase in real property tax revenues, the rate shall be adjusted in the succeeding year so that the cumulative total of each year's property tax revenue increase shall not exceed four percent (4%) per year.
- (9) The provisions of subsection (6) of this section notwithstanding, the assessed value of unmined coal certified by the cabinet after July 1, 1994, shall not be included with the assessed value of other real property in determining the state real property tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also be excluded from the provisions of subsection (6) of this section. The calculated rate shall, however, be applied to unmined coal property, and the state revenue shall be devoted to the program described in KRS 146.550 through 146.570, except that four hundred thousand dollars (\$400,000) of the state revenue shall be paid annually to the State Treasury and credited to the **Kentucky Coal Council**~~Coal Marketing and Export Council~~ for the purpose of public education of coal-related issues.
- (10) Effective on or after January 1, 1990, an ad valorem tax for state purposes of five cents (\$0.05) upon each one hundred dollars (\$100) of value shall be paid upon goods held for sale in the regular course of business, which, on or after January 1, 1999, includes machinery and equipment held in a retailer's inventory for sale or lease originating under a floor plan financing arrangement; and raw materials, which includes distilled spirits and distilled spirits inventory, and in-process materials, which includes distilled spirits and distilled spirits inventory, held for incorporation in finished goods held for sale in the regular course of business.
- (11) An ad valorem tax for state purposes of ten cents (\$0.10) per one hundred dollars (\$100) of assessed value shall be paid on the operating property of railroads or railway companies that operate solely within the Commonwealth.
- (12) An ad valorem tax for state purposes of one and one-half cents (\$0.015) per one hundred dollars (\$100) of assessed value shall be paid on aircraft not used in the business of transporting persons or property for compensation or hire.



- (13) An ad valorem tax for state purposes of one and one-half cents (\$0.015) per one hundred dollars (\$100) of assessed value shall be paid on federally documented vessels not used in the business of transporting persons or property for compensation or hire, or for other commercial purposes.

Section 3. KRS 143.090 is amended to read as follows:

- (1) The Transportation Cabinet shall certify to the secretary of the Revenue Cabinet by October 1 of each fiscal year the amount required for lease rental payments to the Kentucky Turnpike Authority for resource recovery road projects.
- (2) The **Kentucky Coal Council**~~{Coal Marketing and Export Council}~~ shall certify to the secretary of the Revenue Cabinet by October 1 of each year the amount of the annual lease rental payments required to be made for any energy research developmental or demonstration project undertaken by the **Kentucky Coal Council**~~{Coal Marketing and Export Council}~~. The amount so certified shall in no case exceed three million dollars (\$3,000,000) in any one (1) year.
- (3) Upon receiving the certifications provided for in subsections (1) and (2) of this section, the secretary of the Revenue Cabinet shall cause the certified amounts to be deposited from the proceeds of the tax levied by KRS 143.020 to the credit of the transportation fund and the **Kentucky Coal Council**~~{Coal Marketing and Export Council}~~, respectively, unless otherwise provided by the General Assembly in a budget bill, as follows:
  - (a) An amount equal to the amount certified by the Transportation Cabinet shall be deposited to the transportation fund (road fund); and
  - (b) An amount equal to the amount certified by the **Kentucky Coal Council**~~{Coal Marketing and Export Council}~~ shall be transferred by appropriate interfund transfer procedures to the **Kentucky Coal Council**~~{Coal Marketing and Export Council}~~.
- (4) All tax levied by KRS 143.020 collected in excess of the amount required to be deposited to the transportation fund (road fund) or transferred to the **Kentucky Coal Council**~~{Coal Marketing and Export Council}~~ shall be deposited by the Revenue Cabinet to the credit of the general fund.
- (5) If the proceeds of the tax levied by KRS 143.020 are less than the amounts certified under subsections (1) and (2) of this section, the secretary of revenue shall prorate the proceeds to the transportation fund and the **Kentucky Coal Council**~~{Coal Marketing and Export Council}~~ based upon the ratio of each certified amount to the total of the two (2) certified amounts.

Section 4. KRS 154.12-250 is amended to read as follows:

- (1) The **Kentucky Coal Council**~~{Coal Marketing and Export Council}~~ is established within the Office of the Governor. The council shall provide direction to the Governor in marketing efforts targeted to increasing opportunities for Kentucky coal and other products and it shall carry out other duties and responsibilities as assigned by the Governor.
- (2) The Office of Coal Marketing and Export is established within the Office of the Governor. The office shall carry out the purposes of the council and provide other staff support as is deemed necessary.
- (3) All personnel, equipment, supplies, and records relating to the **Kentucky Coal Council**~~{Coal Marketing and Export Council}~~ shall be transferred to the Office of Coal Marketing and Export in the Office of the Governor.

Section 5. KRS 154.12-252 is amended to read as follows:

- (1) The **Kentucky Coal Council**~~{Coal Marketing and Export Council}~~ shall be composed of fourteen (14) members, as follows:
  - (a) The secretary to the Governor's Executive Cabinet, who shall serve as vice chair of the council;
  - (b) The secretary of the Transportation Cabinet;
  - (c) The deputy secretary of the Natural Resources and Environmental Protection Cabinet;
  - (d) The executive director of the **Kentucky Coal Council**~~{Coal Marketing and Export Council}~~;
  - (e) A representative of the Alliance of Kentucky Coal appointed by the Governor; and
  - (f) Nine (9) citizen members appointed by the Governor for terms of four (4) years. These citizen members shall include representatives of interests concerned with the marketing of Kentucky coal and other products, such as the owners or operators of companies involved in coal production, transportation, and

consumption; representatives of the academic and financial communities; and representatives of major coal and industry associations. As the terms expire, the Governor shall appoint successors for terms of four (4) years. Each citizen member shall serve until his successor is appointed.

- (2) Council members shall receive no compensation for their services, but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and functions as council members.
- (3) The council shall, at a minimum, meet once every quarter.
- (4) Eight (8) members of the council shall constitute a quorum for the purpose of conducting business.
- (5) The council shall elect a chair on a biennial basis from the council's citizen membership.

Section 6. KRS 154.12-255 is amended to read as follows:

The ***Kentucky Coal Council***~~{Coal Marketing and Export Council}~~ shall annually or more frequently, as deemed necessary, forward recommendations to the secretary of the Cabinet for Economic Development and the Governor on areas critical to marketing Kentucky coal and other products including, but not limited to:

- (1) Promotion of Kentucky coal through development of market information;
- (2) Coordination of ongoing research and marketing programs relating to coal production, transportation, and consumption;
- (3) Identification of national and international market developments relating to coal and other products; and
- (4) Provision of advice to coal operators and other industries seeking to enter or expand domestic or export markets.

Section 7. KRS 224.46-850 is amended to read as follows:

- (1) It is the intent of the General Assembly that a regional integrated waste treatment and disposal demonstration facility contain an industrial park component. The approved site for a regional integrated waste treatment and disposal demonstration facility shall be of sufficient size to accommodate new industrial and commercial concerns that can utilize the energy by-products of the treatment technologies.
- (2) It shall be the responsibility of the ***Kentucky Coal Council***~~{Coal Marketing and Export Council}~~ to establish a plan for and develop the industrial park component of a regional integrated waste treatment and disposal demonstration facility. The industrial park component, located on property contiguous with the treatment and disposal technologies, shall be designed so as to utilize energy generated from the waste treatment technologies.

Section 8. KRS 224.46-870 is amended to read as follows:

The ***Kentucky Coal Council***~~{Coal Marketing and Export Council}~~ shall provide the cabinet with the information deemed necessary by the cabinet to project hazardous waste generation in the Commonwealth as required by KRS 224.10-100(24) and 224.46-830(2)(d).

Section 9. KRS 247.920 is amended to read as follows:

- (1) Application for an alcohol production exemption certificate shall be filed with the Revenue Cabinet in such manner and in such form as may be prescribed by regulations issued by the Revenue Cabinet and shall contain plans and specifications of the structure or structures including all materials incorporated and to be incorporated therein and a descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of producing ethanol for fuel use and any additional information deemed necessary by the Revenue Cabinet for the proper administration of KRS 247.910 and this section. The ***Kentucky Coal Council***~~{Coal Marketing and Export Council}~~ shall provide technical assistance and factual information as requested in writing by the Revenue Cabinet. If the Revenue Cabinet finds that the facility qualifies as an alcohol production facility as defined by KRS 247.910, it shall enter a finding and issue a certificate to that effect. The effective date of the certificate shall be the date of issuance of the certificate.
- (2) Before issuing an alcohol production tax exemption certificate, the Revenue Cabinet shall give notice in writing by mail to the ***Kentucky Coal Council***~~{Coal Marketing and Export Council}~~, and shall afford to the applicant and to the ***Kentucky Coal Council***~~{Coal Marketing and Export Council}~~ an opportunity for a hearing. On like notice and opportunity for a hearing, the Revenue Cabinet shall on its own initiative revoke the certificate when any of the following appears:

- (a) The certificate was obtained by fraud or misrepresentation;
  - (b) The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of the alcohol production facilities; or
  - (c) The structure or equipment or both to which the certificate relates has ceased to be used for the primary purpose of alcohol production for fuel use and is being used for a different purpose.
- (3) If the circumstances so require, the Revenue Cabinet, in lieu of revoking the certificate, may modify it.
  - (4) On mailing of notice of the action of the Revenue Cabinet revoking or modifying a certificate as provided in subsection (5) of this section, the certificate shall cease to be in force or shall remain in force only as modified as the case may require.
  - (5) An alcohol production tax exemption certificate, when issued, shall be sent by certified mail to the applicant and the notice of issuance in the form of certified copies thereof shall be sent to the **Kentucky Coal Council**~~Coal Marketing and Export Council~~. Notice of an order of the Revenue Cabinet denying, revoking, or modifying a certificate in the form of certified copies thereof shall be sent by certified mail to the applicant or the holder and shall be sent to the **Kentucky Coal Council**~~Coal Marketing and Export Council~~. The applicant or holder and the **Kentucky Coal Council**~~Coal Marketing and Export Council~~ shall be deemed parties for the purpose of the review afforded by subsection (6) of this section.
  - (6) Any party aggrieved by the issuance, refusal to issue, revocation, or modification of an alcohol production tax exemption certificate may appeal from the final ruling of the Revenue Cabinet to the Kentucky Board of Tax Appeals as provided in KRS 131.340.
  - (7) In the event of the sale, lease, or other transfer of an alcohol production facility, not involving a different location or use, the holder of an alcohol production tax exemption certificate for the facility may transfer the certificate by written instrument to the person who, except for the transfer of the certificate, would be obligated to pay taxes on the facility. The transferee shall become the holder of the certificate and shall have all rights pertaining thereto, effective as of the date of transfer of the certificate. The transferee shall give written notice of the effective date of the transfer, together with a copy of the instrument of transfer to the **Kentucky Coal Council**~~Coal Marketing and Export Council~~ and the Revenue Cabinet.
  - (8) In the event an alcohol production facility for which an exemption certificate is held ceases to be used for the primary purpose of alcohol production for fuel use or is used for a different purpose other than that for which the exemption certificate was granted, the holder of the certificate shall give written notice by certified mail of the change to the **Kentucky Coal Council**~~Coal Marketing and Export Council~~ and to the Revenue Cabinet.
  - (9) The alcohol production facility exemption certificate, upon approval, shall exempt said facilities from taxes outlined in the provisions of KRS 247.910 and this section and included in KRS Chapters 132, 136, 138, and 139. Each exemption certificate shall remain in force for a period of eight (8) years from the date of issuance and at the end of said period shall lapse. Any alcohol production facility previously exempted under the terms of KRS 247.910 and this section shall not be eligible for recertification upon completion of the eight (8) year certificate period.

Section 10. KRS 262.875 is amended to read as follows:

- (1) There shall be created a committee to advise the Governor on state activities that may contribute to the conversion of farmland to nonfarm uses. The committee shall be called the Interagency Farmland Advisory Committee and the members shall be appointed by the Governor and shall include one (1) representative for each of the following:
  - (a) Governor's Cabinet;
  - (b) Finance and Administration Cabinet;
  - (c) Revenue Cabinet;
  - (d) Transportation Cabinet;
  - (e) Natural Resources and Environmental Protection Cabinet;
  - (f) **Kentucky Coal Council**~~Coal Marketing and Export Council~~;
  - (g) Department of Agriculture;

- (h) Department for Local Government;
  - (i) Department of Fish and Wildlife Resources;
  - (j) Environmental Quality Commission;
  - (k) Soil and Water Conservation Commission;
  - (l) Dean, College of Agriculture, University of Kentucky;
  - (m) Two (2) farmer owners and operators of one hundred fifty (150) acres or less, one (1) selected from a list of three (3) persons recommended by the Kentucky Farm Bureau, and one (1) selected from a list of three (3) persons recommended by the National Farmers Organization;
  - (n) Two (2) farmer owners and operators of more than one hundred fifty (150) acres, one (1) selected from a list of three (3) persons recommended by the Kentucky Farm Bureau, and one (1) selected from a list of three (3) persons recommended by the National Farmers Organization; and
  - (o) The joint chairpersons of the Interim Joint Committee on Agriculture and Natural Resources.
- (2) The representative of the Natural Resources and Environmental Protection Cabinet shall be the chairperson of the committee, and the representative of the Soil and Water Conservation Commission shall be the vice chairperson of the committee. The staff for the committee shall be provided by the Natural Resources and Environmental Protection Cabinet.
  - (3) In order to advise the Governor, the committee shall review proposed state projects which will convert farmland to nonfarm use. The review shall consider alternatives to the project proposal in an effort to balance the public purpose to be served by the state project against the public purpose of conserving productive farmland.
  - (4) The Interagency Farmland Advisory Committee shall review proposed projects of all state agencies, including but not limited to, boards and commissions. The review shall be limited to proposed projects which will require the acquisition of more than fifty (50) acres of farmland.
  - (5) During the planning stage of the project and before any action is taken to acquire farmland, the state agency shall submit a report to the committee. The report shall explain the project, contain an agricultural impact assessment, highlight the location of land that must be acquired, present the reasons for needing the land, and explain the reasons for rejecting alternatives to the proposed project.
  - (6) All state projects shall be located to provide minimal interference with the productivity of agricultural lands of statewide importance as identified by KRS 246.065.
  - (7) The committee shall provide notice of the proposed project to the local community by publishing the notice in the newspaper of greatest local circulation within fifteen (15) days after receiving the report. The notice shall solicit comments on the proposal and state that a public hearing will be held upon a request received within fifteen (15) days of the last published notice. If requested, the public hearing shall be held within fifteen (15) days after receiving the request. No later than ten (10) days after the hearing, the committee shall file its report and any recommendations to the Governor. The committee may recommend to the Governor that action be taken by the Governor to alter the proposed state project if necessary to balance the public interests.
  - (8) A majority of the members of the committee constitutes a quorum for conducting business, and any action taken in the name of the committee requires an affirmative vote of a majority of the members present and voting.
  - (9) Members shall receive no compensation but shall be reimbursed for expenses incurred.

Section 11. The General Assembly hereby confirms Executive Order 98-1049, dated August 6, 1998, which changes the name of the Coal Marketing and Export Council within the Office of the Governor to the Kentucky Coal Council.

**Approved February 7, 2000**

**CHAPTER 3****(HB 99)**

AN ACT relating to reorganization.

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

SECTION 1. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *The Office of Inspector General is established within the Office of the Secretary of the Natural Resources and Environmental Protection Cabinet.*
- (2) *The Office of Inspector General shall be headed by an executive director appointed by the secretary of the Natural Resources and Environmental Protection Cabinet, subject to approval of the Governor as provided in KRS 12.050.*
- (3) *The office shall:*
  - (a) *Be responsible for investigating alleged violations of environmental laws and administrative regulations;*
  - (b) *Coordinate and provide support for the Natural Resources and Environmental Protection Cabinet's participation in investigations involving the cabinet, other Kentucky state agencies, and agencies of other states and the federal government; and*
  - (c) *Be responsible for administrative investigations necessary for the effective and efficient management of the cabinet.*
- (4) *The Office of Inspector General shall be composed of organizational entities deemed appropriate by the secretary of the Natural Resources and Environmental Protection Cabinet.*

Section 2. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.
  - (c) Registry of Election Finance.
4. Department of Law.
  - (a) Attorney General.
5. Department of the Treasury.
  - (a) Treasurer.
6. Department of Agriculture.

- (a) Commissioner of Agriculture.
  - (b) Kentucky Council on Agriculture.
- 7. Superintendent of Public Instruction.
- 8. Auditor of Public Accounts.
- 9. Railroad Commission.
- II. Program cabinets headed by appointed officers:
  - 1. Justice Cabinet:
    - (a) Department of State Police.
    - (b) Department of Criminal Justice Training.
    - (c) Department of Corrections.
    - (d) Department of Juvenile Justice.
    - (e) Office of the Secretary.
    - (f) Offices of the Deputy Secretaries.
    - (g) Office of General Counsel.
    - (h) Division of Kentucky State Medical Examiners Office.
    - (i) Parole Board.
    - (j) Kentucky State Corrections Commission.
    - (k) Commission on Correction and Community Service.
  - 2. Education, Arts, and Humanities Cabinet:
    - (a) Department of Education.
      - (1) Kentucky Board of Education.
      - (2) Education Professional Standards Board.
    - (b) Department for Libraries and Archives.
    - (c) Kentucky Arts Council.
    - (d) Kentucky Educational Television.
    - (e) Kentucky Historical Society.
    - (f) Kentucky Teachers' Retirement System Board of Trustees.
    - (g) Kentucky Center for the Arts.
    - (h) Kentucky Craft Marketing Program.
    - (i) Kentucky Commission on the Deaf and Hard of Hearing.
    - (j) Governor's Scholars Program.
    - (k) Governor's School for the Arts.
    - (l) Operations and Development Office.
    - (m) Kentucky Heritage Council.
    - (n) Kentucky African-American Heritage Commission.
    - (o) Board of Directors for the Center for School Safety.
  - 3. Natural Resources and Environmental Protection Cabinet:
    - (a) Environmental Quality Commission.

- (b) Kentucky Nature Preserves Commission.
  - (c) Department for Environmental Protection.
  - (d) Department for Natural Resources.
  - (e) Department for Surface Mining Reclamation and Enforcement.
  - (f) Office of Legal Services.
  - (g) Office of Information Services.
  - (h) ***Office of Inspector General.***
4. Transportation Cabinet:
- (a) Department of Highways.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Administrative Services.
  - (d) Department of Fiscal Management.
  - (e) Department of Rural and Municipal Aid.
  - (f) Office of General Counsel.
  - (g) Office of Public Affairs.
  - (h) Office of Personnel Management.
  - (i) Office of Minority Affairs.
  - (j) Office of Environmental Affairs.
  - (k) Office of Policy and Budget.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
  - (b) Department of Job Development.
  - (c) Department of Financial Incentives.
  - (d) Department of Community Development.
  - (e) Tobacco Research Board.
  - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.
  - (b) Department of Insurance.
  - (c) Department of Housing, Buildings and Construction.
  - (d) Department of Financial Institutions.
  - (e) Department of Mines and Minerals.
  - (f) Department of Public Advocacy.
  - (g) Department of Alcoholic Beverage Control.
  - (h) Kentucky Racing Commission.
  - (i) Board of Claims.
  - (j) Crime Victims Compensation Board.
  - (k) Kentucky Board of Tax Appeals.

- (l) Backside Improvement Commission.
- (m) Office of Petroleum Storage Tank Environmental Assurance Fund.
- 7. Cabinet for Families and Children:
  - (a) Department for Social Insurance.
  - (b) Department for Social Services.
  - (c) Public Assistance Appeals Board.
  - (d) Office of the Secretary.
  - (e) Office of the General Counsel.
  - (f) Office of Program Support.
  - (g) Office of Family Resource and Youth Services Centers.
  - (h) Office of Technology Services.
  - (i) Office of the Ombudsman.
  - (j) Office of Aging Services.
- 8. Cabinet for Health Services.
  - (a) Department for Public Health.
  - (b) Department for Medicaid Services.
  - (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission on Children with Special Health Care Needs.
  - (e) Office of Certificate of Need.
  - (f) Office of the Secretary.
  - (g) Office of the General Counsel.
  - (h) Office of Program Support.
  - (i) Office of the Inspector General.
- 9. Finance and Administration Cabinet:
  - (a) Office of Legal and Legislative Services.
  - (b) Office of Management and Budget.
  - (c) Office of Financial Management and Economic Analysis.
  - (d) Office of the Controller.
  - (e) Department for Administration.
  - (f) Department of Facilities Management.
  - (g) Department of Information Systems.
  - (h) State Property and Buildings Commission.
  - (i) Kentucky Pollution Abatement Authority.
  - (j) Kentucky Savings Bond Authority.
  - (k) Deferred Compensation Systems.
  - (l) Office of Equal Employment Opportunity Contract Compliance.
  - (m) Office of Capital Plaza Operations.
  - (n) County Officials Compensation Board.



- (o) Kentucky Employees Retirement Systems.
  - (p) Commonwealth Credit Union.
  - (q) State Investment Commission.
  - (r) Kentucky Housing Corporation.
  - (s) Governmental Services Center.
  - (t) Kentucky Local Correctional Facilities Construction Authority.
  - (u) Kentucky Turnpike Authority.
  - (v) Historic Properties Advisory Commission.
  - (w) Kentucky Kare Health Insurance Authority.
10. Labor Cabinet:
- (a) Department of Workplace Standards.
  - (b) Department of Workers' Claims.
  - (c) Kentucky Labor-Management Advisory Council.
  - (d) Occupational Safety and Health Standards Board.
  - (e) Prevailing Wage Review Board.
  - (f) Workers' Compensation Board.
  - (g) Kentucky Employees Insurance Association.
  - (h) Apprenticeship and Training Council.
  - (i) State Labor Relations Board.
  - (j) Kentucky Occupational Safety and Health Review Commission.
  - (k) Office of Administrative Services.
  - (l) Office of Labor-Management Relations and Mediation.
  - (m) Office of General Counsel.
  - (n) Workers' Compensation Funding Commission.
  - (o) Employers Mutual Insurance Authority.
11. Revenue Cabinet:
- (a) Department of Property Valuation.
  - (b) Department of Tax Administration.
  - (c) Office of Financial and Administrative Services.
  - (d) Department of Law.
  - (e) Department of Information Technology.
  - (f) Office of Taxpayer Ombudsman.
12. Tourism Development Cabinet:
- (a) Department of Travel.
  - (b) Department of Parks.
  - (c) Department of Fish and Wildlife Resources.
  - (d) Kentucky Horse Park Commission.
  - (e) State Fair Board.

- (f) Office of Administrative Services.
- (g) Office of General Counsel.
- 13. Cabinet for Workforce Development:
  - (a) Department for Adult Education and Literacy.
  - (b) Department for Technical Education.
  - (c) Department of Vocational Rehabilitation.
  - (d) Department for the Blind.
  - (e) Department for Employment Services.
  - (f) State Board for Adult and Technical Education.
  - (g) Governor's Council on Vocational Education.
  - (h) The State Board for Proprietary Education.
  - (i) The Foundation for Adult Education.
  - (j) The Kentucky Job Training Coordinating Council.
  - (k) Office of General Counsel.
  - (l) Office of Communication Services.
  - (m) Office of Development and Industry Relations.
  - (n) Office of Workforce Analysis and Research.
  - (o) Office for Administrative Services.
  - (p) Office for Policy and Budget.
  - (q) Office of Personnel Services.
  - (r) Unemployment Insurance Commission.
- 14. Personnel Cabinet:
  - (a) Office of Administrative and Legal Services.
  - (b) Department for Personnel Administration.
  - (c) Department for Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.
  - (e) Kentucky Kare.
  - (f) Division of Performance Management.
  - (g) Division of Employee Records.
  - (h) Division of Staffing Services.
  - (i) Division of Classification and Compensation.
  - (j) Division of Employee Benefits.
  - (k) Division of Communications and Recognition.
- III. Other departments headed by appointed officers:
  - 1. Department of Military Affairs.
  - 2. Council on Postsecondary Education.
    - (a) Kentucky Commission on Community Volunteerism and Service.
  - 3. Department for Local Government.

4. Kentucky Commission on Human Rights.
5. Kentucky Commission on Women.
6. Department of Veterans' Affairs.
7. Kentucky Commission on Military Affairs.
8. Office of the Chief Information Officer.

Section 3. The Central Investigation Section, established within the Office of Legal Services of the Natural Resources and Environmental Protection Cabinet by Executive Order 96-697, and transferred to the secretary's office by Administrative Order No. 98-02, is abolished.

Section 4. The General Assembly confirms Executive Order 99-413, dated March 30, 1999, to the extent it is not otherwise confirmed or superseded by this Act.

**Approved February 7, 2000**

## CHAPTER 4

**(HB 255)**

AN ACT relating to anatomical gifts.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *If an anatomical gift is made in Kentucky for organ transplantation for which the donor does not name a specific donee, and if the organ is deemed suitable for transplantation, the organ shall be donated to the organ procurement organization designated by the Federal Health Care Financing Administration as the organ procurement organization for the county in which the gift is made. The organ procurement organization shall use its best efforts to determine if there is a suitable recipient listed at a transplant center in a county for which it is the designated organ procurement organization.*
- (2) *Any organ procurement organization operating in Kentucky may enter into a reciprocal agreement for the sharing of organs with one (1) or more qualified organ procurement organizations located in other states, if the organ procurement organization considers the agreement advisable, necessary, or expedient, and consistent with the best interests of Kentucky citizens who are awaiting transplantation. Before the organ procurement organization enters into a reciprocal agreement, it shall obtain approval of the proposed agreement from the United Network for Organ Sharing, or its successor, acting as the Organ Procurement and Transplantation Network as designated by the United States Department of Health and Human Services.*
- (3) *To avoid the wasting of donated organs, to avoid futile transplants, to promote patient access to transplantation, and to promote the efficient management of organ placement, except as otherwise provided by any agreement entered into under subsection (2) of this section, an organ procurement organization in Kentucky shall not be mandated to transfer an organ for transplantation to an out-of-state organ procurement organization or to a transplant recipient at a transplant center outside its designated service area if a suitable recipient can be identified at a transplant center within its service area.*

**Approved February 9, 2000**

## CHAPTER 5

**(HB 95)**

AN ACT relating to the reorganization of the Finance and Administration Cabinet.

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

Section 1. KRS 42.013 is amended to read as follows:

- (1) The office of the secretary of the Finance and Administration Cabinet shall include a deputy secretary who shall be appointed by the secretary with the approval of the Governor. The deputy secretary shall be responsible to and have such authority to sign for the secretary as the secretary designates in writing.
- (2) The secretary may organize the office into such additional administrative units as he deems necessary to perform the functions and fulfill the duties of the cabinet, subject to the provisions of KRS Chapter 12. The Office of the Secretary shall include the *Office of Technology Operations, the Customer Resource Center*, ~~Division of Information Resources~~ and the *Administrative Policy and Audit* ~~Division of Internal Audit~~.
- (3) All appointments under this chapter to positions not in the classified service shall be made pursuant to KRS 12.050 and such appointees shall be major assistants to the secretary and shall assist in the development of policy.

Section 2. KRS 42.023 is amended to read as follows:

- (1) The Department for Administration of the cabinet established by KRS 42.014 shall be generally responsible for any functions and duties the secretary may assign relating, but not limited to, supervision of purchasing and store keeping, control of stores, control of personal property and disposition of surplus personal property, printing and reproductions, state forms, postal services, and technical assistance and advice to state agencies.
- (2) There shall be established in the Department for Administration a Division of *Material and Procurement Services* ~~Purchases~~, *a Division of Surplus Property*, a Division of Printing, a Division of Risk Management, a Division of Creative Services, a Division of Occupations and Professions, and a Division of Postal Services, each of which shall be headed by a director appointed by the commissioner, subject to the approval of the Governor, and who shall be responsible to the commissioner. There may be, if needed, sections assigned to specific areas of work, responsible directly to the commissioner for administration.

Section 3. KRS 42.024 is amended to read as follows:

- (1) The Division of *Material and Procurement Services* ~~Purchases~~ shall be responsible for the performance of the cabinet's purchasing functions under KRS Chapters 45 and 45A, except those purchasing functions related to the acquisition of interests in real property, and contractual and construction services which are related to and required in connection with the construction, renovation, and repair of state-owned buildings. The Division of *Material and Procurement Services* ~~Purchases~~ shall be responsible for the control of all state-purchased personal property.
- (2) *The Division of Surplus Property shall be responsible* ~~and~~ for the disposition of all personal property of the state declared surplus. The division shall be the single state agency of the Commonwealth of Kentucky that may receive, warehouse, and distribute surplus property under the Federal Property and Administrative Services Act of 1949, as amended, and any other federal law relating to the disposal of surplus federal property to the states and political subdivisions within the states. The division shall comply with federal laws and regulations in the administration of surplus property received through federal agencies. The secretary of the Finance and Administration Cabinet may promulgate administrative regulations in accordance with KRS Chapter 13A as necessary to comply with the minimum standards established by federal laws and regulations governing disposal of surplus federal property and to implement subsection (3) of this section.
- ~~(3)(2)~~ The Division of Creative Services shall provide photography, multimedia, and graphic service to state government.
- ~~(4)(3)~~ The secretary of the Finance and Administration Cabinet may establish, charge, and collect from donees of federal surplus property a fair and reasonable fee or service charge to defray the cost of operating the surplus property disposal program. The fees shall be deposited in a trust and agency account in the State Treasury to the credit of the Division of *Surplus Property* ~~Purchases~~.

Section 4. KRS 42.065 is amended to read as follows:

- (1) *An Administrative Policy and Audit Division* ~~A Division of Internal Audit~~ is established in the Office of the Secretary within the Finance and Administration Cabinet.
- (2) The *Administrative Policy and Audit* ~~Division of Internal Audit~~ shall be headed by a director, appointed by the secretary of finance pursuant to KRS 12.050, and shall include other personnel employed pursuant to KRS Chapter 18A, as determined by the director of the division, with the approval of the secretary, to be necessary and desirable to carry out the division's functions.

- (3) The division may, with the approval of the secretary of finance, conduct any internal audit, investigation, or management review in the Finance and Administration Cabinet related to the secretary's duties and responsibilities as chief financial officer of the Commonwealth pursuant to KRS 42.012.
- (4) When it is necessary to complete an internal audit, investigation, or management review in the Finance and Administration Cabinet, with the written approval of the secretary of the Governor's Executive Cabinet, the division shall have access, during business hours, to all books, reports, papers, and accounts in the office or under the custody or control of any budget unit, or of any other program cabinet, department, or agency under the authority and direction of the Governor.

Section 5. KRS 42.0201 is amended to read as follows:

- (1) There is created within the Finance and Administration Cabinet the Office of the Controller. The office shall be attached to the Office of the Secretary of the Finance and Administration Cabinet for administrative and reporting purposes.
- (2) The Office of the Controller shall be headed by an executive director appointed by the secretary of the Finance and Administration Cabinet with the approval of the Governor. The executive director shall function as the state controller, who shall be a person qualified by education and experience for the position and held in high professional esteem in the accounting community.
- (3) The state controller shall be the Commonwealth's chief accounting officer and shall be responsible for all aspects of accounting policies and procedures, financial accounting systems, and internal accounting control policies and procedures. The Office of the Controller shall establish guidelines for state personnel administration on issues relating to paycheck distribution dates, assignment of data elements to accurately report labor costs, assignment and tracking of actual expenditures by code, and coverage issues relating to Social Security and Medicare.
- (4) The state controller; the executive director of the Office of Financial Management and Economic Analysis, Finance and Administration Cabinet; and the state budget director designated under KRS 11.068 shall develop and maintain the Commonwealth's strategic financial management program.
- (5) There are established in the Office of the Controller the Division of ***Statewide Accounting Services***~~[Accounts]~~ and the Division of Social Security.
  - (a) The Division of ***Statewide Accounting Services***~~[Accounts]~~ shall be headed by a director appointed by the secretary of the Finance and Administration Cabinet, subject to the approval of the Governor. The director shall report directly to the state controller. The division shall perform financial record keeping functions at the state controller's direction, and shall be responsible for:
    1. The performance of the cabinet's functions outlined in KRS 45.305, 48.800, and other related statutes; and
    2. The state government's duties and functions relating to the county fee system for local entities.
  - (b) The Division of Social Security shall be headed by a director appointed by the secretary of the Finance and Administration Cabinet pursuant to KRS 12.050. The director shall report directly to the state controller. The division shall be responsible for the duties of the state agency for Social Security specified in KRS 61.410 to 61.500.

Section 6. KRS 45.990 is amended to read as follows:

- (1) Any officer, agent, or employee of any budget unit who willfully fails or refuses to comply with any of the provisions of KRS 45.011 to 45.031, 45.121, 45.142, 45.151, 45.242, 45.244, 45.251, 45.253, 45.305, or 45.313, or who expends any money in violation of any of the provisions of those sections, shall be subject to prosecution in the Franklin Circuit Court, and upon conviction shall be guilty of a violation.
- (2) If any person incurs, or orders or votes for the incurrence of, any obligations in violation of any of the provisions of KRS 45.244, he and his sureties shall be jointly and severally liable therefor.
- (3) Any employee of the Division of ***Material and Procurement Services***~~[Purchases]~~, or any official of the Commonwealth of Kentucky, elective or appointive, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or other things of value, as an inducement or intended inducement in the procurement of business, or the giving of business, including, but not limited to, personal service contracts, for, or to, or from, any person, partnership, firm, or corporation, offering, bidding

for, or in open market seeking to make sales to the Commonwealth of Kentucky, shall be deemed guilty of a Class C felony.

- (4) Every person, firm, or corporation offering to make, or pay, or give, any rebate, percentage of contract, money, or any other thing of value, as an inducement or intended inducement, in the procurement of business, or the giving of business, including, but not limited to, personal service contracts, to any employee of the Division of **Material and Procurement Services**~~Purchases~~ or to any official of the Commonwealth, elective or appointive, in his efforts to bid for, or offer for sale, or to seek in the open market, shall be deemed guilty of a Class C felony.

Section 7. KRS 45A.045 is amended to read as follows:

- (1) The Finance and Administration Cabinet shall serve as the central procurement and contracting agency of the Commonwealth.
  - (a) The cabinet shall require all agencies to furnish an estimate of specific needs for supplies, materials, and equipment to be purchased by competitive bidding for the purpose of permitting scheduling of purchasing in large volume. The cabinet shall establish and enforce schedules for purchasing supplies, materials, and equipment. In addition, prior to the beginning of each fiscal year all agencies shall submit to the Finance and Administration Cabinet an estimate of all needs for supplies, materials, and equipment during that year which will have to be required through competitive bidding.
  - (b) The Finance and Administration Cabinet shall have power, with the approval of the secretary of the Finance and Administration Cabinet, to transfer between departments, to salvage, to exchange, and to condemn supplies, equipment, and real property.
  - (c) The Finance and Administration Cabinet shall attempt in every practicable way to ensure that state agencies are fulfilling their business needs through the application of the best value criteria.
- (2) The Finance and Administration Cabinet shall recommend regulations, rules, and procedures and shall have supervision over all purchases by the various spending agencies, except as otherwise provided by law, and, subject to the approval of the secretary of the Finance and Administration Cabinet, shall promulgate administrative regulations to govern purchasing by or for all these agencies. The cabinet shall publish a manual of procedures which shall be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This manual shall be distributed to agencies and shall be revised upon issuance of amendments to these procedures. No purchase or contract shall be binding on the state or any agency thereof unless approved by the Finance and Administration Cabinet or made under general administrative regulations promulgated by the cabinet.
- (3) The Finance and Administration Cabinet shall purchase or otherwise acquire, or, with the approval of the secretary, may delegate and control the purchase and acquisition of the combined requirements of all spending agencies of the state, including, but not limited to, interests in real property, contractual services, rentals of all types, supplies, materials, equipment, and services.
- (4) The Finance and Administration Cabinet shall sell, trade, or otherwise dispose of any interest in real property of the state which is not needed, or has become unsuitable for public use, or would be more suitable to the public's interest if used in another manner, as determined by the secretary of the Finance and Administration Cabinet. The determination of the secretary of the Finance and Administration Cabinet shall be set forth in an order and shall be reached only after review of a written request by the agency desiring to dispose of the property. This request shall describe the property and state the reasons why the agency believes the property should be disposed. All instruments required by law to be recorded which convey any interest in any real property so disposed of shall be executed and signed by the secretary of the Finance and Administration Cabinet and approved by the Governor. Unless the secretary of the Finance and Administration Cabinet deems it in the best interest of the state to proceed otherwise, all interests in real property shall be sold either by invitation of sealed bids or by public auction. The selling price of any interest in real property shall not be less than the appraised value thereof as determined by the cabinet, or the Transportation Cabinet for the requirements of that cabinet.
- (5) The Finance and Administration Cabinet shall sell, trade, or otherwise dispose of all personal property of the state that is not needed, or has become unsuitable for public use, or would be more suitable to the public's interest if used in another manner, or, with the approval of the secretary, may delegate the sale, trade, or other disposal of the personal property. In the event the authority is delegated, the method for disposal shall be determined by the agency head, in accordance with administrative regulations promulgated by the Finance and

Administration Cabinet, and shall be set forth in a document describing the property and stating the method of disposal and the reasons why the agency believes the property should be disposed of. In the event the authority is not delegated, requests to the Finance and Administration Cabinet to sell, trade, or otherwise dispose of the property shall describe the property and state the reasons why the agency believes the property should be disposed of. The method for disposal shall be determined by the Division of ~~Purchases,~~ Surplus Property ~~Branch,~~ and approved by the secretary of the Finance and Administration Cabinet or his or her designee.

- (6) The Finance and Administration Cabinet shall exercise general supervision and control over all warehouses, storerooms, and stores and of all inventories of supplies, services, and construction belonging to the Commonwealth. The cabinet shall promulgate administrative regulations to require agencies to take and maintain inventories of plant property, buildings, structures, other fixed assets, and equipment. The cabinet shall conduct periodic physical audits of inventories.
- (7) The Finance and Administration Cabinet shall establish and maintain programs for the development and use of purchasing specifications and for the inspection, testing, and acceptance of supplies, services, and construction.
- (8) Nothing in this section shall prevent the Finance and Administration Cabinet from negotiating with vendors who maintain a General Services Administration price agreement with the United States of America or any agency thereof. No contract executed under this provision shall authorize a price higher than is contained in the contract between the General Services Administration and the vendor affected.
- (9) Except as provided in KRS Chapters 175, 176, 177, and 180, and subject to the provisions of this code, the Finance and Administration Cabinet shall purchase or otherwise acquire all real property determined to be needed for state use, upon approval of the secretary of the Finance and Administration Cabinet as to the determination of need and as to the action of purchase or other acquisition. The amount paid for this real property shall not exceed the appraised value as determined by the cabinet or the Transportation Cabinet (for such requirements of that cabinet), or the value set by eminent domain procedure. Subject to the provisions of this code, real property or any interest therein may be purchased, leased, or otherwise acquired from any officer or employee of any agency of the state upon a finding by the Finance and Administration Cabinet, based upon a written application by the head of the agency requesting the purchase, and approved by the secretary of the Finance and Administration Cabinet and the Governor, that the employee has not either himself or herself, or through any other person, influenced or attempted to influence either the agency requesting the acquisition of the property or the Finance and Administration Cabinet in connection with such acquisition. Whenever such an acquisition is consummated, the request and finding shall be recorded and kept by the Secretary of State along with the other documents recorded pursuant to the provisions of KRS Chapter 56.
- (10) The Finance and Administration Cabinet shall maintain records of all purchases and sales made under its authority and shall make periodic summary reports of all transactions to the secretary of the Finance and Administration Cabinet, the Governor, and the General Assembly. The Finance and Administration Cabinet shall also report trends in costs and prices, including savings realized through improved practices, to the above authorities. The Finance and Administration Cabinet shall also compile an annual report of state purchases by all spending agencies in the state's statewide accounting and reporting system. The report format shall include, but not be limited to, dollar amount, volume, type of purchase, and vendor.
- (11) For capital construction projects, subject to the provisions of this code, the bidding may be on whichever of the following methods, in the judgment of the secretary of the Finance and Administration Cabinet, offers the lowest real cost to the taxpayer:
  - (a) A total design-bid basis;
  - (b) A package system commonly referred to as "turnkey";
  - (c) Phase bidding commonly referred to as "fast track"; or
  - (d) Construction management.

Bids shall be reviewed by the engineering staff to assure quality and value, and compliance with bid procedures. All specifications shall be written to promote competition.

- (12) The Finance and Administration Cabinet shall have control and supervision over all purchases of energy-consuming equipment, supplies, and related equipment purchased or acquired by any agency of the state as provided in this code, and shall promulgate administrative regulations to designate the manner in which an energy-consuming item will be purchased so as to promote energy conservation and acquisition of energy efficient products. Major energy components shall be amortized on a seven (7) to ten (10) years' recovery basis

and shall take into consideration the projected cost of fuel. The Finance and Administration Cabinet, in consultation with the Cabinet for Economic Development, shall conduct a thorough economic feasibility analysis on any major energy-using component of at least three million (3,000,000) BTU's per hour heat input and shall issue a certificate of economic feasibility prior to the Finance and Administration Cabinet's purchasing or retrofitting any such component that utilizes any fuel other than coal. The economic feasibility analysis shall consist of life-cycle cost comparisons of a component that would utilize coal and one(s) that would utilize any fuel other than coal. For the analysis, the Finance and Administration Cabinet shall provide detailed estimates of equipment purchase price, installation cost, annual operation and maintenance costs, and usage patterns of energy-using components.

Section 8. KRS 45A.540 is amended to read as follows:

Every county, city, school district, and special district may purchase goods, supplies, equipment, material, and printing which meet the procurement standards for minimum recycled material content through the central stores branch of the Division of ***Material and Procurement Services***~~[Purchases]~~ in the Finance and Administration Cabinet. Counties, cities, school districts, and special districts which purchase goods, supplies, equipment, material, and printing which meet the procurement standards established pursuant to KRS 45A.520 for minimum recycled material content shall receive a fifty percent (50%) reduction in any administrative fee the central purchasing agency is authorized to charge.

Section 9. KRS 156.076 is amended to read as follows:

The chief state school officer shall furnish full information on established price contracts to each district board of education. Any board of education may purchase supplies and equipment from the vendor to whom the contract has been awarded, under the terms of the contract. Any board of education may advertise for its own bids on supplies and equipment which meet the specifications of the contracts awarded by the Division of ***Material and Procurement Services***~~[Purchases]~~. Any board of education, after advertising for bids, may award contracts if the chief state school officer certifies that the bid offers supplies and equipment which meet the standards and specifications fixed by the Kentucky Board of Education and that the bid price is lower than that established by the price contract agreement. If supplies and equipment that meet the specifications of the contracts awarded by the Division of ***Material and Procurement Services***~~[Purchases]~~ or a federal, local, or cooperative agency are available for purchase elsewhere, a board of education may purchase those supplies and equipment without advertising for bids. However, prior to making the purchases, the board of education shall obtain certification from:

- (1) The Department of Education for technology components defined in the master plan for education technology for which standards have been established by the Kentucky Board of Education. The department shall certify that the items to be purchased meet or exceed, at a lower cost, the specifications of the components of the original equipment of manufacturers currently holding Kentucky education technology system price contracts; and
- (2) The district's finance officer for supplies and equipment other than that described in subsection (1) of this section. He shall certify that the items to be purchased meet the standards and specifications fixed by state price contract, federal (GSA) price contract, the local school district's bid, or the bid of another school district whose bid specifications allow other districts to utilize their bids, and that the sales price is lower than that established by the price contract agreement or available through the bidding process and the price does not exceed two thousand five hundred dollars (\$2,500).

Section 10. KRS 197.210 is amended to read as follows:

- (1) On and after June 17, 1954, all offices, departments, institutions, agencies, and all political subdivisions which are supported in whole or in part by the Commonwealth shall purchase, when economically feasible, from the department all articles or products required which are produced or manufactured by prison labor, as provided by KRS 197.200 to 197.250. No article or product shall be purchased by any office, department, institution, or agency, from any source except as specified in this subsection.

Exceptions may be made in any case where, in the opinion of the Finance and Administration Cabinet, the articles or products produced or manufactured do not meet the reasonable requirements of the offices, departments, institutions, agencies, or where the requisition cannot be reasonably complied with because of an insufficient supply of the articles or products required. However, no office, department, institution, or agency shall be allowed to evade the intent and meaning of KRS 197.200 to 197.250 by slight variations from standards adopted by the Division of ***Material and Procurement Services***~~[purchases]~~, when the articles or



products produced or manufactured by the department in accordance with the standards, are reasonably adapted to the actual needs of the office, department, institution, or agency.

- (2) All purchases under KRS 197.200 to 197.250 shall be made through the Finance and Administration Cabinet upon requisition by the proper authority of the office, department, institution, agency, or political subdivision of the Commonwealth.

Section 11. KRS 424.260 is amended to read as follows:

- (1) Except where a statute specifically fixes a larger sum as the minimum for a requirement of advertisement for bids, no city, county, or district, or board or commission of a city or county, or sheriff or county clerk, may make a contract, lease, or other agreement for materials, supplies except perishable meat, fish, and vegetables, equipment, or for contractual services other than professional, involving an expenditure of more than ten thousand dollars (\$10,000) without first making newspaper advertisement for bids.
- (2) If the fiscal court requires that the sheriff or county clerk advertise for bids on expenditures of less than ten thousand dollars (\$10,000), the fiscal court requirement shall prevail.
- (3)
  - (a) Nothing in this statute shall limit or restrict the ability of a local school district to acquire supplies and equipment outside of the bidding procedure if those supplies and equipment meet the specifications of the contracts awarded by the Division of *Material and Procurement Services* ~~(Purchases)~~ or a federal, local, or cooperative agency and are available for purchase elsewhere at a lower price. A board of education may purchase those supplies and equipment without advertising for bids if, prior to making the purchases, the board of education obtains certification from the district's finance or purchasing officer that the items to be purchased meet the standards and specifications fixed by state price contract, federal (GSA) price contract, or the bid of another school district whose bid specifications allow other districts to utilize their bids, and that the sales price is lower than that established by the various price contract agreements or available through the bid of another school district whose bid specifications would allow the district to utilize their bid.
  - (b) The procedures set forth in paragraph (a) of this subsection shall not be available to the district for any specific item once the bidding procedure has been initiated by an invitation to bid and a publication of specifications for that specific item has been published. In the event that all bids are rejected, the district may again avail itself of the provisions of paragraph (a) of this subsection.
- (4) This requirement shall not apply in an emergency if the chief executive officer of the city, county, or district has duly certified that an emergency exists, and has filed a copy of the certificate with the chief financial officer of the city, county, or district, or if the sheriff or the county clerk has certified that an emergency exists, and has filed a copy of the certificate with the clerk of the court where his necessary office expenses are fixed pursuant to KRS 64.345 or 64.530, or if the superintendent of the board of education has duly certified that an emergency exists, and has filed a copy of the certificate with the chief state school officer.

Section 12. The General Assembly hereby confirms Executive Order 98-1132, issued by the Governor on August 21, 1998, as amended by Executive Order 99-486, issued by the Governor on April 13, 1999, to the extent that the orders are not otherwise confirmed by Sections 1 through 11 of this Act.

**Approved February 14, 2000**

## CHAPTER 6

**(HB 80)**

AN ACT relating to reorganization.

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

Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected

officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.
  - (c) Registry of Election Finance.
4. Department of Law.
  - (a) Attorney General.
5. Department of the Treasury.
  - (a) Treasurer.
6. Department of Agriculture.
  - (a) Commissioner of Agriculture.
  - (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
  - (a) Department of State Police.
  - (b) Department of Criminal Justice Training.
  - (c) Department of Corrections.
  - (d) Department of Juvenile Justice.
  - (e) Office of the Secretary.
  - (f) Offices of the Deputy Secretaries.
  - (g) Office of General Counsel.
  - (h) Division of Kentucky State Medical Examiners Office.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
  - (a) Department of Education.
    - (1) Kentucky Board of Education.
    - (2) Education Professional Standards Board.
  - (b) Department for Libraries and Archives.
  - (c) Kentucky Arts Council.

- (d) Kentucky Educational Television.
  - (e) Kentucky Historical Society.
  - (f) Kentucky Teachers' Retirement System Board of Trustees.
  - (g) Kentucky Center for the Arts.
  - (h) Kentucky Craft Marketing Program.
  - (i) Kentucky Commission on the Deaf and Hard of Hearing.
  - (j) Governor's Scholars Program.
  - (k) Governor's School for the Arts.
  - (l) Operations and Development Office.
  - (m) Kentucky Heritage Council.
  - (n) Kentucky African-American Heritage Commission.
  - (o) Board of Directors for the Center for School Safety.
3. Natural Resources and Environmental Protection Cabinet:
- (a) Environmental Quality Commission.
  - (b) Kentucky Nature Preserves Commission.
  - (c) Department for Environmental Protection.
  - (d) Department for Natural Resources.
  - (e) Department for Surface Mining Reclamation and Enforcement.
  - (f) Office of Legal Services.
  - (g) Office of Information Services.
4. Transportation Cabinet:
- (a) Department of Highways.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Administrative Services.
  - (d) Department of Fiscal Management.
  - (e) Department of Rural and Municipal Aid.
  - (f) Office of General Counsel.
  - (g) Office of Public Affairs.
  - (h) Office of Personnel Management.
  - (i) Office of Minority Affairs.
  - (j) Office of Environmental Affairs.
  - (k) Office of Policy and Budget.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
  - (b) Department of Job Development.
  - (c) Department of Financial Incentives.
  - (d) Department of Community Development.
  - (e) Tobacco Research Board.

- (f) Kentucky Economic Development Finance Authority.
- 6. Public Protection and Regulation Cabinet:
  - (a) Public Service Commission.
  - (b) Department of Insurance.
  - (c) Department of Housing, Buildings and Construction.
  - (d) Department of Financial Institutions.
  - (e) Department of Mines and Minerals.
  - (f) Department of Public Advocacy.
  - (g) Department of Alcoholic Beverage Control.
  - (h) Kentucky Racing Commission.
  - (i) Board of Claims.
  - (j) Crime Victims Compensation Board.
  - (k) Kentucky Board of Tax Appeals.
  - (l) Backside Improvement Commission.
  - (m) Office of Petroleum Storage Tank Environmental Assurance Fund.
- 7. Cabinet for Families and Children:
  - (a) Department for Social Insurance.
  - (b) Department for Social Services.
  - (c) Public Assistance Appeals Board.
  - (d) Office of the Secretary.
  - (e) Office of the General Counsel.
  - (f) Office of Program Support.
  - (g) Office of Family Resource and Youth Services Centers.
  - (h) Office of Technology Services.
  - (i) Office of the Ombudsman.{
  - ~~(j) Office of Aging Services.}~~
- 8. Cabinet for Health Services.
  - (a) Department for Public Health.
  - (b) Department for Medicaid Services.
  - (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission on Children with Special Health Care Needs.
  - (e) Office of Certificate of Need.
  - (f) Office of the Secretary.
  - (g) Office of the General Counsel.
  - (h) Office of Program Support.
  - (i) Office of the Inspector General.
  - (j) Office of Aging Services.*
- 9. Finance and Administration Cabinet:

- (a) Office of Legal and Legislative Services.
  - (b) Office of Management and Budget.
  - (c) Office of Financial Management and Economic Analysis.
  - (d) Office of the Controller.
  - (e) Department for Administration.
  - (f) Department of Facilities Management.
  - (g) Department of Information Systems.
  - (h) State Property and Buildings Commission.
  - (i) Kentucky Pollution Abatement Authority.
  - (j) Kentucky Savings Bond Authority.
  - (k) Deferred Compensation Systems.
  - (l) Office of Equal Employment Opportunity Contract Compliance.
  - (m) Office of Capital Plaza Operations.
  - (n) County Officials Compensation Board.
  - (o) Kentucky Employees Retirement Systems.
  - (p) Commonwealth Credit Union.
  - (q) State Investment Commission.
  - (r) Kentucky Housing Corporation.
  - (s) Governmental Services Center.
  - (t) Kentucky Local Correctional Facilities Construction Authority.
  - (u) Kentucky Turnpike Authority.
  - (v) Historic Properties Advisory Commission.
  - (w) Kentucky Kare Health Insurance Authority.
10. Labor Cabinet:
- (a) Department of Workplace Standards.
  - (b) Department of Workers' Claims.
  - (c) Kentucky Labor-Management Advisory Council.
  - (d) Occupational Safety and Health Standards Board.
  - (e) Prevailing Wage Review Board.
  - (f) Workers' Compensation Board.
  - (g) Kentucky Employees Insurance Association.
  - (h) Apprenticeship and Training Council.
  - (i) State Labor Relations Board.
  - (j) Kentucky Occupational Safety and Health Review Commission.
  - (k) Office of Administrative Services.
  - (l) Office of Labor-Management Relations and Mediation.
  - (m) Office of General Counsel.
  - (n) Workers' Compensation Funding Commission.

- (o) Employers Mutual Insurance Authority.
- 11. Revenue Cabinet:
  - (a) Department of Property Valuation.
  - (b) Department of Tax Administration.
  - (c) Office of Financial and Administrative Services.
  - (d) Department of Law.
  - (e) Department of Information Technology.
  - (f) Office of Taxpayer Ombudsman.
- 12. Tourism Development Cabinet:
  - (a) Department of Travel.
  - (b) Department of Parks.
  - (c) Department of Fish and Wildlife Resources.
  - (d) Kentucky Horse Park Commission.
  - (e) State Fair Board.
  - (f) Office of Administrative Services.
  - (g) Office of General Counsel.
- 13. Cabinet for Workforce Development:
  - (a) Department for Adult Education and Literacy.
  - (b) Department for Technical Education.
  - (c) Department of Vocational Rehabilitation.
  - (d) Department for the Blind.
  - (e) Department for Employment Services.
  - (f) State Board for Adult and Technical Education.
  - (g) Governor's Council on Vocational Education.
  - (h) The State Board for Proprietary Education.
  - (i) The Foundation for Adult Education.
  - (j) The Kentucky Job Training Coordinating Council.
  - (k) Office of General Counsel.
  - (l) Office of Communication Services.
  - (m) Office of Development and Industry Relations.
  - (n) Office of Workforce Analysis and Research.
  - (o) Office for Administrative Services.
  - (p) Office for Policy and Budget.
  - (q) Office of Personnel Services.
  - (r) Unemployment Insurance Commission.
- 14. Personnel Cabinet:
  - (a) Office of Administrative and Legal Services.
  - (b) Department for Personnel Administration.

- (c) Department for Employee Relations.
- (d) Kentucky Public Employees Deferred Compensation Authority.
- (e) Kentucky Kare.
- (f) Division of Performance Management.
- (g) Division of Employee Records.
- (h) Division of Staffing Services.
- (i) Division of Classification and Compensation.
- (j) Division of Employee Benefits.
- (k) Division of Communications and Recognition.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Council on Postsecondary Education.
  - (a) Kentucky Commission on Community Volunteerism and Service.
- 3. Department for Local Government.
- 4. Kentucky Commission on Human Rights.
- 5. Kentucky Commission on Women.
- 6. Department of Veterans' Affairs.
- 7. Kentucky Commission on Military Affairs.
- 8. Office of the Chief Information Officer.

Section 2. KRS 194A.030 is amended to read as follows:

The cabinet consists of the following major organizational units, which are hereby created:

- (1) Office of the Secretary;
- (2) Office of Program Support. The Office of Program Support shall provide professional support in personnel activities; planning; budgeting; contract management; policy analysis, including but not limited to the appraisal of needs; evaluation of programs; review of citizen complaints about services of the cabinet when complaints cannot be resolved through normal administrative remedies; and fiscal, facility, and information management functions of the cabinet. The Office of Program Support shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050;
- (3) Department for Medicaid Services. The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act. The Department for Medicaid Services shall be headed by a commissioner for Medicaid services, who shall be appointed by the secretary with the approval of the Governor under with KRS 12.050. The commissioner for Medicaid services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for Medicaid services shall exercise authority over the Department for Medicaid Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;
- (4) Department for Public Health. The Department for Public Health shall develop and operate all programs of the cabinet that provide health services and all programs for assessing the health status of the population for the promotion of health and the prevention of disease, injury, disability, and premature death. The Department for Public Health shall be headed by a commissioner for public health who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for public health shall be a duly licensed physician who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner shall advise the head of each major organizational unit enumerated in this section on policies, plans, and programs relating to all matters of public health, including any actions necessary to safeguard the health of the citizens of the Commonwealth. The commissioner shall serve as chief medical officer of the Commonwealth. The commissioner for public health shall exercise authority over the Department

for Public Health under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;

- (5) Department for Mental Health and Mental Retardation Services. The Department for Mental Health and Mental Retardation Services shall develop and administer programs for the prevention of mental illness, mental retardation, and chemical dependency and shall develop and administer an array of services and support for the treatment, habilitation, and rehabilitation of persons who have a mental illness or emotional disability, who have mental retardation, or who are chemically dependent. The Department for Mental Health and Mental Retardation Services shall be headed by a commissioner for mental health and mental retardation who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for mental health and mental retardation shall be by training and experience in administration and management qualified to perform the duties of the office. The commissioner for mental health and mental retardation shall exercise authority over the department under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;
- (6) Office of the Inspector General. The Office of the Inspector General shall be responsible for:
  - (a) The conduct of audits and investigations for detecting the perpetration of fraud or abuse of any program by any client, or by any vendor of services with whom the cabinet has contracted; and the conduct of special investigations requested by the secretary, commissioners, or office heads of the cabinet into matters related to the cabinet or its programs;
  - (b) Licensing and regulatory functions as the secretary may delegate;
  - (c) Review of health facilities participating in transplant programs, as determined by the secretary, for the purpose of determining any violations of KRS 311.165 to 311.235 and KRS 311.241, 311.243, 311.245, and 311.247; and
  - (d) The notification and forwarding of any information relevant to possible criminal violations to the appropriate prosecuting authority.

The Office of the Inspector General shall be headed by an inspector general who shall be appointed by the secretary with the approval of the Governor. The inspector general shall be directly responsible to the secretary;

- (7) Commission for Children with Special Health Care Needs. The duties, responsibilities, and authority set out in KRS 200.460 to 200.490 shall be performed by the commission. The commission shall advocate the rights of children with disabilities and, to the extent that funds are available, shall provide the services and facilities for children with disabilities as are deemed appropriate by the commission. The commission shall be composed of seven (7) members appointed by the Governor to serve a term of office of four (4) years. The commission may promulgate administrative regulations under KRS Chapter 13A as may be necessary to implement and administer its responsibilities. The duties, responsibilities, and authority of the Commission for Children with Special Health Care Needs shall be performed through the office of the executive director of the commission. The executive director shall be appointed by the Governor under KRS 12.040, and the commission may at any time recommend the removal of the executive director upon filing with the Governor a full written statement of its reasons for removal. The executive director shall report directly to the Commission for Children with Special Health Care Needs and serve as the commission's secretary;
- (8) Office of Certificate of Need. The duties, responsibilities, and authority pertaining to the certificate of need functions and the licensure appeal functions, as set out in KRS Chapter 216B, shall be performed by this office;
- (9) Office of the General Counsel. The Office of the General Counsel shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of the General Counsel shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney and shall administer all personal service contracts of the cabinet for legal services. The Office of the General Counsel shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor under KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be directly responsible to the secretary. The Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general under the provisions of KRS 15.105.
- (10) *Office of Aging Services. The Office of Aging Services shall serve as the state unit on aging as required by the Older Americans Act of 1965, as amended, 42 U.S.C. secs. 3001 et seq., including having responsibility*



*for the development of the state plan on aging, advocacy, planning, coordination, information sharing, brokering, reporting and evaluation of contract and service-provider agreement implementation. The Office of Aging Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The Office of Aging Services shall also administer grants, programs, and initiatives designed to assist older Kentuckians, administer the long-term care ombudsman program for Kentucky, and provide and coordinate services to persons with Alzheimer's disease and related disorders and their caregivers.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

*As used in Sections 3, 4, 5, and 6 of this Act:*

- (1) *"Council" means the Alzheimer's Disease and Related Disorders Advisory Council;*
- (2) *"Dementia" means Alzheimer's disease and related dementia illnesses and disorders; and*
- (3) *"Office" means the Office on Alzheimer's Disease and Related Disorders.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *The Office on Alzheimer's Disease and Related Disorders is established within the cabinet. The purpose of the office is to oversee information and resources related to policy and services affecting the sixty thousand (60,000) residents of Kentucky with dementia, and the caregivers and families of the residents.*
- (2) *The director of the office shall be a full-time, permanent employee and shall be responsible for the staffing and operational details of the office. A report on the start-up and implementation of the office shall be made to the Interim Joint Committee on Health and Welfare by September 30, 2000, and on a quarterly basis thereafter.*
- (3) *The office shall:*
  - (a) *Enhance the quality of life for persons affected by dementia and for their caregivers;*
  - (b) *Recommend the delivery of services in the most effective and efficient manner possible to facilitate the needs of people with dementia and their caregivers, after consultation with other agencies of state government that work with dementia-related illness;*
  - (c) *Determine ways the Commonwealth may secure additional federal and private funding to provide additional services and programs through a coordinated effort;*
  - (d) *Apply for any public or private funding relating to dementia that will enhance the office's abilities to perform its duties under this section;*
  - (e) *Promote public and professional awareness and education of dementia and access to needed services and programs;*
  - (f) *Oversee and receive reports from the Alzheimer's Disease and Related Disorders Advisory Council; and*
  - (g) *Coordinate and oversee the implementation of the recommendations of the 1995 Governor's Task Force on Alzheimer's Disease and Related Disorders.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *The Alzheimer's Disease and Related Disorders Advisory Council is created. The council shall report directly to the office.*
- (2) *The council shall be composed of a minimum of fifteen (15) members appointed by the Governor. Three (3) members shall represent agencies of state government dealing with dementia, three (3) shall represent local health departments, one (1) shall represent the University of Kentucky Alzheimer's Disease Research Center at the Sanders-Brown Center on Aging, at least one (1) shall be appointed from each of the chapters of the Alzheimer's Disease and Related Disease Association that serve the Commonwealth, and the remainder shall represent consumers, health-care providers, and the medical research community. Members who are not state employees shall be reimbursed for necessary and actual expenses. The council shall meet quarterly. A majority of the members shall constitute a quorum for the transaction of the council's business.*
- (3) *The council shall:*

- (a) *Elect its own chairperson and establish other officers and subcommittees as needed to execute the duties of the council;*
  - (b) *Adopt bylaws and operate under its bylaws;*
  - (c) *Select the director of the office;*
  - (d) *Establish and evaluate goals and outcomes for the office that may facilitate treatment and care of persons with dementia;*
  - (e) *Assist with the dissemination of information about the availability of program materials, education materials, and curriculum guides; and*
  - (f) *Prepare a report of its activities, at least annually, for submission to the office.*
- (4) *The office shall provide requested personnel to assist the council in fulfilling its responsibilities.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

*The cabinet shall promulgate administrative regulations under KRS Chapter 13A sufficient to implement Sections 3, 4, 5, and 6 of this Act.*

Section 7. KRS 194A.090 is amended to read as follows:

- (1) The cabinet shall include citizen advisory bodies within its structure to provide independent advice from the general public.
- (2) A Public Health Services Advisory Council is created within the cabinet.
  - (a) The council shall advise the secretary for health services, the commissioner for public health, and officials of the Commonwealth on policy matters concerning the delivery of health services, including the assessment of needs, the development of program alternatives, the determination of priorities, the formulation of policy, the allocation of resources, and the evaluation of programs. The council shall be utilized by the cabinet to fulfill federal requirements for citizen's advisory councils associated with programs designed to provide health services and to advise the cabinet on the development and content of the state health plan.
  - (b) The council shall be composed of no more than nineteen (19) citizen members appointed by the Governor. Six (6) members of the council shall be chosen to broadly represent public interest groups concerned with health services, recipients of health services provided by the Commonwealth, minority groups, and the general public. Thirteen (13) members of the council shall represent providers of health care and not less than one-half (1/2) of the providers shall be direct providers of health care. At least one (1) of the direct providers of health care shall be a person engaged in the administration of a hospital, and one (1) shall be a physician in active practice. At least one (1) member shall be a registered sanitarian or sanitary engineer, one (1) a public health nurse, one (1) a member of the current minority advisory council, and one (1) a practicing public health physician. Nominations for health care provider members of the council shall be solicited from recognized health care provider organizations. Membership of the council shall be geographically distributed in order that area development districts are represented. Members shall serve for terms of three (3) years. If a vacancy occurs, the person appointed as a replacement shall serve only for the remainder of the vacated term. Members shall serve until the term begins for their appointed successors. No member shall serve more than two (2) consecutive terms. The chair of the council shall be appointed by the Governor. The secretary for health services and the commissioner for public health shall be nonvoting, ex officio members of the council, and the commissioner for public health shall be a staff director for, and secretary to, the council. The council shall meet at least quarterly and on other occasions as may be necessary on the call of the secretary for health services or the commissioner for public health. A majority of the appointed members shall constitute a quorum.
- (3) *An Institute for Aging is created within the cabinet.*
  - (a) *The institute shall advise the secretary for health services and other officials of the Commonwealth on policy matters relating to the development and delivery of services to the aged.*
  - (b) *The institute shall be composed of no more than fifteen (15) citizen members appointed by the Governor. Members of the institute shall be chosen to broadly represent public interest groups concerned with the needs of the aged, professionals involved in the delivery of services to the aged,*

*minority groups, recipients of state-provided services to the aged, and the general public. The Governor shall appoint a chair of the institute. The secretary for health services shall be a nonvoting, ex officio member of, staff director for, and secretary to the institute. The institute shall meet at least quarterly and on other occasions as may be necessary, on the call of the secretary for health services. A majority of the appointed members shall constitute a quorum.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

*All administrative regulations, acts, determinations, and decisions of or by the corporate bodies or instrumentalities of the Commonwealth, advisory committees, interstate compacts, or other statutory bodies, transferred in whole or in part to the Institute for Aging, shall remain in effect as administrative regulations, acts, determinations, and decisions of the cabinet unless duly modified or repealed by the secretary.*

Section 9. KRS 194A.140 is amended to read as follows:

When the Public Health Services Advisory Council *or the Institute for Aging* is assigned responsibility for qualifying the Commonwealth for federal programs with representation and membership formulas that conflict with a particular council's membership, the secretary shall have the authority to create special subcommittees to these citizens' councils that meet federal requirements.

Section 10. KRS 194A.190 is amended to read as follows:

The Public Health Services Advisory Council and the Advisory Council for Medical Assistance *and the Institute for Aging* shall be empowered to accept gifts and grants, but all of these moneys shall be administered by the cabinet, which shall administer these funds through appropriate trust and agency accounts.

Section 11. KRS 194A.200 is amended to read as follows:

The members of the Public Health Services Advisory Council *and of the Institute for Aging* shall receive no compensation for their services but shall be allowed the necessary expenses incurred through the performance of their duties as members of this citizens' council. No member of a citizens' council shall be held to be a public officer by reason of membership on a council.

Section 12. KRS 194B.030 is amended to read as follows:

The cabinet consists of the following major organizational units, which are hereby created:

- (1) Office of the Secretary. The Office of the Secretary for Families and Children may, in addition to the secretary for families and children, include other personnel as are necessary to direct and carry out the missions and goals of the cabinet, including a deputy secretary if deemed necessary by the secretary of the cabinet and upon approval of the Governor.
- (2) Office of the General Counsel. The Office of the General Counsel shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of the General Counsel shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney and shall administer all personal service contracts of the cabinet for legal services. The Office of the General Counsel shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor under KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be responsible to the secretary. The Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general under the provisions of KRS 15.105.
- (3) Office of Program Support. The Office of Program Support shall be responsible for providing administrative and management support, planning, and appraisal of need services within the Cabinet for Families and Children. All personnel, fiscal, budgetary, contract monitoring, quality assurance, quality control, outcome assessment, and facility management functions of the cabinet shall be vested in the Office of Program Support. The Office of Program Support shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The executive director shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The executive director shall exercise authority over the Office of Program Support under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.
- (4) Department for Social Services. The Department for Social Services shall develop and operate all social service programs of the cabinet. The Department for Social Services shall be headed by a commissioner for social services who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for social services shall be a person who by education, professional qualification, training,

and experience in the administration and management of social service programs is qualified to perform the duties of this office. The commissioner for social services shall exercise authority over the Department for Social Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.

- (5) Department for Social Insurance. The Department for Social Insurance shall develop and operate programs of the cabinet that provide income maintenance or income supplementation services and social insurance benefit programs not assigned to another department. The Department for Social Insurance shall also be responsible for all eligibility determination and certification functions associated with these programs. The Department for Social Insurance shall be headed by a commissioner for social insurance who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for social insurance shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner is under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.
- (6) Office of Family Resource and Youth Services Centers. The Office of Family Resources and Youth Services Centers shall be responsible for the administration, management, and operations of the Family Resources and Youth Services Centers Program. The Office of Family Resources and Youth Services Centers shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050.
- (7) Office of the Ombudsman. The Office of the Ombudsman shall provide professional support in the evaluation of programs, including, but not limited to, a review and resolution of citizen complaints about programs or services of the cabinet when those complaints are unable to be resolved through normal administrative remedies; contract monitoring; and professional development and training. The Office of the Ombudsman shall be headed by an ombudsman who shall be appointed by the secretary with the approval of the Governor under KRS 12.050.
- (8) Office of Technology Services. The Office of Technology Services shall develop and maintain technology and information management systems in support of all units of the cabinet. The Office of Technology Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The executive director for technology services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The executive director for technology services shall exercise authority of the Office of Technology Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.
- ~~[(9) Office of Aging Services. The Office of Aging Services shall serve as the state unit on aging as required by the Older Americans Act of 1965, as amended by 42 U.S.C. sec. 3001 et seq., including having responsibility for the development of the state plan on aging, advocacy, planning, coordination, information sharing, brokering, reporting and evaluation of contract and service provider agreement implementation. The Office of Aging Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The Office of Aging Services shall also administer grants, programs, and initiatives designed to assist older Kentuckians, administer the long term care ombudsman program for Kentucky, and provide and coordinate services to persons with Alzheimer's disease and related disorders and their caregivers.]~~

Section 13. KRS 194B.050 is amended to read as follows:

- (1) The secretary shall formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.
- (2) The secretary shall utilize the ~~[Institute for Aging or the]~~ Council for Families and Children to review and make recommendations on contemplated administrative regulations. No administrative regulations issued under the authority of the cabinet shall be filed with the Legislative Research Commission unless issued under the authority of the secretary, and the secretary shall not delegate this authority. All administrative regulations prepared within the cabinet shall be attested as to form and legality by the Office of the General Counsel.

- (3) Except as otherwise provided by law, the secretary shall have authority to establish by administrative regulation a schedule of reasonable fees, none of which shall exceed one hundred dollars (\$100), to cover the costs of annual inspections of efforts regarding compliance with program standards administered by the cabinet. The balance of the account shall lapse to the general fund at the end of each biennium. Fees shall not be charged for investigation of complaints.

Section 14. KRS 194B.090 is amended to read as follows:

The cabinet shall include citizen advisory bodies within its structure to provide independent advice from the general public. The *Council for Families and Children shall be a* citizen ~~body~~*bodies* within the cabinet *and* shall have the following structure:

- (1) ~~[A Council for Families and Children is created within the cabinet.~~
- (a) ~~—]The council shall advise the secretary for families and children, the commissioner for social insurance, the commissioner for social services, and other officials of the Commonwealth on policy matters relating to the human service needs.~~
- (2)~~[(b)]~~ The council shall be composed of no more than twenty-one (21) citizen members appointed by the Governor. Members of the council shall be chosen to broadly represent public interest groups concerned with social insurance and social service programs operated by the Commonwealth, professionals involved in the delivery of human services, minority groups, the poor, the disadvantaged, recipients of human services provided by the state, and the general public. The Governor shall appoint the chair of the council. The secretary for families and children, the commissioner for social insurance, and the commissioner for social services shall be nonvoting, ex officio members of the council, and the commissioners for social insurance and social services shall be staff directors for, and secretaries to, the council. The council shall meet at least quarterly and on other occasions as may be necessary, on call of the secretary for families and children. A majority of appointed members shall constitute a quorum.

~~[(2) — An Institute for Aging is created within the cabinet.~~

- (a) ~~— The institute shall advise the secretary for families and children and other officials of the Commonwealth on policy matters relating to the development and delivery of services to the aged.~~
- (b) ~~— The institute shall be composed of no more than fifteen (15) citizen members appointed by the Governor. Members of the institute shall be chosen to broadly represent public interest groups concerned with the needs of the aged, professionals involved in the delivery of services to the aged, minority groups, recipients of state provided services to the aged, and the general public. The Governor shall appoint a chair of the institute. The secretary for families and children shall be a nonvoting, ex officio member of, staff director for, and secretary to the institute. The institute shall meet at least quarterly and on other occasions as may be necessary, on the call of the secretary for families and children. A majority of the appointed members shall constitute a quorum.]~~

Section 15. KRS 194B.140 is amended to read as follows:

When the ~~[Institute for Aging and the]~~ Council for Families and Children ~~is~~*are* assigned a responsibility for qualifying the Commonwealth for federal programs with representations and membership formulas that conflict with ~~the~~*a particular* council's membership, the secretary shall have the authority to create special subcommittees to ~~this~~*these* citizens' ~~body~~*bodies* that meet federal requirements.

Section 16. KRS 194B.190 is amended to read as follows:

The ~~[Institute for Aging and the]~~ Council for Families and Children shall be empowered to accept gifts and grants, but all of these moneys shall be administered by the cabinet, which shall administer these funds through appropriate trust and agency accounts.

Section 17. KRS 194B.200 is amended to read as follows:

The members of the ~~[Institute for Aging and the]~~ Council for Families and Children shall receive no compensation for their services but shall be allowed the necessary expenses incurred through the performance of their duties as members of ~~this~~*these* citizens' ~~council~~*councils*. No member of ~~the~~*a* citizens' council shall be held to be a public officer by reason of membership on ~~the~~*a* council.

Section 18. KRS 205.179 is amended to read as follows:

The Cabinet for ***Health Services***~~[Families and Children]~~ shall conduct an annual review of all addresses or locations at which four (4) or more persons reside who receive state supplementation of federal supplemental security income benefits to determine if the address or location is a boarding home that has not registered pursuant to KRS 216B.305. The results of the review shall be reported to the Office of Aging Services and action shall be taken to ensure the registration of all unregistered boarding homes that are identified.

Section 19. KRS 205.201 is amended to read as follows:

The duties of the Cabinet for ***Health Services***~~[Families and Children]~~ shall be to:

- (1) Promote and aid in the establishment of local programs and services for the aging;
- (2) Conduct programs to educate the public as to problems of the aging;
- (3) Review existing state programs and services for the aging and to make recommendations to the Governor, to the appropriate department and agencies of the state, and to the legislature for improvements in and additions to such programs and services;
- (4) Assist and encourage governmental and private agencies to coordinate their efforts on behalf of the aging;
- (5) Conduct and encourage other organizations to conduct studies concerning the aging;
- (6) Establish, in selected areas and communities of the state, programs of services for the aging to demonstrate the value of such programs, and to encourage local agencies to continue the programs and to create new services where needed. Emphasis shall be given to services designed to foster continued participation of older people in family and community life and to lessen the need for institutional care;
- (7) Provide services designed to meet the needs of the minority elderly in programs administered by the cabinet. The cabinet shall annually prepare a report identifying the special needs of the minority elderly population in the Commonwealth as compared to the elderly population at large. The report shall be completed no later than October 1 of each year and transmitted to the Legislative Research Commission. The report shall, at a minimum:
  - (a) Contain an overview of the health status of minority elderly Kentuckians;
  - (b) Identify specific diseases and health conditions for which the minority elderly are at greater risk than the general population;
  - (c) Identify problems experienced by the minority elderly in obtaining services from governmental agencies; and
  - (d) Identify programs at the state and local level designed to specifically meet the needs of the minority elderly;
- (8) In preparing the report required by subsection (7) of this section, the cabinet shall solicit and consider the input of individuals and organizations representing the concerns of the minority elderly population as relates to:
  - (a) Programs and services needed by the minority elderly;
  - (b) The extent to which existing programs do not meet the needs of the minority elderly;
  - (c) The accessibility of existing programs to the minority elderly;
  - (d) The availability and adequacy of information regarding existing services;
  - (e) Health problems the minority elderly experience at a higher rate than the nonminority elderly population; and
  - (f) Financial, social, and other barriers experienced by the minority elderly in obtaining services;
- (9) Conduct an outreach program that provides information to minority elderly Kentuckians about health and social problems experienced by minority elderly persons and available programs to address those problems, as identified in the report prepared pursuant to subsection (7) of this section; and
- (10) Cooperate with the federal government and with the governments of other states in programs relating to the aging.

Section 20. KRS 205.202 is amended to read as follows:

The secretary of the Cabinet for ***Health Services***~~[Families and Children]~~ shall be empowered to accept and expend gifts and grants from any source. Such moneys shall go into a trust and agency fund to be administered by the cabinet in furtherance of the purposes of the provisions of KRS 205.201 to 205.204.

Section 21. KRS 205.203 is amended to read as follows:

- (1) The secretary of the Cabinet for ***Health Services***~~[Families and Children]~~ may provide, within budgetary limitations, for in-home services to the aging to include, but not necessarily limited to: homemaker services; home-help therapy services; day-care services; home-delivered meal services; transportation services; foster care services; and health services.
- (2) The cabinet is authorized to collect fees for services rendered pursuant to this section in accordance with a fee schedule adopted by the secretary for ***health services***~~[families and children]~~. The fee schedule shall take into consideration the ability of the patient or client to pay for such services. Fees shall not be collected from any person who is "needy aged" as defined by KRS 205.010.
- (3) The secretary may utilize and promote available or potential community resources for the delivery of services to the aging and shall, when he deems appropriate, contract for services with local, community, private agencies, and individuals, including relatives of patients and clients, when such services would not otherwise be available without cost.
- (4) The services to the aging authorized under this section are in addition and supplementary to any services to which the aging may be entitled under any other federal, state, or local governmental law, regulation, or program.
- (5) The services to the aging authorized under this section shall be designed to meet the needs of the minority elderly as identified by the Cabinet for ***Health Services***~~[Families and Children]~~ pursuant to KRS 205.201.

Section 22. KRS 205.204 is amended to read as follows:

- (1) The Cabinet for ***Health Services***~~[Families and Children]~~, unless otherwise directed by an executive order of the Governor, is designated the agency of this state for the purpose of administering the Older Americans Act of 1965, Pub. L. 89-73, including all amendments thereto. In administering programs and allocating funds under the Older Americans Act, the cabinet shall design programs and allocate funds to meet the needs of the minority elderly as identified by the cabinet pursuant to KRS 205.201.
- (2) The secretary for ***health services***~~[families and children]~~ may promulgate such administrative regulations as are necessary to comply with any requirement imposed or required by federal law.

Section 23. KRS 205.217 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
  - (a) "Case manager" means an employee of the area development district or an agency under contract with the area development district who shall assist any functionally impaired person in identifying and accessing the long-term-care services most appropriate to the individual's social and medical needs.
  - (b) "Functionally impaired person" means any person who is unable to perform without assistance any of the activities of daily living including, but not limited to dressing, bathing, toileting, transferring, or feeding, or any of the instrumental activities of daily living including but not limited to meal preparation, laundry, housecleaning, budgeting, and shopping.
- (2) There shall be established within the Cabinet for ***Health Services***~~[Families and Children]~~ a Long-Term Care Case Management Demonstration Program to consolidate and coordinate all services provided or funded by the cabinet with respect to long-term care, conducted in at least three (3) area development districts. This demonstration program shall serve as the focal point for the provision of all services provided to functionally impaired persons to assure that services are consistent with the following goals:
  - (a) That functionally impaired persons be allowed to live independently at home or with others as long as the citizen desires without requiring inappropriate or premature institutionalization;
  - (b) That services provided or funded by the cabinet promote independent living by functionally impaired persons and prevent or minimize illness or social isolation;
  - (c) That institutional services be used only as a last resort when in-home or community-based support services are not available or are not adequate to meet the needs of functionally impaired persons;

- (d) That a single entry point for all services for functionally impaired persons be available to all persons in need of information about or access to the services; and
  - (e) That the use of informal providers of care, such as friends and relatives of functionally impaired persons, be used as long as possible before paid services are utilized.
- (3) The following programs and services shall be included in the Long-Term Care Case Management Demonstration Program:
- (a) Hospital-based long-term-care services including dual-licensed beds, swing beds and physical rehabilitation services, skilled-nursing facility services, intermediate-care-facility services, nursing-facility services, home-health services, and home- and community-based waiver services funded by the Kentucky Medical Assistance Program;
  - (b) In-home and community-based services for elderly persons funded under the Older Americans Act (42 U.S.C. secs. 3001 et seq.) and Title XX of the Social Security Act (42 U.S.C. secs. 1397-1397f);
  - (c) Services provided under the home care program pursuant to KRS 205.460; and
  - (d) Personal-care-home services or domiciliary care funded by supplemental payments to persons receiving supplemental security income benefits pursuant to KRS 205.245.
- (4) The Long-Term Care Case Management Demonstration Program shall employ a system of case management to assure that appropriate services are provided to all persons using or applying for the services set forth in subsection (3) of this section, and that the services are consistent with the goals set forth in subsection (2) of this section. All persons applying for these services shall be assigned a case manager. The duties of the case manager shall include preparation of a general plan of care, based on the person's need for services, arranging placements or other needed services or equipment, coordination and management of the applicant through the eligibility process for these services, and reviewing each case on a periodic basis to assure the plan of care is being followed. Case management shall not include the determination of eligibility for Medicaid covered services, long-term-care facility preadmission reviews, level-of-care determinations for purposes of Medicaid reimbursement, or peer review activities. The general plan of care shall not replace a daily care plan prescribed by a physician for treatment of a person in a hospital or long-term-care facility or receiving home-health services. The general plan of care shall identify the categories of services or type of placement required and the providers of the services. Case managers shall serve as advocates for applicants for the services set forth in subsection (3) of this section, and shall interact with the existing administrative structure within the Cabinet for **Health Services**~~(Families and Children)~~ to meet the goals stated in subsection (2) of this section. Patients discharged from a hospital to a long-term-care facility shall receive case management services in the hospital on a timely basis or immediately after admission to a long-term-care facility. The goal of each case plan shall be the provision of services in the least restrictive setting designed to best meet the individual needs of the functionally impaired person. When persons are determined to need services to maintain independent living, but do not meet the financial or eligibility criteria for services, case managers shall attempt to ensure that services are provided from community resources, family member, or volunteers.
- (5) The cabinet, through the Long-Term Care Demonstration Program, shall provide access to information, counseling, and screening as appropriate, for persons potentially in need of long-term-care services without regard to the person's income, in order to assist functionally impaired persons in accessing available services. In administering the Long-Term Care Demonstration Program, the cabinet shall provide services to meet the needs of the minority elderly as identified by the cabinet pursuant to KRS 205.201. The cabinet may charge a fee for providing information, counseling, and screening services based on the client's ability to pay.
- (6) The secretary for **health services**~~(families and children)~~ may promulgate administrative regulations necessary to implement the Long-Term Care Demonstration Program.

Section 24. KRS 205.455 is amended to read as follows:

As used in KRS 205.460 and 205.465:

- (1) "Chore services" means the performance of heavy housecleaning, minor household repairs, yard tasks, and other activities needed to assist in the maintenance of a functionally impaired elderly person in his own home.
- (2) "Core services" means those services, including but not limited to client assessment and case management services, designed to identify a functionally impaired elderly person's needs, develop a plan of care, arrange for services, monitor the provision of services, and reassess the person's needs on a regular basis.



- (3) "Cabinet" means the Cabinet for ***Health Services***~~[Families and Children]~~.
- (4) "District" means an area development district designated pursuant to KRS 147A.050.
- (5) "Escort services" means the accompaniment of a person who requires such assistance for reasons of safety or protection to or from his physician, dentist, or other necessary services.
- (6) "Essential services" means those services which are most needed to prevent unnecessary institutionalization of functionally impaired elderly persons. Essential services shall include chore services, home-delivered meals, home-health aide services, homemaker services, respite services, escort services, and home repair services.
- (7) "Functionally impaired elderly person" means any person, sixty (60) years of age or older, with physical or mental limitations which restrict individual ability to perform the normal activities of daily living and which impede individual capacity to live independently, thus rendering such person at risk of entering an institution. Functional impairment shall be determined through a functional assessment developed by the cabinet and delivered to each applicant for essential services.
- (8) "Home-delivered meals" means the provision of a nutritionally sound meal, that meets at least one-third (1/3) of the current daily recommended dietary allowance, to a functionally impaired elderly person who is homebound by reason of illness, incapacity, or disability.
- (9) "Home-health aide services" means the performance of simple procedures, including but not limited to personal care, ambulation, exercises, household services essential to health care at home, assistance with medications that are ordinarily self-administered, reporting changes in the patient's condition and needs, and completing appropriate records.
- (10) "Homemaker services" means general household activities, including but not limited to nonmedical personal care, shopping, meal preparation, and routine household care, provided by a trained homemaker when the person regularly responsible for these activities is temporarily absent or unable to manage the home and care for himself or others in the home.
- (11) "Home repair services" means the provision of minor home adaptations, additions, or modifications to enable the elderly to live independently or safely or to facilitate mobility including, where appropriate, emergency summons systems.
- (12) "Respite services" means care provided by an approved caregiver or agency for a designated time period because of absence or need for relief of a primary caregiver.

Section 25. KRS 205.900 is amended to read as follows:

As used in KRS 205.905 to 205.920:

- (1) "Cabinet" means the Cabinet for ***Health Services***~~[Families and Children]~~.
- (2) "Evaluation team" means at least three (3) individuals employed as such by a qualified agency or organization.
- (3) "Personal care assistance services" means services which are required by an adult with a severe physical disability to achieve greater physical independence and which include, but are not limited to:
  - (a) Routine bodily functions, such as bowel or bladder care;
  - (b) Dressing;
  - (c) Housecleaning and laundry;
  - (d) Preparation and consumption of food;
  - (e) Moving in and out of bed;
  - (f) Routine bathing;
  - (g) Ambulation; and
  - (h) Any other similar activity of daily living.
- (4) "Qualified agency or organization" means an agency or organization whose purpose is to provide services to severely physically disabled adults to enable them to live as independently as possible and a majority of whose governing board are consumers of these services. If no qualified agency or organization exists, an agency or

organization may become a qualified provider when consumers of personal care assistance services are a majority of its advisory council.

- (5) "Secretary" means the secretary of the Cabinet for **Health Services**~~[Families and Children]~~.
- (6) "Severely physically disabled adult" means a person eighteen (18) years of age or older with permanent or temporary, recurring functional loss of two (2) or more limbs.

Section 26. KRS 205.950 is amended to read as follows:

- (1) The Cabinet **for Health Services** shall, by administrative regulation in accordance with KRS Chapter 13A, establish health, safety, and treatment requirements for certified adult day care centers. No person, association, corporation, or other organization shall operate or maintain an adult day care center without first obtaining a certification as provided in this section.
- (2) The cabinet may issue a certification to any adult day care center meeting standards provided for under subsection (1) of this section. The cabinet may deny, revoke, suspend, or modify adult day care center certification for failure to comply with standards or when it determines the health, safety, or security of residents is in jeopardy. Actions to deny, revoke, suspend, or modify a certification may be appealed to the cabinet within thirty (30) days of receipt of notification of intent. Upon appeal, a hearing shall be conducted in accordance with KRS Chapter 13B.

Section 27. KRS 209.500 is amended to read as follows:

The Kentucky Senior Games Program is hereby created within the Office of Aging Services of the Cabinet for **Health Services**~~[Families and Children]~~. The program shall develop a year-round recreation, fitness, and health promotion program for Kentuckians fifty-five (55) years of age or older which shall provide a network of local competition and participation that culminates in a senior games state final.

Section 28. KRS 210.031 is amended to read as follows:

- (1) The cabinet shall establish an advisory committee of sixteen (16) members to advise the Department for Mental Health and Mental Retardation Services of the need for particular services for persons who are deaf or hard-of-hearing.
  - (a) At least eight (8) members shall be deaf or hard-of-hearing and shall be appointed by the secretary. Four (4) deaf or hard-of-hearing members, representing one (1) of each of the following organizations, shall be appointed from a list of at least two (2) nominees submitted from each of the following organizations:
    - 1. The Kentucky Association of the Deaf;
    - 2. The A.G. Bell Association;
    - 3. The Kentucky School for the Deaf Alumni Association; and
    - 4. Self Help for the Hard of Hearing.

The remaining four (4) deaf or hard-of-hearing members shall be appointed by the secretary from a list of at least eight (8) nominees submitted by the Kentucky Commission on the Deaf and Hard of Hearing.
  - (b) One (1) member shall be a family member of a deaf or hard-of-hearing consumer of mental health services and shall be appointed by the secretary from a list of nominees accepted from any source.
  - (c) The head of each of the following entities shall appoint one (1) member to the advisory committee:
    - 1. The Cabinet for Health Services, Department for Mental Health and Mental Retardation Services;
    - 2. The Cabinet for Workforce Development, Department of Vocational Rehabilitation;
    - 3. The Cabinet for **Health Services**~~[Families and Children]~~, Office of Aging Services;
    - 4. The Education, Arts, and Humanities Cabinet, Commission on the Deaf and Hard of Hearing;
    - 5. The Kentucky Registry of Interpreters for the Deaf; and
    - 6. A Kentucky School for the Deaf staff person involved in education.

- (d) The remaining member shall be a representative of a regional mental health/mental retardation board, appointed by the commissioner of the Department for Mental Health and Mental Retardation Services from a list composed of two (2) names submitted by each regional mental health/mental retardation board.
- (2) Of the members defined in subsection (1)(a) and (b) of this section, three (3) shall be appointed for a one (1) year term, three (3) shall be appointed for a two (2) year term, and three (3) shall be appointed for a three (3) year term; thereafter, they shall be appointed for three (3) year terms. The members defined under subsection (1)(c) and (d) of this section shall serve with no fixed term of office.
- (3) The members defined under subsection (1)(a) and (b) of this section shall serve without compensation but shall be reimbursed for actual and necessary expenses; the members defined under subsection (1)(c) and (d) shall serve without compensation or reimbursement of any kind.
- (4) The Department for Mental Health and Mental Retardation Services shall make available personnel to serve as staff to the advisory committee.
- (5) The advisory committee shall meet quarterly at a location determined by the committee chair.
- (6) (a) The advisory committee shall prepare a biennial report which:
  - 1. Describes the accommodations and the mental health, mental retardation, development disability, and substance abuse services made accessible to deaf and hard-of-hearing persons;
  - 2. Reports the number of deaf or hard-of-hearing persons served;
  - 3. Identifies additional service needs for the deaf and hard-of-hearing; and
  - 4. Identifies a plan to address unmet service needs.
- (b) The report shall be submitted to the secretary, the commissioner of the Department for Mental Health and Mental Retardation Services, and the Interim Joint Committee on Health and Welfare by July 1 of every odd-numbered year.

Section 29. KRS 216.541 is amended to read as follows:

- (1) Willful interference, as defined in KRS 216.535, with representatives of the Office of the Long-Term-Care Ombudsman in the lawful performance of official duties, as set forth in the Older Americans Act, 42 U.S.C. secs. 3001 et seq., shall be unlawful.
- (2) Retaliation and reprisals by a long-term-care facility or other entity against any employee or resident for having filed a complaint or having provided information to the long-term care ombudsman shall be unlawful.
- (3) A violation of subsection (1) or (2) of this section shall result in a fine of one hundred dollars (\$100) to five hundred dollars (\$500) for each violation. Each day the violation continues shall constitute a separate violation. The manner in which appeals are presented for violations of this section shall be in accordance with administrative regulations prescribed by the secretary for determining the rights of the parties. All fines collected pursuant to this section shall be used for programs administered by the Office of Aging Services.
- (4) The Cabinet for **Health Services**~~[Families and Children]~~ shall authorize the acquisition of liability insurance for the protection of representatives of the Long-Term-Care Ombudsman Program who are not employed by the state, to ensure compliance with the federal mandate that no representative of the office shall be liable under state law for the good faith performance of official duties.

Section 30. KRS 216.787 is amended to read as follows:

- (1) No agency providing services to senior citizens which are funded by the Department for Social Services **of the Cabinet for Families and Children** or the Office of Aging Services of the Cabinet for **Health Services**~~[Families and Children]~~ shall employ persons in a position which involves providing direct services to a senior citizen if that person has been convicted of a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or the commission of a sex crime.
- (2) Operators of service provider agencies may employ persons convicted of or pleading guilty to an offense classified as a misdemeanor.

- (3) Each service provider agency providing direct services to senior citizens as specified under KRS 216.785 to 216.793 shall request all conviction information from the Justice Cabinet for any applicant for employment prior to employing the applicant.

Section 31. KRS 216.793 is amended to read as follows:

- (1) Each application form provided by the employer, or each application form provided by a facility either contracted or operated by the Department for Mental Health and Mental Retardation Services of the Cabinet for Health Services, to the applicant for initial employment in a nursing facility or nursing pool providing staff to a nursing facility or in a position funded by the Department for Social Services **of the Cabinet for Families and Children** or the Office of Aging Services of the Cabinet for **Health Services** ~~[Families and Children]~~ and which involves providing direct services to senior citizens shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."
- (2) Any request for criminal records of an applicant as provided under subsection (1) of this section shall be on a form or through a process approved by the Justice Cabinet. The Justice Cabinet may charge a fee to be paid by the applicant or state agency in an amount no greater than the actual cost of processing the request and shall not exceed five dollars (\$5) per application.

Section 32. The following KRS section is repealed:

194B.180 Administrative regulations and decisions of various bodies transferred to Institute for Aging.

194B.550 Definitions for KRS 194B.550 to 194B.559.

194B.552 Office on Alzheimer's Disease and Related Disorders -- Director -- Report -- Purposes and duties.

194B.555 Alzheimer's Disease and Related Disorders Council -- Members -- Duties.

194B.559 Authority to promulgate administrative regulations.

Section 33. The General Assembly confirms Executive Order 99-80, dated January 20, 1999, to the extent it is not otherwise confirmed or superseded by this Act.

**Approved February 15, 2000**

## **CHAPTER 7**

**(HB 83)**

AN ACT relating to reorganization.

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

Section 1. KRS 198A.035 is amended to read as follows:

- (1) The Kentucky Housing Corporation shall oversee the development and implementation of the Kentucky housing policy. The corporation shall create an advisory committee on housing policy consisting of the following:
- (a) The following **eleven (11)** ~~ten (10)~~ state government members, or their duly-appointed designees: the commissioner of education; commissioner of the Department for Local Government; commissioner of the Department of Housing, Buildings and Construction; secretary of the Cabinet for Economic Development; secretary of the Cabinet for Families and Children; secretary of the Natural Resources and Environmental Protection Cabinet; **secretary of the Cabinet for Health Services**; executive director of the Human Rights Commission; state historic preservation officer; secretary of the Transportation Cabinet; and executive director of the Kentucky Housing Corporation.
- (b) At-large members shall be appointed by the chairman of the board of directors of the Kentucky Housing Corporation. There shall be one (1) at-large representative for each of the following:
1. Public housing authorities;
  2. Mortgage banking industry;
  3. Manufactured housing industry;

4. Realtors;
5. Homebuilders;
6. Urban nonprofit housing organizations;
7. Rural nonprofit housing organizations;
8. Urban advocates for the homeless;
9. Rural advocates for the homeless;
10. Residents of economically-diverse urban neighborhoods;
11. Residents of economically-diverse rural neighborhoods;
12. Rental property providers;
13. Advocates for persons with physical disabilities;
14. Advocates for persons with mental disabilities;
15. The Kentucky State Building Trades Council;
16. The Kentucky League of Cities; and
17. The Kentucky Association of Counties.

(c) One (1) member of the Senate and one (1) member of the House of Representatives.

- (2) State government members and General Assembly members shall serve on the advisory committee during the term of their elected or appointed state government positions. Members appointed as provided by subsection (1)(b) of this section shall be appointed for four (4) year terms, except that initially five (5) shall be appointed for two (2) year terms, six (6) shall be appointed for three (3) year terms, and six (6) shall be appointed for four (4) year terms.
- (3) The advisory committee shall meet at least quarterly and hold additional meetings as necessary. Eleven (11) members of the committee shall constitute a quorum for the purposes of conducting business and exercising its powers for all purposes.
- (4) Any vacancy shall be filled as provided by the requirements and procedures for the initial appointment and only for the remainder of the term of the initial appointment.
- (5) Any at-large member may be removed at any time, with or without cause, by resolution of a majority of the board of directors of the corporation.
- (6) The advisory committee shall consult with and advise the officers and directors of the corporation concerning matters relating to the Kentucky housing policy.
- (7) The corporation shall annually report its findings and recommendations regarding the Kentucky housing policy to the Governor and the Interim Joint Committee on Local Government of the Legislative Research Commission.
- (8) The advisory committee shall elect a presiding officer from among its members and may establish its own rules of procedure which shall not be inconsistent with the provisions of this chapter.
- (9) Members of the advisory committee shall serve without compensation. Members who are not employees of the Commonwealth shall be entitled to reimbursement for actual expenses incurred in carrying out their duties on the committee.
- (10) The Kentucky Housing Corporation shall provide the staff and funding for the administrative activities of the advisory committee. The Kentucky Housing Corporation shall perform all budgeting, procurement, and other administrative activities necessary to the functioning of the advisory committee. The advisory committee may authorize studies as it deems necessary and utilize Kentucky Housing Corporation funds and other available resources from the public or private sector to provide housing needs data.

Section 2. The General Assembly hereby confirms Executive Order 98-1013, dated July 30, 1998, to the extent it is not otherwise confirmed by this Act.

**Approved February 15, 2000**

**CHAPTER 8****(HB 183)**

AN ACT relating to reorganization.

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

Section 1. KRS 15A.067 is amended to read as follows:

- (1) As used in this section, "facility" means any of the facilities specified in KRS 15A.200 operated by a political subdivision of the Commonwealth of Kentucky for the care of juveniles alleged to be delinquent or adjudicated delinquent.
- (2) There is established within the Department of Juvenile Justice, a Division of ***Program***~~Educational~~ Services, that shall be responsible for the delivery of appropriate educational programs to incarcerated youth. Each facility shall provide educational services to adjudicated delinquents who may be ordered by the court to remain in the juvenile detention facility for an indeterminate period.
- (3) Any other statutes to the contrary notwithstanding, the Department of Juvenile Justice shall have access to all educational records, public or private, of any juvenile in a facility or program or informal adjustment authorized by law.
- (4) The Division of ***Program***~~Educational~~ Services shall ensure that all incarcerated youth be provided appropriate screening and educational programs as follows:
  - (a) For students identified before incarceration as having an educational disability, the Division of ***Program***~~Educational~~ Services shall make specially designed instruction and related services available as required by Kentucky Board of Education administrative regulations applicable to students with disabilities.
  - (b) For students incarcerated for more than fourteen (14) days, the division shall ensure that appropriate screening is provided to all youth. Screening shall include, but not be limited to, seeking the juvenile's educational record.
  - (c) For students incarcerated for more than thirty (30) days, the division shall ensure that all youth are provided an appropriate education.
- (5) The Department of Juvenile Justice shall be responsible for providing, in its contracts with private juvenile detention facilities and county jails, the specific obligations of those entities to provide educational services to incarcerated juveniles consistent with this section, including funding provisions.
- (6) The Department of Education and all local school district administrators shall cooperate with officials responsible for the operation of juvenile detention facilities and with the Division of ***Program***~~Educational~~ Services to ensure that all documents necessary to establish educational status and need shall follow the students who are being held in these facilities so the students can be afforded educational opportunities.
- (7)
  - (a) Upon disposition by the juvenile court that an adjudicated juvenile shall stay in a juvenile detention facility for any period of time, the facility shall notify the juvenile's last resident school district of the student's whereabouts.
  - (b) Within five (5) days after the juvenile is released, the Division of ***Program***~~Educational~~ Services shall notify the district in which the student will reside of the youth's release and educational status and forward any educational records.
- (8) The Department of Juvenile Justice shall, after consultation with the Department of Education, promulgate an administrative regulation for the effective implementation of this section.

Section 2. The General Assembly hereby confirms Executive Order 99-1325, dated September 27, 1999, to the extent it is not otherwise confirmed by this Act. The reorganization creates the Division of Staff Development and abolishes the Division of Detention Programs and the Division of Educational Services, which is referenced in the order as the Division of Education Services. The Division of Quality Assurance is renamed the Division of Program Services, which assumes the duties of the abolished Division of Educational Services as provided in Section 1 of this Act.

**Approved February 15, 2000**

## **CHAPTER 9**

**(HB 184)**

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 99-1311, dated September 22, 1999, which creates the Office of the Public Advocate within the Department of Public Advocacy. The Office of the Public Advocate shall consist of the public advocate, the deputy public advocate, the general counsel, and other policy-making positions as deemed necessary.

**Approved February 15, 2000**

## **CHAPTER 10**

**(HB 51)**

AN ACT relating to the Federal Individuals with Disabilities Education Act.

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

Section 1. KRS 200.672 is amended to read as follows:

***Kentucky's participation in Part C of the Federal Individuals with Disabilities Education Act requires that***~~*[Within the limitations of any available funding and subject to any appropriations related thereto,]*~~ an infant or toddler with a disability who is being served by the Kentucky Early Intervention System and the parent or guardian of that child shall have the following rights:

- (1) To a timely, multidisciplinary evaluation and assessment;
- (2) To appropriate early intervention services for children and families;
- (3) To refuse evaluation, assessment, or services;
- (4) To written notice before a change is made in the identification, evaluation, or placement of the child, or in the provision of services to the child or family;
- (5) To written notice before a refusal of services is made in the identification, evaluation, or placement of the child, or in the provision of services to the child or family;
- (6) To confidentiality of personally identifiable information, including the right of the parent or guardian to be provided written notice of, and written consent to, the exchange of information among agencies, consistent with federal and state laws;
- (7) To determine if any family member will accept or decline an early intervention service under KRS 200.650 to 200.676, in accordance with state law, without jeopardizing other early intervention services under KRS 200.650 to 200.676;
- (8) To review all records and, if appropriate, to amend records;
- (9) To bring an advocate or attorney into any and all dealings with the early intervention system; and
- (10) To administrative process and judicial review in accordance with KRS Chapter 13B to resolve complaints.

**Approved February 15, 2000**

**CHAPTER 11****(HB 79)**

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 98-1671 of the Department of Education, dated December 17, 1998, which reorganizes the Department of Education into the following: the Office of Communications, the Office of Human Resources and Equity, the Office of District Support Services, the Office of Budget and Financial Management, the Office of Special Instructional Services, the Office of Teacher Education and Certification, the Office of Leadership and School Improvement, the Office of Supportive Learning Environments, the Office of Assessment and Accountability, and the Office of Academic and Professional Development. The Division of Management Assistance Programs is transferred from the Office of Legal Services to the Office of District Support Services. The Bureau of Learning Results Services and the Office of Learning Programs Development are abolished. The relevant duties, functions, responsibilities, records, equipment, facilities, and support budgets of the Department of Education shall be transferred to the appropriate organizational unit or administrative body to effectuate the provisions of the Executive Order, as confirmed by this section. Executive Orders 95-112, 93-689, and 93-542 and 1994 Ky. Acts Ch. 256, which reorganized the Department of Education, remain in effect except to the extent that they are modified by this section.

**Approved February 15, 2000**

**CHAPTER 12****(HB 91)**

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 98-869, issued by the Governor on July 8, 1998, which organizes the Kentucky Higher Education Assistance Authority into the following divisions:

- (1) Division of Student and Administrative Services, which shall be responsible for administration of the state-funded student aid program, the Kentucky Educational Savings Plan Trust, outreach, development and dissemination of student financial aid information, personnel, and other administrative support functions including records, facility management, and document processing performed by the authority. The division shall be headed by a director appointed by the executive director of the authority in accordance with KRS 164.746(7), KRS 164.748(21), and KRS 12.050.
- (2) Division of Information Resources and Technology, which shall be responsible for managing the authority's information resources and technology. The division shall be headed by a director appointed by the executive director of the authority in accordance with KRS 164.746(7), KRS 164.748(21), and KRS 12.050.
- (3) Division of Legal Services, which shall be responsible for all legal requirements and activities of the authority. The division shall be headed by the authority's general counsel who shall be appointed by the executive director of the authority in accordance with KRS 164.746(7), KRS 12.050, and KRS 12.210(1).
- (4) Division of Loan Policy Services, which shall be responsible for policy development and client inquiries, contract management, appeals, compliance, and market development for loans. The division shall be headed by a director appointed by the executive director of the authority in accordance with KRS 164.746(7), 164.748(21), and KRS 12.050.
- (5) Division of Loan Program Administration, formerly named the Division of Program Administration, which shall continue to be responsible for administering the Federal Family Education Loan Program in accordance with federal laws and regulations and providing the origination services of student loans for lenders. The division shall be headed by a director appointed by the executive director of the authority in accordance with KRS 164.746(7), KRS 164.748(21), and KRS 12.050.



- (6) Division of Financial Affairs, formerly named the Division of Fiscal Affairs, which shall be headed by a director appointed by the executive director of the authority in accordance with KRS 164.746(7), KRS 164.748(21), and KRS 12.050.

**Approved February 15, 2000**

## CHAPTER 13

**(HB 93)**

AN ACT relating to reorganization.

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

Section 1. KRS 164.7874 is amended to read as follows:

As used in KRS 164.7871 to 164.7885:

- (1) "Academic term" means a semester or other time period specified in an administrative regulation promulgated by the council;
- (2) "Academic year" means a period consisting of at least the minimum school term, as defined in KRS 158.070;
- (3) "ACT score" means the composite score achieved on the American College Test or an equivalent score, as determined by the council, on the Scholastic Assessment Test;
- (4) "Authority" means the Kentucky Higher Education Assistance Authority;
- (5) "Award period" means two (2) consecutive academic terms;
- (6) "**Kentucky educational excellence**~~[Commonwealth merit]~~ scholarship" means a scholarship provided to an eligible student to attend a participating institution;
- (7) "**Kentucky educational excellence**~~[Commonwealth merit]~~ scholarship curriculum" means five (5) courses of study in an academic year as determined by administrative regulation promulgated by the council;
- (8) "**Kentucky educational excellence**~~[Commonwealth merit]~~ scholarship trust fund" means the Wallace G. Wilkinson **Kentucky educational excellence**~~[Commonwealth merit]~~ scholarship trust fund;
- (9) "Council" means the Council on Postsecondary Education created under KRS 164.011;
- (10) "Eligible student" means any person who is a Kentucky resident enrolling in a Kentucky high school, after July 1, 1998, who, while meeting the **Kentucky educational excellence**~~[Commonwealth merit]~~ scholarship curriculum requirements, has a grade point average of 2.5 or above at the end of any academic year beginning after July 1, 1998, and who is not a convicted felon;
- (11) "Full-time student" means a student enrolled in a postsecondary program of study that meets the full-time student requirements of the participating institution in which the student is enrolled;
- (12) "Grade point average" means the grade point average earned by an eligible student based on a scale of 4.0 or its equivalent if the high school or participating institution that the student attends does not use the 4.0 grade scale;
- (13) "High school" means any Kentucky public high school, and any private, parochial, or church school that has been certified by the Kentucky Board of Education as voluntarily complying with curriculum, certification, and textbook standards established by the Kentucky Board of Education under KRS 156.160;
- (14) "Maximum award amount" means the sum of the proportionate base scholarship amount earned by an eligible student in each academic year of high school study and any supplemental award earned by an eligible student. The amount so determined shall be the maximum amount available to the eligible student for any award period;
- (15) "Participating institution" means an "institution" as defined in KRS 164.001 that actively participates in the federal Pell Grant program, executes a contract with the authority on terms the authority deems necessary or appropriate for the administration of its programs, and:
  - (a) 1. Is publicly operated; or

2. Is licensed by the Commonwealth of Kentucky and has operated for at least ten (10) years, offers an associate or baccalaureate degree program of study not comprised solely of sectarian instruction, and admits as regular students only high school graduates or recipients of a general equivalency diploma or students transferring from another accredited degree granting institution; and
- (b) Continues to commit financial resources to student financial assistance programs and provides annual documentation to the authority of compliance;
- (16) "Part-time student" means a student enrolled in a postsecondary program of study who does not meet the full-time student requirements of the participating institution in which the student is enrolled and who is enrolled for at least six (6) credit hours or the equivalent for an institution that does not use credit hours; and
- (17) "Supplemental award" means commitment of additional scholarship funds under KRS 164.7879(3) to an eligible student based on the eligible student's ACT score.

Section 2. KRS 164.7877 is amended to read as follows:

- (1) There is established in the State Treasury a permanent and perpetual fund to be known as the "Wallace G. Wilkinson **Kentucky Educational Excellence**~~[Commonwealth Merit]~~ Scholarship Trust Fund" to which shall be credited net lottery revenues transferred in accordance with KRS 154A.130; gifts; bequests; endowments; grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private.
- (2) The moneys in the fund are hereby continuously appropriated only for the purposes set forth in KRS 164.7871 to 164.7885 and KRS 164.7889.
- (3) The council shall administer the **Kentucky educational excellence**~~[Commonwealth merit]~~ scholarship trust fund. Upon the approval of the council, the authority may expend funds from the **Kentucky educational excellence**~~[Commonwealth merit]~~ scholarship trust fund that are necessary and reasonable to meet the expenses of administering the **Kentucky educational excellence**~~[Commonwealth merit]~~ scholarship trust fund.

Section 3. KRS 164.7879 is amended to read as follows:

- (1) **Kentucky educational excellence**~~[Commonwealth merit]~~ scholarship awards shall be based upon an established base scholarship amount and an eligible student's grade point average. The base scholarship amount for students attaining a grade point average between 2.5 and 4.0 for the 1998-1999 academic year shall be as follows:

GPA	Amount	GPA	Amount
2.50	\$125.00	3.30	\$325.00
2.60	\$150.00	3.40	\$350.00
2.70	\$175.00	3.50	\$375.00
2.75	\$187.50	3.60	\$400.00
2.80	\$200.00	3.70	\$425.00
2.90	\$225.00	3.75	\$437.50
3.00	\$250.00	3.80	\$450.00
3.10	\$275.00	3.90	\$475.00
3.20	\$300.00	4.00	\$500.00
3.25	\$312.50		

The council shall review the base amount of the **Kentucky educational excellence**~~[Commonwealth merit]~~ scholarship beginning with the 1999-2000 academic year and each academic year thereafter and may promulgate an administrative regulation to make adjustments after considering the availability of funds.

- (2) The authority shall commit to provide to each eligible student the base amount of the **Kentucky educational excellence**~~[Commonwealth merit]~~ scholarship for each academic year of high school study in the **Kentucky educational excellence**~~[Commonwealth merit]~~ scholarship curriculum that the student has attained at least a 2.5 grade point average. The award shall be based upon the eligible student's grade point average at the close

of each academic year. An award attributable to a past academic year shall not be increased after the award has been earned by an eligible student, regardless of any subsequent increases made to the base amount of the ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship through the promulgation of an administrative regulation by the council.

- (3) (a) The authority shall commit to provide to each eligible student graduating from high school before June 30, 1999, and achieving a score of at least 15 on the American College Test, a supplemental award for the award period beginning in the fall of 1999, based on the eligible student's highest ACT score attained by the date of graduation from high school. The amount of the supplemental award shall be determined as follows:

Annual		Annual	
ACT Score	Bonus	ACT Score	Bonus
15	\$21	22	\$171
16	\$43	23	\$193
17	\$64	24	\$214
18	\$86	25	\$236
19	\$107	26	\$257
20	\$129	27	\$279
21	\$150	28 or above	\$300

Subsequent supplemental awards for eligible students graduating before June 30, 1999, shall be determined in accordance with the provisions of paragraph (b) of this subsection.

- (b) The authority shall commit to provide to each eligible student upon achievement after June 30, 1999, of an ACT score of at least 15 on the American College Test a supplemental award based on the eligible student's highest ACT score attained by the date of graduation from high school. The amount of the supplemental award shall be determined as follows:

ACT Score	Amount	ACT Score	Amount
15	\$36	22	\$286
16	\$71	23	\$321
17	\$107	24	\$357
18	\$143	25	\$393
19	\$179	26	\$428
20	\$214	27	\$464
21	\$250	28 and above	\$500

The council shall review the base amount of the supplemental award beginning with the 2001-2002 academic year and each academic year thereafter and may promulgate an administrative regulation to make adjustments after considering the availability of funds.

- (c) The council shall promulgate administrative regulations establishing the eligibility criteria and procedures for making a supplemental award to Kentucky residents who graduate from a nonpublic high school not certified by the Kentucky Board of Education and Kentucky residents who obtain a General Educational Development (GED) diploma within five (5) years of their high school graduating class.

Section 4. KRS 164.7881 is amended to read as follows:

- (1) Every eligible student who has graduated from high school and who has earned a ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship, or a ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship and a supplemental award, shall be eligible to receive the ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship, or the ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship and the supplemental award, for a maximum of eight (8) academic terms in an undergraduate or

other postsecondary program of study at a participating institution, except as provided in subsection (6) of this section.

- (2) To receive the ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship or a ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship and supplemental award, an eligible student shall:
  - (a) Enroll in and attend a participating institution as a full-time student or a part-time student; and
  - (b) Maintain eligibility as provided in subsection (3) of this section.
- (3) Eligibility for a ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship or a ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship and supplemental award shall terminate upon the earlier of:
  - (a) The expiration of five (5) years following the student's graduation from high school, except as provided in subsection (5) or (6) of this section; or
  - (b) The successful completion of an undergraduate or other postsecondary course of study. However, any student who successfully completes the requirements for a degree or certification involving a postsecondary course of study that normally requires less than eight (8) academic terms to complete may continue to receive the benefits of a ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship or a ***Kentucky educational excellence***~~[Commonwealth merit]~~ scholarship and supplemental award for a cumulative total of eight (8) academic terms if the student enrolls full-time in a four (4) year program.
- (4)
  - (a) The maximum award amount shall be determined by the council and shall be adjusted as provided in this subsection. The award amount ultimately determined to be available to an eligible student for an award period shall be disbursed by the authority to the eligible student in two (2) equal installments, with one (1) installment being disbursed in each of the two (2) academic terms during the award period.
  - (b) The authority shall, by promulgation of administrative regulations, provide for the proportionate reduction of the maximum award amount for an eligible student for any academic term in which the student is enrolled on a part-time basis. Each academic term for which any scholarship or supplemental award funds are accepted by an eligible student shall count as a full academic term, even if the award amount was reduced to reflect the part-time status of the eligible student.
  - (c)
    1. An eligible student who is enrolled full-time in an undergraduate program of study shall receive the maximum award amount for the first award period that the student is enrolled in and attending the program of study. To retain the maximum award for the second award period, an eligible student shall have a 2.5 grade point average at the end of the first award period. To retain the maximum award amount for subsequent award periods, an eligible student shall have a cumulative grade point average of 3.0 or greater at the end of the prior award period.
    2. Any eligible student who maintains a cumulative grade point average of less than 3.0 but at least 2.5 at the completion of any award period shall receive a reduction in the maximum award amount equal to fifty percent (50%) of the maximum award amount for the next award period.
    3. Any eligible student who maintains a cumulative grade point average of less than 2.5 at the completion of any award period shall lose his or her award for the next award period.
    4. Each participating institution shall certify to the authority at the close of each award period the cumulative grade point average of each eligible student enrolled as a full-time or part-time student at the participating institution.
    5. Any student who loses eligibility through failure to maintain the required cumulative grade point average may regain eligibility in a subsequent award period upon reestablishing at least a 2.5 cumulative grade point average or its equivalent during a subsequent award period, as certified by the participating institution.
- (5) The expiration of a student's five (5) year eligibility shall be extended by the authority upon a determination that the student was unable to enroll for or complete an academic term due to any of the following circumstances:
  - (a) A serious and extended illness or injury of the student, certified by an attending physician;

- (b) The death or serious and extended illness or injury of an immediate family member of the student, certified by an attending physician, which would render the student unable to attend classes;
  - (c) Natural disasters that would render a student unable to attend classes; or
  - (d) Active duty status for the student in the United States Armed Forces or as an officer in the Commissioned Corps of the United States Public Health Service, or active service by the student in the Peace Corps Act or the Americorps, for up to three (3) years.
- (6) An eligible student who is enrolled at a participating institution in a five (5) year undergraduate degree program designated in an administrative regulation promulgated by the council shall be eligible to receive the **Kentucky educational excellence**~~Commonwealth-merit~~ scholarship, or the **Kentucky educational excellence**~~Commonwealth-merit~~ scholarship and the supplemental award for a maximum of ten (10) academic terms. The expiration of an eligible student's five (5) year eligibility shall be extended to six (6) years for eligible students meeting the requirements of this subsection.
- (7) Each eligible student who attains a 28 or above on the ACT and a 4.0 grade point average for all four (4) years of high school shall be designated as a "Jeff Green Scholar" in honor of the late Senator Jeff Green of Mayfield, Kentucky, First District.

Section 5. KRS 164.7885 is amended to read as follows:

- (1) Not later than August 1, 1999, and each June 30 thereafter, each Kentucky high school shall submit to the Kentucky Department of Education, which shall transmit to the authority, a compiled list of all eligible students during the academic year. The list shall identify the high school and shall contain each eligible student's name, social security number, address, grade point average for the academic year, expected or actual graduation date, and highest ACT score. The authority shall notify each eligible student of his or her **Kentucky educational excellence**~~Commonwealth-merit~~ scholarship award earned each academic year. The authority shall determine the final **Kentucky educational excellence**~~Commonwealth-merit~~ scholarship and supplemental award based upon the actual final grade point average and highest ACT score and shall notify each eligible student of the final determination. The authority shall make available a list of eligible students to participating institutions.
- (2) Not later than January 30, 1999, and each January 30 thereafter, each Kentucky high school shall submit to the Kentucky Department of Education, which shall transmit to the authority, a compiled list of all eligible students expected to graduate during the academic year. The list shall identify the high school and shall contain each eligible student's name, Social Security number, address, grade point average for the fall academic period of the current academic year, and highest ACT score. The authority shall then calculate each eligible student's projected **Kentucky educational excellence**~~Commonwealth-merit~~ scholarship and supplemental award based on the eligible student's data available to the Authority and shall make available to participating institutions by April 1 of each academic year a comprehensive list of prospective graduates who are eligible students and their projected scholarship and supplemental award amounts. The authority shall notify each prospective high school graduate who is an eligible student of his or her projected **Kentucky educational excellence**~~Commonwealth-merit~~ scholarship and supplemental award amount.
- (3) The authority shall provide data access only to participating institutions that have either received an admission application from an eligible student or have been listed by the eligible student on the Free Application For Federal Student Aid.
- (4) For each eligible student enrolling in a participating institution after July 1, 1999, the participating institution shall verify to the authority:
  - (a) The student's initial eligibility for a **Kentucky educational excellence**~~Commonwealth-merit~~ scholarship or **Kentucky educational excellence**~~Commonwealth~~ scholarship and supplemental award through the comprehensive list compiled by the authority or an alternative source satisfactory to the authority;
  - (b) The student's highest ACT score attained by the date of graduation from high school;
  - (c) The eligible student's full-time or part-time enrollment status at the beginning of each academic term; and
  - (d) The eligible student's cumulative grade point average after the completion of each award period.
- (5) Each participating institution shall submit to the authority a report, in a form satisfactory to the authority, of all eligible students enrolled for that academic term. **Kentucky educational excellence**~~Commonwealth-merit~~

scholarships and supplemental awards shall be disbursed by the authority to each eligible student attending a participating institution during the academic term within thirty (30) days after receiving a satisfactory report.

- (6) Except as provided in this subsection, the ***Kentucky educational excellence***~~[Commonwealth-merit]~~ scholarship and the supplemental award shall not be reduced.
  - (a) If the sum of the ***Kentucky educational excellence***~~[Commonwealth-merit]~~ scholarship and the supplemental award plus other student financial assistance from all sources exceeds the eligible student's total cost of education, as defined in 20 U.S.C. sec. 1087ll, need-based financial assistance awards administered by the authority and the participating institution shall be reduced by the amount that all student financial assistance exceeds the total cost of education.
  - (b) ***Kentucky educational excellence***~~[Commonwealth-merit]~~ scholarships and supplemental awards shall not be awarded to any eligible students who are in default on any obligation to the authority under any programs administered by the authority under KRS 164.785 until financial obligations to the authority are satisfied, except that ineligibility may be waived by the authority for cause.
- (7) Notwithstanding the provisions of KRS 164.753, the authority may promulgate administrative regulations for the administration of ***Kentucky educational excellence***~~[Commonwealth-merit]~~ scholarships and supplemental awards under the provisions of KRS 164.7871 to 164.7885 and KRS 164.7889.

Section 6. KRS 154A.130 is amended to read as follows:

- (1) All money received by the corporation from the sale of lottery tickets and all other sources shall be deposited into a corporate operating account. The corporation is authorized to use all money in the corporate operating account for the purposes of paying prizes and the necessary expenses of the corporation and dividends to the state. The corporation shall allocate the amount to be paid by the corporation to prize winners. The amount in the corporate operating account which the corporation anticipates will be available for the payment of prizes on an annuity basis may be invested in direct United States Treasury obligations. These instruments may be in varying maturities with respect to payment of annuities and may be in book-entry form. Monthly, no later than the last business day of the succeeding month, the corporation shall transfer to a lottery trust fund the amount of net revenues which the corporation determines are surplus to its needs. These funds shall be held in trust until 1990 at which time the General Assembly shall determine the manner in which the funds will be allocated and appropriated. The net revenues shall be determined by deducting from gross revenues the payment costs incurred in the operation and administration of the lottery, including the expenses of the corporation and the costs resulting from any contract or contracts entered into for promotional, advertising, or operational services or for the purchase or lease of lottery equipment and materials, fixed capital outlays, and the payment of prizes to the holders of winning tickets. After the start-up costs are paid, it is the intent of the Legislature that it shall be the goal of the corporation to transfer each year thirty-five percent (35%) of gross revenues to the general fund for the purposes stated above.
- (2) A Kentucky lottery trust account is established in the State Treasury. Net lottery revenues shall be credited to this restricted account as provided in subsection (1) of this section. Moneys credited to the Kentucky lottery trust account shall be invested by the state in accordance with state investment practices and all earnings from the investments shall accrue to this account. No moneys shall be allotted or expended from this account unless pursuant to an appropriation by the General Assembly, except that moneys as are needed shall be transferred to the general fund pursuant to the provisions of the Acts of the Extraordinary Session of the 1988 General Assembly. Moneys in the Kentucky lottery trust account shall not lapse at the close of the state fiscal year.
- (3) Beginning in fiscal year 1999-2000, and each fiscal year thereafter, three million dollars (\$3,000,000) from net lottery revenues from the sale of lottery tickets shall be credited from the general fund as follows:
  - (a) To the Collaborative Center for Literacy Development, one million two hundred thousand dollars (\$1,200,000) in fiscal year 1999-2000 and each fiscal year thereafter; and
  - (b) To the early reading incentive fund, one million eight hundred thousand dollars (\$1,800,000) in fiscal year 1999-2000 and each fiscal year thereafter.
- (4) After the allocation of three million dollars (\$3,000,000) to literacy development, as provided in subsection (3) of this section, net lottery revenues from the sale of lottery tickets shall be credited from the general fund as follows:
  - (a) To the Wallace G. Wilkinson ***Kentucky educational excellence***~~[Commonwealth-merit]~~ scholarship trust fund established in Section 3 of this Act:

1. Seven million dollars (\$7,000,000) in fiscal year 1999-2000;
  2. Fifteen percent (15%) in fiscal year 2000-2001;
  3. Twenty-five percent (25%) in fiscal year 2001-2002;
  4. Thirty-two percent (32%) in fiscal year 2002-2003;
  5. Forty percent (40%) in fiscal year 2003-2004; and
  6. Forty-five percent (45%) in fiscal year 2004-2005 and each fiscal year thereafter; and
- (b) To the College Access Program and the Kentucky Tuition Grants Program established in KRS Chapter 164:
1. Fourteen million dollars (\$14,000,000) in fiscal year 1998-1999;
  2. Fifteen million dollars (\$15,000,000) in fiscal year 1999-2000;
  3. Thirty-two percent (32%) in fiscal year 2000-2001 through fiscal year 2002-2003;
  4. Forty percent (40%) in fiscal year 2003-2004;
  5. Forty-five percent (45%) in fiscal year 2004-2005; and
  6. Fifty-five percent (55%) of net lottery revenues in fiscal year 2005-2006 and each fiscal year thereafter.
- (5) The Auditor of Public Accounts shall be responsible for a financial postaudit of the books and records of the corporation. The postaudit shall be conducted in accordance with generally accepted accounting principles, shall be paid for by the corporation, and shall be completed within ninety (90) days of the close of the corporation's fiscal year. The Auditor of Public Accounts shall contract with an independent, certified public accountant who meets the qualifications existing to do business within the Commonwealth of Kentucky to perform the corporation postaudit. The Auditor of Public Accounts shall remain responsible for the annual postaudit and the corporation shall pay all audit costs. The Auditor of Public Accounts may at any time conduct additional audits, including performance audits, of the corporation as he deems necessary or desirable. Contracts shall be entered into for audit services for a period not to exceed five (5) years and the same firm shall not receive two (2) consecutive audit contracts. All audits shall be filed with the Governor, the President of the Senate, and the Speaker of the House of Representatives. The corporation shall reimburse the Auditor of Public Accounts for the reasonable costs of any audits performed by him. The corporation shall cooperate with the Auditor of Public Accounts by giving employees designated by any of them access to facilities of the corporation for the purpose of efficient compliance with their respective responsibilities. With respect to any reimbursement that the corporation is required to pay to any agency, the corporation shall enter into an agreement with that agency under which the corporation shall pay to the agency an amount reasonably anticipated to cover the reimbursable expenses in advance of the expenses being incurred.
- (6) By no later than December 31 of each year, in an advertisement at least one-fourth (1/4) of a page in size, the Kentucky Lottery Corporation shall publish the following information in every general-circulation daily newspaper published in Kentucky:
- (a) The statements of revenue, expenses, and changes in retained earnings as shown in the most recent annual audit report. It shall be explained that the transfer of dividends is the amount of lottery earnings transferred to the general fund;
  - (b) A statement identifying the auditing firm;
  - (c) A telephone number which citizens may call to obtain a complete copy of the annual audit report; and
  - (d) The name of the president/chief executive officer of the Kentucky Lottery Corporation and a complete list of board members.

The Kentucky Lottery Corporation shall pay for the cost of the advertisement.

Section 7. The General Assembly hereby confirms Executive Order 98-1592, issued by the Governor on December 3, 1998, to the extent that it is not otherwise confirmed by this Act.

**Approved February 15, 2000**

**CHAPTER 14****(SB 24)**

AN ACT relating to reorganization.

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

Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.
  - (c) Registry of Election Finance.
4. Department of Law.
  - (a) Attorney General.
5. Department of the Treasury.
  - (a) Treasurer.
6. Department of Agriculture.
  - (a) Commissioner of Agriculture.
  - (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
  - (a) Department of State Police.
  - (b) Department of Criminal Justice Training.
  - (c) Department of Corrections.
  - (d) Department of Juvenile Justice.
  - (e) Office of the Secretary.
  - (f) Offices of the Deputy Secretaries.
  - (g) Office of General Counsel.



- (h) Division of Kentucky State Medical Examiners Office.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
- (a) Department of Education.
    - (1) Kentucky Board of Education.
    - (2) Education Professional Standards Board.
  - (b) Department for Libraries and Archives.
  - (c) Kentucky Arts Council.
  - (d) Kentucky Educational Television.
  - (e) Kentucky Historical Society.
  - (f) Kentucky Teachers' Retirement System Board of Trustees.
  - (g) Kentucky Center for the Arts.
  - (h) Kentucky Craft Marketing Program.
  - (i) Kentucky Commission on the Deaf and Hard of Hearing.
  - (j) Governor's Scholars Program.
  - (k) Governor's School for the Arts.
  - (l) Operations and Development Office.
  - (m) Kentucky Heritage Council.
  - (n) Kentucky African-American Heritage Commission.
  - (o) Board of Directors for the Center for School Safety.
3. Natural Resources and Environmental Protection Cabinet:
- (a) Environmental Quality Commission.
  - (b) Kentucky Nature Preserves Commission.
  - (c) Department for Environmental Protection.
  - (d) Department for Natural Resources.
  - (e) Department for Surface Mining Reclamation and Enforcement.
  - (f) Office of Legal Services.
  - (g) Office of Information Services.
4. Transportation Cabinet:
- (a) Department of Highways.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Administrative Services.
  - (d) Department of Fiscal Management.
  - (e) Department of Rural and Municipal Aid.
  - (f) Office of General Counsel.
  - (g) Office of Public Affairs.

- (h) Office of Personnel Management.
- (i) Office of Minority Affairs.
- (j) Office of Environmental Affairs.
- (k) Office of Policy and Budget.
- 5. Cabinet for Economic Development:
  - (a) Department of Administration and Support.
  - (b) Department of Job Development.
  - (c) Department of Financial Incentives.
  - (d) Department of Community Development.
  - (e) Tobacco Research Board.
  - (f) Kentucky Economic Development Finance Authority.
- 6. Public Protection and Regulation Cabinet:
  - (a) Public Service Commission.
  - (b) Department of Insurance.
  - (c) Department of Housing, Buildings and Construction.
  - (d) Department of Financial Institutions.
  - (e) Department of Mines and Minerals.
  - (f) Department of Public Advocacy.
  - (g) Department of Alcoholic Beverage Control.
  - (h) Kentucky Racing Commission.
  - (i) Board of Claims.
  - (j) Crime Victims Compensation Board.
  - (k) Kentucky Board of Tax Appeals.
  - (l) Backside Improvement Commission.
  - (m) Office of Petroleum Storage Tank Environmental Assurance Fund.
- 7. Cabinet for Families and Children:
  - (a) Department for **Community Based Services**~~[Social Insurance]~~.
  - (b) Department for **Disability Determination**~~[Social]~~ Services.
  - (c) Public Assistance Appeals Board.
  - (d) Office of the Secretary.
  - (e) Office of the General Counsel.
  - (f) Office of Program Support.
  - (g) Office of Family Resource and Youth Services Centers.
  - (h) Office of Technology Services.
  - (i) Office of the Ombudsman.
  - (j) Office of **Performance Enhancement**~~[Aging Services]~~.
- 8. Cabinet for Health Services.
  - (a) Department for Public Health.

- (b) Department for Medicaid Services.
  - (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission on Children with Special Health Care Needs.
  - (e) Office of Certificate of Need.
  - (f) Office of the Secretary.
  - (g) Office of the General Counsel.
  - (h) Office of Program Support.
  - (i) Office of the Inspector General.
9. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
  - (b) Office of Management and Budget.
  - (c) Office of Financial Management and Economic Analysis.
  - (d) Office of the Controller.
  - (e) Department for Administration.
  - (f) Department of Facilities Management.
  - (g) Department of Information Systems.
  - (h) State Property and Buildings Commission.
  - (i) Kentucky Pollution Abatement Authority.
  - (j) Kentucky Savings Bond Authority.
  - (k) Deferred Compensation Systems.
  - (l) Office of Equal Employment Opportunity Contract Compliance.
  - (m) Office of Capital Plaza Operations.
  - (n) County Officials Compensation Board.
  - (o) Kentucky Employees Retirement Systems.
  - (p) Commonwealth Credit Union.
  - (q) State Investment Commission.
  - (r) Kentucky Housing Corporation.
  - (s) Governmental Services Center.
  - (t) Kentucky Local Correctional Facilities Construction Authority.
  - (u) Kentucky Turnpike Authority.
  - (v) Historic Properties Advisory Commission.
  - (w) Kentucky Kare Health Insurance Authority.
10. Labor Cabinet:
- (a) Department of Workplace Standards.
  - (b) Department of Workers' Claims.
  - (c) Kentucky Labor-Management Advisory Council.
  - (d) Occupational Safety and Health Standards Board.
  - (e) Prevailing Wage Review Board.

- (f) Workers' Compensation Board.
  - (g) Kentucky Employees Insurance Association.
  - (h) Apprenticeship and Training Council.
  - (i) State Labor Relations Board.
  - (j) Kentucky Occupational Safety and Health Review Commission.
  - (k) Office of Administrative Services.
  - (l) Office of Labor-Management Relations and Mediation.
  - (m) Office of General Counsel.
  - (n) Workers' Compensation Funding Commission.
  - (o) Employers Mutual Insurance Authority.
11. Revenue Cabinet:
- (a) Department of Property Valuation.
  - (b) Department of Tax Administration.
  - (c) Office of Financial and Administrative Services.
  - (d) Department of Law.
  - (e) Department of Information Technology.
  - (f) Office of Taxpayer Ombudsman.
12. Tourism Development Cabinet:
- (a) Department of Travel.
  - (b) Department of Parks.
  - (c) Department of Fish and Wildlife Resources.
  - (d) Kentucky Horse Park Commission.
  - (e) State Fair Board.
  - (f) Office of Administrative Services.
  - (g) Office of General Counsel.
13. Cabinet for Workforce Development:
- (a) Department for Adult Education and Literacy.
  - (b) Department for Technical Education.
  - (c) Department of Vocational Rehabilitation.
  - (d) Department for the Blind.
  - (e) Department for Employment Services.
  - (f) State Board for Adult and Technical Education.
  - (g) Governor's Council on Vocational Education.
  - (h) The State Board for Proprietary Education.
  - (i) The Foundation for Adult Education.
  - (j) The Kentucky Job Training Coordinating Council.
  - (k) Office of General Counsel.
  - (l) Office of Communication Services.

- (m) Office of Development and Industry Relations.
  - (n) Office of Workforce Analysis and Research.
  - (o) Office for Administrative Services.
  - (p) Office for Policy and Budget.
  - (q) Office of Personnel Services.
  - (r) Unemployment Insurance Commission.
14. Personnel Cabinet:
- (a) Office of Administrative and Legal Services.
  - (b) Department for Personnel Administration.
  - (c) Department for Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.
  - (e) Kentucky Kare.
  - (f) Division of Performance Management.
  - (g) Division of Employee Records.
  - (h) Division of Staffing Services.
  - (i) Division of Classification and Compensation.
  - (j) Division of Employee Benefits.
  - (k) Division of Communications and Recognition.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Council on Postsecondary Education.
  - (a) Kentucky Commission on Community Volunteerism and Service.
- 3. Department for Local Government.
- 4. Kentucky Commission on Human Rights.
- 5. Kentucky Commission on Women.
- 6. Department of Veterans' Affairs.
- 7. Kentucky Commission on Military Affairs.
- 8. Office of the Chief Information Officer.

Section 2. KRS 13B.020 is amended to read as follows:

- (1) The provisions of this chapter shall apply to all administrative hearings conducted by an agency, with the exception of those specifically exempted under this section. The provisions of this chapter shall supersede any other provisions of the Kentucky Revised Statutes and administrative regulations, unless exempted under this section, to the extent these other provisions are duplicative or in conflict. This chapter creates only procedural rights and shall not be construed to confer upon any person a right to hearing not expressly provided by law.
- (2) The provisions of this chapter shall not apply to:
  - (a) Investigations, hearings to determine probable cause, or any other type of information gathering or fact finding activities;
  - (b) Public hearings required in KRS Chapter 13A for the promulgation of administrative regulations;
  - (c) Any other public hearing conducted by an administrative agency which is nonadjudicatory in nature and the primary purpose of which is to seek public input on public policy making;

- (d) Military adjudicatory proceedings conducted in accordance with KRS Chapter 35;
  - (e) Administrative hearings conducted by the legislative and judicial branches of state government;
  - (f) Administrative hearings conducted by any city, county, urban-county, charter county, or special district contained in KRS Chapters 65 to 109, or any other unit of local government operating strictly in a local jurisdictional capacity;
  - (g) Informal hearings which are part of a multilevel hearing process that affords an administrative hearing at some point in the hearing process if the procedures for informal hearings are approved and promulgated in accordance with subsections (4) and (5) of this section;
  - (h) Limited exemptions granted for specific hearing provisions and denoted by reference in the text of the applicable statutes or administrative regulations;
  - (i) Administrative hearings exempted pursuant to subsection (3) of this section;
  - (j) Administrative hearings exempted, in whole or in part, pursuant to subsections (4) and (5) of this section; and
  - (k) Any administrative hearing which was commenced but not completed prior to July 15, 1996.
- (3) The following administrative hearings are exempt from application of this chapter in compliance with 1994 Ky. Acts ch. 382, sec. 19:
- (a) Finance and Administration Cabinet
    - 1. Higher Education Assistance Authority
      - a. Wage garnishment hearings conducted under authority of 20 U.S.C. sec. 1095a and 34 C.F.R. sec. 682.410
      - b. Offset hearings conducted under authority of 31 U.S.C. sec. 3720A and sec. 3716, and 34 C.F.R. sec. 30.33
  - (b) Cabinet for Health Services
    - 1. Office of Certificate of Need
      - a. Certificate-of-need hearings and licensure conducted under authority of KRS Chapter 216B
      - b. Licensure revocation hearings conducted under authority of KRS Chapter 216B
  - (c) Cabinet for Families and Children
    - 1. Department for **Community Based**~~[Social]~~ Services
      - a. Supervised placement revocation hearings conducted under authority of KRS Chapter 630
    - 2. Department for **Disability Determination Services**~~[Social Insurance]~~
      - a. Disability determination hearings conducted under authority of 20 C.F.R. sec. 404
  - (d) Justice Cabinet
    - 1. Department of State Police
      - a. State Police Trial Board disciplinary hearings conducted under authority of KRS Chapter 16
    - 2. Department of Corrections
      - a. Parole Board hearings conducted under authority of KRS Chapter 439
      - b. Prison adjustment committee hearings conducted under authority of KRS Chapter 197
      - c. Prison grievance committee hearings conducted under authority of KRS Chapters 196 and 197
    - 3. Department of Juvenile Justice
      - a. Supervised placement revocation hearings conducted under KRS Chapter 635

- (e) Labor Cabinet
  - 1. Department of Workers' Claims
    - a. Workers' compensation hearings conducted under authority of KRS Chapter 342
- (f) Natural Resources and Environmental Protection Cabinet
  - 1. Department for Surface Mining Reclamation and Enforcement
    - a. Surface mining hearings conducted under authority of KRS Chapter 350
  - 2. Department for Environmental Protection
    - a. Wild River hearings conducted under authority of KRS Chapter 146
    - b. Water resources hearings conducted under authority of KRS Chapter 151
    - c. Water plant operator and water well driller hearings conducted under authority of KRS Chapter 223
    - d. Environmental protection hearings conducted under authority of KRS Chapter 224
- (g) Kentucky Occupational Safety and Health Review Commission
  - 1. Occupational safety and health hearings conducted under authority of KRS Chapter 338
- (h) Public Protection and Regulation Cabinet
  - 1. Board of Claims
    - a. Liability hearings conducted under authority of KRS Chapter 44
  - 2. Public Service Commission
    - a. Utility hearings conducted under authority of KRS Chapters 74, 278, and 279
- (i) Cabinet for Workforce Development
  - 1. Department for Employment Services
    - a. Unemployment Insurance hearings conducted under authority of KRS Chapter 341
- (j) Secretary of State
  - 1. Registry of Election Finance
    - a. Campaign finance hearings conducted under authority of KRS Chapter 121
- (k) State universities and colleges
  - 1. Student suspension and expulsion hearings conducted under authority of KRS Chapter 164
  - 2. University presidents and faculty removal hearings conducted under authority of KRS Chapter 164
  - 3. Campus residency hearings conducted under authority of KRS Chapter 164
  - 4. Family Education Rights to Privacy Act hearings conducted under authority of 20 U.S.C. sec. 1232 and 34 C.F.R. sec. 99
  - 5. Federal Health Care Quality Improvement Act of 1986 hearings conducted under authority of 42 U.S.C. sec. 11101 to 11115 and KRS Chapter 311.
- (4) Any administrative hearing, or portion thereof, may be certified as exempt by the Attorney General based on the following criteria:
  - (a) The provisions of this chapter conflict with any provision of federal law or regulation with which the agency must comply, or with any federal law or regulation with which the agency must comply to permit the agency or persons within the Commonwealth to receive federal tax benefits or federal funds or other benefits;

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

Section 3. KRS 15.290 is amended to read as follows:

- (1) There is hereby established in the Department of Law the Child Support Enforcement Commission which shall consist of nine (9) members as prescribed below:
- (a) The Attorney General, or a designee, who shall also serve as chairman;
  - (b) The secretary of the Cabinet for Families and Children, or his designee, who shall also serve as vice chairman;
  - (c) The director of the Administrative Office of the Courts, or his designee;
  - (d) The director of the Division of Child Support~~[-Enforcement]~~ within the Cabinet for Families and Children; and
  - (e) The remaining five (5) members shall be appointed by the Governor for terms of four (4) years, except that the initial appointments shall be made in the following manner: One (1) member for two (2) years, two (2) members for three (3) years, and two (2) members for four (4) years. Each member shall serve until a successor is named and any appointment, due to vacancy, shall be for the unexpired term. The remaining five (5) members shall be appointed in the following manner: three (3) members from a list of nine (9) nominees submitted by the Kentucky County Attorney Association, with one (1) of the three members representing either a first class or urban-county government, and two (2) citizen-at-large members.
- (2) The secretary of the cabinet shall reimburse to the Department of Law such an amount as incurred related to the function of the commission. The secretary shall provide such information as may be requested by the commission.
- (3) The commission shall meet at least quarterly and may meet additional times as may be deemed necessary by the chairman.
- (4) Reimbursement for actual travel expenses shall be paid by the Department of Law for commission members, if members are not otherwise eligible for such reimbursement from their respective agency.
- (5) The commission shall have the following responsibilities:
- (a) Advise the Governor on any issue related to the child-support program;
  - (b) Advise the Cabinet for Families and Children on any issue related to the child-support program;
  - (c) Advise the Department of Law on any issue related to the child-support program;
  - (d) Advise the Administrative Office of the Courts on any issue related to the child-support program;
  - (e) Provide a regular forum for all parties involved in the child-support program to address any aspect of the administrative or judicial process;



- (f) Develop and prepare reports and recommendations related to administrative procedures, prosecution, judicial procedures, state or federal legislation; or any other matters which might improve program effectiveness and efficiency; and
  - (g) Initiate recommendations to facilitate interaction between local officials and the cabinet.
- (6) The commission shall prepare and issue an annual report not later than August 15 of each year for the preceding fiscal year which includes a performance assessment for all aspects of the program. The report shall include recommendations to improve performance and service delivery. The report shall be submitted to the Governor and the Legislative Research Commission. The first report shall be due August 15, 1989.
  - (7) Nothing in this section shall be construed as modifying the designation of the single state agency as required under the Federal Title IV-D plan.

Section 4. KRS 15A.300 is amended to read as follows:

- (1) The Department of Juvenile Justice or a local organization approved by the Department of Juvenile Justice may form local juvenile delinquency prevention councils for the purpose of encouraging the initiation of, or supporting ongoing, interagency cooperation and collaboration in addressing juvenile crime and juvenile status offenses.
- (2) The membership of the local council shall be determined by the Department of Juvenile Justice and shall include representatives of law enforcement, the school system, the Department for **Community Based**~~[Social]~~ Services, the Court of Justice, the Commonwealth's attorney, the county attorney, a representative of a county juvenile detention facility, and the Department for Public Advocacy. The members of the council shall be appointed as provided by the department by administrative regulation and shall be appointed for not longer than four (4) years, but members may be reappointed for a successive term. A member of the council shall receive no salary for service as a member of the council but may be reimbursed for expenses in the same manner as a state employee.
- (3) The duties and responsibilities of a juvenile delinquency prevention council shall include but not be limited to:
  - (a) Developing a local juvenile justice plan based upon utilization of the resources of law enforcement, the school system, the Department of Juvenile Justice, the Department for **Community Based**~~[Social]~~ Services, the Administrative Office of the Courts, and others in a cooperative and collaborative manner to prevent or discourage juvenile delinquency and to develop meaningful alternatives to incarceration;
  - (b) Entering into a written local interagency agreement specifying the nature and extent of contributions that each signatory agency will make in achieving the goals of the local juvenile justice plan;
  - (c) Sharing of information as authorized by law to carry out the interagency agreements;
  - (d) Applying for and receiving public or private grants to be administered by one (1) of the participating cities or counties or other public agencies; and
  - (e) Providing a forum for the presentation of interagency recommendations and the resolution of disagreements relating to the contents of the interagency agreement or the performance by the parties of their respective obligations under the agreement.
- (4) Training of council members shall be the responsibility of the department.
- (5) The Department of Juvenile Justice may provide grants to the councils to establish or enhance prevention programs.
- (6) The department shall promulgate administrative regulations in accordance with KRS Chapter 13A that relate to:
  - (a) The formation of councils;
  - (b) The operation of councils;
  - (c) The duties of councils; and
  - (d) The administration and operation of the grant program.

Section 5. KRS 17.460 is amended to read as follows:

- (1) Upon notification by a parent, guardian, person exercising custodial control or supervision, or the authorized representative of the Department for **Community Based**~~Social~~ Services of the Cabinet for Families and Children if the child is a ward of the state, that a child is missing, the law enforcement agency receiving notification shall immediately complete a missing person's report in a form prescribed by the Justice Cabinet which shall include information the Justice Cabinet deems necessary for the identification of the missing child, including the child's physical description, last known location, and known associates.
- (2) Within twenty-four (24) hours after completion of the missing person's report form, the law enforcement agency shall transmit the report for inclusion within the Kentucky Missing Child Information Center computer and shall cause the report to be entered into the National Crime Information Center computer.
- (3) Within twenty-four (24) hours thereafter, the law enforcement agency shall investigate the report, shall inform all appropriate law enforcement officers of the existence of the missing child report, and shall communicate the report to every other law enforcement agency having jurisdiction in the area.
- (4)
  - (a) Upon location of the missing child and verification of the National Crime Information Center entry, the law enforcement agency shall transport the child to the parent, guardian, or person exercising custodial control or supervision.
  - (b) If the child is a ward of the state, the law enforcement agency shall transport the child to the authorized representative of the Department for **Community Based**~~Social~~ Services of the Cabinet for Families and Children in the jurisdiction of the law enforcement agency.
  - (c) If the law enforcement agency is unable to return the child to the appropriate caretaker pursuant to paragraph (a) of this subsection, the law enforcement agency shall contact the court-designated worker with jurisdiction for placement determination.
  - (d) If the child is in custody on a charge of committing an offense pursuant to KRS Chapters 600 to 645, the law enforcement agency shall proceed according to the provisions therein.
- (5) Within twenty-four (24) hours after a missing child is located and returned to the appropriate caretaker pursuant to subsection (4) of this section, the law enforcement agency which transported, found, or returned the missing child shall notify both the Missing Child Information Center and the National Crime Information Center of that fact.

Section 6. KRS 36.255 is amended to read as follows:

- (1) The Kentucky Community Crisis Response Board is hereby created as a separate administrative body of state government within the meaning of KRS Chapter 12 and attached for administrative purposes to the Department of Military Affairs.
- (2) The membership of the board shall consist of the following:
  - (a) The commissioner of the Department for Mental Health and Mental Retardation Services, or the commissioner's designee;
  - (b) The commissioner of the Department for Public Health, or the commissioner's designee;
  - (c) The commissioner of the Department of Education, or the commissioner's designee;
  - (d) The commissioner of the Kentucky State Police, or the commissioner's designee;
  - (e) The Kentucky state fire marshal, or the fire marshal's designee;
  - (f) The executive director of the Division of Disaster and Emergency Services, or the executive director's designee;
  - (g) The Attorney General, or the Attorney General's designee;
  - (h) One (1) representative of local community crisis response teams appointed by the Governor;
  - (i) Four (4) members appointed by the Governor to represent mental health disciplines;
  - (j) Two (2) members appointed by the Governor to represent emergency services disciplines;
  - (k) One (1) member who is a mental health professional licensed for independent clinical practice, to be appointed by the Governor. The licensed mental health professional member shall serve as clinical director for the board;

- (l) One (1) member, appointed by the Governor, from a state-wide chaplain's association involved in emergency services, who is trained in grief counseling and has experience in crisis response;
  - (m) One (1) member from the Kentucky Chapter of the American Red Cross; and
  - (n) The commissioner of the Department for **Community Based**~~[Social]~~ Services or the commissioner's designee.
- (3) All board members appointed pursuant to subsection (2)(h) to (2)(l) of this section shall be approved members of the existing community crisis response team.
  - (4) All board members appointed pursuant to subsection (2)(h) to (2)(l) of this section shall have demonstrated a commitment to the provision of community crisis response services.
  - (5) The members of the board appointed by the Governor shall serve for two (2) years and may be reappointed for one (1) additional consecutive two (2) year term. All vacancies in appointed members' terms shall be filled by appointment of the Governor for the remainder of the unexpired term.
  - (6) The board shall elect annually from its membership a chairperson and shall establish other officers and committees as needed to execute the duties of the board.
  - (7) The board shall meet at least quarterly, and a majority of the members shall constitute a quorum for the transaction of the board's business.
  - (8) Except for hired and appointed staff, no board member or team member shall receive compensation. However, board members and crisis response team members may receive reimbursement for expenses incurred in the course of providing crisis response services or executing the duties of the board, consistent with state policy governing the reimbursement of state employees for food, travel, and lodging. Except as provided for in KRS 36.260, nothing in the provisions of KRS 36.250 to 36.270 shall be construed to create liability of a private party for expenses incurred or reimbursed under this subsection.

Section 7. KRS 62.160 is amended to read as follows:

- (1) The state officers elected by the voters of the state at large, except the Governor, Lieutenant Governor, and the Superintendent of Public Instruction, the heads of departments and cabinets of the state government, the adjutant general, the members of the Public Service Commission, the members of the State Fair Board and Fish and Wildlife Resources Commission, and the members of the Kentucky Board of Tax Appeals and the Alcoholic Beverage Control Board, shall each give bond. The amounts of the bonds shall be fixed by the Governor, which amounts as to those offices set forth in subsection (2) of this section shall be not less than the amounts set forth for the respective offices. At any time when it appears to be to the interest of the Commonwealth the Governor may increase the penal sum of any bond or require a renewal of the bond with other or additional surety.
- (2) The minimum sum of the bond for the following offices shall be as follows:
 

Secretary of State .....	\$10,000
Attorney General .....	10,000
State Treasurer .....	300,000
Secretary for economic development .....	10,000
Commissioner of Agriculture .....	10,000
Secretary for education, arts, and humanities .....	10,000
Auditor of Public Accounts .....	25,000
Adjutant general .....	10,000
Secretary of finance and administration .....	100,000
Secretary of revenue .....	50,000
Secretary of transportation .....	50,000
Commissioner of highways .....	50,000
Secretary of justice .....	50,000

Secretary of corrections .....	25,000
Commissioner for health services .....	10,000
Secretary of labor .....	5,000
Commissioner of surface mining reclamation and enforcement .....	50,000
State librarian .....	5,000
Commissioner of mines and minerals .....	5,000
Commissioner of alcoholic beverage control .....	10,000
Commissioner of financial institutions .....	25,000
Secretary for natural resources and environmental protection .....	10,000
Commissioner of insurance .....	50,000
Commissioner of vehicle regulation .....	10,000
Commissioner of fish and wildlife resources .....	5,000
Secretary for health services .....	20,000
Secretary for families and children .....	20,000
Commissioner for environmental protection .....	10,000
Secretary for public protection and regulation .....	10,000
Secretary of tourism .....	25,000
Commissioner for <b>community based services</b> <del>[social insurance]</del> .....	20,000
Member of the Public Service Commission .....	10,000
Member of State Fair Board .....	10,000
Member of Fish and Wildlife Resources Commission .....	1,000
Member of Kentucky Board of Tax Appeals .....	10,000
Associate member of Alcoholic Beverage Control Board .....	5,000
Commissioner of local government .....	100,000

Section 8. KRS 72.410 is amended to read as follows:

- (1) The coroner of each county shall investigate the cause and manner of all deaths that are defined by KRS 72.405 as a coroner's case.
- (2) The coroner may, in his sound discretion, when investigating a coroner's case, request the assistance of the district medical examiner and the Division of Kentucky State Medical Examiners Office, order an autopsy, and hold an inquest.
- (3)
  - (a) Upon notification of the death of a child under the age of eighteen (18) years which meets the criteria for a coroner's case as defined in KRS 72.405 and 72.025, the coroner shall as soon as practicable contact the local office of the Department for **Community Based**~~[Social]~~ Services, law enforcement agencies with local jurisdiction, and the local health department to determine the existence of relevant information concerning the case.
  - (b) Any agency of the state or any other agency, institution, or facility providing services to the child or the child's family, shall provide to the coroner upon his request the cooperation, assistance, and information to enable the coroner to comply with the provisions of this chapter. This section shall not be deemed to abrogate the attorney-client nor the clergy-penitent privilege or the confidentiality of records provided by KRS 311.377(2). If other privileged or confidential records are disclosed to the coroner pursuant to this section, the records shall remain confidential or privileged and shall not be disclosed except as authorized by this section, to the state or local child fatality response team, or as otherwise required by law.

Section 9. KRS 141.065 is amended to read as follows:

- (1) For the purposes of this section, "code" or "Internal Revenue Code" means the Internal Revenue Code in effect as of December 31, 1981.
- (2) There shall be allowed as a credit for any taxpayer against the tax imposed by this chapter for any taxable year, an amount equal to one hundred dollars (\$100) for each person hired by the taxpayer, if that person has been classified as unemployed by the Department for **Community Based Services**~~[Social Insurance]~~ of the Cabinet for Families and Children, and has been so classified for at least sixty (60) days prior to his employment by the taxpayer, and if further that person has remained in the employ of the taxpayer for at least one hundred eighty (180) consecutive days during the taxable year in which the taxpayer claims the credit.
- (3) No credit shall be allowed to any taxpayer for any person hired under any of the following circumstances:
  - (a) A person for whom the taxpayer receives federally funded payments for on-the-job training;
  - (b) For any person who bears any of the relationships to the taxpayer described in paragraphs (1) through (8) of Section 152(a) of the Internal Revenue Code, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than fifty percent (50%) in value of the outstanding stock of the corporation as determined with the application of Section 267(c) of the code;
  - (c) If the taxpayer is an estate or trust, to any person who is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in paragraphs (1) through (8) of Section 152(a) of the code to a grantor, beneficiary, or fiduciary of the estate or trust; or
  - (d) To any person who is a dependent of the taxpayer as described in code Section 152(a)(9), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.
- (4) For purposes of this section, all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. In no instance shall the credit, if any, allowable by subsection (2) of this section for any employee qualified thereunder be claimed more than once for any taxable year by such a controlled group of corporations. For purposes of this subsection, the term "controlled group of corporations" has the meaning given to that term by code Section 1563(a), except that "more than fifty percent (50%)" shall be substituted for "at least eighty percent (80%)" each place it appears in code Section 1563(a)(1), and the determination shall be made without regard to subsections (a)(4) and (e)(3)(c) of code Section 1563.
- (5) For purposes of this section, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer, and in no instance shall the credit, if any, allowable by subsection (2) of this section for any employee qualified thereunder be claimed more than once for any taxable year.
- (6) No credit shall be allowed under subsection (2) of this section to any organization which is exempt from income tax by this chapter.
- (7) In the case of an electing small business corporation, the amount of the credit determined under this section for any taxable year shall be apportioned pro rata among the persons who are shareholders of the corporation on the last day of the taxable year, and any person to whom an amount is so apportioned shall be allowed, subject to code Section 53, a credit under subsection (2) of this section for that amount.
- (8) In the case of an estate or trust, the amount of the credit determined under this section for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of income of the estate or trust allocable to each, and any beneficiary to whom any amount has been apportioned under this subsection shall be allowed, subject to code Section 53, a credit under subsection (2) of this section for that amount.
- (9) In no event shall the credit allowed, pursuant to this section, for any taxable year exceed the tax liability of the taxpayer for the taxable year.

Section 10. KRS 157.317 is amended to read as follows:

- (1) The Kentucky Board of Education through administrative regulations shall develop and implement a statewide Early Childhood Education Program which shall include basic principles of child development, early childhood education, and all other related concepts which deal with generally accepted early childhood programs, including the delivery of health and social services to children as needed.

- (2) (a) The Kentucky Early Childhood Advisory Council is created to advise the chief state school officer on the implementation of early childhood education programs. The Department of Education shall provide staff and administrative support for the council.
- (b) The Kentucky Early Childhood Advisory Council shall consist of one (1) member of the Kentucky Board of Education appointed by the chairman and sixteen (16) members appointed by the Governor. The sixteen (16) appointed members shall include *two (2) representatives from the Department for Community Based Services* and one (1) representative from each of the following agencies or groups: preschool teachers, public school teachers, elementary school principals, parents, child-care providers, community education, the Interagency Task Force on Family Resource Centers and Youth Services Centers, the Head Start Association, the Head Start director, the Head Start Program, the Infant/Toddler Coordinating Council, the Department for Public Health, ~~the Department for Social Services, the Department for Social Insurance,~~ the colleges of education, and the colleges of home economics.
- (c) Members shall serve a four (4) year term, except initial appointments shall be set so that four (4) members shall serve one (1) year, four (4) members shall serve two (2) years, four (4) members shall serve three (3) years, and four (4) members shall serve four (4) years.

Section 11. KRS 158.442 is amended to read as follows:

- (1) The General Assembly hereby authorizes the establishment of the Center for School Safety. The center's mission shall be to serve as the central point for data analysis; research; dissemination of information about successful school safety programs, research results, and new programs; and, in collaboration with the Department of Education and others, to provide technical assistance for safe schools.
- (2) To fulfill its mission, the Center for School Safety shall:
  - (a) Establish a clearinghouse for information and materials concerning school violence prevention;
  - (b) Provide program development and implementation expertise and technical support to schools, law enforcement agencies, and communities, which may include coordinating training for administrators, teachers, students, parents, and other community representatives;
  - (c) Analyze the data collected in compliance with KRS 158.444;
  - (d) Research and evaluate school safety programs so schools and communities are better able to address their specific needs;
  - (e) Administer a school safety grant program for local districts as directed by the General Assembly;
  - (f) Promote the formation of interagency efforts to address discipline and safety issues within communities throughout the state in collaboration with other postsecondary education institutions and with local juvenile delinquency prevention councils;
  - (g) Prepare and disseminate information regarding best practices in creating safe and effective schools;
  - (h) Advise the Kentucky Board of Education on administrative policies and administrative regulations; and
  - (i) Provide an annual report by July 1 of each year to the Governor, the Kentucky Board of Education, and the Interim Joint Committee on Education regarding the status of school safety in Kentucky.
- (3) The Center for School Safety shall be governed by a board of directors appointed by the Governor. Members shall consist of:
  - (a) The commissioner or a designee of the Department of Education;
  - (b) The commissioner or a designee of the Department of Juvenile Justice;
  - (c) The commissioner or a designee of the Department for Mental Health and Mental Retardation Services;
  - (d) The commissioner or a designee of the Department for *Community Based*~~Social~~ Services;
  - (e) The secretary or a designee of the Education, Arts, and Humanities Cabinet;
  - (f) A juvenile court judge;
  - (g) A local school district board of education member;
  - (h) A local school administrator;

- (i) A school council parent representative;
- (j) A teacher;
- (k) A classified school employee; and
- (l) A superintendent of schools who is a member of the Kentucky Association of School Administrators.

In appointing the board of education member, the school administrator, the school superintendent, the school council parent member, the teacher, and the classified employee, the Governor shall solicit recommendations from the following groups respectively: the Kentucky School Boards Association, the Kentucky Association of School Administrators, the Kentucky Association of School Councils, the Kentucky Education Association, and the Kentucky Education Support Personnel Association. The initial board shall be appointed by July 15, 1998. The board shall hold its first meeting no later than thirty (30) days after the appointment of the members.

Section 12. KRS 194B.030 is amended to read as follows:

The cabinet consists of the following major organizational units, which are hereby created:

- (1) Office of the Secretary. The Office of the Secretary for Families and Children may, in addition to the secretary for families and children, include other personnel as are necessary to direct and carry out the missions and goals of the cabinet, including a deputy secretary if deemed necessary by the secretary of the cabinet and upon approval of the Governor.
- (2) Office of the General Counsel. The Office of the General Counsel shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of the General Counsel shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney and shall administer all personal service contracts of the cabinet for legal services. The Office of the General Counsel shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor under KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be responsible to the secretary. The Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general under the provisions of KRS 15.105.
- (3) Office of Program Support. The Office of Program Support shall be responsible for providing administrative and management support, planning, and appraisal of need services within the Cabinet for Families and Children. All personnel, fiscal, budgetary, *legislative*~~[contract monitoring, quality assurance, quality control, outcome assessment]~~, and facility management functions of the cabinet shall be vested in the Office of Program Support. The Office of Program Support shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The executive director shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The executive director shall exercise authority over the Office of Program Support under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.
- ~~(4) Department for Social Services. The Department for Social Services shall develop and operate all social service programs of the cabinet. The Department for Social Services shall be headed by a commissioner for social services who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for social services shall be a person who by education, professional qualification, training, and experience in the administration and management of social service programs is qualified to perform the duties of this office. The commissioner for social services shall exercise authority over the Department for Social Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.~~
- ~~(5) Department for Social Insurance. The Department for Social Insurance shall develop and operate programs of the cabinet that provide income maintenance or income supplementation services and social insurance benefit programs not assigned to another department. The Department for Social Insurance shall also be responsible for all eligibility determination and certification functions associated with these programs. The Department for Social Insurance shall be headed by a commissioner for social insurance who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for social insurance shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner is under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.~~
- ~~(6)~~ Office of Family Resource and Youth Services Centers. The Office of Family Resources and Youth Services Centers shall be responsible for the administration, management, and operations of the Family Resources and

Youth Services Centers Program. The Office of Family Resources and Youth Services Centers shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050.

- (5)~~(7)~~ Office of the Ombudsman. The Office of the Ombudsman shall provide professional support in the evaluation of programs, including, but not limited to, a review and resolution of citizen complaints about programs or services of the cabinet when those complaints are unable to be resolved through normal administrative remedies; contract monitoring; and professional development and training. The Office of the Ombudsman shall be headed by an ombudsman who shall be appointed by the secretary with the approval of the Governor under KRS 12.050.
- (6)~~(8)~~ Office of Technology Services. The Office of Technology Services shall develop and maintain technology and information management systems in support of all units of the cabinet. The Office of Technology Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The executive director for technology services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The executive director for technology services shall exercise authority of the Office of Technology Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.
- (7)~~(9)~~ Office of Aging Services. The Office of Aging Services shall serve as the state unit on aging as required by the Older Americans Act of 1965, as amended by 42 U.S.C. sec. 3001 et seq., including having responsibility for the development of the state plan on aging, advocacy, planning, coordination, information sharing, brokering, reporting and evaluation of contract and service provider agreement implementation. The Office of Aging Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The Office of Aging Services shall also administer grants, programs, and initiatives designed to assist older Kentuckians, administer the long-term care ombudsman program for Kentucky, and provide and coordinate services to persons with Alzheimer's disease and related disorders and their caregivers.
- (8) *Office of Performance Enhancement. The Office of Performance Enhancement shall be responsible for quality assurance and performance measurement programs, including contract monitoring, program monitoring, and the development of outcome-based contracts. The Office of Performance Enhancement shall focus on research, best practice, and program accountability, shall monitor federal compliance, and shall provide training for temporary assistance for needy families, food stamps, social services, and medical assistance programs. The Office of Performance Enhancement shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050.*
- (9) *Department for Community Based Services. The Department for Community Based Services shall administer an array of services including child and adult protection, permanency, child care, social services, public assistance, family and child support, and services to enhance family self-sufficiency. The department shall be headed by a commissioner appointed by the secretary with the approval of the Governor in accordance with KRS 12.050.*
- (10) *Department for Disability Determination Services. The Department for Disability Determination Services shall serve as the state unit as required by Title II and Title XVI of the Social Security Act, including having responsibility for determining eligibility for disability for those citizens of the Commonwealth who file applications for disability with the Social Security Administration. The department shall also make determinations for citizens of the Commonwealth who make application for the Kentucky Transitional Assistance Program and determine medical exemptions for participants in the Kentucky Works Program. The department shall be headed by a commissioner appointed by the secretary with the approval of the Governor in accordance with KRS 12.050.*

Section 13. KRS 194B.090 is amended to read as follows:

The cabinet shall include **a citizens'**~~citizen~~ advisory **body**~~bodies~~ within its structure to provide independent advice from the general public.~~The citizen bodies within the cabinet shall have the following structure: (1)~~ A Council for Families and Children is created within the cabinet.

- (1)~~(a)~~ The council shall advise the secretary for families and children, the commissioner for **community based**~~social insurance, the commissioner for social~~ services, and other officials of the Commonwealth on policy matters relating to the human service needs.



- (2)(b) The council shall be composed of no more than twenty-one (21) citizen members appointed by the Governor. Members of the council shall be chosen to broadly represent public interest groups concerned with social insurance and social service programs operated by the Commonwealth, professionals involved in the delivery of human services, minority groups, the poor, the disadvantaged, recipients of human services provided by the state, and the general public. The Governor shall appoint the chair of the council. The secretary for families and children *and* ~~the commissioner for **community based** social insurance, and the commissioner for social~~ services shall be nonvoting, ex officio members of the council, and the *commissioner for community based* ~~commissioners for social insurance and social~~ services shall be staff *director* ~~directors~~ for, and *secretary* ~~secretaries~~ to, the council. The council shall meet at least quarterly and on other occasions as may be necessary, on call of the secretary for families and children. A majority of appointed members shall constitute a quorum.
- (3)(2) An Institute for Aging is created within the cabinet.
- (a) The institute shall advise the secretary for families and children and other officials of the Commonwealth on policy matters relating to the development and delivery of services to the aged.
  - (b) The institute shall be composed of no more than fifteen (15) citizen members appointed by the Governor. Members of the institute shall be chosen to broadly represent public interest groups concerned with the needs of the aged, professionals involved in the delivery of services to the aged, minority groups, recipients of state-provided services to the aged, and the general public. The Governor shall appoint a chair of the institute. The secretary for families and children shall be a nonvoting, ex officio member of, staff director for, and secretary to the institute. The institute shall meet at least quarterly and on other occasions as may be necessary, on the call of the secretary for families and children. A majority of the appointed members shall constitute a quorum.

Section 14. KRS 194B.102 is amended to read as follows:

- (1) There is hereby created the "Statewide Strategic Planning Committee for Children in Placement" which is administratively attached to the Department for *Community Based* ~~Social~~ Services. The committee shall be composed of the following:
  - (a) Members who shall serve by virtue of their positions: the *secretary of the Cabinet for Families and Children or the secretary's designee* ~~commissioner of the Department for Social Services~~, the commissioner of the Department for Public Health, the commissioner of the Department for Mental Health and Mental Retardation Services, the commissioner for the Department for Medicaid Services, the commissioner of the Department for *Community Based Services* ~~Social Insurance~~, the commissioner of the Department of Juvenile Justice, the commissioner of the Department of Education, the executive director of the Administrative Office of the Courts, or their designees; and
  - (b) One (1) foster parent selected by the statewide organization for foster parents, one (1) District Judge selected by the Chief Justice of the Kentucky Supreme Court, one (1) parent of a child in placement at the time of appointment to be selected by the secretary of the Cabinet for Families and Children, one (1) youth in placement at the time of the appointment to be selected by the secretary of the Cabinet for Families and Children, and one (1) private child care provider selected by the statewide organization for private child care providers. These members shall serve a term of two (2) years, and may be reappointed.
- (2) The Statewide Strategic Planning Committee for Children in Placement shall, by July 1, 1999, develop a statewide strategic plan for the coordination and delivery of care and services to children in placement and their families. The plan shall be submitted to the Governor, the Chief Justice of the Supreme Court, and the Legislative Research Commission on or before July 1, 1999, and each July 1 thereafter.
- (3) The strategic plan shall, at a minimum, include:
  - (a) A mission statement;
  - (b) Measurable goals;
  - (c) Principles;
  - (d) Strategies and objectives; and
  - (e) Benchmarks.

- (4) The planning horizon shall be three (3) years. The plan shall be updated on an annual basis. Strategic plan updates shall include data and statistical information comparing plan benchmarks to actual services and care provided.
- (5) The Statewide Strategic Planning Committee for Children in Placement shall, in consultation with the commissioner and the statewide placement coordinator as provided for in KRS 199.801, establish a statewide facilities and services plan that identifies the location of existing facilities and services for children in placement, identifies unmet needs, and develops strategies to meet the needs. The planning horizon shall be five (5) years. The plan shall be updated on an annual basis. The plan shall be used to guide, direct, and, if necessary, restrict the development of new facilities and services, the expansion of existing facilities and services, and the geographic location of placement alternatives.
- (6) The Statewide Strategic Planning Committee for Children in Placement may, through the promulgation of administrative regulations, establish a process that results in the review and approval or denial of the development of new facilities and services, the expansion of existing facilities and services, and the geographic location of any facilities and services for children in placement in accordance with the statewide facilities and services plan. Any process established shall include adequate due process rights for individuals and entities seeking to develop new services, construct new facilities, or expand existing facilities, and shall require the involvement of local communities and other resource providers in those communities.
- (7) As a part of the statewide strategic plan, and in consultation with the Kentucky Information Resources Management Commission, the Statewide Strategic Planning Committee for Children in Placement shall plan for the development or integration of information systems that will allow information to be shared across agencies and entities, so that relevant data will follow a child through the system regardless of the entity or agency that is responsible for the child. The data produced shall be used to establish and monitor the benchmarks required by subsection (3) of this section. The data system shall, at a minimum, produce the following information on a monthly basis:
  - (a) Number of placements per child;
  - (b) Reasons for placement disruptions;
  - (c) Length of time between removal and establishment of permanency;
  - (d) Reabuse or reoffense rates;
  - (e) Fatality rates;
  - (f) Injury and hospitalization rates;
  - (g) Health care provision rates;
  - (h) Educational achievement rates;
  - (i) Multiple placement rates;
  - (j) Sibling placement rates;
  - (k) Ethnicity matching rates;
  - (l) Family maintenance and preservation rate; and
  - (m) Adoption disruption rates.
- (8) The Statewide Strategic Planning Committee for Children in Placement shall publish an annual report no later than December 1 of each year that includes, but is not limited to, the information outlined in subsection (7) of this section.

Section 15. KRS 194B.530 is amended to read as follows:

- (1) The secretary for families and children shall develop an initial training course and continuing education courses for employees of the Department for **Community Based** ~~Social~~ Services concerning the dynamics of domestic violence, effects of domestic violence on adult and child victims, legal remedies for protection, lethality and risk issues, model protocols for addressing domestic violence, available community resources and victim services, and reporting requirements. The training shall be developed in consultation with legal, victim services, victim advocacy, and mental health professionals with an expertise in domestic violence.

- (2) Each person employed by the Department for ~~Community Based Social~~ Services who provides supervisory or direct service at the local, district, or state level shall successfully complete the initial training course and, at least once every two (2) years, the continuing education course developed under subsection (1) of this section.

Section 16. KRS 196.081 is amended to read as follows:

- (1) To facilitate the need for comprehensive planning for the Department of Corrections and for related matters the Kentucky State Corrections Commission is created and is attached to the office of the secretary of the Justice Cabinet. The commission shall consist of twelve (12) members as follows:
- (a) The Attorney General;
  - (b) The secretary of the Justice Cabinet;
  - (c) The commissioner of the Department of Corrections;
  - (d) The chairman of the Parole Board;
  - (e) The secretary of the Cabinet for Families and Children;
  - (f) A county jailer chosen by the Governor;
  - (g) A Circuit Judge chosen by the Governor from a list of three (3) submitted by the Chief Justice;
  - (h) Two (2) criminal justice professionals who are familiar with correctional research, theory, and program implementation, appointed by the Governor;
  - (i) A representative from a law enforcement agency, appointed by the Governor;
  - (j) A Commonwealth's attorney chosen by the Governor from a list of three (3) submitted by the Prosecutors Advisory Council; and
  - (k) The state Public Advocate.
- (2) The terms of those representatives appointed by the Governor shall be three (3) years. These members shall serve at the pleasure of the Governor and shall be eligible for reappointment. If there is a vacancy, the Governor shall immediately make an appointment effective for the unexpired term.
- (3) The Governor shall appoint a chairman of the corrections commission from among its members. The members of the commission shall elect from among its members a vice chairman who shall preside and exercise the functions of chairman during absence or disability of the chairman.
- (4) Regular meetings of the commission shall be held at least once every three (3) months at a place, day, and hour determined by the commission. Special meetings shall be held when needed as determined by the chairman. If six (6) or more members of the commission request in writing that the chairman call a special meeting, the chairman shall call a special meeting.
- (5) Members of the commission shall receive reimbursement for necessary expenses for attendance at official commission meetings or public hearings. The commission shall be staffed by a director and other staff.
- (6) The commission shall:
- (a) Develop and approve the methodology to be used by the commission to project and maintain current six (6) year projections of prison populations;
  - (b) Develop a six (6) year plan for Department of Corrections operations, including both construction and programmatic elements; this plan shall be developed with information supplied by the agencies, departments, and groups represented on the commission, and other public and private agencies and citizens with a vested interest in corrections;
  - (c) Monitor, modify, and update the six (6) year plan as necessary but not less frequently than semiannually and submit the current plan to the Legislative Research Commission not later than six (6) months prior to the commencement of every regular session of the General Assembly;
  - (d) Assist the Department of Corrections in preparing and submitting legislative proposals, including budget requests necessary to implement and update the six (6) year plan;
  - (e) Review and make recommendations to the General Assembly concerning legislative proposals, including Department of Corrections budget proposals, to insure consistency with the six (6) year plan;

- (f) Develop, in cooperation with the Department of Public Advocacy, the Administrative Office of the Courts, the Prosecutors Advisory Council, and other interested parties, a schedule of punitive and rehabilitative alternatives to imprisonment for dissemination to judges, prosecutors, and defense attorneys. The schedule shall include, but shall not be limited to, rehabilitation treatment and counseling, community work and service, and drug and alcohol testing;
  - (g) Receive regular reports from the Department of Corrections, on a schedule established by the commission, as to the department's progress in complying with the six (6) year plan;
  - (h) Review and make recommendations to the department on any significant change in programs, policies, procedures, staffing, classification, or other component of corrections operations which departs from the six (6) year plan;
  - (i) Assist the Legislative Research Commission in the preparation of corrections impact statements for proposed legislation;
  - (j) Make recommendations to the Governor and the General Assembly concerning legislation affecting corrections including, but not limited to, legislation relating to sentencing, probation, and parole;
  - (k) In cooperation with the Administrative Office of the Courts, the Prosecutors Advisory Council, the Department for **Community Based**~~Social~~ Services of the Cabinet for Families and Children, and the Kentucky Bar Association, conduct educational seminars for judges, attorneys, and probation officers, to disseminate information concerning the availability and appropriate utilization of community service, rehabilitation, and other types of alternative sentences and conditions of probation; and
  - (l) Administer the provisions of KRS 196.700 to 196.735.
- (7) The six (6) year plan shall consist of at least the following elements:
- (a) The location, capacity, classification, and staffing of each penal institution and program administered by the Department of Corrections;
  - (b) The location, capacity, classification, staffing, and anticipated cost and time of construction of each new facility to be constructed or each facility expansion to be constructed during the six (6) year plan period;
  - (c) The administrative structure of the Department of Corrections;
  - (d) Prison population projections for the six (6) year plan period;
  - (e) Education, rehabilitation, and prison industries programs administered by the Department of Corrections;
  - (f) The inmate labor program administered by the department; and
  - (g) Contingency plans to deal with unexpected increases in prison population.
- (8) The six (6) year plan shall be submitted to the General Assembly and approved by the General Assembly with the additions, deletions, or modifications the General Assembly shall deem advisable. Upon adoption by the General Assembly, all new facilities, and renovations and expansions of existing facilities, shall be in accordance with the plan, except in the case of an emergency declared by the Governor after the adoption of the plan. All other material changes in the plan shall be presented to the Corrections Commission for review and recommendation prior to implementation. While a change may be implemented without commission approval, the Corrections Commission shall advise the Legislative Research Commission of any material change request that is not favorably recommended by the commission.

Section 17. KRS 199.011 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Secretary" means the secretary for families and children;
- (2) "Cabinet" means the Cabinet for Families and Children;
- (3) "Department" means the Department for **Community Based**~~Social~~ Services;
- (4) "Child" means any person who has not reached his eighteenth birthday;
- (5) "Adult adopted person" means any adopted person who is twenty-one (21) years of age or older;

- (6) "Child-caring facility" means any institution or group home, including institutions and group homes that are publicly operated, providing residential care on a twenty-four (24) hour basis to children, not related by blood, adoption, or marriage to the person maintaining the facility, other than an institution or group home certified by an appropriate agency as operated primarily for educational or medical purposes, or a residential program operated or contracted by the Department of Juvenile Justice that maintains accreditation, or obtains accreditation within two (2) years of opening from a nationally recognized accrediting organization;
- (7) "Child-placing agency" means any agency licensed by the cabinet which supervises the placement of children in foster family homes or child-caring facilities, or which places children for adoption;
- (8) "Adoption worker" means an employee of the cabinet so designated by the secretary for families and children, a social worker employed by a county or city who has been approved by the cabinet to handle, under its supervision, adoption placement services to children, or a social worker employed by or under contract to a child-placing adoption agency;
- (9) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or of a licensed child-placing agency;
- (10) "Group home" means a homelike facility, excluding Department of Juvenile Justice operated or contracted facilities, for not more than eight (8) foster children, not adjacent to or part of an institutional campus, operated by a sponsoring agency for children who may participate in community activities and use community resources;
- (11) "Institution" means a child-caring facility providing care or maintenance for nine (9) or more children;
- (12) "Family rehabilitation home" means a child-caring facility for appropriate families and comprising not more than twelve (12) children and two (2) staff persons;
- (13) "Placement services" means those social services customarily provided by a licensed child-placing or a public agency which are necessary for the arrangement and placement of children in foster family homes, child-placing facilities, or adoptive homes. Placement services are provided through a licensed child-placing or a public agency for children who cannot be cared for by their biological parents and who need and can benefit from new and permanent family ties established through legal adoption. Licensed child-placing agencies and public agencies have a responsibility to act in the best interests of children, biological parents, and adoptive parents by providing social services to all the parties involved in an adoption; and
- (14) "Voluntary and informed consent" means that at the time of the execution of the consent the consenting person was fully informed of the legal effect of the consent, that the consenting person was not given or promised anything of value except those expenses allowable under KRS 199.590(6), that the consenting person was not coerced in any way to execute the consent, and that the consent was voluntarily and knowingly given. If at the time of the execution of the consent the consenting person was represented by independent legal counsel, there shall be a presumption that the consent was voluntary and informed. In the event the person was not represented by independent legal counsel, the consent shall be in writing, signed and sworn to by the consenting person and include the following:
  - (a) Date, time, and place of the execution of the consent;
  - (b) Name of the child, if any, to be adopted and the date and place of the child's birth;
  - (c) Consenting person's relationship to the child;
  - (d) Identity of the proposed adoptive parents or a statement that the consenting person does not desire to know the identification of the proposed adoptive parents;
  - (e) A statement that the consenting person understands that the consent will be final and irrevocable twenty (20) days after the execution of the consent if the placement was previously approved, if approval of the placement is required;
  - (f) Disposition of the child if the adoption is not adjudged;
  - (g) A statement that the consenting person has received a completed and signed copy of the consent at the time of the execution of the consent;
  - (h) A statement that the consenting person understands that the consent may only be withdrawn by written notification sent by certified or registered mail addressed to either the attorney for the consenting person or to the attorney for the adoptive parents, within thirty (30) days following the execution of the consent;

- (i) Name and address of the person who prepared the consent, name and address of the person who reviewed and explained the consent to the consenting person, and a verified statement from the consenting person that the consent has been reviewed with and fully explained to the consenting person; and
- (j) Total amount of the consenting person's legal fees, if any, for any purpose related to the execution of the consent and the source of payment of the legal fees.

Section 18. KRS 199.461 is amended to read as follows:

- (1) As used in this section, "~~social~~~~family~~" service worker" means a social worker employed by the Cabinet for Families and Children, Department for **Community Based**~~Social~~ Services, to provide direct casework services in foster care, child protection, juvenile services, or adult protection.
- (2) As used in this section, "active case" includes the total number of cases for which the family service worker has responsibility.
- (3) The monthly statewide caseload average for ~~social~~~~family~~ service workers in the area of foster care, child protection, juvenile services, or adult protection shall not exceed twenty-five (25) active cases.
- (4) Nothing in this section shall prevent the department or a ~~social~~~~family~~ service worker from handling emergencies to carry out statutory mandates. If the monthly statewide caseload average for ~~social~~~~family~~ service workers exceeds twenty-five (25) active cases for ninety (90) consecutive days, the department shall report the fact to the Governor and to the Legislative Research Commission together with a description of the factors contributing thereto and shall make recommendations related thereto. The report shall include, by county and district, ~~social~~~~family~~ service worker caseload averages; the number of established ~~social~~~~family~~ service worker positions; and the number of vacant ~~social~~~~family~~ service worker positions.

Section 19. KRS 199.565 is amended to read as follows:

- (1) The Department for **Community Based**~~Social~~ Services shall develop a written protocol for statewide swift adoption procedures to decrease the length of time necessary to complete the adoption process for children who are committed to the cabinet. The protocol shall establish outcome measures for the adoption process, and identify all state, local, and federal agencies, and other entities required to provide services in the adoption process.
- (2) The department shall develop swift adoption teams to expedite the adoption process for children who are committed to the cabinet. Swift adoption teams shall include department personnel representing the state, district, and local levels. The swift adoption teams shall operate under the protocol developed pursuant to subsection (1) of this section. Case referrals to swift adoption teams shall be accepted from social services offices from across the state.
- (3) The department shall issue a quarterly report which shall provide the status of the teams' goals and objectives and identify all adoption proceedings in which the teams have participated during the three (3) month period examined in the quarterly report. The report shall include:
  - (a) The number and location of all committed children placed for adoption;
  - (b) All options made available to those populations;
  - (c) The experience and activity for each case;
  - (d) The successful adoptions and locations;
  - (e) The status of all cases in which the teams have participated;
  - (f) The identity of all agencies involved in the adoption process;
  - (g) An evaluation of the team efforts for the quarter; and
  - (h) A report of initiatives for the swift adoption process for the upcoming quarter.
- (4) The quarterly report shall also include recommendations for changes in statutes, administrative regulations, and policies that would enable the department to further improve the timeliness of adoption placements. The report shall be provided to the Governor, the Legislative Research Commission, and the Chief Justice of the Kentucky Supreme Court.

Section 20. KRS 199.5954 is amended to read as follows:

- (1) A child with special needs residing in this state, who is the subject of an adoption assistance agreement with another state, shall be entitled to receive medical assistance from this state upon the filing in the Department for ***Community Based Services***~~[Social Insurance]~~, Cabinet for Families and Children, a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with regulations of the Department for Medicaid Services, Cabinet for Health Services, the adoptive parents shall be required at least annually to show that the agreement is still in force or has been renewed.
- (2) The Department for Medicaid Services, Cabinet for Health Services shall consider recipients of medical assistance pursuant to this section as any other recipient of medical assistance under the laws of this state and shall process and make payment on claims on account of the recipient in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance.
- (3) The Department for Medicaid Services, Cabinet for Health Services shall provide coverage and benefits for a child who is in another state and who is covered by an adoption assistance agreement made by the Department for ***Community Based Services***~~[Social]~~, Cabinet for Families and Children for the coverage or benefits, if any, not provided by the residence state. To this end, the adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state and shall be reimbursed therefor. However, there shall be no reimbursement for services or benefit amounts covered under any insurance or other third-party medical contract or arrangement held by the child or the adoptive parents. The Cabinet for Families and Children shall make regulations implementing this subsection. The additional coverages and benefit amounts provided pursuant to this subsection shall be for services to the cost of which there is no federal contribution, or which, if federally aided, are not provided by the residence state. Among other things, the regulations shall include procedures to be followed in obtaining prior approvals for services in those instances where required for the assistance.
- (4) The submission of any claim for payment or reimbursement for services or benefits pursuant to this section or the making of any statement in connection therewith, which claim or statement the maker knows or should know to be false, misleading, or fraudulent shall be punishable as perjury and shall also be subject to a fine not to exceed ten thousand dollars (\$10,000) or imprisonment for not more than two (2) years, or both such fine and imprisonment.
- (5) The provisions of this section shall apply only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this state under which the other state provides medical assistance agreements made by this state. All other children entitled to medical assistance pursuant to adoption assistance agreements entered into by this state shall be eligible to receive it in accordance with the laws and procedures applicable thereto.

Section 21. KRS 199.641 is amended to read as follows:

- (1) As used in this section, unless the context otherwise requires:
  - (a) "Allowable costs" means all allowable costs as defined by the Federal Office of Management and Budget circular A-122, "cost principles for nonprofit organizations," utilizing cost data from the child-caring facility's most recent yearly audited financial statement;
  - (b) "Child-caring facility" means any institution or group home other than a state facility, or one certified by an appropriate agency as operated primarily for educational or medical purposes providing residential care on a twenty-four (24) hour basis to children, not related by blood, adoption, or marriage to the person maintaining the facility; and
  - (c) "Department" means the Department for ***Community Based Services***~~[Social]~~ of the Cabinet for Families and Children.
- (2) When the Department for ***Community Based Services***~~[Social]~~ chooses to place a child in a nonprofit child-caring facility, the department shall reimburse that facility the allowable cost of the child's care, subject to the limitation set forth in subsection (3) of this section.
- (3) When the Department for ***Community Based Services***~~[Social]~~ chooses to place a child in a nonprofit child-caring facility, the rate of reimbursement for the child's care shall not exceed seventy-five percent (75%) of the average cost in the most comparable residential facility operated by the department. The rate shall be based on actual total facility occupancy for the most recent audited year or ninety percent (90%) of the facility capacity for the audited year, whichever is greater.

- (4) The secretary shall, to the extent funds are appropriated, implement the reimbursement methodology set forth in this section, or may promulgate administrative regulations in accordance with KRS Chapter 13A to establish the rate of reimbursement for child-caring facilities which are consistent with the level of service provided. If funds are insufficient in any given fiscal year to fully fund this provision, rates shall be adjusted by determining the reimbursement schedule and adjusting by the ratio of available funds to estimated full cost.

Section 22. KRS 199.680 is amended to read as follows:

- (1) The Department for ***Community Based***~~[Social]~~ Services and the Department for Medicaid Services shall not reimburse an out-of-state provider of residential care for children whose care is paid by state general funds or state administered federal funds unless the Department for Medicaid Services or the Department for ***Community Based***~~[Social]~~ Services or a designated agent thereof has determined that there is no provider within the Commonwealth that is capable and willing to provide comparable services at a comparable cost per child to those that would be delivered by the out-of-state provider. An exception may be made if:
  - (a) The identified in-state resource is farther away from the child's parent or guardian than a similar out-of-state resource; or
  - (b) The services offered by the out-of-state resource is deemed by either department or a designated agent thereof to be more appropriate for the individual child than the services offered by the in-state provider.
- (2) Prior to promulgating administrative regulations governing the determination of the availability of providers of residential care within the Commonwealth, the Department for Medicaid Services and the Department for ***Community Based***~~[Social]~~ Services shall establish uniform conditions, requirements, and exceptions for the determination of the availability of providers of residential care within the Commonwealth.
- (3) Each department shall promulgate an administrative regulation in accordance with KRS Chapter 13A that contains the uniform conditions, requirements, and exceptions for the determination of the availability of providers of residential care within the Commonwealth established under subsection (2) of this section.

Section 23. KRS 199.800 is amended to read as follows:

For the purposes of KRS 199.800 to 199.805:

- (1) "Department" means the Department for ***Community Based***~~[Social]~~ Services;
- (2) "Home county" means the county in which the child's natural parents, adoptive parents, or guardian reside. If the parents are divorced, the home county is the county of residence of the parent with legal custody. If the child is committed, the home county is the county of original commitment or case responsibility;
- (3) "Home district" means the Department for ***Community Based***~~[Social]~~ Services district in which the child's home county is located;
- (4) "Type of placement" means the living arrangement, including family foster care, private child care, or other residential alternative that is deemed appropriate for a child as determined by the district placement coordinator and the ***social service***~~[family services]~~ worker with case responsibility; and
- (5) "Unmet need" means the type of facility or placement needed to serve the child's needs which is unavailable at the time placement is being sought for the child.

Section 24. KRS 199.8982 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
  - (a) "Cabinet" means the Cabinet for Families and Children;
  - (b) "Department" means the Department for ***Community Based***~~[Social]~~ Services; and
  - (c) "Family child-care home" means a private home which provides full or part-time care day or night for six (6) or fewer children who are not the children, grandchildren, nieces, nephews, or children in legal custody of the provider.
- (2) (a) The cabinet shall establish a family child-care home certification program which shall be administered by the department. A family child-care provider shall apply for certification of the provider's home if the provider is caring for four (4) to six (6) children unrelated to the provider. A family child-care provider caring for three (3) or fewer children may apply for certification of the provider's home at the discretion



of the provider. Applicants for certification shall not have been found by the cabinet or a court to have abused or neglected a child, and shall meet the following minimum requirements:

1. Submit two (2) written character references;
  2. Provide a written statement from a physician that the applicant is in good health;
  3. Submit to a criminal record check as provided by KRS 17.165;
  4. Provide smoke detectors, a telephone, an adequate water supply, sufficient lighting and space, and a safe environment in the residence in which care is provided;
  5. Provide a copy of the results of a tuberculosis skin test for the applicant administered within thirty (30) days of the date of application for certification; and
  6. Demonstrate completion of a total of at least six (6) hours of training in the following areas within three (3) months of application for certification:
    - a. Basic health, safety, and sanitation;
    - b. Recognizing and reporting child abuse; and
    - c. Developmentally appropriate child-care practice.
- (b) Initial applications for certification shall be made to the department and shall be accompanied by a ten dollar (\$10) certification fee. The department shall issue a certificate of operation upon inspecting the family child-care home and determining the provider's compliance with the provisions of this section. The inspection shall be unannounced. A certificate of operation issued pursuant to this section shall not be transferable and shall be renewed every two (2) years for a fee of ten dollars (\$10).
- (c) A certified family child-care provider shall display the certificate of operation in a prominent place within the residence in which care is provided. The cabinet shall provide the certified family child-care provider with written information explaining the requirements for a family day-care provider and instructions on the method of reporting violations of the requirements which the provider shall distribute to parents.
- (d) Upon request of any person, the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of day-care license of the family child-care provider. Identifying information regarding children and their families shall remain confidential.
- (e) The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the family child-care home within the past year. All information distributed by the cabinet under this paragraph shall include a statement indicating that the reports as provided under this paragraph from the past five (5) years are available from the family child-care home upon the parent's, custodian's, guardian's, or other interested person's request.
- (f) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A which establish standards for the issuance, monitoring, release of information under this section and KRS 199.896 and 199.898, renewal, denial, revocation, and suspension of a certificate of operation for a family child-care home; provided, however, any administrative regulations promulgated in accordance with KRS Chapter 13A shall prohibit the employment of persons convicted of any sexual offense. A denial, suspension, or revocation of a certificate may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B. If the cabinet has probable cause to believe that there is an immediate threat to the public health, safety, or welfare, the cabinet may take emergency action to suspend a certificate pursuant to KRS 13B.125. The cabinet shall promulgate administrative regulations to impose minimum staff-to-child ratios. The cabinet may promulgate administrative regulations relating to other requirements necessary to ensure minimum safety in family child-care homes. The cabinet shall develop and provide an "easy-to-read" guide containing the following information to a family child-care provider seeking certification of his home:
1. Certification requirements and procedures;
  2. Information about available child-care training; and
  3. Child-care food sponsoring organizations.

- (3) Family child-care providers shall annually demonstrate to the department completion of at least six (6) hours of training in child development.
- (4) The cabinet shall, either through the development of or approval of, make available a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection (2)(a)6. of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection (2)(a)6. of this section.

Section 25. KRS 199.8984 is amended to read as follows:

- (1) The Child-Care Policy Council is created within the Cabinet for Families and Children. The council shall:
  - (a) Promote coordination and communication among state agencies responsible for child-care and early childhood education services;
  - (b) Serve as an advisor for state agencies responsible for child-care programs;
  - (c) Review state child-care programs and make recommendations to state agencies and the General Assembly related to program implementation, access to child care, the supply of child care, and coordination of child-care and other early childhood programs;
  - (d) Review and make recommendations on administrative regulations relating to child-care programs and services;
  - (e) Advise the cabinet on application requirements and distribution of contracts to local child-care resource and referral agencies; and
  - (f) Submit biennially to the Legislative Research Commission by October 1 in each odd-numbered year a report on the status of child care.
- (2) The council shall be composed of seventeen (17) citizen members appointed by the Governor and shall include one (1) member of the House of Representatives appointed by the Speaker of the House and one (1) member of the Senate appointed by the Senate President. Members of the council shall serve for a term of four (4) years and until their successors are appointed and qualified; they shall be chosen to broadly represent public interest groups concerned with child-care services, professionals involved in the delivery of child-care services, nonprofit child-care providers, for-profit child-care providers, family child-care providers, employers, labor, resource and referral programs, parents, and the general public. The Governor shall appoint the chairman of the council, who shall also serve as one of the voting members of the council. The secretary for families and children ~~and~~ the commissioner for **community based** ~~[social insurance, and the commissioner for social]~~ services shall be nonvoting, ex officio members of the council. The commissioner for **community based** ~~[social]~~ services shall be staff director for, and shall provide staff to, the council. The council shall meet at least quarterly and on other occasions as may be necessary. A majority of the appointed members shall constitute a quorum.

Section 26. KRS 200.503 is amended to read as follows:

As used in KRS 200.501 to 200.509, unless the context otherwise requires:

- (1) "Child with an emotional disability" means a child with a clinically significant disorder of thought, mood, perception, orientation, memory, or behavior that is listed in the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders and seriously limits a child's capacity to function in the home, school, or community.
- (2) "Child with a severe emotional disability" means a child with a clinically significant disorder of thought, mood, perception, orientation, memory, or behavior that is listed in the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders and that:
  - (a) Presents substantial limitations that have persisted for at least one (1) year or are judged by a mental health professional to be at high risk of continuing for one (1) year without professional intervention in at least two (2) of the following five (5) areas: "Self-care," defined as the ability to provide, sustain, and protect his or herself at a level appropriate to his or her age; "Interpersonal relationships," defined as the ability to build and maintain satisfactory relationships with peers and adults; "Family life," defined as the capacity to live in a family or family type environment; "Self-direction," defined as the child's ability to control his or her behavior and to make decisions in a manner appropriate to his or her age; and

"Education," defined as the ability to learn social and intellectual skills from teachers in available educational settings; or

- (b) Is a Kentucky resident and is receiving residential treatment for emotional disability through the interstate compact; or
  - (c) The Department for ***Community Based***~~[Social]~~ Services has removed the child from the child's home and has been unable to maintain the child in a stable setting due to behavioral or emotional disturbance; or
  - (d) Is a person under twenty-one (21) years of age meeting the criteria of paragraph (a) of this subsection and who was receiving services prior to age eighteen (18) that must be continued for therapeutic benefit.
- (3) "State Family Advisory Council" means the council composed of all parent members or alternate parent members of the state, regional, and local interagency councils for services to children with an emotional disability pursuant to KRS 200.505 and 200.509 and all parent members of regional policy councils.
- (4) "Least restrictive alternative mode of treatment" means treatment given in the least confining setting which will provide a child with an emotional disability or severe emotional disability appropriate treatment or care consistent with accepted professional practice. For purposes of this section, least restrictive alternative mode of treatment may include an institutional placement.

Section 27. KRS 200.505 is amended to read as follows:

There is hereby created a State Interagency Council for Services to Children with an Emotional Disability. The chairman of the council shall be designated by the Governor and shall establish procedures for the council's internal procedures.

- (1) This council shall be composed of the following:
  - (a) Members who shall serve by virtue of their positions: the commissioner of the Department of Education, the commissioner of the Department for Mental Health and Mental Retardation Services, the commissioner of the Department for ***Community Based***~~[Social]~~ Services, the commissioner of the Department for Public Health, the commissioner of the Department ~~for~~***of*** Medicaid Services, ***the commissioner of the Department of Juvenile Justice***, and the executive director of the Administrative Offices of the Courts, or their designees; and
  - (b) The Governor shall appoint one (1) parent of a child with an emotional disability, who is a consumer of state-funded services for children with an emotional disability to serve as a member of the council, and one (1) parent who meets the same criteria to serve as the parent member's alternate to serve in the absence of the parent member. For each appointment to be made, the State Family Advisory Council shall submit to the Governor a list of two (2) names of parents who are qualified for appointment from which list the Governor shall make the appointment. Appointees shall serve a term of four (4) years. If the child of the parent member or alternate parent member ceases to be a consumer of state-funded services for children with an emotional disability during the term of appointment, the member shall be eligible to serve out the remainder of the term of appointment. The alternate parent member may attend and participate in all council meetings but shall vote only in the absence of the parent member. The parent member and alternate parent member shall receive no compensation in addition to that which they may already receive as service providers or state employees, but the parent member and alternate parent member shall be reimbursed for expenses incurred through the performance of their duties as council members.
- (2) The State Interagency Council for Services to Children with an Emotional Disability shall:
  - (a) Consider issues and make recommendations annually to the Governor and the Legislative Research Commission regarding the provision of services for children with an emotional disability;
  - (b) Direct each regional interagency council to coordinate services to children with an emotional disability and identify factors contributing to a lack of coordination;
  - (c) Develop a form to be signed by the parent or other legal guardian of a child referred for services to any interagency council for children with an emotional disability. The form shall enable the agencies involved with the child to share information about the child as necessary to identify and provide services for the child;

- (d) Review service and treatment plans for children for whom reviews are requested, and provide any advice and assistance that the state council determines to be necessary to meet the needs of children with an emotional disability referred by regional councils;
  - (e) Assess the effectiveness of regional councils in meeting the service needs of children with an emotional disability;
  - (f) Establish a uniform grievance procedure for the state, to be implemented by each regional interagency council. Appeals may be initiated by the child, parent, guardian, person exercising custodial control or supervision, or other authorized representative about matters relating to the interagency service plan for the child or the denial of services by the regional interagency council. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B;
  - (g) Meet at least monthly and maintain records of meetings, except that records that identify individual children shall only be disclosed as provided by law;
  - (h) Adopt interagency agreements as necessary for coordinating services to children with an emotional disability by the agencies represented in the state council;~~[-and]~~
  - (i) Develop services to meet the needs of children with an emotional disability; *and*
  - (j) ***Promote services to prevent the emotional disability of a child.***
- (3) The State Interagency Council for Services to Children with an Emotional Disability may promulgate administrative regulations necessary to comply with the requirements of KRS 200.501 to 200.509.

Section 28. KRS 200.509 is amended to read as follows:

- (1) There are hereby created regional interagency councils for services to children with an emotional disability. These councils shall be formed in each area development district within the Commonwealth of Kentucky, except that those area development districts that contain a county with a population greater than one hundred thousand (100,000) may form up to three (3) such councils. The regional interagency councils for services to children with an emotional disability shall be chaired by the ***service region administrator***~~[-district supervisor]~~ of the Department for ***Community Based***~~[-Social]~~ Services or a program specialist with expertise in this service area as the district supervisor's designee. Each council shall be composed of the following members:
- (a) The children's services coordinator from each regional community mental health center or their designee in the case of a multicouncil district;
  - (b) One (1) court, designated worker chosen by the Chief Regional District Judge within the region;
  - (c) One (1) specialist in special education chosen by the school district superintendents in the area served by the regional council;
  - (d) One (1) parent of a child with an emotional disability, who is a consumer of state-funded services for children with an emotional disability, and one (1) parent who meets the same criteria to serve as the parent member's alternate, who may attend and participate in all council meetings, but shall vote only in the absence of the parent member. For each appointment to be made, the regional interagency council for which the appointment is to be made shall submit to the Governor a list of two (2) names of parents who are qualified for appointment from which list the Governor shall make the appointment. Appointees shall serve a term of four (4) years. If the child of the parent member or alternate parent member ceases to be a consumer of state-funded services for children with an emotional disability during the term of appointment, the member shall be eligible to serve out the remainder of the term of appointment;~~[-and]~~
  - (e) Any other local public or private agency that provides services to children with an emotional disability which the regional interagency council may invite to have a representative become a permanent or temporary member of the council; *and*
  - (f) ***Representatives from the Department of Juvenile Justice and local health departments.***
- (2) No member of a regional interagency council for services to children with an emotional disability shall be given compensation in addition to that which they already receive as service providers or state employees, except that the parent members and alternate parent members of regional interagency councils shall be reimbursed for all expenses incurred through the performance of their duties as council members.

- (3) Each regional interagency council for services to children with an emotional disability shall perform the following functions:
- (a) Review case histories of children referred to it by its members or any other entity within its geographical area to coordinate service provision;
  - (b) Coordinate the development of interagency service plans for children with an emotional disability in the least restrictive alternative mode of treatment;
  - (c) Identify the time frames necessary and the parties responsible for the timely development of the interagency service plans for children with an emotional disability;
  - (d) Verify that services identified in interagency service plans are developed, accessed, and delivered in a coordinated and timely manner;
  - (e) Initiate and adopt interagency agreements as necessary for providing services to children with an emotional disability by the agencies represented in the regional council;
  - (f) Advise the state interagency council regarding service delivery to children with an emotional disability within the region;
  - (g) Refer those children for whom the regional councils cannot provide adequate services to the state interagency council;
  - (h) Implement the uniform grievance procedure established by the state interagency council;
  - (i) Make periodic reports to the state interagency council regarding the number of children referred to the regional council and the progress made in meeting the needs of each child;~~and~~
  - (j) Recognize local interagency councils for services to children with an emotional disability when it determines the council would be beneficial to service delivery; *and*
  - (k) *Promote services to prevent the emotional disability of a child.*
- (4) The secretary for families and children and the designee of the State Department of Education shall ensure that regional councils for services to children with an emotional disability are formed by October 1, 1990.
- (5) Local interagency councils for services to children with an emotional disability may be formed as necessary to enhance service provision, better coordinate services, or initiate special projects and fundraising activities for children with an emotional disability within a city, county, or other local community.

Section 29. KRS 200.585 is amended to read as follows:

- (1) The Department for ***Community Based***~~[Social]~~ Services shall be the lead administrative agency for family preservation services and may receive funding for the implementation of these services. The Department for ***Community Based***~~[Social]~~ Services shall:
- (a) Provide the coordination of and planning for the implementation of family preservation services;
  - (b) Provide standards for family preservation services programs;
  - (c) Monitor these services to ensure they meet measurable standards of performance as set forth in state law and as developed by the Department for ***Community Based***~~[Social]~~ Services; and
  - (d) Provide the initial training and approve any ongoing training required by providers of family preservation services.
- (2) The Department for ***Community Based***~~[Social]~~ Services may provide family preservation services directly or may contract with a private, nonprofit social service agency to provide these services. In the event the department provides family preservation services with state caseworkers, those caseworkers and cases shall be excluded for the overall caseworker/case averages provided on a quarterly basis to the Legislative Research Commission and the Governor's office under KRS 199.461. Family preservation services caseworkers and cases shall be included in the report as a separate category.
- (3) In the event a nonprofit social service agency is contracted by the Department for ***Community Based***~~[Social]~~ Services, to provide family preservation services, the contract shall include:
- (a) Requirements for provider acceptance of any client referred by the Cabinet for Families and Children for family preservation services;

- (b) Limitation of caseload to four (4) or fewer families per caseworker;
- (c) Provision of twenty-four (24) hour crisis intervention services to families served by the program;
- (d) Provision for training of family preservation services staff to meet the following minimum standards:
  - 1. Intensive training of not less than forty (40) hours to any therapist before family preservation services clients are assigned. This training is to be provided by individuals with recognized expertise regarding family preservation services and is to concern itself with the required knowledge skills, and techniques for success within the family preservation services model;
  - 2. A plan for the continuing education of staff therapists after the initial forty (40) hours;
  - 3. Training of not less than twenty (20) hours for a paraprofessional family aide before provision of services without the direct supervision of a family preservation services caseworker;
- (e) Provide for and conduct internal program evaluation and cooperate with external evaluation as directed by the Department for **Community Based**~~Social~~ Services;
- (4) To qualify for continued funding under subsection (3) of this section, an agency contracting to provide family preservation services shall demonstrate an annual success rate of seventy-five percent (75%) in avoiding out-of-home placement six (6) months after the cessation of family preservation services.

Section 30. KRS 200.658 is amended to read as follows:

- (1) There is hereby created the Kentucky Early Intervention System Interagency Coordinating Council to be comprised of twenty-five (25) members to be appointed by the Governor to serve a term of three (3) years. The members of the council shall be geographically and culturally representative of the population of the Commonwealth and conform to the requirements of federal law and regulations. For administrative purposes, the council shall be attached to the Cabinet for Health Services. Pursuant to federal law and regulations, the membership shall be as follows:
  - (a) At least five (5) members shall be the parents, including minority parents, of a child with a disability who is twelve (12) years of age or less, with at least one (1) being the parent of a child six (6) years of age or less. Each parent shall have knowledge of or experience with programs for infants and toddlers with disabilities;
  - (b) At least five (5) members shall be public or private providers of early intervention services to infants and toddlers with disabilities;
  - (c) At least one (1) member shall be a member of the Kentucky General Assembly;
  - (d) At least one (1) member shall be representative of an entity responsible for personnel preparation and may include personnel from an institution of higher education or preservice training organization;
  - (e) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Public Health;
  - (f) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Medicaid Services;
  - (g) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Mental Health and Mental Retardation Services;
  - (h) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for **Community Based**~~Social~~ Services;
  - (i) At least one (1) member shall be the commissioner or designee of the Department of Education;
  - (j) At least one (1) member shall be the commissioner or designee of the Department of Insurance; and
  - (k) At least one (1) member shall be a representative of the Commission for Handicapped Children.
- (2) In matters concerning the Kentucky Early Intervention System, the council shall advise and assist the cabinet in areas including, but not limited to, the following:
  - (a) Development and implementation of the statewide system and the administrative regulations promulgated pursuant to KRS 200.650 to 200.676;

- (b) Achieving the full participation, coordination, and cooperation of all appropriate entities in the state, including, but not limited to, individuals, departments, and agencies, through the promotion of interagency agreements;
  - (c) Establishing a process to seek information from service providers, service coordinators, parents, and others concerning the identification of service delivery problems and the resolution of those problems;
  - (d) Resolution of disputes, to the extent deemed appropriate by the cabinet;
  - (e) Provision of appropriate services for children from birth to five (5) years of age;
  - (f) Identify sources of fiscal and other support services for early intervention programs;
  - (g) Preparing applications to Part H of the Federal Individuals with Disabilities Education Act (IDEA) and any amendments to the applications; and
  - (h) Transitioning of infants and toddlers with disabilities and their families from the early intervention system to appropriate services provided under Part B of the Federal Individuals with Disabilities Education Act (IDEA) operated by the state Department of Education.
- (3) The council shall prepare no later than December 30 of each year an annual report on the progress toward and any barriers to full implementation of the Kentucky Early Intervention System for infants and toddlers with disabilities and their families. The report shall include recommendations concerning the Kentucky Early Intervention System and shall be submitted to the Governor, Legislative Research Commission, and the Secretary of the United States Department of Education.
- (4) No member of the council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of the existence of a conflict of interest.

Section 31. KRS 200.662 is amended to read as follows:

The cabinet shall establish one (1) district early intervention committee in each of the fifteen (15) area development districts. Each committee shall have from fifteen (15) to twenty-five (25) members of whom at least five (5) shall be parents, at least five (5) shall be early intervention service providers, and at least one (1) shall be a representative from each of the following: the local health department, the local office of the Department for **Community Based[Social]** Services, the local community mental health and mental retardation center, and the local Commission for Handicapped Children. Each committee may include representatives from one (1) or more of the following: a child day-care facility, a public school, a provider of medical services, a provider of therapy services, a home health agency if operated separately from the local health department, a university or college, a family resource center, a local business, a local charity, or others deemed appropriate. Each committee shall:

- (1) Advise and assist the cabinet and the council in the development, implementation, and monitoring of the Kentucky Early Intervention System;
- (2) Identify local resources available to infants and toddlers with disabilities and their families;
- (3) Assist in identifying the unmet needs of infants and toddlers with disabilities and their families;
- (4) Assist in establishing and maintaining a point of entry to the early intervention system; and
- (5) Assist in the establishment of local interagency agreements for early intervention services and provide a forum for coordinating district early intervention services.

Section 32. KRS 205.510 is amended to read as follows:

As used in this chapter as it pertains to medical assistance unless the context clearly requires a different meaning:

- (1) "Council" means the Advisory Council for Medical Assistance;
- (2) "Dentist" means a person authorized to practice dentistry under laws of the Commonwealth;
- (3) "Medical care" as used in this chapter means essential medical, surgical, dental, optometric, podiatric, and nursing services, in the home, office, clinic, or other suitable places, which are provided or prescribed by physicians, optometrists, podiatrists, or dentists licensed to render such services, including drugs and medical supplies, appliances, laboratory, diagnostic and therapeutic services, nursing-home and convalescent care, hospital care as defined in KRS 205.560(1)(a), and such other essential medical services and supplies as may be prescribed by such persons; but not including abortions, or induced miscarriages or premature births, unless in the opinion of a physician such procedures are necessary for the preservation of the life of the woman

seeking such treatment or except in induced premature birth intended to produce a live viable child and such procedure is necessary for the health of the mother or her unborn child. However, this section does not authorize optometrists to perform any services other than those authorized by KRS Chapter 320;

- (4) "Nurse" means a person authorized to practice professional nursing under the laws of the Commonwealth;
- (5) "Nursing home" means a facility which provides routine medical care in which physicians regularly visit patients, which provide nursing services and procedures employed in caring for the sick which require training, judgment, technical knowledge, and skills beyond that which the untrained person possesses, and which maintains complete records on patient care, and which is licensed pursuant to the provisions of KRS 216B.015;
- (6) "Optometrist" means a person authorized to practice optometry under the laws of the Commonwealth;
- (7) "Pharmacist" means a person authorized to practice pharmacy under the laws of the Commonwealth;
- (8) "Physician" means a person authorized to practice medicine or osteopathy under the laws of the Commonwealth;
- (9) "Podiatrist" means a person authorized to practice podiatry under the laws of the Commonwealth;
- (10) "Primary-care center" means a facility which provides comprehensive medical care with emphasis on the prevention of disease and the maintenance of the patients' health as opposed to the treatment of disease;
- (11) "Public assistance recipient" means a person who has been certified by the Department for **Community Based Services**~~[Social Insurance]~~ of the Cabinet for Families and Children as being eligible for, and a recipient of, public assistance under the provisions of this chapter;
- (12) "Other persons eligible for medical assistance" may include the categorically needy excluded from money payment status by state requirements and classifications of medically needy individuals as permitted by federal laws and regulations and as prescribed by regulation of the secretary for health services or his designee;
- (13) "Vendor payment" means a payment for medical care which is paid by the Cabinet for Health Services directly to the authorized person or institution which rendered medical care to an eligible recipient;
- (14) "Third party" means an individual, institution, corporation, company, insurance company, personal representative, administrator, executor, trustee, or public or private agency, including but not limited to a reparation obligor and the assigned claims bureau under the Motor Vehicle Reparation Act, who is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or recipient of medical assistance provided under Title XIX of the Social Security Act.

Section 33. KRS 205.6318 is amended to read as follows:

The Cabinet for Health Services shall review the available technology associated with the medical assistance system to determine which technology is best suited to enhance program service operation, monitoring ability, and fraud and abuse detection. This shall include the ability to provide on-line access to data files to allow cross-analysis of provider and recipient utilization patterns. The cabinet shall by promulgation of administrative regulations, pursuant to KRS Chapter 13A, establish an integrated system to enhance program integrity, using a combination of staff, computer technology, and contractual services to identify potential fraud, abuse, and misutilization of services. This system shall:

- (1) Utilize statisticians, program specialists, accountants, nurses, and other medical specialists to review the Medical Assistance Program to identify patterns of provider and recipient behavior that contributes to unnecessary or abusive use of program services;
- (2) Utilize computer capability through contractual services or the purchase of computer software to detect the unbundling of claims and other techniques used by providers to enhance reimbursement;
- (3) Impose utilization controls on the expenditures in respiratory, physical, speech, and occupational therapy and durable medical equipment provided to nursing-home residents, through the use of established medical criteria or preauthorization of ancillary therapies;
- (4) Establish state audit and edit requirements that exceed the federal audit and edit requirements;
- (5) Obtain access to necessary data from the fiscal agent of each medical provider;
- (6) Review the efficiency and effectiveness of the fraud and abuse detection and investigation process to determine whether changes shall be made;



- (7) Direct that fraud and abuse detection and investigation components shall be active in initiating investigations. The fraud and abuse detection, investigation, and prosecution functions shall be integrated, with access to information in files maintained by the Department for *Community Based Services*~~[Social Insurance]~~ and the Department for Medicaid Services;
- (8) Review penalties for deterrent value for medical providers that are found to have abused Medicaid regulations and statutes; and
- (9) Provide for a proactive effort to reduce costs for institutionalized program participants. Program officials shall seek to implement innovative or experimental demonstration programs that aim to control costs.

Section 34. KRS 205.6336 is amended to read as follows:

- (1) The secretary of the Finance and Administration Cabinet, after consultation with the secretary for the Cabinet for Health Services, shall on a quarterly basis, certify to the Interim Committee on Appropriations and Revenue the general fund savings realized from the procedures required by KRS 205.6310 to 205.6332 and any other procedures adopted by the Cabinet for Health Services or the Kentucky Health Policy Board to control the cost of health care.
- (2) The certification shall indicate the following:
  - (a) The means by which savings were achieved, including a description of the discrete procedure used to achieve the savings; and
  - (b) The amount saved as a result of the specific procedure, including an explanation as to the calculations and assumptions used in determining the amount.
- (3) The amount certified by the secretary under this section shall be transferred to a trust account to be utilized by the secretary of the Cabinet for Health Services to provide health-care coverage for additional categories of citizens, but the funds in the trust account shall not be spent until appropriated by the General Assembly. The funds in the trust account shall not lapse. The secretary shall give priority in utilizing any appropriated trust account funds to matching available federal funds in the Medicaid program.
- (4) Savings in the general fund appropriation for the Medicaid program shall be determined as follows:
  - (a) To the extent that the average cost per month per eligible actually experienced by the Medicaid program is less than the average cost per month per eligible reflected in the enacted budget, the savings attributable to that difference shall be deemed to be eligible for certification under this section.
  - (b) To the extent that the number of eligibles actually participating in the Medicaid program is less than the number reflected in the enacted budget, the savings attributable to that difference shall be deemed not eligible for certification under this section.
- (5) Savings in the general fund appropriation to the Department for Mental Health and Mental Retardation Services shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.
- (6) Savings in the general fund appropriation to the Department for Public Health shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.
- (7) Savings in the general fund appropriation to the Department for *Community Based*~~[Social]~~ Services shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.
- (8) Only those savings that can be certified as being recurring shall be transferred to the trust fund.

Section 35. KRS 205.634 is amended to read as follows:

- (1) No medical assistance payments shall be made under this chapter to any out-of-state health facility or health service providing services within the geographic boundaries of the Commonwealth who does not have a certificate of need if the health facility or health service would be required to obtain a certificate of need under KRS Chapter 216B if the facility or service were located within the geographic boundaries of the Commonwealth.

- (2) The Department for Medicaid Services and the Department for ***Community Based***~~*Social*~~ Services shall not reimburse an out-of-state provider of residential care for children whose care is paid by state general funds or state administered federal funds, unless the Department for Medicaid Services or the Department for ***Community Based***~~*Social*~~ Services or a designated agent thereof has determined that there is no provider within the Commonwealth that is capable and willing to provide comparable services at a comparable cost per child to those that would be delivered by the out-of-state provider. An exception may be made if:
  - (a) The identified in-state resource is farther away from the child's parent or guardian than a similar out-of-state resource; or
  - (b) The services offered by the out-of-state resource is deemed by either department or a designated agent thereof to be more appropriate for the individual child than the services offered by the in-state provider.
- (3) Prior to promulgating administrative regulations governing the determination of the availability of providers of residential care within the Commonwealth, the Department for Medicaid Services and the Department for ***Community Based***~~*Social*~~ Services shall establish uniform conditions, requirements, and exceptions for the determination of the availability of providers of residential care within the Commonwealth.
- (4) Each department shall promulgate an administrative regulation in accordance with KRS Chapter 13A that contains the uniform conditions, requirements, and exceptions for the determination of the availability of providers of residential care within the Commonwealth established under subsection (3) of this section.

Section 36. KRS 205.6489 is amended to read as follows:

- (1) The Kentucky Children's Health Insurance Program shall be administered by the Cabinet for Health Services in terms of conducting eligibility determination and providing oversight over enrollment and claims payment.
- (2) The program shall include a system of outreach and referral for children who may be eligible for the Kentucky Children's Health Insurance Program. The program shall work with the Department for Medicaid Services, the Department for ***Community Based Services***~~*Social Insurance*~~, schools, pediatricians, public health departments, and other entities interested in the health of children in developing the system of outreach and referral.
- (3) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish a structure for quality assurance and utilization review under KRS 205.6481 to 205.6495 and KRS 304.17A-340.
- (4) The Kentucky Children's Health Insurance Program shall collect, analyze, and publicly disseminate comprehensive data on the number of children enrolled in the program, services received through the program, and the effect on health outcomes of children served by the program including the special health needs of minority children. The information collected by the program shall be subject to KRS 216.2927(1). The program shall have access to all data collected by the cabinet under KRS 216.2920 to 216.2929 and shall coordinate program data collection efforts with the data collection efforts of the cabinet under KRS 216.2920 to 216.2929.

Section 37. KRS 205.712 is amended to read as follows:

- (1) The Division of Child Support~~*Enforcement*~~ is established in the Cabinet for Families and Children.
- (2) The duties of the Division of Child Support~~*Enforcement*~~, or its designee, shall include:
  - (a) Serve as state agency authorized to administer Part D of Title IV of the Social Security Act, 42 U.S.C. secs. 651 to 669;
  - (b) Serve as the information agency as provided in the Uniform Interstate Family Support Act, KRS Chapter 407;
  - (c) Serve as collector of all court-ordered or administratively ordered child support payments pursuant to Part D of Title IV of the Social Security Act;
  - (d) Serve as the agent for enforcement of international child support obligations, and respond to requests from foreign reciprocating countries;
  - (e) Establish and enforce an obligation upon receipt of a completed, notarized voluntary acknowledgment-of-paternity form;
  - (f) Enforce Kentucky child support laws, including collection of court-ordered or administratively ordered child support arrearages and prosecution of persons who fail to pay child support;

- (g) Publicize the availability of services and encourage the use of these services for establishing paternity and child support;
  - (h) Pay the cost of genetic testing to establish paternity, subject to recoupment from the alleged father, when paternity is administratively or judicially determined; and obtain additional testing when an original test is contested, upon request and advance payment by the contestant;
  - (i) Establish child support obligations and seek modification of judicially or administratively established child support obligations in accordance with the child support guidelines of the Commonwealth of Kentucky as provided under KRS 403.212;
  - (j) Administratively establish child support orders which shall have the same force and effect of law;
  - (k) Issue an administrative subpoena to secure public and private records of utility and cable companies and asset and liability information from financial institutions for the establishment, modification, or enforcement of a child support obligation;
  - (l) Impose a penalty for failure to comply with an administrative subpoena;
  - (m) Provide notices, copies of proceedings, and determinations of support amounts to any parties or individuals who are applying for or receiving Title IV-D services, or who are parties to cases in which Title IV-D services are being provided;
  - (n) Issue interstate administrative subpoenas to any individual or entity for financial or other information or documents which are needed to establish, modify, or enforce a child support obligation pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. sec. 651 et seq. An administrative subpoena lawfully issued in another state to an individual or entity residing in this state shall be honored and enforced in the Circuit Court where the individual or entity resides; and
  - (o) May promulgate administrative regulations to implement this section and adopt forms or implement other requirements of federal law relating to interstate administrative subpoenas.
- (3) Effective September 30, 1999, the cabinet shall establish a system to receive and process all child support payments. The system shall include existing computer systems to record the payments. The automated system shall include a state case registry that contains records with respect to each case in which services are being provided by the cabinet and each child support order established or modified in the state on or after October 1, 1998.
- (4) The cabinet shall establish and operate a state disbursement unit for the collection, disbursement, and recording of payments under support orders for all Title IV-D cases and for all cases initially issued in the state on or after January 1, 1994, in which a wage withholding has been court-ordered or administratively ordered, pursuant to Part D of Title IV of the Social Security Act. Establishment of the state unit may include the designation and continuation of existing local collection units to aid efficient and effective collection, disbursement, and recording of child support payments.
- (5) After the establishment of the disbursement unit child support collection system, the cabinet or its designee shall serve as collector of all court-ordered or administratively ordered child support payments pursuant to Part D of Title IV of the Social Security Act.
- (6) Where establishment of paternity and enforcement and collection of child support is by law the responsibility of local officials, the cabinet shall refer cases to the appropriate official for such action. The cabinet may enter into cooperative arrangements with appropriate courts and law enforcement officials to assist the cabinet in administering the program of child support recovery, including the entering into of financial arrangements with such courts and officials as provided for under the provisions of federal law and regulations. The local county attorney shall be considered the designee of the cabinet for purposes of administering the program of child support recovery within a county, subject to the option of the county attorney to decline such designation. Nothing in this section shall prevent the secretary from taking such action, with prior written notice, as appropriate if the terms and conditions of the cooperative agreement are not met. When a cooperative agreement with a contracting official is canceled for good cause, the cabinet may not offer that cooperative agreement to that official during the official's tenure.
- (7) Where the local county attorney, friend of the court, domestic relations agent, or other designee of the cabinet has been contracted for the purpose of administering child support enforcement pursuant to Title IV-D of the Social Security Act, the contracting official shall be deemed to be representing the cabinet and as such does not

have an attorney-client relationship with the applicant who has requested services pursuant to Title IV-D of the Social Security Act nor with any dependent on behalf of the individuals for whom services are sought.

- (8) The cabinet shall determine the name of each obligor who owes an arrearage of at least five thousand dollars (\$5,000). After notification to the obligor owing an arrearage amount of five thousand dollars (\$5,000), the cabinet shall transmit to the United States secretary of health and human services the certified names of the individuals and supporting documentation for the denial, revocation, or limitation of the obligor's passport. The cabinet shall notify the identified obligor of the determination and the consequences and provide an opportunity to contest the determination.
- (9) The cabinet shall determine the name of an obligor owing an arrearage and shall indefinitely deny, suspend, or revoke a license or certification that has been issued if the person has a child support arrearage that equals or exceeds the amount that would be owed after one (1) year of nonpayment or fails, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings as provided by 42 U.S.C. sec. 666(a)(16).
- (10) The cabinet shall forward the name of the individual to a board of licensure or board of certification for the notification of the denial, revocation, or suspension of a driver's license, professional license or certification, occupational license or certification, recreational license, or sporting license.
- (11) The denial or suspension shall remain in effect until the child support arrearage has been eliminated or payments on the child support arrearage are being made in accordance with a court or administrative order, the person complies with the subpoena or warrant relating to paternity or child support proceedings, or the appeal of the denial or suspension is upheld and the license is reinstated.
- (12) Except for cases administered by the cabinet under 42 U.S.C. sec. 651 et seq. which shall be afforded the appeal process set forth by KRS 405.450(3), an individual who has a license or certification denied, revoked, or suspended shall have the right to appeal to the licensing or certifying board.
- (13) A dispute hearing shall be conducted by the cabinet in accordance with KRS 405.450. The only basis for a dispute hearing shall be a mistake in fact.
- (14) The cabinet shall in its discretion enter into agreements with financial institutions doing business in the Commonwealth to develop and operate, in coordination with the financial institutions, a data match system. The financial institution shall be required to provide identifying information for each obligated parent who maintains an account at the institution and owes an arrearage, and who shall be identified by the cabinet. Assets held by the institutions on behalf of any obligated parent who is subject to a child support lien pursuant to KRS 205.745 shall be encumbered or surrendered in response to a notice of lien or levy issued by the cabinet. The cabinet may pay a reasonable fee to a financial institution for conducting the data match, not to exceed the actual cost. The financial institution shall not be liable for encumbering or surrendering any assets held by the financial institution in response to a notice of lien or levy issued by the cabinet or for any other action taken in good faith to comply with the requirements of this subsection.
- (15) The cabinet may issue both intrastate and interstate administrative subpoenas to any individual or entity for financial or other information or documents that are needed to establish, modify, or enforce a child support obligation pursuant to Title IV-D of the Social Security Act, 42 U.S.C. sec. 651 et seq. An administrative subpoena lawfully issued in another state to an individual or entity in this state shall be honored and enforced in the Circuit Court of the county in which the individual or entity resides.

Section 38. KRS 205.940 is amended to read as follows:

- (1) A representative payee fund shall be created for the purpose of providing grants to public or private organizations who provide representative payee services. The fund shall consist of moneys appropriated by the General Assembly. These moneys may also be supplemented by funds obtained from other sources for the fund as provided in this section.
- (2) The fund shall be administered by the Cabinet for Families and Children.
- (3) Application for moneys from the fund may be made to the cabinet, on forms prescribed by administrative regulation. The awarding of grants shall be based upon the availability of funds. Grants shall be given to nonprofit organizations or agencies providing representative payee services to more than ten (10) persons who are mentally impaired, homeless or at risk of being homeless, or substance abusers in area development districts created pursuant to KRS 147A.050. The cabinet shall endeavor to fund an applicant where an eligible

applicant exists. Health-care facilities or other institutions, who serve as representative payees for persons residing therein, shall not be eligible to receive funds under this section.

- (4) In determining the amount of each grant, the cabinet shall consider the number of persons receiving representative payee services from an applicant, the amount necessary to reimburse the applicant for all or a portion of the administrative costs incurred in providing representative payee services, and any fee charged by an applicant for the provision of representative payee services.
- (5) The cabinet shall require applicants receiving funds pursuant to this section to be bonded, and to file an annual report with the cabinet providing an accounting of all funds expended on behalf of persons for whom representative payee services are provided. The cabinet shall promulgate administrative regulations providing for the termination of a grant if it determines a representative payee is not serving in the best interests of a client. If a grant is terminated, the cabinet shall report the termination to the agency who appointed the representative payee and recommend the appointment of a new representative payee. If financial exploitation is indicated, the termination shall also be reported to the Department for **Community Based Social** Services for investigation pursuant to KRS Chapter 209.
- (6) The cabinet may provide training for persons serving as representative payees and may provide technical assistance to applicants awarded a grant.
- (7) The cabinet may apply for any grants that may be used to supplement the representative payee fund, and may accept gifts or donations to the fund.

Section 39. KRS 207.200 is amended to read as follows:

- (1) The Kentucky Department of Workplace Standards is authorized to enforce the employment provisions of KRS 207.130 to 207.240 in conjunction with the State Attorney General's office and the state and local courts.
- (2) Any individual with a disability requesting the intervention of the Kentucky Department of Workplace Standards under this section shall, within one hundred and eighty (180) days of the alleged incident, submit with his request a signed, sworn statement specifying and describing the disability or disabilities which affect him. This statement may be used by the commissioner of workplace standards or his representative to determine if the individual does, or does not, have a "physical disability" as defined in KRS 207.130(2). If the commissioner of workplace standards or his representative determines that the aggrieved individual does have a disability which falls under the definition in KRS 207.130(2), the Department of Workplace Standards shall provide a copy of the aggrieved individual's signed statement to the employer for his inspection.
- (3) In the event the employer wishes to challenge the validity of the statement, he shall so notify the commissioner of workplace standards, who shall in turn notify the aggrieved individual. If the aggrieved individual wishes the Department of Workplace Standards to continue its involvement with the case, he shall be required to submit to the commissioner of workplace standards, within thirty (30) days of such notice, a signed, sworn statement from a licensed physician of his choice, or from one of the state or federal agencies serving individuals with disabilities:
  - (a) Specifying and describing the disability or disabilities affecting the individual; and
  - (b) Indicating any specific type of employment for which such disability should be considered a bona fide or necessary reason for limitation or exclusion.
- (4) (a) The state agencies which may be consulted under subsection (3) of this section may include, but are not limited to, the following:
  1. Department of Education, Office of Vocational Rehabilitation Services;
  2. Cabinet for Health Services, Department for Public Health;
  3. Cabinet for Families and Children, **Department for**~~Division of~~ Disability Determination **Services**.
- (b) The commissioner of workplace standards, in conjunction with the agencies designated in this subsection, is authorized to adopt appropriate regulations governing the issuance and setting the standards of determinations of ability or disability;
- (c) The agencies designated in this subsection, and any other state agency which serves individuals with disabilities and which the commissioner of workplace standards deems proper, shall cooperate to the fullest with the Department of Workplace Standards in issuing a statement of disability and limitations

as specified in subsection (3) of this section within twenty (20) days of the date the individual with a disability presents himself before such agency for examination.

- (5) (a) For the purposes of KRS 207.130 to 207.240, the commissioner of workplace standards, or his authorized representative, shall have the power to enter the place of employment of any employer, labor organization, or employment agency to inspect and copy employment records, to compare character of work and operations on which persons employed by him are engaged, to question such persons, and to obtain such other information as is reasonably necessary to make a preliminary determination that the aggrieved individual is, or is not, fully capable of carrying out the duties of the job which he or she had been denied;
- (b) In the event that a preliminary determination is made that the aggrieved individual is not fully capable of carrying out the duties of the job which he or she had been denied, the aggrieved individual and the employer shall both be so advised;
- (c) The aggrieved individual, within ten (10) days of receiving such notification, may file with the Department of Workplace Standards an application for reconsideration of the determination. Upon such application, the commissioner of workplace standards or his representative shall make a new determination within ten (10) days whether the aggrieved individual is, or is not, fully capable of carrying out the duties of the job which he or she had been denied. If the determination is again made that the aggrieved individual is not fully capable of carrying out these duties, the aggrieved individual and the employer shall both be so advised;
- (d) In the event that a preliminary determination has been made that the aggrieved individual is fully capable of carrying out the duties of the job which he or she had been denied, the employer, labor organization, or employment agency shall be so advised and encouraged to make an immediate offer to the aggrieved individual of the position which he or she had been denied. In the event the position has already been filled, the employer, labor organization, or employment agency shall be encouraged to make an offer to the aggrieved individual of the next available position for which he or she is qualified.

Section 40. KRS 209.005 is amended to read as follows:

- (1) The Cabinet for Families and Children shall create an Elder Abuse Committee to develop a model protocol on elder abuse and neglect in the Commonwealth, that shall be comprised of various state agency representatives from the following list:
  - (a) The Department for **Community Based**~~[Social]~~ Services;
  - (b)~~[(c)]~~ ~~The Department for Social Insurance;~~
  - ~~(c)~~ The Department for Public Health;
  - (c)~~[(d)]~~ The Department for Mental Health and Mental Retardation;
  - (d)~~[(e)]~~ The **Office of Aging Services**~~[Division of Aging];~~
  - (e)~~[(f)]~~ The Division of Licensing and Regulation;
  - (f)~~[(g)]~~ The Office of the Ombudsman; and
  - (g)~~[(h)]~~ Area Agencies on Aging.
- (2) The committee shall address issues of prevention, intervention, and agency coordination of services on a state and local level through interaction with local groups or entities that either directly or indirectly provide services to the elder population, including, but not limited to:
  - (a) Senior citizen centers;
  - (b) Local governmental human service groups;
  - (c) The Sanders-Brown Center on Aging at the University of Kentucky;
  - (d) Long Term Care Ombudsmen; and
  - (e) Other organizations or associations dedicated to serving elder citizens and their families in the Commonwealth.
- (3) The committee shall:

- (a) Explore the need for a comprehensive statewide resource directory of services for the elderly;
  - (b) Enhance existing public awareness campaigns for elder abuse and neglect; and
  - (c) Provide forums for the exchange of information to educate the elder population and their families on the rights of elders.
- (4) The committee shall produce an annual report of their activities, products, and recommendations for public policy to the Governor and the Legislative Research Commission.

Section 41. KRS 209.020 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Secretary" means the secretary of the Cabinet for Families and Children;
- (2) "Cabinet" means the Cabinet for Families and Children;
- (3) "Department" means the Department for **Community Based**~~Social~~ Services of the Cabinet for Families and Children;
- (4) "Adult" means:
  - (a) A person eighteen (18) years of age or older, who because of mental or physical dysfunctioning, is unable to manage his own resources or carry out the activity of daily living or protect himself from neglect, or a hazardous or abusive situation without assistance from others, and who may be in need of protective services; or
  - (b) A person without regard to age who is the victim of abuse and neglect inflicted by a spouse;
- (5) "Protective services" means agency services undertaken with or on behalf of an adult in need of protective services who is being abused, neglected, or exploited. These services may include, but are not limited to conducting investigations of complaints of possible abuse, neglect, or exploitation to ascertain whether or not the situation and condition of the adult in need of protective services warrants further action; social services aimed at preventing and remedying abuse, neglect, and exploitation; and services directed toward seeking legal determination of whether or not the adult in need of protective services has been abused, neglected, or exploited and to ensure that he obtains suitable care in or out of his home;
- (6) "Caretaker" means an individual or institution who has the responsibility for the care of the adult as a result of family relationship, or who has assumed the responsibility for the care of the adult person voluntarily, or by contract, or agreement;
- (7) "Abuse" means the infliction of physical pain, mental injury, or injury of an adult;
- (8) "Exploitation" means the improper use of an adult or an adult's resources by a caretaker or other person for the profit or advantage of the caretaker or other person;
- (9) "Investigation" shall include, but is not limited to, a personal interview with the individual reported to be abused, neglected, or exploited. When abuse, or neglect is allegedly the cause of death, a coroner's or doctor's report shall be examined as part of the investigation;
- (10) "Emergency" means that an adult is living in conditions which present a substantial risk of death or immediate and serious physical harm to himself or others;
- (11) "Emergency protective services" are protective services furnished an adult in an emergency;
- (12) "Protective placement" means the transfer of an adult from his present living arrangement to another;
- (13) "Court" means the Circuit Court or the District Court if no judge of that Circuit Court is present in the county;
- (14) "Access to records" means that any representative of the Cabinet for Families and Children actively involved in the conduct of an abuse, neglect, or exploitation investigation under this chapter shall be allowed access to the medical, mental, health, and financial records of the adult that are in the possession of any individual, hospital, firm, corporation or other facility, if necessary to complete the investigation mandated in this chapter; and
- (15) "Neglect" means a situation in which an adult is unable to perform or obtain for himself the services which are necessary to maintain his health or welfare, or the deprivation of services by a caretaker which are necessary to maintain the health and welfare of an adult, or a situation in which a person deprives his spouse of reasonable services to maintain health and welfare.

Section 42. KRS 210.271 is amended to read as follows:

- (1) No patient in an institution for the mentally ill or the mentally retarded operated by the Cabinet for Health Services shall be discharged to a boarding home as defined in KRS 216B.300 unless the boarding home is registered pursuant to KRS 216B.305.
- (2) The cabinet shall conduct a quarterly follow-up visit, using cabinet personnel or through contract with the Regional Community Mental Health Centers, of all patients of state mental health or mental retardation facilities that are discharged to boarding homes. Any resident found to have needs that cannot be met by the boarding home shall be referred to the Department for **Community Based**~~Social~~ Services for appropriate placement. Any boarding home suspected of operating as an unlicensed personal care facility or housing residents with needs that cannot be met by the boarding home shall be reported to the Division of Licensing and Regulation for investigation.

Section 43. KRS 211.686 is amended to read as follows:

- (1) A local child fatality response team may be established in every county or group of contiguous counties by the coroner or coroners with jurisdiction in the county or counties. The local coroner may authorize the creation of additional local teams within the coroner's jurisdiction as needed.
- (2) Membership of the local team may include representatives of the coroner, the local office of the Department for **Community Based**~~Social~~ Services, law enforcement agencies with investigation responsibilities for child fatalities which occur within the jurisdiction of the local team, the Commonwealth's and county attorneys, representatives of the medical profession, and other members whose participation the local team believes is important to carry out its purpose. Each local team member shall be appointed by the agency the member is representing and shall serve at the pleasure of the appointing authority.
- (3) The purpose of the local child fatality response team shall be to:
  - (a) Allow each member to share specific and unique information with the local team;
  - (b) Generate overall investigative direction and emphasis through team coordination and sharing of specialized information;
  - (c) Create a body of information that will assist in the coroner's effort to accurately identify the cause and reasons for death; and
  - (d) Facilitate the appropriate response by each member agency to the fatality, including but not limited to, intervention on behalf of other children who may be adversely affected by the situation, implementation of health services necessary for protection of other citizens, further investigation by law enforcement, or legal action by Commonwealth's or county attorneys.
- (4) The local team may:
  - (a) Analyze information regarding local child fatalities to identify trends, patterns, and risk factors;
  - (b) Recommend to the state team, and any other entities deemed appropriate, changes in state or local programs, legislation, administrative regulations, policies, budgets, and treatment and service standards which may facilitate strategies for prevention and reduce the number of child fatalities; and
  - (c) Evaluate the effectiveness of local prevention and intervention strategies.
- (5) The local team may establish a protocol for the investigation of child fatalities and may establish operating rules and procedures as it deems necessary to carry out the purposes of this section.
- (6) The review of a child fatality by a local team may include information from reports generated or received by agencies, organizations, or individuals that are responsible for investigation, prosecution, or treatment in the case.
- (7) The proceedings, records, opinions, and deliberations of the local team shall be privileged and shall not be subject to discovery, subpoena, or introduction into evidence in any civil action in any manner that would directly or indirectly identify specific persons or cases reviewed by the local team. Nothing in this subsection shall be construed to restrict or limit the right to discover or use in any civil action any evidence that is discoverable independent of the proceedings of the local team.

Section 44. KRS 213.066 is amended to read as follows:



- (1) For each adoption decreed by a Circuit Court in the Commonwealth, the court shall require the preparation of a report of adoption on a form prescribed and furnished by the state registrar. The report shall include the facts necessary to establish a new certificate of birth of the person adopted and identify the order of adoption, and be certified by the clerk of the court.
- (2) Information necessary to prepare the report of adoption shall be furnished by each petitioner for adoption or the petitioner's attorney. The Department for **Community Based**~~[Social]~~ Services or any other agency or person having knowledge of the facts shall supply the court with the additional information necessary to complete the report. The provision of the information shall be prerequisite to the issuance of a final decree in the matter by the court.
- (3) If an adoption decree is amended or annulled, the clerk of the court shall prepare a report thereof which shall include the facts necessary to identify the original adoption report and the facts amended in the adoption decree necessary to properly amend the birth record.
- (4) Not later than the fifteenth day of each calendar month or more frequently, the clerk of the court shall forward to the state registrar reports of decrees of adoption, annulments of adoption, and amendments of decrees of adoption which were entered in the preceding month, together with such related reports as the state registrar shall require.
- (5) If the state registrar receives a report of adoption, annulment of adoption, or amendment of a decree of adoption for a person born outside this state, the state registrar shall forward the report to the state registrar in the state of birth. If the birth occurred in a foreign country and the child was not a citizen of the United States at the time of birth, the state registrar shall prepare a record of foreign birth as provided by KRS 213.056(2). If the child was born in Canada, the state registrar shall also send a copy of the report of adoption, annulment of adoption, or amendment of a decree of adoption to the appropriate registration authority in that country.

Section 45. KRS 216.583 is amended to read as follows:

The Long-Term Care Coordinating Council shall be composed of the following members from within the cabinet: the commissioner of the Department for Public Health; the commissioner of the Department for **Mental Health and Mental Retardation**~~[Social]~~ Services;~~the commissioner of the Department for Social Insurance;~~ the inspector general; the director of the Division for Licensing and Regulation; the executive director of the Office of Aging Services; the commissioner of the Department for Medicaid Services; the general counsel; and the long-term care ombudsman.

Section 46. KRS 216.787 is amended to read as follows:

- (1) No agency providing services to senior citizens which are funded by the Department for **Community Based**~~[Social]~~ Services or the Office of Aging Services of the Cabinet for Families and Children shall employ persons in a position which involves providing direct services to a senior citizen if that person has been convicted of a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or the commission of a sex crime.
- (2) Operators of service provider agencies may employ persons convicted of or pleading guilty to an offense classified as a misdemeanor.
- (3) Each service provider agency providing direct services to senior citizens as specified under KRS 216.785 to 216.793 shall request all conviction information from the Justice Cabinet for any applicant for employment prior to employing the applicant.

Section 47. KRS 216.793 is amended to read as follows:

- (1) Each application form provided by the employer, or each application form provided by a facility either contracted or operated by the Department for Mental Health and Mental Retardation Services of the Cabinet for Health Services, to the applicant for initial employment in a nursing facility or nursing pool providing staff to a nursing facility or in a position funded by the Department for **Community Based**~~[Social]~~ Services or the Office of Aging Services of the Cabinet for Families and Children and which involves providing direct services to senior citizens shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."
- (2) Any request for criminal records of an applicant as provided under subsection (1) of this section shall be on a form or through a process approved by the Justice Cabinet. The Justice Cabinet may charge a fee to be paid by

the applicant or state agency in an amount no greater than the actual cost of processing the request and shall not exceed five dollars (\$5) per application.

Section 48. KRS 216B.455 is amended to read as follows:

- (1) A certificate of need shall be required for all psychiatric residential treatment facilities. The application for a certificate of need shall include formal written agreements of cooperation that identify the nature and extent of the proposed working relationship between the proposed psychiatric residential treatment facility and each of the following agencies, organizations, or facilities located in the service area of the proposed facility:
  - (a) Regional interagency council for children with emotional disability or severe emotional disability as defined in KRS 200.509;
  - (b) Department for **Community Based**~~[Social]~~ Services;
  - (c) Local school districts;
  - (d) Psychiatric hospitals; and
  - (e) Any other agency, organization, or facility deemed appropriate by the cabinet.
- (2) All psychiatric residential treatment facilities shall comply with the licensure requirements as set forth in KRS 216B.105.
- (3) All psychiatric residential treatment facilities shall be certified by the Joint Commission on Accreditation of Healthcare Organizations.
- (4) A psychiatric residential treatment facility shall not be located in or on the grounds of a psychiatric hospital.
- (5) The total number of psychiatric residential treatment facility beds shall not exceed sixteen (16) beds in any area development district with less than 275,000 population; thirty-two (32) beds in any area development district with 275,000 to 550,000 population; and forty-eight (48) beds in any area development district with over 550,000 population.

Section 49. KRS 222.021 is amended to read as follows:

- (1) There is hereby created within the Cabinet for Health Services a Substance Abuse, Pregnancy, and Women of Childbearing Age Work Group. The work group shall carry out the planning and coordinating activities of the Commonwealth with regard to substance dependency and abuse among pregnant women and other women of childbearing age.
- (2) The work group shall be appointed by the secretary for health services and be composed of, but not restricted to, a representative of the Cabinet for Health Services, Department for Public Health, Division of Maternal and Child Health Services; Department for **Community Based**~~[Social]~~ Services;~~Department for Social Insurance;~~ Department for Mental Health and Mental Retardation Services, Division of Substance Abuse and Division of Mental Health; Department for Medicaid Services; Justice Cabinet, Department of State Police, Drug Enforcement, Special Investigations Unit; Department of Education, Division of Program Resources; Office of the Attorney General; Office for a Drug Free Kentucky; Kentucky Commission on Women; Regional Community Mental Health and Mental Retardation System; University of Kentucky Institute on Women and Substance Abuse; University of Louisville, School of Medicine, Department of Pediatrics; University of Kentucky Medical Center, Department of Obstetrics and Gynecology; local or district health department; Kentucky Psychological Association; Kentucky Pharmacists Association; Kentucky Hospital Association; Kentucky Nurses Association; and the Kentucky Medical Association; Kentucky Chapter of the National Association of Social Workers; Kentucky Association of Addiction Professionals; Kentucky Prevention Network; Coalition for Women's Substance Abuse Services; Kentucky Women's Advocates; Kentucky Youth Advocates; Kentucky Chapter of the March of Dimes; Foster Parent Association; and the Homeless Coalition.
- (3) The Substance Abuse, Pregnancy, and Women of Childbearing Age Work Group shall be chaired jointly by the Director of the Division of Substance Abuse and another member of the work group who has been elected by the membership of the work group. The work group shall meet at least quarterly and shall periodically assess the extent of alcohol and other substance dependency and abuse among Kentucky women who are pregnant and other women of childbearing age; identify, develop, and coordinate resources available and needed within the Commonwealth for any woman who is pregnant or of childbearing age and at risk of alcohol and substance dependency or abuse; and identify, develop, and coordinate resources available and needed for infants and children exposed to alcohol or drugs in utero or through alcohol or drug abuse in the home.

- (4) The work group shall make a biennial report, no later than January 1 of each odd-numbered year, of its activities and any recommendations to the Secretary of the Cabinet for Health Services and the Legislative Research Commission.
- (5) The provisions of subsections (1) to (4) of this section, creating a Substance Abuse, Pregnancy, and Women of Childbearing Age Work Group shall expire on July 15, 2002. As of that date, the Substance Abuse, Pregnancy, and Women of Childbearing Age Work Group shall cease to exist.

Section 50. KRS 314.142 is amended to read as follows:

- (1) The Kentucky Board of Nursing shall promulgate administrative regulations pursuant to KRS Chapter 13A to create a Sexual Assault Nurse Examiner Program. These administrative regulations shall address, at a minimum:
  - (a) Educational requirements for sexual assault nurse examiners and statewide standards for provision of the education;
  - (b) The application process through which registered nurses who submit documentation of required education and clinical experience and who remit the designated application fee may apply to the board to be credentialed as a "Sexual Assault Nurse Examiner";
  - (c) Continuing education requirements for maintenance of the sexual assault nurse examiner credential; and
  - (d) Methods of monitoring overall program implementation.
- (2) For the purpose of providing recommendations to the Kentucky Board of Nursing on the development and implementation of the Sexual Assault Nurse Examiner Program, there is hereby created a Sexual Assault Nurse Examiner Advisory Council. The following members shall serve on the council by virtue of their office: the executive director of the Kentucky Board of Nursing or the executive director's designee; the executive director of the Kentucky Hospital Association or the executive director's designee; the state medical examiner or the examiner's designee; the commissioner of the Department for **Community Based**~~{Social}~~ Services of the Cabinet for Families and Children or the commissioner's designee; the executive director of the Governor's Office of Child Abuse and Domestic Violence Services or the executive director's designee; the president of the Kentucky Association of Sexual Assault Programs or the president's designee; the commissioner of the Department for Public Health of the Cabinet for Health Services or the commissioner's designee; the commissioner of the Kentucky State Police or the commissioner's designee; the chair of the Kentucky Association of Baccalaureate and Higher Degree Nursing Programs or the chair's designee; the director of the Victim's Advocacy Division of the Office of the Attorney General or the director's designee; the director of the Prosecutors Advisory Council of the Office of the Attorney General or the director's designee; and the director of the Kentucky State Police Crime Lab or the director's designee. Two (2) members shall be registered nurses with forensic experience appointed by the Governor from a list of three (3) names recommended by the Kentucky Nurses Association. One (1) member shall be a physician with forensic experience appointed by the Governor from a list of three (3) names recommended by the Kentucky Medical Association. Two (2) members with a demonstrated interest and experience in victims' services shall be appointed by the Governor to serve as at-large members. Of the at-large members, one (1) shall be appointed from a list of three (3) names recommended by the Kentucky Board of Nursing and one (1) from a list of three (3) names recommended by the Cabinet for Health Services.
- (3) Members shall serve at the pleasure of the appointing authority but shall not serve longer than four (4) years without reappointment.
- (4) The chair of the advisory council shall be elected by a majority vote of council members.
- (5) Each member of the council may be reimbursed for necessary expenses incurred in attending its meetings from funds available through the collection of fees required under subsection (1) of this section.
- (6) Any person in this state who holds a credential as a Sexual Assault Nurse Examiner as defined in KRS 314.011(14) shall have the right to use the title "Sexual Assault Nurse Examiner" and the abbreviation "SANE". No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is a Sexual Assault Nurse Examiner.

Section 51. KRS 403.270 is amended to read as follows:

- (1) (a) As used in this chapter and KRS 405.020, unless the context requires otherwise, "de facto custodian" means a person who has been shown by clear and convincing evidence to have been the primary

caregiver for, and financial supporter of, a child who has resided with the person for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older or has been placed by the Department for **Community Based[Social]** Services. Any period of time after a legal proceeding has been commenced by a parent seeking to regain custody of the child shall not be included in determining whether the child has resided with the person for the required minimum period.

- (b) A person shall not be a de facto custodian until a court determines by clear and convincing evidence that the person meets the definition of de facto custodian established in paragraph (a) of this subsection. Once a court determines that a person meets the definition of de facto custodian, the court shall give the person the same standing in custody matters that is given to each parent under this section and KRS 403.280, 403.340, 403.350, 403.420, and 405.020.
- (2) The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent and to any de facto custodian. The court shall consider all relevant factors including:
  - (a) The wishes of the child's parent or parents, and any de facto custodian, as to his custody;
  - (b) The wishes of the child as to his custodian;
  - (c) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests;
  - (d) The child's adjustment to his home, school, and community;
  - (e) The mental and physical health of all individuals involved;
  - (f) Information, records, and evidence of domestic violence as defined in KRS 403.720;
  - (g) The extent to which the child has been cared for, nurtured, and supported by any de facto custodian;
  - (h) The intent of the parent or parents in placing the child with a de facto custodian; and
  - (i) The circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence as defined in KRS 403.720 and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school.
- (3) The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child. If domestic violence and abuse is alleged, the court shall determine the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parents.
- (4) The abandonment of the family residence by a custodial party shall not be considered where said party was physically harmed or was seriously threatened with physical harm by his or her spouse, when such harm or threat of harm was causally related to the abandonment.
- (5) The court may grant joint custody to the child's parents, or to the child's parents and a de facto custodian, if it is in the best interest of the child.
- (6) If the court grants custody to a de facto custodian, the de facto custodian shall have legal custody under the laws of the Commonwealth.

Section 52. KRS 403.783 is amended to read as follows:

- (1) For the purposes of KRS 403.783 to 403.785, "law enforcement agency" means any agency of state, county, city, or metropolitan government, or a combination of these, responsible for employing and directing the action of peace officers, including sheriffs and their deputies, sworn police officers, sworn enforcement officers of the Kentucky State Police or other duly authorized state law enforcement agency whose officers are persons with authority to make arrests under the provisions of KRS 403.760(2).
- (2) The secretary of the Justice Cabinet, or a designee, in consultation with legal, victims' services, victim advocacy, and mental professionals with an expertise in domestic violence, shall develop a written model policy and procedures manual related to domestic violence for law enforcement agencies. The model policy shall set forth the core elements required to be addressed in each law enforcement agency's policy. The model policy shall also recommend procedures which may be included in local policies. The model policy shall be developed to comply with the provisions of KRS 403.715 to 403.785. The policy shall include purpose

statements; definitions; supervisory responsibilities; procedures for twenty-four (24) hour access to protective orders; procedures for enforcement of court orders or relief when protective orders are violated; procedures for timely and contemporaneous reporting of adult abuse and domestic violence to the Cabinet for Families and Children, Department for **Community Based~~Social~~** Services; victim rights, assistance and service responsibilities; and duties related to timely completion of records. The model policy shall be completed no later than four (4) months after July 15, 1996. The cabinet shall distribute a copy of the model policy to each law enforcement agency in the Commonwealth.

- (3) No later than January 1 after July 15, 1996, and July 31 of every even-numbered year which follows, every law enforcement agency shall submit a copy of the agency's written domestic violence policy to the Justice Cabinet.
- (4) If a law enforcement agency fails to submit a copy of the agency's written domestic violence policy in a timely manner, the secretary shall promptly notify the law enforcement agency in writing of the requirements contained in this section.
- (5) If the secretary determines that a law enforcement agency has submitted a domestic violence policy which is inadequate, the secretary shall reject the policy and provide assistance to the agency in developing an adequate domestic violence policy.

Section 53. KRS 403.785 is amended to read as follows:

- (1) Each law enforcement agency shall report all incidents of actual or suspected domestic violence and abuse within their knowledge to the Cabinet for Families and Children, Department for **Community Based~~Social~~** Services, within forty-eight (48) hours of learning of the incident or of the suspected incident.
- (2) When a law enforcement officer has reason to suspect that a family member, member of an unmarried couple, or household member has been the victim of domestic violence and abuse, the officer shall use all reasonable means to prevent further abuse, including but not limited to:
  - (a) Remaining at the location of the domestic violence and abuse so long as the officer reasonably suspects there is danger to the physical safety of individuals present without the presence of a law enforcement officer;
  - (b) Assisting the victim of domestic violence and abuse in obtaining medical treatment, including transporting the victim to the nearest medical facility capable of providing the necessary treatment; and
  - (c) Advising the victim immediately of the rights available to them, including the provisions of KRS 403.715 to 403.785.

Section 54. KRS 407.5102 is amended to read as follows:

The Circuit Court, District Court, and family courts shall be the state tribunals for judicial proceedings, and the Cabinet for Families and Children and the Division of Child Support~~Enforcement (DCSE)~~ shall be the state tribunals for administrative proceedings.

Section 55. KRS 431.650 is amended to read as follows:

- (1) The Kentucky Multidisciplinary Commission on Child Sexual Abuse is hereby created.
- (2) The commission shall be comprised of the following members:
  - (a) The commissioner of the Department for **Community Based~~Social~~** Services or a designee;
  - (b) The commissioner of the Department for Mental Health and Mental Retardation Services or a designee;
  - (c) One (1) ~~social~~~~family~~ service worker who is employed by the Department for **Community Based~~Social~~** Services to provide child protective services, who shall be appointed by the secretary of the Cabinet for Families and Children;
  - (d) One (1) therapist who provides services to sexually abused children, who shall be appointed by the secretary of the Cabinet for Families and Children;
  - (e) The commissioner of the Kentucky State Police or a designee;
  - (f) One (1) law enforcement officer who is a detective with specialized training in conducting child sexual abuse investigations, who shall be appointed by the secretary of the Justice Cabinet;

- (g) One (1) employee of the Administrative Office of the Courts appointed by the Chief Justice of the Supreme Court of Kentucky;
  - (h) Two (2) employees of the Attorney General's Office who shall be appointed by the Attorney General;
  - (i) One (1) Commonwealth's attorney who shall be appointed by the Attorney General;
  - (j) The commissioner of the Department of Education or a designee;
  - (k) One (1) school counselor, school psychologist, or school social worker who shall be appointed by the commissioner of the Department of Education; and
  - (l) One (1) former victim of a sexual offense or one (1) parent of a child sexual abuse victim who shall be appointed by the Attorney General.
- (3) Appointees shall serve at the pleasure of the appointing authority but shall not serve longer than four (4) years without reappointment.
- (4) The commission shall elect a chairperson annually from its membership.

Section 56. KRS 508.025 is amended to read as follows:

- (1) A person is guilty of assault in the third degree when the actor:
- (a) Recklessly, with a deadly weapon or dangerous instrument, or intentionally causes or attempts to cause physical injury to:
    - 1. A state, county, city, or federal peace officer;
    - 2. An employee of a detention facility, or state residential treatment facility or state secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender;
    - 3. An employee of the Department for *Community Based* ~~Social~~ Services employed as a social worker to provide direct client services, if the event occurs while the worker is performing job related duties; or
    - 4. A probation and parole officer; or
  - (b) Being a person confined in a detention facility, or state residential treatment facility or state secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender, inflicts physical injury upon or throws or causes feces or urine to be thrown upon an employee of the facility.
- (2) Assault in the third degree is a Class D felony.

Section 57. KRS 600.020 is amended to read as follows:

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

- (1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child:
- (a) Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;
  - (b) Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;
  - (c) Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005(12);
  - (d) Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;
  - (e) Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;

- (f) Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;
  - (g) Abandons or exploits the child; or
  - (h) Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;
- (2) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet;
  - (3) "Cabinet" means the Cabinet for Families and Children;
  - (4) "Certified juvenile holding facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training developed and approved by, the Department of Juvenile Justice after consultation with other appropriate state agencies;
  - (5) "Child" means any person who has not reached his eighteenth birthday unless otherwise provided;
  - (6) "Child-caring facility" means any facility or group home other than a state facility, Department of Juvenile Justice contract facility or group home, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility;
  - (7) "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;
  - (8) "Clinical treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;
  - (9) "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Families and Children, Department of Juvenile Justice, or another facility or agency until the child attains the age of eighteen (18) unless the commitment is discharged under KRS Chapter 605 or the committing court terminates or extends the order;
  - (10) "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the Department of Juvenile Justice or the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;
  - (11) "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;
  - (12) "Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;
  - (13) "Court-designated worker" means that organization or individual delegated by the administrative office of the courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;
  - (14) "Deadly weapon" has the same meaning as it does in KRS 500.080;
  - (15) "Department" means the Department for **Community Based**~~Social~~ Services;
  - (16) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;

- (17) "Detain" means, upon a valid court order, to confine a child pending further proceedings in an intermittent holding facility, a juvenile holding facility, a secure juvenile detention facility, or an alternative form of detention;
- (18) "Diversion agreement" means an agreement entered into between a court-designated worker and a child charged with the commission of offenses set forth in KRS Chapters 630 and 635, the purpose of which is to serve the best interest of the child and to provide redress for those offenses without court action and without the creation of a formal court record;
- (19) "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;
- (20) "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in the child's ability to function within a normal range of performance and behavior with due regard to his age, development, culture, and environment as testified to by a qualified mental health professional;
- ~~(21) "Family service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;~~
- ~~(22)~~ "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;
- ~~(22)~~~~(23)~~ "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;
- ~~(23)~~~~(24)~~ "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;
- ~~(24)~~~~(25)~~ "Habitual truant" means any child who has been found by the court to have been absent from school without valid excuse for three (3) or more days during a one (1) year period or tardy for three (3) or more days on at least three (3) occasions during a one (1) year period;
- ~~(25)~~~~(26)~~ "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;
- ~~(26)~~~~(27)~~ "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;
- ~~(27)~~~~(28)~~ "Informal adjustment" means an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;
- ~~(28)~~~~(29)~~ "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;
- ~~(29)~~~~(30)~~ "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, in which children are supervised and observed on a regular basis;
- ~~(30)~~~~(31)~~ "Juvenile holding facility" means a physically secure setting, approved by the Department of Juvenile Justice, which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile holding facility staff to provide twenty-four (24) hours per day supervision. Employees of jails who meet the qualifications of the Department of Juvenile Justice may supervise juvenile as well as adult prisoners;
- ~~(31)~~~~(32)~~ "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; and is conducted at the suitable available facility closest to the child's place of residence;



- ~~(32)~~~~(33)~~ "Motor vehicle offense" means any violation of the nonfelony provisions of KRS Chapters 186, 189 or 189A, KRS 177.300, 304.39-110, or 304.39-117;
- ~~(33)~~~~(34)~~ ""Near fatality" means an injury that, as certified by a physician, places a child in serious or critical condition;
- ~~(34)~~~~(35)~~ "Needs of the child" means necessary food, clothing, health, shelter, and education.
- ~~(35)~~~~(36)~~ "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;
- ~~(36)~~~~(37)~~ "Parent" means the biological or adoptive mother or father of a child;
- ~~(37)~~~~(38)~~ "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;
- ~~(38)~~~~(39)~~ "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;
- ~~(39)~~~~(40)~~ "Physical injury" means substantial physical pain or any impairment of physical condition;
- ~~(40)~~~~(41)~~ "Public offense action" means an action, excluding contempt, brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;
- ~~(41)~~~~(42)~~ "Qualified mental health professional" means:
- (a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;
  - (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;
  - (c) A licensed psychologist at the doctoral level or certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under KRS Chapters 600 to 645;
  - (d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center; or
  - (e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;
- ~~(42)~~~~(43)~~ "Residential treatment facility" means a facility or group home with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of children;
- ~~(43)~~~~(44)~~ "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;
- ~~(44)~~~~(45)~~ "School personnel" means those certified persons under the supervision of the local public or private education agency;
- ~~(45)~~~~(46)~~ "Secretary" means the secretary of the Cabinet for Families and Children;

- ~~(46)~~~~(47)~~ "Secure juvenile detention facility" means any facility used for the secure detention of children other than a jail, police station, lockup, intermittent holding facility, or any building which is a part of, or attached to, any facility in which adult prisoners are confined or which shares staff with a facility in which adult prisoners are confined;
- ~~(47)~~~~(48)~~ "Secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;
- ~~(48)~~~~(49)~~ "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily member or organ;
- ~~(49)~~~~(50)~~ "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions in which the parent, guardian, or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;
- ~~(50)~~~~(51)~~ "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;
- ~~(51)~~~~(52)~~ ***"Social service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;***
- (52) "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew or possession of alcoholic beverages;
- (53) "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;
- (54) "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;
- (55) "Youth alternative center" means a nonsecure facility, approved by the Department of Juvenile Justice, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in KRS 610.267 and the administrative regulations promulgated thereunder; and
- (56) "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

Section 58. KRS 605.110 is amended to read as follows:

- (1) Unless provided otherwise, when any child committed to the Department of Juvenile Justice or the cabinet requires medical or surgical care or treatment, the Department of Juvenile Justice or the cabinet may provide the same or arrange for the furnishing thereof by other public or private agencies, and may give consent to the medical or surgical treatment. For this purpose, the services and facilities of local health officers and departments shall be made available, at a cost not to exceed the Medicaid reimbursement rate, to the Department of Juvenile Justice or the cabinet, and as far as practicable, any publicly-owned hospital shall provide hospitalization without charge for any such child who is a resident of the political subdivision by which the hospital is owned or operated. This section does not authorize nor shall permission be granted for abortion or sterilization.
- (2) Any child placed in a foster home by an agency duly authorized in KRS Chapter 620 to place a child in a foster home shall receive a complete medical, visual, and dental examination by a professional authorized by the Kentucky Revised Statutes to conduct such examinations. Arrangements for a child placed in a foster home to receive such examinations shall be made within two (2) weeks of his placement in a foster home and not less than every twelve (12) months thereafter.

- (3) Children maintained in any of the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet shall, so far as possible, receive a common school education.
- (a) The Kentucky Educational Collaborative for State Agency Children shall be established to serve children in facilities and programs operated or contracted by the Department of Juvenile Justice or the Cabinet for Families and Children, residential, day treatment, clinical, and group home programs. All policies and procedures necessary to educate state agency children shall be approved by the Kentucky Board of Education. All duties, responsibilities, rights, and privileges specifically imposed on or granted to the local education administration units shall be imposed on or granted to the Department of Juvenile Justice or the Cabinet for Families and Children and contracted agencies with regard to educating agency children. Classrooms for the Kentucky Educational Collaborative for State Agency Children shall be within or near the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet. The Kentucky Department of Education, the Department of Juvenile Justice, and the Cabinet for Families and Children, Department for **Community Based**~~Social~~ Services, shall develop a biennial plan regarding the educational needs and provisions of educational programs, with emphasis on the coordination of all treatment services and funds available to provide for the education of state agency children. The biennial plan shall include strategies to assure that teacher preparation programs include content related to working with state agency children and that adequate professional development opportunities for better meeting the needs of these students are available for teachers and schools.
  - (b) Teachers and other staff shall be hired on contract through a local school district or if the local school district is not willing to participate, teachers shall be hired by the Kentucky Educational Cooperative for State Agency Children. All certified educational staff of the Kentucky Educational Cooperative for State Agency Children shall be members of the Kentucky Teachers' Retirement System.
  - (c) Beginning July 1, 1993, the Kentucky Education Collaborative for State Agency Children shall be financed through:
    1. The amount generated by state agency children under the Support Education Excellence in Kentucky program as provided in KRS 157.360 for the guaranteed base and adjustments for the number of at-risk students, exceptional students, and transportation costs;
    2. A per-pupil distribution of professional development funds with the collaborative serving as a consortium for state agency children;
    3. A per-pupil distribution of technology funds in accordance with the state education technology plan pursuant to KRS 156.670 and the formula for the distribution of funds to local school districts;
    4. A per-pupil distribution of textbook funds pursuant to KRS 157.100 and 157.190;
    5. The funding for school services for state agency children authorized by KRS 158.135; and
    6. Other grants and entitlements, including federal funds, identified in the implementation plan developed pursuant to paragraph (f) of this subsection for the education of Kentucky's children.
  - (d) The commissioner of Juvenile Justice and the secretary of the Cabinet for Families and Children shall promulgate administrative regulations, pursuant to KRS Chapter 13A, with the assistance of the Kentucky Department of Education and upon recommendation of the Kentucky Board of Education regarding the governance, curriculum, and other topics necessary to educate state agency children. The regulations shall:
    1. Provide for the development and implementation of interagency agreements that:
      - a. Define the financial responsibility of each state and local agency for providing services to state agency children;
      - b. Establish procedures for resolving interagency disputes among agencies that are parties to the agreements; and
    2. Provide procedures for the implementation of the Kentucky statutes regarding school-based decision making, student outcomes, accountability, assessment, rewards and sanctions, technology, staff development, salaries, and the development of coordinated individual treatment, education, and transition plans to ensure compliance with present education and treatment laws

and regulations specific to the needs of children in the programs of the Cabinet for Families and Children.

- (e) When the placement of a state agency child is changed so that the state agency child must transfer from one school or educational facility to a different school or educational facility, the school or educational facility that the state agency child is leaving shall, within two (2) days of the state agency child leaving, prepare an educational passport for the child, which shall be delivered to the cabinet or the Department of Juvenile Justice. The cabinet or the Department of Juvenile Justice shall, within two (2) days of enrolling a state agency child in a new school or educational facility, present the educational passport to the receiving school or educational facility.
- (f) The commissioner of Juvenile Justice and the secretary of the Cabinet for Families and Children and the commissioner of the state Department of Education shall initiate development of a plan for implementation of the Kentucky Educational Collaborative for State Agency Children.

Section 59. KRS 620.270 is amended to read as follows:

- (1) Subject to the provisions of KRS 620.230, the local citizen foster care review board shall review the case of each child placed in the custody of the cabinet by an order of temporary custody or commitment by the court in the county or counties which the local board serves. The review shall occur at least once every six (6) months until the child is no longer in the custody of the cabinet or until an adoption proceeding becomes final.
- (2) During each six (6) month review, the local citizen foster care review board shall review:
  - (a) The past, current, and future status of the child and his placement as shown through the case permanency plan, case record, case progress reports submitted by the cabinet, and other information as the board may require;
  - (b) The efforts or adjustment the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time considering the age of the child;
  - (c) The efforts of the cabinet to locate and provide services to the biological parents of the child;
  - (d) The efforts of the cabinet and other agencies to facilitate the return of the child to the home or to find an alternative permanent placement if reunion with the parent or previous custodian is not feasible. The cabinet shall report to the board all factors which either favor or mitigate against any decision or alternative with regard to these matters; and
  - (e) Any problems, solutions, or alternatives which may be capable of exploration, or other matters with regard to the child as the cabinet or the board determine to be explored with regard to the best interests of the state or of the child.
- (3) Upon completion of a training curriculum developed and provided jointly by the Administrative Office of the Courts and by the Department for **Community Based Social** Services and approved by the state review board in regard to child sexual abuse, the local citizen foster care review board may review, at the discretion of the board, a sample of all petitions filed in the District Court of the county served by the board alleging sexual abuse of any child, not to exceed two hundred (200) petitions per year statewide, in order to determine the adequacy of the investigation, and the appropriateness of findings, adjudication, and disposition of the court. The board shall have access to all records of the cabinet, medical professionals, and law enforcement agencies pertaining to these cases. The board shall provide the cabinet and the court a full report of the findings and recommendations concerning the review.

Section 60. KRS 199.801 is amended to read as follows:

- (1) The department shall establish a procedure throughout the state that is designed to determine and expedite the placement of children who are in the custody of the department. The procedure shall utilize a statewide placement coordinator and district placement coordinators who may be state employees or employees of a contracted entity, and who shall be assigned and located in each of the department's districts.
- (2) Upon determining that a child shall be removed from the current living arrangement, the **social service** ~~family services~~ worker with responsibility for the child shall contact the district placement coordinator to facilitate the placement. In consultation with the **social service** ~~family services~~ worker, the district placement coordinator shall determine the appropriate type of placement according to the child's circumstances and needs and shall attempt to locate the appropriate placement within the child's home county.

- (3) The living arrangement and placement selected for the child shall be the type of facility that is determined to be the best alternative for the child that is in the closest proximity to the child's home county.
- (4) If the type of placement that best suits the child's needs is not available in the child's home county, the district placement coordinator shall document the circumstance as an unmet need and may seek a placement in another county located within the home district of the child.
- (5) If the type of placement that best suits the child's needs is not available in the child's home district, the district placement coordinator shall document the circumstance as an unmet need and may seek a placement in surrounding districts by contacting the statewide placement coordinator.
- (6) If the type of placement that best suits the child's needs is not available in the districts surrounding the child's home district, the district placement coordinator shall document the circumstance as an unmet need and may seek a placement in any district within the state by contacting the statewide placement coordinator.
- (7) If the type of placement that best suits the child's needs is not available within the state, the statewide placement coordinator shall contact the commissioner of the department or the commissioner's designee to explore placement options.
- (8) The statewide placement coordinator and every district placement coordinator shall compile information that identifies the unmet needs for their jurisdiction, and shall submit the data and recommendations for meeting the unmet needs to the commissioner of the department.
- (9) The commissioner shall develop a state placement resource plan that identifies areas of unmet need and strategies to meet the need. The plan shall be used to guide and, if necessary, restrict the development of new facilities, the expansion of existing facilities, and the geographic location of placement alternatives.
- (10) The commissioner and the statewide planning coordinator shall assist the Statewide Strategic Planning Committee for Children in Placement, created in KRS 194B.102, in the development of a statewide facilities services plan.

Section 61. KRS 211.684 is amended to read as follows:

- (1) For the purposes of KRS Chapter 211:
  - (a) "Child fatality" means the death of a person under the age of eighteen (18) years; and
  - (b) "Local child fatality response team" and "local team" means a community team composed of representatives of agencies, offices, and institutions that investigate child deaths, including but not limited to, coroners, ~~social~~~~family~~ service workers, medical professionals, law enforcement officials, and Commonwealth's and county attorneys.
- (2) The Department for Public Health may establish a state child fatality review team. The state team may include representatives of public health, social services, law enforcement, prosecution, coroners, health-care providers, and other agencies or professions deemed appropriate by the commissioner of the department.
- (3) If a state team is created, the duties of the state team may include the following:
  - (a) Develop and distribute a model protocol for local child fatality response teams for the investigation of child fatalities;
  - (b) Facilitate the development of local child fatality response teams which may include, but is not limited to, providing joint training opportunities and, upon request, providing technical assistance;
  - (c) Review and approve local protocols prepared and submitted by local teams;
  - (d) Receive data and information on child fatalities and analyze the information to identify trends, patterns, and risk factors;
  - (e) Evaluate the effectiveness of prevention and intervention strategies adopted; and
  - (f) Recommend changes in state programs, legislation, administrative regulations, policies, budgets, and treatment and service standards which may facilitate strategies for prevention and reduce the number of child fatalities.
- (4) The department shall prepare an annual report to be submitted no later than November 1 of each year to the Governor, the Legislative Research Commission, the Chief Justice of the Kentucky Supreme Court, and to be made available to the citizens of the Commonwealth. The report shall include a statistical analysis of the

incidence and causes of child fatalities in the Commonwealth during the past fiscal year and recommendations for action. The report shall not include any information which would identify specific child fatality cases.

Section 62. KRS 605.090 is amended to read as follows:

- (1) Unless precluded by law, any child committed to the Department of Juvenile Justice or the cabinet may by the decision of the Department of Juvenile Justice or the cabinet or its designee, at any time during the period of his commitment, be:
  - (a) Upon fourteen (14) days' prior written notice to the court, discharged from commitment. Written notice of discharge shall be given to the committing court and to any other parties as may be required by law;
  - (b) Placed in the home of the child's parents, in the home of a relative, a suitable foster home, or boarding home, upon such conditions as the Department of Juvenile Justice or the cabinet may prescribe and subject to visitation and supervision by a ~~social~~~~family~~ service worker or juvenile probation and parole officer. At the time a committed child is placed in the home of his parents by the Department of Juvenile Justice or the cabinet, the parents shall be informed in writing of the conditions of the placement and the criteria that will be used to determine whether removal is necessary;
  - (c) Placed in one (1) of the facilities or programs operated by the Department of Juvenile Justice or the cabinet, except that: No child committed under the provisions of KRS 610.010(1)(b), (c), or (d) shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as a public offender unless the cabinet and the department agree, and the court consents, that the placement is in the best interest of the child and that the placement does not exceed a group home level;
  - (d) Placed in a child-caring facility operated by a local governmental unit or by a private organization willing to receive the child, upon such conditions as the cabinet may prescribe;
  - (e) Treated as provided in KRS Chapter 645;
  - (f) Following the transfer or placement of a child pursuant to paragraphs (b), (c), (d), or (e) of this subsection, the Department of Juvenile Justice or the cabinet shall, within fourteen (14) days, excluding weekends and holidays, give written notice to the court of the transfer, the placement, and the reasons therefor.
- (2) No child ten (10) years of age or under shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as public offenders;
- (3) If a child committed to the cabinet as dependent, neglected, or abused is placed in the home of the child's parents, the child shall not be removed except in accordance with the following standards and procedures:
  - (a) If the ~~social~~~~family~~ service worker believes that the committed child continues to be dependent, neglected, or abused, but immediate removal is unnecessary to protect the child from imminent death or serious physical injury, the casework situation and evidence shall be reviewed with his supervisor to determine whether to continue work with the family intact or to remove the child. There shall be documentation that the ~~social~~~~family~~ service worker, prior to the court hearing, made an effort to contact the parents to inform them of the specific problems that could lead to removal so they have an opportunity to take corrective action. If the parents are unavailable or do not respond to attempts to communicate, the specific circumstances shall be documented;
  - (b) If it appears that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm and there is not reasonably available an alternative less drastic than removal of the child from the home, the cabinet shall petition the District Court to review the commitment pursuant to KRS 610.120 in relation to the cabinet's intention to remove the child from the parent's home. The petition shall set forth the facts which constitute the need for removal of the child. The court shall serve notice of the petition and the time and place of the hearing on the parents; however, the ~~social~~~~family~~ service worker shall also contact the parents to ensure that they received the notice and are aware of the right to be represented by counsel. If the parents' whereabouts are unknown, notice may be mailed to the last known address of an adult who is a near relative. If the court fails to find that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall not be removed from the parents' home;

- (c) If a ~~social[family]~~ service worker finds a committed, unattended child who is too young to take care of himself, the ~~social[family]~~ service worker shall make reasonable efforts to arrange for an emergency caretaker in the child's home until the parents return or fail to return within a reasonable time. If no in-home caretaker is available for the child, the ~~social[family]~~ service worker shall request any appropriate law enforcement officer to take the child into protective custody. If, after a reasonable time, it appears the child has been abandoned, the cabinet shall petition the District Court to review the case; or
  - (d) If there exist reasonable grounds to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents are unable or unwilling to protect the child, the ~~social[family]~~ service worker shall, with the assistance of a law enforcement officer, immediately remove the child prior to filing a petition for review. Within seventy-two (72) hours after the removal, the cabinet shall file a petition for review in District Court pursuant to KRS 610.120 with a request for an expeditious hearing. If the court fails to find that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall be returned to the parents' home.
- (4) The cabinet or the Department of Juvenile Justice, as appropriate, shall notify the juvenile court of the county of placement with the conditions of supervised placement of each child placed in that county from one (1) of the residential treatment facilities operated by the Department of Juvenile Justice or the cabinet. Notice of the conditions of such placement may be made available by the court to any law enforcement agency.
  - (5) The person in charge of any home to which a child is probated, and the governing authority of any private facility or agency to which a child is committed, shall make such reports to the court as the court may require, and such reports as the Department of Juvenile Justice or the cabinet may require in the performance of its functions under the law. The Department of Juvenile Justice or the cabinet shall have the power to make such visitations and inspections of the homes, facilities, and agencies in which children who have committed public offenses have been placed as it deems necessary to carry out its functions under the law.
  - (6) The Department of Juvenile Justice or the cabinet shall provide a written transfer summary to the person in charge of any foster home or any governing authority of any private facility or agency in which the Department of Juvenile Justice or the cabinet has placed a child. The written summary shall include, at a minimum, demographic information about the child, a narrative statement detailing the child's prior placements, the length of time the child has been committed, a description of the services and assistance provided to the child or the child's family since the most current case plan, a copy of the current case plan for the child and the child's family, and a copy of the child's medical and educational passport, if available, provided that no information shall be provided that violates any statutory confidentiality requirements. The transfer summary shall be provided by the Department of Juvenile Justice if it is responsible for the child, or the cabinet if it is responsible for the child, within seven (7) days of the placement of the child with the person, agency, or facility providing care to the child.
  - (7) The Department of Juvenile Justice may assist the courts in placing children who have committed public offenses in boarding homes, and, under agreements with the individual courts, may assume responsibility for making such placements. Counties may pay or contribute towards the expenses of maintaining such children and, to the extent authorized by the fiscal court, the Department of Juvenile Justice may incur obligations chargeable to the county for such expenses.

Section 63. KRS 620.040 is amended to read as follows:

- (1) Upon receipt of a report alleging abuse or neglect by a parent, guardian, or person exercising custodial control or supervision, pursuant to KRS 620.030(1) or (2), the recipient of the report shall forthwith notify the cabinet or its designated representative, the local law enforcement agency or Kentucky State Police, and the Commonwealth's or county attorney of the receipt of the report unless they are the reporting source. The cabinet shall investigate the matter immediately and within seventy-two (72) hours, exclusive of weekends and holidays, make a written report to the Commonwealth's or county attorney and the local enforcement agency or Kentucky State Police concerning the action which has been taken on the matter. If the report alleges abuse or neglect by someone other than a parent, guardian, or person exercising custodial control or supervision, the cabinet shall forthwith notify the Commonwealth's or county attorney and the local law enforcement agency or Kentucky State Police.
- (2) Upon receipt of a report alleging dependency pursuant to KRS 620.030(1) and (2), the recipient shall forthwith notify the cabinet or its designated representative. The cabinet shall investigate reports of alleged dependency

not later than forty-eight (48) hours after receipt of the report but need not notify the local law enforcement agency or Kentucky State Police or county attorney or Commonwealth's attorney of such reports. If the cabinet or its designated representative receives a report of abuse by other than a parent, guardian, or other person exercising custodial control or supervision of a child, it shall forthwith notify the local law enforcement agency or Kentucky State Police and the Commonwealth's or county attorney of the receipt of the report and its contents and they shall investigate the matter. The cabinet or its designated representative may participate in an investigation of noncustodial abuse at the request of the local law enforcement agency or the Kentucky State Police.

- (3) School personnel or other persons listed in KRS 620.030(2) do not have the authority to conduct internal investigations in lieu of the official investigations outlined in this section.
- (4)
  - (a) If, after receiving the report, the law enforcement officer, the cabinet, or its designated representative cannot gain admission to the location of the child, a search warrant shall be issued by the judge to the appropriate law enforcement official upon probable cause that the child is dependent, neglected, or abused. If, pursuant to a search under a warrant a child is discovered and appears to be in imminent danger, the child may be removed by the law enforcement officer.
  - (b) If a child who is in a hospital or under the immediate care of a physician appears to be in imminent danger if he is returned to the persons having custody of him, the physician or hospital administrator may hold the child without court order, provided that a request is made to the court for an emergency custody order at the earliest practicable time, not to exceed seventy-two (72) hours.
  - (c) Any appropriate law enforcement officer may take a child into protective custody and may hold that child in protective custody without the consent of the parent or other person exercising custodial control or supervision if there exist reasonable grounds for the officer to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents or other person exercising custodial control or supervision are unable or unwilling to protect the child. The officer or the person to whom the officer entrusts the child shall, within twelve (12) hours of taking the child into protective custody, request the court to issue an emergency custody order.
  - (d) When a law enforcement officer, hospital administrator, or physician takes a child into custody without the consent of the parent or other person exercising custodial control or supervision, he shall provide written notice to the parent or other person stating the reasons for removal of the child. Failure of the parent or other person to receive notice shall not, by itself, be cause for civil or criminal liability.
- (5)
  - (a) One (1) or more multidisciplinary teams may be established in every county or group of contiguous counties.
  - (b) Membership of the multidisciplinary team shall include, but is not limited to, ~~social~~~~(family)~~ service workers employed by the Cabinet for Families and Children and law enforcement officers. Additional team members may include Commonwealth's and county attorneys, mental health professionals, medical professionals, victim advocates, educators, and other related professionals, as deemed appropriate.
  - (c) The multidisciplinary team may review child sexual abuse cases referred by participating professionals, including those in which the alleged perpetrator does not have custodial control or supervision of the child, or is not responsible for the child's welfare. The purpose of the multidisciplinary team shall be to review investigations, assess service delivery, and to facilitate efficient and appropriate disposition of cases through the criminal justice system.
  - (d) The team shall hold regularly scheduled meetings if new reports of sexual abuse are received or if active cases exist. At each meeting, each active case shall be presented and the agencies' responses assessed.
  - (e) The multidisciplinary team shall provide an annual report to the public of nonidentifying case information to allow assessment of the processing and disposition of child sexual abuse cases.
  - (f) Multidisciplinary team members, and anyone invited by the multidisciplinary team to participate in a meeting, shall not divulge case information, including information regarding the identity of the victim or source of the report. Team members, and others attending meetings, shall sign a confidentiality statement that is consistent with statutory prohibitions on disclosure of this information.
  - (g) The multidisciplinary team shall, pursuant to KRS 431.600 and 431.660, develop a local protocol consistent with the model protocol issued by the Kentucky Multidisciplinary Commission on Child Sexual Abuse. The local team shall submit the protocol to the commission for review and approval.



- (h) The multidisciplinary team review of a case may include information from reports generated by agencies, organizations, or individuals that are responsible for investigation, prosecution, or treatment in the case, KRS 610.320 to KRS 610.340 notwithstanding.

Section 64. To the extent the following executive orders are not otherwise confirmed or superseded by this Act, the General Assembly hereby confirms these executive orders relating to the reorganization of the Cabinet for Families and Children:

- (1) Executive Order 98-731, dated June 16, 1998, relating to the internal structure of the Cabinet for Families and Children. In that executive order, the Department for Community Based Services is established and the Department for Social Services and the Department for Social Insurance are abolished; the Office of Performance Enhancement is established; the Division of Operations and Resource Management in the Office of Program Support is abolished and is replaced by the Division of Personnel, which is created within the Office of Program Support; the Division of Technical Support and the Division of Systems Support are created within the Office of Technology Services; the Division of Outcome Based Contracts and the Division of Quality Development are created within the Office of Performance Enhancement; the Divisions of Policy Development, Protection and Permanency, Family Support, Child Care, Child Support, Disability Determinations Services, and Service Regions are all established within the Department for Community Based Services; the Divisions of Management and Development, Field Services, Administrative Review, Child Support Enforcement, and Disabilities Determinations are all abolished from the Department for Social Insurance; the Divisions of Program Management and Family Services are abolished from the Department for Social Services.
- (2) Executive Order 99-203, dated February 11, 1999, relating to the internal structure of the Cabinet for Families and Children. In that executive order, the Division for Disability Determinations Services within the Department for Community Based Services in the Cabinet for Families and Children is abolished and the Department for Disability Determination Services is established.
- (3) Executive Order 99-1200, dated August 30, 1999, relating to the internal structure of the Cabinet for Families and Children. That executive order appoints the commissioner for Community Based Services, or the commissioner's designee, and the commissioner of the Department for Juvenile Justice, or the commissioner's designee, as permanent members of the State Interagency Council for Services to Children with emotional disabilities.
- (4) Executive Order 99-255, dated March 1, 1999, relating to the internal structure of the Cabinet for Families and Children. That executive order transfers the staff and appropriations for the Case Inquiry and Response functions in the Office of the Ombudsman to the Department for Community Based Services, Division of Family Support; transfers the administrative hearings function and its staff from the Department for Community Based Services, Division of Family Support, to the Office of Performance Enhancement, Division of Quality Development; transfers the maintenance of the L&N Building in Jefferson County from the Office of Program Support to the Department for Community Based Services; transfers the implementation function of the Empower Transportation Initiative from the Office of Technology Services to the Department for Community Based Services; transfers the maintenance and requests of state exchange funds from the United States Department of Agriculture, Food and Nutrition Service, and the mediation and liaison between family support staff and quality control from the Office of Performance Enhancement to the Department for Community Based Services; transfers the special projects, policy and legislative coordination, and leasing and design functions from the Department for Community Based Services to the Office of Program Support; transfers systems support from the Department for Community Based Services to the Office of Technology Services; transfers the legal secretarial support from the Department for Community Based Services to the Office of the General Counsel; transfers the functions of the federal compliance monitoring and the training for Temporary Assistance for Needy Families, food stamp, and medical assistance programs from the Department for Community Based Services to the Office of Performance Enhancement.

Section 65. It is the intention of the General Assembly that any separate legislation that is enacted to confirm Executive Order 99-80, relating to the transfer of the Office of Aging Services from the Cabinet for Families and Children to the Cabinet for Health Services along with all related programs and services, shall be given effect, and the Reviser of Statutes is directed to take action to implement both acts in order to give effect to both. The Reviser of Statutes is authorized to consult with and receive the advice of the secretaries of the Cabinet for Families and Children and the Cabinet for Health Services, or their designees, as may be necessary to accomplish this objective.

**Approved February 15, 2000**

**CHAPTER 15****(HB 147)**

AN ACT relating to the issuance of bonds for low cost housing by the Kentucky Housing Corporation.

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

Section 1. KRS 198A.090 is amended to read as follows:

- (1) Except as provided in subsection (6) of this section, the corporation may provide for the issuance, at one (1) time or from time to time, of bonds of the corporation if the cumulative outstanding indebtedness of the corporation's bonds does not exceed **two billion five hundred million dollars (\$2,500,000,000)** ~~one billion one hundred twenty five million dollars (\$1,125,000,000)~~, in order to carry out and effectuate its corporate purposes and powers.
- (2) In anticipation of the issuance of bonds, the corporation may provide for the issuance, at one (1) time or from time to time, of bond anticipation notes. The principal of and the interest on the bonds or notes shall be payable solely from the funds provided for the payment. Notes may be made payable from the proceeds of bonds or renewal notes or, if bond or renewal note proceeds are not available, notes may be paid from any available revenues or assets of the corporation.
- (3) The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the corporation at a price and under terms and conditions determined by the corporation. Bonds or notes shall bear interest at a rate determined by the corporation. Notes shall mature at a time not exceeding ten (10) years from their date and bonds shall mature at a time not exceeding forty (40) years from their date, as determined by the corporation. The corporation shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination and the place of payment of principal and interest, which may be any bank or trust company within or without the Commonwealth. If an officer whose signature or a facsimile of whose signature appears on any bonds, notes, or coupons attached to them shall cease to be an officer before the delivery thereof, the signature or facsimile shall be valid and sufficient for all purposes as if he had remained in office until delivery. The corporation may provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the corporation may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Upon the approval of a resolution of the corporation, authorizing the sale of its bonds or notes, the bonds or notes may be sold in a manner, either at public or private sale, and for a price the corporation shall determine to be for the best interest of the corporation and best effectuate the purposes of this chapter, if the sale is approved by the corporation.
- (4) The proceeds of any bonds or notes shall be used solely for the purposes for which they are issued and shall be disbursed in the manner and under the restrictions, if any, the corporation may provide in the resolution authorizing the issuance of bonds or notes or in the trust agreement securing the same.
- (5) Prior to the preparation of definitive bonds, the corporation may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The corporation may also provide for the replacement of any bonds or notes which become mutilated, destroyed, or lost.
- (6) (a) Prior to the issuance of any bonds or notes that are not secured by:
  1. Direct obligations or obligations guaranteed by the United States of America; or
  2. Obligations of federal agencies to the extent that the obligations are backed by the full faith and credit of the United States of America; or
  3. Repurchase agreements with any primary dealer in securities fully secured by obligations described in subparagraphs 1 and 2 if the market value of the security is maintained at one hundred three percent (103%) of the principal amount of the repurchase agreement and the security is held by an independent third party custodian financial institution; or

4. Insured or guaranteed construction loans or mortgage loans as defined by KRS 198A.010(9) and (10); or
5. Guaranty insurance policies which guarantee payment of the principal and interest on the bonds issued by a nationally recognized entity authorized to issue guarantees and rated in the highest rating category by at least one (1) of the nationally recognized rating services;

the corporation shall obtain the approval of the issuance from the General Assembly in accordance with the provisions of KRS 56.870(1), unless the provisions of paragraph (b) of this subsection apply. This requirement shall not apply to refunding bond or note issues which are for the purpose of achieving debt service savings and which do not extend the term of the refunded bonds or notes.

- (b) The corporation may provide for the issuance, at any one (1) time or from time to time, of bonds which do not satisfy the requirements of paragraph (a) of this subsection without approval of the issuance by the General Assembly if the cumulative outstanding indebtedness of the corporation that does not meet the requirements of paragraph (a) of this subsection does not exceed thirty million dollars (\$30,000,000).
  - (c) The corporation shall annually report on its housing and bonding programs to the Interim Joint Committee on Appropriations and Revenue.
- (7) The Finance and Administration Cabinet shall provide to the corporation fiscal consultant services regarding revenue bond management as necessary.

**Approved February 18, 2000**

## CHAPTER 16

**(HB 49)**

AN ACT related to the use of automated external defibrillators.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

*It is the intent of the legislature that an automated external defibrillator may be used for the purpose of saving the life of another person in cardiac arrest when used in accordance with the provisions of Section 3 of this Act.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 5 of this Act, unless the context requires otherwise:*

- (1) *"Automated external defibrillator" or "AED" means an external defibrillator capable of cardiac rhythm analysis which will charge and, with or without further operator action, deliver a shock after electronically detecting and assessing ventricular fibrillation or rapid ventricular tachycardia. These devices are known as fully or semiautomatic defibrillators;*
- (2) *"Cardiopulmonary resuscitation" or "CPR" means a basic emergency procedure for life support, consisting of artificial respiration and manual external cardiac massage; and*
- (3) *"Emergency medical service system" means the same as in KRS 211.950.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

*In order to ensure public health and safety:*

- (1) *A person or entity who acquires an AED shall ensure that:*
  - (a) *Expected AED users receive American Heart Association or American Red Cross training in CPR and AED use, or an equivalent nationally recognized course in CPR and AED use;*
  - (b) *The AED is maintained and tested according to the manufacturer's operational guidelines;*
  - (c) *There is medical oversight of the AED program by a physician licensed in Kentucky to ensure compliance with requirements for training, maintenance, notification, and communication with the local emergency medical services system. The physician providing oversight shall also work with the*

*AED site to establish protocols for AED deployment and conduct a review of each use of an AED; and*

- (d) Any person who renders emergency care or treatment on a person in cardiac arrest by using an AED activates the local emergency medical services system as soon as possible and, if an entity with an AED program, reports any clinical use of the AED to the licensed physician.*
- (2) Any person or entity who acquires an AED shall notify an agent of the local emergency medical services system and the local emergency communications or vehicle dispatch center of the existence, location, and type of AED acquired.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) Any person or entity, who in good faith and without compensation, renders emergency care or treatment by the use of an AED shall be immune from civil liability for any personal injury as a result of the care or treatment, or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as a ordinary, reasonable prudent person would have acted under the same or similar circumstances.*
- (2) The immunity from civil liability for any personal injury under subsection (1) of this section includes the licensed physician who is involved with AED site placement, the person or entity who provides the CPR and AED site placement, the person or entity who provides the CPR and AED training, and the person or entity responsible for the site where the AED is located.*
- (3) The immunity from civil liability under subsection (1) of this section does not apply if the personal injury results from the gross negligence or willful or wanton misconduct of the person rendering the emergency care.*
- (4) The requirements of Section 3 of this Act shall not apply to any individual using an AED in an emergency setting if that individual is acting as a good Samaritan under KRS 411.148 and KRS 313.257.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) The provisions of Sections 1 to 4 of this Act shall not apply to the use of an AED by:*
  - (a) Physicians, podiatrists, or osteopaths licensed under KRS Chapter 311 or chiropractors licensed under KRS Chapter 312;*
  - (b) Physician Assistants as defined in KRS 311.550;*
  - (c) Registered nurses, practical nurses, or advanced registered nurse practitioners licensed under KRS Chapter 314;*
  - (d) Dentists licensed under KRS Chapter 313; or*
  - (e) Paramedics certified under KRS 311.654, or emergency medical technicians certified under KRS 211.964.*
- (2) Nothing in this section shall preclude the licensing boards referred to in Subsection (1) of this section from requiring continuing education or training on the use of an AED.*

Approved February 18, 2000

## CHAPTER 17

### (HB 3)

AN ACT relating to insurance.

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

SECTION 1. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) As used in this section, unless the context requires otherwise:*
  - (a) "Casualty insurance" has the meaning set forth in KRS 304.5-070;*

- (b) *"Domestic violence and abuse" has the meaning set forth in KRS 403.720;*
  - (c) *"Innocent co-insured" means an individual who did not cooperate in or contribute to the creation of the loss;*
  - (d) *"Insurer" means an insurer licensed to write property or casualty insurance in Kentucky; and*
  - (e) *"Property insurance" has the meaning set forth in KRS 304.5-050.*
- (2) (a) *No insurer shall use the fact that an applicant or insured incurred bodily injury as a result of domestic violence and abuse committed against him or her as the sole reason for rating or underwriting decisions, refusing to insure, refusing to continue to insure, or limiting the amount, extent, or kind of coverage available to an applicant or insured.*
- (b) *If a property or casualty insurance policy excludes property coverage for intentional acts, the insurer shall not deny payment to an innocent co-insured if the loss arose out of a pattern of domestic violence and abuse and the perpetrator of the loss is criminally prosecuted for the act causing the loss. Payment to the innocent co-insured may be limited to his or her ownership interests in the property as reduced by any payments to a mortgage or other secured interest.*

Approved February 21, 2000

## CHAPTER 18

(HB 9)

AN ACT relating to health insurance.

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

Section 1. KRS 304.17-316 is amended to read as follows:

- (1) The term "mammogram" shall mean an x-ray examination of the breast using equipment dedicated specifically for mammography, including, but not limited to, the x-ray tube, filter, compression device, screens, film, and cassettes, with two (2) views of each breast and with an average radiation exposure at the current recommended level as set forth in guidelines of the American College of Radiology.
- (2) (a) All insurers issuing individual health insurance policies in this Commonwealth ~~that~~~~which~~ provide coverage on an expense-incurred basis for surgical services for a mastectomy and ~~that~~~~which~~ are delivered, issued for delivery, amended, or renewed on or after October 15, 1990, shall also provide coverage for low-dose mammography screening for persons who have no sign or symptom of breast cancer and when performed on dedicated equipment which meets the guidelines established by the American College of Radiology and upon self-referral or on referral by a health care practitioner acting within the scope of ~~the~~~~such~~ practitioner's licensure. The coverage shall make available one (1) screening mammogram to persons age thirty-five (35) through thirty-nine (39); one (1) mammogram every two (2) years for persons ages forty (40) through forty-nine (49); and one (1) mammogram per year for a person fifty (50) years of age and over and may be limited to a benefit of fifty dollars (\$50) per screening mammogram. Any deductibles and coinsurance factors shall be no less favorable than for coverage for physical illness generally.
- (b) *All insurers issuing individual health insurance policies in this Commonwealth that provide coverage on an expense-incurred basis for surgical services for a mastectomy and that are delivered, issued for delivery, amended, or renewed on or after the effective date of this Act, shall also provide coverage for mammograms, performed on dedicated equipment that meets the guidelines established by the American College of Radiology, for any covered person, regardless of age, who has been diagnosed with breast disease upon referral by a health care practitioner acting within the scope of the practitioner's licensure. The coverage provided under this paragraph shall be subject to the same annual deductibles or coinsurance established for other coverages within the policy.*
- (3) The mammogram shall be performed by a Kentucky State Certified General Certificate Radiographer or an American Registry of Radiologic Technology Registered Radiographer, interpreted by a qualified radiologist, and performed under the direction of a person licensed to practice medicine and certified by the American Board of Radiology. Two (2) copies of the mammogram report shall be sent to the health care practitioner who ordered it, one (1) copy of which shall be given to the patient. In case of self-referral, one (1) copy of the

mammogram report shall be given to the patient upon request. The mammography film shall be retained by the facility performing the examination in accordance with guidelines of the American College of Radiology.

- (4) Effective July 15, 1990, any facility in which mammograms are performed for reimbursement under this section, KRS 304.18-098, 304.32-1591, or 304.38-1935 shall meet current criteria of the American College of Radiology Mammography Accreditation Program.

SECTION 2. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

***All insurers issuing health benefit plans in this Commonwealth that provide coverage for surgical services for a mastectomy and that are delivered, issued for delivery, amended, or renewed on or after the effective date of this Act, shall also provide coverage for mammograms under Section 1 of this Act. The coverage shall meet the standards set forth in Section 1 of this Act.***

Section 3. KRS 304.18-098 is amended to read as follows:

All insurers issuing group or blanket health insurance policies and certificates in this Commonwealth ~~that provide~~~~[providing]~~ coverage on an expense-incurred basis for surgical services for a mastectomy and ~~that~~~~[which]~~ are delivered, issued for delivery, amended, or renewed on or after October 15, 1990, shall also provide coverage for **mammograms under**~~[low dose mammography screening as provided in]~~ KRS 304.17-316. The coverage shall meet the standards set forth in KRS 304.17-316.

Section 4. KRS 304.32-1591 is amended to read as follows:

All nonprofit hospital, medical-surgical, dental, and health service corporations issuing contracts in this Commonwealth ~~that~~~~[which]~~ provide hospital, medical, or surgical expense benefits for a mastectomy and ~~that~~~~[which]~~ are delivered, issued for delivery, amended, or renewed on or after October 15, 1990, shall also provide coverage for **mammograms**~~[low dose mammography screening as provided]~~ under KRS 304.17-316. The coverage shall meet the standards set forth in KRS 304.17-316.

Section 5. KRS 304.38-1935 is amended to read as follows:

Health maintenance organizations issuing contracts in this Commonwealth ~~that~~~~[which]~~ provide hospital, medical, or surgical expense benefits for surgical services for a mastectomy and ~~that~~~~[which]~~ are delivered, issued for delivery, amended, or renewed on or after October 15, 1990, shall also provide coverage for **mammograms**~~[low dose mammography screening as provided]~~ under KRS 304.17-316. The coverage shall meet the minimum standards set forth in KRS 304.17-316.

**Approved February 21, 2000**

## **CHAPTER 19**

**(HB 72)**

AN ACT relating to unemployment insurance.

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

Section 1. KRS 341.390 is amended to read as follows:

There shall be deducted from the benefit rate determined for a worker in accordance with subsection (2) of KRS 341.380:

- (1) Eighty percent (80%), adjusted to the nearest multiple of one dollar (\$1), of the amount of wages earned by such worker during the week of unemployment with respect to which he claims benefits. For the purpose of this subsection, wages shall also include amounts earned by benefit claimants in self employment provided such earnings otherwise meet the definition of wages as contained in KRS 341.030;
- (2) The amount of remuneration which the worker has received or is receiving with respect to such week of unemployment (adjusted to the nearest multiple of one dollar (\$1)) in the form of remuneration in lieu of notice; and
- (3) (a) The amount of compensation payable to an individual for any week which begins after March 31, 1980, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment under a plan

maintained or contributed to a chargeable or base-period employer, shall be reduced (but not below zero (0)) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment which is reasonably attributable to such week; except that **this reduction shall not be made if the secretary may provide for limitations on the amount of any such deduction to take into account contributions made by** the worker **contributed to** for the pension, retirement or retired pay, annuity, or other similar periodic payment. ~~The weekly benefit amount payable to a claimant for a week shall be reduced, but not below zero, by no part of a Social Security retirement pension if fifty percent (50%) or more of the contributions to the plan were provided by the claimant during the claimant's base period.~~

- (b) No reduction shall be made under this section by reason of the receipt of a pension if the services performed by the worker during the base period (or remuneration received for such services) for such employer did not affect the worker's eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or other similar periodic payment. The conditions specified by this subsection shall not apply to pensions paid under the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law). Payments made under such acts shall be treated solely in the manner specified by paragraph (a) of this subsection.
- (c) If Public Law 94-566, Public Law 96-364 or the federal act which amends either for any cause shall become inoperative in its application, or stayed pendente lite, as to deductions of such compensation, then ~~sub~~ subsection (3) of this section, by virtue of that fact, shall likewise and to the same extent ~~become inoperative as to such deductions.~~

Approved February 21, 2000

## CHAPTER 20

(HB 82)

AN ACT relating to reorganization.

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

Section 1. KRS 194A.135 is amended to read as follows:

- (1) The Developmental Disabilities ~~Planning~~ Council is created within the cabinet.
- (2) The Developmental Disabilities ~~Planning~~ Council is established to comply with the requirements of the Developmental Disabilities Act of 1984 and any subsequent amendment to that act.
- (3) The members of the Developmental Disabilities Planning Council shall be appointed by the Governor to serve as advocates for persons with developmental disabilities. The council shall be composed of **twenty-six (26)** ~~twenty-four (24)~~ members. ~~of whom~~
  - (a) **Ten (10) members shall be** ~~twelve (12) are~~ representatives of: the principal state agencies administering funds provided under the Rehabilitation Act of 1973 **as amended**; the state agency that administers funds provided under the **Individuals with Disabilities Education Act (IDEA)** ~~Education of the Handicapped Act~~; the state agency that administers funds provided under the Older Americans Act of 1965 **as amended**; the single state agency designated by the Governor for administration of Title XIX of the Social Security Act for persons with developmental disabilities; higher education training facilities, each university-affiliated program or satellite center in the Commonwealth; **and** the protection and advocacy system established under Public Law 101-496. **These members shall represent the following:**
    - 1. **Department for Vocational Rehabilitation;**
    - 2. **Department for the Blind;**
    - 3. **Division of Exceptional Children, within the Department of Education;**
    - 4. **Office of Aging Services;**
    - 5. **Department for Medicaid Services;**
    - 6. **Department of Public Advocacy, Protection and Advocacy Division;**
    - 7. **University-affiliated programs;**

8. *Council on Postsecondary Education;*
9. *Department for Mental Health/Mental Retardation Services; and*
10. *Department for Public Health, Division of Adult and Child Health*~~[-; and local agencies, nongovernmental agencies, and private, nonprofit groups concerned with services to persons with developmental disabilities].~~

~~(b)~~~~(a)~~ At least **sixty percent (60%)**~~[twelve (12)]~~ of the members of the council shall be composed of persons with developmental disabilities or the parents or guardians of persons, or immediate relatives or guardians of persons with mentally impairing developmental disabilities, who are not managing employees or persons with ownership or controlling interest in any other entity that receives funds or provides services under the Developmental Disabilities Act of 1984 *as amended* and who are not employees of a state agency that receives funds or provides services under this section. Of these members, **five (5)**~~[at least four (4)]~~ members shall be persons with developmental disabilities, and **five (5)**~~[at least four (4)]~~ members shall be *parents or guardians of children with developmental disabilities or immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves. Six (6) members shall be a combination of individuals in these two (2) groups, and*~~[the immediate relatives or guardians of persons with mentally impairing developmental disabilities meeting the conditions listed in this subsection.]~~ at least one (1) of these ~~members~~~~[relatives or guardians]~~ shall be an immediate relative or guardian of an institutionalized or previously institutionalized person with a developmental disability *or an individual with a developmental disability who resides in an institution or who previously resided in an institution*~~[- At least one (1) member of the council shall represent and advocate for the interests and rights of disabled, newborn infants].~~

~~(c)~~~~(b)~~ Members not representing principal state agencies shall be appointed for a term of three (3) years. *Members shall serve no more than two (2) consecutive three (3) year terms. Members shall serve until their successors are appointed or until they are removed for cause*~~[-, except the initial appointments shall be made in the following manner: four (4) members shall be appointed for a term of three (3) years, four (4) members shall be appointed for a term of two (2) years, and four (4) members shall be appointed for a term of one (1) year].~~

~~(d)~~~~(c)~~ The~~[- planning]~~ council shall elect its own chair, adopt bylaws, and operate in accordance with its bylaws. Members of the council who are not state employees shall be reimbursed for necessary and actual expenses. The cabinet shall provide personnel adequate to insure that the council has the capacity to fulfill its responsibilities. *The council shall be headed by an executive director. If the executive director position becomes vacant, the council shall be responsible for the recruitment and hiring of a new executive director.*

(4) The Developmental Disabilities~~[- Planning]~~ Council shall:

- (a) Develop, *in consultation*~~[- jointly]~~ with the cabinet, *and implement*~~[- and any other agencies designated to administer or supervise the administration of]~~ the state plan as required by Part B of the Developmental Disabilities Act of 1984, *as amended*~~[- Public Law 98-527]~~, including the specification of priority services required by that plan;
- (b) Monitor, review, and evaluate, not less often than annually, the implementation *and effectiveness* of *the state plan in meeting the plan's objectives*~~[- this plan];~~
- (c) To the maximum extent feasible, review and comment on all state plans that relate to persons with developmental disabilities;~~[- and]~~
- (d) Submit to the secretary of the cabinet, *the commissioner of the Department for Mental Health and Mental Retardation Services, and the Secretary of the United States Department of Health and Human Services* any periodic reports on its activities as required by the United States Department of Health and Human Services and keep records and afford access as the cabinet finds necessary to verify the reports;
- (e) *Serve as an advocate for individuals with developmental disabilities and conduct programs, projects, and activities that promote systematic change and capacity building;*



- (f) *Examine, not less than once every three (3) years, the provision of and need for federal and state priority areas to address, on a statewide and comprehensive basis, urgent needs for services, supports, and other assistance for individuals with developmental disabilities and their families; and*
- (g) *Prepare, approve, and implement a budget that includes amounts paid to the state under the Developmental Disabilities Act of 1984, as amended, to fund all programs, projects, and activities under that Act.*

Section 2. KRS 210.775 is amended to read as follows:

- (1) There is hereby created the State Supported Living Council for services to persons with a disability and their families.
- (2) (a) The State Supported Living Council shall be composed of ten (10) members. The commissioner of the Department for Mental Health and Mental Retardation Services and the executive director of the Kentucky Housing Corporation or their designees shall be ex-officio members.
- (b) Eight (8) of the members shall be volunteers and shall be appointed by the Governor from a list of nominees in the following manner:
  - 1. Three (3) of the appointed members shall represent family members of persons with a disability. One (1) member shall be selected from each of three (3) lists containing two (2) nominees submitted by each of the following associations: the Kentucky Association for Retarded Citizens, the Association for Persons with Severe Handicaps, and the Mental Health Coalition;
  - 2. One (1) of the appointed members shall represent family members of persons with a disability who reside in an intermediate care facility for mental retardation or developmental disabilities. The nominee shall be selected from a list containing two (2) nominees submitted by each of the following associations: Concerned Parents of Hazelwood, Parents and Relatives of Oakwood Facility, and Concerned Parents of Outwood;
  - 3. Two (2) of the appointed members shall be persons with a disability. They shall be selected from a list containing two (2) nominees submitted by each of the following associations: the Kentucky Campaign for Personal Attendant Care, the Kentucky Association for Retarded Citizens, the Mental Health Coalition, and the Kentucky Disabilities Coalition;
  - 4. One (1) of the appointed members shall represent professionals and providers of services to persons with a disability. The nominee shall be selected from a list containing two (2) nominees submitted by each of the following associations: the Kentucky Association of Private Residential Resources and the Kentucky Association on Mental Retardation; and
  - 5. One (1) of the appointed members shall represent advocates for persons with a disability. The nominee shall be selected from a list containing two (2) nominees submitted by each of the following entities: the Division of Protection and Advocacy and the Kentucky Developmental Disabilities~~Planning~~ Council.
- (3) The appointed members may serve on the council for three (3) years. Members may be reappointed for a maximum of two (2) consecutive terms. The Governor shall fill any vacancy occurring in the council in the manner prescribed in subsection (2) of this section.
- (4) The Department for Mental Health and Mental Retardation Services shall provide staff assistance to the State Supported Living Council.
- (5) The chairman of the State Supported Living Council shall be elected from among the members. A majority of the members shall constitute a quorum.
- (6) The State Supported Living Council shall meet as often as necessary but no less frequently than every other month.

Section 3. The General Assembly hereby confirms Executive Order 98-892, dated July 14, 1998, to the extent it is not otherwise confirmed or superseded by this Act.

**Approved February 21, 2000**

**CHAPTER 21****(HB 107)**

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 99-37, dated January 11, 1999, relating to the Public Protection and Regulation Cabinet, Department of Insurance, that: creates the Division of Health Insurance Policy and Managed Care to be headed by a director, appointed in accordance with KRS 12.050 and KRS 304.2-060; and, changes the name of the Life and Health Division to the Life Insurance Division, this division to be headed by a director appointed in accordance with KRS 12.050 and KRS 304.2-060. The newly created Division of Health Insurance Policy and Managed Care and the renamed Life Insurance Division shall be composed of such personnel, equipment, files, and funding as may be set forth by administrative order of the Department of Insurance, in accordance with Executive Order 99-37.

**Approved February 21, 2000**

**CHAPTER 22****(SB 26)**

AN ACT relating to reorganization.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 7 of this Act, unless the context indicates otherwise:*

- (1) *"Authority" means the Appalachian/Kentucky Artisans Gateway Center Authority;*
- (2) *"Board" means the board of directors of the Appalachian/Kentucky Artisans Gateway Center Authority; and*
- (3) *"Center" means the Appalachian/Kentucky Artisans Gateway Center.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

*The Appalachian/Kentucky Artisans Gateway Center Authority is created and established as an independent, de jure municipal corporation and political subdivision of the Commonwealth that shall be a public body corporate and politic. The authority shall develop, operate, and manage the Appalachian/Kentucky Artisans Gateway Center funded by 1998 Ky. Acts ch. 615, Part X, under the reference "Artisans Center--Berea." The authority shall be attached to the Tourism Development Cabinet for administrative purposes.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

- (1) *The authority shall be governed by a board of directors consisting of thirteen (13) members as follows:*
  - (a) *Secretary of the Tourism Development Cabinet, or his or her designee;*
  - (b) *Secretary of the Transportation Cabinet, or his or her designee;*
  - (c) *Secretary of the Education, Arts, and Humanities Cabinet, or his or her designee;*
  - (d) *Secretary of the Finance and Administration Cabinet, or his or her designee;*
  - (e) *Three (3) members appointed by the Governor, one (1) to be a representative of the Kentucky Arts Council, and two (2) to be at-large members; and*
  - (f) *Six (6) members appointed by the mayor of the city of Berea to include two (2) representatives of Berea city government, two (2) representatives of Berea College recommended by the president of Berea College, one (1) representative of Eastern Kentucky University recommended by the president of Eastern Kentucky University, and one (1) at-large member.*

- (2) *Members shall serve for staggered terms of four (4) years beginning August 1, 2000, except that of the initial appointments:*
  - (a) *One (1) appointment by the Governor and two (2) appointments by the mayor of the city of Berea shall each serve a term of four (4) years;*
  - (b) *Two (2) appointments by the mayor of the city of Berea and one (1) appointment by the Governor shall each serve a term of three (3) years;*
  - (c) *One (1) appointment by the Governor and one (1) appointment by the mayor of the city of Berea shall each serve a term of two (2) years; and*
  - (d) *One (1) appointment by the mayor of the city of Berea shall serve a term of one (1) year.*
- (3) *The Governor shall appoint a chair from among the members of the board.*
- (4) *A quorum of the board shall consist of seven (7) members, with a majority of members present authorized to act upon any matter legally before the authority.*
- (5) *A member may be removed by the appointing authority only for neglect of duty, misfeasance, or malfeasance, and after being afforded an opportunity for a hearing in accordance with KRS Chapter 13B, relating to administrative hearings.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

- (1) *An executive director shall be appointed in accordance with KRS 12.050.*
  - (a) *The executive director shall at all times attempt to accommodate the desires expressed by the board of directors.*
  - (b) *The executive director shall keep all minutes, records, and orders of the authority and shall be responsible for the preservation of all the documents. The documents shall be public records subject to KRS 61.870 to 61.884, relating to open records.*
- (2) *The staff of the authority, including its executive director, shall be employees of the Tourism Development Cabinet.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall develop articles of incorporation and appropriate documentation to establish its existence as a nonprofit corporation under KRS 58.180.*
- (2) *The board may establish from among its membership an executive committee, which shall have full authority to act between board meetings to the extent delegated by the board.*
- (3) *The board may enact bylaws concerning the election of officers and other administrative procedures it deems necessary.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

*The authority shall have the following duties and authorities:*

- (1) *The authority shall supervise the design, construction, and operation of the center and shall provide all management functions for the facility and for any other property acquired or leased under its powers established by law.*
- (2) *The authority shall promote the growth and development of statewide tourism related to arts and crafts destinations throughout the state and shall ensure that its efforts conform to marketing and promotion strategies devised by the Tourism Cabinet.*
- (3) *The authority shall have the exclusive control of scheduling all exhibitions, performances, retail activities, and concessions in the center. The authority shall have a prior lien upon the property of any private exhibitor, concessionaire, or other person holding an exhibition or performance or operating a concession in the center and may sell the property upon ten (10) days' notice to satisfy any indebtedness.*
- (4) *The authority shall participate with local hotels and the travel industry to develop tourist packages and additional services to attract events, conferences, and conventions to the region.*

- (5) *The authority may take, acquire, and hold property, and all interests therein, by deed, purchase, gift, devise, bequest, or lease, or by transfer from the State Property and Buildings Commission and may dispose of any property so acquired in any manner provided by law.*
- (6) *The authority may adopt administrative regulations in accordance with KRS Chapter 13A only for governing the operation, maintenance, or use of property under its custody and control.*
- (7) *The authority may levy a surcharge on tickets for functions held within the center to contribute to operating revenue.*
- (8) *The authority may sue and be sued and maintain and defend legal actions in its name.*
- (9) *Members of the authority shall serve without compensation, but shall be reimbursed for actual and necessary travel expenses incurred in the performance of their duties. The reimbursement shall be in accordance with administrative regulations promulgated under KRS Chapter 13A by the Finance and Administration Cabinet.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

*All revenues derived by the authority from the use of the center and from contributions to the center from other sources, and any additional revenues derived by the authority from any other source, shall be used solely for the expenses of the center, including payment on debt; the cost of management and operation of its facilities; the creation of an adequate reserve for repair, replacement, debt service, and capital improvements; the procurement of insurance; and promotional activities.*

Section 8. The General Assembly confirms Executive Order 99-331, dated March 12, 1999, to the extent it is not otherwise confirmed or superseded by this Act.

**Approved February 21, 2000**

## CHAPTER 23

(HB 250)

AN ACT relating to motor vehicle dealers and declaring an emergency.

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

Section 1. KRS 190.010 is amended to read as follows:

As used in KRS 190.010 to 190.990:

- (1) "Manufacturer" means any person, partnership, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new motor vehicles, or imports for distribution through distributors of new motor vehicles, or any partnership, firm, association, joint venture, corporation, or trust, resident or nonresident, which is controlled by the manufacturer. Additionally, the term "manufacturer" shall include the following terms:
  - (a) "Distributor" which means any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers, or who maintains factory representatives, or who controls any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers.
  - (b) "Factory branch" which means a branch office maintained by a manufacturer for the purpose of selling, or offering for sale, new motor vehicles to a distributor, wholesaler, or new motor vehicle dealer, or for directing or supervising, in whole or in part, factory or distributor representatives, and shall further include any sales promotion organization, whether the same be a person, firm, or corporation, which is engaged in promoting the sale of new motor vehicles in this state of a particular brand or make to new motor vehicle dealers.
  - (c) "Factory representative" which means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting for the sale of his, its, or their new motor vehicles, or for supervising or contracting with his, its, or their dealers, or prospective dealers.

- (d) "Distributor branch" which means a branch office similarly maintained by a distributor or wholesaler for the same purposes.
  - (e) "Distributor representative" which means a representative similarly employed by a distributor, distributor branch, or wholesaler.
- (2) "Motor vehicle dealer" means any person not excluded by subsection (3) of this section, engaged in the business of selling, offering to sell, soliciting, or advertising the same, of new or used motor vehicles, or possessing motor vehicles for the purpose of resale, either on his own account, or on behalf of another, either as his primary business or incidental thereto.
  - (3) The term "motor vehicle dealer" shall not include:
    - (a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court, and any bank, trust company, or lending institution that is subject to state or federal regulation, with regard to its disposition of repossessed motor vehicles;
    - (b) Public officers while performing their official duties; or
    - (c) Employees of persons enumerated in paragraphs (a) and (b) of this subsection, when engaged in the specific performance of their duties as employees.
  - (4) "New motor vehicle dealer" means a vehicle dealer who holds a valid sales and service agreement, franchise, or contract, granted by the manufacturer, distributor, or wholesaler for the sale of the manufacturer's new motor vehicles.
  - (5) "New motor vehicle dealership facility" means an established place of business which is being used or will be used primarily for the purpose of selling, buying, displaying, repairing, and servicing motor vehicles.
  - (6) "Used motor vehicle dealer" means any person engaged in the business of selling at retail, displaying, offering for sale, or dealing in used motor vehicles, but shall not mean any person engaged in the business of dismantling, salvaging, or rebuilding motor vehicles by means of using used parts, or any public officer performing his official duties.
  - (7) "Motor vehicle leasing dealer" means any person engaged in the business of regularly making available, offering to make available, or arranging for another person to use a motor vehicle pursuant to a bailment, lease, or other contractual arrangement under which a charge is made for its use at a periodic rate for at least a monthly term, and title to the motor vehicle is in a person other than the user, but shall not mean a manufacturer or its affiliate leasing to its employees or to dealers.
  - (8) "Restricted motor vehicle dealer" means a motor vehicle dealer who exclusively sells, offers to sell, solicits, or advertises specialized motor vehicles including, but not limited to, funeral coaches, emergency vehicles, and an automotive recycling dealer engaged in the business of dismantling, salvaging, or recycling salvage motor vehicles for the purpose of harvesting used parts, components, assemblies, and recyclable materials for resale, reuse, or reclamation.
  - (9) "Motorcycle dealer" means a motor vehicle dealer who exclusively sells, offers to sell, solicits, or advertises motorcycles. Motorcycles shall not include mopeds as defined in this section.
  - (10) "Motor vehicle salesman" means any person who is employed as a salesman by a motor vehicle dealer to sell motor vehicles, or who is employed as an auctioneer by a motor vehicle auction dealer to sell motor vehicles at auction.
  - (11) "Motor vehicle auction dealer" means any person primarily engaged in the business of offering, negotiating, or attempting to negotiate a sale, purchase, or exchange of a motor vehicle through auction.
  - (12) "Motor vehicle" means every vehicle intended primarily for use and operation on the public highways, that is self propelled, but shall not include farm tractors and other machines and tools used in the production, harvesting, and care of farm products.
  - (13) "New motor vehicle" means a vehicle that is in the possession of the manufacturer, distributor, or wholesaler, or has been sold to the holders of a valid sales and service agreement, franchise, or contract, granted by the manufacturer, distributor, or wholesaler for the sale of the make of new vehicle, which is new, and on which the original title has not been issued from the franchised dealer.

- (14) "Moped" means a motorized bicycle with pedals whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank, or a motorized bicycle with pedals and with a step through type frame rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour.
- (15) "Commission" means the Motor Vehicle Commission.
- (16) "Commissioner" means the commissioner of the department.
- (17) "Department" means the Department of Vehicle Regulation.
- (18) "Licensor" means the commission.
- (19) "Established place of business" means a permanent, enclosed commercial building located within this state, easily accessible and open to the public at all reasonable times, and at which the business of a vehicle dealer, including the display and repair of vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning, and other land use regulatory ordinances.
- (20) "Person" means a person, partnership, firm, corporation, association, trust, estate, or other legal entity.
- (21) "Franchise" means the agreement or contract between any new motor vehicle manufacturer, written or otherwise, and any new motor vehicle dealer that purports to fix the legal rights and liabilities of the parties to an agreement or contract, and pursuant to which the dealer purchases and resells the franchise product.
- (22) "Good faith" means honesty in fact, and the observance of reasonable commercial standards of fair dealing in the trade, as is defined and interpreted in KRS 355.2-103(1)(b).
- (23) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will; or who has otherwise been designated in writing by a deceased dealer to succeed him in the motor vehicle dealership; or who, under the laws of intestate succession of this state is entitled to inherit the interest; or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term includes the appointed and qualified personal representative and testamentary trustee of a deceased dealer.
- (24) "Fraud" means a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made in good faith; or an intentional failure to disclose material fact.
- (25) "Sale" means the issuance, transfer, agreement for transfer, exchange, *lease*, pledge, hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest in it, or of any franchise related to it, as well as any option, subscription, other contract, or solicitation looking to a sale, offer to attempt to sell in any form, whether spoken or written. A gift or delivery of any motor vehicle or franchise with respect thereto, with or as a bonus on account of the sale of anything, shall be deemed a sale of the motor vehicle or franchise.

Section 2. KRS 190.040 is amended to read as follows:

- (1) A license may be denied, suspended, or revoked on the following grounds:
  - (a) Proof of financial or moral unfitness of applicant;
  - (b) Material misstatement in application for license;
  - (c) Filing a materially false or fraudulent tax return as certified by the Revenue Cabinet;
  - (d) Willful failure to comply with any provision of this chapter or any administrative regulation promulgated under this chapter;
  - (e) Willfully defrauding any retail buyer to the buyer's damage;
  - (f) Willful failure to perform any written agreement with any buyer;
  - (g) Failure or refusal to furnish and keep in force any bond required;
  - (h) Having made a fraudulent sale, transaction, or repossession;
  - (i) False or misleading advertising;

- (j) Fraudulent misrepresentation, circumvention, or concealment through subterfuge or device of any of the material particulars or the nature of them required to be stated or furnished to the retail buyer;
  - (k) Employment of fraudulent devices, methods, or practices in connection with compliance with the requirements under the statutes of this state with respect to the retaking of goods under retail installment contracts and the redemption and resale of goods;
  - (l) Having violated any law relating to the sale, distribution, or financing of motor vehicles;
  - (m) Being a manufacturer of motor vehicles, factory branch, distributor, field representative, officer, agent, or any representative of the motor vehicle manufacturer or factory branch, who has induced, coerced, or attempted to induce or coerce any automobile dealer to accept delivery of any motor vehicle, vehicles, parts, accessories, or any other commodities that shall not have been ordered by the dealer;
  - (n) Being a manufacturer of motor vehicles, factory branch, distributor, field representative, officer, agent, or any representative of a motor vehicle manufacturer or factory branch, who has attempted to induce or coerce, or has induced or coerced, any automobile dealer to enter into any agreement with a manufacturer, factory branch, or representative, or to do any other act unfair to the dealer, by threatening to cancel any franchise existing between a manufacturer, factory branch, or representative and the dealer;
  - (o) Being a manufacturer, factory branch, distributor, field representative, officer, agent, or any representative of a motor vehicle manufacturer or factory branch, who has unfairly, without due regard to the equities of the dealer and without just provocation, canceled the franchise of any motor vehicle dealer. The nonrenewal of a franchise or selling agreement without just provocation or cause shall be deemed an evasion of this section and shall constitute an unfair cancellation;
  - (p) Being a ***manufacturer, factory branch, distributor, field representative, officer, agent, or any representative of a motor vehicle manufacturer or factory branch***, or wholesaler who makes, attempts to make, or aids or abets the making of a sale of a motor vehicle to a person other than a licensed motor vehicle dealer. This section shall not prevent any license holder from selling any motor vehicle to any of its employees;
  - (q) Being a dealer who advertises for sale a new motor vehicle unless he is a dealer operating under a franchise with a licensed manufacturer, factory branch, or distributor authorizing the sale of the new motor vehicle being advertised.
- (2) The licensor may deny the application for a license within thirty (30) days after receipt thereof by written notice to the applicant, stating the grounds for denial. Upon request by the applicant whose license has been denied, the licensor shall set the time and place of hearing a review of denial, to be conducted in accordance with KRS Chapter 13B.
  - (3) A license shall not be suspended or revoked except after a hearing conducted in accordance with KRS Chapter 13B.
  - (4) The commission may inspect the pertinent books, letters, records, and contracts of a licensee.
  - (5) If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension, or revocation of a license that any officer, director, or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be cause for refusing, suspending, or revoking a license to the party as an individual. Each licensee shall be responsible for the acts of any or all of his salesmen while acting as his agent, if the licensee approved of or had knowledge of the acts and after approval or knowledge retained the benefit, proceeds, profits, or advantages accruing from the acts.
  - (6) Any licensee or other person in interest who is dissatisfied with a final order of the commission may appeal to the Franklin Circuit Court and to the Court of Appeals in the manner provided by KRS Chapter 13B.

Section 3. KRS 190.045 is amended to read as follows:

- (1) Notwithstanding the terms, provisions, or conditions of any franchise or notwithstanding the terms or provisions of any waiver, ~~a **no**~~ manufacturer shall **not** cancel, terminate, or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has:
  - (a) Satisfied the notice requirement of subsection (4) of this section;
  - (b) Has good cause for cancellation, termination, or nonrenewal;

- (c) Has acted in good faith as defined in KRS 190.010(22); and
- (d) Has established the requirements of this subsection in proceedings before the licensor if the action is protested by the new motor vehicle dealer within fifteen (15) days after receiving notice of the cancellation, termination, or nonrenewal.

When a protest is filed, the licensor shall inform the manufacturer, distributor, factory branch, or factory representative that a timely protest has been filed and that the manufacturer, distributor, factory branch, or factory representative shall not cancel, terminate, or fail to renew any franchise with the licensed new motor vehicle dealer until the licensor has held a hearing and the licensor has determined that the manufacturer has met its burden under this section.

- (2) Notwithstanding the terms, provisions, or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation, or nonrenewal when:
  - (a) There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship, provided that the dealer has been notified in writing of the failure within one hundred eighty (180) days after the manufacturer first acquired knowledge of ~~the~~~~[such]~~ failure.
  - (b) If the failure by the new motor vehicle dealer, defined in paragraph (a) of this subsection, relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer, if the new motor vehicle dealer was apprised by the manufacturer in writing of ~~a~~~~[such]~~ failure, and
    - 1. ~~The~~~~[Said]~~ notification stated that notice was provided of failure of performance pursuant to this section;
    - 2. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than six (6) months, to comply with ~~the~~~~[such]~~ criteria; and
    - 3. The new motor vehicle dealer did not demonstrate substantial progress toward compliance with the manufacturer's performance criteria during ~~the designated~~~~[such]~~ period.
- (3) The manufacturer shall have the burden of proof under this section.
- (4) Notwithstanding the terms, provisions, or conditions of any franchise prior to the termination, cancellation, or nonrenewal of any franchise, the manufacturer shall furnish notification of ~~a~~~~[such]~~ termination, cancellation, or nonrenewal to the new motor vehicle dealer as follows:
  - (a) In the manner described in subsection (2)(b) of this section; and
  - (b) In not less than ninety (90) days prior to the effective date of ~~the~~~~[such]~~ termination, cancellation or nonrenewal; or
  - (c) In not less than fifteen (15) days prior to the effective date of ~~a~~~~[such]~~ termination, cancellation, or nonrenewal with respect to any of the following:
    - 1. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;
    - 2. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven (7) consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;
    - 3. Fraudulent misrepresentation by the new motor vehicle dealer to the manufacturer or distributor which is material to the franchise;
    - 4. Conviction of the new motor vehicle dealer, or any owner or operator thereof, of any felony which is punishable by imprisonment; or
    - 5. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;
  - (d) In not less than one hundred eighty (180) days prior to the effective date of ~~a~~~~[such]~~ termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.



- (5) Notification under this section shall be in writing by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:
- (a) A statement of intent to terminate, cancel, or not to renew the franchise; and
  - (b) A statement of the reasons for the termination, cancellation, or nonrenewal; and
  - (c) The date on which ~~the~~<sup>such</sup> termination, cancellation, or nonrenewal takes effect.
- (6) Upon the termination, nonrenewal, or cancellation of any franchise, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:
- (a) New current model year motor vehicle inventory which has been acquired from the manufacturer, and which has not been damaged or altered while in the dealer's possession;
  - (b) Supplies and parts which have been acquired from the manufacturer;
  - (c) Equipment and furnishings provided the new motor vehicle dealer purchased from the manufacturer or its approved sources; and
  - (d) Special tools.
- ~~Such~~ Fair and reasonable compensation shall be paid by the manufacturer within ninety (90) days of the effective date of termination, cancellation, or nonrenewal, provided the new motor vehicle dealer has clear title to the inventory and other items and is in a position to convey that title to the manufacturer.
- (7) In the event of a termination, cancellation, or nonrenewal under this section, and the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, or owns the dealership facilities, the manufacturer shall pay a reasonable rent to the dealer in accordance with and subject to subsection (8) of this section.
- (8) (a) ~~Such~~ Reasonable rental value shall be paid only to the extent the dealership premises are recognized in the franchise and only if they are:
- 1. Used solely for performance in accordance with the franchise; and
  - 2. Not substantially in excess of those facilities recommended by the manufacturer.
- (b) If the facilities are owned by the dealer, the manufacturer will either:
- 1. Locate a purchaser who will offer to purchase the dealership facilities at a reasonable price; or
  - 2. Locate a lessee who will offer to lease the premises for a reasonable term at a reasonable rent; or
  - 3. Failing the foregoing, lease the dealership facilities at a reasonable rental value for one (1) year.
- (c) If the facilities are leased by the dealer, the manufacturer will either:
- 1. Locate a tenant or tenants satisfactory to the lessor, who will sublet or assume the balance of the lease; or
  - 2. Arrange with the lessor for the cancellation of the lease without penalty to the dealer; or
  - 3. Failing the foregoing, lease the dealership facilities at a reasonable rent for one (1) year.
- (d) The manufacturer shall not be obligated to provide assistance under this section if the dealer:
- 1. Fails to accept a bona fide offer from a prospective purchaser, sublessee or assignee; or
  - 2. Refuses to execute a settlement agreement with the lessor if ~~the~~<sup>such</sup> agreement would be without cost to the dealer; or
  - 3. Fails to make *a* written request for assistance under this section within one (1) month of the termination, cancellation, or nonrenewal.
- (e) If, in an action for damages under this section, the manufacturer or distributor fails to prove either that the manufacturer or distributor has acted in good faith or that there was good cause for the franchise termination, cancellation, or nonrenewal, then the manufacturer or distributor may terminate, cancel, or fail to renew the franchise upon payment to the new motor vehicle dealer of an amount equal to the value of the dealership as an ongoing business location.

- (9) *Notice of termination to a dealer shall entitle the dealer to continue the franchise and the dealer may attempt to sell the franchise until all of the dealer's appeal rights have been exhausted.*

Section 4. KRS 190.046 is amended to read as follows:

- (1) Notwithstanding the terms of any franchise agreement, each motor vehicle manufacturer or distributor, doing business within this Commonwealth, shall assume all responsibility for and shall defend, indemnify, and hold harmless its motor vehicle dealers against any loss, damages, and expenses, including legal costs, arising out of complaints, claims, *recall repairs or modifications or factory authorized or directed repairs*, or lawsuits resulting from warranty defects, which shall include structural or production defects; defects in the assembly; or design of motor vehicles, parts, accessories; or other functions beyond the control of the dealer, including without limitation, the selection of parts or components for the vehicle. Each manufacturer or distributor shall pay reasonable compensation to any authorized dealer who performs work to repair defects, or to repair any damage to the manufacturer's or distributor's product sustained while the product is in transit to the dealer, when the carrier or the means of transportation is designated by the manufacturer or distributor. Each manufacturer or distributor shall provide to its dealers with each model year a schedule of time allowances for the performance of warranty repair work and services, which shall include time allowances for the diagnosis and performance of warranty work and service time, and shall be reasonable and adequate for the work to be performed.
- (2) In the determination of what constitutes "reasonable compensation" under this section, the principal factor to be considered shall be the amount of money that the dealer is charging its other customers for the same type service or repair work. Other factors may be considered, including the compensation being paid by other manufacturers or distributors to their dealers for work; and the prevailing amount of money being paid or charged by the dealers in the city or community in which the authorized dealer is doing business. "Reasonable compensation" shall include diagnosing the defect; repair service; labor; parts and administrative and clerical costs. The compensation of a dealer shall not be less than the amount charged by the dealer for like services and parts, which minimum compensation for parts shall be dealer cost plus thirty percent (30%) gross profit, to retail customers for nonwarranty service and repairs, or less than the amounts indicated for work on the schedule of warranty compensation required to be filed by the manufacturer with the commission as a part of the manufacturer's license application by KRS 190.030.
- (3) A manufacturer or distributor shall not require unreasonable proof to establish "reasonable compensation" or delay reimbursement of payment to the dealer beyond thirty-five (35) days from the submission by mail of a valid warranty claim. If a valid warranty claim is not paid within forty-five (45) days, the dealer may give the manufacturer one (1) copy of the dealer's related repair order bearing the customer's signature, the dealer's signature, the date the work was completed, the vehicle serial number or identification number, the odometer reading, the date of delivery of the vehicle, a list of the parts and supplies used if applicable, a brief general description of the defect, and the amount of money charged the manufacturer or distributor for the work. If, after fifteen (15) days, the valid warranty claim is still not paid, the dealer may deduct a like amount from any moneys due or owing to the manufacturer or distributor. The dealer shall hold the defective part for inspection by the manufacturer or distributor for a period of time not to exceed ninety (90) days from the time the warranty claim is submitted. The manufacturer or distributor shall not unfairly discriminate against any dealer in the application of warranty, policy, and procedure or deny any valid warranty order claim submitted by a franchised dealer within thirty (30) days from completion of the work or longer if existing manufacturer-dealer relationships apply. Upon the written request of the dealer for valid reasons, the manufacturer shall extend the submission time. Any dispute between the dealer and the manufacturer or distributor shall be subject to the provisions of KRS 190.057.
- (4) *All audits by a manufacturer shall be limited to a period of one (1) year prior to the date of the audit.*

Section 5. KRS 190.0491 is amended to read as follows:

- (1) "Delivery" of a motor vehicle to a dealer by a manufacturer or distributor for the purposes of this section shall be accomplished by the:
  - (a) Tender of the motor vehicle and any documents necessary to enable the dealer to obtain title and possession of the motor vehicle at the dealer's place of business or designated place of delivery, and
  - (b) The giving of notice of ~~the~~<sup>such</sup> tender of the motor vehicle and documents to the dealer.

- (2) Whenever a motor vehicle is damaged while in transit when the carrier or the means of transportation is designated by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the dealer, the dealer must:
- Notify the manufacturer or distributor of ~~the~~~~[such]~~ damage within three (3) working days of the occurrence of the delivery of the motor vehicle as defined in subsection (1) of this section; and
  - ~~Must~~ Request from the manufacturer or distributor authorization to repair the damages sustained or to replace the parts or accessories damaged.
- ~~Such~~ Notification of damage by the dealer must be by certified mail, with a notice of delivery requested to be returned to the dealer, and shall be presumed to have occurred upon deposit of the notice with the United States Postal Service.
- (3) In the event the manufacturer or distributor refuses or fails to authorize repair or replacement of ~~the~~~~[any such]~~ damage within three (3) working days of notification of damage by the dealer, ownership of the motor vehicle shall revert to the manufacturer or distributor, and the dealer shall incur no obligations, financial or otherwise, for ~~the~~~~[such]~~ damage to the motor vehicle. In determining when ~~the~~~~[such]~~ notification of the damage by the dealer to the manufacturer or distributor occurs, the date the notice is received by the manufacturer or distributor by the United States Postal Service indicated on the notice of delivery returned to the dealer shall be controlling.
- (4) In computing the lapse of three (3) working days under this section, the day of the occurrence of delivery of the motor vehicle to the dealer by the manufacturer or distributor, as defined in subsection (1) of this section, or the day of notification of the damage to the manufacturer or distributor by the dealer, as described in subsection (3) of this section, ~~shall~~~~is~~ not ~~to~~ be included, but the last working day of the period so computed ~~shall~~~~is~~ to be included.
- (5) Prior to the sale of any motor vehicle damaged prior to delivery to the dealer as described in subsection (2) of this section, excluding damage to glass, tires, and bumpers when replaced by identical manufacturer's original equipment and any damage not exceeding six percent (6%) of the sticker price of the vehicle, the occurrence and extent of ~~the~~~~[such]~~ damage must be disclosed by the dealer to the consumer, and upon repair of the damage sustained, or replacement of the parts or accessories damaged, the manufacturer and/or dealer, must certify to the consumer that the motor vehicle has been repaired or remanufactured to the manufacturer's standards; if the dealer makes the certification he shall be indemnified by the manufacturer. Upon ~~this~~~~[such]~~ certification, liability for any concealed damages then remaining with the motor vehicle shall lie with the manufacturer.
- (6) Whenever a motor vehicle is damaged resulting in repairs or repair estimates that exceed **one thousand dollars (\$1,000)**~~three hundred dollars (\$300)~~ after delivery to the dealer by the manufacturer or distributor, as defined in subsection (1) of this section, but before sale by the dealer to the consumer, the occurrence and extent of ~~the~~~~[such]~~ damage must be disclosed by the dealer to the consumer prior to ~~a~~~~[such]~~ sale, and upon repair of the damage sustained, or replacement of parts or accessories damaged, the dealer must certify to the consumer that this motor vehicle has been repaired or remanufactured according to the manufacturer's standards. Upon ~~this~~~~[such]~~ certification, liability for any concealed damages then remaining with the motor vehicle shall lie with the dealer.
- (7) Notwithstanding the terms of any franchise agreement, it shall be a violation of this section for any new motor vehicle manufacturer to fail to indemnify and hold harmless its franchised dealers against any judgment or settlement agreed to in writing by the manufacturer for damages, including, but not limited to, court costs and reasonable attorneys' fees of the new motor vehicle dealer, arising out of complaints, claims, or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, warranty (express or implied), or rescission of the sale as is defined in KRS 355.2-608, to the extent that the judgment or settlement agreed to in writing by the manufacturer relates to the alleged defective or negligent manufacture, assembly, or design of new motor vehicles, parts, or accessories or other functions by the manufacturer, beyond the control of the dealer.

Section 6. KRS 190.070 is amended to read as follows:

- (1) It shall be a violation of this section for any manufacturer, distributor, factory branch, or factory representative licensed under this chapter to require any new motor vehicle dealer in the Commonwealth:

- (a) To order or accept delivery of any motor vehicle, part or accessory thereof, appliances, equipment, or any other product not required by law, which shall not have been voluntarily ordered by the new motor vehicle dealer; except that this section is not intended to modify or supersede any terms or provisions of the franchise requiring new motor vehicle dealers to market a representative line of those motor vehicles which the manufacturer or distributor is publicly advertising.
  - (b) To order or accept delivery of any new motor vehicle with special features, appliances, accessories, or equipment not included in the list price of ~~the [such]~~ motor ~~vehicle [vehicles]~~, as publicly advertised by the manufacturer or distributor.
  - (c) To order for any person any parts, accessories, equipment, machinery tools, appliance, or any commodity whatsoever not required in connection with a recall campaign.
  - (d) To participate monetarily in an advertising campaign or contest, any promotional materials, training materials, showroom or other display decorations, or materials, at the expense of the dealer, without the consent of the dealer.
  - (e) To enter into any agreement with the manufacturer, distributor, factory branch, or factory representative, or to do any other act prejudicial to the new motor vehicle dealer by threatening to cancel a franchise or any contractual agreement existing between the dealer and the manufacturer, distributor, factory branch, or factory representative. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of ~~the dealer's [such]~~ franchise, or contractual agreement shall not constitute a violation of this law.
  - (f) To change the capital structure of the dealership, or the means by or through which the dealer finances the operation of the dealership, provided that the dealership at all times meets any reasonable capital standards agreed to by the dealer, excluding any entity engaged primarily in providing financing or insurance on motor vehicles.
  - (g) To refrain from participation in the management or investment in, or the acquisition of any other line of new motor vehicle or related products; provided, however, that this section does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles, and that the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the franchise and with any reasonable facility requirements of the manufacturer, and no change is made in the principal management of the new motor vehicle dealership.
  - (h) To change location of the dealership, or to, during the course of the agreement, make any substantial alterations to the dealership premises, when to do so, would be unreasonable in light of the current economic, political, and social considerations.
  - (i) To prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by this law, or to require any controversy between a dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the Commonwealth or the United States of America, or to the commissioner, if ~~the [such]~~ referral would be binding upon the dealer.
  - (j) ***To establish or maintain exclusive facilities, personnel, display space, or signage for a new motor vehicle make or line.***
  - (k) ***To expand facilities without making available a sufficient supply of new motor vehicles to support the expansion in light of the market and economic conditions.***
- (2) It shall be a violation of this section for any manufacturer, distributor, factory branch, or factory representative:
- (a) To delay, refuse, or fail to deliver motor vehicles, or vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's relevant market area, and within a reasonable time, but in any case no more than sixty (60) days, after receipt of an order from a dealer having a franchise for the retail sale of any new vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts, or accessories to new vehicles as are covered by ~~the [such]~~ franchise, if ~~the [such]~~ vehicle, parts, or accessories are publicly advertised as being available for delivery or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who had placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be prima facie evidence of a delayed delivery of, or refusal to

deliver, a new motor vehicle to a motor vehicle dealer within sixty (60) days, without cause. This section is not violated, however, if ~~the[such]~~ failure is caused by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative.

- (b) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the relevant market areas.
- (c) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business. There shall **not** be ~~a[no]~~ transfer or assignment of the dealer's franchise without the consent of the manufacturer or distributor, which consent shall not be unreasonably withheld.
- (d) To obtain money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and ~~the[such]~~ other person, other than for compensation for services rendered, unless ~~the[such]~~ benefit is promptly accounted for, and transmitted to, the dealer, excluding any entity engaged primarily in providing financing or insurance on motor vehicles.
- (e) To increase prices of motor vehicles which the dealer had ordered for private retail customers prior to the dealer's receipt of the written official price increase notification, a sales contract signed by a private retail consumer shall constitute evidence of each ~~such~~ order, provided that the vehicle is in fact delivered to the customer. In the event of manufacturer price reductions, the amount of ~~a[any such]~~ reduction received by a dealer shall be passed on to the private retail consumer by the dealer, if the retail price was negotiated on the basis of the previous higher price to the dealer. Price reductions shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price differences applicable to new model or series motor vehicles at the time of the introduction of new models or series shall not be considered a price increase or price decrease. Price changes caused by the following shall not be subject to the provisions of this section:
  1. The addition to a motor vehicle of required or optional equipment pursuant to state or federal law;
  2. Revaluation of the United States dollar, in the case of foreign-make vehicles or components;
  3. Increased transportation charges due to an increase in the rate charged by common carrier or transporter.
- (f) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the state or any political subdivision thereof, without making the same offer, upon written request, to all other dealers in the same line make within the relevant market area.
- (g) To release to any outside party, except under subpoena, any administrative, judicial or arbitration proceedings, or any business, financial, or personal information which may be, from time to time, provided by the dealer to the manufacturer, without the express written consent of the dealer.
- (h) To deny any dealer the right of free association with any other dealer for any lawful purpose.
- (i) ***To establish or maintain a relationship, on the part of a manufacturer, distributor, factory branch, or factory representative, where the voting rights exceed a simple majority.***
- (j) ***To own, operate, or control any motor vehicle dealership in the Commonwealth; however, this subsection shall not prohibit:***
  1. ***The operation by any manufacturer of a dealership for a temporary period, not to exceed one (1) year, during the transition from one (1) owner to another;***
  2. ***The ownership or control of a dealership by a manufacturer while the dealership is being sold under a bona fide contract or purchase option to the operator of the dealership; or***
  3. ***The ownership, operation, or control of a dealership by a manufacturer if the licensor determines after a hearing at the request of any party, that there is not a dealer who is independent of the manufacturer available in the community or trade area to own and operate the franchise in a manner consistent with the public interest.***

- (k) To compete without good faith with a new motor vehicle dealer in the same line make, operating under an agreement or franchise from the aforementioned manufacturer, distributor, factory branch, or factory representative in the relevant market area. A manufacturer, distributor, factory branch, or factory representative shall not, however, be deemed to be competing when operating a dealership, either temporarily for a reasonable period, ***not to exceed one (1) year***, or in a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment, subject to loss in the dealership, and can reasonably expect to acquire full ownership of such dealership on reasonable terms and conditions.
  - ~~(l)(4)~~ To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursement or authority granted its new motor vehicle dealers to make warranty adjustment with retail customers.
  - ~~(m)(4)~~ To fail to give consent to the sale, transfer, or exchange of the franchise to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state; provided that consent may be withheld when in light of other circumstances, granting the consent would be unreasonable.
  - ~~(n)(4)~~ To fail to be licensed as provided in this chapter, and to maintain a bond in an amount as determined by this chapter.
- (3) ***It shall be unlawful for a manufacturer, either directly or indirectly, or in combination with or through any subsidiary or affiliated entity, to discriminate in favor of one (1) dealer against another dealer holding a franchise for the same line make of motor vehicle by furnishing to only one (1) dealer any of the following:***
- (a) ***Any vehicle, part, or other product that is not available to each dealer at the same price, including discounts, rebates, incentives, or other payments or allowances affecting the net price of the product;***
  - (b) ***Any vehicle, part, or other product that is not made available to each dealer in quantities proportionate to the demand for the vehicle, part, or other product;***
  - (c) ***Any vehicle, part, or other product that is not made available to each dealer on comparable delivery terms, including time of delivery after placement of an order;***
  - (d) ***Any promotional or advertising payment or allowance that is not made available to each dealer on proportionally equal terms;***
  - (e) ***Any opportunity to purchase or lease from the manufacturer the dealer's facility that is not made available to each dealer on terms proportionate to the respective values of its facilities;***
  - (f) ***Any personnel training that is not made available to each dealer on proportionally equal terms;***
  - (g) ***Any inventory or other financing that is not made available to each dealer on proportionally equal terms, except that a manufacturer, subsidiary, or affiliated entity shall not be obligated to make available financing to a dealer who does not meet reasonable credit standards uniformly applied by the manufacturer, subsidiary, or affiliated entity;***
  - (h) ***Any opportunity to perform work for which the dealer is entitled to be compensated under this chapter that is not made available to each dealer under uniformly applied standards;***
  - (i) ***Any opportunity to sell products or services distributed by the manufacturer for resale in connection with the line make of the motor vehicle covered by the franchise that is not made available to each dealer on proportionally equal terms;***
  - (j) ***Any opportunity to establish an additional sales, service, or parts outlet that is not made available to each dealer in whose relevant market area the sales, service, or parts outlet will be located;***
  - (k) ***Any information concerning the manufacturer's products, prices or other terms of sale, or promotional programs that is not contemporaneously furnished to the dealer;***
  - (l) ***Any improvement to, or payment to the dealer for an improvement to, the dealer's facilities that is not made available to each dealer on proportionally equal terms;***
  - (m) ***Any opportunity to sell or assign retail installment contracts or consumer leases to the manufacturer or the manufacturer's sales finance company subsidiary that is not made available to each dealer on proportionally equal terms, except that a manufacturer or sales finance company shall not be***

*obligated to purchase any retail installment contract or consumer lease that does not meet reasonable credit terms uniformly applied by the manufacturer or sales finance company subsidiary;*

- (n) Any product assistance, service, or facility in connection with the franchise that is not made available to each dealer on proportionally equal terms; or*
  - (o) Any payment for any service or facility in connection with the franchise that is not made available to each dealer on proportionally equal terms.*
- (4) It shall not be a defense to an alleged violation of subsection (3) of this section, that an item or opportunity was offered to a dealer if the offer was conditioned upon the dealer meeting one (1) or more requirements that are not reasonable and necessary to fulfill the dealer's obligations under the franchise. The manufacturer shall have the burden of proving that any requirement upon which an offer was conditioned was reasonable and necessary to fulfill the dealer's obligations under the franchise when the offer was made. A requirement shall not be found to be reasonable and necessary to fulfill the dealer's obligations under the franchise if the manufacturer cannot prove that it was within the control of each dealer to meet the requirement imposed on the dealer as a condition of the offer.*
- (5) A dealer who alleges a good faith belief that the dealer has been, or is being, discriminated against in violation of subsection (3) of this section, may demand in writing that the manufacturer furnish the dealer with pertinent information reasonably necessary for the dealer to determine if discrimination exists. If the manufacturer fails to furnish the dealer with the information demanded within thirty (30) days of the manufacturer's receipt of the dealer's written demand, the manufacturer shall have, in any subsequent legal proceeding, the burden of proving that the alleged violation has not occurred.*
- (6) Any dealer who is discriminated against by a manufacturer in violation of subsection (3) of this section shall recover three (3) times an amount equal to the value of what the dealer would have received if the manufacturer had complied with subsection (3) of this section upon furnishing any item or opportunity to another dealer.*

Section 7. KRS 186A.540 is amended to read as follows:

An individual or a dealer required to be licensed pursuant to KRS Chapter 190 shall disclose all damages to a motor vehicle which result in repairs or repair estimates that exceed ***one thousand dollars (\$1,000)***~~*three hundred dollars (\$300)*~~ and that occur while the motor vehicle is in his possession and prior to delivery to a purchaser. Disclosure shall be in writing and shall require the purchaser's signature acknowledging the disclosure of damages.

Section 8. Whereas motor vehicle dealers across the Commonwealth have legitimate concerns that manufacturers will move swiftly to retaliate against motor vehicle dealers before the provisions of this Act could become effective, an emergency is declared to exist, and this Act shall take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved February 22, 2000**

## CHAPTER 24

**(HB 257)**

AN ACT changing the classification of the City of Union, in Boone County.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Union, in Boone County, is such as to justify its being classified as a city of the fifth class;

NOW, THEREFORE,

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

Section 1. The City of Union, in Boone County, is transferred from the sixth to the fifth class of cities.

**Approved February 22, 2000**

## CHAPTER 25

## (HB 312)

AN ACT relating to emergency medical technicians.

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

Section 1. KRS 211.964 is amended to read as follows:

- (1) The Cabinet for Health Services shall promulgate administrative regulations relating to emergency medical technicians. The regulations may include the classification and certification of emergency medical technicians, instructors, instructor-trainers, and students and trainees; examinations; standards of training and experience; curricula standards; issuance, renewal, suspension, denial, revocation, probation, and restriction of certificates; hearing of appeals; and other reasonable standards or regulations as may be necessary for the protection of public health and safety in the delivery of emergency medical services. Any administrative hearing conducted under authority of this section shall be conducted in accordance with KRS Chapter 13B. No additional testing or examinations shall be required for recertification, except for proficiency testing of new skills or knowledge, or areas in which there is documented evidence of deterioration of skills.
- (2) Recertification programs shall be organized to include continuing education and in-service training approved by the cabinet. The continuing education program shall be subject to the requirements of KRS 214.610(1).
- (3) ***On or after the effective date of this Act, a new emergency medical technician shall, for initial certification, be certified using the requirements and testing established by the National Registry of Emergency Medical Technicians.***
- (4) ***On or after the effective date of this Act, a certified emergency medical technician who seeks recertification shall recertify under the requirements established and maintained by the cabinet. These requirements shall contain a minimum of sixteen (16) hours of required topics and eight (8) hours of elective topics over a two (2) year recertification period. The cabinet shall also recertify any emergency medical technician who chooses to recertify under the requirements established by the National Registry of Emergency Medical Technicians in lieu of the standards established by the cabinet.***~~In lieu of the continuing education and in-service training requirement specified by the cabinet for recertification, an emergency medical technician, certified as of July 15, 1996, or within one (1) year of July 15, 1996, may elect to recertify utilizing the continuing education and in-service training required by the National Registry of Emergency Medical Technicians or its successor organization. Upon successful completion of the National Registry recertification requirements, the emergency medical technician shall be recertified for the period of time specified by law.~~
- ~~(4) Emergency medical technicians certifying later than one (1) year after July 15, 1996, shall, in lieu of the certification requirements specified by the cabinet under subsection (1) of this section, successfully complete the National Registry of Emergency Medical Technicians final examination for certification and shall maintain National Registry of Emergency Medical Technicians credentials in order to be recertified.~~
- ~~(5) A person who has chosen to recertify as an emergency medical technician utilizing the National Registry of Emergency Medical Technicians or its successor organization's requirements shall not be permitted to recertify utilizing the cabinet's requirements, unless the National Registry of Emergency Medical Technicians and its successor organization ceases business or there is no successor organization.~~
- ~~(5)~~~~(6)~~ Other than the requirements of KRS 214.610(1), the cabinet shall not require any additional course work, in-service training, testing, or examinations of a person who chooses the National Registry of Emergency Medical Technicians or its successor organization for certification or recertification as an emergency medical technician.
- ~~(6)~~~~(7)~~ Other than the requirements of KRS 214.610(1), any person certified by the State Board of Medical Licensure as a paramedic shall be certified as an emergency medical technician by the cabinet. The certification shall be issued without fee, without additional training, in-service training, testing, or examination. The emergency medical technician certification shall be issued and expire at the same time that paramedic certification is issued or expires, and if a paramedic voluntarily gives up his certification prior to the expiration of his paramedic certification, his emergency medical technician certification shall be unaffected thereby. If a paramedic chooses not to recertify as a paramedic but chooses to retain his emergency medical technician



certification, the paramedic shall, prior to the expiration of his paramedic certification, recertify as an emergency medical technician utilizing one (1) of the methods provided for in this section.

- (7)(8) A paramedic whose certification as a paramedic is suspended, revoked, or denied by the State Board of Medical Licensure shall have the same action taken automatically by the cabinet with regard to his emergency medical technician certification.

**Approved February 24, 2000**

## CHAPTER 26

**(HB 98)**

AN ACT relating to reorganization.

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

Section 1. KRS 11.182 is amended to read as follows:

- (1) The membership of the commission shall consist of **forty-eight (48)**~~forty-five (45)~~ members who have the resources to accomplish the goals set forth in Kentucky's Appalachian Development Plan created under KRS 11.180(1).
  - (a) Ex-officio members shall be: the Governor; secretary of the Governor's Executive Cabinet; secretary of the Cabinet for Economic Development; secretary of the Transportation Cabinet; secretary of the Natural Resources and Environmental Protection Cabinet; secretary of the Tourism Development Cabinet; secretary of the Cabinet for Families and Children; secretary of the Cabinet for Health Services; secretary of the Cabinet for Workforce Development; secretary of the Education, Arts, and Humanities Cabinet; commissioner of the Department of Agriculture; ***president of the Council on Postsecondary Education; president of the Kentucky Community and Technical College System;*** commissioner of the Department of Education; commissioner of the Department for Local Government; executive director of the Kentucky Housing Corporation; Governor's alternate to the Appalachian Regional Commission; president of Morehead State University; executive director of the University of Kentucky Appalachian Center; director of the Center for Kentucky Rural Economic Development; state director of Rural Development of the United States Department of Agriculture; executive director of the East Kentucky Corporation; chair of the Kentucky Appalachian Advisory Council's steering committee; and two (2) vice chairs of the Kentucky Appalachian Advisory Council's Steering Committee.
  - (b) Members appointed by the Governor shall be:
    1. A county judge/executive, mayor, executive director of an area development district, president of a community college, member of the House of Representatives, member of the Senate, and member of the state's judicial branch, all of whom shall be currently serving in the Appalachian region of the Commonwealth. The members who are a representative, a senator, and a representative of the judicial branch shall serve in a nonvoting capacity;~~and~~
    2. Nine (9) at-large members; ***and***
    3. ***One (1) member representing the Community Action Agencies of Appalachian Kentucky.***
  - (c) Members appointed by and representing certain entities shall be: two (2) members of the Kentucky Appalachian Advisory Council; one (1) member of the University of Kentucky Office of Management and Budget; one (1) member from the Christian Appalachian Project; one (1) member appointed by the United States Representative from the Fifth Congressional District; and one (1) member appointed by the East Kentucky Leadership Foundation's board of directors.
- (2) Members listed in subsection (1)(a) and (b)1. of this section shall serve during their terms of office or appointment. Members listed in subsection (1)(b)2., ***(1)(b)3., and***~~subsection~~ (1)(c) of this section shall serve four (4) year staggered terms and may be reappointed.
- (3) Members of the commission who are not state employees shall receive reimbursement for actual and necessary expenses incurred in the performance of their duties.
- (4) Each member of the commission may designate in writing over his signature an alternate with full authority, in the absence of the designating member for any reason, to attend any properly convened meeting of the

commission and to participate in the consideration of any business and transactions of the commission. Any designation of an alternate may, in the discretion of the designating member, be limited to be effective only for a designated meeting or only for specified business. An alternate shall not be entitled to vote upon any business or transactions of the commission.

Section 2. The General Assembly confirms Executive Order 99-42, dated January 12, 1999, relating to increasing the membership of the Kentucky Appalachian Commission from forty-five (45) members to forty-eight (48) members, to the extent it is not otherwise confirmed by this Act.

**Approved February 25, 2000**

## **CHAPTER 27**

### **(HB 129)**

AN ACT relating to durable powers of attorney.

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

Section 1. KRS 386.093 is amended to read as follows:

- (1) As used in this section, "durable power of attorney" means a power of attorney by which a principal designates another as the principal's attorney in fact in writing and the writing contains the words, "This power of attorney shall not be affected by subsequent disability or incapacity of the principal, or lapse of time", or "This power of attorney shall become effective upon the disability or incapacity of the principal", or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument.
- (2) All acts done by an attorney in fact under a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal were competent and not disabled. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.
- (3) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal.
- (4) The disability or incapacity of the principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.
- (5) If the power of attorney is to become effective upon the disability or incapacity of the principal, the principal may specify the conditions under which the power is to become effective and may designate the person, persons, or institution responsible for making the determination of disability or incapacity. If the principal fails to so specify, the power shall become effective upon a written determination by two (2) physicians that the principal is unable, by reason of physical or mental disability, to prudently manage or care for the principal's person or property, which written determination shall be conclusive proof of the attorney in fact's power to act pursuant to the power of attorney. The two (2) physicians making the determination shall be licensed to practice medicine.
- (6) *Notwithstanding any provision of law to the contrary, a durable power of attorney may authorize an attorney in fact to make a gift of the principal's real or personal property to the attorney in fact or to others if the intent of the principal to do so is unambiguously stated on the face of the instrument.*

**Became law February 26, 2000, without Governor's signature**

**CHAPTER 28****(HB 160)**

AN ACT relating to the Department of Law.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

- (1) *The Financial Integrity Division is created in the Department of Law. The division shall:*
- (a) *Investigate illegal redemption of food stamp benefits in cooperation with the United States Department of Agriculture and the Cabinet for Families and Children;*
  - (b) *Verify eligibility of food stamp program applicants as to past criminal history;*
  - (c) *Investigate the illegal distribution of counterfeit merchandise; and*
  - (d) *Investigate the use of personal identification by persons for the purpose of theft, or fraud, or both theft and fraud, and other illegal or fraudulent activity which may involve electronic commerce.*
- (2) *The Office of the Attorney General shall coordinate with the Department of Financial Institutions, the United States Secret Service, the Kentucky Bankers' Association, and any other agency or organization to prepare and disseminate information to prevent identity theft.*

Section 2. KRS 15.010 is amended to read as follows:

- (1) The Attorney General is the head of the Department of Law.
- (2) The Department of Law shall include the following major organizational units:
  - (a) Criminal Appellate Division;
  - (b) Consumer Protection Division;
  - (c) Special Investigations Division;
  - (d) Special Prosecutions Division;
  - (e) Prosecutors Advisory Council Services Division;
  - (f) Medicaid Fraud and Abuse Control Division;
  - (g) Civil and Environmental Law Division;
  - (h) Victims Advocacy Division;
  - (i) Child Support Enforcement Commission;
  - (j) Administrative Hearings Division;
  - (k) Office of Rate Intervention;~~and~~
  - (l) Administrative Services Division; *and*
  - (m) *Financial Integrity Enforcement Division.*

Section 3. The General Assembly confirms Executive Order 98-04 issued by the Attorney General on October 1, 1998, to the extent that it is not otherwise confirmed by this Act.

**Became law February 26, 2000, without Governor's signature**

**CHAPTER 29****(HB 214)**

AN ACT relating to reorganization.

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

Section 1. KRS 154.12-222 is amended to read as follows:

- (1) There is created within the Cabinet for Economic Development the Department of Administration and Support. The department shall be headed by a commissioner appointed by the Governor pursuant to KRS 12.040. The department shall provide cabinet-wide support in fiscal management, information resources, personnel support, budgetary implementation and control, and research development.
- (2) The Department of Administration and Support shall include:
  - (a) ***The Office of***~~an~~ Information Resources ***to be headed by an executive director appointed in accordance with KRS 12.050;***~~Section~~ and
  - (b) The following divisions, each of which shall be headed by a director appointed by the secretary pursuant to KRS 12.050:
    - 1.~~(a)~~ The Division of Administrative Services, which shall be responsible for fiscal management, personnel, and payroll functions; and
    - 2.~~(b)~~ The Division of Research, which shall be responsible for general research, economic development library, map sales, and community brochures activities.

Section 2. The General Assembly confirms Resolution 98-1 of the Kentucky Economic Development Partnership, dated April 29, 1998, relating to the reorganization of the Cabinet for Economic Development, to the extent it is not otherwise confirmed by this Act, this Resolution having been made by the Kentucky Economic Development Partnership under the powers and authorities granted to the partnership by KRS 154.010, 154.030, and 12.028. The Resolution abolishes the Information Resources Section within the cabinet's Department of Administration and Support and creates the Office of Information Resources (OIR) within that same Department. All personnel, equipment, files and funding of the Information Resources Section shall be transferred to the newly created OIR and the Secretary is authorized to create such new positions or transfer any additional personnel necessary to effectuate the implementation of this executive order.

**Approved February 25, 2000**

## **CHAPTER 30**

### **(HB 164)**

AN ACT relating to compensation for returning fugitives from justice.

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

Section 1. KRS 440.090 is amended to read as follows:

When the Governor of this state makes requisition upon the Governor of another state for a fugitive from justice, the person named in the requisition as the agent of this state shall, unless a different condition is contained in his commission, be allowed as compensation from the State Treasury for his services a mileage allowance at the same rate fixed by regulations adopted by the secretary of the Finance and Administration Cabinet pursuant to KRS 44.060, plus an additional sum calculated at the rate of five cents (\$0.05) per mile for the distance he travels to and from the jail of the county designated in the proclamation to the place where the fugitive is arrested, and any other necessary expenses he pays in reclaiming and returning the fugitive. ***If, in attempting to reclaim the fugitive, the agent is acting within the course and scope of his employment, the amount due shall be paid over to the agent's employer instead of the agent.*** When a fugitive is to be returned to this state from a location out of state which is in excess of five hundred (500) miles from the jail to which he is to be returned, commercial air transportation may be utilized in lieu of ground transportation, unless the agent undertaking the transportation decides to utilize ground transportation. Payment for air transportation shall be in lieu of the mileage payment for ground transportation only for that portion of the journey for which air transportation is used. Ground transportation and other expenses shall be paid as authorized herein. If the agent is not given possession of the fugitive for reasons beyond the agent's control, he, ***or his employer,*** shall nevertheless be allowed the compensation prescribed by this section. Upon the return of the fugitive to the county in which the jail named in the proclamation is located, the person having him in charge shall go before a judge, who shall issue a mittimus to the jailer to receive the prisoner and keep him until he is discharged.

Section 2. KRS 440.380 is amended to read as follows:

- (1) When a person charged with commission of a felony in this state or with having been convicted of a felony here and having escaped from confinement or broken the terms of his bail, probation or parole is arrested in another state and waives extradition proceedings, the county judge/executive of the county in which the felony was committed, or from which the escape was made, may, upon filing of a verified application by the Commonwealth's attorney or county attorney setting forth the fact of waiver and making all statements required by subsection (1) or subsection (2) of KRS 440.370, enter an order designating an officer to return the fugitive to this state without benefit of any procedure incidental to extradition proceedings. Upon entry of such order the officer so designated shall be authorized to go after and return the fugitive as the agent of this state and shall receive from the State Treasury the same payment for his expenses as is provided by KRS 440.090 for agents acting under requisition of the Governor. ***If, in attempting to reclaim the fugitive, the agent is acting within the course and scope of his employment, the amount due shall be paid over to the agent's employer instead of the agent.*** Claims for reimbursement of expenses under this subsection shall be accompanied by certified copies of the verified application for appointment of the agent and the order of appointment, together with a copy of any process showing delivery of the fugitive to the jailer upon return to this state. If the agent is not given possession of the fugitive for reasons beyond the agent's control, he, ***or his employer,*** shall nevertheless be reimbursed as provided herein, if it is shown that prior to his appointment as agent and before departure from the state the fugitive had executed in the presence of any officer authorized to administer an oath a written waiver stating that he consents to return to this state without extradition.
- (2) All legal costs incurred in apprehending and securing in this state a fugitive wanted in another state shall be paid by the agent of the state demanding him before the agent is permitted to remove him or receive him into custody.

**Approved February 25, 2000**

## CHAPTER 31

**(HB 215)**

AN ACT relating to reorganization.

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

Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.
  - (c) Registry of Election Finance.
4. Department of Law.
  - (a) Attorney General.
5. Department of the Treasury.
  - (a) Treasurer.

6. Department of Agriculture.
    - (a) Commissioner of Agriculture.
    - (b) Kentucky Council on Agriculture.
  7. Superintendent of Public Instruction.
  8. Auditor of Public Accounts.
  9. Railroad Commission.
- II. Program cabinets headed by appointed officers:
1. Justice Cabinet:
    - (a) Department of State Police.
    - (b) Department of Criminal Justice Training.
    - (c) Department of Corrections.
    - (d) Department of Juvenile Justice.
    - (e) Office of the Secretary.
    - (f) Offices of the Deputy Secretaries.
    - (g) Office of General Counsel.
    - (h) Division of Kentucky State Medical Examiners Office.
    - (i) Parole Board.
    - (j) Kentucky State Corrections Commission.
    - (k) Commission on Correction and Community Service.
  2. Education, Arts, and Humanities Cabinet:
    - (a) Department of Education.
      - (1) Kentucky Board of Education.
      - (2) Education Professional Standards Board.
    - (b) Department for Libraries and Archives.
    - (c) Kentucky Arts Council.
    - (d) Kentucky Educational Television.
    - (e) Kentucky Historical Society.
    - (f) Kentucky Teachers' Retirement System Board of Trustees.
    - (g) Kentucky Center for the Arts.
    - (h) Kentucky Craft Marketing Program.
    - (i) Kentucky Commission on the Deaf and Hard of Hearing.
    - (j) Governor's Scholars Program.
    - (k) Governor's School for the Arts.
    - (l) Operations and Development Office.
    - (m) Kentucky Heritage Council.
    - (n) Kentucky African-American Heritage Commission.
    - (o) Board of Directors for the Center for School Safety.
  3. Natural Resources and Environmental Protection Cabinet:

- (a) Environmental Quality Commission.
  - (b) Kentucky Nature Preserves Commission.
  - (c) Department for Environmental Protection.
  - (d) Department for Natural Resources.
  - (e) Department for Surface Mining Reclamation and Enforcement.
  - (f) Office of Legal Services.
  - (g) Office of Information Services.
4. Transportation Cabinet:
- (a) Department of Highways.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Administrative Services.
  - (d) Department of Fiscal Management.
  - (e) Department of Rural and Municipal Aid.
  - (f) Office of General Counsel.
  - (g) Office of Public Affairs.
  - (h) Office of Personnel Management.
  - (i) Office of Minority Affairs.
  - (j) Office of Environmental Affairs.
  - (k) Office of Policy and Budget.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
  - (b) Department *for Business*~~[of Job]~~ Development.
  - (c) Department of Financial Incentives.
  - (d) Department of Community Development.
  - (e) Tobacco Research Board.
  - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.
  - (b) Department of Insurance.
  - (c) Department of Housing, Buildings and Construction.
  - (d) Department of Financial Institutions.
  - (e) Department of Mines and Minerals.
  - (f) Department of Public Advocacy.
  - (g) Department of Alcoholic Beverage Control.
  - (h) Kentucky Racing Commission.
  - (i) Board of Claims.
  - (j) Crime Victims Compensation Board.
  - (k) Kentucky Board of Tax Appeals.

- (l) Backside Improvement Commission.
- (m) Office of Petroleum Storage Tank Environmental Assurance Fund.
- 7. Cabinet for Families and Children:
  - (a) Department for Social Insurance.
  - (b) Department for Social Services.
  - (c) Public Assistance Appeals Board.
  - (d) Office of the Secretary.
  - (e) Office of the General Counsel.
  - (f) Office of Program Support.
  - (g) Office of Family Resource and Youth Services Centers.
  - (h) Office of Technology Services.
  - (i) Office of the Ombudsman.
  - (j) Office of Aging Services.
- 8. Cabinet for Health Services.
  - (a) Department for Public Health.
  - (b) Department for Medicaid Services.
  - (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission on Children with Special Health Care Needs.
  - (e) Office of Certificate of Need.
  - (f) Office of the Secretary.
  - (g) Office of the General Counsel.
  - (h) Office of Program Support.
  - (i) Office of the Inspector General.
- 9. Finance and Administration Cabinet:
  - (a) Office of Legal and Legislative Services.
  - (b) Office of Management and Budget.
  - (c) Office of Financial Management and Economic Analysis.
  - (d) Office of the Controller.
  - (e) Department for Administration.
  - (f) Department of Facilities Management.
  - (g) Department of Information Systems.
  - (h) State Property and Buildings Commission.
  - (i) Kentucky Pollution Abatement Authority.
  - (j) Kentucky Savings Bond Authority.
  - (k) Deferred Compensation Systems.
  - (l) Office of Equal Employment Opportunity Contract Compliance.
  - (m) Office of Capital Plaza Operations.
  - (n) County Officials Compensation Board.



- (o) Kentucky Employees Retirement Systems.
  - (p) Commonwealth Credit Union.
  - (q) State Investment Commission.
  - (r) Kentucky Housing Corporation.
  - (s) Governmental Services Center.
  - (t) Kentucky Local Correctional Facilities Construction Authority.
  - (u) Kentucky Turnpike Authority.
  - (v) Historic Properties Advisory Commission.
  - (w) Kentucky Kare Health Insurance Authority.
10. Labor Cabinet:
- (a) Department of Workplace Standards.
  - (b) Department of Workers' Claims.
  - (c) Kentucky Labor-Management Advisory Council.
  - (d) Occupational Safety and Health Standards Board.
  - (e) Prevailing Wage Review Board.
  - (f) Workers' Compensation Board.
  - (g) Kentucky Employees Insurance Association.
  - (h) Apprenticeship and Training Council.
  - (i) State Labor Relations Board.
  - (j) Kentucky Occupational Safety and Health Review Commission.
  - (k) Office of Administrative Services.
  - (l) Office of Labor-Management Relations and Mediation.
  - (m) Office of General Counsel.
  - (n) Workers' Compensation Funding Commission.
  - (o) Employers Mutual Insurance Authority.
11. Revenue Cabinet:
- (a) Department of Property Valuation.
  - (b) Department of Tax Administration.
  - (c) Office of Financial and Administrative Services.
  - (d) Department of Law.
  - (e) Department of Information Technology.
  - (f) Office of Taxpayer Ombudsman.
12. Tourism Development Cabinet:
- (a) Department of Travel.
  - (b) Department of Parks.
  - (c) Department of Fish and Wildlife Resources.
  - (d) Kentucky Horse Park Commission.
  - (e) State Fair Board.

- (f) Office of Administrative Services.
- (g) Office of General Counsel.
- 13. Cabinet for Workforce Development:
  - (a) Department for Adult Education and Literacy.
  - (b) Department for Technical Education.
  - (c) Department of Vocational Rehabilitation.
  - (d) Department for the Blind.
  - (e) Department for Employment Services.
  - (f) State Board for Adult and Technical Education.
  - (g) Governor's Council on Vocational Education.
  - (h) The State Board for Proprietary Education.
  - (i) The Foundation for Adult Education.
  - (j) The Kentucky Job Training Coordinating Council.
  - (k) Office of General Counsel.
  - (l) Office of Communication Services.
  - (m) Office of Development and Industry Relations.
  - (n) Office of Workforce Analysis and Research.
  - (o) Office for Administrative Services.
  - (p) Office for Policy and Budget.
  - (q) Office of Personnel Services.
  - (r) Unemployment Insurance Commission.
- 14. Personnel Cabinet:
  - (a) Office of Administrative and Legal Services.
  - (b) Department for Personnel Administration.
  - (c) Department for Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.
  - (e) Kentucky Kare.
  - (f) Division of Performance Management.
  - (g) Division of Employee Records.
  - (h) Division of Staffing Services.
  - (i) Division of Classification and Compensation.
  - (j) Division of Employee Benefits.
  - (k) Division of Communications and Recognition.
- III. Other departments headed by appointed officers:
  - 1. Department of Military Affairs.
  - 2. Council on Postsecondary Education.
    - (a) Kentucky Commission on Community Volunteerism and Service.
  - 3. Department for Local Government.

4. Kentucky Commission on Human Rights.
5. Kentucky Commission on Women.
6. Department of Veterans' Affairs.
7. Kentucky Commission on Military Affairs.
8. Office of the Chief Information Officer.

Section 2. KRS 154.12-225 is amended to read as follows:

- (1) There is created within the Cabinet for Economic Development the Department **for Business**~~of Job~~ Development. The department shall be headed by a commissioner appointed by the Governor pursuant to KRS 12.040. The department shall coordinate the recruitment of industries that will enhance the overall viability of Kentucky's economy.
- (2) The Department **for Business**~~of Job~~ Development shall include the following divisions, each of which shall be headed by a director appointed by the secretary pursuant to KRS 12.050:
  - (a) The Industrial Development Division; and
  - (b) The Site Evaluation Division.
- (3) Kentucky's representative development offices located in other states and countries shall be assigned to the Department **for Business**~~of Job~~ Development.

Section 3. The General Assembly confirms Resolution 99-1 of the Kentucky Economic Development partnership, dated April 1, 1999, relating to the reorganization of the Cabinet for Economic Development, to the extent it is not otherwise confirmed by this Act, this Resolution having been made by the Kentucky Economic Development partnership under the powers and authorities granted to the partnership by KRS 154.010, 154.030, and 12.028. This Resolution changes the name of the Department of Job Development within the Cabinet for Economic Development to the Department for Business Development. All personnel, equipment, files, and funding, as well as all duties, responsibilities, and obligations of the Department of Job Development shall remain in full force and effect and shall be a part of the newly named Department for Business Development.

**Approved February 25, 2000**

## CHAPTER 32

**(HB 232)**

AN ACT relating to unemployment insurance.

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

Section 1. KRS 341.540 is amended to read as follows:

- (1) Any employing unit which succeeds to or acquires the organization, trade, or business of a subject employer shall assume the resources and liabilities of the predecessor's reserve account, including interest, and shall continue the payment of all contributions and interest due under this chapter, except that the successor or acquirer shall not be required to assume the liability of any delinquent contributions and interest of a predecessor or predecessors unless the cabinet notifies the successor or acquirer of ~~the~~~~such~~ delinquency within six (6) months after the department has notice of the succession or acquisition.
- (2) The liability for delinquent contributions and interest imposed upon the successor or acquirer by subsection (1) of this section shall be secondary to the liability of the predecessor or predecessors, and if the delinquency has been reduced to judgment, the order of execution on ~~the~~~~such~~ judgment shall be as follows:
  - (a) Against the assets, both real and personal, of the predecessor or predecessors;
  - (b) Against the assets, both real and personal, of the business acquired; and
  - (c) Against the assets, both real and personal, of the successor or acquirer.
- (3) Notwithstanding the provisions of subsection (1), any employing unit which succeeds to or acquires a segregable and identifiable portion of the organization, trade, or business from a subject employer, and who is, or by reason of ~~the~~~~such~~ succession or acquisition becomes, a subject employer, shall assume the position of

~~an[such]~~ employer with respect to the resources and liabilities of ~~the[such]~~ reserve account in proportion to the percentage of the payroll or employees assignable to the transferred portion. ***In calculating the transferred portion, the secretary shall utilize the last four (4) calendar quarters, preceding the date of succession or acquisition, for workers employed by the successor subsequent to that date.*** ~~[as determined by the secretary, and]~~ The taxable payroll, benefit charges and the potential benefit charges shall likewise be assumed by the successors or acquirers in interest in a like proportion.

- (4) (a) The contribution rate of a successor or acquirer employing unit, whether in whole or in part, which was a subject employer prior to such succession or acquisition, shall not be affected by the transfer of the reserve account for the remainder of the rate year in which such succession or acquisition occurred.
- (b) The contribution rate of a successor or acquirer employing unit, either in whole or in part, which was not a subject employer prior to such succession or acquisition, shall be, for the calendar year in which such succession or acquisition occurred, the same rate as that of its predecessor.
- (c) The contribution rate for a successor or acquirer employing unit, which was not a subject employer prior to the simultaneous succession to or acquisition of two (2) or more predecessor reserve accounts, either in whole or in part, shall be the rate determined in accordance with the provisions of KRS 341.270, by combining the reserve accounts succeeded to or acquired as they existed as of the computation date for determining rates for the calendar year in which such succession or acquisition occurred.
- (d) The contribution rate of a successor or acquirer employing unit which succeeds to or acquires, either in whole or in part, a predecessor's reserve account after a computation date but prior to the beginning of the calendar year immediately following such computation date shall be the rate determined, in accordance with KRS 341.270, by effecting the transfer of such reserve account as of the computation date immediately preceding the date of such succession or acquisition.

**Approved February 25, 2000**

## CHAPTER 33

### (HB 242)

AN ACT relating to reorganization.

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

Section 1. KRS 151B.030 is amended to read as follows:

The Department for Technical Education shall be divided according to the following organizational structure:

- (1) The commissioner of the Department for Technical Education shall appoint a deputy commissioner for technical education pursuant to KRS 12.050, who shall serve as secretary to the State Board for Adult and Technical Education.
- (2) There is hereby created a Division of Administrative Services within the Department for Technical Education. The division shall be headed by a director appointed by the commissioner of the Department for Technical Education. The division shall be composed of organizational entities as deemed appropriate by the commissioner of the Department for Technical Education as set forth by administrative order.
- (3) There is hereby created ***a Division of School Services within the Department for Technical Education. The Division of School Services shall be headed by a director appointed by the commissioner of the Department for Technical Education under KRS 12.050. The Division of School Services shall be composed of such organizational entities as deemed appropriate by the Secretary of the Cabinet for Workforce Development as set forth by administrative order*** ~~an Office of Area Vocational Education and Technology Centers within the Department for Technical Education. The office shall be headed by an office head appointed by the commissioner of the Department for Technical Education pursuant to KRS 12.050. The office head shall be an individual with a background in school administration and supervision and shall be otherwise reasonably qualified to carry out the duties of the office. The office shall be comprised of the system of state operated secondary area vocational education and technology centers. The office shall be composed of the Division of School Management, the Division of Curriculum Services, an Ombudsman, and an assistant for budget analysis. Each division shall be headed by a director appointed by the commissioner of the Department for~~

~~Technical Education and shall be composed of such organizational entities as deemed appropriate by the commissioner of the Department for Technical Education as set forth by administrative order].~~

**(4) The commissioner shall appoint an Ombudsman, and specify his functions and duties.**

Section 2. The General Assembly confirms Executive Order 98-1595, dated December 3, 1998, as amended by Executive Order 99-1597, dated December 3, 1999, to the extent that it is not otherwise confirmed by this Act.

**Approved February 25, 2000**

## CHAPTER 34

### (HB 266)

AN ACT relating to personal telecommunications devices in public schools.

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

Section 1. KRS 158.165 is amended to read as follows:

- (1) ~~[A student in a public school shall not possess a paging device while on school property or while attending a school sponsored or school-related activity on or off school property unless the student is in attendance in the capacity of an active member of a volunteer firefighting organization or a volunteer emergency medical services organization.~~
- ~~(2)~~ **The board of *education of* each school district shall *develop a policy regarding the possession and use of a personal telecommunications device by a student while on school property or while attending a school-sponsored or school-related activity on or off school property, and shall* include the *policy* ~~[prohibition in subsection (1) of this section]~~ in the district's written standards of student conduct. A student who violates the *policy* ~~[prohibition]~~ shall be subject to discipline as provided by board policy ~~[consistent with this section]~~.**
- ~~(2)~~ **(3) A person who discovers a student in possession of a paging device in violation of this section shall report the violation to the appropriate school administrator, as determined by school policy, who shall order a peace officer or appropriate school employee to confiscate the device, which is forfeited to the school district.**
- ~~(4)~~ **In this section, "*personal telecommunications device*" ~~["paging device"]~~ means a ~~[telecommunications]~~ device that emits an audible signal, vibrates, displays a message, or otherwise summons or delivers a communication to the possessor, *including but not limited to a paging device and a cellular telephone*.**

**Approved February 25, 2000**

## CHAPTER 35

### (HB 357)

AN ACT relating to fish and wildlife.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO READ AS FOLLOWS:

***In addition to the game permits issued under Section 3 of this Act, the commission may issue a special permit to an incorporated nonprofit wildlife conservation organization. In a license year, no more than two (2) special permits may be issued per species for which a game permit is required. An organization that receives a special permit issued under this section may sell and transfer the permit if all proceeds of the sale are used in Kentucky for wildlife management.***

SECTION 2. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO READ AS FOLLOWS:

- (1) In this section "*recreational activity*" means hunting, fishing, or trapping for sport.**
- (2) For a special department-sponsored event or program involving a recreational activity, the commission may waive the requirement that participants hold licenses required under this chapter if the commission finds that:**

- (a) *The special event or program will provide education in or appreciation of the recreational activity; and*
  - (b) *The waiver of the license requirement will not result in a substantial loss of revenue to the department.*
- (3) *The department shall, for one (1) weekend each year, suspend enforcement of the requirement that persons fishing in the waters of the Commonwealth buy and hold a license.*

Section 3. KRS 150.175 is amended to read as follows:

- (1) The kinds of licenses and tags authorized by this chapter, and the acts authorized to be performed under the licenses and tags, subject to the other provisions of this chapter and subject to administrative regulations promulgated under this chapter, shall be as follows:
- (a) Statewide resident sport fishing license, which authorizes the holder to take fishes by angling, or take crayfish by a minnow seine, or by hand, to take minnows by the use of a minnow seine, minnow trap, or dip net, or to take fishes by grabbing, gigging, snagging, snaring, jugging, and bow and arrow, and to take frogs and turtles from any waters in any county of this state open for such purposes and subject to the limitations in this chapter and additional limitations that the department may from time to time prescribe. This license shall not authorize the holder to sell fish;
  - (b) A short-term sport fishing license, which may be issued only to a nonresident and which authorizes the holder to perform all acts authorized by a statewide sport fishing license and subject to the same limitations or prescribed administrative regulations. This license shall not authorize the holder to sell fish;
  - (c) A resident commercial fishing license and a nonresident commercial fishing license, which authorize a holder to perform any act authorized by a sport fishing license and to take rough fishes from the waters of the state by the use of commercial fishing gear as prescribed by administrative regulation. The license shall also authorize the holder to sell rough fishes, other than those protected by administrative regulation;
  - (d) A commercial fishing gear tag, which shall be attached to each piece of commercial fishing gear including hoop nets, slat traps, trotline, wing nets, and to each one hundred (100) feet of linear gear or portion thereof in use, including commercial seines, gill nets, or trammel nets. Commercial gear tags may be issued only to a person holding a resident or nonresident commercial fishing license;
  - (e) Live fish and bait dealer's licenses, resident and nonresident, which authorize the holder to sell bait and live fish as may be prescribed by administrative regulation;
  - (f) Musseling licenses, resident and nonresident, which authorize the holder to take mussels for commercial purposes as may be prescribed by administrative regulation;
  - (g) A statewide resident hunting license, which authorizes the holder to take or pursue wild animals, wild birds, frogs, and turtles with gun, bow and arrow, dog, or falcon, or to participate in a fox-hunting party engaged in the hunting or pursuing of foxes with dogs for sport, according to the provisions of the laws and administrative regulations of the department;
  - (h) A junior statewide hunting license, which may be issued to a person before he has reached his sixteenth birthday, and which authorizes the holder to exercise all the privileges authorized by a statewide hunting license. No junior hunting license shall be issued without the written permission of parent, guardian, or person having custody of the person under sixteen (16) years of age;
  - (i) Trapping licenses, resident and nonresident, which authorize the holder to take wild animals by trapping upon his own lands or upon the lands of another person, if the holder of the license shall have first obtained a written consent as provided in KRS 150.092;
  - (j) Taxidermist licenses, commercial and noncommercial, which authorize the holder to engage in the act of preparing, stuffing, and mounting the skins of wildlife;
  - (k) A commercial guide's license, which authorizes the holder to guide hunting and fishing parties according to the provisions of the laws and administrative regulations of the department;
  - (l) Fur buyer's licenses, resident and nonresident, which authorize the holder to buy raw furs from licensed trappers and hunters and to sell raw furs so purchased. Applicants for the license shall state the number

of premises to be used and shall display at each a copy of the license as furnished by the department, except that the commissioner may limit the number of copies furnished and may revoke the license for violation;

- (m) A fur processor's license, which may be issued only to a resident, a partnership, firm, or corporation of this state and which authorizes the holder to buy raw furs when in legal possession for processing, manufacture, or retention in cold storage or for resale;
- (n) A nonresident sport fishing license, which authorizes the holder to perform any act authorized by a resident statewide sport fishing license. This license shall not authorize the holder to sell fish;
- (o) A nonresident annual hunting license, which authorizes the holder to perform any act authorized by a resident statewide hunting license;
- (p) Shoot-to-retrieve field trial permits, four (4) day and single day, which authorize a permit holder to conduct a shoot-to-retrieve field trial on private or government-owned lands. With a four (4) day permit, all participants, whether residents or nonresidents, shall not be required to possess any other license to participate in the permitted field trial, and the permit shall expire four (4) days after the date on which the field trial began. With the single day permit, the permit is valid for one (1) day and all participants shall have a valid resident or nonresident annual Kentucky hunting license. A permit is not required to conduct a shoot-to-retrieve field trial on a licensed shooting preserve; however, all participants that take or attempt to take game shall have in their possession a resident or nonresident annual Kentucky hunting license or a nonresident shooting preserve license;
- (q) A special license to nonresidents for the purpose of hunting on licensed hunting preserves. This license shall be good only for the preserve for which it was issued and shall remain in effect only for one (1) year. These licenses shall be issued in ink by the preserve manager, and he shall ensure that each hunter is properly licensed before going into the field. When the hunter owns either a nonresident or resident statewide hunting license for the current year, the special license shall not be required. The commissioner, with the approval of the commission, may establish and regulate hunting preserves, either private or commercial;
- (r) ~~[-A big-]~~ Game *permits*~~[-permit]~~ and ~~[-a]~~ junior ~~[-big]~~ game *permits*~~[-permit]~~, which, in combination with a valid statewide hunting license or a valid junior statewide hunting license, authorize the holder to take or pursue *the specified game species*~~[-deer, bear, or wild turkey,]~~ in any designated open area of this state, during the open season and according to the provisions of the laws and administrative regulations governing the hunting;
- (s) A combination hunting and fishing license, which authorizes only resident holders to perform all acts valid under either a sport fishing or hunting license;
- (t) A trout permit, which in combination with a valid statewide fishing license, authorizes the holder to take trout by angling or as may be prescribed by administrative regulation;
- (u) A commercial waterfowl permit, which authorizes the holder to establish and operate a commercial waterfowl hunting preserve;
- (v) A short-term hunting license, which may be issued only to a nonresident and which authorizes the holder to perform all acts authorized by a statewide hunting license~~[-, except for hunting big game species for which an annual nonresident hunting license shall be required, and]~~ according to the provisions of the laws and administrative regulations of the department;
- (w) A joint statewide resident sport fishing license issued to a husband and wife which authorizes them to take fish as provided in subsection (1) of this section. The license fee for this joint license shall be ten percent (10%) less than the license fee set by the commission for two (2) statewide resident sport fishing licenses;
- (x) A Kentucky waterfowl permit, which in combination with a valid statewide hunting license and compliance with applicable federal law, authorizes the holder to take or pursue waterfowl and migratory shore or upland game birds;
- (y) A pay lake license which authorizes the holder to operate privately owned impounded waters for fishing purposes for which a fee is charged;

- (z) A migratory game bird permit, which, in combination with a statewide hunting license and compliance with applicable federal law, allows the holder to take migratory shore or upland game birds;~~and~~
- (aa) A senior/disabled combination hunting and fishing license, which authorizes the holder to perform all acts valid under a sport fishing license, a sport hunting license, or a state permit to take deer, turkey, trout, waterfowl, or migratory shore or upland game birds, and which shall be available to a Kentucky resident who is:
  1. Sixty-five (65) years of age or older; *or*
  2. An American veteran at least fifty percent (50%) disabled as a result of a service-connected disability; or
  3. Declared permanently and totally disabled by the Federal Social Security Administration, the Department of Workers' Claims, or its equivalent from another state, or the United States Railroad Retirement Board.

The senior/disabled combination license shall not be valid unless the holder carries proof of residency and proof of age or disability, as the department may require by administrative regulation, on his or her person while performing an act authorized by the license; *and*

- (bb) *A sportsman's license for residents that includes an annual hunting and fishing license and such permits as allowed by administrative regulations promulgated by the department.*

Section 4. KRS 150.300 is amended to read as follows:

- (1) No person shall, without first securing the permission of the commissioner, enter upon the premises of a propagation farm, game farm or game refuge or fish hatchery and take wildlife; or, without the consent of the property owner, enter upon any pond and take wildlife or foul the waters of any pond or farm with a substance injurious to life or growth of wildlife, or break or destroy any dam, reservoir or embankment or divert the waters or otherwise willfully damage the farm or pond.~~[No person, except bona fide employees in line of duty, shall go upon the premises of any propagation farm, state game farm, or game refuge or fish hatchery accompanied by a dog of any type or description or while carrying firearms upon or about his person.]~~
- (2) It is unlawful for any person to mar, deface, destroy or in any wise damage, or attempt to mar, deface, destroy or damage any sign or posted notice upon any game farm, game or wildlife refuge or fish hatchery in the state.

Section 5. KRS 150.620 is amended to read as follows:

For the purpose of encouraging and developing public interest in wildlife and carrying out the policy of the Commonwealth of Kentucky under KRS Chapter 150, the Department of Fish and Wildlife Resources Commission, as a state agency, and based upon investigations and recommendations of the commission, is hereby authorized to acquire lands including any improvements thereon by purchase, condemnation or lease from the State Property and Buildings Commission or from others, and partly by any or all of such means, and to thereafter establish, improve, maintain and operate public shooting and fishing grounds and similar or related recreational facilities thereon, and for the purpose of paying the cost of any such purchase or condemnation and the maintenance and operation expenses may use and apply any funds available for that purpose. The payments under each such lease shall be deemed an administrative and operating expense of the department, and such payments may be secured by a pledge of and made from all or any part of the funds coming under the control of the department including the game and fish fund, as may be provided and specified in the lease. The commissioner, with the approval of the commission may sublease any lands and improvements thereon acquired under the provisions of this chapter for agricultural and for any purpose deemed by the commission to be incidental or beneficial to the maintenance and operation of the balance of said lands and improvements for the purpose herein stated. The commission may impose and enforce special regulations in the maintenance and operation of the facilities and lands acquired under the provisions of this section *or lands that are managed by the department under a cooperative agreement* and charge such rates as may be deemed fair and reasonable for the use of and participation of the public in the facilities and lands and lease payments aforesaid may be made a first charge on the income and revenues from the maintenance and operation of the facilities and lands and from the sublease of any portion thereof, to be supplemented with any other funds available for that purpose.

**Approved February 25, 2000**



**CHAPTER 36****(HB 56)**

AN ACT changing the classification of the city of Hollow Creek, in Jefferson County.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Hollow Creek, in Jefferson County, is such as to justify its being classified as a city of the fifth class;

NOW THEREFORE,

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

Section 1. The City of Hollow Creek, in Jefferson County, is transferred from the sixth to the fifth class of cities.

**Approved February 25, 2000**

**CHAPTER 37****(HB 90)**

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 99-324, dated March 11, 1999, which creates, abolishes, and renames several divisions within the Kentucky Employees Retirement System. The Division of Equity Assets and the Division of Fixed Assets are created and assume the functions of the Division of Investments, which is abolished. The Division of Employment Services, the Division of Retiree Services, the Division of Support Services, the Division of Membership Support, and the Division of Disabilities are created and assume the functions of the Division of Records and Employer Services and the Division of Employee Benefits, which are abolished. The Division of Data Processing is renamed the Division of Information Technology and its Imaging Branch is moved to the new Division of Support Services.

**Approved February 25, 2000**

**CHAPTER 38****(HB 109)**

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 99-1199, dated August 30, 1999, which creates the position of General Counsel within the Department for Local Government.

**Approved February 25, 2000**

**CHAPTER 39****(HB 137)**

AN ACT relating to the Kentucky Long-Term Policy Research Center.

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

Section 1. KRS 7B.030 is amended to read as follows:

- (1) The board of the Kentucky Long-Term Policy Research Center shall consist of twenty-one (21) members, including ten (10) members selected from state government and eleven (11) at-large members selected from the private and civic sectors, universities, and local governments.

- (a) State government members shall be appointed as follows:

1. Three (3) members of the House of Representatives and three (3) members of the Senate shall be appointed by the Legislative Research Commission; and
  2. Four (4) members from the executive branch shall be appointed by the Governor.
- (b) At-large members shall be appointed as follows:
1. Five (5) members shall be appointed by the Legislative Research Commission and confirmed by the House of Representatives and the Senate; and
  2. Six (6) members shall be appointed by the Governor and confirmed by the House of Representatives and the Senate;
  3. ~~Initial at-large appointees may serve prior to confirmation; thereafter, persons appointed to fill expired terms of at-large members shall be confirmed prior to assuming board membership, and board members with expiring terms shall serve until their replacements have been confirmed;~~
  4. ~~Persons appointed to fill vacancies in unexpired terms of at-large members~~ may serve prior to confirmation, but shall continue to serve only if confirmed at the next regular session, or special session if the matter is included in the call therefor of the General Assembly;
- ~~4.5.~~ The provisions of KRS 11.160 shall apply to Senate and House of Representatives confirmation of at-large members appointed by the Legislative Research Commission and the Governor.
- (2) Board members shall serve four (4) year terms, except initial appointments shall be for terms as follows:
- (a) The Legislative Research Commission shall initially appoint two (2) legislators for terms of two (2) years, two (2) legislators for terms of three (3) years and two (2) legislators for terms of four (4) years; and shall initially appoint one (1) at-large member for a two (2) year term, two (2) at-large members for three (3) year terms, and two (2) at-large members for four (4) year terms.
  - (b) The Governor shall initially appoint two (2) members from the executive branch for terms of two (2) years, one (1) for a three (3) year term, and one (1) for a four (4) year term, and shall initially appoint two (2) at-large members for terms of two (2) years, two (2) for three (3) year terms, and two (2) for four (4) year terms.
- (3) Members of the board shall meet the same age and state residency requirements as provided in Section 32 of the Kentucky Constitution for members of the House of Representatives, shall represent the cultural diversity of Kentucky, and shall have demonstrated an interest in the well-being and development of the Commonwealth.
- (4) The chair shall be elected annually by the board and shall alternate between the members selected from state government and the at-large members. If the chair is a member selected from state government, the vice chair shall be an at-large member, and if the chair is an at-large member, the vice chair shall be a member selected from state government.
- (5) Board members who miss three (3) consecutive meetings ~~may~~**shall** be ~~automatically~~ removed from the board **by a majority vote of the board at any regularly scheduled meeting in which a quorum is present.** ~~The position shall then be declared vacant and shall be filled in the same manner as it was originally appointed.~~
- (6) If vacancies are not filled by the original appointing authority within thirty (30) days of the occurrence of the vacancy, the board ~~may~~**shall** fill the vacancy.

**Approved February 25, 2000**

## CHAPTER 40

### (HB 205)

AN ACT relating to the Consumers' Advisory Council.

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

Section 1. KRS 367.130 is amended to read as follows:

- (1) The members of the Consumers' Advisory Council shall be sixteen (16) in number and shall be appointed by the Governor and shall include citizens of Kentucky generally knowledgeable in consumer affairs.
- (2) In addition to the members appointed by the Governor, the Attorney General shall be an ex officio member and shall serve as the chairman of the Consumers' Advisory Council.
- (3) The members of the council other than the Attorney General shall be appointed *or reappointed* by the Governor within sixty (60) days after July 1, 2000~~[1972]~~. Each member shall serve for a *three (3)*~~one (1)~~ year term, *except that of the members first appointed or reappointed after July 1, 2000, six (6) shall be appointed for a term of one (1) year, five (5) shall be appointed for a term of two (2) years, and five (5) shall be appointed for a term of three (3) years. Members of the council*~~and~~ shall be eligible for reappointment by the Governor.
- (4) Each member of the Consumers' Advisory Council shall be a resident of Kentucky, and except for the Attorney General, shall not be in the employ of the Commonwealth, except as a faculty member or on the staff of a school.

Approved February 25, 2000

## CHAPTER 41

### (HB 22)

AN ACT relating to the Legislative Research Commission.

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

Section 1. KRS 7.100 is amended to read as follows:

It shall be the duty of the Legislative Research Commission to:

- (1) Maintain in the State Capitol or State Capitol Annex for the use and information of the General Assembly, a legislative reference room and working library; collect, summarize, and index information of a legislative and governmental nature relating to legislation and legislative policies and index all bills introduced in the General Assembly. Permanent office space for the Legislative Research Commission and for the director thereof and employees or subcommittees shall be provided on the third floor of the State Capitol. When the General Assembly is not in session, the Commission shall have jurisdiction over the use of the House and Senate chambers and over the allocation of all rooms used by the General Assembly while in session. The Commission may provide for such other office space as it may deem necessary.
- (2) Make or cause to be made such investigations into statute law, legislation, governmental agencies and institutions, and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and economical manner. In making such studies and investigations between the regular sessions of the General Assembly, the Commission shall give priority to those subjects requested by the General Assembly. *The Commission shall promptly consider any requests of the General Assembly by bill or resolution for the creation of task forces, committees, subcommittees, or other entities for the purpose of studying or reviewing issues or subjects. Provisions of the bill or resolution to the contrary notwithstanding, the Commission, in its sole discretion, may grant or deny the request to create an entity or alternatively assign the subject matter of the proposed study or review to an existing committee or task force, including interim joint subcommittees of the Commission.*
- (3) Afford to any member of the General Assembly or any committee of either house of the General Assembly such information and assistance as may be practicable in the preparation of bills, memorials, resolutions, amendments, alterations and changes thereto, and revisions and substitutes thereof, proposed to be introduced into the General Assembly.
- (4) The Commission, at the close of each legislative session, shall assume custody of all furniture, equipment, records, materials and supplies, and printed copies of bills in the possession of the clerks of the Senate and House. Immediately prior to the convening of the next session, the Commission shall transfer all furniture, equipment, materials, and supplies to the clerks of the respective houses. The Commission may, when the General Assembly is not in session, authorize the expenditure of funds appropriated to the General Assembly for the purchase, repair, or maintenance of furniture, equipment, materials, and supplies and contract for services needed by the General Assembly.

- (5) The Commission shall prepare and publish or contract for the preparation and publishing of a daily index and digest of the content of and legislative action on all measures introduced in the General Assembly.
- (6) After each election the Commission shall conduct a pre-session orientation conference for members of the General Assembly.
- (7) The Commission shall notify the members of the General Assembly of the reports filed with the Commission for distribution to the members of the General Assembly and of the reports and publications of the Commission which are available for the members of the General Assembly. Each member of the General Assembly shall indicate upon a form provided by the Commission which reports shall be forwarded to the member.
- (8) Conduct, while the General Assembly is not in session, any and all business of the legislative department of government, except for the passage of legislation, which could be conducted by the legislative department of government or the General Assembly if the General Assembly ~~were~~<sup>was</sup> in session.
- (9) Conduct such other business and possess such other powers and duties as may be assigned or authorized by the General Assembly by statute or otherwise.

**Approved February 25, 2000**

## CHAPTER 42

(HB 342)

AN ACT relating to insurance.

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

SECTION 1. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A domestic mutual insurer may convert to a stock insurer by amendment of its articles of incorporation and upon compliance with the requirements of Sections 1 to 14 of this Act and the applicable requirements of this subtitle and Subtitle 3 of this chapter.*
- (2) *A domestic mutual insurer shall only convert to a stock insurer in accordance with a plan of conversion approved by the commissioner.*

SECTION 2. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 14 of this Act, unless the context requires otherwise:*

- (1) *"Converting mutual" means a domestic mutual insurer that adopts a plan of conversion under Section 3 of this Act that will result in the insurer converting into a domestic stock insurer.*
- (2) *"Eligible member" means:*
  - (a) *Any person who is a member of the converting mutual on the date the converting mutual's board of directors adopts a resolution proposing a plan of conversion;*
  - (b) *Any person who has been a member of the converting mutual within the last three (3) years prior to the date the converting mutual's board of directors adopts a resolution proposing a plan of conversion; and*
  - (c) *Any person who is a certificate holder under a group policy if the person meets the condition in paragraph (a) or (b) of this subsection and inclusion of the certificate holder as an eligible member is necessary for a fair and equitable distribution.*
- (3) *"Former mutual" means the domestic stock insurer resulting from the conversion of a converting mutual to a stock insurer pursuant to a plan of conversion in accordance with Sections 1 to 14 of this Act.*
- (4) *"Membership interests" means:*
  - (a) *The voting rights of members of a domestic mutual insurer as provided by law and by the insurer's articles of incorporation and bylaws; and*

- (b) *The rights of members of a domestic mutual insurer to receive cash, stock, or other consideration in the event of a conversion to a stock insurer under Sections 1 to 14 of this Act or a dissolution under KRS 304.24-430.*
- (5) *"Plan of conversion" means the plan of conversion described in Section 3 of this Act and includes the proposed amendment to the converting mutual's articles of incorporation, unless the context requires otherwise.*

SECTION 3. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The board of directors of the converting mutual shall adopt a resolution proposing the amendment of its articles of incorporation in accordance with KRS 304.24-080 and proposing a plan of conversion.*
- (2) *The plan of conversion shall:*
  - (a) *Describe the manner in which the proposed conversion shall occur and the insurer and any other business entity that will result from or be directly affected by the conversion, including the former mutual and any affiliate;*
  - (b) *Provide that the membership interests in the converting mutual shall be extinguished as of the effective date of the conversion;*
  - (c) *Require the fair and equitable distribution of aggregate consideration to the eligible members, upon the extinguishing of their membership interests, which shall be equal to the fair value of the converting mutual as determined under a fair formula:*
    - 1. *Describe the manner in which the fair value of the converting mutual shall be determined or established;*
    - 2. *Describe the form or forms of consideration that shall be distributed to the eligible members; and*
    - 3. *Specify relevant classes, categories, or groups of eligible members, and describe the method or formula that shall be used for the equitable allocation of the aggregate consideration among the eligible members;*
  - (d) *Provide for the determination and preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends that shall be implemented through establishment of a closed block or other method acceptable to the commissioner in compliance with Sections 1 to 14 of this Act;*
  - (e) *Specify the effective date of the plan of conversion and distributions to eligible members; and*
  - (f) *Include all other provisions that are necessary for, or material to, the implementation of the conversion.*
- (3) *The plan of conversion may include any other provisions that the converting mutual deems necessary or reasonable.*

SECTION 4. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The converting mutual shall file with the commissioner an application for approval of the plan of conversion.*
- (2) *The application shall consist of the following:*
  - (a) *The plan of conversion;*
  - (b) *A certificate of the secretary of the converting mutual regarding the adoption of the plan of conversion;*
  - (c) *A statement of the reasons for the proposed conversion and why it is in the best interests of the converting mutual and its eligible members, including an analysis of the risks and benefits to the converting mutual and its members and a comparison of the risks and benefits of reasonable alternatives to a conversion;*

- (d) *A five (5) year business plan of the former mutual, including five (5) year financial projections, detailed descriptive narrative, and all relevant assumptions;*
- (e) *Any plans or proposals that the former mutual or any affiliate company may have to raise additional capital through the issuance of stock or otherwise; and any other plans that the former mutual or any affiliate company may have to sell or otherwise issue stock to any person, including the adoption of any employee compensation or benefit plan under which stock may be issued;*
- (f) *Any plans or proposals that the former mutual or any affiliate company may have to liquidate or dissolve any company, to sell any material assets, or to merge or consolidate with any person, or to make any other material change in investment policy, business, corporate structure, or management;*
- (g) *Any plans or arrangement for a delayed distribution of consideration to eligible members, or restrictions on sale or transfer of stock or other securities;*
- (h) *A plan of operation for any closed block established for the preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends;*
- (i) *Copies of the current articles of incorporation and bylaws of the converting mutual;*
- (j) *Copies of any proposed articles of incorporation and bylaws of the former mutual;*
- (k) *A list of individuals who are or have been selected to become directors or officers of the former mutual and of any affiliate, or the individuals who perform or will perform duties customarily performed by a director or officer, including the following information:*
  - 1. *The individual's principal occupation;*
  - 2. *All offices and positions the individual has held in the preceding five (5) years;*
  - 3. *Any criminal convictions of the individual;*
  - 4. *Information concerning any personal bankruptcy of the individual or the individual's spouse during the previous seven (7) years;*
  - 5. *Information concerning the supervision, rehabilitation, or liquidation of any insurer or the bankruptcy of any corporation or other entity of which the individual was an officer or director;*
  - 6. *Information concerning any state or federal securities law allegations against the individual that resulted in a determination that the individual violated the state or federal securities law, a plea of nolo contendere, or a consent decree;*
  - 7. *Information concerning the revocation of any state or federal license issued to the individual; and*
  - 8. *Information as to whether the individual was refused a fidelity or other bond during the previous ten (10) years.*
- (l) *A fairness opinion addressed to the board of directors of the converting mutual from a qualified independent financial advisor, that the provision of stock, cash, policy benefits, or other forms of consideration upon extinguishing the converting mutual's membership interests under the plan of conversion, is fair and equitable to the eligible members, as a group, from a financial point of view;*
- (m) *An actuarial opinion and supporting memorandum;*
- (n) *A description of the plans of the former mutual or its affiliates to assure that an active trading market for any stock or other securities distributed to eligible members will develop within a reasonable amount of time after the effective date of the plan of conversion and that eligible members who receive stock or other securities will be able to sell their stock or other securities, subject to any delayed distribution or transfer restrictions, at reasonable cost and effort. These plans may consist of:*
  - 1. *Appointing a registrar and transfer agent for the stock or other securities;*
  - 2. *Making filings, applications, or registrations for the stock or other securities with the Federal Securities and Exchange Commission and with appropriate state securities regulators;*

3. *Listing the stock or other securities on a national or other securities exchange;*
  4. *Facilitating coverage of the stock or other securities by research analysts and securing the commitment of at least one (1) market maker to make a market in the stock or other securities;*
  5. *Conducting an underwritten public offering of the same class of stock or other securities, promptly following the effective date of the plan of conversion, in order to facilitate the development of a public market; and*
  6. *Making available a procedure for eligible members holding small numbers or amounts of stock or other securities to sell their stock or other securities to the former mutual or an affiliate at market value without the payment of brokerage commissions or similar fees, or to sell their stock or other securities in the market through a broker with discounted brokerage commissions or fees;*
- (o) *Any additional information, documents, or materials that the converting mutual deems necessary or reasonable; and*
- (p) *Any other additional information, documents, or materials that the commissioner may request in writing.*
- (3) (a) *The actuarial opinion shall address whether:*
1. *The methodology or formulas used to determine the total aggregate consideration to be distributed to eligible members is reasonable and appropriate;*
  2. *The methodology or formulas used to allocate consideration among the eligible members is reasonable and appropriate;*
  3. *The financial condition of the former mutual will not be adversely diminished; and*
  4. *If a closed block is used for the preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of the policy dividends, the plan of operation, and the sufficiency of the assets allocated to the closed block, is reasonable.*
- (b) *The actuarial opinion shall be provided by a qualified and independent actuary who is a member of the American Academy of Actuaries. The opinion shall be given in accordance with professional standards and practices generally accepted by the actuarial profession and those other factors as the actuary believes are reasonable and appropriate in the exercise of professional judgment at the time the opinion is given.*
- (c) *The opinion shall be supported by a memorandum of the actuary, describing the calculations made and the assumptions used in the calculations.*

SECTION 5. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The commissioner shall have ninety (90) days to review the plan of conversion after it is filed. Upon completion of the review, the commissioner shall schedule a public hearing on the plan of conversion.*
- (2) *The commissioner shall hold a hearing upon the plan of conversion in accordance with KRS 304.2-310.*
- (3) *The converting insurer shall present evidence that the plan of conversion complies with Sections 1 to 14 of this Act.*
- (4) *Persons wishing to make comments and submit information may submit written statements prior to the public hearing and may appear and be heard at the hearing. These comments shall be part of the record and shall be considered by the commissioner before issuing an order on the plan of conversion.*
- (5) *At least forty-five (45) days prior to the hearing date, the converting mutual shall provide information regarding the hearing to the eligible members and its other policyholders and certificate holders. The information provided shall include a brief statement of the subject of the hearing, the date, time, and location of the hearing, a description of members eligible to vote on the plan of conversion, and a statement indicating the location at which the public portion of the application may be examined. This information shall be provided by mail or by other means approved by the commissioner.*

- (6) *Following the hearing, the commissioner shall, by order, approve, conditionally approve, or disapprove the plan of conversion. The commissioner may require, as a condition of approval of the plan of conversion, modification of the proposed plan of conversion. The insurer shall file the amendments required by the conditional approval within thirty (30) days of the date of the order. The commissioner may grant an extension for filing amendments for good cause shown. If the applicant does not timely file the required amendments, the plan of conversion shall be deemed disapproved.*

SECTION 6. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The commissioner shall approve the plan of conversion if the commissioner finds, following the hearing, that the plan of conversion:*
- (a) *Complies with the provisions of this chapter and all other applicable laws;*
  - (b) *Is fair and equitable to the eligible members and the other policyholders of the converting mutual;*
  - (c) *Is actuarially reasonable and appropriate;*
  - (d) *Will not jeopardize the financial stability of the former mutual or prejudice the interest of its policyholders; and*
  - (e) *Provides that the former mutual shall be able to satisfy the requirements for issuance of a certificate of authority to write the kinds of insurance for which the converting mutual is presently authorized.*
- (2) *The commissioner shall, at the converting mutual's expense, hire accountants, actuaries, attorneys, financial advisors, investment bankers, and other experts as may be necessary to assist the commissioner in reviewing all matters under Sections 1 to 14 of this Act that are related to the plan of conversion and the application. The commissioner may at any time require the converting mutual to deposit an amount of money with the department in anticipation of expenses to be incurred by the commissioner under this subsection.*
- (3) *The commissioner may consider the effect of any action taken by the converting insurer within a three (3) year period immediately prior to the filing of the plan of conversion if the action taken by the insurer has a material effect on the fairness and equity of the plan of conversion.*

SECTION 7. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The plan of conversion and the proposed amendment to the articles of incorporation of the converting mutual shall be submitted to a vote of the members of the converting mutual, as provided in this section and in KRS 304.24-095.*
- (2) *The meeting of members shall be held no later than ninety (90) days after the issuance of the commissioner's order of approval of the plan of conversion or after the filing of all amendments in compliance with the order of conditional approval of the plan of conversion.*
- (3) *The converting mutual shall give written notice of the right to vote on the plan of conversion to the members of the converting mutual entitled to vote. The notice shall be accompanied by explanatory information concerning the plan of conversion and may be accompanied by proxy solicitation materials. The notice and accompanying information and materials shall not be provided to the members until approved by the commissioner. The notice and accompanying materials shall include:*
- (a) *A brief statement of the subject of the meeting;*
  - (b) *The date, time, and location of the meeting;*
  - (c) *A description of the member's right to attend and participate in the meeting;*
  - (d) *A description of the nature and amount of consideration that will be provided to the eligible members upon completion of the conversion;*
  - (e) *If reasonably ascertainable by the converting mutual, a description of the form and amount or approximate amount of consideration to be provided to the particular member to whom the notice is addressed;*
  - (f) *A copy of the plan of conversion and summary of the plan; and*



- (g) *A reference to the applicable statutory provisions.*
- (4) *The notice required by subsection (3) of this section shall achieve a minimum score of forty (40) on the Flesch reading ease test or an equivalent score on a comparable test approved by the commissioner.*
- (5) *The notice shall be mailed, or provided by some other method or methods as may be approved by the commissioner, not less than thirty (30) days before the date of the meeting of members to vote on the plan of conversion.*
- (6) *Only persons who are members of the converting mutual on both the date the converting mutual's board of directors adopts the resolution proposing the plan of conversion and the record date for the meeting established by the board of directors shall be entitled to vote on the plan of conversion and the proposed amendment to the articles of incorporation of the converting mutual. Each voting member shall be entitled to vote in accordance with KRS 304.24-210.*
- (7) *Notwithstanding KRS 304.24-210, a member may vote by proxy only if:*
- (a) *The proxy was solicited and obtained from the member for the express and sole purpose of voting on the plan of conversion, amendments to the articles of incorporation and bylaws, and any other matter materially related to the plan of conversion; and*
- (b) *The proxy solicitation materials were provided to the commissioner prior to sending the materials to the members.*
- (8) *The plan of conversion and the proposed amendment to the converting mutual's articles of incorporation shall be approved by the members upon receiving the affirmative votes of at least two-thirds (2/3) of the members voting at the meeting in person or by proxy.*

SECTION 8. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon the effective date of the plan of conversion:*
- (a) *The converting mutual shall be converted from a domestic mutual insurer to a domestic stock insurer, and the former mutual shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a stock insurer existing under this chapter;*
- (b) *The membership interests of every member and policyholder of the converting mutual shall be extinguished and cease; and*
- (c) *The rights of every policyholder, certificate holder, and other insured of the converting mutual under any contract of insurance shall continue in force in accordance with the terms, provisions, and conditions of the contract, including rights, if any, to dividends.*
- (2) *The former mutual shall be a continuation of the existence of the original converting mutual. The conversion in no way shall annul, modify, or change any of the original converting mutual's existing suits, rights, contracts, or liabilities. The former mutual shall be vested in all the rights, franchises, and interests of the converting mutual in and to every species of property without any deed or transfer, and the former mutual shall succeed to all the obligations and liabilities of the converting mutual and retain all rights and contracts existing prior to effectiveness of the conversion.*

SECTION 9. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The total aggregate consideration to be distributed to the eligible members shall be determined under a fair formula. The total aggregate consideration shall not be less than the converting mutual's total surplus or surplus as regards policyholders; plus the value of all nonadmitted assets; plus a reasonable present equity in reserves, if any; minus any adjustments for contributed or borrowed surplus.*
- (2) *The consideration to be distributed to the eligible members shall be cash, stock, or other securities of the former mutual or of an affiliate, additional paid up insurance or annuity benefits, or any combination of these forms of consideration or other forms of consideration described in the plan of conversion and approved by the commissioner.*
- (3) *The form of consideration to be distributed to a class, category, or group of eligible members may differ from the form of consideration to be distributed to another class, category, or group of eligible members. The choice of the form of consideration may take into account such factors as the type of policies with*

*respect to which the consideration is being distributed, the country or state of residence or tax status of the eligible members, the length of time that eligible members have been members of the converting mutual, or other appropriate factors or circumstances described in the plan of conversion.*

- (4) *Distribution of all or part of the consideration to some or all of the eligible members may be delayed, or restrictions on sale or transfer of any stock or other securities to be distributed to eligible members may be required, for a reasonable period of time following the effective date of the conversion. That period of time shall not exceed six (6) months, unless approved by the commissioner.*

SECTION 10. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*In determining whether the method or formula in the plan of conversion is fair and equitable, the commissioner may consider the following factors:*

- (1) *Voting rights;*
- (2) *Number of eligible members;*
- (3) *Length of membership in the converting mutual;*
- (4) *Premiums paid by members;*
- (5) *Policy limits;*
- (6) *Risk of line of insurance;*
- (7) *Sources of the proportionate contributions to historical surplus, based on such groupings, classification, historical information, assumptions, and projections as are actuarially sound and reasonable;*
- (8) *For a converting mutual that is a property and casualty company, the net earned premiums each eligible member has paid to the converting mutual, compared to the total net earned premiums paid by all eligible members, in each case during the period of time specified in the plan of conversion; and*
- (9) *Any other relevant factors the commissioner may deem appropriate.*

SECTION 11. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *No dividend preservation provisions shall provide in any way or substitute for the distribution of consideration to eligible members upon extinguishing their membership interests.*
- (2) *Any dividend preservation provision may be limited to participating individual life insurance policies and participating individual annuity contracts in force or deemed to be in force by the plan of conversion on the effective date of the plan of conversion for which the converting mutual insurer has an experience-based dividend scale due, paid, or accrued by action of the board of directors of the converting mutual in the year in which the plan of reorganization is adopted, except that:*
  - (a) *Policies that would be included but for the fact that their recent issuance results in no dividends for an initial period, may be included;*
  - (b) *Policies that are in force as extended term insurance may be included; and*
  - (c) *Other categories of policies and benefits not described in this subsection may be included or excluded with approval of the commissioner.*

SECTION 12. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The provisions of this section apply if a closed block is used for the preservation of the reasonable dividend expectations of eligible members and other policyholders.*
- (2) *The converting mutual shall prepare a written plan of operation for the closed block, consistent with the requirements of this section and the other applicable requirements of Sections 1 to 14 of this Act.*
- (3) *The closed block shall be operated for the exclusive benefit of policies and contracts included in it. No costs or expenses incurred in connection with the conversion shall be charged to the closed block.*

- (4) *The assets allocated to the closed block, together with the revenue from the closed block, shall be calculated to be reasonably sufficient to support the business in the closed block until the last policy in the closed block has terminated, including payment of claims and those expenses and taxes as are specified in the plan of conversion, and to provide for continuation of dividend scales in effect on the adoption date of the plan of conversion, if the experience underlying those scales continues and for appropriate adjustments in the scales if the experience changes.*
- (5) *The assets to a closed block shall be specified in the plan of operation and must consist of:*
  - (a) *A list of designated assets of the converting mutual's general account or specified segments, which list shall change periodically to reflect the acquisition and disposition of assets;*
  - (b) *A designated portion of each asset of the converting mutual's general account or specified segments thereof, which portion shall change periodically to reflect the cash flows of the closed block; or*
  - (c) *Assets designated by a combination of the methods described in paragraphs (a) and (b) of this subsection.*
- (6) *The plan of operation shall specify which of those methods of assignment of closed block assets is being used and shall set forth the methods by which the designations referred to in subsection (5) of this section are changed during the course of closed block operations.*
- (7) *The former mutual shall submit to the commissioner annual reports, in a form acceptable to the commissioner, that account for and describe the operations of the closed block; and as specified in the plan of operation provide for annual reviews of, and reports and opinions on, the closed block by an independent actuary.*
- (8) *The plan of operation shall provide for the conditions under which the former mutual may terminate the closed block.*
- (9) *The former mutual shall not distribute any residual assets of the closed block until the plan for distribution of the residual assets is approved by the commissioner.*

SECTION 13. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as specifically provided in the plan of conversion, for a period of five (5) years following the effective date of the conversion, no person or persons acting in concert, other than the former mutual, any affiliate, any employee benefit plans, or trusts sponsored by the former mutual or affiliate, shall directly or indirectly offer to acquire or acquire in any manner the beneficial ownership of five percent (5%) or more of any class of a voting security of the former mutual or any affiliate company without the prior approval by the commissioner of a statement filed by that person with the commissioner. The statement shall contain the information required by subsection (2) of Section 15 of this Act and any other information required by the commissioner.*
- (2) *The commissioner shall not approve the acquisition if the commissioner finds that:*
  - (a) *The requirements of subsection (4)(a) of Section 15 of this Act have not been satisfied;*
  - (b) *The acquisition will frustrate the fair and equitable plan of conversion as approved by the members and the commissioner;*
  - (c) *The acquisition or change of control will result in unjust enrichment of the acquiring persons to the detriment of the eligible members of the converting mutual; and*
  - (d) *The acquisition would not be in the best interest of the present and future policyholders of the former mutual, without regard to any interest of policyholders as shareholders of the former mutual or any affiliate company.*
- (3) *The requirements of this section shall be in addition and supplemental to any other filings or approvals required by this chapter or otherwise by law.*

SECTION 14. A NEW SECTION OF SUBTITLE 24 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

***During the one (1) year period following the effective date of the plan of conversion, neither the former mutual nor any affiliate company shall sell or issue, or adopt any plan or benefit program providing for the sale or issuance of, any stock or other equity security except:***

- (1) As disclosed in the approved plan of conversion; or***
- (2) As otherwise approved by the commissioner, upon a finding that the stock transaction:***
  - (a) Will not frustrate the plan of conversion as approved by the members and the commissioner; and***
  - (b) Is not adverse to the best interests of the policyholders of the former mutual, without regard to any interests of policyholders as shareholders of the former mutual or any affiliate company.***

Section 15. KRS 304.37-120 is amended to read as follows:

- (1) No person other than the issuer shall make a tender offer for, a request or invitation for tenders of, enter into any agreement to exchange securities, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic insurer if, after the consummation, the person would, directly or indirectly, or by conversion, or by exercise of any right to acquire, be in control of the insurer. No person shall enter into an agreement to merge with or to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time of the offer, request, or invitation is made, or any agreement is entered into, or prior to the acquisition of these securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner prescribed in this section.
  - (a) For purposes of this section a domestic insurer shall include any person controlling a domestic insurer unless the person as determined by the commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, the person shall file a preacquisition notification with the commissioner containing the information required in KRS 304.37-130(3)(a) thirty (30) days prior to the proposed effective date of the acquisition. The person who fails to file a preacquisition notification shall be subject to the penalty set out in KRS 304.99-151. For the purposes of this section, "person" shall not include any securities broker holding, in the usual and customary brokers function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.
- (2) The statement to be filed with the commissioner under this section shall be made under oath or affirmation and shall contain the following information:
  - (a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) of this section is to be effected; and
    - 1. If the person is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years; or
    - 2. If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for a lesser period that the person and any predecessors have been in existence, an informative description of the business intended to be done by the person and the person's subsidiaries, and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to these functions. The list shall include for each individual the information required by subparagraph 1. of this paragraph.
  - (b) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for merger or other acquisition of control, including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration; but if a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests.
  - (c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each acquiring party, or for a lesser period that the acquiring party

and any predecessors have been in existence, and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement.

- (d) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets, or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.
  - (e) The number of shares of any security referred to in subsection (1) of this section which the acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section, and a statement as to the method used to determine the fairness of the proposal.
  - (f) The amount of each class of any security referred to in subsection (1) of this section which is beneficially owned, or concerning any security referred to in subsection (1) of this section which there is a right to acquire beneficial ownership of by each acquiring party.
  - (g) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (1) of this section in which any acquiring party is involved, such as transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom these contracts, arrangements, or understandings have been entered into.
  - (h) A description of the purchase of any security referred to in subsection (1) of this section during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid.
  - (i) A description of any recommendations to purchase any security referred to in subsection (1) of this section made during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party.
  - (j) Copies of all tender offers for requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) of this section, and of additional soliciting material distributed which relates.
  - (k) The term of any agreement, contract, or understanding made with, or proposed to be made with any broker-dealer, as to solicitation of securities referred to in subsection (1) of this section for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard to subsection (1) of this section.
  - (l) Any additional information as the commissioner may by regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.
  - (m) If the person required to file the statement referred to in subsection (1) of this section is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by paragraphs (a) to (l) of this subsection shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or other group, and each person who controls the partner or member. If any partner, member, or person is a corporation, or the person required to file the statement referred to in subsection (1) of this section is a corporation, the commissioner may require that the information called for by paragraphs (a) to (l) of this subsection shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of the corporation.
  - (n) If any material change occurs in the facts in the statement filed with the commissioner and sent to the insurer pursuant to this section, an amendment stating the change, with copies of all documents and other materials relevant to the change, shall be filed with the commissioner and sent to the insurer within two (2) business days after the person learns of the change.
- (3) If any offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section is proposed to be made by means of a registration statement under the Securities Act of 1933, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection

(1) of this section may utilize those documents in furnishing the information required by the statement referred to in subsection (1) of this section.

- (4) (a) The commissioner shall approve any merger or other acquisition of control referred to in subsection (1) of this section unless, after a public hearing he finds that:
    1. After the change of control, the domestic insurer referred to in subsection (1) of this section would not be able to satisfy the requirements for issuance of a certificate of authority to write the line or lines of insurance for which it is presently authorized;
    2. The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in Kentucky or tend to create a monopoly. In applying the competitive standard in this paragraph:
      - a. The informational requirements of KRS 304.37-130(3)(a) and the standards of KRS 304.37-130(4)(b) shall apply;
      - b. The merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by KRS 304.37-130(4)(c) exist; and
      - c. The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;
    3. The financial condition of the acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders;
    4. The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;
    5. The competence, experience, and integrity of persons who would control the operation of the insurer would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or
    6. The acquisition is likely to be hazardous or prejudicial to the insurance buying public.
  - (b) The public hearing required by this section shall be conducted as directed in KRS Chapter 304.2.
  - (c) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff that may be necessary to assist the commissioner in reviewing the proposed acquisition of control.
- (5) The provisions of this section shall not apply to:
- (a) Any transaction which is subject to the provisions of KRS 304.24-390, dealing with the merger or consolidation of a domestic insurer; or
  - (b) Any offer, request, invitation, agreement, or acquisition which the commissioner, by order, shall exempt from the section as not having been made or entered into for the purpose of and not having the effect of changing or influencing the control of, a domestic insurer, or not comprehended within the purposes of this section; *or*
  - (c) ***Any acquisition of stock of a former mutual by an affiliate company that occurs in connection with the conversion of a mutual insurer to a stock insurer under Sections 1 to 14 of this Act, provided that no person acquires control of the parent company. For purposes of this paragraph, "former mutual" has the meaning provided in Section 2 of this Act.***
- (6) The following shall be violations of this section:
- (a) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (1) or (2) of this section; or
  - (b) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval.
- (7) The courts of this state shall have jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and overall actions

involving such person arising out of violations of this section. Each person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the Secretary of State to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of the violations of this section. Copies of all lawful process shall be served on the Secretary of State and transmitted to the person at his last known address by the Secretary of State in the same manner as service of process on foreign insurers.

Section 16. KRS 304.37-150 is amended to read as follows:

- (1) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this ~~chapter~~~~[subtitle]~~ or of any rule, administrative regulation, or order issued by the commissioner may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding; but no action taken at the meeting shall be invalidated by the voting of the securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this ~~chapter~~~~[subtitle]~~ or of any rule, administrative regulation, or order issued by the commissioner, the insurer or the commissioner may apply to the Circuit Court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of KRS 304.37-130 or *any other provision of this chapter*, or any rule, administrative regulation, or order issued by the commissioner to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of shareholders, and for any other equitable relief as required by the nature of the case and the interest of the insurer's policyholders, creditors, shareholders, or the public.
- (2) In any case where a person has acquired or is proposing to acquire any voting securities in violation of this ~~chapter~~~~[subtitle]~~ or any rule, administrative regulation, or order issued by the commissioner, the Circuit Court for Franklin County or the Circuit Court for the county in which the insurer has its principal place of business may, upon notice the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue the appropriate order to effectuate the provisions of this subtitle.
- (3) Notwithstanding any other provisions of law, for the purposes of this ~~chapter~~~~[subtitle]~~ the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

Section 17. KRS 304.37-525 is amended to read as follows:

- (1) *Sections 1 to 14 of this Act are*~~[KRS 304.24-380 is]~~ not applicable to a reorganization or merger under KRS 304.37-505 and 304.37-510.
- (2) *Sections 1 to 14 of this Act are*~~[KRS 304.24-380 is]~~ applicable to demutualization of a mutual insurance holding company which resulted from the reorganization of a domestic mutual insurance company organized under Subtitle 24 of this chapter as if it were a mutual insurance company.

Section 18. Sections 1 to 14 of this Act may be cited as the Kentucky Insurer Demutualization Act.

Section 19. The following KRS section is repealed:

304.24-380 Converting mutual insurer.

**Approved February 25, 2000**

## CHAPTER 43

(HB 81)

AN ACT relating to reorganization.

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

Section 1. KRS 209.200 is amended to read as follows:

- (1) "Assisted living residence" means an apartment or home-style housing unit residence which provides assisted living to two (2) or more adult persons who are not related within the third degree of consanguinity to the

owner or operator of the apartment or residence, and which provides supportive services within the residence or on the grounds of the residence. For purposes of this section:

- (a) "Apartment" means a residence which shall offer at least one (1) unfurnished room, a private bathroom with a bathtub or shower, a kitchenette, a lockable door, and individual thermostat controls.
  - (b) "Home-style housing unit" means a residence which shall offer at least one (1) unfurnished room, a semiprivate bathroom with a bathtub or shower, free use of kitchen facilities, and a lockable door to the room entrance.
  - (c) "Supportive services" means assistance with household chores, cleaning, shopping, meals, laundry, transportation, twenty-four (24) hour supervision and organized social and recreational activities. Other services, including but not limited to assistance with health related services, may be arranged through a licensed or cabinet-approved service provider.
- (2) The Cabinet *for Health Services* shall, after consultation with the director of the Kentucky Housing Corporation to assure compliance with federal law, including but not limited to 12 U.S.C. sec. 1715b, 12 U.S.C. sec. 1715w, or 42 U.S.C. sec. 3535(d), as amended, or federal regulations promulgated under those statutes, establish by promulgation of administrative regulation pursuant to KRS Chapter 13A the requirements for certification of an assisted living residence. Certification of an assisted living residence shall be voluntary.
  - (3) The Cabinet *for Health Services* may issue a certificate to any assisted living residence meeting standards provided for under subsection (2) of this section. The Cabinet *for Health Services* may deny, revoke, suspend, or modify an assisted living residence certificate for failure to comply with standards or when it determines the health, safety, or security of residents is in jeopardy. Actions to deny, revoke, suspend, or modify a certificate may be appealed to the Cabinet *for Health Services* within thirty (30) days of receipt of notification of intent. The Cabinet *for Health Services* shall, by administrative regulation in accordance with KRS Chapter 13A, establish procedures for the conduct of hearings upon appeals assuring reasonable notice and an opportunity to be heard pursuant to KRS Chapter 13B. Certification of an assisted living residence shall be voluntary.
  - (4) No Medical Assistance or general fund moneys shall be used to pay for new classifications of services authorized by this section. Nothing in this section or KRS 216B.020 shall be construed to prohibit payment for services solely because the services may be performed in an assisted living facility if the services are otherwise eligible for Medical Assistance or general fund payment.

Section 2. The General Assembly hereby confirms Executive Order 98-791, dated June 24, 1998, to the extent it is not otherwise confirmed by this Act. The confirmation shall include: (1) requiring a separate budget identification number be assigned to the Office of the Inspector General of the Cabinet for Health Services; and (2) transferring the voluntary assisted living certification program for assisted living facilities which is administered by the Kentucky Housing Authority under state and federal law from the Cabinet for Families and Children to the Cabinet for Health Services, Office of the Inspector General.

**Approved March 3, 2000**

## **CHAPTER 44**

**(HB 168)**

AN ACT relating to child support.

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

Section 1. KRS 405.467 is amended to read as follows:

- (1) All support orders issued by the Cabinet for Families and Children, including those issued pursuant to Part D, Title IV of the Federal Social Security Act, shall provide for immediate withholding of earnings of the parent or parents obligated to pay child support and medical support as is necessary to pay the child support obligation, except where one (1) of the parties demonstrates, and the court or administrative order finds that there is good cause not to require immediate income withholding, or a written agreement is reached by both parties which provides for an alternative arrangement.
- (2) In any case in which a support order was issued in the state ~~prior to October 1, 1994,~~ and in which a parent is required to pay court-ordered or administratively determined child support, medical support, maintenance, and medical support insurance, and wage withholding is not in effect, and an arrearage accrues that is equal to the



amount of support payment for one (1) month, upon request of the absent parent, request of the custodial parent, or upon administrative determination, the secretary shall issue an order for withholding of earnings of the parent as is necessary to comply with the order plus interest at the legal rate on the arrearage, if any, without the need for a judicial or administrative hearing.

- (3) In any case in which a parent is required either by court order or administrative order to provide medical insurance coverage for the child and the parent has failed to make application to obtain coverage for the child, the secretary shall issue an order for withholding of the employee's share, if any, of premiums for health coverage and to pay the share of premiums to the insurer, without the need for a judicial or administrative hearing.
- (4) The cabinet shall advise the obligated parent that a wage withholding has commenced by sending a copy of the order to withhold at the same time that the order is sent to the employer. The only basis for contesting the withholding shall be a mistake of fact or law. If the parent contests the withholding, the cabinet shall give the obligor an opportunity to present his or her case at an administrative hearing conducted in accordance with KRS Chapter 13B and decide if the withholding will continue.
- (5) The cabinet shall combine any administrative or judicial wage withholding order, or multiple administrative or judicial orders for child support and medical support into a single wage withholding order when payable through the cabinet to a single family or to multiple family units.
- (6) The cabinet shall serve the order to withhold earnings or notice of multiple wage withholding orders specifying wage withholding requirements on the employer of an obligor by certified mail, return receipt requested. The order shall state the amount to be withheld, or the requirement to enroll the child under the health insurance coverage, including amounts to be applied to arrearages, plus interest at the legal rate on the arrearage, if any, and the date the withholding is to begin. The total amount to be withheld, including current support and payment on arrearages plus interest, and medical insurance coverage may not exceed the limit permitted under the federal Consumer Credit Protection Act at 15 U.S.C. sec. 1673(b).
- (7) If there is more than one (1) notice for child support withholding against a single absent parent, the cabinet shall allocate amounts available for withholding, giving priority to current child support, up to the limits imposed under Section 303(b) of the Consumer Credit Protection Act at 15 U.S.C. sec. 1673(b). The allocation by the cabinet shall not result in a withholding for one (1) of the support obligations not being implemented. Amounts resulting from wage withholding shall be allocated on a proportionate basis between multiple family units. Any custodial parent adversely affected by the provisions of this subsection shall have standing to challenge any proportionate allocations and, for good cause shown, a District Court, Circuit Court, or family court of competent jurisdiction may set aside the cabinet's proportional allocations as to the custodial parent.
- (8) If the amounts to be withheld preclude collection of the total amount of combined child support and medical support due to the limits of the federal Consumer Credit Protection Act at 15 U.S.C. sec. 1673(b), the actual amount received shall be applied first to the current monthly child support obligation amount. Any payment exceeding the current monthly child support obligation shall then be applied by the cabinet to the administratively ordered or judicially ordered medical support obligation.
- (9) The employer shall forward to the Cabinet for Families and Children that portion of salary or wages of the parent due and to be due in the future as will be sufficient to pay the child support amount ordered.
- (10) The employer shall be held liable to the cabinet for any amount which the employer fails to withhold from earnings due an obligor following receipt of an order to withhold earnings.
- (11) Any order to withhold earnings under this section shall have priority as against any attachment, execution, or other assignment, notwithstanding any state statute or administrative regulation to the contrary.
- (12) No withholding under this section shall be grounds for discharging from employment, refusing to employ, or taking disciplinary action against any obligor subject to withholding required by this section.
- (13) The remedies provided for in this section shall also be available for applicable support orders issued in other states.
- (14) Interstate requests for withholding of earnings shall be processed by the cabinet.

**Approved March 3, 2000**

**CHAPTER 45****(HB 284)**

AN ACT relating to eminent domain by boards of education.

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

Section 1. KRS 416.560 is amended to read as follows:

- (1) Notwithstanding any other provision of the law, a department, instrumentality or agency of city, county, or urban-county government, other than a waterworks corporation the capital stock of which is wholly owned by a city of the first class, having a right of eminent domain under other statutes shall exercise such right only by requesting the governing body of the city, county, or urban-county to institute condemnation proceedings on its behalf. If the governing body of the city, county, or urban-county agrees, it shall institute such proceedings under KRS 416.570, and all costs involved in the condemnation shall be borne by the department, instrumentality, or agency requesting the condemnation.
- (2) If any department, instrumentality or agency of a city, county, or urban-county government, other than a waterworks corporation the capital stock of which is wholly owned by a city of the first class, operates in more than one (1) governmental unit, it shall request the governing body of the city, county, or urban-county government wherein the largest part of the individual tract of the property sought to be condemned lies, to institute condemnation proceedings on its behalf.
- (3) A department, instrumentality, or agency of the Commonwealth of Kentucky, other than the Transportation Cabinet **and local boards of education**, having a right of eminent domain under other statutes shall exercise such right only by requesting the Finance and Administration Cabinet to institute condemnation proceedings on its behalf. If the Finance and Administration Cabinet agrees, it shall institute such proceedings under KRS 416.570, and all costs involved in the condemnation shall be borne by the department, instrumentality, or agency requesting the condemnation.
- (4) Prior to the filing of the petition to condemn, the condemnor or its employees or agents shall have the right to enter upon any land or improvement which it has the power to condemn, in order to make studies, surveys, tests, sounding, and appraisals, provided that the owner of the land or the party in whose name the property is assessed has been notified ten (10) days prior to entry on the property. Any actual damages sustained by the owner of a property interest in the property entered upon by the condemnor shall be paid by the condemnor and shall be assessed by the court or the court may refer the matter to commissioners to ascertain and assess the damages sustained by the condemnee, which award shall be subject to appeal.

**Approved March 3, 2000**

**CHAPTER 46****(HB 374)**

AN ACT relating to reorganization.

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

Section 1. KRS 11.068 is amended to read as follows:

- (1) There is created an agency of state government known as the Office of State Budget Director. The office shall be attached for administrative purposes to the Office of the Governor.
- (2) The office shall include the following major organizational units:
  - (a) The Office of State Budget Director, headed by the state budget director. The state budget director shall be appointed by the Governor pursuant to KRS 11.040 and shall serve, under direction of the Governor, as state budget director and secretary of the state planning committee. The office shall include such principal assistants and supporting personnel appointed pursuant to KRS Chapter 12 as may be necessary to carry out the functions of the office. The office shall have such duties, rights and responsibilities as are necessary to perform, without being limited to, the following functions:

1. Functions relative to the preparation, administration, and evaluation of the executive budget as provided in KRS Chapters 45 and 48 and in other laws, including but not limited to, capital construction budgeting, evaluation of state programs, program monitoring, financial and policy analysis and issue review, and executive policy implementation and compliance;
  2. Continuous evaluation of statewide management and administrative procedures and practices, including but not limited to, organizational analysis and review, economic forecasting, technical assistance to state agencies, forms control, and special analytic studies as directed by the Governor; and
  3. Staff planning functions of the state planning committee and evaluation of statewide management and administrative practices and procedures.
- (b) Governor's Office for Policy and Management, headed by the state budget director, who shall report to the Governor. The state budget director shall maintain staff employed pursuant to KRS Chapter 18A sufficient to carry out the functions of the office relating to state budgeting as provided in paragraph (a) of this subsection and state planning as provided in KRS Chapter 147, review of administrative regulations proposed by executive agencies prior to filing pursuant to KRS Chapter 13A and such other duties as may be assigned by the Governor.
- (c) Governor's Office for ***Policy Research*** headed by ~~Program Administration, which shall assist~~ the state budget director. ***The Governor's Office for Policy Research shall assist the state budget director in providing policy research data, information, and analysis to the Governor on public policy issues that impact the Commonwealth. The state budget director shall identify and direct the research to be completed and provided by the office. The state budget director shall maintain staff employed in accordance with KRS Chapter 18A sufficient to carry out the functions of the office***~~carrying out his functions and duties pertaining to the coordination of activities of state government for their effective and efficient administration. The office shall be headed by an executive director appointed by the Governor pursuant to KRS 12.040. The executive director shall report to the Governor through the state budget director. The organization of the office shall be established by the executive director with the approval of the state budget director. Persons employed in the office shall be deemed to be employees of the Governor within the meaning of KRS Chapters 11, 12, and 18A~~.
- (d) ***Governor's Office for Economic Analysis headed by the state budget director who shall report to the Governor. The state budget director shall maintain staff employed in accordance with KRS Chapter 18A sufficient to carry out the functions of the office. The Governor's Office for Economic Analysis shall carry out the revenue estimating and economic analysis functions and responsibilities, including but not limited to the functions and responsibilities assigned to the Office of State Budget Director by KRS 48.115, 48.117, 48.120, 48.400, and 48.600. The Governor's Office for Economic Analysis shall perform the tax administrative function of using tax data to provide the Revenue Cabinet with studies, projections, statistical analyses, and any other information that will assist the Revenue Cabinet in performing its tax administrative functions.***

Section 2. KRS 7B.080 is amended to read as follows:

- (1) The operation of the center shall be funded from the restricted agency fund established in subsection (3) of this section.
- (2) There is hereby established a fiduciary fund to be entitled the Kentucky Long-Term Policy Research Center fund. The fund may receive appropriations, gifts, grants, and federal funds. Moneys in the fund shall not lapse back to the General Fund at the end of any fiscal year. Moneys in the fund shall be invested by the Office of Financial Management~~and Economic Analysis~~, consistent with the provisions of KRS Chapter 42.
- (3) A restricted agency fund account is established to receive the interest on the fiduciary fund and any other resources made available to the center. Interest from the fiduciary fund shall be credited to the restricted agency fund account on a monthly basis for the center's operations. Moneys in the account shall be invested by the Office of Financial Management~~and Economic Analysis~~, consistent with the provisions of KRS Chapter 42.
- (4) Any appropriation by the General Assembly to the fiduciary fund shall remain intact and shall not be available to the board, and should the center and its functions terminate, the principal and any remaining interest from other accumulated funds shall revert to the general fund of the Commonwealth or to the donor.

Section 3. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.
  - (c) Registry of Election Finance.
4. Department of Law.
  - (a) Attorney General.
5. Department of the Treasury.
  - (a) Treasurer.
6. Department of Agriculture.
  - (a) Commissioner of Agriculture.
  - (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
  - (a) Department of State Police.
  - (b) Department of Criminal Justice Training.
  - (c) Department of Corrections.
  - (d) Department of Juvenile Justice.
  - (e) Office of the Secretary.
  - (f) Offices of the Deputy Secretaries.
  - (g) Office of General Counsel.
  - (h) Division of Kentucky State Medical Examiners Office.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:

- (a) Department of Education.
    - (1) Kentucky Board of Education.
    - (2) Education Professional Standards Board.
  - (b) Department for Libraries and Archives.
  - (c) Kentucky Arts Council.
  - (d) Kentucky Educational Television.
  - (e) Kentucky Historical Society.
  - (f) Kentucky Teachers' Retirement System Board of Trustees.
  - (g) Kentucky Center for the Arts.
  - (h) Kentucky Craft Marketing Program.
  - (i) Kentucky Commission on the Deaf and Hard of Hearing.
  - (j) Governor's Scholars Program.
  - (k) Governor's School for the Arts.
  - (l) Operations and Development Office.
  - (m) Kentucky Heritage Council.
  - (n) Kentucky African-American Heritage Commission.
  - (o) Board of Directors for the Center for School Safety.
3. Natural Resources and Environmental Protection Cabinet:
- (a) Environmental Quality Commission.
  - (b) Kentucky Nature Preserves Commission.
  - (c) Department for Environmental Protection.
  - (d) Department for Natural Resources.
  - (e) Department for Surface Mining Reclamation and Enforcement.
  - (f) Office of Legal Services.
  - (g) Office of Information Services.
4. Transportation Cabinet:
- (a) Department of Highways.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Administrative Services.
  - (d) Department of Fiscal Management.
  - (e) Department of Rural and Municipal Aid.
  - (f) Office of General Counsel.
  - (g) Office of Public Affairs.
  - (h) Office of Personnel Management.
  - (i) Office of Minority Affairs.
  - (j) Office of Environmental Affairs.
  - (k) Office of Policy and Budget.
5. Cabinet for Economic Development:

- (a) Department of Administration and Support.
  - (b) Department of Job Development.
  - (c) Department of Financial Incentives.
  - (d) Department of Community Development.
  - (e) Tobacco Research Board.
  - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.
  - (b) Department of Insurance.
  - (c) Department of Housing, Buildings and Construction.
  - (d) Department of Financial Institutions.
  - (e) Department of Mines and Minerals.
  - (f) Department of Public Advocacy.
  - (g) Department of Alcoholic Beverage Control.
  - (h) Kentucky Racing Commission.
  - (i) Board of Claims.
  - (j) Crime Victims Compensation Board.
  - (k) Kentucky Board of Tax Appeals.
  - (l) Backside Improvement Commission.
  - (m) Office of Petroleum Storage Tank Environmental Assurance Fund.
7. Cabinet for Families and Children:
- (a) Department for Social Insurance.
  - (b) Department for Social Services.
  - (c) Public Assistance Appeals Board.
  - (d) Office of the Secretary.
  - (e) Office of the General Counsel.
  - (f) Office of Program Support.
  - (g) Office of Family Resource and Youth Services Centers.
  - (h) Office of Technology Services.
  - (i) Office of the Ombudsman.
  - (j) Office of Aging Services.
8. Cabinet for Health Services.
- (a) Department for Public Health.
  - (b) Department for Medicaid Services.
  - (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission on Children with Special Health Care Needs.
  - (e) Office of Certificate of Need.
  - (f) Office of the Secretary.

- (g) Office of the General Counsel.
  - (h) Office of Program Support.
  - (i) Office of the Inspector General.
9. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
  - (b) Office of Management and Budget.
  - (c) Office of Financial Management~~[-and Economic Analysis]~~.
  - (d) Office of the Controller.
  - (e) Department for Administration.
  - (f) Department of Facilities Management.
  - (g) Department of Information Systems.
  - (h) State Property and Buildings Commission.
  - (i) Kentucky Pollution Abatement Authority.
  - (j) Kentucky Savings Bond Authority.
  - (k) Deferred Compensation Systems.
  - (l) Office of Equal Employment Opportunity Contract Compliance.
  - (m) Office of Capital Plaza Operations.
  - (n) County Officials Compensation Board.
  - (o) Kentucky Employees Retirement Systems.
  - (p) Commonwealth Credit Union.
  - (q) State Investment Commission.
  - (r) Kentucky Housing Corporation.
  - (s) Governmental Services Center.
  - (t) Kentucky Local Correctional Facilities Construction Authority.
  - (u) Kentucky Turnpike Authority.
  - (v) Historic Properties Advisory Commission.
  - (w) Kentucky Kare Health Insurance Authority.
10. Labor Cabinet:
- (a) Department of Workplace Standards.
  - (b) Department of Workers' Claims.
  - (c) Kentucky Labor-Management Advisory Council.
  - (d) Occupational Safety and Health Standards Board.
  - (e) Prevailing Wage Review Board.
  - (f) Workers' Compensation Board.
  - (g) Kentucky Employees Insurance Association.
  - (h) Apprenticeship and Training Council.
  - (i) State Labor Relations Board.
  - (j) Kentucky Occupational Safety and Health Review Commission.

- (k) Office of Administrative Services.
  - (l) Office of Labor-Management Relations and Mediation.
  - (m) Office of General Counsel.
  - (n) Workers' Compensation Funding Commission.
  - (o) Employers Mutual Insurance Authority.
11. Revenue Cabinet:
- (a) Department of Property Valuation.
  - (b) Department of Tax Administration.
  - (c) Office of Financial and Administrative Services.
  - (d) Department of Law.
  - (e) Department of Information Technology.
  - (f) Office of Taxpayer Ombudsman.
12. Tourism Development Cabinet:
- (a) Department of Travel.
  - (b) Department of Parks.
  - (c) Department of Fish and Wildlife Resources.
  - (d) Kentucky Horse Park Commission.
  - (e) State Fair Board.
  - (f) Office of Administrative Services.
  - (g) Office of General Counsel.
13. Cabinet for Workforce Development:
- (a) Department for Adult Education and Literacy.
  - (b) Department for Technical Education.
  - (c) Department of Vocational Rehabilitation.
  - (d) Department for the Blind.
  - (e) Department for Employment Services.
  - (f) State Board for Adult and Technical Education.
  - (g) Governor's Council on Vocational Education.
  - (h) The State Board for Proprietary Education.
  - (i) The Foundation for Adult Education.
  - (j) The Kentucky Job Training Coordinating Council.
  - (k) Office of General Counsel.
  - (l) Office of Communication Services.
  - (m) Office of Development and Industry Relations.
  - (n) Office of Workforce Analysis and Research.
  - (o) Office for Administrative Services.
  - (p) Office for Policy and Budget.
  - (q) Office of Personnel Services.



- (r) Unemployment Insurance Commission.

14. Personnel Cabinet:

- (a) Office of Administrative and Legal Services.
- (b) Department for Personnel Administration.
- (c) Department for Employee Relations.
- (d) Kentucky Public Employees Deferred Compensation Authority.
- (e) Kentucky Kare.
- (f) Division of Performance Management.
- (g) Division of Employee Records.
- (h) Division of Staffing Services.
- (i) Division of Classification and Compensation.
- (j) Division of Employee Benefits.
- (k) Division of Communications and Recognition.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Council on Postsecondary Education.
  - (a) Kentucky Commission on Community Volunteerism and Service.
- 3. Department for Local Government.
- 4. Kentucky Commission on Human Rights.
- 5. Kentucky Commission on Women.
- 6. Department of Veterans' Affairs.
- 7. Kentucky Commission on Military Affairs.
- 8. Office of the Chief Information Officer.

Section 4. KRS 42.014 is amended to read as follows:

- (1) There is established within the cabinet the Office of Legal and Legislative Services, the Office of Management and Budget, the Office of Financial Management~~[- and Economic Analysis]~~, the Office of Capital Plaza Operations, and the Office of the Controller, each of which offices shall be headed by an executive director, the Department for Administration, the Department for Facilities Management, and the Department of Information Systems each of which shall be headed by a commissioner appointed by the secretary, upon the approval of the Governor, and responsible to the secretary. Each of these departments may have at least one (1) major assistant not in the classified service.
- (2) The secretary shall establish the internal organization and assignment of functions which are not established by statute, and shall divide the cabinet into the offices, bureaus, divisions, or other units the secretary deems necessary to perform the functions, powers, and duties of the cabinet, subject to the provisions of KRS Chapter 12.

Section 5. KRS 42.0201 is amended to read as follows:

- (1) There is created within the Finance and Administration Cabinet the Office of the Controller. The office shall be attached to the Office of the Secretary of the Finance and Administration Cabinet for administrative and reporting purposes.
- (2) The Office of the Controller shall be headed by an executive director appointed by the secretary of the Finance and Administration Cabinet with the approval of the Governor. The executive director shall function as the state controller, who shall be a person qualified by education and experience for the position and held in high professional esteem in the accounting community.

- (3) The state controller shall be the Commonwealth's chief accounting officer and shall be responsible for all aspects of accounting policies and procedures, financial accounting systems, and internal accounting control policies and procedures. The Office of the Controller shall establish guidelines for state personnel administration on issues relating to paycheck distribution dates, assignment of data elements to accurately report labor costs, assignment and tracking of actual expenditures by code, and coverage issues relating to Social Security and Medicare.
- (4) The state controller; the executive director of the Office of Financial Management~~[-and Economic Analysis]~~, Finance and Administration Cabinet; and the state budget director designated under KRS 11.068 shall develop and maintain the Commonwealth's strategic financial management program.
- (5) There are established in the Office of the Controller the Division of Accounts and the Division of Social Security.
  - (a) The Division of Accounts shall be headed by a director appointed by the secretary of the Finance and Administration Cabinet, subject to the approval of the Governor. The director shall report directly to the state controller. The division shall perform financial record keeping functions at the state controller's direction, and shall be responsible for:
    1. The performance of the cabinet's functions outlined in KRS 45.305, 48.800, and other related statutes; and
    2. The state government's duties and functions relating to the county fee system for local entities.
  - (b) The Division of Social Security shall be headed by a director appointed by the secretary of the Finance and Administration Cabinet pursuant to KRS 12.050. The director shall report directly to the state controller. The division shall be responsible for the duties of the state agency for Social Security specified in KRS 61.410 to 61.500.

Section 6. KRS 42.400 is amended to read as follows:

- (1) There is established within the Finance and Administration Cabinet an Office of Financial Management~~[-and Economic Analysis]~~, which shall be headed by an executive director responsible to the secretary of the Finance and Administration Cabinet, and appointed by the secretary upon approval of the Governor in accordance with the provisions of KRS 12.050.
- (2) There is included in the Office of Financial Management~~[-and Economic Analysis]~~ the positions of deputy executive ~~directors~~~~[-director]~~ for investment and debt management ~~who~~~~[-, and deputy executive director for revenue estimating and economic analysis, which]~~ shall be employed in the classified service as set forth in KRS Chapter 18A.

Section 7. KRS 42.409 is amended to read as follows:

As used in KRS 42.410 and 45.760, unless the context requires otherwise:

- (1) "State total personal income" means the measure of all income received by or on behalf of persons in the Commonwealth, as most recently published in the Survey of Current Business by the United States Department of Commerce, Bureau of Economic Analysis.
- (2) "Estimated state total personal income" means the personal income figure used by the **Governor's Office for Economic Analysis**~~[-Finance and Administration Cabinet]~~ to generate final detailed revenue estimates.
- (3) "Total revenues" means revenues credited to the general fund and the road fund consistent with the provisions of KRS 48.120, as well as any restricted agency fund account from which debt service is expended.
- (4) "Anticipated total revenues" means final estimates of revenues, as provided for in KRS 48.120(2), projected for the general fund and the road fund, as well as any restricted agency fund account from which debt service is expended.
- (5) "Available revenues" means revenues credited to the general fund and the road fund consistent with the provisions of KRS 48.120, as well as any restricted agency fund account from which debt service is expended, minus any statutorily dedicated receipts of the respective funds.
- (6) "Anticipated available revenues" means final estimates of revenues, as provided for in KRS 48.120(2), projected for the general fund and the road fund, as well as any restricted agency fund account from which debt service is expended, minus any statutorily dedicated receipts of the respective funds.

- (7) "Total assessed value of property" means state total net assessed value of property for taxes due, as obtained from the Revenue Cabinet.
- (8) "Per capita" means per unit of population, where population figures are the most recent available from the University of Louisville, Kentucky State Data Center.
- (9) "Appropriation-supported debt service" means the amount of an appropriation identified to be expended for debt service purposes in the executive budget recommendation, and the amount of an appropriation expended for debt services in a completed fiscal year.
- (10) "Appropriation-supported debt" means the outstanding principal of bonds issued by all state agencies and all individuals, agencies, authorities, boards, cabinets, commissions, corporations, or other entities of, or representing the Commonwealth with the authority to issue bonds, and for which debt service is appropriated by the General Assembly.
- (11) "Nonappropriation-supported debt" means the outstanding principal of bonds issued by all state agencies and all individuals, agencies, authorities, boards, cabinets, commissions, corporations, or other entities of, or representing the Commonwealth with the authority to issue bonds, and for which debt service is not appropriated by the General Assembly.
- (12) "Statutorily dedicated receipts" means revenues credited to the general fund and road fund consistent with the provisions of KRS 48.120, as well as any restricted agency fund account, which are required by an enacted statute to be used for a specific purpose. Statutorily dedicated receipts include, but are not limited to, the following:
  - (a) Receipts credited to the general fund which are subject to KRS 24A.191, KRS 24A.192, KRS 42.450 to 42.495, KRS 278.130 to 278.150, or KRS 350.139;
  - (b) Receipts credited to the road fund which are subject to KRS 175.505, KRS 177.320, KRS 177.365 to 177.369, KRS 177.9771 to 177.979, KRS 186.531, or KRS 186.535; and
  - (c) Receipts credited to a restricted agency fund account in accordance with any applicable statute.
- (13) "True interest cost" means the bond yield according to issue price without a reduction for related administrative costs, and is the same figure as the arbitrage yield calculation described in the United States Tax Reform Act of 1986.

Section 8. KRS 42.410 is amended to read as follows:

- (1) The Office of Financial Management~~and Economic Analysis~~ established in KRS 42.400 shall, subject to the provisions of KRS 41.020 to 41.375 and KRS 42.500, have and perform functions and duties as follows:
  - (a) The analysis and management of short and long-term cash flow requirements;
  - (b) The maximization of the return on state investments given the cash flow and liquidity requirements;
  - (c) The coordination and monitoring of cash needs relative to investment and debt activity;
  - (d) The development of a long-term debt plan including criteria for the issuance of debt and an evaluation of how much total state debt is justified;
  - ~~(e) The evaluation of revenue projections relative to proposed revenue bond issues;~~
  - ~~(f) The performance of the cabinet's revenue estimating and economic analysis functions and responsibilities, including, but not limited to, those functions and responsibilities assigned to the cabinet by KRS 48.120;~~
  - ~~(g) The responsibility for liaison with the General Assembly on all investment and debt matters, including, but not limited to, new bond issues, the status of state debt, and the status of state investments;~~
  - ~~[(h) The tax administrative function of utilizing tax data to provide the Revenue Cabinet with studies, projections, statistical analyses, and any other information that will assist the Revenue Cabinet in performing its tax administrative functions;]~~ and
  - ~~(f) [(i)]~~ All other functions of the cabinet relative to state investment and debt management including, but not limited to, the making of debt service payments, the sale of bonds, and staff assistance to the State Property and Buildings Commission and the State Investment Commission.

- (2) The Office of Financial Management~~[-and Economic Analysis]~~ shall render monthly written reports concerning the performance of each investment to the State Investment Commission.
- (3) The Office of Financial Management~~[-and Economic Analysis]~~ shall review state appropriation-supported bond issues every six (6) months for possible debt service savings through advanced refundings.
- (4) The Office of Financial Management~~[-and Economic Analysis]~~ shall submit a report within forty-five (45) days after the publication of the Comprehensive Annual Financial Report to the Legislative Research Commission, for referral to the appropriate committee, indicating the bond issues refunded, original and new interest rates, estimated savings, original and new amortization schedules, issuance costs, debt reserves, disposition of savings, and information on economic, fiscal, and market indicators of the Commonwealth's debt position.
- (5) The state debt report shall include, but not be limited to, economic, fiscal, and market indicators of debt position as set forth in this section. Indicators shall be presented in tabular and, where appropriate, graphical form. Indicators shall be presented for the fiscal year just ended and, if data is available and except as otherwise noted, for the preceding nine (9) fiscal years.
- (6) Economic indicators shall include:
  - (a) Nonappropriation-supported debt as a percent of state total personal income;
  - (b) Nonappropriation-supported debt as a percent of total assessed value of property;
  - (c) Nonappropriation-supported debt per capita;
  - (d) Appropriation-supported debt as a percent of state total personal income;
  - (e) Appropriation-supported debt as a percent of total assessed value of property;
  - (f) Appropriation-supported debt per capita;
  - (g) Appropriation-supported debt service as a percent of total state personal income;
  - (h) Appropriation-supported debt service as a percent of total assessed value of property; and
  - (i) Appropriation-supported debt service per capita.
- (7) Fiscal indicators shall be reported separately and in total for the general fund, the road fund, and each restricted fund account from which debt service is expended.
- (8) Fiscal indicators shall include:
  - (a) Annual appropriation-supported debt service as a percent of total revenues; and
  - (b) Annual appropriation-supported debt service as a percent of available revenues.
- (9) Market indicators shall include:
  - (a) The rating assigned by Moody's Investors Services, Inc., or a comparable rating agency, to each nonappropriation-supported bond issued in the fiscal year just ended;
  - (b) The rating assigned by Moody's Investors Services, Inc., or a comparable rating agency, to each appropriation-supported bond issued in the fiscal year just ended;
  - (c) A comparison of the difference between the true interest cost of each nonappropriation-supported bond issued and the value of a selected revenue bond index, as published by the Bond Buyer Weekly, the Delphis Hanover Corporation, or other comparable service on a date relevant to the bond issue; and
  - (d) A comparison of the difference between the true interest cost of each appropriation-supported bond issued and the value of a selected municipal bond index, as published by the Bond Buyer Weekly, the Delphis Hanover Corporation, or other comparable service on a date relevant to the bond issue.
- (10) The state debt report shall contain a complete description of the sources of data used to prepare the report. This description shall include, but not be limited to, an enumeration, by fund and restricted fund account, of all debt, debt service, and revenue figures; the source and publication date of figures used for state total personal income, total assessed value of property, population, and selected bond indexes.
- (11) If the sources of data used in a current report differ substantially from those used in the report of the preceding year, the report shall include a detailed explanation of the change. If possible, data presented in the current

report for previous years shall be calculated so that, in any one (1) report, indicators for all years are calculated using consistent data categories. The use of any inconsistent data shall be noted and explained.

- (12) Nothing in this section shall authorize any act inconsistent with the authority granted the State Investment Commission by KRS 42.500 and 42.525.

Section 9. KRS 42.420 is amended to read as follows:

All other provisions of the Kentucky Revised Statutes notwithstanding, all state agencies and all individuals, agencies, authorities, boards, cabinets, commissions, corporations, or other entities of, or representing the Commonwealth with the authority to issue bonds, shall submit all proposed bond issues, bond anticipation notes, or interim debt financing to the Office of Financial Management~~[Economic Analysis]~~ for review and approval prior to issuance of such debt.

Section 10. KRS 42.560 is amended to read as follows:

- (1) There is established in the Treasury of the Commonwealth a trust fund to be known as the "Energy Assistance Trust Fund" referred to in KRS 42.560 to 42.572 as the "trust fund."
- (2) The trust fund shall consist of any oil overcharge refunds which become available to the state as a result of litigation for alleged overcharges for crude oil or refined petroleum products sold during the period of time in which federal price controls on such products were in effect, any moneys as may be appropriated by the general fund, and any investment interest earned on the fund.
- (3) The fund shall be managed by the state Office of Financial Management~~[and Economic Analysis]~~ and all moneys in excess of the amount to be disbursed in a given fiscal year shall be invested to maximize returns. The principal and any interest earnings of the trust fund shall at no time lapse to the general fund.
- (4) The trust fund and all accumulated interest shall be disbursed over a period of time not exceeding ten (10) years from February 19, 1988. Interest accumulated during the 1987-88 fiscal year shall immediately be available for disbursement. Fifty thousand dollars (\$50,000) of the interest shall be allocated to the Legislative Research Commission for consultant costs for a study of energy conservation and weatherization programs as directed by the 1988 General Assembly. The remainder of the accumulated interest shall be made available to the Cabinet for Families and Children with fifty percent (50%) of the interest allocated to weatherization services to low-income households and fifty percent (50%) of the interest allocated to low-income energy assistance services. The funds to be available for expenditure in any fiscal year shall be appropriated by the General Assembly from the trust fund as provided in KRS 48.300.

Section 11. KRS 42.572 is amended to read as follows:

The State Office of Financial Management~~[and Economic Analysis]~~ shall prepare and submit to the Legislative Research Commission a report by July 30 of each year on the operational and financial status of the fund.

Section 12. KRS 45A.840 is amended to read as follows:

As used in KRS 45A.840 to 45A.879, unless the context requires otherwise:

- (1) "Bond counsel" means an attorney who provides legal counsel to a bond issuing agency with regard to bond issuance and provides an unqualified legal opinion to the agency with respect to validity and tax treatment;
- (2) "Bond issuance" means the formulation, authorization, and issuance of bonds by a bond issuing agency;
- (3) "Bond issuing agency" means the State Property and Buildings Commission, Kentucky Asset/Liability Commission, Turnpike Authority of Kentucky, Kentucky Housing Corporation, Kentucky Infrastructure Authority, Kentucky Higher Education Student Loan Corporation, Kentucky River Authority, Kentucky Agricultural Finance Corporation, Kentucky Local Correctional Facilities Construction Authority, School Facilities Construction Commission, Murray State University, Western Kentucky University, University of Louisville when it declines to exercise the authority granted under KRS 164A.585(1) and 164A.605, Northern Kentucky University, Kentucky State University, University of Kentucky when it declines to exercise the authority granted under KRS 164A.585(1) and 164A.605, Morehead State University, Eastern Kentucky University, the Kentucky Community and Technical College System for the Technical Institutions' Branch, and the University of Kentucky for the University of Kentucky Community College System;
- (4) "Bonds" means the revenue bonds, notes, or other debt obligations issued by a bond issuing agency;
- (5) "Executive director" means the executive director of the Office of Financial Management~~[and Economic Analysis]~~;

- (6) "Office" means the Office of Financial Management~~and Economic Analysis~~ established by KRS 42.400;
- (7) "Underwriter" means:
- (a) The financial institution which structures and underwrites the bond issuing agency's issuance of bonds; or
  - (b) The financial advisor or fiscal agent which provides advice or services to the bond issuing agency with respect to the structure, timing, terms, or other matters concerning bond issuance;
- (8) "Underwriter's counsel" means an attorney who provides legal counsel to an underwriter with respect to its work on behalf of a bond issuing agency.

Section 13. KRS 45A.843 is amended to read as follows:

- (1) One (1) or more selection committees shall be created in the Office of Financial Management~~and Economic Analysis~~. Each selection committee shall have the authority to participate in the selection of both underwriters and bond counsel.
- (2) Except as provided in KRS 45A.867 and 45A.870, a selection committee shall participate in every instance of a bond issuing agency hiring an underwriter or bond counsel on behalf of a bond issuing agency.
- (3) A selection committee created in the office shall consist of the following six (6) or more members selected in the manner specified within each paragraph:
  - (a) Three (3) employees of the office other than the executive director. The executive director shall select the three (3) employees;
  - (b) Two (2) employees of the bond issuing agency appointed by the head of that agency to participate in the hiring of an underwriter or a bond counsel for that agency. However, at the discretion of the head of the bond issuing agency, he may substitute for one (1) of his employees an employee of the agency whose project will be funded by the bond proceeds; and
  - (c) One (1) or more merit employees of the Auditor of Public Accounts, appointed by the Auditor. The merit employees shall serve as nonvoting members of the committee. If one (1) employee is appointed, then that employee shall attend all committee proceedings. If more than one (1) employee is appointed, then at least one (1) of the employees shall attend any committee proceeding.
- (4)
  - (a) All selection committee members shall have experience which qualifies them to serve on the committee.
  - (b) Any individual appointed to serve by the executive director or the Auditor of Public Accounts shall serve an initial one (1) year term and may be reappointed to serve for additional successive one (1) year terms. He shall serve until his successor is appointed and qualified. A successor or a replacement, in the case of a vacancy, shall be appointed in the same manner as the initial appointee.
  - (c) A selection committee member appointed by the head of a bond issuing agency shall serve for the duration of the selection committee's participation in the hiring of an underwriter and a bond counsel for his agency. A replacement, in the case of a vacancy, shall be appointed in the same manner as the initial appointee.

Section 14. KRS 48.115 is amended to read as follows:

- (1) Except as provided for in subsection (4) of this section, the detailed revenue estimates for the general fund and the road fund required by KRS 48.120 shall be based on a consensus revenue forecast. The consensus revenue forecast shall be developed by the consensus forecasting group. The members of the consensus forecasting group shall be jointly selected by the *state budget director*~~secretary of the Finance and Administration Cabinet~~ and the Legislative Research Commission. The members shall be knowledgeable about the state and national economy and the revenue and financial conditions of the Commonwealth.
- (2) If, after the revenue estimates made as required under KRS 48.120, the *state budget director*~~secretary of the Finance and Administration Cabinet~~ determines that a revision to the revenue estimates is needed, the *state budget director*~~secretary of the Finance and Administration Cabinet~~ shall request a revision from the consensus forecasting group. The revised revenue estimates shall become the official revenue estimates.
- (3) The *state budget director*~~secretary of the Finance and Administration Cabinet~~ shall coordinate with the Revenue Cabinet and the Transportation Cabinet to ensure that the financial and revenue data required for the forecasting process is made available to the consensus forecasting group.

- (4) If the consensus forecasting group cannot agree on a consensus revenue forecast for the detailed revenue estimates required under KRS 48.120 or the revised revenue estimates as provided for under subsection (2) of this section, the official revenue estimates required by law shall be provided by the ***Governor's Office for Economic Analysis***~~[Finance and Administration Cabinet]~~.

Section 15. KRS 48.117 is amended to read as follows:

- (1) On or before August 15 of 1999 and of each subsequent odd-numbered year, the ***Office of State Budget Director***~~[Finance and Administration Cabinet]~~, in conjunction with the consensus forecasting group created by KRS 48.115, shall provide to each branch of government a budget planning report to include:
- (a) A baseline analysis and projections of economic conditions and outlook;
  - (b) Any potential consequences of the analysis and projections for the Commonwealth's fiscal condition; and
  - (c) The revenue implications for the general fund and road fund for the current fiscal year and next four (4) fiscal years.
- (2) The budget planning report shall include, but not be limited to, projections of personal income, employment, and preliminary planning estimates of general fund and road fund revenues to be used in the development of budgetary policy and guidelines for budget unit requests under KRS 48.040 and 48.050 for the next fiscal biennium.

Section 16. KRS 48.120 is amended to read as follows:

- (1) By October 15 of each odd-numbered year, the ***Office of State Budget Director***~~[Finance and Administration Cabinet]~~ shall provide to each branch of government the preliminary detailed revenue estimates made in accordance with the provisions of KRS 48.115 for the general fund and road fund for the current and next two (2) fiscal years, including explanatory statements, and a comparative record of the actual revenues of these funds for each of the last two (2) years concluded.
- (2) On or before the fifteenth legislative day, the ***Office of State Budget Director***~~[Finance and Administration Cabinet]~~ shall certify and present to the General Assembly the final detailed revenue estimates made in accordance with the provisions of KRS 48.115 for these funds.
- (3) Appropriations made in the branch budget bills enacted for each branch of government shall be based upon the revenue estimates presented to the General Assembly by the ***Office of State Budget Director***~~[Finance and Administration Cabinet]~~ under subsection (2) of this section, as modified by the appropriations committees of the General Assembly.

Section 17. KRS 48.130 is amended to read as follows:

- (1) The branch budget recommendation submitted by each branch of government shall include a plan for the reduction of the respective budget recommendations, by budget unit, if projected or actual tax receipts accruing to the general fund or road fund are five percent (5%) or less than the revenue estimates for these funds as determined under subsection (3) of KRS 48.120.
- (2)
- (a) In recommending budget reductions, the Governor, the Chief Justice, and the Legislative Research Commission shall not recommend universal percentage reductions, but shall weigh the needs of all budget units and shall strive to protect the highest possible level of service in their respective branches. Services which are not essential to constitutional functions shall be subject to reduction. Transfer of funds may be authorized by the budget reduction plan;
  - (b) In recommending budget reductions for the executive branch, the budget reduction plan provided for by subsection (1) of this section shall comply with the provisions of KRS 18A.1132;
  - (c) A layoff of state employees in the executive branch under the budget reduction plan enacted by the General Assembly shall comply with the provisions of KRS 18A.1132; and
  - (d) A layoff of state employees in the executive branch required by an actual or projected deficit in tax receipts contemplated by subsection (5) of this section shall comply with the provisions of KRS 18A.1132.
- (3) The plan shall be enacted as modified by the General Assembly in each branch budget bill.

- (4) Based upon the information provided in KRS 48.400 and in the event of an actual or projected deficit in tax receipts provided for by this section, the **Office of State Budget Director**~~[Finance and Administration Cabinet]~~ shall notify all branches of government:
  - (a) If funds that have accrued to the surplus accounts of the general or road funds are not sufficient to meet these deficits, the allotments to the respective branches shall be reduced according to the reduction provisions embodied in the branch budget bill, and the Governor, the Chief Justice, and the Legislative Research Commission shall automatically implement budget reductions for their respective branches according to the reduction provisions embodied in the branch budget bill; and
  - (b) In the event funds that have accrued to the surplus accounts of the general or road funds are sufficient to meet these deficits, transfers from these surplus accounts shall be made, as appropriate, and the budget reduction provisions embodied in the branch budget bill shall not be implemented.
- (5) Based upon the information provided in KRS 48.400 and in the event of an actual or projected deficit in tax receipts of five percent (5%) or less, the Governor, the Chief Justice, and the Legislative Research Commission shall implement budget reductions for their respective branches consistent with the provisions of the enacted branch budget bills.
- (6) The budget reduction plan shall provide that the annual increment granted state employees under KRS 18A.355 shall be reduced as provided by KRS 18A.355. Any such reduction of the annual increment shall be uniform for all employees.
- (7) If general fund or road fund tax receipts increase over the estimated deficits, then services shall be restored in the reverse order of the reduced services.
- (8) This section shall not preclude the General Assembly, in regular or special session, from amending a branch budget bill requiring budget reductions nor shall it preclude the Governor from calling a special session of the General Assembly at any time the budget reduction plan is in effect.
- (9) No budget reduction action shall be taken by any branch head in excess of the actual or projected deficit.

Section 18. KRS 48.400 is amended to read as follows:

- (1) The **Office of State Budget Director**~~[Finance and Administration Cabinet]~~ shall continuously monitor the financial situation of the Commonwealth. Based upon reports from budget units and its own estimates, the **office**~~[cabinet]~~ shall no later than the tenth day of each month or more often if necessary, report to the Governor, Chief Justice, and the Legislative Research Commission on the financial condition of the Commonwealth and its budget units.
- (2) Within thirty (30) days of the close of each fiscal quarter, the **state budget director**~~[Secretary of the Finance and Administration Cabinet]~~ shall report to the head of each branch budget the actual revenue receipts from the just-concluded quarter, as well as the projected revenue receipts for the next three (3) fiscal quarters. The report shall include a comparison with the estimated revenue receipts upon which the branch budget bills were developed pursuant to KRS 48.120 and shall note any potential consequences to the Commonwealth's fiscal condition as a result of actual or projected revenue receipts that differ from those used in the development of the branch budget bills.
- (3) In the event there is an actual or anticipated surplus or decrease in total estimated tax receipts, as determined under KRS 48.120(3) and subsection (2) of this section, immediate notification shall be given to all branches of government.

Section 19. KRS 48.600 is amended to read as follows:

- (1) In the event of an actual or projected deficit, as determined by the **Office of State Budget Director**~~[Finance and Administration Cabinet]~~, in total tax receipts, as specified in KRS 48.130, of five percent (5%) or less, the Governor, the Chief Justice, and the Legislative Research Commission shall make any allotment reductions for the budget units of their respective branches of government that are deemed necessary and shall take any steps to revise allotments for their respective branches that are necessary to prevent a cash deficit.
- (2) No budget revision action shall be taken by any branch head in excess of the actual or projected deficit.
- (3) Allotment revisions shall be reported to the standing Appropriations and Revenue Committees of each house or to the Interim Joint Committee on Appropriations and Revenue, as appropriate.

Section 20. KRS 48.705 is amended to read as follows:



- (1) A budget reserve trust fund account is hereby created in the general fund, pursuant to KRS 45.305. The budget reserve trust fund account shall be funded through direct appropriations, surplus revenue receipts in the general fund, and certain unexpended appropriations. Moneys in the account shall remain unallotted unless required by the provisions of this section.
- (2) (a) Beginning with the fiscal year starting on July 1, 1995, and for each fiscal year thereafter, except as provided in subsection (3) of this section, within thirty (30) days of the end of each fiscal year, the secretary of the Finance and Administration Cabinet shall cause to be deposited to the budget reserve trust fund account the lesser of the following amounts:
  1. Fifty percent (50%) of all general fund revenue receipts in excess of the revenue estimates determined under KRS 48.120(3), or the amount subsequently certified by the *state budget director*~~[secretary of the Finance and Administration Cabinet]~~ pursuant to KRS 48.400(3) for the year just ended; and fifty percent (50%) of the unexpended balance of all general fund appropriations for the fiscal year just ended that would otherwise lapse to the general fund surplus account under KRS 45.229; or
  2. The amount necessary, from general fund revenue receipts in excess of the revenue estimates determined under KRS 48.120(3), or the amount subsequently certified by the *state budget director*~~[secretary of the Finance and Administration Cabinet]~~ pursuant to KRS 48.400(3) for the year just ended, and from the unexpended balance of all general fund appropriations for the fiscal year just ended that would otherwise lapse to the surplus account under KRS 45.229, to make the balance of the budget reserve trust fund account equal to five percent (5%) of the actual general fund revenue receipts collected during the fiscal year just ended, as determined by the Finance and Administration Cabinet.
- (b) Any amounts to be deposited to the budget reserve trust fund account from general fund revenue receipts in excess of the revenue estimates determined under KRS 48.120(3) or the amount subsequently certified by the *state budget director*~~[secretary of the Finance and Administration Cabinet]~~ pursuant to KRS 48.400(3) shall be determined after the excess receipts have been reduced by the amount necessary to implement the provisions of any surplus expenditure plan authorized by KRS 48.140 and enacted as a part of a branch budget bill.
- (3) If, at the close of any fiscal year, the budget reserve trust fund account has a balance equal to or greater than five percent (5%) of the actual general fund revenue receipts collected during the fiscal year just ended, as determined by the Finance and Administration Cabinet, the deposits required under subsection (2) of this section shall be suspended for that year.
- (4) (a) Moneys in the budget reserve trust fund account may be appropriated by the General Assembly in a regular or special session.
- (b) Funds from the budget reserve trust fund account may be used pursuant to the provisions of KRS Chapter 47 if actual general fund revenue receipts are not sufficient to meet the general fund appropriation levels authorized by the General Assembly in the branch budget bills for the executive, legislative, and judicial branches, as determined under KRS 48.130 and 48.600, or an appropriation provision in any act.
- (5) Before authorizing any allotments from the budget reserve trust fund account, the secretary of the Finance and Administration Cabinet shall notify in writing the Interim Joint Committee on Appropriations and Revenue. The notice shall include the amount and purpose for the proposed allotment.
- (6) Within thirty (30) days of the close of each fiscal year, the secretary of the Finance and Administration Cabinet shall report to the Interim Joint Committee on Appropriations and Revenue the general fund revenue receipts collected for the fiscal year just ended, the balance of the budget reserve trust fund account, and any amounts deposited to the budget reserve trust fund account pursuant to the provisions of subsection (2) of this section.
- (7) All sums appropriated or deposited to the budget reserve trust fund account shall not lapse at the close of the fiscal year but shall carry forward into the next fiscal year and shall remain available for the purposes of this section.

Section 21. KRS 56.862 is amended to read as follows:

The Office of Financial Management~~[and Economic Analysis]~~ shall serve as staff to the commission. The executive director of the Office of Financial Management~~[and Economic Analysis]~~ shall serve as secretary to the commission.

The commission shall coordinate with the Office of the Controller to ensure that the necessary financial data is made available.

Section 22. KRS 56.863 is amended to read as follows:

The commission shall have the power and duty to:

- (1) Maintain the records and perform the functions necessary and proper to accomplish the purposes of KRS 56.860 to 56.869;
- (2) Promulgate administrative regulations relating to KRS 56.860 to 56.869;
- (3) Conduct analysis to determine the impact of fluctuating receipts of revenues on the budget of the Commonwealth, fluctuating interest rates upon the interest-sensitive assets and interest-sensitive liabilities of the Commonwealth, and the resulting change in the net interest margin on the budget of the Commonwealth;
- (4) Develop strategies to mitigate the impact of fluctuating receipts of revenues on the budget of the Commonwealth and of fluctuating interest rates on the Commonwealth's interest-sensitive assets and interest-sensitive liabilities;
- (5) Report its findings to the State Investment Commission at least annually to assist the State Investment Commission in developing and implementing its investment strategy. The State Investment Commission shall provide the commission with a copy of its monthly investment income report to aid the commission in developing and implementing its strategies;
- (6) Issue funding notes, project notes, and tax and revenue anticipation notes or other obligations on behalf of any state agency to fund authorized projects or to satisfy judgments;
- (7) Refund any funding notes, project notes, or tax and revenue anticipation notes issued under KRS 56.860 to 56.869 to achieve economic savings, to better match receipts with expenditures, or as a part of a continuing finance program;
- (8) Designate individual employees or officers of the Office of Financial Management~~[and Economic Analysis]~~ as agents for purposes of approving the principal amount of tax and revenue anticipation notes, the interest rate, the discount, maturity date, and other relevant terms of tax and revenue anticipation notes, project notes, and funding notes or refunding notes issued within constraints established by the commission and to execute agreements, including notes and financial agreements, for the commission;
- (9) Enter into financial agreements for the purpose of hedging a portfolio of interest-sensitive assets and interest-sensitive liabilities to stabilize the Commonwealth's net interest margin, as deemed necessary by the commission, subject to administrative regulations promulgated by the commission that limit the net exposure of the Commonwealth as a result of these financial agreements;
- (10) Deposit net interest payments and premiums received by the commission under financial agreements relating to funding notes, project notes, and tax and revenue anticipation notes into a restricted account, which shall not lapse at the end of the fiscal year but shall continue to accumulate to act as security for these financial agreements. This duty is mandatory in nature. Any accumulated funds in excess of the amount determined by the commission to be necessary to establish this security may be applied to debt service payments, net interest payments, and premiums and expenses related to tax and revenue anticipation notes, project notes, and funding notes; and
- (11) Report to the Capital Projects and Bond Oversight Committee and the Interim Joint Committee on Appropriations and Revenue on a semiannual basis, by September 30 and March 31 of each year, the following:
  - (a) A description of the Commonwealth's investment and debt structure;
  - (b) The plan developed to mitigate the impact of fluctuating revenue receipts on the budget of the Commonwealth and fluctuating interest rates on the interest-sensitive assets and interest-sensitive liabilities of the Commonwealth, including an analysis of the impact that a change in the net interest margin would have on the budget of the Commonwealth. The report due by March 31 of each year shall reflect the strategy for January through June of the fiscal year, and the report due by September 30 shall reflect the strategy for July through December of the fiscal year;
  - (c) The principal amount of notes issued, redeemed, and outstanding; and a description of all financial agreements entered into during the reporting period. The report due by March 31 shall include

information about agreements entered into from July through December of the fiscal year. The report due by September 30 shall include information about agreements entered into between January and June of the prior fiscal year; and

- (d) A summary of gains and losses associated with financial agreements and any other cash flow strategies undertaken by the commission to mitigate the effect of fluctuating interest rates during each reporting period. The report due by March 31 shall include information about agreements and strategies entered into or undertaken from July through December of the fiscal year. The report due by September 30 shall include information about agreements and strategies entered into or undertaken from January through June of the prior fiscal year.

Section 23. KRS 131.020 is amended to read as follows:

- (1) The Revenue Cabinet shall be organized into the following functional units:
  - (a) Office of the Secretary. The Office of the Secretary shall include the Office of the Taxpayer Ombudsman, the Office of Financial and Administrative Services, principal assistants and other personnel appointed by the secretary pursuant to KRS Chapter 12 as are necessary to enable the secretary to perform functions of the office;
  - (b) Office of Financial and Administrative Services. The Office of Financial and Administrative Services shall be headed by an executive director. The functions and duties of the office shall include personnel services, administrative support, preparation and administration of the budget, training, and asset management;
  - (c) Office of Taxpayer Ombudsman. The Office of Taxpayer Ombudsman shall be headed by a taxpayer ombudsman as established by KRS 131.051(1). The functions and duties of the office shall consist of those established by KRS 131.071;
  - (d) Department of Law. The Department of Law shall be headed by a commissioner. The functions and duties of the department shall include establishing Revenue Cabinet tax policies, providing information to the public, conducting tax research, collecting delinquent taxes, conducting conferences, administering taxpayer protests, issuing final rulings, administering all activities relating to assessments issued pursuant to KRS 138.885, 139.185, 139.680, 141.340, 142.357, and 143.085, enforcing the criminal laws of the Commonwealth involving revenue and taxation, and representing the cabinet in legal and administrative actions. The Department of Law shall consist of the divisions of legal services, protest resolution, tax policy, collections, and research;
  - (e) Department of Property Valuation. The Department of Property Valuation shall be headed by a commissioner. The functions and duties of the department shall include mapping, providing assistance to property valuation administrators, supervising the property valuation process throughout the Commonwealth, valuing the property of public service companies, valuing unmined coal and other mineral resources, administering tangible and intangible personal property taxes, and collecting delinquent taxes. The Department of Property Valuation shall consist of the Divisions of Local Valuation, State Valuation, and Technical Support;
  - (f) Department of Tax Administration. The Department of Tax Administration shall be headed by a commissioner. The functions and duties of the department shall include recordkeeping, conducting audits, reviewing audits, rendering taxpayer assistance, and collecting delinquent taxes. The Department of Tax Administration shall consist of the Divisions of Field Operations, Revenue Operations, and Compliance and Taxpayer Assistance; and
  - (g) Department of Information Technology. The Department of Information Technology shall be headed by a commissioner. The functions and duties of the department shall include the development and maintenance of technology and information management systems in support of all units of the cabinet. The Department of Information Technology shall consist of the Division of Systems Planning and Development and the Division of Technology Infrastructure Support.
- (2) The functions and duties of the cabinet shall include conducting conferences, administering taxpayer protests, and settling tax controversies on a fair and equitable basis, taking into consideration the hazards of litigation to the Commonwealth of Kentucky and the taxpayer. The mission of the cabinet shall be to afford an opportunity for taxpayers to have an independent informal review of the determinations of the audit functions of the cabinet, and to attempt to fairly and equitably resolve tax controversies at the administrative level.

- (3) Except as provided in KRS 131.190(4), the cabinet shall fully cooperate with and make tax information available as prescribed under KRS 131.190(2) to the ~~Governor's [Finance and Administration Cabinet's] Office for [of Financial Management and]~~ Economic Analysis as necessary for the office to perform the tax administration function established in KRS 42.410.

Section 24. KRS 151.730 is amended to read as follows:

- (1) The authority is hereby authorized to provide, at one (1) time or from time to time, for the issuance of its revenue bonds for the purpose of paying all or any part of the cost of any one (1) or more projects undertaken pursuant to KRS 151.720. The principal of and the interest on such bonds shall in each instance be payable solely from a special fund provided for the payment, with revenues derived from water use fees collected from all facilities using water from the Kentucky River basin, except those facilities using water primarily for agricultural purposes, pledged to be set aside and deposited in such special fund. The bonds of any issue may be in one (1) or more series and any one (1) or more such series may enjoy equal or subordinate status with respect to the pledge of funds from which they are payable, shall be dated, shall bear interest, shall mature at such time or times not exceeding the thirtieth anniversary of their respective dates, all as may be provided by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form of bonds including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places for payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. The bonds shall be signed by the facsimile signature of the chairman of the authority, and the seal of the authority or a facsimile thereof shall be affixed thereto and attested by the manual signature of the treasurer of the authority, and any coupons attached thereto shall bear the facsimile signature of the chairman of the authority. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All bonds issued under the provisions of this section shall have and are hereby declared to have all qualities and incidents of negotiable instruments under the uniform commercial code of the Commonwealth. The bonds may be issued in coupon or in registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The authority may sell such bonds at public sale, and for such price as it may determine will best effect the purposes of KRS 151.720.
- (2) The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project or projects for which such bonds shall have been issued, and shall be disbursed in such a manner and under such restrictions, if any, as the authority may provide in the proceedings authorizing the issuance of such bonds or in the trust indenture securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the proceedings authorizing the issuance of such bonds or in the trust indenture securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed such cost, the surplus shall be deposited to the credit of the sinking fund or funds for such bonds or any account or accounts therein as the authority shall have provided in the proceedings or trust indenture authorizing and securing such bonds.
- (3) Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.
- (4) The authority may issue revenue bond anticipation notes.
- (5) Any holder of bonds issued under the provisions of this section or any of the coupons appertaining thereto, and the trustee under any trust indenture, except to the extent of the rights given in this section, may be restricted by such trust indenture or proceedings, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the Commonwealth or granted under this section or under such trust indenture or the proceedings authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this section or by such trust indenture or proceedings to be performed by the authority or by any officer or employee thereof.

- (6) Revenue bonds issued under the provisions of this section shall not be a debt, liability, or obligation of the Commonwealth or any political subdivision thereof and shall not be a pledge of the faith and credit of the Commonwealth or any political subdivision thereof.
- (7) Revenue bonds issued by the authority shall be subject to the jurisdiction and approval of the State Property and Buildings Commission and the Capital Projects and Bond Oversight Committee and shall be subject to review by the Office of Financial Management~~[-and Economic Analysis]~~.
- (8) The authority shall not be required to pay any taxes and assessments to the Commonwealth or any county, municipality, or other governmental subdivision of the Commonwealth upon any of its property or upon its obligations or other evidences of indebtedness pursuant to the provisions of this section, or upon any moneys, funds, revenues, or other income held or received by the authority and the bonds or notes of the authority and the income therefrom shall at all times be exempt from taxation, except for death and gift taxes and taxes of transfers.
- (9) Contractual expenses to construct, reconstruct, provide for the major maintenance, or repair the Kentucky River locks and dams, or to maintain the channel, or to acquire real or personal property pertaining thereto, or to construct, reconstruct, maintain, or repair such property, shall be paid from the proceeds of the revenue bonds. Expenses for administrative services and necessary travel expenses and per diem compensation of authority members, shall not be paid from the proceeds of the revenue bonds. Nor shall the cabinet's cost of operating the locks be paid from the proceeds of the revenue bonds.

Section 25. KRS 153.180 is amended to read as follows:

- (1) There is hereby established a nonprofit foundation to be known as the Kentucky Foundation for the Arts. The purpose of the foundation shall be to enhance the stability of Kentucky's arts organizations and to ensure Kentuckians have access to the arts through the support of an endowment fund.
- (2) Funding for the foundation shall be obtained through state appropriations, gifts, grants, and any other funds from the public and private sectors. The foundation board shall have the authority to solicit, accept, and receive contributions from the public and private sectors to match public funding. Moneys in the foundation fund shall not lapse to the general fund at the end of the fiscal year. Moneys in the foundation fund shall be invested by the Office of Financial Management~~[-and Economic Analysis]~~ consistent with the provisions of KRS Chapter 42, and interest income earned shall be credited to the foundation fund. The foundation board may use the investment income for the purpose of awarding matching grants to nonprofit arts organizations to carry out the following programs:
  - (a) The Performing Arts and Visual Arts Touring Subsidy Program shall support tours and exhibitions for the education and enjoyment of audiences throughout the state.
  - (b) The Institutional Stabilization Program shall provide operating funds to achieve short-term or long-term stability of arts organizations.
- (3) The foundation shall be governed by a board of trustees consisting of six (6) members appointed by the Governor on recommendations from the Kentucky Arts Council. For the initial appointments, the Governor shall appoint two (2) members to serve two (2) year terms; two (2) members to serve three (3) year terms; and two (2) members to serve four (4) year terms. Thereafter, the Governor shall make all appointments for a term of four (4) years. The board shall elect by majority vote a chair and other officers deemed necessary. Board members shall not receive any compensation for their services, but may be reimbursed in accordance with the provisions of KRS 44.070 and 45.101 for actual and necessary expenses incurred in the performance of their duties.
- (4) The foundation board shall perform duties and responsibilities deemed necessary to fulfill the purposes of this section. The foundation board shall establish by administrative regulation procedures for administration of the foundation, eligibility criteria for the award of grants, appropriate matching contributions from grant recipients, and evaluation and reporting requirements.
- (5) The foundation shall be attached to the office of the secretary for the Education, Arts, and Humanities Cabinet for administrative purposes only. The Kentucky Arts Council shall provide to the foundation by agreement staff support and office facilities for which reasonable charges and fees may be levied against the foundation fund.
- (6) The foundation board shall submit an annual report to the Governor and the Legislative Research Commission listing the sources of funds acquired and expended.

Section 26. KRS 177.366 is amended to read as follows:

- (1) Except as provided in subsection (8) of this section, on and after July 1, 1980, the Finance and Administration Cabinet shall allocate to each incorporated city and "unincorporated urban place" its pro rata share of the funds set apart for construction, reconstruction, and maintenance of urban roads and streets on the basis of the ratio which the population in the incorporated cities and in "unincorporated urban places" bears to the total population in incorporated cities and in "unincorporated urban places" of the state. "Unincorporated urban places" as used here, means an area as defined in KRS 81.015, and any area outside of incorporated cities, which area has a population of 2,500 or more as shown by the most recent decennial census of the United States Bureau of the Census, and all populations shall be determined by the most recent decennial census of the United States.
- (2) Any area which becomes incorporated after December 31, 1970, shall not be eligible to participate in the Municipal Aid Program until the beginning of the second fiscal year following its incorporation and population certification. It shall be the responsibility of the newly incorporated area to provide the Finance and Administration Cabinet with documentation from the United States Bureau of the Census showing the population of the newly incorporated area as it existed at the time of the last decennial census.
- (3) In the event the newly incorporated area cannot obtain a population count from the Bureau of the Census, it shall not be eligible to participate in the Municipal Aid Program until the next decennial census.
- (4) If an incorporated city, whose incorporation took place prior to December 31, 1970, annexes additional area, the population of the annexed area will not be counted in the allocation of municipal aid funds until the beginning of the second fiscal year following annexation and population certification.
- (5) It shall be the responsibility of the incorporated city to provide the Finance and Administration Cabinet with documentation from the United States Bureau of the Census showing the population for the annexed area as it existed at the time of the last decennial census.
- (6) If the incorporated area cannot obtain a population count from the Bureau of the Census, the annexed area's population shall not be eligible to be counted in the distribution of the municipal aid fund. However, the streets included in the annexed areas shall be eligible to receive work through this program.
- (7) Apportionments as required by the provisions of this section shall be made on the basis of revenue estimates supplied by the **Office of State Budget Director**~~[Finance and Administration Cabinet]~~ and shall be adjusted quarterly in accordance with the most recent revision of the estimates by the **Office of State Budget Director**~~[Finance and Administration Cabinet]~~.
- (8) Any local government eligible to receive municipal road aid moneys pursuant to KRS 177.365 to 177.369 shall be required to submit a uniform financial information report to the Department for Local Government pursuant to KRS 65.905 before any payment of municipal road aid funds shall be made. The Department for Local Government shall notify the Finance and Administration Cabinet no later than March 1 annually of any local government that has not submitted a uniform financial information report. The Finance and Administration Cabinet shall upon notification by the department, immediately suspend all municipal road aid moneys to the local government until the local government complies with the provisions of KRS 65.900 to 65.915 and submits the uniform financial information report to the Department for Local Government. The department shall immediately notify the Finance and Administration Cabinet to reinstate municipal road aid moneys to any local government affected by this subsection as soon as the local government submits the uniform financial information report.

Section 27. KRS 247.946 is amended to read as follows:

The corporation shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of KRS 247.940 to 247.978 including, but without limiting the generality of the foregoing, the power:

- (1) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, administrative regulations, and policies in connection with the performance of its functions and duties;
- (2) To review the projects authorized to be financed by KRS 247.940 to 247.978 in order to determine the following:
  - (a) The qualifications of the applicant as a party entitled to financing assistance under the provisions of KRS 247.940 to 247.978 and the rules and administrative regulations of the corporation;

- (b) The qualifications of the applicant in the areas of experience, training, and financial ability in relation to the project for which assistance is sought and any other areas as the corporation shall determine necessary and desirable in implementing the intent of KRS 247.940 to 247.978 in the promotion of agriculture throughout the Commonwealth. Analysis shall include a careful evaluation of character, experience, record, and prospects for sound financial management and sound operation of the project. Financial ability factors to be considered shall include the applicant's total assets controlled, equity owned, contingent liabilities, history of earnings to date, and repayment capacity, as well as other factors set by the corporation. Consideration may be given to the special needs of beginning farmers;
  - (c) The economic need for the project in the area based upon general economic conditions and unemployment in the region;
  - (d) The economic soundness of the project based upon generally accepted cost-benefit methodology; and
  - (e) Consistency of the project with other policies of the Commonwealth designed to ensure a sustained land base for agriculture including preservation of prime farmland and promotion of soil conservation techniques for protection of farmland;
- (3) To issue from time to time bonds, notes, bond anticipation notes, renewal notes, refunding bonds, interim certificates, certificates of indebtedness, debentures, warrants, commercial paper, or other obligations or evidence of indebtedness, hereinafter collectively referred to as "bonds" or "notes," to provide funds for and to fulfill and achieve its authorized public functions or corporate purposes, as set forth in the provisions of KRS 247.940 to 247.978; and in addition to the powers conferred hereunder, to have all the authority delegated to cities and counties pursuant to the provisions of KRS 103.200 to 103.285; provided, however, that bonds or notes issued by the corporation shall not be subject to the jurisdiction or approval of the Industrial Revenue Bond Oversight Committee or the State Property and Buildings Commission but shall be subject to the review of the Office of Financial Management~~and Economic Analysis~~;
  - (4) To make or participate in the making of insured mortgage loans to qualified applicants for the purpose of purchasing agricultural real estate and improvements;
  - (5) To purchase or participate in the purchase of mortgage loans made to qualified applicants for the purpose of purchasing agricultural real estate and improvements;
  - (6) To make or participate in the making of loans to qualified applicants for the purpose of purchasing machinery, equipment, and livestock;
  - (7) To purchase or participate in the purchase of loans to qualified applicants for the purpose of purchasing machinery, equipment, and livestock;
  - (8) To make or participate in the making or to purchase or participate in the purchase of loans to qualified applicants for the purpose of leasing equipment, introducing new agricultural commodities or enhancing agricultural markets;
  - (9) To collect and pay reasonable fees and charges in connection with making, purchasing, and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness;
  - (10) To acquire real and personal property, or any interest therein, by purchase, foreclosure, lease, sublease, or otherwise; to own, manage, and operate real and personal property; to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber real and personal property where necessary or appropriate to the purposes of the corporation subject to the rights of holders of the bonds of the corporation, at public or private sale, with or without public bidding;
  - (11) To sell, at public or private sale, all or any part of any real estate mortgage or chattel mortgage or other instrument or document securing any loan permitted by KRS 247.940 to 247.978;
  - (12) To procure insurance against any loss in connection with its operations in the amounts and from any insurers, as it may deem necessary or desirable;
  - (13) To consent, whenever the corporation deems necessary or desirable in the fulfillment of its corporate purposes, to the modification of interest rates, time of payment of principal or interest, or any other terms of any loan, contract, or agreement of any kind to which the corporation is a party;

- (14) To include in any borrowing those amounts deemed necessary by the corporation to pay financing charges, capitalized interest, consultant, advisory, and legal fees and any other expenses necessary or incident to any borrowing;
- (15) To make and publish administrative regulations respecting its lending programs and any other rules and regulations as are necessary to effectuate its corporate purposes;
- (16) To make, execute, and effectuate any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, or other organization or entity, necessary to accomplish the purposes of KRS 247.940 to 247.978;
- (17) To accept gifts, devises, bequests, grants, loans, appropriations, and other assistance and any other aid from any source whatsoever and to agree to and to comply with conditions attached thereto;
- (18) To sue and be sued in its own name and in the name of any subsidiary corporation or entity which may be created pursuant to subsection (28) of this section;
- (19) To maintain an office in the city of Frankfort and at any other place or places as it may determine;
- (20) To employ fiscal consultants, engineers, attorneys, appraisers, and such other agents and employees as may be required in the judgment of the corporation and to fix and pay their compensation from funds available to the corporation therefor;
- (21) To invest any funds held in sinking funds, reserve funds, or trust fund accounts or any moneys not required for immediate disbursement by the corporation in:
  - (a) Obligations of or guaranteed by the Commonwealth, United States of America or their respective agencies and instrumentalities;
  - (b) Certificates of deposit and other evidences of deposit at state and federal chartered banks and savings and loan associations, fully collateralized as to any principal amount in excess of the amount insured by the United States government or any agency thereof;
  - (c) A guaranteed investment or similar contract, which provides for the investment of funds at a guaranteed rate of return, with an insurance company or depository financial institution with a claim paying rating of no less than either of the two (2) highest grades given by a nationally recognized rating agency; and
  - (d) Any other investment authorized by law for the investment of funds of the Commonwealth;
- (22) Subject to the rights of holders of bonds of the corporation, to renegotiate, refinance, or foreclose on any mortgage, security interest, or lien; or commence any action to protect or enforce any right or benefit conferred upon the corporation by any law, mortgage, security interest, lien, contract, or other agreement; and bid for and purchase property at any foreclosure or at any other sale or otherwise acquire or take possession of any property; and in any such event, the corporation may complete, administer, pay the principal of and interest on any obligation incurred in connection with the property, dispose of and otherwise deal with the property in any manner as may be necessary or desirable to protect the interest of the corporation or of holders of its bonds therein;
- (23) To insure, coinsure, reinsure, or cause to be insured, coinsured or reinsured, agricultural loans, mortgage loans, or mortgages, or any other type of loans, and pay or receive premiums on insurance, coinsurance, or reinsurance, and establish reserves for losses, and participate in the insurance, coinsurance, or reinsurance of agricultural loans, mortgage loans or mortgages, or any other type of loans with the federal or state government or any private insurance company;
- (24) To undertake and carry out or authorize the completion of studies and analyses of agricultural conditions and needs within the Commonwealth and needs relating to the promotion of agricultural exports and ways of meeting the needs, and make the studies and analyses available to the public and to the agricultural industry, and to engage in research or disseminate information on agriculture and agricultural exports;
- (25) To accept federal, state, or private financial or technical assistance and comply with any conditions for assistance, provided that those conditions are not in conflict with the intent of the provisions of KRS 247.940 to 247.978;
- (26) To purchase, discount, sell, negotiate and guarantee, insure, co-insure and reinsure notes, drafts, checks, bills of exchange, acceptances, bankers' acceptances, cable transfers, letters of credit, and other evidence of indebtedness;



- (27) To serve as the beneficiary of any public trust; and
- (28) To create such subsidiary corporations or entities as may be necessary to borrow money, insure or reinsure agricultural loans, or issue bonds.

Section 28. KRS 248.550 is amended to read as follows:

- (1) The amount of revenues collected and/or credited to the tobacco research-trust fund shall be appropriated each year to the University of Kentucky Tobacco and Health Research Institute to finance tobacco research projects and programs as provided in KRS 248.510 to 248.570 and shall be expended by the institute only on those projects and programs authorized by the Kentucky Tobacco Research Board.
- (2) The ***Office of State Budget Director***~~[Finance and Administration Cabinet]~~ shall supply revenue estimates of the amount of revenue anticipated to be collected during each fiscal year by the added one-half cent (\$0.005) tax on cigarettes which estimate, along with any federal funds available, shall be the basis for preparing tobacco research programs and budget requests for each fiscal year.

Section 29. KRS 342.1223 is amended to read as follows:

- (1) The Kentucky Workers' Compensation Funding Commission is created as an agency of the Commonwealth for the public purpose of controlling, investing, and managing the funds collected pursuant to KRS 342.122.
- (2) The commission shall:
  - (a) Hold, administer, invest, and reinvest the funds collected pursuant to KRS 342.122 and its other funds separate and apart from all "state funds" or "public funds," as defined in KRS Chapter 446;
  - (b) Act as a fiduciary, as defined in KRS Chapter 386, in exercising its power over the funds collected pursuant to KRS 342.122, and may invest association funds through one (1) or more banks, trust companies, or other financial institutions with offices in Kentucky in good standing with the Department of Financial Institutions, in investments described in KRS Chapter 386, except that the funding commission may, at its discretion, invest in nondividend-paying equity securities;
  - (c) Report to the General Assembly at each regular session the actuarial soundness and adequacy of the funding mechanism for the special fund and other programs supported by the mechanism, including detailed information on the investment of funds and yields thereon;
  - (d) Recommend to the General Assembly, not later than October 31 of the year prior to each regular legislative session, changes deemed necessary in the level of the assessments imposed in this chapter;
  - (e) In conjunction with the Labor Cabinet, submit to the General Assembly, not later than October 31 of the year prior to each regular legislative session, a proposed budget for the biennium beginning July 1 following the regular session of the General Assembly;
  - (f) In conjunction with the Labor Cabinet, provide to the Interim Joint Committee on Appropriations and Revenue an annual budget and detailed quarterly financial reports;
  - (g) Conduct periodic audits, independently or in cooperation with the Labor Cabinet or the Revenue Cabinet, of all entities subject to the assessments imposed in this chapter; and
  - (h) Report monthly to the Committees on Appropriations and Revenue and on Labor and Industry its monthly expenditures of restricted agency funds and the nature of the expenditures.
- (3) The commission shall have all of the powers necessary or convenient to carry out and effectuate the purposes for which it was established, including, but not limited to, the power:
  - (a) To sue and be sued, complain, or defend, in its name;
  - (b) To elect, appoint, or hire officers, agents, and employees, and define their duties and fix their compensation within the limits of its budget approved by the General Assembly;
  - (c) To contract for investment counseling, legal, actuarial, auditing, and other professional services in accordance with the provisions relating to personal service contracts contained in KRS Chapter 45A;
  - (d) To appoint, hire, and contract with banks, trust companies, and other entities to serve as depositories and custodians of its investment receipts and other funds;

- (e) To take any and all other actions consistent with the purposes of the commission and the provisions of this chapter; and
  - (f) To make and promulgate administrative regulations.
- (4) Notwithstanding the provisions of this chapter to the contrary, the Kentucky Workers' Compensation Funding Commission shall utilize the investment expertise and advice of the Office of Financial Management ~~and Economic Analysis~~ rather than entering into a consulting contract for investment counseling. The fees charged by financial institutions for managing the investments of the funds of the funding commission shall be paid from the investment earnings of the funds.
- (5) The commission shall be attached to the Labor Cabinet for administrative purposes only.

Section 30. KRS 342.825 is amended to read as follows:

The board shall formulate and adopt an investment policy that safeguards the value of all assets and maximizes investment potential commensurate with risk and liquidity restrictions, and supervise the investment activities of the authority subject to the limitations on domestic insurance companies under KRS Chapter 304. Notwithstanding any provisions of the Kentucky Revised Statutes to the contrary, the authority may utilize the investment expertise and advice of the Office of Financial Management ~~and Economic Analysis~~ in the ~~Cabinet for~~ Finance and Administration *Cabinet*. The authority shall also retain an independent investment counsel or managers who shall be subject to standards applicable to fiduciaries responsible for safeguarding assets of a corporation.

Section 31. The General Assembly confirms Executive Order 99-1439, issued by the Governor on October 26, 1999, to the extent that it is not otherwise confirmed by this Act.

**Approved March 3, 2000**

## CHAPTER 47

### (HB 193)

AN ACT relating to state leasing.

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

Section 1. KRS 56.803 is amended to read as follows:

- (1) When an agency determines that it will need office or other space, the agency shall submit a request for the acquisition of the additional space to the Department for Facilities Management in the Finance and Administration Cabinet. Except in the case of an emergency as described at KRS 56.805(3), an agency shall submit its space request in writing to the department at least ninety (90) calendar days before the space requested will be required by the agency. In the case of an emergency, an agency shall communicate its space needs to the department pursuant to KRS 56.805(3) as soon as an agency knows that it will need the space. If the commissioner of the Department for Facilities Management determines that insufficient space has been allocated to the agency making the request and that it is appropriate to lease additional space for the agency making the request, the commissioner shall acquire the space required by lease as provided by KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190.
- (2) The Department for Facilities Management shall review each agency space request to determine whether space suitable to meet the agency's reasonable needs may be available in a state-owned or occupied building. If it is determined that there is suitable space available in a state-owned or occupied building, the commissioner shall notify the agency. A copy of the notice shall be kept on file.
- (3) If it is determined that there is no suitable space available in a state-owned or occupied building, the department shall comply with the procedures set forth in this section in the leasing of space, except as otherwise provided in KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190.
- (4) The department shall draw up general requirement specifications for the space required. These general requirement specifications shall not be changed except, at the discretion of the commissioner, when the lease process is initiated again pursuant to paragraph (c) of subsection (15) of this section or pursuant to paragraph (b) of subsection (16) of this section. The general requirement specifications shall be kept on file.
- (5) (a) In soliciting the interest of lessors who have property to let in a county where space is sought, the department shall give adequate public notice to reasonably inform persons having property to let within

the county of the type of space required, the general location of the property, and the number of square feet needed. The notice may include posting on the Internet or newspaper advertisements. Each notice shall contain general information concerning the agency requirements for the space sought and shall state the last time, date, and place that written responses shall be received. When it is anticipated that a lease may be negotiated containing deviations or variations from the terms and conditions of the state standard lease form prescribed by the Division of Real Properties, within the department, any deviations or variations shall be stated in the notice.

- (b) The Department for Facilities Management may use any means available to notify landlords that a notice has been given.
- (6) A property owner, or his representative, shall respond in writing on or before the time and date designated in the notice and shall state in the writing the type and location of the property, the name and address of the property owner, and the date of availability of the property. The department shall deal only with individuals who have submitted written responses on or before the time and date designated in the notice.
- (7) All written responses received on or before the time and date designated shall be opened or downloaded at the same time, publicly read or posted, and kept on file by the department.
- (8) Within five (5) days of the opening of written responses, the department shall transmit general requirement specifications to each person who submitted a written response on or before the time and date designated. The same general requirement specifications shall be transmitted to each person.
- (9) After the general requirement specifications have been transmitted, except as provided in paragraph (a) of subsection (13) of this section, the commissioner, and department employees under his supervision, may negotiate with persons who submitted written responses on or before the time and date designated. If in the course of negotiations, a person proposes terms and conditions of lease different from those contained in the state standard lease form which are determined to be in the Commonwealth's best interest to accept, but no mention of the acceptability thereof has been made in the notice given pursuant to subsection (5) of this section, all other persons who submitted written responses on or before the time and date designated shall be notified of the terms and conditions and shall be allowed to incorporate the terms and conditions in written proposals when submitted pursuant to subsection (12) of this section. A copy of each notice shall be kept on file.
- (10) The department shall inspect each space proposed to be leased to determine its suitability to the reasonable needs of the agency for whose use the property is sought. The owner of the property, or the owner's representative, shall provide access to the property for the inspection. A report of the findings about each property inspected shall be submitted on a site evaluation form to the commissioner of the department. Completed site evaluation forms shall be kept on file.
- (11) After the commissioner has reviewed the completed site evaluation forms, the commissioner shall inform each owner of property, or his representative, of the steps necessary to bring the property up to general and specific requirement specifications. The commissioner shall also invite each person to submit a written proposal on a form created by the Department for Facilities Management. A copy of the form shall be provided to each bidder. A written proposal shall constitute a best and final offer. The department shall not consider a written proposal unless it is submitted on a department form on or before the time and date designated.
- (12) All written proposals submitted on or before the time and date designated shall be opened at the same time, publicly identified by the name of the property owner and the location of the property, and kept on file.
- (13) Except pursuant to paragraph (b) of subsection (15) of this section, when the requirements of paragraph (a) of this subsection shall not apply, from the time that written proposals are opened until the awarding of a lease, the department:
  - (a) Shall not negotiate or agree to changes in the terms of written proposals except to correct technical errors;
  - (b) Shall log in all contacts between department employees and any person with an interest in the awarding of a lease. The log shall state the time, date, place, and a summary of the substance of each contact. Each log entry shall be signed by the department employee who was contacted. After the lease is awarded, the log shall be kept as a department record.
- (14) (a) The commissioner shall assess the proposals, taking into account factors including, but not limited to: consultation with the head of the agency for whose use the space is sought; the location and accessibility

of the property to the public; its condition and state of repair; its conformity with the requirements of occupational health and safety regulations; its conformity with applicable state fire, health, safety and sanitation requirements; the proposed rental rates; utility and janitorial costs; agency moving costs; and whether the property proposed is in substantial conformity with the general and specific requirement specifications.

- (b) The commissioner shall give preference to properties in areas which have received, within the previous five (5) year period, state community development funds for revitalization if properties are offered at a competitive rate and meet the provisions of paragraph (a) of this subsection.
- (15) The commissioner, relying exclusively on his assessment made pursuant to subsection (14) of this section, shall:
  - (a) Choose the best proposal in the interest of the Commonwealth;
  - (b) Be permitted to negotiate with a potential lessor if he was the only responsive and responsible potential lessor who submitted a proposal; or
  - (c) Except as provided in paragraph (b) of this subsection, reject all proposals when none is in the Commonwealth's best interest to accept as assessed according to the factors stated in subsection (14) of this section and may, at his discretion, initiate the lease process again.
- (16) (a) The commissioner shall award or decline to award a lease to the potential lessor who submitted the best proposal pursuant to paragraph (a) of subsection (15) of this section or who negotiated with the commissioner pursuant to paragraph (b) of subsection (15) of this section. However, the commissioner shall not award a lease to a potential lessor who negotiated with the commissioner pursuant to paragraph (b) of subsection (15) of this section if that potential lessor's proposal after negotiations was not in the Commonwealth's best interest to accept as assessed according to the factors stated in subsection (14) of this section, and the commissioner shall not award a lease to a person other than a potential lessor prescribed in this paragraph.
  - (b) If the commissioner declines to award a lease, he may, at his discretion, initiate the lease process again.
- (17) The commissioner shall put in writing the justifications for his decisions made pursuant to subsections (15) and (16) of this section. This writing shall be kept on file.
- (18) The commissioner, all department employees under the commissioner's supervision who performed a site evaluation or negotiated a lease agreement under this section, ~~and~~ the head of the agency that will occupy the leased space, **and all agency employees who were directly involved with a site evaluation or lease negotiations** shall sign separate certificates, devised by the commissioner, which shall provide the signatory with the option of certifying that, to the best of his knowledge, he is either aware or unaware of circumstances which may constitute a violation of KRS 56.800 to 56.823. The Department for Facilities Management shall keep the certificates on file **and shall inform state agencies of the legal requirements concerning lease certification on an annual basis.**
- (19) The department shall notify each person who submitted a written response on or before the time and date designated in the public notice pursuant to subsection (6) of this section, but who was not awarded the lease, of the selected property to be leased, and that the person has a right to examine the leasing records relevant to the lease that was awarded. If the Capital Projects and Bond Oversight Committee, pursuant to KRS 56.823(2), will review the awarding of a lease, each notice shall state that fact. A copy of each notice shall be kept on file.

**Approved March 3, 2000**

## **CHAPTER 48**

### **(SCR 20)**

A CONCURRENT RESOLUTION designating the Louisville Pipe Band as the official Pipe Band of Kentucky.

WHEREAS, the Louisville Pipe Band is a musical and educational organization dedicated to furthering the Celtic arts of piping and drumming through public performances and band and solo competition and instruction, and the band is a non-profit corporation that relies on performance fees, private donations, and corporate sponsorships to facilitate teaching programs and travel to competitions; and

WHEREAS, the Louisville Pipe Band is a competitive Grade Four pipe band based in Jefferson County; this is the band's second year as a partner in the Louisville & Nashville Pipe Band Project; and, in 1999, the band established itself as a contender by placing second in a field of fifteen in their grade at the United States Open Pipe Band Championships at Alma, Michigan, and securing three first-place finishes in the Eastern United States Pipe Band Association competitions; and

WHEREAS, the Louisville Pipe Band actively participates as a member of the Eastern United States Pipe Band Association, Southern Branch, and the band retains world class piping and drumming instructors for workshops with participation open to all who share an appreciation of piping and drumming; and

WHEREAS, the Louisville Pipe Band actively supports many public events, including the Kentucky Derby Parade, Shakespeare in the Park, and the Commonwealth's two great Highland games: Kentucky Scottish Weekend and the Glasgow Highland Games; and

WHEREAS, the Louisville Pipe Band is proudly uniformed in ancient Henderson tartan kilts in honor of Colonel Richard Henderson, whose Transylvania Company established the first settlement in Kentucky, and employed Daniel Boone as a trailblazer; and

WHEREAS, the Louisville Pipe Band has been invited to represent the Commonwealth of Kentucky at the World Pipe Band Championships in Glasgow, Scotland, in August, 2000, and this unique opportunity to participate in this international event gives recognition to the talent, accomplishments, and dedication of the Louisville Pipe Band;

NOW, THEREFORE,

*Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky, the House of Representatives concurring therein:*

Section 1. The Louisville Pipe Band is hereby designated the official Pipe Band of Kentucky for the purpose of representing the Commonwealth of Kentucky in the ceremony of international significance at the World Pipe Band Championships in Glasgow, Scotland, in August, 2000.

Section 2. The General Assembly of the Commonwealth of Kentucky praises and highly commends the Louisville Pipe Band members for their excellent performances, and they are hereby designated as goodwill ambassadors for the Commonwealth of Kentucky in their appearances at the World Pipe Band Championships.

Section 3. The Clerk of the Senate is hereby directed to transmit a copy of this Resolution to the Louisville Pipe Band, c/o Dr. Robert Caudill, 17208 Mallet Hill Drive, Louisville, Kentucky 40245.

**Approved March 3, 2000**

## CHAPTER 49

**(HB 362)**

AN ACT relating to the Justice Cabinet and declaring an emergency.

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

Section 1. KRS 15A.030 is amended to read as follows:

The Justice Cabinet, in addition to the departments set forth in KRS 15A.020, shall consist of the following organizational units which are hereby created or reestablished:

- (1) Office of the Secretary of Justice comprised of the secretary of justice, the Commission on Correction and Community Service, the Kentucky State Corrections Commission, and the Criminal Justice Council. The Parole Board shall be attached to the Office of the Secretary for administrative and support purposes only.
- (2) Offices of Deputy Secretaries of Justice.
- (3) Office of the General Counsel.
- (4) Division of Kentucky State Medical Examiners Office.
- (5) *Office of Management, Administrative, and Legal Services, which shall be responsible for providing information systems management, investigative services, and legal services to the Office of the Secretary. The office shall be headed by an executive director appointed by the secretary in accordance with KRS 12.050.*

Section 2. Whereas the amendment set out in this Act will affect a positive influence upon the health, safety, and welfare of the citizens of the Commonwealth of Kentucky through the more efficient operation of the Kentucky Justice Cabinet and the General Assembly finds that any delay of the implementation of this Act will intolerably delay the provision of the most effective services of the Kentucky Justice Cabinet, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved March 3, 2000**

## **CHAPTER 50**

### **(HB 192)**

AN ACT relating to state leasing.

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

Section 1. KRS 48.111 is amended to read as follows:

- (1) The Governor shall include in the executive branch budget recommendation and in the draft branch budget bill for the executive branch submitted to each regular session of the General Assembly pursuant to KRS 48.110, for the biennium period beginning July 1, 1992, and for each biennium thereafter, a recommended program for rental of any space for which the annual rental cost will exceed two hundred thousand dollars (\$200,000).
- (2) The recommended program for leased space shall include:
  - (a) A summary description of each specific two hundred thousand dollar (\$200,000) lease project recommended for funding during the biennium; and
  - (b) For each project:
    1. The name of the agency for which space will be leased;
    2. The purpose and justification for the lease;
    3. Whether the lease contains a purchase option which will be exercised during the biennium pursuant to KRS 56.806(4) and the estimated purchase price;
    4.
      - a. Whether the lease contains a lease-purchase which will be completed during the biennium pursuant to KRS 56.806(5) prior to the total amortization, through lease payments, of the fair market value of the leased property as of the time the lessor and the Commonwealth entered into the lease; and
      - b. The estimated sum of money that will have to be paid in addition to rent paid to complete the purchase;
    5. The estimated cost of the lease; and
    6. The recommended sources of funds.
- (3) All information required by subsection (2) of this section shall be included in the executive branch budget recommendation. The branch budget bill for the executive branch shall contain only the information specified in subparagraphs 1. and 2. of subsection (2)(b) of this section.
- (4) Except as provided in subsection (5) of this section, no lease with an annual rental cost which will exceed two hundred thousand dollars (\$200,000) shall be executed unless the lease has been identified and included in the branch budget bill. The branch budget bill for the executive branch shall authorize the expenditure by the budget unit that will occupy the premises.
- (5) A lease with an annual rental cost exceeding two hundred thousand dollars (\$200,000) may be authorized even though it is not specifically listed in the biennial budget report and branch budget bill, subject to the following conditions and procedures:
  - (a) A lease is awarded as the result of the consolidation of leases in which case, in addition to subsection (6) of this section, the provisions of KRS 56.803 and 56.823(2) or of KRS 56.805(2) and 56.823(3) shall apply, as appropriate; or

- (b) A lease is awarded as the result of an agency occupying substantially less space than it should, under the standards for space set by the Department for Facilities Management, in which case, in addition to subsection (6) of this section, the provisions of KRS 56.803 and 56.823(2) or of KRS 56.805(2) and 56.823(3) shall apply, as appropriate. The space allocated under the new lease shall not exceed the space which should be allocated pursuant to the standards for space; or
  - (c) *A lease with an annual rental cost of less than two hundred thousand dollars (\$200,000) is renewed or replaced for an annual rental cost that exceeds two hundred thousand dollars (\$200,000), but only if that request and subsequent renewal or replacement lease is:*
    - 1. *From the same state agency lessee whose initial lease was under two hundred thousand dollars (\$200,000);*
    - 2. *For the same or substantially the same square footage as the initial lease that was under two hundred thousand dollars (\$200,000);*
    - 3. *The result of the competitive leasing process authorized by KRS 56.803;*
    - 4. *For an annual lease payment of less than two hundred and fifty thousand dollars (\$250,000); and*
    - 5. *Effective only until June 30 of the next even numbered year unless authorized in the biennial budget report and branch budget bill; or*
  - (d) A lease is awarded as the result of an emergency in which case the provisions of KRS 56.805(3) and (4) and KRS 56.823(5) shall apply; or
  - (e)~~(d)~~
    - 1. Fifty percent (50%) or more of the actual cost shall be funded by federal or private funds; and
    - 2. Money specifically budgeted and appropriated by the General Assembly for another purpose shall not be allotted or reallocated for expenditure on the lease. Money utilized shall not jeopardize any existing program and shall not require the use of current general funds specifically dedicated to existing programs; and
    - 3. The Finance and Administration Cabinet shall comply with the requirements of subsection (6) of this section.
- (6) (a) No later than five (5) business days after an advertisement for lease proposals pursuant to paragraph (a) or (b) of subsection (5) of this section, the cabinet shall provide the Capital Projects and Bond Oversight Committee with a copy of the advertisement and shall state in writing to the committee that the copy is being provided in compliance with this paragraph.
- (b) Prior to final authorization of a lease pursuant to paragraph (e)~~(d)~~ of subsection (5) of this section, the cabinet shall report to the Capital Projects and Bond Oversight Committee:
- 1. The name of the agency for which space will be leased;
  - 2. The purpose and justification for the lease;
  - 3. The estimated cost of the lease;
  - 4. The source of funds; and
  - 5. Whether the requirements of paragraph (e)~~(d)~~ of subsection (5) of this section have been met.
- (c) Within thirty (30) days after the report required in paragraph (b) of this subsection has been submitted to the committee, the committee shall conduct its review and decide whether to approve or disapprove the proposed lease authorization. The Legislative Research Commission shall promptly transmit the committee's findings and determinations to the Finance and Administration Cabinet.
- (d) If the committee disapproves a proposed lease authorization, the secretary of the Finance and Administration Cabinet shall:
- 1. Revise the proposed lease authorization to comply with the objection of the committee; or
  - 2. Cancel the proposed lease authorization; or
  - 3. Determine to proceed with the proposed lease authorization disapproved by the committee.

- (e) The decision made by the secretary of the Finance and Administration Cabinet under paragraph (d) of this subsection shall be communicated to the committee in writing within thirty (30) days of the committee's disapproval.
- (f) The Legislative Research Commission shall maintain records of the committee's disapproval of a proposed lease authorization and the cabinet's report of its actions on a disapproved proposed lease authorization. If the committee disapproves a proposed lease authorization, the Legislative Research Commission shall transmit the committee's disapproval and the cabinet's action on the disapproval to the appropriate interim joint committee of the Legislative Research Commission and to the General Assembly when next convened.
- (g) If after committee review a lease is authorized, the lease shall be awarded pursuant to the provisions of KRS 56.800 to 56.823 and this section, KRS 43.050, and KRS 48.190 and shall be subsequently reviewed pursuant to the appropriate subsection of KRS 56.823.

**Approved March 3, 2000**

## CHAPTER 51

(HB 92)

AN ACT relating to reorganization.

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

Section 1. KRS 36.010 is amended to read as follows:

The Department of Military Affairs shall be attached to the Office of the Governor, have charge of and be responsible to the Governor for the proper functioning of the Kentucky National Guard, militia, and all other military or naval matters of the state, and shall consist of the following offices and divisions:

- (1) Office of Management and Administration, containing the:
  - (a) Division of Administrative Services;
  - (b) Division of Facilities;
  - (c) Bluegrass Station Division; and
  - (d) Division of Air Transport;
- (2) Division of Disaster and Emergency Services;
- (3) Office of the Chief of Staff for Federal Army Guard;
- (4) Office of the Chief of Staff for Federal Air Guard;~~and~~
- (5) ***Kentucky Guard Youth Challenge Division; and***
- (6) Kentucky Civil Air Patrol.

In order to promote greater efficiency, economy, and improved administration, the divisional structure of the Department of Military Affairs may be changed, redesignated, or reorganized in accordance with KRS Chapter 12. Notwithstanding KRS Chapter 12, the department's attachment to the Office of Governor as a separate organizational unit not attached to any cabinet shall not be changed except by action of the General Assembly.

Section 2. The General Assembly hereby confirms Executive Order 98-1397, issued by the Governor on October 19, 1998, to the extent that it is not otherwise confirmed by Section 1 of this Act.

**Approved March 3, 2000**

## CHAPTER 52

(HB 46)

AN ACT relating to the Kentucky Higher Education Student Loan Corporation.

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



Section 1. KRS 164A.080 is amended to read as follows:

- (1) The corporation may provide for the issuance, at one (1) time or from time to time, of not exceeding ***nine hundred fifty million dollars (\$950,000,000)***~~five hundred fifty three million dollars (\$553,000,000)~~ in bonds of the corporation to carry out and effectuate its corporate purposes and powers. In anticipation of the issuance of bonds, the corporation may provide for the issuance, at one (1) time or from time to time, of bond anticipation notes. The principal of and the interest on bonds or notes shall be payable solely from the funds provided for payment. Any notes may be made payable from the proceeds of bonds or renewal notes or, if bond or renewal note proceeds are not available, notes may be paid from any available revenues or assets of the corporation. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the corporation at the price or prices and under the terms and conditions determined by the corporation. Any bonds or notes shall bear interest at a rate or rates determined by the corporation. Notes shall mature at a time or times not exceeding five (5) years from their date or dates and bonds shall mature at a time or times not exceeding thirty (30) years from their date or dates, as determined by the corporation. The corporation shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the state. If any officer whose signature or a facsimile of whose signature appears on any bonds or notes or coupons attached to them shall cease to be an officer before the delivery of the bonds or notes, the signature or facsimile shall be valid and sufficient for all purposes as if he had remained in office until the delivery. The corporation may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the corporation may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Upon the approval of a resolution of the corporation authorizing the sale of its bonds or notes, the bonds or notes may be sold in a manner, either at public or private sale, and for a price the corporation shall determine to be for the best interest of the corporation and best effectuate the purposes of this chapter if the sale is approved by the corporation.
- (2) The proceeds of any bonds or notes shall be used solely for the purposes for which they are issued and shall be disbursed in a manner and under restrictions, if any, the corporation may provide in the resolution authorizing the issuance of bonds or notes or in the trust agreement securing the bonds or notes. The principal of and interest on any bonds issued by the corporation shall be payable only from the proceeds derived by the corporation from insured student loans made and purchased from the proceeds of the bonds.
- (3)
  - (a) Prior to the issuance of any bonds or notes that are not secured by the repayment of student loans at least ninety-five percent (95%) insured by the guarantee agency and reinsured by the United States of America, the corporation shall obtain approval of the issuance from the General Assembly in accordance with the provisions of KRS 56.870(1). This requirement shall not apply to refunding bond or note issues which are for the purpose of achieving debt service savings and which do not extend the term of the refunded bond or note.
  - (b) Notwithstanding paragraph (a) of this subsection, if during the interim of sessions of the General Assembly, the federal act is amended to reduce to less than ninety-five percent (95%) the maximum rate of insurance payable by the guarantee agency or reinsurance payable by the Secretary of Education of the United States on insured student loans, upon notification by the corporation to the Legislative Research Commission of the change in the federal act, the corporation may, until the adjournment of the next regular session of the General Assembly, issue bonds or notes for student loans insured by the guarantee agency and reinsured by the Secretary of Education of the United States to the maximum extent permitted by the federal act.

**Approved March 3, 2000**

## CHAPTER 53

**(HB 2)**

AN ACT relating to campaign expenditures.

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

Section 1. KRS 119.205 is amended to read as follows:

- (1) Any person who makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate or public question at an election shall be guilty of a Class D felony.
- (2) Any person who solicits, accepts, or receives any such expenditure as payment or consideration for his vote, or the withholding of his vote, or to vote for or against any candidate or public question at an election shall be guilty of a Class D felony.
- (3) ***Any person who makes or offers to make an expenditure to any person to sign a petition to have a public question placed on the ballot, or any person who solicits, accepts, or receives any such expenditure as payment or consideration to sign a petition to have a public question placed on the ballot, shall be guilty of a Class B misdemeanor.***
- (4) For purposes of this section, "expenditure" means any of the following when intended as payment or consideration for ***voting or withholding*** a vote~~, or the withholding of a vote~~, ***voting*** for or against any candidate or public question, ***or signing a petition to have a public question placed on the ballot***:
  - (a) A payment, distribution, loan, advance, deposit, or gift of money or anything of value; or
  - (b) A contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a payment, distribution, loan, advance, deposit, or gift of money or anything of value.

"Expenditure," as used in this section, shall not include the distribution of materials bearing the name, likeness, or other identification of a candidate, political party, committee, or organization, or position on a public question and not intended as payment or consideration for ***voting or withholding*** a vote~~, or the withholding of a vote~~, ***voting*** for or against any candidate or public question, ***or signing a petition to have a public question placed on the ballot***.

- ~~(5)~~~~(4)~~ Any candidate or committee, or any person on his behalf, who pays any person, including campaign workers, for transporting voters to the polls on the day of the election, shall make all payments by check. All payments, regardless of amount, shall be reported to the Registry of Election Finance in the manner that the Registry shall provide by administrative regulation. Any person who knowingly violates any requirement of this subsection shall be guilty of a Class B misdemeanor.

- ~~(6)~~~~(5)~~ In addition to the above provisions, a person may be convicted of a violation of this section pursuant to KRS 502.020.

**Approved March 3, 2000**

## **CHAPTER 54**

### **(SCR 16)**

A CONCURRENT RESOLUTION reauthorizing the Task Force on Funding for Wildlife Conservation.

WHEREAS, the Task Force on Funding for Wildlife Conservation was authorized by the 1996 Regular Session of the General Assembly and presented recommendations to the 1998 General Assembly; and

WHEREAS, these recommendations cover a broad range of policy, regulatory, and legislative changes; and

WHEREAS, the Task Force on Funding for Wildlife Conservation was reauthorized by the 1998 Regular Session of the General Assembly; and

WHEREAS, important issues in this area will require the oversight and continued attention of this task force;

NOW, THEREFORE,

*Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky, the House of Representatives concurring therein:*

Section 1. The Task Force on Funding for Wildlife Conservation is reauthorized with its original membership. The task force shall convene once in 2000 and twice in 2001 to assess the progress being made toward implementing the recommendations from its October 1997 report.

Section 2. The task force shall report its findings to the Interim Joint Committee on Agriculture and Natural Resources and the Interim Joint Committee on Appropriations and Revenue before October 31, 2001.

Section 3. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

**Approved March 3, 2000**

## CHAPTER 55

**(HB 166)**

AN ACT relating to child support.

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

Section 1. KRS 405.435 is amended to read as follows:

- (1) An employer or labor organization in the Commonwealth of Kentucky shall provide information to the Cabinet for Families and Children when that employer or labor organization hires an employee who resides or works in the Commonwealth, or rehires or permits the return to work of an employee who has been laid off, furloughed, separated, granted a leave without pay, or terminated from employment, unless the reporting could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission as determined by the secretary of families and children.
- (2) The employer shall provide the information within twenty (20) days of the hiring or return to work of the employee. The information shall include:
  - (a) The employee's name, address, and Social Security number; and
  - (b) The employer's name, address, and, if the employer has been assigned one, federal and state employer identification numbers.
- (3) An employer shall report the required information by submitting a copy of the employee's W-4 form or, at the option of the employer, an equivalent form provided by the Cabinet for Families and Children as prescribed by administrative regulation promulgated by the Cabinet for Families and Children in accordance with KRS Chapter 13A.
- (4) The Cabinet for Families and Children shall enter all new hire information into the database of the cabinet within five (5) business days.
- ~~(5) An employer shall not be required to report the information when the hiring, rehiring, or returning to work involves:~~
  - ~~(a) An employee to whom the employer pays wages of less than three hundred dollars (\$300) each month;~~  
~~or~~
  - ~~(b) An employee who is under eighteen (18) years of age.~~
- ~~(6)~~ The Cabinet for Families and Children may promulgate administrative regulations in accordance with KRS Chapter 13A if the Cabinet for Families and Children determines exceptions are needed to reduce unnecessary or burdensome reporting or are needed to facilitate cost-effective operation of the cabinet under this section.
- ~~(6)~~~~(7)~~ The Cabinet for Families and Children shall use the information collected pursuant to this section for the location of noncustodial parents, establishment, modification, and enforcement of child support and any other matter related to paternity or child support.
- ~~(7)~~~~(8)~~ If the employer fails to report as required by this section, the Cabinet for Families and Children shall give the employer written notice of the provisions of this section, including the penalty for failure to report.
- ~~(8)~~~~(9)~~ If the employer has not filed a report within twenty (20) days from the date that the written notice is sent to him, the Cabinet for Families and Children shall send a second written notice.
- ~~(9)~~~~(10)~~ If the employer fails to file a W-4 or equivalent form within twenty (20) days from the date that the second written notice is sent, or supplies a false or incomplete report, and the failure is a result of a conspiracy between the employee and the employer to prevent the proper information from being filed within twenty (20) days from the date that the second written notice is sent, the Cabinet for Families and Children shall send the employer by certified mail, return receipt request, notice of an administrative fine. The fine shall be two

hundred fifty dollars (\$250) per calendar month per person for any violation occurring after the second notice has been given, and continuing until a W-4 or equivalent form is received by the Cabinet for Families and Children. No fine shall be imposed for any period of less than one (1) full calendar month.

- ~~(10)(11)~~ The employer shall have ten (10) days after receipt of the administrative fine notice to request a hearing before the Cabinet for Families and Children on whether the administrative fine was properly assessed. If a timely request for a hearing is received, the Cabinet for Families and Children shall schedule and conduct a hearing in accordance with administrative regulations promulgated by the cabinet in accordance with KRS Chapter 13A.

**Approved March 3, 2000**

## **CHAPTER 56**

**(HB 84)**

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 98-1673, dated December 18, 1998, which abolishes the Division of Administration and Development, the Division of Facilities and Alternative Services and the Division of Individual and Clinic Providers from the Department for Medicaid Services and creates the following: 1) Division of Physical Health Programs; 2) Division of Children's Health Programs; 3) Division of Long Term Care Programs; 4) Division of Behavioral Health Programs; 5) Division of Financial Systems; 6) Division of Member and Provider Services; 7) Division of Quality Improvement; and 8) Division of Management Information Systems.

**Approved March 3, 2000**

## **CHAPTER 57**

**(HB 18)**

AN ACT relating to insurance agents.

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

Section 1. KRS 304.9-270 is amended to read as follows:

- (1) Each insurer appointing an agent in this state shall ***obtain approval of the appointment from the commissioner by filing***~~file~~ with the commissioner the ***notice of*** appointment in writing, specifying the kinds of insurance or classifications thereof to be transacted by the agent for the insurer, and submit the license fee with the license application and the appointment fee with every appointment thereafter, or license fee in the case of limited licenses, as specified in KRS 304.4-010.
- (2) ***No agent shall claim to be an agent or representative of, or in any way imply a contractual relationship with, a particular insurer, or place applications for insurance with an insurer unless the agent becomes an appointed agent of that insurer and the agent's appointment has been approved by the commissioner.***
- (3) ***An agent may act as a representative of and place insurance with an insurer without first obtaining approval of the appointment by the commissioner for a period of thirty (30) days from the date the first insurance application is executed by the agent subject to the following criteria:***
  - (a) ***The agent has filed with the commissioner, and thereafter kept in force, evidence of financial responsibility in the sum of not less than one million dollars (\$1,000,000) per occurrence, and the sum of two million dollars (\$2,000,000) in the aggregate, for all such occurrences within one (1) year, either in the form of an errors and omissions insurance policy issued by an authorized insurer, a bond issued by an authorized corporate surety, a deposit, or any combination of these evidences of financial responsibility. Such a policy, bond, deposit, or combination shall not be terminated unless at least thirty (30) days' prior written notice is given to the licensee and the commissioner.***
  - (b) ***If the agent does not receive from the insurer acknowledgment that the agent's appointment has been approved by the commissioner within thirty (30) days from the date the first insurance***

*application is executed, the agent shall immediately discontinue acting as an agent on behalf of the insurer until acknowledgment is received.*

- (4) (a) *The insurer shall, no later than forty-five (45) days from the date the agency contract is executed or the first insurance application is submitted by an agent, whichever is earlier, file with the commissioner a written notice of appointment on a form prescribed by the commissioner.*
- (b) *If there is no executed agency contract, the insurer shall also mail to the agent, within the same forty-five (45) day period specified in paragraph (a) of this subsection, a copy of the notice of appointment form filed with the commissioner.*
- (5) *Within fifteen (15) days of receipt of the notice of appointment, the commissioner shall determine and notify the insurer whether the agent is eligible for appointment. If the agent's license is in good standing and no other grounds exist to deny the appointment, the commissioner shall approve the appointment.*
- (6) Subject to continuation by the insurer as provided in subsection ~~(4)~~~~(3)~~ of this section, each appointment shall remain in effect until the agent's license is revoked or otherwise terminated, unless the insurer earlier terminates the appointment as provided in KRS 304.9-280.
- ~~(7)~~~~(3)~~ Biennially, before January 31, the department shall distribute to each insurer a listing of the names and addresses of that insurer's agents whose appointment, or licenses in the case of limited licenses, were in effect during the proceeding calendar year and who were not terminated on or prior to December 31 of that calendar year. Any appointment or license not expressly terminated shall remain in effect as to the kinds of insurance or classifications thereof for which the respective agents are currently appointed, and subject to the fees specified under KRS 304.4-010. On or before March 31, each insurer shall submit the continuation of appointment fee, or license fee in the case of limited licenses, as specified in KRS 304.4-010, for each appointment not terminated on or prior to December 31 of the preceding calendar year. Any appointment or license not expressly terminated shall continue, unless otherwise terminated, canceled, suspended, or revoked by the department of insurance.

Section 2. KRS 304.9-080 is amended to read as follows:

- (1) No person shall in this state be, act as, or hold himself out as an agent, solicitor, consultant, or adjuster unless then licensed as an agent, solicitor, consultant, or adjuster respectively.
- (2) No agent, or solicitor shall solicit or take applications for, procure or place for others any kind of insurance as to which he is not then licensed. No consultant shall act as such with respect to any kind of insurance as to which he is not then licensed as a consultant.
- (3) A consultant license must cover either or both of the following categories, as selected by the licensee:
  - (a) General lines;
  - (b) Life and health.

A consultant licensed in both categories shall qualify separately for, and be licensed in, each category.

- (4) No person licensed as a consultant shall act as a consultant until he has filed with the commissioner a bond or insurance as prescribed in KRS 304.9-330.
- (5) Except as provided in KRS 304.9-410 *and subsection (3) of Section 1 of this Act*, no agent shall place, and no insurer shall accept, any insurance with any insurer as to which he does not then hold a license and appointment as agent under this subtitle.
- (6) The commissioner shall prescribe and furnish all forms required under this subtitle as to licenses and appointments.

**Approved March 3, 2000**

## CHAPTER 58

**(HB 355)**

AN ACT relating to visitation rights.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding the provisions of KRS 403.320, if a parent of a child is convicted of murder or manslaughter in the first degree of the other parent, a court shall not grant the convicted parent visitation rights with respect to that child unless the court, through a hearing, determines that visitation is in the child's best interest.*
- (2) *If the court later modifies a denial of visitation to grant visitation, the court shall do so only after a hearing which establishes that visitation is in the child's best interest.*
- (3) *In any hearing conducted under subsection (1) or (2) of this section:*
  - (a) *Jurisdiction shall lie with the Circuit Court of the county where the child resides; and*
  - (b) *The convicted parent, to obtain visitation, shall have to meet the burden of proving that visitation is in the child's best interest.*

Section 2. This Act may be cited as the Roxie Denkhoff Act.

**Approved March 6, 2000**

## **CHAPTER 59**

### **(HB 222)**

AN ACT relating to the designation of the Commonwealth's official steam locomotive.

WHEREAS, the Commonwealth's rich and vibrant railroad history, including the construction of America's second steam locomotive and the laying of one of the earliest railroads in the United States from Lexington to Frankfort and on to Louisville, has been and continues to be a source of pride and honor for the thousands of dedicated employees involved in making that history and to every Kentuckian who benefits from the transportation revolution that the railroads brought to this Commonwealth; and

WHEREAS, it is perhaps the steam locomotive which best exemplifies and symbolizes the historic growth of the railroad industry in the Commonwealth, continued today with the modern power of the Commonwealth's world class railroad companies; and

WHEREAS, there exists in Kentucky a special steam locomotive known affectionately far and wide as "Ol' Number 152" which annually pulls thousands of visitors behind her as she majestically strides along the high iron as the only regularly operating steam locomotive in Kentucky; and

WHEREAS, in pulling express passenger trains from Louisville to points throughout the South or serving the vibrant rural communities of Kentucky, and in being tapped by the Louisville and Nashville Railroad to pull trains for such notable dignitaries as Theodore Roosevelt or such notorious criminals as Al Capone, steam locomotive #152 distinguished itself in its service to the people of this great nation and the citizens of this proud Commonwealth; and

WHEREAS, the volunteers of the Kentucky Railway Museum, in tirelessly laboring over thirteen years to transform steam locomotive #152 from an engine facing the scrapyard to the pride of the Commonwealth which it is today, giving of themselves in time, effort, and money, provide an example to us all of the civic pride and involvement which typify the conduct to be found in and give true meaning to the term "Commonwealth;"

NOW, THEREFORE,

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 2 IS CREATED TO READ AS FOLLOWS:

*Steam locomotive #152, a 4-6-2 Light Pacific, formerly of the Louisville and Nashville Railroad and restored to operation by the volunteer members of the Kentucky Railway Museum, is named and designated as the official steam locomotive of the Commonwealth of Kentucky.*

**Approved March 6, 2000**

**CHAPTER 60****(HB 170)**

AN ACT relating to child protection.

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

Section 1. KRS 600.020 is amended to read as follows:

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

- (1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child:
  - (a) Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;
  - (b) Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;
  - (c) Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005(12);
  - (d) Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;
  - (e) Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;
  - (f) Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;
  - (g) Abandons or exploits the child;~~or~~
  - (h) Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child; *or*
  - (i) *Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) of the most recent twenty-two (22) months;*
- (2) *"Aggravated circumstances" means the existence of one or more of the following conditions:*
  - (a) *The parent has not attempted or has not had contact with the child for a period of not less than ninety (90) days;*
  - (b) *The parent is incarcerated and will be unavailable to care for the child for a period of at least one (1) year from the date of the child's entry into foster care and there is no appropriate relative placement available during this period of time;*
  - (c) *The parent has sexually abused the child and has refused available treatment;*
  - (d) *The parent has been found by the cabinet to have engaged in abuse of the child that required removal from the parent's home two (2) or more times in the past two (2) years; or*
  - (e) *The parent has caused the child serious physical injury;*
- (3) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet;
- ~~(4)~~~~(3)~~ "Cabinet" means the Cabinet for Families and Children;

- (5)~~(4)~~ "Certified juvenile holding facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training developed and approved by, the Department of Juvenile Justice after consultation with other appropriate state agencies;
- (6)~~(5)~~ "Child" means any person who has not reached his eighteenth birthday unless otherwise provided;
- (7)~~(6)~~ "Child-caring facility" means any facility or group home other than a state facility, Department of Juvenile Justice contract facility or group home, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility;
- (8)~~(7)~~ "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;
- (9)~~(8)~~ "Clinical treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;
- (10)~~(9)~~ "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Families and Children, Department of Juvenile Justice, or another facility or agency until the child attains the age of eighteen (18) unless the commitment is discharged under KRS Chapter 605 or the committing court terminates or extends the order;
- (11)~~(10)~~ "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the Department of Juvenile Justice or the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;
- (12)~~(11)~~ "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;
- (13)~~(12)~~ "Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;
- (14)~~(13)~~ "Court-designated worker" means that organization or individual delegated by the administrative office of the courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;
- (15)~~(14)~~ "Deadly weapon" has the same meaning as it does in KRS 500.080;
- (16)~~(15)~~ "Department" means the Department for Social Services;
- (17)~~(16)~~ "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;
- (18)~~(17)~~ "Detain" means, upon a valid court order, to confine a child pending further proceedings in an intermittent holding facility, a juvenile holding facility, a secure juvenile detention facility, or an alternative form of detention;
- (19)~~(18)~~ "Diversion agreement" means an agreement entered into between a court-designated worker and a child charged with the commission of offenses set forth in KRS Chapters 630 and 635, the purpose of which is to serve the best interest of the child and to provide redress for those offenses without court action and without the creation of a formal court record;
- (20)~~(19)~~ "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;
- (21)~~(20)~~ "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in the child's ability to function within a normal range of performance and behavior with due regard to his age, development, culture, and environment as testified to by a qualified mental health professional;



- (22)~~(21)~~ "Family service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;
- (23)~~(22)~~ "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;
- (24)~~(23)~~ "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;
- (25)~~(24)~~ "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;
- (26)~~(25)~~ "Habitual truant" means any child who has been found by the court to have been absent from school without valid excuse for three (3) or more days during a one (1) year period or tardy for three (3) or more days on at least three (3) occasions during a one (1) year period;
- (27)~~(26)~~ "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;
- (28)~~(27)~~ "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;
- (29)~~(28)~~ "Informal adjustment" means an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;
- (30)~~(29)~~ "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;
- (31)~~(30)~~ "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, in which children are supervised and observed on a regular basis;
- (32)~~(31)~~ "Juvenile holding facility" means a physically secure setting, approved by the Department of Juvenile Justice, which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile holding facility staff to provide twenty-four (24) hours per day supervision. Employees of jails who meet the qualifications of the Department of Juvenile Justice may supervise juvenile as well as adult prisoners;
- (33)~~(32)~~ "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; and is conducted at the suitable available facility closest to the child's place of residence;
- (34)~~(33)~~ "Motor vehicle offense" means any violation of the nonfelony provisions of KRS Chapters 186, 189 or 189A, KRS 177.300, 304.39-110, or 304.39-117;
- (35)~~(34)~~ "'Near fatality" means an injury that, as certified by a physician, places a child in serious or critical condition;
- (36)~~(35)~~ "Needs of the child" means necessary food, clothing, health, shelter, and education;~~;~~
- (37)~~(36)~~ "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;
- (38)~~(37)~~ "Parent" means the biological or adoptive mother or father of a child;
- (39)~~(38)~~ "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;

- ~~(40)~~~~(39)~~ "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;
- ~~(41)~~~~(40)~~ "Physical injury" means substantial physical pain or any impairment of physical condition;
- ~~(42)~~~~(41)~~ "Public offense action" means an action, excluding contempt, brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;
- ~~(43)~~~~(42)~~ "Qualified mental health professional" means:
- (a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;
  - (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;
  - (c) A licensed psychologist at the doctoral level or certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under KRS Chapters 600 to 645;
  - (d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center; or
  - (e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;
- ~~(44)~~~~(43)~~ "Residential treatment facility" means a facility or group home with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of children;
- ~~(45)~~~~(44)~~ "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;
- ~~(46)~~~~(45)~~ "School personnel" means those certified persons under the supervision of the local public or private education agency;
- ~~(47)~~~~(46)~~ "Secretary" means the secretary of the Cabinet for Families and Children;
- ~~(48)~~~~(47)~~ "Secure juvenile detention facility" means any facility used for the secure detention of children other than a jail, police station, lockup, intermittent holding facility, or any building which is a part of, or attached to, any facility in which adult prisoners are confined or which shares staff with a facility in which adult prisoners are confined;
- ~~(49)~~~~(48)~~ "Secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;
- ~~(50)~~~~(49)~~ "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily member or organ;
- ~~(51)~~~~(50)~~ "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions in which the parent, guardian, or other person having custodial control or supervision of the child or responsibility for his

welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;

- (52)~~(51)~~ "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;
- (53)~~(52)~~ "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew or possession of alcoholic beverages;
- (54)~~(53)~~ "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;
- (55)~~(54)~~ "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;
- (56)~~(55)~~ "Youth alternative center" means a nonsecure facility, approved by the Department of Juvenile Justice, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in KRS 610.267 and the administrative regulations promulgated thereunder; and
- (57)~~(56)~~ "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

Section 2. KRS 610.010 is amended to read as follows:

- (1) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the District Court of each county shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his eighteenth birthday or of any person who at the time of committing a public offense was under the age of eighteen (18) years, who allegedly:
  - (a) Has committed a public offense prior to his eighteenth birthday, except a motor vehicle offense involving a child sixteen (16) years of age or older. A child sixteen (16) years of age or older taken into custody upon the allegation that he has committed a motor vehicle offense shall be treated as an adult and shall have the same conditions of release applied to him as an adult. A child taken into custody upon the allegation that he has committed a motor vehicle offense who is not released under conditions of release applicable to adults shall be held, pending his appearance before the District Court, in a secure juvenile detention facility or a juvenile holding facility or, if neither is available, in an intermittent holding facility. Children sixteen (16) years of age or older who are convicted of, or plead guilty to, a motor vehicle offense shall, if sentenced to a term of confinement, be placed in a secure juvenile detention facility or a juvenile holding facility. The term "motor vehicle offense" shall not be deemed to include the offense of stealing or converting a motor vehicle nor operating the same without the owner's consent nor any offense which constitutes a felony;
  - (b) Has not subjected himself to the reasonable control of his parent or guardian, school personnel, or other person exercising custodial control or supervision of the child;
  - (c) Is an habitual truant from school;
  - (d) Is an habitual runaway from his parent or other person exercising custodial control or supervision of the child;
  - (e) Is dependent, neglected, or abused; or
  - (f) Is mentally ill.
- (2) Actions brought under subsection (1)(a) of this section shall be considered to be public offense actions.
- (3) Actions brought under subsection (1)(b), (c), and (d) of this section shall be considered to be status offense actions.

- (4) Actions brought under subsection (1)(e) of this section shall be considered to be dependency actions.
- (5) Actions brought under subsection (1)(f) of this section shall be considered to be mental health actions.
- (6) Nothing in this chapter shall deprive other courts of the jurisdiction to determine the custody or guardianship of children upon writs of habeas corpus or to determine the custody or guardianship of children when such custody or guardianship is incidental to the determination of other causes pending in such other courts; nor shall anything in this chapter affect the jurisdiction of Circuit Courts over adoptions and proceedings for termination of parental rights.
- (7) The court shall have no jurisdiction to make permanent awards of custody of a child *except as provided by Section 5 of this Act.* ~~but~~
- (8) If the court finds an emergency to exist affecting the welfare of a child, it may make temporary orders for his custody; however, if the case involves allegations of dependency, neglect, or abuse, no emergency removal or temporary custody orders shall be effective unless the provisions of KRS Chapter 620 are followed. Such orders shall be entirely without prejudice to the proceedings for permanent custody of the child and shall remain in effect until modified or set aside by the court. Upon the entry of a temporary or final judgment in the Circuit Court awarding custody of such child, all prior orders of the juvenile session of the District Court in conflict therewith shall be deemed canceled. This section shall not work to deprive the Circuit Court of jurisdiction over cases filed in Circuit Court.
- ~~(9)(7)~~ The court of each county wherein a public offense, as defined in paragraph (a) of subsection (1) of this section, is committed by a child who is a resident of another county of this state shall have concurrent jurisdiction over such child with the court of the county wherein the child resides or the court of the county where the child is found. Whichever court first acquires jurisdiction of such child may proceed to final disposition of his case, or in its discretion may make an order transferring the case to the court of the county of his residence or the county wherein the offense was committed, as the case may be.
- ~~(10)(8)~~ Nothing in this chapter shall prevent the District Court from holding a child in contempt of court to enforce valid court orders previously issued by the court.
- ~~(11)(9)~~ Except as provided in KRS 635.060(3), nothing in this chapter shall confer upon the District Court jurisdiction over the actions of the Department of Juvenile Justice or the cabinet in the placement, care, or treatment of a child committed to the Department of Juvenile Justice or the cabinet; or to require the department or the cabinet to perform, or to refrain from performing, any specific act in the placement, care, or treatment of any child committed to the department or the cabinet.
- ~~(12)(10)~~ Unless precluded by KRS Chapter 635 or 640, in addition to informal adjustment, the court shall have the discretion to amend the petition to reflect jurisdiction pursuant to the proper chapter of the Kentucky Unified Juvenile Code.
- ~~(13)(11)~~ The court shall have continuing jurisdiction over a child pursuant to subsection (1) of this section, to review dispositional orders, and to conduct *permanency*~~dispositional~~ hearings under 42 U.S.C. sec. 675(5)(c) until the child is placed for adoption, returned home to his parents with all the court imposed conditions terminated, or reaches the age of eighteen (18) years.

Section 3. KRS 610.125 is amended to read as follows:

- (1) If a child has been removed from the home and placed in the custody of the Department of Juvenile Justice or the cabinet, a judge of the District Court shall conduct a *permanency*~~dispositional review~~ hearing no later than twelve (12) months after the date the child is considered to have entered foster care, and every twelve (12) months thereafter if custody and out-of-home placement continues, to determine the future status of the child. For purposes of this section, a child shall be considered to have entered foster care on the earlier of the date of the first judicial finding that the child has been subjected to child abuse or neglect or the date that is sixty (60) days after the date on which the child is removed from the home.

The court shall address the following areas:

- (a) If parental rights have not been terminated, whether the child should be returned to the parent;
- ~~(b) Whether the child should continue in out of home care for a specified period of time;~~
- ~~(c) Whether the child should be placed for adoption; and~~
- (c) *Whether the child should be placed with a permanent custodian; and*

- (d) Whether *the cabinet has documented a compelling reason that it is in the best interest of the child to be placed in another planned permanent living arrangement other than those listed in this subsection*~~[special circumstances indicate that the child's needs can best be met by continuation in out-of-home care on a permanent or long-term basis].~~
- (2) If the cabinet or the Department of Juvenile Justice determines that reasonable efforts to reunify the child with the child's *parent*~~[family]~~ will not be made, the cabinet or Department of Juvenile Justice shall file a case permanency plan as defined by KRS 620.230 or case progress report with the court that documents the reasons for not making reasonable efforts. The court shall hold a *permanency*~~[dispositional review]~~ hearing within thirty (30) days of the filing of the cabinet's or Department of Juvenile Justice's plan or report with the Court.
- (3) The Department of Juvenile Justice or the cabinet shall inform the court not less than sixty (60) days prior to the expiration of the time in which the hearing shall be held and within the time established in subsection (1) of this section, and shall further inform the court of the name and address of the child's foster parents, preadoptive parents, or relatives providing care to the child; court-appointed special advocate; and foster care review board member assigned to the case. For the hearing to be held pursuant to subsection (2) of this section, the names and addresses of the persons identified in this subsection shall be provided in the case permanency plan or case progress report to be filed with the court. The court shall set a time for the hearing and notify the child's parent, foster parents, preadoptive parents, or relatives providing care to the child; court-appointed special advocate; foster care review board member assigned to the case; attorney for the child; attorney for the parent, if any; and the Department of Juvenile Justice or the cabinet.
- (4) The Department of Juvenile Justice or the cabinet shall present evidence to the court concerning the care and progress of the child since the last *permanency*~~[dispositional]~~ hearing, including the following:
- (a) The length of time the child has been committed to the Department of Juvenile Justice or the cabinet;
  - (b) The number, location, and date for each placement during the total period of the child's commitment;
  - (c) A description of the services and assistance provided to the parent or arranged by the Department of Juvenile Justice or the cabinet since the last case permanency plan or case progress report, and the results achieved;
  - (d) A description of the efforts and progress of the child's parent since the last case permanency plan and case progress report, including the number and dates of parental visits and the extent, quality, and frequency of the parent's communication with the child;
  - (e) The familial and institutional barriers to:
    - 1. Returning the child to the home;
    - 2. Ending the commitment of the child to the Department of Juvenile Justice or the cabinet; and
    - 3. Delivery of appropriate services needed by the child;
  - (f) Recommendations of services needed to make the transition from out-of-home care to independent living for children who have reached the age of sixteen (16) years;
  - (g) An evaluation of the child's current placement and services provided to the child;
  - (h) Recommendations for necessary services required to terminate the commitment of the child to the cabinet, to return the child home, or to facilitate another permanent placement; and
  - (i) Recommendations as to the permanency goal for the child.
- (5) The child's parent, foster parent, preadoptive parent, relative providing care to the child, attorney for the parent, attorney for the child, or court-appointed special advocate, if deemed appropriate by the court, may present any evidence relevant to the determination of a permanency goal for the child.
- (6) Upon conclusion of the hearing the court shall make a written *order determining*~~[finding regarding the adequacy of]~~ the permanency plan~~[, the extent to which the permanency plan complies with KRS 620.230(2), and the services intended to achieve permanency]~~ for the child.
- (7) If *necessary, the case may be redocketed for further review of the progress toward the implementation of the permanency plan established at the permanency hearing*~~[the court finds that the permanency plan is not adequate, it shall redocket the case within sixty (60) days for further review].~~

## SECTION 4. A NEW SECTION OF KRS CHAPTER 610 IS CREATED TO READ AS FOLLOWS:

***Reasonable efforts as defined in KRS 620.020(9) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction determines that the parent has:***

- (1) Subjected the child to aggravated circumstances as defined in Section 1 of this Act;***
- (2) Been convicted in a criminal proceeding of having caused or contributed to the death of another child of the parent;***
- (3) Committed a felony assault that resulted in serious bodily injury to the child or to another child of the parent;***
- (4) Had their parental rights to another child terminated involuntarily;***
- (5) Engaged in a pattern of conduct due to alcohol or other drug abuse as defined in KRS 222.005(12) for a period of not less than ninety (90) days that has rendered the parent incapable of caring for the immediate and ongoing needs of the child, and the parent has refused or failed to complete available treatment for alcohol or other drug abuse;***
- (6) Mental illness as defined in KRS 202A.011(9) or mental retardation as defined in KRS 202B.010(9) or other developmental disability as defined in KRS 387.510(7) that places the child at substantial risk of physical or emotional injury even if the most appropriate and available services were provided to the parent for twelve (12) months; or***
- (7) Other circumstances in existence that make continuation or implementation of reasonable efforts to preserve or reunify the family inconsistent with the best interests of the child and with the permanency plan for the child.***

Section 5. KRS 620.027 is amended to read as follows:

The District Court has jurisdiction, concurrent with that of the Circuit Court, to determine matters of child custody and visitation in cases ***that come before the District Court*** where the need for a permanent~~[relative]~~ placement and custody order is established as set forth in this chapter~~[and the order is requested by the relative custodian]~~. The District Court, in making these determinations, shall utilize the provisions of KRS Chapter 403 relating to child custody and visitation.~~[In no event shall permanent custody orders be entered if the relative custodian elects to pursue approval as a provisional foster parent with the cabinet.]~~ In any case where the child is actually residing with a grandparent in a stable relationship, the court may recognize the grandparent as having the same standing as a parent for evaluating what custody arrangements are in the best interest of the child.

Section 6. KRS 625.090 is amended to read as follows:

- (1) The Circuit Court may involuntarily terminate all parental rights of a parent of a named child, if the Circuit Court finds from the pleadings and by clear and convincing evidence that:
  - (a) 1. The child has been adjudged to be an abused or neglected child, as defined in KRS 600.020(1), by a court of competent jurisdiction;
  2. The child is found to be an abused or neglected child, as defined in KRS 600.020(1), by the Circuit Court in this proceeding; or
  3. The parent has been convicted of a criminal charge relating to the physical or sexual abuse or neglect of any child and that physical or sexual abuse, neglect, or emotional injury to the child named in the present termination action is likely to occur if the parental rights are not terminated; and
- (b) Termination would be in the best interest of the child.
- (2) No termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds:
  - (a) That the parent has abandoned the child for a period of not less than ninety (90) days;
  - (b) That the parent has inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;
  - (c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;

- (d) That the parent has been convicted of a felony that involved the infliction of serious physical injury to any child;
  - (e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;
  - (f) That the parent has caused or allowed the child to be sexually abused or exploited;
  - (g) That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child;
  - (h) That:
    - 1. The parent's parental rights to another child have been involuntarily terminated;
    - 2. The child named in the present termination action was born subsequent to or during the pendency of the previous termination; and
    - 3. The conditions or factors which were the basis for the previous termination finding have not been corrected;
  - (i) That the parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical or sexual abuse or neglect; or
  - (j) That the child has been in foster care under the responsibility of the cabinet for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the petition to terminate parental rights.
- (3) In determining the best interest of the child and the existence of a ground for termination, the Circuit Court shall consider the following factors:
- (a) Mental illness as defined by KRS 202A.011(9), or mental retardation as defined by KRS 202B.010(9) of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;
  - (b) Acts of abuse or neglect as defined in KRS 600.020(1) toward any child in the family;
  - (c) If the child has been placed with the cabinet, whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents ***unless one or more of the circumstances enumerated in Section 4 of this Act for not requiring reasonable efforts have been substantiated in a written finding by the District Court;***
  - (d) The efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child;
  - (e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered; and
  - (f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.
- (4) If the child has been placed with the cabinet, the parent may present testimony concerning the reunification services offered by the cabinet and whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent.
- (5) If the parent proves by a preponderance of the evidence that the child will not continue to be an abused or neglected child as defined in KRS 600.020(1) if returned to the parent the court in its discretion may determine not to terminate parental rights.
- (6) Upon the conclusion of proof and argument of counsel, the Circuit Court shall enter findings of fact, conclusions of law, and a decision as to each parent-respondent within thirty (30) days either:

- (a) Terminating the right of the parent; or
- (b) Dismissing the petition and stating whether the child shall be returned to the parent or shall remain in the custody of the state.

**Approved March 6, 2000**

## CHAPTER 61

### (HB 113)

AN ACT relating to election precincts.

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

Section 1. KRS 117.055 is amended to read as follows:

Subject to KRS 117.0551 to 117.0555:

- (1) Each county shall be divided into election precincts by the county board of elections. Each election precinct shall be composed of contiguous and, as nearly as practicable, compact areas having clearly definable boundaries and wholly contained within any larger district. The county board of election shall establish precincts so that no boundary of a precinct crosses the boundary of:
  - (a) The Commonwealth;
  - (b) A county or urban-county;
  - (c) A congressional district;
  - (d) A state senatorial district;
  - (e) A state representative district;~~[-or]~~
  - (f) A justice of the peace or county commissioner's district established under KRS Chapter 67; *or*
  - (g) ***An aldermanic ward established under KRS 83.440.***
- (2) The county board of elections shall have the authority to draw precinct lines so as to enable more than one (1) precinct to vote at one (1) location. The county board of elections shall review election precinct boundaries as often as necessary. Without exception, they shall review the boundaries of all election precincts exceeding seven hundred (700) votes cast in the last regular election prior to each primary election. Consideration to the division of said election precincts should be based on the anticipated growth factor within the specified boundaries; however, the county board of elections shall not be prohibited from dividing election precincts in excess of seven hundred (700) votes cast in the last regular election or less than seven hundred (700) votes cast in the last regular election if they elect to do so. However, the State Board of Elections shall not remit to a county the expenses of an election for any precinct containing less than three hundred fifty (350) registered voters unless the county has received prior approval from the state board to establish a precinct containing less than three hundred fifty (350) registered voters. The State Board of Elections shall provide by administrative regulation under what circumstances an exception shall be granted.
- (3) No election precinct shall be created, divided, abolished, or consolidated or the boundaries therein changed prior to any primary election to comply with the provisions of KRS 117.055 to 117.0555 and KRS 117.0557 later than the last date prescribed by election law generally for filing notification and declaration forms with the county clerk or Secretary of State. No election precinct shall be created, divided, abolished, or consolidated or the boundaries therein changed prior to any general election to comply with the provisions of KRS 117.055 to 117.0555 and KRS 117.0557 later than the last date prescribed by election law generally for filing certificates or petitions of nomination with the county clerk or Secretary of State.
- (4) The county board of elections shall designate the name or number and the boundaries of the election precincts. Each precinct shall contain, as nearly as practicable, an equal number of voters, based on the number of registered voters in the county.
- (5) A map and listing of the exact election precinct boundaries shall be filed by the county board of elections with the State Board of Elections, and any changes in boundaries thereafter made shall also be filed with the State



Board of Elections. A copy of this map indicating all precinct boundaries within the county shall be included in the election supplies of each precinct.

- (6) If the county board of elections fails to perform any of the duties required by KRS 117.055 to 117.0555 and KRS 117.0557:
  - (a) The State Board of Elections or any citizen and voter of the county may apply to the Circuit Court of the county for a summary mandatory order requiring the board to perform the duty. Appeals may be taken to the Court of Appeals by either party; and
  - (b) The State Board of Elections shall not submit claims for payments to the county under KRS 117.343 and 117.345 until the State Board of Elections determines in writing that the duty has been performed.
- (7) The county board of elections shall coordinate all precinct boundary changes with the affected school board, magisterial, and municipal boundaries.

**Approved March 6, 2000**

## CHAPTER 62

### (HB 186)

AN ACT relating to registered nurses.

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

Section 1. KRS 314.181 is amended to read as follows:

- (1) When it appears that a person whom a registered nurse who has successfully completed training in determination of death has been called to attend is dead, the registered nurse shall, utilizing the protocol specified by the board by administrative regulation, determine whether or not the patient is dead after resuscitation of the patient is attempted by the registered nurse or a paramedic or an emergency medical technician who has responded with or after the registered nurse, unless the protocol indicates that the patient is not capable of being resuscitated. If, after resuscitation has been attempted on a patient who the protocol deems is capable of being resuscitated, the patient has not been successfully resuscitated according to the protocol, the nurse may discontinue further resuscitation efforts and proceed to determine whether the patient is dead and whether to declare the patient dead. If it is determined that death has occurred in accordance with the procedures of KRS 446.400(1) ***concerning patients whose circulation and respiration are not being artificially maintained***~~[with regard to patients who have not been resuscitated]~~, the registered nurse may make the actual determination and pronouncement of death.~~[This section shall not apply to patients who are in a hospital when apparent death occurs.]~~
- (2) ***When the determination and pronouncement of death of a patient whose circulation and respiration are not being artificially maintained, as required under KRS 446.400(1), occurs in a hospital or nursing facility, that declaration may be made by a registered nurse, in addition to any other person permitted by law to determine and pronounce death. The nurse shall notify the patient's attending physician of the death in accordance with the hospital's or facility's policy.***
- (3) In the event that a registered nurse determines that a person is dead, the registered nurse shall make the notifications required by KRS 72.020 and take the protective actions required by that statute.
- ~~(4)~~~~(3)~~ Any registered nursing course taught in pre-licensure programs after July 15, 1998, shall include a course of instruction on the determination of death and preservation of evidence as required by the Board of Nursing by administrative regulation.
- ~~(5)~~~~(4)~~ Any registered nurse within the two (2) years following July 15, 1998, shall successfully complete in-service training required by the Board of Nursing by administrative regulation relating to determination of death and preservation of evidence.
- ~~(6)~~~~(5)~~ Any registered nurse from another jurisdiction desiring to become a registered nurse in Kentucky shall show evidence of successful completion of a training course in Kentucky meeting the requirements of subsection ~~(5)~~~~(4)~~ of this section.
- ~~(7)~~~~(6)~~ The administration of cardiopulmonary resuscitation or other basic life support measures to the apparently dead person prior to the arrival of the registered nurse by any person, for the purposes of this

section and KRS 446.400, shall not be considered as artificial maintenance of respiration and circulation. The administration of advanced cardiac life support procedures by any person, other than a paramedic rendering care pursuant to KRS 311.660, prior to the arrival of the registered nurse shall preclude the determination of death by the registered nurse, and the provisions of KRS 446.400 shall apply. However, nothing in this section shall preclude the supervising physician from directing the registered nurse to cease resuscitative efforts under approved agency medical protocols.

(8)(7) The resuscitative efforts of a nurse under protocols authorized by this section shall not invoke the provisions of KRS 446.400.

**Approved March 6, 2000**

## **CHAPTER 63**

### **(HB 194)**

AN ACT relating to state leasing.

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

Section 1. KRS 56.800 is amended to read as follows:

The Finance and Administration Cabinet shall be responsible for the lease of all real property rentals required for use by all departments, agencies, and administrative bodies of the state government listed in KRS Chapter 12 ***that do not have statutory authority to lease property***, and no lease of real property shall be binding against the Commonwealth or any agency unless made and entered into as provided in KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190.

Section 2. KRS 56.803 is amended to read as follows:

- (1) When an agency determines that it will need office or other space, the agency shall submit a request for the acquisition of the additional space to the Department for Facilities Management in the Finance and Administration Cabinet. Except in the case of an emergency as described at KRS 56.805(3), an agency shall submit its space request in writing to the department ~~at least ninety (90) calendar days before the space requested will be required by the agency~~. In the case of an emergency, an agency shall communicate its space needs to the department pursuant to KRS 56.805(3) as soon as an agency knows that it will need the space. If the commissioner of the Department for Facilities Management determines that insufficient space has been allocated to the agency making the request and that it is appropriate to lease additional space for the agency making the request, the commissioner shall acquire the space required by lease as provided by KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190.
- (2) The Department for Facilities Management shall review each agency space request to determine whether space suitable to meet the agency's reasonable needs may be available in a state-owned or occupied building. If it is determined that there is suitable space available in a state-owned or occupied building, the commissioner shall notify the agency. A copy of the notice shall be kept on file.
- (3) If it is determined that there is no suitable space available in a state-owned or occupied building, the department shall comply with the procedures set forth in this section in the leasing of space, except as otherwise provided in KRS 56.800 to 56.823 and KRS 43.050, 48.111, and 48.190.
- (4) The department shall draw up general requirement specifications for the space required. These general requirement specifications shall not be changed except, at the discretion of the commissioner, when the lease process is initiated again pursuant to paragraph (c) of subsection (15) of this section or pursuant to paragraph (b) of subsection (16) of this section. The general requirement specifications shall be kept on file.
- (5) (a) In soliciting the interest of lessors who have property to let in a county where space is sought, the department shall give adequate public notice to reasonably inform persons having property to let within the county of the type of space required, the general location of the property, and the number of square feet needed. The notice may include posting on the Internet or newspaper advertisements. Each notice shall contain general information concerning the agency requirements for the space sought and shall state the last time, date, and place that written responses shall be received. When it is anticipated that a lease may be negotiated containing deviations or variations from the terms and conditions of the state

standard lease form prescribed by the Division of Real Properties, within the department, any deviations or variations shall be stated in the notice.

- (b) The Department for Facilities Management may use any means available to notify landlords that a notice has been given.
- (6) A property owner, or his representative, shall respond in writing on or before the time and date designated in the notice and shall state in the writing the type and location of the property, the name and address of the property owner, and the date of availability of the property. The department shall deal only with individuals who have submitted written responses on or before the time and date designated in the notice.
- (7) All written responses received on or before the time and date designated shall be opened or downloaded at the same time, publicly read or posted, and kept on file by the department.
- (8) Within **ten (10) business**~~five (5)~~ days of the opening of written responses, the department shall transmit general requirement specifications to each person who submitted a written response on or before the time and date designated. The same general requirement specifications shall be transmitted to each person.
- (9) After the general requirement specifications have been transmitted, except as provided in paragraph (a) of subsection (13) of this section, the commissioner, and department employees under his supervision, may negotiate with persons who submitted written responses on or before the time and date designated. If in the course of negotiations, a person proposes terms and conditions of lease different from those contained in the state standard lease form which are determined to be in the Commonwealth's best interest to accept, but no mention of the acceptability thereof has been made in the notice given pursuant to subsection (5) of this section, all other persons who submitted written responses on or before the time and date designated shall be notified of the terms and conditions and shall be allowed to incorporate the terms and conditions in written proposals when submitted pursuant to subsection (12) of this section. A copy of each notice shall be kept on file.
- (10) The department shall inspect each space proposed to be leased to determine its suitability to the reasonable needs of the agency for whose use the property is sought. The owner of the property, or the owner's representative, shall provide access to the property for the inspection. A report of the findings about each property inspected shall be submitted on a site evaluation form to the commissioner of the department. Completed site evaluation forms shall be kept on file.
- (11) After the commissioner has reviewed the completed site evaluation forms, the commissioner shall inform each owner of property, or his representative, of the steps necessary to bring the property up to general and specific requirement specifications. The commissioner shall also invite each person to submit a written proposal on a form created by the Department for Facilities Management. A copy of the form shall be provided to each bidder. A written proposal shall constitute a best and final offer. The department shall not consider a written proposal unless it is submitted on a department form on or before the time and date designated.
- (12) All written proposals submitted on or before the time and date designated shall be opened at the same time, publicly identified by the name of the property owner and the location of the property, and kept on file.
- (13) Except pursuant to paragraph (b) of subsection (15) of this section, when the requirements of paragraph (a) of this subsection shall not apply, from the time that written proposals are opened until the awarding of a lease, the department:
  - (a) Shall not negotiate or agree to changes in the terms of written proposals except to correct technical errors;
  - (b) Shall log in all contacts between department employees and any person with an interest in the awarding of a lease. The log shall state the time, date, place, and a summary of the substance of each contact. Each log entry shall be signed by the department employee who was contacted. After the lease is awarded, the log shall be kept as a department record.
- (14) (a) The commissioner shall assess the proposals, taking into account factors including, but not limited to: consultation with the head of the agency for whose use the space is sought; the location and accessibility of the property to the public; its condition and state of repair; its conformity with the requirements of occupational health and safety regulations; its conformity with applicable state fire, health, safety and sanitation requirements; the proposed rental rates; utility and janitorial costs; agency moving costs; and whether the property proposed is in substantial conformity with the general and specific requirement specifications.

- (b) The commissioner shall give preference to properties in areas which have received, within the previous five (5) year period, state community development funds for revitalization if properties are offered at a competitive rate and meet the provisions of paragraph (a) of this subsection.
- (15) The commissioner, relying exclusively on his assessment made pursuant to subsection (14) of this section, shall:
  - (a) Choose the best proposal in the interest of the Commonwealth;
  - (b) Be permitted to negotiate with a potential lessor if he was the only responsive and responsible potential lessor who submitted a proposal; or
  - (c) Except as provided in paragraph (b) of this subsection, reject all proposals when none is in the Commonwealth's best interest to accept as assessed according to the factors stated in subsection (14) of this section and may, at his discretion, initiate the lease process again.
- (16) (a) The commissioner shall award or decline to award a lease to the potential lessor who submitted the best proposal pursuant to paragraph (a) of subsection (15) of this section or who negotiated with the commissioner pursuant to paragraph (b) of subsection (15) of this section. However, the commissioner shall not award a lease to a potential lessor who negotiated with the commissioner pursuant to paragraph (b) of subsection (15) of this section if that potential lessor's proposal after negotiations was not in the Commonwealth's best interest to accept as assessed according to the factors stated in subsection (14) of this section, and the commissioner shall not award a lease to a person other than a potential lessor prescribed in this paragraph.
  - (b) If the commissioner declines to award a lease, he may, at his discretion, initiate the lease process again.
- (17) The commissioner shall put in writing the justifications for his decisions made pursuant to subsections (15) and (16) of this section. This writing shall be kept on file.
- (18) The commissioner, all department employees under the commissioner's supervision who performed a site evaluation or negotiated a lease agreement under this section, and the head of the agency that will occupy the leased space shall sign separate certificates, devised by the commissioner, which shall provide the signatory with the option of certifying that, to the best of his knowledge, he is either aware or unaware of circumstances which may constitute a violation of KRS 56.800 to 56.823. The Department for Facilities Management shall keep the certificates on file.
- (19) The department shall notify each person who submitted a written response on or before the time and date designated in the public notice pursuant to subsection (6) of this section, but who was not awarded the lease, of the selected property to be leased, and that the person has a right to examine the leasing records relevant to the lease that was awarded. If the Capital Projects and Bond Oversight Committee, pursuant to KRS 56.823(2), will review the awarding of a lease, each notice shall state that fact. A copy of each notice shall be kept on file.
- (20) ***Prior to finalization of the lease, the department or the leasing agency shall inspect the property to ensure that any changes described in subsection (11) of this section necessary to bring the property up to specifications have been completed in a manner satisfactory to the agency or department. At the conclusion of the inspection, the owner shall be advised in writing by the department either that the property is approved for occupancy and the lease may be finalized, or that there remain changes to be completed or corrected before the lease may be finalized.***

Section 3. KRS 56.8035 is amended to read as follows:

- (1) When the Department for Facilities Management solicits for procurement of leased office space under the provisions of KRS 56.803, a proposal for new construction shall be considered if it does not contain any provision for a lease-purchase or an option to purchase.
- (2) The Department for Facilities Management shall only consider a proposal for construction of leased office space with provision for lease-purchase or option to purchase if the proposal is submitted in response to a solicitation for proposals for built-to-suit leases in accordance with KRS 56.8169.
- (3) ***A building constructed and leased to the Commonwealth under this section shall be constructed:***
  - (a) ***In accordance with all applicable state and national safety, building, and construction code requirements; and***
  - (b) ***To last for a minimum of thirty (30) years.***

Section 4. KRS 56.806 is amended to read as follows:

- (1) Except when another lease term is approved by the secretary of the Finance and Administration Cabinet, the terms of all leases entered into pursuant to KRS 56.803 or 56.805 may provide for an initial lease term beginning on a date stated and ending on June 30 in each year in which the General Assembly has convened in regular session and appropriated funds for the operation of the state government during the next ensuing biennium. The leases may grant the state successive options for the automatic renewal of the lease upon the same terms and conditions for additional renewal periods of twenty-four (24) months each, not to exceed three (3) automatic renewal periods. Any lease containing provision for the automatic renewal of the lease after the expiration of the initial lease term shall also provide that the state may, upon written notice given to the lessor on or before April 15 of the year in which the initial or any automatic renewal term expires, elect not to exercise its option for the automatic renewal of the lease term. Subject to the agreement of the lessor, a lease in which the final automatic renewal period has expired, or will expire as of the end of the then current term, may be renewed upon the same terms and conditions, provisions of KRS 56.803 to the contrary notwithstanding.
- (2) The Department for Facilities Management shall comply with the provisions of this subsection when calculating rentable area for the purposes of a lease.
  - (a) If the Commonwealth is the only tenant on a single floor of a multistory building, the rentable area shall be the entire area described by measuring to the inside finished surface of the dominant portion of the permanent outer building walls, excluding any major vertical penetrations of the floor which shall include, but not be limited to, stairways, elevator shafts, pipe chases, vertical air ducts, and the enclosing wall of all such excluded areas. Restrooms, corridors, and utility rooms which exclusively serve the floor occupied by the Commonwealth shall be included as part of the rentable area.
  - (b) If the Commonwealth is the only tenant in a one (1) story or multistory building, rentable area shall be calculated pursuant to the provisions of paragraph (a) of this subsection except that those areas excluded pursuant to paragraph (a) shall be included as part of the rentable area.
  - (c) If the Commonwealth shares a floor with one (1) or more other tenants, the rentable area shall be calculated by measuring from the inside finished surface of the dominant portion of the permanent outer building walls to the office side of every corridor wall or other wall separating the Commonwealth's leased space from other adjacent rentable areas which shall include, but not be limited to, space under the control of another tenant, public corridors, restrooms, all common service and utility areas, stairways, elevator shafts, vertical pipe chases, and air ducts.
  - (d) The Commonwealth's rentable area determined pursuant to paragraphs (a), (b), and (c) of this subsection shall include columns and projections necessary to the building.
- (3) The Finance and Administration Cabinet may include in a lease an option to purchase the leased property or a lease-purchase of the leased property.
- (4) If the Finance and Administration Cabinet exercises an option to purchase leased property, the option price shall not exceed the fair market value of the leased property as of the time the lessor and the Commonwealth enter into the option. Two (2) competent and qualified real estate appraisers shall each determine the fair market value. Each real estate appraiser shall be selected by the Finance and Administration Cabinet and shall employ an accepted appraisal technique.
- (5)
  - (a) Except as provided in paragraph (b) of this subsection, if the Finance and Administration Cabinet includes in a lease the lease-purchase of the leased property, two (2) competent and qualified real estate appraisers shall each determine the fair market value of the leased property as of the time the lessor and the Commonwealth enter into the lease. Each appraiser shall be selected by the Finance and Administration Cabinet and shall employ an accepted appraisal technique. The lease shall provide for an initial lease term ending June 30 of the second year of the then current fiscal biennium of the Commonwealth, with the option of the Commonwealth, as lessee, to extend the term of the lease for a term of two (2) years from the expiration of each extended term of the lease, until the original term of the lease has been extended for a total number of years agreed upon by the parties. The agreed rental paid for the original term and for each of the full number of years for which the term of the lease may be extended shall amortize the fair market value of the leased property as of the time the lessor and the Commonwealth entered into the lease. The lease shall provide that the Commonwealth may, at the expiration of the original or any extended term, purchase the leased property at a stated price, which

shall be the balance of the fair market value of the leased property as of the time the lease was entered into which has not been amortized by the payments of rent previously made by the Commonwealth.

- (b) If the Finance and Administration Cabinet includes lease-purchase of the leased property in a lease with the federal government, the terms of the lease-purchase shall be determined through negotiations between the Commonwealth and the federal government.
- (6) Except when a lease incorporates a lease-purchase pursuant to subsection (5) of this section, the Commonwealth shall reserve the right to cancel a lease upon written notice within thirty (30) ~~days, which ever is specified in the lease agreement~~, ~~sixty (60), or ninety (90)~~ days.

**Approved March 6, 2000**

## **CHAPTER 64**

### **(HB 218)**

AN ACT relating to charitable health care providers.

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

Section 1. KRS 216.940 is amended to read as follows:

As used in KRS 216.940 to 216.945:

- (1) "Charitable health care provider" means any person, agency, clinic, or facility licensed or certified by ~~the Commonwealth~~ ~~this state~~ or under a comparable provision of law of another state, territory, district, or possession of the United States, engaged in the rendering of medical care without compensation or charge, and without expectation of compensation or charge, to the individual, without payment or reimbursement by any governmental agency or insurer. "Charitable health care provider" only means those persons, agencies, clinics, or facilities engaging in primary care and performing no invasive or surgical procedures.
- (2) "Regularly practice" means to practice for more than sixty (60) days within any ninety (90) day period.
- (3) "Sponsoring organization" means any organization, with an established relationship with a practicing entity, that organizes or arranges for the voluntary provision of health care services in the state.

Section 2. KRS 216.941 is amended to read as follows:

- (1) Notwithstanding any provision of law to the contrary, no additional license or certificate otherwise required under the provisions of KRS Chapters 211, 216, 311, 312, 313, or 314 shall be necessary for the voluntary provision of health care services by any person who:
  - (a) Is a charitable health care provider as defined in KRS 216.940; or
  - (b) Does not regularly practice in the Commonwealth.
- (2) No person whose license or certificate is suspended or revoked under disciplinary proceedings in any jurisdiction, nor any person who renders services outside of the scope of practice authorized by his or her licensure or certification or exception to license or certification shall be allowed to participate with any sponsoring organization as a charitable health care provider.
- (3) Before providing charitable health care services in this state, a charitable health care provider or sponsoring organization shall register with the Cabinet for Health Services by ~~submitting a registration fee of fifty dollars (\$50) and~~ filing a registration form that shall contain the following information:
  - (a) The name, address, and phone number of the charitable health care provider;
  - (b) Written and verifiable documentation of a current Kentucky license including, if applicable, a license granted to an individual under a reciprocal agreement with another state or country;
  - (c) The name, principal office address, phone number, and principal officer of any sponsoring organization;
  - (d) The dates, locations, types of services, and intended recipients of any charitable health care services to be performed in the state;
  - (e) Information as to any medical malpractice insurance procured under KRS 304.40-075 or otherwise; and

- (f) Other information as the cabinet may require by administrative regulation.
- (4) The cabinet shall provide, upon request of the charitable health care provider or sponsoring organization, any information available as to declared emergencies, underserved populations, and lack of access to health care in the state that will assist the charitable health care provider or sponsoring organization in the provision of these services.
- (5) Boards of health created under KRS Chapter 212 may submit requests for charitable health care providers in their jurisdictions to be listed in any information provided.
- (6) Each sponsoring organization shall maintain a list of health care providers associated with its provision of charitable health care services. For each health care provider, the sponsoring organization shall maintain a copy of a current license, certificate, or statement of exemption from licensure or certification and shall require each health care provider to attest in writing that his or her license or certificate is not suspended or revoked under disciplinary proceedings in any jurisdiction. The sponsoring organization shall maintain its records of charitable health care providers for at least five (5) years after the provision of charitable health care services, including actual dates, types of services, and recipients of charitable health care services, and shall furnish these records upon the request of the Cabinet for Health Services. Compliance with this section shall be prima facie evidence that the sponsoring organization has exercised due care in selecting charitable health care providers.
- (7) The cabinet may revoke the registration of any charitable health care provider or sponsoring organization for failure to comply with the provisions of KRS 216.940 to 216.945, in accordance with the provisions of KRS Chapter 13B.
- (8) The cabinet shall report to the General Assembly the name and location of individuals registered with the cabinet as charitable health care providers, by October 1 of each year.

Section 3. KRS 304.40-075 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
  - (a) "Charitable health care provider" means any person, agency, clinic, or facility licensed or certified by the Commonwealth, or under a comparable provision of law of another state, territory, district, or possession of the United States, engaged in the rendering of medical care without compensation or charge, and without expectation of compensation or charge, to the individual, without payment or reimbursement by any governmental agency or insurer. "Charitable health care provider" only means those persons, agencies, clinics, or facilities engaging in *primary care*~~[general practice]~~ medicine and performing no invasive or surgical procedures;
  - (b) "Medical malpractice insurer" means every person or entity engaged as principal and as indemnitor, surety, or contractor in the business of entering into contracts to provide medical professional liability insurance, except an entity in the business of providing such medical professional liability insurance only to itself or its affiliated subsidiary, or parent corporation, or subsidiaries of its parent corporations; and
  - (c) "Medical professional liability insurance" means insurance to cover liability incurred as a result of the hands-on providing of medical professional services directly to patients by an insured in the treatment, diagnosis, or prevention of patient illness, disease, or injury.
- (2) Insurers offering medical professional liability insurance in the Commonwealth shall make available, as a condition of doing business in the Commonwealth pursuant to this chapter, medical professional liability insurance for charitable health care providers and persons volunteering to perform medical services for charitable health care providers, with the same coverage limits made available to its other insureds.
- (3)
  - (a) Premiums for policies issued under subsection (2) of this section shall be paid by the Commonwealth from the general fund~~[not to exceed the sum of twenty thousand dollars (\$20,000) and from the registration fees collected by the Cabinet for Health Services under KRS 216.941(3)]~~ upon written application for payment of the premium by the health care provider wishing to offer charitable services.
  - (b) The Department of Insurance shall, through promulgation of administrative regulations pursuant to KRS Chapter 13A, establish reasonable guidelines for the registration of charitable health care providers. The guidelines shall require the provider to supply, at a minimum, the following information:
    - 1. Name and address of the charitable health care provider;

2. Number of employees of the charitable health care provider who will be rendering medical care without compensation or charge and without expectation of compensation or charge, and who will be covered under the policy issued under subsection (2) of this section;
  3. The expected number of patients to be provided charitable health care services in the year for which the insurer will offer malpractice coverage;
  4. The charitable health care provider's acknowledgment that the insurer's risk management and loss prevention policies shall be followed; and
  5. A copy of the registration filed with the Cabinet for Health Services under KRS 216.941.
- (c) Persons insured under this section shall be required to comply with the same risk management and loss prevention policies which the insurer imposes upon its other insureds.
- (4) This section shall only apply to charitable health care providers and persons volunteering to perform medical services for charitable health care providers who are not otherwise covered by any policy of medical professional liability insurance *for the charitable health care services provided*, and that meet the terms for eligibility established pursuant to this section.
  - (5) Coverage offered to charitable health care providers and persons volunteering at charitable health care providers shall be at least as broad as the coverage offered by the insurer to other noncharitable health care providers or facilities and to medical professionals working at noncharitable health care facilities.
  - (6) The Department of Insurance shall retrospectively review on an annual basis the premiums paid pursuant to this section as opposed to the expenses incurred by the insurers covering risks under this section to determine if the profits made for those risks were consistent with reasonable loss ratio guidelines. If the determination is made that the profits were not consistent with reasonable loss ratio guidelines, the Department of Insurance shall determine the amount of the premiums to be refunded to the Commonwealth.
  - (7) The Cabinet for Health Services shall make available to the Department of Insurance information on its registration of charitable health care providers for the purpose of obtaining medical malpractice insurance.
  - (8) The Department of Insurance shall not provide medical malpractice insurance as specified in subsection (3)(a) of this section to a charitable health care provider who has not registered with the Cabinet for Health Services under KRS 216.941.

**Approved March 6, 2000**

## CHAPTER 65

### (HB 219)

AN ACT relating to ophthalmic dispensers.

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

Section 1. KRS 326.020 is amended to read as follows:

- (1) There is hereby created a board of ophthalmic dispensers to be known as the "Kentucky Board of Ophthalmic Dispensers." It shall consist of five (5) members to be appointed by the Governor, one (1) member of which shall be a licensed medical physician or osteopath experienced in the treatment and examination of eyes and one (1) member of which shall be a licensed optometrist. Two (2) members shall be licensed ophthalmic dispensers. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. They shall not pass upon their own qualifications. The board shall elect one (1) of its members chairman and one (1) member secretary-treasurer. These officers shall serve at the pleasure of the board.
- (2) Members shall serve for a period of four (4) years from the date of their appointment and qualification. At the expiration of the term of office of any member, the Governor shall appoint a successor for a term of four (4) years.
- (3) (a) The board may promulgate administrative regulations to carry out the purposes and provisions of this chapter, including the licensing of apprentice ophthalmic dispensers and the adoption of a program for continuing education for all licensees.



- (b) No licensee shall be permitted to renew his *or her* license, unless the minimum annual continuing education requirements have been completed. No program for continuing education shall contain, as a prerequisite for license renewal, a requirement for more than a total of six (6) credit hours per year for ophthalmic dispenser licensees, or four (4) credit hours per year for apprentice ophthalmic dispenser licensees.
- (4) Board members shall receive fifty dollars (\$50) per day for attending board meetings. ***Board members shall also be reimbursed for reasonable and necessary expenses incurred in the performance of their duties.***
- (5) ***The board may:***
  - (a) ***Revoke, suspend, or refuse to issue or renew licenses; impose probationary or supervisory conditions upon licensee; or issue written reprimands to licensees, in accordance with Section 4 of this Act;***
  - (b) ***Impose administrative fines in accordance with Section 5 of this Act; or***
  - (c) ***Take any other action or combination of actions regarding licenses, licensees, or apprenticeships authorized by this chapter.***
- (6) ***For the purpose of enforcing the provisions of this chapter, the board may administer oaths, receive evidence, interview persons, issue subpoenas, and require the production of books, papers, documents, or other evidence.***
- (7) ***The board may seek injunctive relief in Franklin Circuit Court to enjoin violation of KRS 326.030.***

Section 2. KRS 326.030 is amended to read as follows:

~~[On and after January 1, 1955,]~~ No person shall engage in the practice of ophthalmic dispensing unless he *or she* is duly licensed to practice medicine, osteopathy, or optometry in this Commonwealth or unless he *or she* is the holder of a license as an ophthalmic dispenser; provided, this section shall not be so construed as to prohibit a firm or corporation from operating a business which comes within the meaning of ophthalmic dispensing, if each of its employees either (1) coming in contact with the public and performing for the public any service or services included within the meaning of ophthalmic dispensing, or (2) otherwise performing any work or service required by this chapter to be performed by an ophthalmic dispenser, is the holder of a license as an ophthalmic dispenser.

Section 3. KRS 326.040 is amended to read as follows:

A license as an ophthalmic dispenser shall be issued by the board to any person who pays a fee of ***fifty dollars (\$50)***~~[\$25]~~ and submits evidence under oath satisfactory to the board:

- (1) That he *or she* is more than eighteen (18) years of age and of good moral character;
- (2) ***That he or she has graduated from high school or possesses a General Educational Development (GED) certificate;***
- (3) That he *or she* has at least two (2) years of satisfactory training and experience in ophthalmic dispensing under the supervision of an ophthalmic dispenser, physician, osteopath, or optometrist, or is a graduate of an accepted school of ophthalmic dispensing;
- ~~(4)(3)~~ That he *or she* has passed a satisfactory examination in ophthalmic dispensing ***approved***~~[given]~~ by the board.

Section 4. KRS 326.090 is amended to read as follows:

- (1) The board ***may refuse to issue a license, or*** may suspend,~~for~~ ***revoke, impose probationary conditions upon, impose an administrative fine upon, or issue a written reprimand against the holder of a***~~any~~ license to practice ophthalmic dispensing ***or an apprentice license if the applicant or licensee has***~~for any of the following causes~~:
  - (a)~~(1)~~ ***Committed a dishonest or corrupt act. If the act is a crime, conviction in a criminal proceeding shall not be a condition precedent to disciplinary action. Upon conviction of the crime, the judgment and sentence are presumptive evidence of guilt at the ensuing disciplinary hearing of the licensee. Conviction includes all instances in which a plea of no contest is the basis of the conviction***~~[The conviction of a felony involving moral turpitude]~~;
  - (b) ***Committed any unfair, false, misleading, or deceptive act or practice;***
  - (c) ***Been incompetent or negligent in the practice of ophthalmic dispensing;***

- (d) *Failed to comply with a lawful order of the board;*
- (e) *Aided or abetted another person in falsely procuring or attempting to procure a license;*
- (f) *Aided or abetted an unlicensed person in activities which violate KRS 326.030 and which are not otherwise exempted from the provisions of this chapter;*
- (g)~~[(2)]~~ *Exhibited* chronic or persistent inebriety or addiction to a drug habit, to an extent that disqualifies *the applicant or the licensee* from practicing with safety to the public;
- (h)~~[(3)]~~ *Committed* fraud or deception in the application or in the examination for the license; *or*
- (i)~~[(4)]~~ *Violated any provisions of*~~[Violation of]~~ this chapter *or administrative regulations promulgated in accordance with this chapter.*
- (2) *After investigating an alleged violation and offering the licensee the opportunity to respond to the allegation, the board may issue a written reprimand to the licensee if the board determines that a violation that is not of a serious nature has occurred. A copy of the reprimand shall be placed in the permanent file of the licensee. The licensee may file a written response to the reprimand within thirty (30) days of receiving the reprimand or may request a hearing with the board. If the licensee responds to the reprimand, his or her response shall be placed in the licensee's permanent file. If the licensee requests a hearing, the board shall set aside the written reprimand, pending the outcome of a hearing by the board under the provisions of KRS Chapter 13B.*

Section 5. KRS 326.100 is amended to read as follows:

- (1) *The board before suspending, revoking, imposing probationary, or supervisory conditions upon, imposing an administrative fine, issuing a written reprimand, or taking any combination of these actions regarding any licensee under KRS Chapter 326 shall conduct a hearing under the provisions of*~~[No license shall be suspended or revoked until after a hearing conducted in accordance with]~~ KRS Chapter 13B, *upon the request of the licensee.*
- (2) *After denying an application under the provisions of this chapter, the board shall grant a hearing to the denied applicant under the provisions of KRS Chapter 13B.*
- (3) *Any applicant aggrieved by a disciplinary action of the board may appeal*~~[A licensee whose license has been suspended or revoked may appeal]~~ the final order of the board to the Circuit Court in the county in which the licensee is practicing in accordance with KRS Chapter 13B.

Section 6. KRS 326.990 is amended to read as follows:

Any person who shall directly or indirectly engage in the practice of ophthalmic dispensing or hold himself *or herself* out to the public as being able so to do, or who shall violate any of the provisions of this chapter relating to ophthalmic dispensing, or having had his *or her* license suspended or revoked shall continue to engage in the practice of ophthalmic dispensing, or who directly or indirectly employs, permits or authorizes an unlicensed person to engage in the practice of ophthalmic dispensing shall be guilty of a misdemeanor, and, upon conviction, shall be punished by imprisonment for not more than thirty (30) days, or by a fine of not *less than one hundred dollars (\$100) nor* more than ~~five~~~~one~~ hundred dollars ~~(\$500)~~~~(\$100)~~ or by both such fine and imprisonment, and each such violation shall be deemed a separate offense.

Section 7. The following KRS section is repealed:

326.050 Issuance of license to persons in business prior to January 1, 1955 or in Armed Forces.

**Approved March 6, 2000**

## CHAPTER 66

**(HB 236)**

AN ACT relating to vehicle emission testing programs.

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

Section 1. KRS 224.20-710 is amended to read as follows:

As used in KRS 224.20-710 to 224.20-765, unless the context clearly indicates otherwise:

- (1) "Compliance certificate" means an official emission inspection certificate issued by the cabinet or a county, air pollution control district, contractor, or fleet operator authorized by the cabinet, indicating that a vehicle has been tested in accordance with KRS 224.20-710 to 224.20-765 and complies with all applicable emission standards;
- (2) "Independent contractor" means any person, business firm, partnership, or corporation with whom the cabinet or a fiscal court may negotiate an agreement providing for construction, equipment, maintenance, personnel, management, and operation of an official emission inspection station;
- (3) "Control system" means equipment designed for installation or installed on a motor vehicle for the purpose of reducing the air contaminants emitted from the vehicle or a system or engine adjustment or modification which causes a reduction of air contaminants emitted from the vehicle;
- (4) "Exemption certificate" means an official exemption certificate issued by the cabinet or a county, contractor, or fleet operator authorized by the cabinet, indicating that a vehicle is exempt from certain requirements of KRS 224.20-710 to 224.20-765;
- (5) "Inspection station" means an official vehicle emission inspection facility whether placed in a permanent structure or in a mobile unit for conveyance among various locations within this Commonwealth, to conduct emission inspections of vehicles required to be inspected pursuant to KRS 224.20-710 to 224.20-765;
- (6) "Vehicle" means any automobile or truck registered in this Commonwealth having a combined manufacturer's weight of vehicle and maximum load to be carried of up to eighteen thousand (18,000) pounds, which is equivalent to eight thousand one hundred eighty-two (8,182) kilograms, or less and used upon the public highways of the Commonwealth for the purpose of transporting persons or property. ***The term "vehicle" shall not include a motorcycle as defined in KRS 189.285(6); and***
- (7) "Vehicle emission control program" means a program developed by the cabinet pursuant to KRS 224.20-710 to 224.20-765 which provides for the control of vehicle emissions of any air contaminant.

Section 2. KRS 224.20-755 is amended to read as follows:

- (1) A county fiscal court may apply to the cabinet for authority to operate a vehicle emission control program. The cabinet may delegate authority when it has found that the applicant:
  - (a) Has obtained approved machinery, tools, and equipment approved by the cabinet and adequate to conduct the required emission inspections;
  - (b) Has provided for a sufficient number of facilities to ensure minimum waiting time for vehicles to be inspected;
  - (c) Employs properly trained personnel with whom to perform the necessary inspections;
  - (d) Has adopted minimum emission standards for vehicles at least as stringent as those adopted by the cabinet; and
  - (e) Agrees to provide information prescribed by the cabinet concerning the implementation, administration, and operation of the vehicle emission control program.
- (2) ***Any county that has received authority to operate a vehicle emission control program shall be prohibited from inspecting motorcycles as defined in KRS 189.285(6). The provisions of this subsection shall supersede any existing local ordinance involving the inspection of motorcycles under a vehicle emission control program administered by a county. All counties, cities, special districts, and other units of local government shall be prohibited from enacting an ordinance contrary to the provisions of this subsection.***
- (3) Any county which has received authority to operate a vehicle emission control program may charge an inspection fee. There shall be established an emission inspection account in the county. Unless an independent contractor is authorized pursuant to KRS 224.20-740 to collect inspection fees, the county clerk shall collect the fee at the time of registration renewal in the manner provided for cabinet programs. The inspection fees collected by the county clerk shall be immediately transferred to the county emission inspection account, except for a sum of no more than twenty-five cents (\$0.25) per vehicle which the county clerk may retain.
- ~~(4)~~~~(3)}~~ A county which has received authority to operate a vehicle emission control program shall transmit to the cabinet's vehicle emission control fund two percent (2%) of the funds received from inspection fees or from the independent contractor authorized pursuant to KRS 224.20-740.

- (5)~~(4)~~ The county may use the county's emission inspection fund to acquire any special equipment, tools, employees, material, or facilities needed to adequately administer, investigate, or enforce the provisions of KRS 224.20-710 to 224.20-765.
- (6)~~(5)~~ The county may enter into a contract with the cabinet and receive state funds charged to the cabinet's vehicle emission control fund to start a vehicle emission control program.
- (7)~~(6)~~ A county applying for delegation pursuant to this section may enter into a contract with one (1) or more independent contractors subject to the provisions of KRS 224.20-740 to provide for construction, equipment, establishment, maintenance and operation of inspection stations for the purpose of obtaining delegation pursuant to KRS 224.20-710 to 224.20-765.
- (8)~~(7)~~ If the cabinet determines, after a hearing with notice, that a delegated vehicle emission control program is not being administered in accordance with KRS 224.20-710 to 224.20-765, the delegation of authority may be revoked by order of the cabinet and all unexpended money, equipment and facilities acquired by the county with funds granted by the cabinet shall be transferred to the cabinet.

Section 3. KRS 224.20-760 is amended to read as follows:

- (1) ***Except as provided in subsection (2) of this section***, the provisions of KRS 224.20-710 to 224.20-765 shall not detract from the authority provided air pollution control districts in KRS Chapters 77 and 224.
- (2) ***Any air pollution control district that has received authority to operate a vehicle emission control program shall be prohibited from inspecting motorcycles as defined in KRS 189.285(6). The provisions of this subsection shall supersede any existing local ordinance involving the inspection of motorcycles under a vehicle emission control program administered by an air pollution control district. All counties, cities, special districts, and other units of local government, including an air pollution control district, shall be prohibited from enacting an ordinance contrary to the provisions of this subsection.***
- (3) The authority in KRS 224.20-720 is provided to air pollution control districts provided:
  - (a) The air pollution control district may function and exercise its powers pursuant to resolution or ordinance as provided in ***this section and*** KRS Chapter 77; and
  - (b) The air pollution control district has been granted concurrent jurisdiction by the cabinet pursuant to KRS 224.20-130.
- (4)~~(3)~~ Actions taken by an air pollution control district for violations of KRS 224.20-710 to 224.20-765 shall be enforced in accordance with the provisions of KRS 224.20-130(5).

Section 4. All counties and air pollution control districts that have authority to operate a vehicle emission control program under the provisions of KRS 224.20-710 to 224.20-765 shall be prohibited from inspecting motorcycles as defined in KRS 189.285(6) upon the effective date of this Act. Any county, city, special district, or other unit of local government, including an air pollution control district, that currently has an ordinance requiring the inspection of motorcycles under a locally administered vehicle emission control program, shall repeal the ordinance within thirty (30) days of the effective date of this Act. Any local government that fails to repeal an ordinance requiring the inspection of motorcycles in violation of this section, shall have the local government's authority to administer a vehicle emission control program immediately suspended until the offending ordinance is repealed.

**Approved March 6, 2000**

## **CHAPTER 67**

### **(HB 376)**

AN ACT relating to blasting safety.

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

Section 1. KRS 351.315 is amended to read as follows:

- (1) No person shall detonate explosives in any blasting operation in which more than five (5) pounds of explosives or the equivalent are used in a single charge or in which less than five (5) pounds of explosives are used by a regular user, excluding blasting for agriculture and underground coal, unless he is licensed by the department. The department shall issue a license to use explosives to any person who:

- (a) Has worked in blasting operations for at least twenty-four (24) months under the immediate supervision of an experienced blaster *or has worked in blasting operations for twelve (12) months and has completed a formal training program approved by the department*; and
  - (b) Has passed an examination prescribed by the department which shall test the examinee's practice of blasting operations and the storage, moving, handling, and detonation of explosives.
- (2) Application for license shall be in writing upon a form furnished by the department and shall be accompanied by a **photograph of the applicant**~~[fee]~~. If the applicant is successful in passing the examination, a license indicating his competency to detonate explosives shall be issued upon the payment of ~~a[n additional]~~ fee of twenty-five dollars (\$25).
- (3) Any person who is a licensed blaster in another state where the qualifications prescribed at the time of licensing were, in the opinion of the commissioner, equal to those prescribed in the Commonwealth at the date of application, and where reciprocal licensing privileges satisfactory to the department are granted to licensees of the Commonwealth, may be granted a license without an examination, upon the payment of a fee.
- (4) Each blaster shall be required to renew his license *every three (3) years*~~[each year]~~ by application to the department, which application shall be accompanied by a fee. *Each applicant for renewal of a Kentucky blaster's license, other than a certified surface coal miner, shall furnish proof that during the preceding three (3) years, he has attended a minimum of sixteen (16) hours of blaster's training approved by the department. Each applicant for renewal of a limited Kentucky blaster's license shall furnish proof that during the preceding three (3) years, he has attended a minimum of four (4) hours of blaster's training approved by the department.*
- (5) The department shall not issue a blaster's license to any person not entitled to transport or receive explosives under existing federal law, including persons who:
- (a) Are less than twenty-one (21) years of age; or
  - (b) Have been convicted in any court of a crime punishable by imprisonment for a term exceeding one (1) year, unless the conviction has been specifically exempted by the United States Bureau of Alcohol, Tobacco and Firearms or its successor.
- (6) All fees provided in this section shall be set by the department by administrative regulation; however, the fee for an application shall not exceed forty dollars (\$40), the fee for license renewal shall not exceed ~~sixty~~~~[twenty]~~ dollars ~~(\$60)~~~~(\$20)~~, and the fee for reciprocal licensing shall not exceed sixty dollars (\$60).
- (7) The commissioner may suspend any license for due cause, but no license may be revoked until the licensee has been granted adequate opportunity for a hearing conducted in accordance with KRS Chapter 13B.

**Approved March 6, 2000**

## CHAPTER 68

**(HB 404)**

AN ACT relating to training and education of coal miners.

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

Section 1. KRS 351.102 is amended to read as follows:

- (1) No person shall be assigned~~[to work]~~ duties by a licensee as a laborer or supervisor working~~[underground]~~ for the purpose of mining coal unless the person holds a valid certificate of competency and qualification or a valid permit as trainee issued in accordance with this section.
- (2) A permit as trainee miner shall be issued by the commissioner to any person who has completed a program of education of a minimum of forty (40) hours *for underground mining or sixteen (16) hours for surface mining* or who has completed a certified mine technology program and has passed an examination approved by the commissioner. An additional eight (8) hours of mine-specific training shall be administered to the trainee miner by the licensee, which training shall be documented on a form *approved*~~[prepared]~~ by the *commissioner*~~[department]~~. This education and training program shall be determined and established by the board, as provided in KRS 351.105.

- (3) Trainee miners shall work within the sight and sound of a certified miner.
- (4) Any miner holding a certificate of competency and qualification may have one (1) person working with him and under his direction as a trainee miner. Any person certified as a mine foreman ~~or~~ assistant mine foreman ~~shall, or his boss may~~ have no more than five (5) persons working ~~with him and~~ under his supervision or direction as trainee miners for the purpose of learning and being instructed in the duties of underground coal mining.
- (5) A certificate of competency and qualification as ~~a~~ ~~an underground~~ miner shall be issued by the commissioner to any person who has ~~in total~~ a minimum of forty-five (45) working days' experience ***within a thirty-six (36) month period*** as a trainee miner and demonstrated competence as a miner.
- (6) All examinations for the certification of a miner shall be of a practical nature and shall determine the competency and qualification of the applicant to engage in the mining of coal with reasonable safety to himself and his fellow employees. The examination ~~shall~~ ~~may~~ be given orally if the miner is unable to read or comprehend a written examination.
- (7) Examinations shall be held in any district office during regular business hours ~~after whatever public notice and at the time that the commissioner finds necessary to enable all applicants for certificates to have an opportunity to qualify for certification~~.
- ~~((8))~~ Notice of the time and place of the examination for the certification of miners shall be given to management at the mine and to the miners or their representatives at the mine, and notice shall be posted at the places in the vicinity of the mine where notices to employees are posted.
- ~~((8))~~ If the commissioner or his ***authorized*** representative finds that an applicant is not qualified and competent, he shall notify the applicant not more than ten (10) days after the date of examination.
- ~~((9))~~ Any applicant aggrieved by an action of the commissioner ***or his authorized representative*** in failing or refusing to issue a certificate of qualification and competency ~~shall~~ ~~may~~, within ten (10) days of notice of the action complained of, appeal to the commissioner who shall ~~schedule an informal hearing and~~ either affirm the action or issue the certificate to the applicant.
- ~~((10))~~ If the applicant is ~~still~~ aggrieved by the action of the commissioner, he may appeal to the board which shall hold a hearing on the matter in accordance with KRS Chapter 13B.
- ~~((11))~~ The applicant may appeal from the final order of the board by filing in the Circuit Court in the judicial circuit in which he resides a petition for appeal in accordance with KRS Chapter 13B.

Section 2. KRS 351.106 is amended to read as follows:

- (1) The board shall establish criteria and standards for a program of education and training to be required of prospective miners ~~of coal mines~~, miners ~~of coal mines~~, and all certified persons. This education and training shall be provided in a manner determined by the commissioner to be adequate to meet the standards established by the board, which shall include as a minimum the requirements of KRS 351.102 and the requirements of the federal government for the training of miners for new work assignments, ~~but in no case less than twenty (20) hours training for new work assignments~~, and at least eight (8) hours of annual retraining and reeducation for all certified persons.
- (2) Beginning with the first full calendar year after the effective date established by the board and during each calendar year thereafter, each certified miner shall receive at least eight (8) hours of retraining and reeducation.
- (3) Newly-hired experienced miner training shall satisfy the miner's annual retraining requirement if a time lapse occurs between the miner's last training anniversary date and the next scheduled training anniversary date for the mine where he is newly employed, if the miner has complied with the annual retraining requirements within the last twelve (12) months from the date of his newly hired experienced miner training.
- (4) Retraining and reeducation sessions shall be conducted at times and in numbers to reasonably assure each certified miner an opportunity to attend. ~~Each licensee shall annually submit to the department the dates on which the annual retraining and reeducation sessions were conducted and the names and corresponding miner identification numbers of those persons receiving training and reeducation on a form prescribed by the commissioner.~~
- (5) The licensee shall pay all certified ~~miners~~ ~~persons~~ their regular wages and benefits while they receive ~~required~~ training ***required*** by the department.

- (6) Willful failure of a working miner to complete annual retraining and reeducation requirements shall constitute grounds for revocation, suspension, or probation of his certificate.
- (7) If the department discovers a miner working without proper training ~~or~~~~and~~ the licensee cannot provide proof of training, the miner shall be withdrawn from the mine and the licensee shall pay the miner his regular wages until the training is administered and properly documented.
- (8) When employment is terminated, the licensee shall provide the employee a copy of his training records, upon request. If the employee does not request his training records immediately, the licensee shall, within fifteen (15) days, provide the employee with those training records.
- (9) The board may, upon its own motion or whenever requested to do so by the commissioner, deem applicable certificates issued by other states to be proof of training and education equal to the requirements of KRS 351.102 or deem training provided by appropriate federal agencies to be adequate to meet training and education requirements established by the board, if the training and education meet the minimum requirements of this chapter.
- (10) The commissioner may promulgate reasonable administrative regulations necessary to establish a program to implement the provisions of this chapter according to the criteria and standards established by the board. This program shall include, but not be limited to, implementation of a program of instruction and the conduct of examinations to test each applicant's knowledge and understanding of the training and instruction.
- (11) The commissioner shall keep and maintain records of board meetings, activities of the board, and current records on all certified ~~miners~~~~persons~~, all of which shall be maintained by computer for ready access.
- (12) The commissioner is authorized and directed to utilize state mine inspectors, mine safety instructors, the state mine foreman examiner, private and public institutions of education, and other qualified persons available to him in implementing the program of instruction and examination.
- (13) The commissioner may make recommendations or supply information to the board as he may deem appropriate. The commissioner is authorized and directed to utilize state and federal moneys and personnel that may be available to the department for educational and training purposes in the implementation of the provisions of this chapter.
- (14) All training and education required by this chapter may be conducted in classrooms, on the job, or in simulated mines.

**Approved March 6, 2000**

## CHAPTER 69

**(HB 463)**

AN ACT relating to alcoholic beverage licenses at automobile race tracks and declaring an emergency.

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

Section 1. KRS 243.050 is amended to read as follows:

- (1) The department may issue a railroad system license to a railroad company upon the payment of the required fee. This license tax shall be in lieu of all license and excise taxes which would otherwise be due by the holder in connection with the retailing of alcoholic beverages.
- (2) The department may issue a commercial airlines system license to a commercial airlines system or charter flight system upon the payment of the required fee. This license fee shall be in lieu of all license and excise taxes which would otherwise be due by the holder in connection with the retailing of alcoholic beverages and the license may be renewed annually. The license shall authorize the licensee to sell distilled spirits and wine by the drink and by miniature bottle, and malt beverages, upon regularly-scheduled or charter flights of the licensee, in and out of the State of Kentucky. The license shall authorize the licensee to store alcoholic beverages for retail sale at a location or locations, if operating from more than one airport in Kentucky, as designated on the license application.
- (3) The department may issue a transporter's license to a commercial airline system, a charter flight system, or a commercial cargo system, upon the payment of the required fee. This license may be renewed annually. The license shall authorize the licensee to transport distilled spirits and wine and malt beverages, into and out of the

State of Kentucky, upon regularly-scheduled or charter flights of the licensee. The license shall authorize, for the purpose of transportation, the storage of alcoholic beverages at a location or locations, if operating from more than one airport in Kentucky, as designated on the license application. This license shall authorize an airline to transport if both the consignor and consignee in each case are authorized by the laws of the states of their residence to sell, purchase, ship, or receive the alcoholic beverages.

- (4) The department may issue a convention center or convention hotel complex license for the retail sale of distilled spirits, wine, and malt beverages for consumption on the premises to a convention center or hotel having seating capacity of one thousand (1,000) or more persons. The license shall cover all alcoholic beverage sales on the premises, except that a separate hotel in-room service license is required, where applicable. An applicant for the license shall meet the qualifications of KRS 243.055, and an extended supplement license under subsection (5) of this section may be issued. The convention center or convention hotel complex license shall be a nonquota license and shall not be transferable to other premises. The provisions of this subsection shall not apply to convention center licenses or the renewal thereof, other than those in a city of the first class or a county containing a city of the first class, if the original license was issued prior to July 15, 1998.
- (5) Where it is determined by the department to be in the best interest of promoting tourism, conventions, and the economic development of Kentucky or any part thereof, the department may issue a supplemental license for the retail sale of alcoholic beverages by the drink at convention centers, at horse race tracks licensed to conduct a race meeting under KRS Chapter 230,~~and~~ at commercial airports through which more than five hundred thousand (500,000) passengers arrive or depart annually, **and at automobile race tracks having a seating capacity of at least thirty thousand (30,000) people**. Upon application by the holder of a retail alcoholic beverage license at a convention center, convention hotel complex, horse race track, **automobile race track, meeting the requirements of this subsection**, or commercial airport as provided above, the department may establish the days when the supplemental license will be valid at the specific location, including Sundays after 1 p.m. The supplemental license fee shall be established, and shall be in addition to all other licenses and fees due by the holder in connection with the retailing of alcoholic beverages. The department may, by administrative regulation or special conditions of the supplemental permit, establish such restrictions on the use of the license as will insure that it will be primarily for the benefit of the convention business, the horse racing industry,~~and~~ passengers at large commercial airports, **and the automobile racing industry**.

Section 2. KRS 243.030 is amended to read as follows:

The following kinds of distilled spirits and wine licenses may be issued by the administrator of the distilled spirits unit, the fees for which shall be:

- (1) Distiller's license, per annum ..... \$2,500.00
- (2) Rectifier's license, per annum ..... \$2,500.00
- (3) Blender's license, per annum ..... \$2,500.00
- (4) Vintner's license, per annum ..... \$1,000.00
- (5) Small winery license, per annum ..... \$100.00
  - (a) Small winery off-premises retail license, per annum ..... \$25.00
- (6) Wholesaler's license, per annum ..... \$2,000.00
- (7) Retail package license, per annum:
  - (a) In counties containing cities of the first class ..... \$800.00
  - (b) In counties containing cities of the second class ..... \$700.00
  - (c) In counties containing cities of the third class ..... \$600.00
  - (d) In counties containing cities of the fourth class ..... \$500.00
  - (e) In all other counties ..... \$400.00
- (8) Retail drink license, motel drink license, restaurant drink license, or supplemental bar license, per annum:
  - (a) In counties containing cities of the first class ..... \$1,000.00
  - (b) In counties containing cities of the second class ..... \$700.00



(c)	In counties containing cities of the third class .....	\$600.00
(d)	In counties containing cities of the fourth class .....	\$500.00
(9)	Transporter's license, per annum .....	\$100.00
(10)	Dining car license, per annum .....	\$100.00
(11)	Special nonbeverage alcohol vendor's license, per annum .....	\$50.00
(12)	Special industrial alcohol license, per annum .....	\$50.00
(13)	Special nonindustrial alcohol license, per annum .....	\$50.00
(14)	Special agent's or solicitor's license, per annum .....	\$25.00
(15)	Special storage or warehouse license and bottling house storage license, per annum .....	\$500.00
(16)	Special temporary liquor license, per event .....	\$100.00
(17)	Special private club license, per annum .....	\$300.00
(18)	Special Sunday retail drink license, per annum .....	\$500.00
(19)	Nonresident, special agent or solicitor's license, per annum .....	\$100.00
(20)	Transport permit, nonresident license, per annum .....	\$100.00
(21)	Through transporter's license, per annum .....	\$100.00
(22)	Freight forwarder's license, per annum .....	\$100.00
(23)	Restaurant wine license, per annum.....	\$500.00
(24)	Farm winery license, per annum .....	\$100.00
(a)	Farm winery, off-premises retail outlet license, per annum .....	\$25.00
(25)	Special temporary wine license, per event .....	\$50.00
(26)	Caterer's license, per annum .....	\$800.00
(27)	Souvenir retail liquor license, per annum .....	\$500.00
(28)	Special temporary distilled spirits and wine auction license, per event .....	\$100.00
(29)	Airport drink license, per annum .....	\$1,000.00
(30)	Convention center or convention hotel complex license, per annum .....	\$5,000.00
(31)	Extended hours, supplemental license, per annum .....	\$2,000.00
(32)	Horse race track license, per annum .....	\$2,000.00
(33)	<b>Automobile race track license, per annum .....</b>	<b>\$2,000.00</b>
(34)	Air or rail system license, per annum .....	\$2,000.00
(35) <del>(34)</del>	Riverboat license, per annum .....	\$1,000.00
(36) <del>(35)</del>	Bottling house license, per annum .....	\$1,000.00
(37) <del>(36)</del>	Hotel in-room license, per annum .....	\$200.00
(38) <del>(37)</del>	Bonded warehouse license, per annum .....	\$1,000.00
(39) <del>(38)</del>	Air transporter liquor license, per annum .....	\$500.00
(40) <del>(39)</del>	Replacement or duplicate license .....	\$25.00

~~(41)~~~~(40)~~ Other special licenses the board finds necessary for the proper regulation and control of the traffic in distilled spirits and wine and provides for by administrative regulation. In fixing the amount of license taxes that are required to be fixed by the board, it shall have regard for the value of the privilege granted.

A nonrefundable application fee of fifty dollars (\$50) shall be charged to process each new application under this section, except for subsections (5), (9), (11), (12), (13), (14), (16), (19), (20), (21), (22), (24), (25), (28), and ~~(40)~~~~(39)~~. The application fee shall be applied to the licensing fee if the application is issued and shall be retained by the department if the license is denied.

Section 3. KRS 243.070 is amended to read as follows:

The city legislative body of any city in which traffic in alcoholic beverages is not prohibited under KRS Chapter 242 may impose license fees for the privilege of manufacturing and trafficking in alcoholic beverages. The licenses may only be issued by the city administrator, and the fee shall not exceed the following:

- (1) Distilled spirit licenses as set forth in KRS 243.030:
  - (a) Distiller's license, per annum ..... \$500.00
  - (b) Rectifier's license, per annum ..... \$3,000.00
  - (c) Blender's license, per annum ..... \$3,000.00
  - (d) Wholesaler's distilled spirits and wine license, per annum ..... \$3,000.00
  - (e) Distilled spirits and wine retail package license, per annum:
    1. In counties containing cities of the first class ..... \$1,200.00
    2. In counties containing cities of the second class ..... \$1,000.00
    3. In counties containing cities of the third class ..... \$800.00
    4. In counties containing cities of the fourth class ..... \$600.00
    5. In all other counties ..... \$400.00
- (2) Distilled spirits and wine retail drink license, motel drink license, airport drink license, restaurant drink license, or supplemental bar license, per annum:
  - (a) In counties containing cities of the first class ..... \$1,600.00
  - (b) In counties containing cities of the second class ..... \$1,000.00
  - (c) In counties containing cities of the third class ..... \$800.00
  - (d) In counties containing cities of the fourth class ..... \$600.00
- (3) Distilled spirits and wine special temporary liquor license, per event:
  - (a) In counties containing cities of the first class ..... \$266.66
  - (b) In counties containing cities of the second class ..... \$166.66
  - (c) In counties containing cities of the third class ..... \$133.33
  - (d) In counties containing cities of the fourth class ..... \$100.00
- (4) Special temporary wine license, per event ..... \$50.00
- (5) Distilled spirits and wine special temporary auction  
license, per event ..... \$200.00
- (6) Special private club license, per annum ..... \$300.00
- (7) Distilled spirits and wine special Sunday retail drink  
license, per annum ..... \$300.00
- (8) Extended hours supplemental license, per annum ..... \$2,000.00
- (9) Nonresident special agent or solicitor's license, per annum ..... \$40.00

- (10) Restaurant wine license, per annum:
  - (a) New applicants ..... \$600.00
  - (b) Applicants for renewal ..... \$400.00
- (11) Caterer's license, per annum ..... \$800.00
- (12) Riverboat license, per annum ..... \$1,200.00
- (13) Horse race track license, per annum ..... \$2,000.00
- (14) Convention center or convention hotel complex  
license, per annum ..... \$2,000.00
- (15) ***Automobile race track license, per annum*** ..... ***\$2,000.00***
- (16) Bottling house distilled spirits license or wine  
storage license, per annum ..... \$1,000.00
- ~~(17)(16)~~ Souvenir retail liquor license, per annum ..... \$1,000.00
- ~~(18)(17)~~ Malt beverage licenses as follows:
  - (a) Brewer's license, per annum ..... \$500.00
  - (b) Microbrewery license, per annum ..... \$500.00
  - (c) Malt beverage distributor's license, per annum ..... \$400.00
  - (d) Retail malt beverage license, per annum ..... \$200.00
  - (e) Special temporary retail malt beverage license, per event ..... \$25.00
  - (f) Malt beverage brew-on-premises license, per annum ..... \$100.00

Section 4. Whereas the availability of alcoholic beverage sales by the drink at an automobile race track will spur economic growth and development and promote tourism in the Commonwealth, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Approved March 6, 2000**

## CHAPTER 70

### (HCR 10)

A CONCURRENT RESOLUTION confirming the reappointment of Alayne Lackey White to the Kentucky Long-Term Policy Research Center Board.

WHEREAS, KRS 7B.030 requires the Governor to appoint six at-large members of the Kentucky Long-Term Policy Research Center Board, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by Executive Order 98-1508 and letter of February 5, 1999, the Governor reappointed Alayne Lackey White and submitted her reappointment for legislative confirmation; and

WHEREAS, the House of Representatives and the Senate find that Alayne Lackey White meets the age and residency requirements of KRS 7B.030 and has demonstrated an interest in the well-being and development of the Commonwealth, as required by that statute;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. That the House of Representatives and the Senate do confirm the reappointment of Alayne Lackey White to the Kentucky Long-Term Policy Research Center Board for a term expiring October 6, 2002.

Section 2. That the Clerk of the House of Representatives shall send a copy of this Resolution, and notification of its adoption, to Ms. Alayne Lackey White, 1151 Red Mile Road, Suite 1B, Lexington, Kentucky 40504-2654 and to Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601.

**Approved March 6, 2000**

## **CHAPTER 71**

### **(HCR 13)**

A CONCURRENT RESOLUTION confirming the reappointment of Daniel Hall to the Kentucky Long-Term Policy Research Center Board.

WHEREAS, KRS 7B.030 requires the Governor to appoint six at-large members of the Kentucky Long-Term Policy Research Center Board, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by Executive Order 99-1338 and letter of October 5, 1999, the Governor reappointed Daniel Hall and submitted his reappointment for legislative confirmation; and

WHEREAS, the House of Representatives and the Senate find that Daniel Hall meets the age and residency requirements of KRS 7B.030 and has demonstrated an interest in the well-being and development of the Commonwealth, as required by that statute;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. That the House of Representatives and the Senate do confirm the reappointment of Daniel Hall to the Kentucky Long-Term Policy Research Center Board for a term expiring October 6, 2003.

Section 2. That the Clerk of the House of Representatives shall send a copy of this Resolution, and notification of its adoption, to Mr. Daniel Hall, 2200 Wynnewood Circle, Louisville, Kentucky 40222 and to Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601.

**Approved March 6, 2000**

## **CHAPTER 72**

### **(HCR 28)**

A CONCURRENT RESOLUTION confirming the reappointment of Dr. Paul Cook to the Kentucky Long-Term Policy Research Center Board.

WHEREAS, KRS 7B.030 requires the Legislative Research Commission to appoint five at-large members of the Kentucky Long-Term Policy Research Center Board, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, on June 2, 1999, the Legislative Research Commission reappointed Dr. Paul Cook to the Long-Term Policy Research Center Board and by letter of December 14, 1999, has submitted his appointment for the General Assembly's confirmation; and

WHEREAS, the House of Representatives and the Senate find that Dr. Paul Cook meets the age and residency requirements of KRS 7B.030 and has demonstrated an interest in the well-being and development of the Commonwealth, as required by that statute;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. That the House of Representatives and the Senate do confirm the appointment of Dr. Paul Cook to the Kentucky Long-Term Policy Research Center Board for a term expiring July 13, 2003.

Section 2. That the Clerk of the House of Representatives shall send a copy of this Resolution, and notification of its adoption, to Dr. Paul Cook, 1296 Underwood Court, Bowling Green, Kentucky 42103.

**Approved March 6, 2000**

## CHAPTER 73

### (HCR 30)

A CONCURRENT RESOLUTION confirming the reappointment of Dr. Betty Griffin to the Kentucky Long-Term Policy Research Center Board.

WHEREAS, KRS 7B.030 requires the Legislative Research Commission to appoint five at-large members of the Kentucky Long-Term Policy Research Center Board, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, on June 2, 1999, the Legislative Research Commission reappointed Dr. Betty Griffin to the Long-Term Policy Research Center Board and by letter of December 14, 1999, has submitted her appointment for the General Assembly's confirmation; and

WHEREAS, the House of Representatives and the Senate find that Dr. Betty Griffin meets the age and residency requirements of KRS 7B.030 and has demonstrated an interest in the well-being and development of the Commonwealth, as required by that statute;

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. That the House of Representatives and the Senate do confirm the appointment of Dr. Betty Griffin to the Kentucky Long-Term Policy Research Center Board for a term expiring July 13, 2003.

Section 2. That the Clerk of the House of Representatives shall send a copy of this Resolution, and notification of its adoption, to Dr. Betty Griffin, 462 McDowell Avenue, Frankfort, Kentucky 40601.

**Approved March 6, 2000**

## CHAPTER 74

### (HCR 34)

A CONCURRENT RESOLUTION reauthorizing the Task Force on Funding for Wildlife Conservation to conduct three meetings and to report its findings.

WHEREAS, the Task Force on Funding for Wildlife Conservation, authorized by the 1996 Regular Session of the General Assembly and reauthorized by the 1998 Regular Session of the General Assembly, presented recommendations to the 1998 General Assembly;

WHEREAS, these recommendations will be affected by future funding developments; and

WHEREAS, these recommendations cover a broad range of policy, regulatory, and legislative changes;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. The Task Force on Funding for Wildlife Conservation is reauthorized with its original membership. The task force shall convene once in 2000 and twice in 2001 to assess the progress being made toward implementing the recommendations from its October 1997 report.

Section 2. The task force shall report its findings to the Interim Joint Committee on Agriculture and Natural Resources and the Interim Joint Committee on Appropriations and Revenue before October 31, 2001.

Section 3. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

**Approved March 6, 2000**

## **CHAPTER 75**

### **(HCR 45)**

A CONCURRENT RESOLUTION requesting reauthorization of the Tobacco Task Force.

WHEREAS, tobacco production is at the heart of Kentucky's economy; and

WHEREAS, loss of tobacco production or the tobacco program would have a devastating effect on Kentucky and its tobacco farmers; and

WHEREAS, such losses would cause failure of many farms and businesses, decreases in land values, the default of loans, and the loss of state and local revenues; and

WHEREAS, the Tobacco Task Force was created by the Legislative Research Commission in 1984 to address problems that threaten the tobacco industry and the tobacco price support program; and

WHEREAS, the Task Force has been instrumental in helping to resolve these problems; and

WHEREAS, the tobacco industry and tobacco farmers remain in jeopardy because of threats to the program, increased imports, labor shortages, marginal prices, possible increases in excise taxes, and other problems;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. That the Kentucky Tobacco Task Force be reauthorized to help resolve the problems facing the tobacco industry and the tobacco program.

Section 2. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

**Approved March 6, 2000**

## **CHAPTER 76**

### **(HJR 41)**

A JOINT RESOLUTION renaming a segment of KY 100 in Simpson County the "Veterans Memorial Highway".

WHEREAS, all Americans owe a debt of gratitude that we can never repay to the selfless men and women who have served in the United States Armed Forces; and

WHEREAS, our brave sons and daughters willingly spilled their blood in their defense of the United States Constitution; and

WHEREAS, rows of plain white headstones, both here and around the world, represent the ultimate sacrifice made to protect our freedom and our way of life; and

WHEREAS, even though millions of friends and loved ones have shed silent tears and endured grief filled hearts, there remains a constant overwhelming pride in the veterans who have gallantly served their country;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. That state highway KY 100 in Simpson County from the junction with Interstate 65 to the junction with US 31W in the City of Franklin be renamed the "Veterans Memorial Highway".

Section 2. That the Secretary of the Transportation Cabinet erect appropriate highway signs at both the junction of KY 100 with Interstate 65 and the junction of KY 100 with US 31W in the City of Franklin within thirty (30) days of the effective date of this Resolution.

**Approved March 6, 2000**

## CHAPTER 77

### (HJR 42)

A JOINT RESOLUTION reauthorizing the Kentucky Aquaculture Task Force, and making an appropriation therefor.

WHEREAS, the Kentucky Aquaculture Task Force was created in 1998 by House Joint Resolution 72 to develop a State Aquaculture Plan to address the proper management, use, and marketing of the state's aquacultural industry; and

WHEREAS, the State Aquaculture Plan was developed and recommendations were made to the Governor and to the Legislative Research Commission; and

WHEREAS, it is essential to the aquaculture industry in Kentucky that the recommendations made by the task force be monitored as they are implemented;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. The Kentucky Aquaculture Task Force created by 1998 House Joint Resolution 72 is reauthorized to monitor the recommendations made in the State Aquaculture Plan as they are implemented, and to promote the development of the aquaculture industry in the Commonwealth.

Section 2. The membership guidelines of the task force remain the same, including the provision that the Department of Agriculture provide staff services for the task force.

Section 3. The task force shall develop a report by September 1, 2001, with respect to the implementation of the State Aquaculture Plan recommendations and other recommendations that the task force may support relating to the aquaculture industry in the Commonwealth. The report shall be given to the Governor and to the Legislative Research Commission.

Section 4. There is appropriated from the general fund the sum of \$5,000 to accomplish the report. Any amount remaining following the completion of the report shall revert to the general fund. The report and recommendations shall be submitted to the Governor and to the Legislative Research Commission no later than September 1, 2001.

Section 5. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

**Approved March 6, 2000**

## CHAPTER 78

### (HJR 59)

A JOINT RESOLUTION directing the Transportation Cabinet to name KY 11 from US 421 to the town of Oneida in Clay County the "James Anderson Burns Highway".

WHEREAS, James Anderson Burns, a native of West Virginia, came to Kentucky in the late 1800's; and

WHEREAS, James Anderson Burns, known across the nation as "Burns of the Mountains", was such a famous Chautauqua speaker that he was considered one of the finest speakers of his day; and

WHEREAS, James Anderson Burns' life was one of adventure, excitement, and violent contrast; and

WHEREAS, James Anderson Burns came to reject the feuds that were all too prevalent in the mountains at that time, feeling that God had called him to be an instrument through which the feuds were to be ended; and

WHEREAS, James Anderson Burns was determined to substitute the opportunities of education for the violence of feuding; and

WHEREAS, James Anderson Burns opened Oneida Baptist Institute in 1900 to help expand educational opportunities; and

WHEREAS, Oneida Baptist Institute has grown beyond Mr. Burns' wildest expectations and dreams with the simple mission of teaching God's love; and

WHEREAS, through the last 100 years, the students who have passed through the halls of Oneida Baptist Institute have not only been taught God's love, but more importantly, have been shown His love; and

WHEREAS, Oneida Baptist Institute was opened to help the needy children of the mountains, but has since reached the four corners of the earth to help the young people of the world; and

WHEREAS, students of Oneida Baptist Institute have gone on to outstanding, productive careers in all fields and include former Governor Bert T. Combs; and

WHEREAS, through the last 100 years, and for the future, the commitment of Oneida Baptist Institute remains the same: to provide all who enter an "Education for Time and Eternity";

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. That the Transportation Cabinet is directed to name KY 11 from US 421 to the town of Oneida in Clay County the "James Anderson Burns Highway".

Section 2. That the Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "James Anderson Burns Highway" to facilitate their erection upon the effective date of this Resolution.

Section 3. That the Clerk of the House of Representatives is directed to transmit copies of this Resolution to Dr. Wesley Underwood, President of Oneida Baptist Institute, to the Secretary of the Transportation Cabinet, and to the District Highway Engineer in Manchester, Kentucky.

**Approved March 6, 2000**

## **CHAPTER 79**

### **(HJR 66)**

A JOINT RESOLUTION directing the Transportation Cabinet to name the new bridge on Kentucky Route 3071 near the community of Moranburg in Mason County the "John P. Loyd Memorial Bridge."

WHEREAS, Mason County's native son John P. Loyd has slipped the bonds of earth to join his Almighty in eternal bliss; and

WHEREAS, John P. Loyd was a life-long resident of the community of Moranburg in Mason County; and

WHEREAS, John P. Loyd was a dedicated public servant who selflessly served the citizens of Mason County as a County Commissioner on the Fiscal Court; and

WHEREAS, while serving as County Commissioner, John P. Loyd was appointed as County Judge/Executive upon the death of Mr. Harry Lowe; and

WHEREAS, John P. Loyd was elected to three terms as County Judge/Executive by the citizens of Mason County; and

WHEREAS, Judge Loyd tirelessly championed the needs of the less advantaged through his advocacy for a better public health system; and

WHEREAS, during his tenure, Judge Loyd reorganized the Mason County Health Department to better serve citizens countywide; and

WHEREAS, Judge Loyd's compassion and humanitarian efforts were especially focused upon young people, evidenced by his diligence in creating and staffing a county welfare office; and



WHEREAS, Judge Loyd also ensured the citizens of Mason County enjoyed good roads with easy access to work and personal activities by paving as many county roads as possible during his tenure;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. In honor and tribute to Judge John P. Loyd, the Transportation Cabinet shall name the new bridge on Kentucky Route 3071 in Mason County, located approximately one-half mile north of the intersection of Kentucky Route 3071 and Kentucky Route 3056 near the community of Moranburg the "John P. Loyd Memorial Bridge."

Section 2. The Transportation Cabinet shall erect memorial signs on each side of the bridge honoring John P. Loyd within thirty (30) days of the effective date of this Resolution.

Section 3. A copy of this Resolution is to be transmitted to Secretary James Codell, Kentucky Transportation Cabinet, and to Chief District Engineer, Jim Rummage, for the District 9 Highway Office in Flemingsburg, Kentucky.

**Approved March 6, 2000**

## CHAPTER 80

(SB 97)

AN ACT relating to the airport zoning commission.

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

Section 1. KRS 183.861 is amended to read as follows:

There is hereby created and established within the cabinet, a commission to be known as the "Kentucky Airport Zoning Commission" which, notwithstanding the provisions of KRS Chapters 100 and 147, shall be empowered to issue ~~such~~ orders, rules, and regulations pertaining to use of land within and around all **military and public use airports, heliports, and sea plane bases** ~~publicly owned airports~~ within the state as will promote the public interest and protect and encourage the proper use of ~~the~~ ~~such~~ airports and their facilities.

Section 2. KRS 183.865 is amended to read as follows:

All of the powers, provisions and duties relating to the zoning and use of land, structures and air space within and around **military and public use airports, heliports, and sea plane bases** ~~public airports~~ within the state are hereby conferred upon, delegated to and vested in the commission. The commission shall also exercise all powers, provisions, and duties relating to the use of navigable air space within the state. Nothing contained in this chapter shall prevent a governmental unit from acquiring airports, airport facilities, or air navigation facilities, or from taking any action authorized by law for the elimination of any airport hazard, either alone or jointly with the commission.

Section 3. KRS 183.867 is amended to read as follows:

- (1) The commission shall require that every **military and public use airport, heliport, and sea plane base** ~~public airport~~ in the state file with it, from time to time, as required, maps showing the airport and area surrounding ~~the~~ ~~such~~ airport used for approach or landing purposes. The commission shall thereafter designate on ~~the~~ ~~such~~ maps, by reference to the regulations or standards promulgated by the Federal Aviation Administration concerning the area required for the safe maneuvering approach and landing of aircraft, the area over which jurisdiction will be assumed for zoning purposes. The commission shall notify any local zoning bodies of the area so designated and may exercise jurisdiction of ~~the~~ ~~such~~ area insofar as it pertains to the safe and proper maneuvering of aircraft and the safe and proper use of the airport involved. The local zoning body may retain jurisdiction of zoning in such areas as to all other matters.
- (2) The commission may adopt ~~such~~ regulations pertaining to the zoning of areas over which jurisdiction is assumed as will provide for the proper and safe use of ~~the~~ ~~such~~ area and airport.

- (3) The commission shall maintain a public file in the offices of the cabinet showing maps of each ***military and public use airport, heliport, and sea plane base***~~[public airport]~~ within the state and the area around ~~the [such]~~ airport over which it has assumed jurisdiction for zoning purposes and such shall constitute public notice of the restrictions and zoning applicable to ~~the [such]~~ areas or airport. The commission shall also maintain a public file showing any regulations adopted pertaining to land uses in areas zoned and ***these regulations***~~[such]~~ shall constitute public notice of same.

**Approved March 6, 2000**

## **CHAPTER 81**

### **(SCR 15)**

A CONCURRENT RESOLUTION requesting reauthorization of the Tobacco Task Force.

WHEREAS, tobacco production is at the heart of Kentucky's economy; and

WHEREAS, loss of tobacco production or the tobacco program would have a devastating effect on Kentucky and its tobacco farmers; and

WHEREAS, such losses would cause failure of many farms and businesses, decreases in land values, the default of loans, and the loss of state and local revenues; and

WHEREAS, the Tobacco Task Force was created by the Legislative Research Commission in 1984 to address problems that threaten the tobacco industry and the tobacco price support program; and

WHEREAS, the Task Force has been instrumental in helping to resolve these problems; and

WHEREAS, the tobacco industry and tobacco farmers remain in jeopardy because of threats to the program, increased imports, labor shortages, marginal prices, possible increases in excise taxes, and other problems;

NOW, THEREFORE,

*Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky, the House of Representatives concurring therein:*

Section 1. That the Kentucky Tobacco Task Force be reauthorized to help resolve the problems facing the tobacco industry and the tobacco program.

Section 2. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

**Approved March 6, 2000**

## **CHAPTER 82**

### **(HB 61)**

AN ACT relating to intergovernmental agreements.

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

Section 1. KRS 67.083 is amended to read as follows:

- (1) It is the purpose of this section to provide counties as units of general purpose local government with the necessary latitude and flexibility to provide and finance various governmental services within those functional areas specified in subsection (3) of this section, while the General Assembly retains full authority to prescribe and limit by statute local governmental activities when it deems such action necessary.
- (2) The fiscal court of any county is hereby authorized to levy all taxes not in conflict with the Constitution and statutes of this state now or hereafter enacted.
- (3) The fiscal court shall have the power to carry out governmental functions necessary for the operation of the county. Except as otherwise provided by statute or the Kentucky Constitution, the fiscal court of any county

may enact ordinances, issue regulations, levy taxes, issue bonds, appropriate funds, and employ personnel in performance of the following public functions:

- (a) Control of animals, and abatement of public nuisances;
- (b) Regulation of public gatherings;
- (c) Public sanitation and vector control;
- (d) Provision of hospitals, ambulance service, programs for the health and welfare of the aging and juveniles, and other public health facilities and services;
- (e) Provision of corrections facilities and services, and programs for the confinement, care and rehabilitation of juvenile law offenders;
- (f) Provision of parks, nature preserves, swimming pools, recreation areas, libraries, museums, and other recreational and cultural facilities and programs;
- (g) Provision of cemeteries and memorials;
- (h) Conservation, preservation and enhancement of natural resources including soils, water, air, vegetation, and wildlife;
- (i) Control of floods;
- (j) Facilitating the construction and purchase of new and existing housing; causing the repair or demolition of structures which present a hazard to public health, safety, or morals or are otherwise inimical to the welfare of residents of the county; causing the redevelopment of housing and related commercial, industrial, and service facilities in urban or rural areas; providing education and counseling services and technical assistance to present and future residents of publicly assisted housing;
- (k) Planning, zoning, and subdivision control according to the provisions of KRS Chapter 100;
- (l) Adoption, by reference or in full, of technical codes governing new construction, renovation, or maintenance of structures intended for human occupancy;
- (m) Regulation of commerce for the protection and convenience of the public;
- (n) Regulation of the sale of alcoholic beverages according to the provisions of KRS Chapters 241 to 244;
- (o) Exclusive management of solid wastes by ordinance or contract or by both and disposition of abandoned vehicles;
- (p) Provision of public buildings, including armories, necessary for the effective delivery of public services;
- (q) Cooperation with other units of government and private agencies for the provision of public services, including, but not limited to, training, educational services, and cooperative extension service programs;
- (r) Provision of water and sewage and garbage disposal service but not gas or electricity; including management of onsite sewage disposal systems;
- (s) Licensing or franchising of cable television;
- (t) Provision of streets and roads, bridges, tunnels and related facilities, elimination of grade crossings, provision of parking facilities, enforcement of traffic and parking regulations;
- (u) Provision of police and fire protection;
- (v) Regulation of taxis, buses, and other passenger vehicles for hire;
- (w) Provision and operation of air, rail and bus terminals, port facilities, and public transportation systems;
- (x) Promotion of economic development of the county, directly or in cooperation with public or private agencies, including the provision of access roads, land and buildings, and promotion of tourism and conventions;
- (y) Preservation of historic structures; and
- (z) Regulation of establishments or commercial enterprises offering adult entertainment and adult entertainment activities.

- (4) The county judge/executive is hereby authorized and empowered to exercise all of the executive powers pursuant to this section.
- (5) A county acting under authority of this section may assume, own, possess and control assets, rights and liabilities related to the functions and services of the county.
- (6) If a county is authorized to regulate an area which the state also regulates, the county government may regulate the area only by enacting ordinances which are consistent with state law or administrative regulation:
  - (a) If the state statute or administrative regulation prescribes a single standard of conduct, a county ordinance is consistent if it is identical to the state statute or administrative regulation;
  - (b) If the state statute or administrative regulation prescribes a minimal standard of conduct, a county ordinance is consistent if it establishes a standard which is the same as or more stringent than the state standard;
  - (c) A county government may adopt ordinances which incorporate by reference state statutes and administrative regulations in areas in which a county government is authorized to act.
- (7) County ordinances which prescribe penalties for their violation shall be enforced throughout the entire area of the county unless:
  - (a) Otherwise provided by statute; or
  - (b) The legislative body of any city within the county has adopted an ordinance pertaining to the same subject matter which is the same as or more stringent than the standards that are set forth in the county ordinance. The fiscal court shall forward a copy of each ordinance which is to be enforced throughout the entire area of the county to the mayor of each city in the county.
- (8) (a) The powers granted to counties by this section shall be in addition to all other powers granted to counties by other provisions of law. These powers, other than the power to tax, may be exercised cooperatively by two (2) or more counties, or by a county and a city, or by a county and a special district, or by a county and the state through, but not limited to, joint contracts, joint ownership of property, or the exchange of services, including personnel and equipment. When counties cooperate in the provision of public services, contracts shall be drawn to **document the [insure that] benefits and relative cost for each of [among] the participating governments. One (1) government may pay one hundred percent (100%), or a lesser percentage, of all or any part of the cost of the joint undertaking, based upon the written contract required by this subsection [are relative to costs among them. If the personnel or equipment of one (1) government is provided for a second government, the second government shall fully compensate the first through the reciprocal provision of services or through monetary compensation].**
  - (b) A permissive procedure authorized by this section shall not be deemed to be exclusive or to prohibit the exercise of other existing laws and laws which may hereafter be enacted but shall be an alternative or supplement thereto.
- (9) Any agency of county government exercising authority pursuant to subsection (3)(y) of this section shall, prior to exercising such authority, obtain the voluntary written consent of the owner of the structure. Consent may be obtained only after advising the owner in writing of any advantages and disadvantages to the owner which are likely to result from the exercise of such authority.

Section 2. KRS 178.010 is amended to read as follows:

- (1) As used in this chapter, unless the context otherwise requires:
  - (a) "Construction" includes reconstruction and improvement;
  - (b) "County roads" are public roads which have been accepted by the fiscal court of the county as a part of the county road system after July 1, 1914, or private roads, streets, or highways which have been acquired by the county pursuant to KRS 178.405 to 178.425. "County roads" includes necessary bridges, culverts, sluices, drains, ditches, waterways, embankments or retaining walls; and
  - (c) "Hard surface road" means a road the surface of which is asphalt, brick, stone block, macadam, concrete, gravel or other material of equal merit.

- (2) Nothing in this chapter shall be construed to take from the jurisdiction or control of the legislative body of any incorporated city any road, bridge, landing or wharf, or any other thing exclusively under the jurisdiction or control of such city.
- (3) Nothing in this chapter shall prevent any fiscal court from acquiring land by gift for public purposes.
- (4) Nothing in this chapter, including the fact that a municipal street has not been accepted into the county road system, shall prevent any county from entering into an agreement, pursuant to the provisions of KRS 65.220 to 65.300, with any city located within the county to perform work upon or to provide personnel, materials or equipment for work to be performed upon any street located within the city. ***A county may pay one hundred percent (100%), or a lesser percentage, of all or any part of the cost of the joint undertaking, based upon the terms agreed to in the interlocal cooperative agreement required by this subsection***~~[, provided that the city agrees to pay the costs if any associated with any such agreement].~~

**Approved March 6, 2000**

## CHAPTER 83

**(HB 94)**

AN ACT relating to reorganization.

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

Section 1. KRS 36.355 is amended to read as follows:

- (1) There shall be established and maintained in the Commonwealth of Kentucky state veterans' nursing homes to provide long-term care to veterans who are residents of Kentucky.
- (2) ***There is created the Office of Kentucky Veterans' Centers within the Department of Veterans' Affairs. The office shall be headed by an executive director appointed pursuant to KRS 12.050. The office shall operate the Kentucky state veterans' nursing homes***~~[shall be attached to the Finance and Administration Cabinet]. The Department of Veterans' Affairs~~~~[Finance and Administration Cabinet]~~ may promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statutes and regulations.
- (3) The Department of Veterans' Affairs may seek federal and private funding for the construction or renovation, and operation of Kentucky state veterans' nursing homes.

Section 2. The General Assembly hereby confirms Executive Order 98-1594, issued by the Governor on December 3, 1998, to the extent that it is not otherwise confirmed by Section 1 of this Act.

Section 3. Notwithstanding KRS 446.260, the change made in Section 1 of this Act shall be merged into the section of 2000 House Bill 139 affecting that statute, if House Bill 139 becomes law.

**Approved March 6, 2000**

## CHAPTER 84

**(HB 106)**

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 98-1566, dated November 25, 1998, relating to the Public Protection and Regulation Cabinet, Kentucky Racing Commission, that: creates the Division of Racing/Security to provide supervision and oversight functions of horse racing in accordance with KRS Chapter 230; abolishes the Division of Thoroughbred Racing, transferring all personnel, records, files, equipment, and funds to the Division of Racing/Security; abolishes the Division of Standardbred and Quarter Horse Racing, transferring all personnel, records, files, equipment, and funds to the Division of Racing/Security; and abolishes the Division of Security, transferring all personnel, records, files, equipment, and funds to the Division of Racing/Security. The newly created Division of Racing/Security shall be composed of such personnel, records, files, equipment and funds as have

been transferred pursuant to Executive Order 98-1566, and as may be set forth by subsequent executive order of the Governor, or administrative order of the commission.

**Approved March 6, 2000**

## **CHAPTER 85**

### **(HB 108)**

AN ACT relating to reorganization.

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

Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.
  - (c) Registry of Election Finance.
4. Department of Law.
  - (a) Attorney General.
5. Department of the Treasury.
  - (a) Treasurer.
6. Department of Agriculture.
  - (a) Commissioner of Agriculture.
  - (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
  - (a) Department of State Police.
  - (b) Department of Criminal Justice Training.
  - (c) Department of Corrections.
  - (d) Department of Juvenile Justice.
  - (e) Office of the Secretary.

- (f) Offices of the Deputy Secretaries.
  - (g) Office of General Counsel.
  - (h) Division of Kentucky State Medical Examiners Office.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
- (a) Department of Education.
    - (1) Kentucky Board of Education.
    - (2) Education Professional Standards Board.
  - (b) Department for Libraries and Archives.
  - (c) Kentucky Arts Council.
  - (d) Kentucky Educational Television.
  - (e) Kentucky Historical Society.
  - (f) Kentucky Teachers' Retirement System Board of Trustees.
  - (g) Kentucky Center for the Arts.
  - (h) Kentucky Craft Marketing Program.
  - (i) Kentucky Commission on the Deaf and Hard of Hearing.
  - (j) Governor's Scholars Program.
  - (k) Governor's School for the Arts.
  - (l) Operations and Development Office.
  - (m) Kentucky Heritage Council.
  - (n) Kentucky African-American Heritage Commission.
  - (o) Board of Directors for the Center for School Safety.
3. Natural Resources and Environmental Protection Cabinet:
- (a) Environmental Quality Commission.
  - (b) Kentucky Nature Preserves Commission.
  - (c) Department for Environmental Protection.
  - (d) Department for Natural Resources.
  - (e) Department for Surface Mining Reclamation and Enforcement.
  - (f) Office of Legal Services.
  - (g) Office of Information Services.
4. Transportation Cabinet:
- (a) Department of Highways.
    - 1. *Office of Program Planning and Management.*
    - 2. *Office of Project Development.*
    - 3. *Office of Construction and Operations.*
    - 4. *Office of Intermodal Programs.*

**5. Highway District Offices One through Twelve.**

- (b) Department of Vehicle Regulation.
- (c) Department of Administrative Services.
- (d) Department of Fiscal Management.
- (e) Department of Rural and Municipal Aid.
- (f) **Department of Human Resources Management.**
- (g) **Office of the Secretary.**
- (h) Office of General Counsel **and Legislative Affairs.**
- (i)~~(g)~~ Office of Public Affairs.
- (j)~~(h)~~ **Office of Transportation Delivery**~~Office of Personnel Management~~.
- (k)~~(i)~~ Office of Minority Affairs.
- ~~(l)~~(j)~~ Office of Environmental Affairs.~~
- ~~(k)~~ Office of Policy and Budget.

**5. Cabinet for Economic Development:**

- (a) Department of Administration and Support.
- (b) Department of Job Development.
- (c) Department of Financial Incentives.
- (d) Department of Community Development.
- (e) Tobacco Research Board.
- (f) Kentucky Economic Development Finance Authority.

**6. Public Protection and Regulation Cabinet:**

- (a) Public Service Commission.
- (b) Department of Insurance.
- (c) Department of Housing, Buildings and Construction.
- (d) Department of Financial Institutions.
- (e) Department of Mines and Minerals.
- (f) Department of Public Advocacy.
- (g) Department of Alcoholic Beverage Control.
- (h) Kentucky Racing Commission.
- (i) Board of Claims.
- (j) Crime Victims Compensation Board.
- (k) Kentucky Board of Tax Appeals.
- (l) Backside Improvement Commission.
- (m) Office of Petroleum Storage Tank Environmental Assurance Fund.

**7. Cabinet for Families and Children:**

- (a) Department for Social Insurance.
- (b) Department for Social Services.
- (c) Public Assistance Appeals Board.



- (d) Office of the Secretary.
  - (e) Office of the General Counsel.
  - (f) Office of Program Support.
  - (g) Office of Family Resource and Youth Services Centers.
  - (h) Office of Technology Services.
  - (i) Office of the Ombudsman.
  - (j) Office of Aging Services.
8. Cabinet for Health Services.
- (a) Department for Public Health.
  - (b) Department for Medicaid Services.
  - (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission on Children with Special Health Care Needs.
  - (e) Office of Certificate of Need.
  - (f) Office of the Secretary.
  - (g) Office of the General Counsel.
  - (h) Office of Program Support.
  - (i) Office of the Inspector General.
9. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
  - (b) Office of Management and Budget.
  - (c) Office of Financial Management and Economic Analysis.
  - (d) Office of the Controller.
  - (e) Department for Administration.
  - (f) Department of Facilities Management.
  - (g) Department of Information Systems.
  - (h) State Property and Buildings Commission.
  - (i) Kentucky Pollution Abatement Authority.
  - (j) Kentucky Savings Bond Authority.
  - (k) Deferred Compensation Systems.
  - (l) Office of Equal Employment Opportunity Contract Compliance.
  - (m) Office of Capital Plaza Operations.
  - (n) County Officials Compensation Board.
  - (o) Kentucky Employees Retirement Systems.
  - (p) Commonwealth Credit Union.
  - (q) State Investment Commission.
  - (r) Kentucky Housing Corporation.
  - (s) Governmental Services Center.
  - (t) Kentucky Local Correctional Facilities Construction Authority.

- (u) Kentucky Turnpike Authority.
  - (v) Historic Properties Advisory Commission.
  - (w) Kentucky Kare Health Insurance Authority.
10. Labor Cabinet:
- (a) Department of Workplace Standards.
  - (b) Department of Workers' Claims.
  - (c) Kentucky Labor-Management Advisory Council.
  - (d) Occupational Safety and Health Standards Board.
  - (e) Prevailing Wage Review Board.
  - (f) Workers' Compensation Board.
  - (g) Kentucky Employees Insurance Association.
  - (h) Apprenticeship and Training Council.
  - (i) State Labor Relations Board.
  - (j) Kentucky Occupational Safety and Health Review Commission.
  - (k) Office of Administrative Services.
  - (l) Office of Labor-Management Relations and Mediation.
  - (m) Office of General Counsel.
  - (n) Workers' Compensation Funding Commission.
  - (o) Employers Mutual Insurance Authority.
11. Revenue Cabinet:
- (a) Department of Property Valuation.
  - (b) Department of Tax Administration.
  - (c) Office of Financial and Administrative Services.
  - (d) Department of Law.
  - (e) Department of Information Technology.
  - (f) Office of Taxpayer Ombudsman.
12. Tourism Development Cabinet:
- (a) Department of Travel.
  - (b) Department of Parks.
  - (c) Department of Fish and Wildlife Resources.
  - (d) Kentucky Horse Park Commission.
  - (e) State Fair Board.
  - (f) Office of Administrative Services.
  - (g) Office of General Counsel.
13. Cabinet for Workforce Development:
- (a) Department for Adult Education and Literacy.
  - (b) Department for Technical Education.
  - (c) Department of Vocational Rehabilitation.

- (d) Department for the Blind.
  - (e) Department for Employment Services.
  - (f) State Board for Adult and Technical Education.
  - (g) Governor's Council on Vocational Education.
  - (h) The State Board for Proprietary Education.
  - (i) The Foundation for Adult Education.
  - (j) The Kentucky Job Training Coordinating Council.
  - (k) Office of General Counsel.
  - (l) Office of Communication Services.
  - (m) Office of Development and Industry Relations.
  - (n) Office of Workforce Analysis and Research.
  - (o) Office for Administrative Services.
  - (p) Office for Policy and Budget.
  - (q) Office of Personnel Services.
  - (r) Unemployment Insurance Commission.
14. Personnel Cabinet:
- (a) Office of Administrative and Legal Services.
  - (b) Department for Personnel Administration.
  - (c) Department for Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.
  - (e) Kentucky Kare.
  - (f) Division of Performance Management.
  - (g) Division of Employee Records.
  - (h) Division of Staffing Services.
  - (i) Division of Classification and Compensation.
  - (j) Division of Employee Benefits.
  - (k) Division of Communications and Recognition.
- III. Other departments headed by appointed officers:
- 1. Department of Military Affairs.
  - 2. Council on Postsecondary Education.
    - (a) Kentucky Commission on Community Volunteerism and Service.
  - 3. Department for Local Government.
  - 4. Kentucky Commission on Human Rights.
  - 5. Kentucky Commission on Women.
  - 6. Department of Veterans' Affairs.
  - 7. Kentucky Commission on Military Affairs.
  - 8. Office of the Chief Information Officer.

Section 2. KRS 174.016 is amended to read as follows:

- (1) ~~The Department of Rural and Municipal Aid is created as a major organizational unit within the Transportation Cabinet. The department shall be headed by a commissioner who may be designated as a deputy secretary of transportation for operational purposes. The commissioner shall be appointed by the Governor pursuant to KRS 12.040 and shall be directly supervised by and responsible to the secretary.~~
- (2) The Department of Rural and Municipal Aid shall be responsible for the development and implementation of the Rural Secondary Program and such other functions as are assigned by the secretary, except that the department shall not have jurisdiction over the County Road Aid Program or Municipal Road Aid Program unless an agreement initiated by a county or municipality is in effect.
- (2)(3) The Department of Rural and Municipal Aid shall include an assistant state highway engineer for rural and municipal aid appointed pursuant to KRS Chapter 12 by the secretary upon the recommendation of the state highway engineer of the Department of Highways.

Section 3. KRS 174.020 is amended to read as follows:

- (1) The Transportation Cabinet ~~in addition to the departments set forth in KRS 174.015~~ shall consist of the following *major* organizational units:
- (a) *The Office of the Secretary, which shall include, but not be limited to:*
    - 1. a. *The secretary to be appointed by the Governor under KRS 12.255; and*
    - b. *The deputy secretary appointed under KRS 12.040;*
    - 2. *The Railroad Commission shall be attached to the Office of the Secretary for administrative purposes;*
  - (b) *The Department of Highways, headed by a commissioner, appointed by the Governor under KRS 12.040 on the recommendation of the secretary;*
  - (c) *The Department of Vehicle Regulation, headed by a commissioner, appointed by the secretary with the approval of the Governor, under KRS 12.040;*
  - (d) *The Department of Rural and Municipal Aid, headed by a commissioner appointed by the Governor under KRS 12.040;*
  - (e) *The Department of Fiscal Management, headed by a commissioner appointed by the Governor under KRS 12.040;*
  - (f) *The Department of Administrative Services, headed by a commissioner appointed by the Governor under KRS 12.040;*
  - (g) *The Department of Human Resources Management, headed by a commissioner appointed by the Governor under KRS 12.040;*
  - (h) *The following offices, which shall be attached to the Office of the Secretary:*
    - 1. *The Office of Public Affairs, headed by an executive director appointed under KRS 12.040;*
    - 2. *The Office of Policy and Budget, headed by an executive director appointed under KRS 12.040;*
    - 3. *The Office of Transportation Delivery, headed by an executive director appointed under KRS 12.040;*
    - 4. *The Office of General Counsel and Legislative Affairs, headed by an executive director appointed under KRS 12.040;*
    - 5. *The Office of Minority Affairs, headed by an executive director appointed under KRS 12.040;*
  - (i) *The following offices, which shall be attached to the Department of Highways;*
    - 1. *The Office of Program Planning and Management, headed by an executive director appointed under KRS 12.040, who shall be a registered professional engineer under KRS Chapter 322, and known as the deputy state highway engineer for program planning and management;*

2. *The Office of Project Development, headed by an executive director appointed under KRS 12.040, who shall be a registered professional engineer under KRS Chapter 322, and who shall be known as the deputy state highway engineer for project development;*
3. *The Office of Construction and Operations, headed by an executive director appointed under KRS 12.040, who shall be a registered professional engineer under KRS Chapter 322, and who shall be known as the deputy state highway engineer for construction and operations;*
4. *The Office of Intermodal Programs, headed by an executive director appointed under KRS 12.040, who shall be a registered professional engineer under KRS Chapter 322, and who shall be known as the deputy state highway engineer for intermodal programs. The Kentucky Airport Zoning Commission established by KRS 183.861 shall be attached to the Division of Aeronautics within the Office of Intermodal Programs for administrative purposes; and*
5. *Highway District Offices One through Twelve, each district office to be headed by a chief highway district engineer, appointed by the secretary upon the recommendation of the commissioner and the state highway engineer, with the approval of the Governor*

~~{Office of the Secretary of Transportation comprised of the secretary of transportation, a deputy secretary for administration, a deputy secretary for legal affairs, and the Office of Environmental Affairs created by paragraph (h) of this subsection;~~

~~(b) — Railroad Commission, attached to the Office of the Secretary for administrative purposes;~~

~~(c) — Office of Public Affairs, headed by an executive director who shall serve as media spokesperson and shall be responsible for all matters relating to public relations and information;~~

~~(d) — Office of General Counsel, headed by an executive director responsible for general office administration, and the general counsel who provides legal services for the cabinet;~~

~~(e) — Office of Personnel Management, headed by an executive director who shall be responsible for the implementation of programs and practices for the recruitment, utilization, and management of cabinet personnel;~~

~~(f) — Office of Minority Affairs, headed by an executive director who shall be responsible for the development and implementation of programs and procedures for assisting minorities in employment and contractual relations with the cabinet;~~

~~(g) — Kentucky Airport Zoning Commission established by KRS 183.861, which shall be attached to the Division of Aeronautics;~~

~~(h) — Office of Environmental Affairs, headed by an executive director who shall oversee all Transportation Cabinet environmental issues, activities, and programs; developing and implementing policies; and procedures. The position of executive director is a policy making position under the provisions of KRS 18A.175. The Office of Environmental Affairs may direct the Transportation Cabinet's environmental activities, associated personnel, and facilities when necessary to assure compliance with environmental laws and regulations; and~~

~~(i) — Office of Policy and Budget, headed by an executive director who shall be responsible for administering the budget functions of the Transportation Cabinet}.~~

- (2) ~~{The executive directors of the Offices of Public Affairs, General Counsel, Personnel Management, Minority Affairs, Environmental Affairs, and Policy and Budget shall be appointed by the secretary with the approval of the Governor pursuant to KRS 12.050. }The positions of director in the Division of Fleet Management, Division of Professional Services, and Division of Environmental Analysis are policy-making positions under{pursuant to} KRS 18A.175.~~

Section 4. KRS 174.025 is amended to read as follows:

The executive director of the Office of General Counsel *and Legislative Affairs* may also serve as general counsel if so appointed pursuant to KRS 12.210. The Office of General Counsel *and Legislative Affairs* shall be directly responsible to the secretary and shall perform such duties as may be assigned by the secretary. The office shall consist of such~~{ attorney}~~ appointed pursuant to KRS 12.210 and such employees as necessary to perform the duties, responsibilities, and functions of the office.

Section 5. The General Assembly confirms Executive Order 98-1596, dated December 3, 1998, relating to the reorganization of the Transportation Cabinet to the extent not otherwise confirmed by this Act.

Section 6. The following KRS section is repealed:

174.015 Departments within the cabinet.

**Approved March 6, 2000**

## **CHAPTER 86**

**(HB 110)**

AN ACT relating to reorganization.

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

Section 1. KRS 227.205 is amended to read as follows:

The Department of Housing, Buildings and Construction (hereinafter referred to as the department of housing) is hereby created within the Cabinet for Public Protection and Regulation. The department shall be headed by a commissioner appointed by the Governor subject to the provisions of KRS 12.040 and who shall report to the secretary of the Cabinet for Public Protection and Regulation. The office of the commissioner shall also include a deputy commissioner and an executive assistant to the commissioner, who shall be the policy making assistants to the commissioner and shall be appointed pursuant to KRS 12.050. The department shall consist of the Division of Fire Prevention, the Division of Building Codes Enforcement, the Division of Administrative Services, ~~and~~ the Division of Plumbing, **and the Division of Heating, Ventilation and Air Conditioning (HVAC).**

Section 2. The General Assembly hereby confirms Executive Order 99-1198, dated August 30, 1999, relating to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction, which creates the Division of Heating, Ventilation and Air Conditioning (HVAC), to be headed by a division director appointed by the secretary of the cabinet pursuant to KRS 12.050.

**Approved March 6, 2000**

## **CHAPTER 87**

**(SB 105)**

AN ACT relating to parks.

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

Section 1. KRS 148.029 is amended to read as follows:

- (1) All areas controlled by the Department of Parks and designated as camping, hiking, or other family-oriented recreation areas are designated wildlife sanctuaries for the purpose of affording protection to the wildlife thereon as natural, integrated, interrelated, ecological communities.
- (2) No unauthorized person shall enter a wildlife sanctuary and take, damage, injure, kill, destroy, or unduly disturb the wildlife therein except as provided in **this section** ~~subsection (3) hereof~~.
- (3) The department may issue to any person a permit for the scientific collection of wildlife provided the applicant for such permit holds a current state scientific collecting permit issued by the Department of Fish and Wildlife Resources.
- (4) This section does not apply to fish taken pursuant to KRS Chapter 150 and all rules and regulations promulgated by the Department of Parks and the Department of Fish and Wildlife Resources.
- (5) The department **may authorize** ~~in cooperation with~~ the Department of Fish and Wildlife Resources **to administer a wildlife management plan that may include the implementation of any management method provided in KRS Chapter 150** ~~may remove, destroy, or disturb wildlife~~ in the course of operating and administering the parks; and in so doing shall consider the ecological impact on the sanctuary as a whole.

**Approved March 8, 2000**

**CHAPTER 88****(HB 208)**

AN ACT relating to organ donation.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

***If an individual has made an anatomical gift by signing the anatomical gift section on the back of his or her operator's license or by directing the gift as a part of a living will directive according to KRS 311.623, the individual's family members and any health care surrogate as defined in KRS 311.621 shall honor the wishes upon the death of the individual and shall not have any legal standing or authority to modify the decedent's wishes or deny the anatomical gift from being made to the donee for the purposes stated in KRS 311.185, unless the gift has been revoked.***

**Approved March 8, 2000**

**CHAPTER 89****(HB 253)**

AN ACT relating to city audits.

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

Section 1. KRS 91A.040 is amended to read as follows:

- (1) Each city of the first through fifth class shall, after the close of each fiscal year, cause each fund of the city to be audited by the Auditor of Public Accounts or a certified public accountant. The audits shall be completed by February 1 immediately following the fiscal year being audited. Within ten (10) days of the completion of the audit and its presentation to the city legislative body, in accordance with subsection (4)(f) of this section, each city shall forward three (3) copies of the audit report to the Kentucky Department for Local Government for information purposes. The department shall forward one (1) copy of the audit report to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975.
- (2) Except as provided in subsection (3) of this section, each city of the sixth class shall, after the close of each odd-numbered fiscal year, cause each fund of the city to be audited by the Auditor of Public Accounts or a certified public accountant. The audits shall be completed by February 1 immediately following the fiscal year to be audited. Within ten (10) days of the completion of the audit and its presentation to the city legislative body, in accordance with subsection (4)(f) of this section, each sixth class city shall forward three (3) copies of the audit report to the Kentucky Department for Local Government for information purposes. The department shall forward one (1) copy of the audit report to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975. After the close of each even-numbered fiscal year, each sixth class city shall prepare a financial statement in accordance with KRS 424.220 and immediately forward one (1) copy to the Kentucky Department for Local Government. The department shall forward one (1) copy of the financial statement to the Legislative Research Commission.
- (3) Any city of the sixth class, which for any fiscal year receives and expends, from all sources and for all purposes, less than ***seventy-five thousand dollars (\$75,000)*** ~~twenty-five thousand dollars (\$25,000)~~, and which has no long-term debt, whether general obligation or revenue debt, shall not be required to audit each fund of the city for that particular fiscal year. Each city shall annually prepare a financial statement in accordance with KRS 424.220 and immediately forward one (1) copy to the Kentucky Department for Local Government for information purposes. The department shall be responsible for forwarding one (1) copy of the financial statement to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975.
- (4) Each city required by this section to conduct an annual or biannual audit shall enter into a written contract with the selected auditor. The contract shall set forth all terms and conditions of the agreement which shall include, but not be limited to, requirements that:
  - (a) The auditor be employed to examine the general purpose financial statements of all governmental, proprietary, and fiduciary funds of the city;

- (b) The auditor shall include in the annual city audit report an examination of local government economic assistance funds granted to the city under KRS 42.450 to 42.495. The auditor shall include a certification with the annual audit report that the funds were expended for the purpose intended;
  - (c) All audit information be prepared in accordance with generally accepted governmental auditing standards which include tests of the accounting records and auditing procedures considered necessary in the circumstances. Where the audit is to cover the use of state or federal funds, appropriate state or federal guidelines shall be utilized;
  - (d) The auditor prepare a typewritten or printed report embodying the general purpose financial statements and his opinion and statements relating to those statements;
  - (e) The auditor express an overall opinion as to whether the general purpose financial statements present fairly the financial condition of the city or state the reasons why an overall opinion cannot be expressed;
  - (f) The completed audit and all accompanying documentation shall be presented to the city legislative body at a regular or special meeting; and
  - (g) Any contract with a certified public accountant for an audit shall require the accountant to forward a copy of the audit report and management letters to the Auditor of Public Accounts upon request of the city or the Auditor of Public Accounts, and the Auditor of Public Accounts shall have the right to review the certified public accountant's work papers upon request.
- (5) A copy of an audit report which meets the requirements of this section shall be considered satisfactory and final in meeting any official request to a city for financial data, except for statutory or judicial requirements, or requirements of the Legislative Research Commission necessary to carry out the purposes of KRS 6.955 to 6.975.
- (6) Upon completion of an audit, each city may elect to publish the auditor's report in accordance with subsection (7) of this section, or publish a financial statement in accordance with subsection (8) of this section. Notwithstanding the election of subsection (7) or (8) of this section, the city shall, within ninety (90) days after the close of the fiscal year, cause to be published in a newspaper qualified under KRS 424.120 a legal display advertisement of not less than eight (8) column inches that the statement required by KRS 424.220 has been prepared and that copies have been provided to each local newspaper of general circulation, each news service, and each local radio or television station which has on file with the city a written request to be provided a statement.
- (7) If the city elects to publish the auditor's report prepared in accordance with this section in lieu of the financial statement required by KRS 424.220, it shall publish the auditor's cover letter to the city council, the combined balance sheet showing all fund types and account groups, the combined statement of revenues, expenditures, and changes in fund balance for all governmental fund types, the combined statement of revenues, expenses, and changes in retained earnings/fund balances for all proprietary fund types and similar trust funds, and the combined statement of changes in financial position for all proprietary fund types and similar trust funds in accordance with KRS Chapter 424. The advertisement shall contain a statement that a copy of the complete auditor's report, including financial statements and supplemental information, are on file at city hall and are available for public inspection during normal business hours. The advertisement shall also contain a statement that any citizen may obtain from city hall a copy of the complete auditor's report, including financial statements and supplemental information, for his personal use. The statement shall notify citizens requesting a personal copy of the city audit report that they will be charged for duplication costs at a rate that shall not exceed twenty five cents (\$0.25) per page. In addition, the advertisement shall contain a statement that copies of the financial statement prepared in accordance with KRS 424.220 are available to the public at no cost at the business address of the officer responsible for preparation of the statement.
- (8) If the city, other than a city of the first or second class or urban-county government, elects to publish the financial statement prepared in accordance with KRS 424.220 in lieu of publishing the auditor's report, it shall, within sixty (60) days after the completion of the audit, publish the statement in accordance with KRS Chapter 424.
- (9) Any city of the fifth or sixth class may utilize the alternative publication methods authorized by KRS 424.190(2) to comply with the provisions of this section.
- (10) Any person who violates any provision of this section shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500). In addition, any officer who fails to comply with any of the provisions of this



section shall, for each failure, be subject to a forfeiture of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), in the discretion of the court, which may be recovered only once in a civil action brought by any resident of the city. The costs of all proceedings, including a reasonable fee for the attorney of the resident bringing the action, shall be assessed against the unsuccessful party.

**Approved March 8, 2000**

## CHAPTER 90

**(HB 302)**

AN ACT relating to city civil service.

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

Section 1. KRS 90.330 is amended to read as follows:

- (1) The civil service commission shall examine all applicants as to their physical and mental qualification for the particular classification wherein they seek employment. To be eligible for examination a person must not be less than eighteen (18) nor have passed his or her forty-sixth birthday, a law-abiding citizen of sobriety and integrity, and must be able to read and write and understand the English language; provided, however, that any present employee who is over forty-five (45) years of age and who is otherwise qualified shall be eligible to take any promotional examinations.
- (2) Except for those members whose qualifications are determined under KRS 95.440, no person shall be appointed to a position under civil service until that person is a resident of the *Commonwealth of Kentucky*~~{county in which the city is located}~~.
- (3) *Any city legislative body that operates under this chapter may by ordinance require persons appointed to civil service positions to be a resident of the county in which the city is located.*

**Approved March 8, 2000**

## CHAPTER 91

**(HB 340)**

AN ACT relating to personnel.

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

Section 1. KRS 18A.005 is amended to read as follows:

As used in this chapter, unless the context indicates otherwise:

- (1) "Appointing authority" means the agency head or any person whom he has authorized by law to designate to act on behalf of the agency with respect to employee appointments, position establishments, payroll documents, register requests, waiver requests, requests for certification, or other position actions. Such designation shall be in writing and signed by both the agency head and his designee. Prior to the exercise of appointing authority, such designation shall be filed with the secretary;
- (2) "Base salary or wages" means the compensation to which an employee is entitled under the salary schedules adopted pursuant to the provisions of KRS 18A.030 and 18A.110. Base salary or wages shall be adjusted as provided under the provisions of KRS 18A.355 and 48.130;
- (3) "Board" means the Personnel Board created by KRS 18A.045;
- (4) "Career employee" shall mean a state employee with sixteen (16) or more years of permanent full-time state service, or the part-time employment equivalent of at least sixteen (16) years of full-time state service. The service may have been in the classified service, the unclassified service, or a combination thereof;
- (5) "Certification" means the referral of the name of one (1) or more qualified prospective employees by the secretary on request of an appointing officer for consideration in filling a position in the classified service;
- (6) "Class" means a group of positions sufficiently similar as to duties performed, scope of discretion and responsibility, minimum requirements of training, experience, or skill, and such other characteristics that the

same title, the same tests of fitness, and the same schedule of compensation have been or may be applied to each position in the group;

- (7) "Classified employee" means an employee appointed to a position in the classified service whose appointment and continued employment are subject to the classified service provisions of this chapter;
- (8) "Classified position" means a position in the executive branch of state government that is not exempt from the classified service under KRS Chapter 16, KRS 18A.115, KRS Chapter 151B, or any other provision of law;
- (9) "Classified service" includes all the employment subject to the terms of this chapter except for those positions expressly cited in KRS 18A.115; a "classified position" is a position in the classified service;
- (10) "Secretary" means the secretary of the Personnel Cabinet as provided for in KRS 18A.015;
- (11) "Demotion" means a change in the rank of an employee from a position in one (1) class to a position in another class having a lower minimum salary range or less discretion or responsibility;
- (12) "Cabinet" means the Personnel Cabinet provided for in KRS 18A.015, unless the context indicates otherwise;
- (13) "Eligible" refers to a person who has made a passing score on any examination required under KRS 18A.010 to 18A.200 and who has qualified to be placed on a register;
- (14) "Employee" means a person regularly appointed to a position in the state service for which he is compensated on a full-time, part-time, or interim basis;
- (15) "Full-time employee" means an employee in a full-time position;
- (16) "Full-time position" means a position, other than an interim position, requiring an employee to work at least thirty-seven and one-half (37.5) hours in a work week, except for the following:
  - (a) Positions in the state parks, where the work assigned is dependent upon fluctuations in tourism, may be assigned work hours from twenty-five (25) hours per week during the off seasons and remain in full-time positions; and
  - (b) Positions in health care facilities, which regularly involve three (3) consecutive days of twelve (12) hour shifts to cover weekends, shall be considered full-time;
- (17) "Initial probation" means the period of service following initial appointment to any position under KRS 18A.010 to 18A.200 which requires special observation and evaluation of an employee's work and which must be passed successfully before status may be conferred as provided in KRS 18A.110 and by the provisions of this chapter. If the appointee is granted leave in excess of twenty (20) consecutive work days during this period, his initial probation shall be extended for the same length of time as the granted leave to cover such absence. "Initial probation" does not include a probationary period served by a laid-off employee who accepts a bona fide written offer of appointment;
- (18) "Interim employee" means an unclassified employee without status who has been appointed to an interim position that shall be less than nine (9) months duration;
- (19) "Interim position" means a position established to address a one time or recurring need of less than nine (9) months duration and exempt from the classified service under KRS 18A.115;
- (20) "Part-time employee" means an employee in a part-time position;
- (21) "Part-time position" means a position, other than an interim position, requiring an employee to work less than one hundred (100) hours per month;
- (22) "Penalization" shall include, but not be limited to, demotion, dismissal, suspension, fines and other disciplinary actions, involuntary transfers; salary adjustments; any action that diminishes the level, rank, discretion, or responsibility of an employee without proper cause, including a reclassification or reallocation; and the abridgement or denial of other rights granted to state employees;
- (23) "Position" means an office or employment in an agency (whether part-time, full-time, or interim, occupied, or vacant) involving duties requiring the services of one (1) person;
- (24) "Promotion" means a change of rank of an employee from a position in one (1) class to a position in another class having a higher minimum salary or carrying a greater scope of discretion or responsibility;

- (25) "Promotional probation" means the period of service, consistent with the length of the initial probationary period, following the promotion of an employee with status which must be successfully completed in order for the employee to retain the position to which he has been promoted. If the employee is granted leave in excess of twenty (20) consecutive work days during this period, his promotional probation shall be extended for the same length of time as the granted leave to cover such absence;
- (26) "Reallocation" means the correction of the classification of an existing position by placement of the position into the classification that is appropriate for the duties the employee has been and shall continue to perform;
- (27) "Reclassification" shall mean the change in the classification of an employee when a material and permanent change in the duties or responsibilities of that employee occurs;
- (28) "Reemployment" shall mean the rehiring of an employee with status who has been laid off;
- (29) "Reemployment register" means the separate list of names of persons who have been separated from state service by reason of layoff. Reemployment registers shall be used as provided by the provisions of KRS 18A.110, 18A.130, and 18A.135;
- (30) "Register" means any official list of eligibles for a particular class and, except as provided in this chapter, placed in rank order according to the examination scores maintained for use in making original appointments or promotions to positions in the classified service;
- (31) "Reinstatement" shall mean the restoration of an employee who has resigned in good standing, or who has been ordered reinstated by the board or a court to a position in his former class, or to a position of like status and pay;
- (32) ***"Reversion" means either the returning of a status employee to his or her last position held in the classified service, if vacant, or the returning of a status employee to a vacant position in the same or similar job classification as his or her last position held in the classified service. Reversion occurs after a career employee is terminated other than for cause from the unclassified service or after a status employee fails to successfully complete promotional probation. Reversion after unsuccessful completion of promotional probation, or in the case of a career employee after termination from the unclassified service, may only be appealed to the Personnel Board under KRS 18A.095(13);***
- (33) "Seniority" means the total number of months of state service;
- ~~(34)(33)~~ "Status" means the acquisition of tenure with all rights and privileges granted by the provisions of this chapter after satisfactory completion of the initial probationary period by an employee in the classified service;
- ~~(35)(34)~~ "Transfer" means a movement of any employee from one (1) position to another of the same grade having the same salary ranges, the same level of responsibility within the classified service, and the same salary received immediately prior to transfer.

Section 2. KRS 18A.0751 is amended to read as follows:

- (1) The board shall promulgate comprehensive administrative regulations for the classified service governing:
  - (a) Appeals by state employees;
  - (b) Demotion;
  - (c) Dismissal;
  - (d) Fines, suspensions, and other disciplinary measures;
  - (e) Probation, provided that the board may not require an initial probationary period in excess of six (6) months except as provided in subsection (4)(e) of this section and KRS 18A.005;
  - (f) Promotion;
  - (g) Reinstatement;
  - (h) Transfer; and
  - (i) Employee grievances and complaints.
- (2) (a) These administrative regulations shall comply with the provisions of this chapter and KRS Chapter 13A, and shall have the force and effect of law, when approved by the board, after compliance with the provisions of KRS Chapters 13A and 18A and the procedures adopted thereunder;

- (b) Administrative regulations promulgated by the board shall not expand or restrict rights granted to, or duties imposed upon, employees and administrative bodies by the provisions of this chapter; and
  - (c) No administrative body, other than the personnel board, shall promulgate administrative regulations governing the subject matters specified in this section.
- (3) Prior to filing an administrative regulation with the Legislative Research Commission, the board shall submit the administrative regulation to the secretary for review:
- (a) The secretary shall review the administrative regulation proposed by the board not ~~more~~~~less~~ than twenty (20) days after its submission to him;
  - (b) Not ~~more~~~~less~~ than five (5) days after his review, the secretary shall submit his recommendations in writing to the board;
  - (c) The board shall review the recommendations of the secretary and may revise the proposed administrative regulation as it deems necessary; and
  - (d) After the board has completed the review provided for in this section, it may file the proposed administrative regulation with the Legislative Research Commission pursuant to the provisions of KRS Chapter 13A.
- (4) These administrative regulations shall provide:
- (a) For the procedures to be utilized by the board in the conduct of hearings by the board, consistent with the provisions of KRS Chapter 13B;
  - (b) For reduction in rank or grade as provided by this chapter;
  - (c) For discharge, as provided by this section;
  - (d) For imposition, as disciplinary measures, of a fine of not more than ten (10) working days' pay, or for suspension from the service without pay for no longer than thirty (30) working days and, in accordance with the provisions of KRS 18A.095, for the manner of notification of the employee of the discipline and his right of appeal;
  - (e) No probationary period may exceed twelve (12) months, except as provided in KRS 18A.005. The secretary may recommend an initial probationary period in excess of six (6) months for specific job classifications to the board. This recommendation shall take the form of a proposed administrative regulation that shall be submitted to the board for approval. The subject of the administrative regulation shall be limited to job classifications for which an initial probationary period in excess of six (6) months is required and shall specify:
    - 1. The job classification for which an initial probationary period in excess of six (6) months is required; and
    - 2. The specific number of months constituting the initial probationary period for the job classification. No other administrative regulation shall include any provision prescribing an initial probationary period in excess of six (6) months, except as provided in KRS 18A.005. Upon approval by the board of the proposed administrative regulation provided for in this paragraph, the board shall file the regulation with the Legislative Research Commission as provided by KRS Chapter 13A;
  - (f) For promotions which shall give appropriate consideration to the applicant's qualifications, record of performance, conduct, and seniority. Except as provided by this chapter, vacancies shall be filled by promotion whenever practicable and in the best interest of the service;
  - (g) For reemployment of laid-off employees in accordance with the provisions of this chapter;
  - (h) For transfer from a position in one (1) department to a similar position in another department involving similar qualifications, duties, responsibilities, and salary ranges as provided by the provisions of KRS 18A.1131(3)(a);
  - (i) For establishment of a plan for resolving employee grievances and complaints. This plan shall not restrict rights granted employees by the provisions of this chapter;

- (j) For promotion of career employees to positions in the unclassified service without loss of status to the individual employees so promoted, as provided by this chapter; and
- (k) For any other administrative regulations not inconsistent with this chapter and KRS Chapter 13A as may be proper and necessary for its enforcement.

Section 3. KRS 18A.080 is amended to read as follows:

- (1) Except as provided in KRS 18A.200, members of the board shall receive compensation of ***one hundred dollars (\$100)***~~[sixty-five dollars (\$65)]~~ per diem for each meeting of the board and reimbursement for actual and necessary expenses in accordance with state regulations and standards applicable to state employees.
- (2) In addition to payments for attendance at board meetings all board members may also be paid ***one hundred dollars (\$100)***~~[sixty-five dollars (\$65)]~~ for each day spent in the preparation of recommended orders, the review of transcripts or other matters related to appeals before the board.
- (3) Any board member missing three (3) consecutive regular meetings shall be deemed to have vacated his office. Replacements to the board shall be made as provided in KRS 18A.050(2) and 18A.060.

**Approved March 8, 2000**

## CHAPTER 92

**(SJR 17)**

A JOINT RESOLUTION directing the Transportation Cabinet to rename the Cumberland Parkway in honor of Louie B. Nunn.

WHEREAS, Louie Nunn was born on March 8, 1924, in the town of Park, in Barren County, Kentucky, the fourth son of Walter H. and Mary Roberts Nunn; and

WHEREAS, Louie Nunn served his country as an infantryman from 1943 to 1945 at the height of World War II; and

WHEREAS, Louie Nunn received a law degree from the University of Louisville in 1950; and

WHEREAS, Louie Nunn was very active in civic affairs, evidenced by his serving as chairman of the Board of Elders and Deacons of the First Christian Church of Glasgow and director of the Glasgow Little League, and by his memberships in the Rotary Club, the Chamber of Commerce, the American Legion, and the Jaycees; and

WHEREAS, Louie Nunn's long history of public service began with his election as Barren County Judge in 1953, and continued with his service as city attorney for Glasgow; and

WHEREAS, Louie Nunn served as Governor of the Commonwealth from 1967 to 1971; and

WHEREAS, Louie Nunn's tenure as Governor was highlighted by increased support for economic development programs, mental health services, the establishment of the Kentucky Educational Television System, and expansion of state parks; and

WHEREAS, Louie Nunn was instrumental in increasing budgets for education at the primary, secondary, and post secondary levels, and his administration helped further higher education in the Commonwealth, by bringing the University of Louisville into the state system and by transforming a community college into what is now Northern Kentucky University; and

WHEREAS, Louie Nunn has continued to be an active force in the political and civic life of the Commonwealth;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. The Transportation Cabinet is directed to rename the Cumberland Parkway the "Louie B. Nunn Parkway".

Section 2. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "Louie B. Nunn Parkway" to facilitate their erection upon the effective date of this Resolution.

Section 3. A copy of this Resolution shall be sent to the Secretary of the Transportation Cabinet.

**Approved March 8, 2000**

### **CHAPTER 93**

#### **(HCR 35)**

A CONCURRENT RESOLUTION confirming the appointment of Joan N. Taylor to the Council on Postsecondary Education.

WHEREAS, KRS 164.011 requires the Governor to appoint the thirteen citizen members of the Council on Postsecondary Education, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Ms. Joan N. Taylor as a citizen member of the Council on Postsecondary Education for a term expiring December 31, 2000; and

WHEREAS, the Senate and the House of Representatives find that Ms. Taylor meets the requirements of KRS 164.011, being a resident and qualified voter of Kentucky, not holding an official relationship to any institution of higher education in Kentucky, and not engaging in any occupation or business inconsistent with her duties as a member of the Council on Postsecondary Education;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. That the House of Representatives and the Senate, pursuant to KRS 164.011, do confirm the appointment of Ms. Joan N. Taylor to the Council on Postsecondary Education for a term expiring December 31, 2000.

Section 2. That the Clerk of the House shall forward a copy of this Resolution, and written notification of its adoption, to Ms. Joan N. Taylor, 1324 Tanforan Drive, Lexington, Kentucky 40517, and to Governor Paul Patton, Room 100, State Capitol, Frankfort Kentucky 40601.

**Approved March 8, 2000**

### **CHAPTER 94**

#### **(HCR 37)**

A CONCURRENT RESOLUTION confirming the appointment of Charles Layson Owen to the Council on Postsecondary Education.

WHEREAS, KRS 164.011 requires the Governor to appoint the thirteen citizen members of the Council on Postsecondary Education, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Mr. Charles Layson Owen as a citizen member of the Council on Postsecondary Education for a term expiring December 31, 2005; and

WHEREAS, the Senate and the House of Representatives find that Mr. Owen meets the requirements of KRS 164.011, being a resident and qualified voter of Kentucky, not holding an official relationship to any institution of higher education in Kentucky, and not engaging in any occupation or business inconsistent with his duties as a member of the Council on Postsecondary Education;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. That the House of Representatives and the Senate, pursuant to KRS 164.011, do confirm the appointment of Mr. Charles Layson Owen to the Council on Postsecondary Education for a term expiring December 31, 2005.

Section 2. That the Clerk of the House shall forward a copy of this Resolution, and written notification of its adoption, to Mr. Charles Layson Owen, 6 River Hill Road, Louisville, Kentucky 40207, and to Governor Paul Patton, Room 100, State Capitol, Frankfort Kentucky 40601.

**Approved March 8, 2000**

## CHAPTER 95

### (HB 326)

AN ACT related to the probationary period of police and firefighters.

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

Section 1. KRS 95.762 is amended to read as follows:

- (1) The commission shall require all applicants for appointments as members of the police or fire departments to be examined as to their qualifications to fill the office of policeman or firefighter, and as to their knowledge of the English language, and as to the law and rules governing the duties of policemen and firefighters. Every member of the police or fire department shall be able to read and write and understand the English language, and have such other general qualifications as may be prescribed.
- (2) No person shall be appointed a member of the police or fire departments unless he is well known to be a person of sobriety and integrity, and has been and is an orderly, law-abiding citizen, nor shall any person be appointed as a member of said police or fire departments on account of any political, partisan service rendered by him or on account of political sentiments or affiliations, or who is under twenty-one (21) years of age or over forty (40), unless the applicant has had as much as five (5) years' experience as a regular policeman or firefighter and is not over fifty-five (55) years of age. No member of the police or fire departments shall be removed or discharged or reduced in grade or pay for any political partisan opinion. The appointment and continuance upon the police and fire departments shall depend solely upon the ability and willingness of a person to comply with the rules of the said departments and to perform the duties of said departments. No appointment to or continuance as a member of a police or fire department shall be as a reward for political activity nor be obtained by political services or contributions to campaign funds.
- (3) The examination and qualifications provided for in this section shall not apply to the members of the regular police and fire departments at this time, who have been continuously in the service for a period of three (3) years.
- (4) Members of police and fire departments otherwise qualified under this law shall hold their positions during good behavior, provided, however, that the provisions of KRS 95.761 to 95.785 shall not prevent the said city legislative body from increasing or decreasing the number of policemen or firefighters, as may be deemed proper from time to time, and provided further, that in the event the said city legislative body decreases the number of policemen or firefighters, the youngest member in point of service shall be the first to be reduced and returned to the eligible list and to advance according to the rules and regulations of said department.
- (5) The civil service commission may provide that appointments for initial permanent employment may be probationary appointments for a period of not more than *twelve (12)*~~six (6)~~ months, after which probationary period regular appointments shall be given to all probationary employees who are deemed to be satisfactory by the respective appointing authority.

**Approved March 8, 2000**

## CHAPTER 96

### (HB 281)

AN ACT relating to registered nurse first assistants.

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

Section 1. KRS 216B.015 is amended to read as follows:

Except as otherwise provided, for purposes of this chapter, the following definitions shall apply:

- (1) "Abortion facility" means any place in which an abortion is performed;
- (2) "Administrative regulation" means a regulation adopted and promulgated pursuant to the procedures in KRS Chapter 13A;
- (3) "Affected persons" means the applicant; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health facilities within that geographic area; health facilities located in the health service area in which the project is proposed to be located which provide services similar to the services of the facility under review; health facilities which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future; the cabinet and third-party payors who reimburse health facilities for services in the health service area in which the project is proposed to be located;
- (4) "Applicant" means any physician's office requesting a major medical equipment expenditure of one million five hundred thousand dollars (\$1,500,000) or more after July 15, 1996, adjusted annually, or any person, health facility, or health service requesting a certificate of need or license;
- (5) "Cabinet" means the Cabinet for Health Services;
- (6) "Capital expenditure" means an expenditure made by or on behalf of a health facility which:
  - (a) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance or is not for investment purposes only; or
  - (b) Is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part thereof;
- (7) "Capital expenditure minimum" means one million five hundred thousand dollars (\$1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether an expenditure exceeds the expenditure minimum, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the improvement, expansion, or replacement of any plant or any equipment with respect to which the expenditure is made shall be included. Donations of equipment or facilities to a health facility which if acquired directly by the facility would be subject to review under this chapter shall be considered a capital expenditure, and a transfer of the equipment or facilities for less than fair market value shall be considered a capital expenditure if a transfer of the equipment or facilities at fair market value would be subject to review;
- (8) "Certificate of need" means an authorization by the cabinet to acquire, to establish, to offer, to substantially change the bed capacity, or to substantially change a health service as covered by this chapter;
- (9) "Formal review process" means the ninety (90) day certificate-of-need review conducted by the cabinet;
- (10) "Health facility" means any institution, place, building, agency, or portion thereof, public or private, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care and includes alcohol abuse, drug abuse, and mental health services. This shall include, but shall not be limited to, health facilities and health services commonly referred to as hospitals, psychiatric hospitals, physical rehabilitation hospitals, chemical dependency programs, tuberculosis hospitals, skilled nursing facilities, nursing facilities, nursing homes, personal care homes, intermediate care facilities, family care homes, primary care centers, rural health clinics, outpatient clinics, ambulatory care facilities, ambulatory surgical centers, emergency care centers and services, ambulance providers, hospices, community mental health and mental retardation centers, home health agencies, kidney disease treatment centers and freestanding hemodialysis units, facilities and services owned and operated by health maintenance organizations directly providing health services subject to certificate of need, and others providing similarly organized services regardless of nomenclature;
- (11) "Health services" means clinically related services provided within the Commonwealth to two (2) or more persons, including, but not limited to, diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services;
- (12) "Major medical equipment" means equipment which is used for the provision of medical and other health services and which costs in excess of the medical equipment expenditure minimum. For purposes of this subsection, "medical equipment expenditure minimum" means one million five hundred thousand dollars (\$1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether medical equipment has a value in excess of the medical equipment expenditure minimum, the value of studies,



surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of the equipment shall be included;

- (13) "Nonsubstantive review" means an expedited review conducted by the cabinet of an application for a certificate of need as authorized under KRS 216B.095;
- (14) "Nonclinically-related expenditures" means expenditures for:
  - (a) Repairs, renovations, alterations, and improvements to the physical plant of a health facility which do not result in a substantial change in beds, a substantial change in a health service, or the addition of major medical equipment, and do not constitute the replacement or relocation of a health facility; or
  - (b) Projects which do not involve the provision of direct clinical patient care including, but not limited to, the following:
    - 1. Parking facilities;
    - 2. Telecommunications or telephone systems;
    - 3. Management information systems;
    - 4. Ventilation systems;
    - 5. Heating or air conditioning, or both;
    - 6. Energy conservation; or
    - 7. Administrative offices;
- (15) "Party to the proceedings" means the applicant for a certificate of need and any affected person who appears at a hearing on the matter under consideration and enters an appearance of record;
- (16) *"Perioperative nursing" means a practice of nursing in which the nurse provides preoperative, intraoperative, and postoperative nursing care to surgical patients;*
- (17) "Person" means an individual, a trust or estate, a partnership, a corporation, an association, a group, state, or political subdivision or instrumentality including a municipal corporation of a state;
- ~~(18)~~~~(17)~~ "Record" means, as applicable in a particular proceeding:
  - (a) The application and any information provided by the applicant at the request of the cabinet;
  - (b) Any information provided by a holder of a certificate of need or license in response to a notice of revocation of a certificate of need or license;
  - (c) Any memoranda or documents prepared by or for the cabinet regarding the matter under review which were introduced at any hearing;
  - (d) Any staff reports or recommendations prepared by or for the cabinet;
  - (e) Any recommendation or decision of the cabinet;
  - (f) Any testimony or documentary evidence adduced at a hearing;
  - (g) The findings of fact and opinions of the cabinet or the findings of fact and recommendation of the hearing officer; and
  - (h) Any other items required by administrative regulations promulgated by the cabinet;
- (19) *"Registered nurse first assistant" means one who:*
  - (a) *Holds a current active registered nurse licensure;*
  - (b) *Is certified in perioperative nursing; and*
  - (c) *Has successfully completed and holds a degree or certificate from a recognized program, which shall consist of:*
    - 1. *The Association of Operating Room Nurses, Inc., Core Curriculum for the registered nurse first assistant; and*

2. *One (1) year of postbasic nursing study, which shall include at least forty-five (45) hours of didactic instruction and one hundred twenty (120) hours of clinical internship or its equivalent of two (2) college semesters.*

*A registered nurse who was certified prior to 1995 by the Certification Board of Perioperative Nursing shall not be required to fulfill the requirements of paragraph (c) of this subsection.*

- ~~(20)~~~~(18)~~ "Secretary" means the secretary of the Cabinet for Health Services;
- ~~(21)~~~~(19)~~ "State health plan" means the document prepared triennially, updated annually, and approved by the Governor;
- ~~(22)~~~~(20)~~ "Substantial change in a health service" means:
- (a) The addition of a health service for which there are review criteria and standards in the state health plan;
  - (b) The addition of a health service subject to licensure under this chapter; or
  - (c) The reduction or termination of a health service which had previously been provided in the health facility;
- ~~(23)~~~~(21)~~ "Substantial change in bed capacity" means the addition, reduction, relocation, or redistribution of beds by licensure classification within a health facility;
- ~~(24)~~~~(22)~~ "Substantial change in a project" means a change made to a pending or approved project which results in:
- (a) A substantial change in a health service, except a reduction or termination of a health service;
  - (b) A substantial change in bed capacity, except for reductions;
  - (c) A change of location; or
  - (d) An increase in costs greater than the allowable amount as prescribed by regulation;
- ~~(25)~~~~(23)~~ "To acquire" means to obtain from another by purchase, transfer, lease, or other comparable arrangement of the controlling interest of a capital asset or capital stock, or voting rights of a corporation. An acquisition shall be deemed to occur when more than fifty percent (50%) of an existing capital asset or capital stock or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one person from another person;
- ~~(26)~~~~(24)~~ "To batch" means to review in the same review cycle and, if applicable, give comparative consideration to all filed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area;
- ~~(27)~~~~(25)~~ "To establish" means to construct, develop, or initiate a health facility;
- ~~(28)~~~~(26)~~ "To obligate" means to enter any enforceable contract for the construction, acquisition, lease, or financing of a capital asset. A contract shall be considered enforceable when all contingencies and conditions in the contract have been met. An option to purchase or lease which is not binding shall not be considered an enforceable contract; and
- ~~(29)~~~~(27)~~ "To offer" means, when used in connection with health services, to hold a health facility out as capable of providing, or as having the means of providing, specified health services.

Section 2. KRS 216B.160 is amended to read as follows:

All health care facilities and services licensed under this chapter shall include in their policies and procedures a care delivery model based on patient needs which includes but is not limited to:

- (1) Defined roles and responsibilities of licensed and unlicensed health care personnel;
- (2) *A policy that establishes the credentialing, oversight, appointment, and reappointment of the registered nurse first assistant and for granting, renewing, and revising of the registered nurse first assistant's clinical privileges;*
- (3) A staffing plan that specifies staffing levels of licensed and unlicensed personnel required to safely and consistently meet the performance and clinical outcomes-based standards as outlined in the facility's or service's quality improvement plan;

- ~~(4)~~~~(3)~~ A staffing model that is developed and implemented in an interdisciplinary and collaborative manner;
- ~~(5)~~~~(4)~~ A policy and method that incorporates at least four (4) components in an ongoing assessment done by the registered nurse of the severity of the patient's disease, patient condition, level of impairment or disability, and the specific unit patient census to meet the needs of the individual patient in a timely manner; and
- ~~(6)~~~~(5)~~ A staffing model that supports the delivery of patient care services with an appropriate mix of licensed health care personnel that will allow them to practice according to their legal scope of practice, and for nurses, the professional standards of practice referenced in KRS Chapter 314, and facility and service policies.

If a nursing facility, intermediate care facility, or skilled care facility meets the most current state or federal regulations which address safe and consistent staffing levels of licensed and unlicensed personnel, those shall suffice for compliance with the standards in this section.

SECTION 3. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*Notwithstanding any provision of law, a health plan issued or renewed on or after July 15, 2000, that provides coverage for surgical first assisting benefits or services shall be construed as providing coverage for a registered nurse first assistant who performs services that are within the scope of practice of the registered nurse first assistant.*

Approved March 8, 2000

## CHAPTER 97

(HB 265)

AN ACT relating to an annual leave sharing program for state employees.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 18A IS CREATED TO READ AS FOLLOWS:

- (1) *The Commonwealth of Kentucky annual leave sharing program is created. An employee who has accrued an annual leave balance of more than seventy-five (75) hours may request that the appointing authority of the agency for which the employee works makes available for transfer a specified amount of his or her annual leave balance to another named employee authorized to receive leave under subsection (2) of this section. The employee may not request a transfer of an amount of leave that would result in reducing his or her annual leave balance to less than seventy-five (75) hours.*
- (2) *An appointing authority, with the approval of the secretary of personnel, may permit an employee of the agency to receive leave under this section if:*
  - (a) *The employee suffers from a catastrophic loss to his or her personal property, due to either a natural disaster or fire, that either has caused or will likely cause the employee to go on leave for at least ten (10) consecutive working days;*
  - (b) *The employee has exhausted his or her accumulated annual leave and compensatory leave balances; and*
  - (c) *The employee has complied with administrative regulations governing the use of annual leave.*
- (3) *The appointing authority, with the approval of the secretary of personnel, shall determine the amount of leave, if any, that an employee within his or her agency may receive under subsection (2) of this section. Transfers of leave shall not exceed the amount requested by the recipient.*
- (4) *Leave may be transferred from an employee of one (1) agency to an employee within the same agency. With the approval of the secretary of personnel and of the appointing authorities of both agencies, leave may be transferred from an employee of one (1) agency to an employee of another state agency. The Personnel Cabinet shall maintain records of leave transferred between employees and the utilization of transferred leave.*
- (5) *While an employee is on leave transferred under this section, he or she shall be deemed a state employee and shall receive the same treatment with respect to salary, wages, and employee benefits.*

- (6) *All salary and wage payments made to an employee while on leave transferred under this section shall be made by the agency employing the person receiving the leave.*
- (7) *Any leave transferred under this section that remains unused shall be returned to the employees who transferred the leave when the appointing authority finds that the leave is no longer needed and will not be needed at a future time in connection with the catastrophic loss for which the leave was transferred to an employee in his or her agency.*
- (8) *No employee shall directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any other employee for the purpose of interfering with the employee's right to voluntarily contribute leave when authorized under this section. For the purpose of this subsection, "intimidate, threaten, or coerce" shall include, without being limited to, the promise to confer or the conferring of any benefit or effecting or threatening to effect any reprisal.*
- (9) *The secretary of the Personnel Cabinet shall promulgate procedural administrative regulations to implement the provisions of this section.*

Section 2. KRS 18A.025 is amended to read as follows:

- (1) The Governor shall appoint the secretary of personnel as provided in KRS 18A.015, who shall be considered an employee of the state. He shall be a graduate of an accredited college or university and have at least five (5) years' experience in personnel administration or in related fields, have known sympathies with the merit principle in government and shall be dedicated to the preservation of this principle. Additional education may be substituted for the required experience and additional experience may be substituted for the required education.
- (2) The secretary of the Personnel Cabinet or his designee, shall be responsible for the coordination of the state's affirmative action plan, established by KRS 18A.138.
- (3) There is established within the Personnel Cabinet the following offices and departments, each of which shall be headed by a commissioner appointed by the secretary, subject to the prior approval of the Governor, pursuant to KRS 12.050, except that the Kentucky Employees Deferred Compensation Authority shall be headed by an executive director who shall be appointed by the authority's board of directors:
  - (a) Office of the Secretary, composed of the:
    - 1. Office of Administrative and Legal Services, which shall:
      - a. Provide all administrative information systems management, and legal services to the Cabinet; and
      - b. Coordinate the state's affirmative action plan established in KRS 18A.138;
    - 2. Kentucky Public Employees Deferred Compensation Authority which shall be attached to the Office of the secretary for administrative purposes only. The authority shall be governed by a board of trustees composed of seven (7) members including the secretary of Finance and Administration, ex officio; the secretary of Personnel, ex officio; the state controller, ex officio; and four (4) at large members appointed by the Governor, one (1) of whom shall have at least five (5) years of investment or banking experience and one (1) of whom shall represent a nonstate employer. The authority shall be headed by an executive director who shall be appointed by the board of directors of the authority without the limitations imposed by KRS 12.040 and KRS Chapter 18A; and
    - 3. Kentucky Kare;
  - (b) Department for Personnel Administration, composed of the:
    - 1. Division of Performance Management, which shall coordinate and implement the employee performance evaluation systems throughout state government;
    - 2. Division of Employee Records, which shall:
      - a. Maintain the central personnel files mandated by KRS 18A.020;
      - b. Process personnel documents and position actions;
      - c. Operate and maintain a uniform payroll system;

- d. Implement lay-off plans mandated by KRS 18A.113 to KRS 18A.1132;
  - e. Certify payrolls as required by KRS 18A.125; and
  - f. Monitor and assist state agencies in complying with the provisions of the Federal Fair Labor Standards Act (FLSA);
3. Division of Staffing Services, which shall:
- a. Operate a centralized applicant and employee counseling program;
  - b. Operate the examination program for State employment;
  - c. Prepare registers of candidate employment;
  - d. Coordinate outreach programs, such as recruitment and the Administrative Intern Program; and
  - e. Construct merit examinations; and
4. Division of Classification and Compensation, which shall:
- a. Maintain plans of classification and compensation for the State Service; and
  - b. Review and evaluate the plans; and
- (c) Department for Employee Relations, composed of the:
1. Division of Employee Benefits, which shall be responsible for administering and assisting state employees with the following benefits and programs:
- a. Workers' Compensation (KRS 18A.375);
  - b. Life Insurance (KRS 18A.205 to KRS 18A.220);
  - c. Health Insurance (KRS 18A.225);
  - d. Flexible Benefit Plan (KRS 18A.227);
  - e. Employee Benefit Plan (KRS 18A.2281);
  - f. Sick leave Sharing Program (KRS 18A.197);
  - g. ***Annual Leave Sharing Program;***
  - h.*** Health and Safety Programs (OSHA); and
  - ~~i-h.~~ Assessment and referral services provided to state employees;
2. Division of Communications and Recognition, which shall:
- a. Communicate with state employees about personnel issues and other relevant issues through publications;
  - b. Administer the employee incentive programs established by KRS 18A.202; and
  - c. Provide dispute resolution assistance to state employees and agencies.
- (4) The cabinet shall include principal assistants appointed by the secretary, pursuant to KRS 12.050, as necessary for the development and implementation of policy. The secretary may employ, pursuant to the provisions of this chapter, personnel necessary to execute the functions and duties of the department.

Section 3. KRS 18A.197 is amended to read as follows:

- (1) The Commonwealth of Kentucky ***sick*** leave sharing program is created. An employee who has accrued a sick leave balance of more than seventy-five (75) hours may request that the appointing authority of the agency for which the employee works makes available for transfer a specified amount of his ***or her*** sick leave balance to another named employee authorized to receive leave under subsection (2) of this section. The employee may not request a transfer of an amount of leave that would result in reducing his ***or her*** sick leave balance to less than seventy-five (75) hours.

- (2) An appointing authority, with the approval of the secretary of personnel, may permit an employee of the agency to receive leave under this section if:
  - (a) The employee or a member of his *or her* immediate family suffers from a medically certified illness, injury, impairment, or physical or mental condition which has caused, or is likely to cause, the employee to go on leave for at least ten (10) consecutive working days;
  - (b) The employee's need for absence and use of leave are certified by a licensed practicing physician;
  - (c) The employee has exhausted his *or her* accumulated sick leave, annual leave, and compensatory leave balances; and
  - (d) The employee has complied with administrative regulations governing the use of sick leave.
- (3) The appointing authority, with the approval of the secretary of personnel, shall determine the amount of leave, if any, which an employee within his *or her* agency may receive under subsection (2) of this section. Transfers of leave shall not exceed the amount requested by the recipient.
- (4) Leave may be transferred from an employee of one (1) agency to an employee within the same agency. With the approval of the secretary of personnel and of the appointing authorities of both agencies, leave may be transferred from an employee of one (1) agency to an employee of another state agency. The Personnel Cabinet shall maintain records of leave transferred between employees and the utilization of transferred leave.
- (5) While an employee is on leave transferred under this section, he *or she* shall be deemed a state employee and shall receive the same treatment with respect to salary, wages and employee benefits.
- (6) All salary and wage payments made to an employee while on leave transferred under this section shall be made by the agency employing the person receiving the leave.
- (7) Any leave transferred under this section which remains unused shall be returned to the employees who transferred the leave when the appointing authority finds that the leave is no longer needed and will not be needed at a future time in connection with the illness or injury for which the leave was transferred to an employee in his agency.
- (8) No employee shall directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any other employee for the purpose of interfering with the employee's right to voluntarily contribute leave when authorized under this section. For the purpose of this subsection, "intimidate, threaten, or coerce" shall include, without being limited to, the promise to confer or the conferring of any benefit or effecting or threatening to effect any reprisal.
- (9) The secretary of the Personnel Cabinet shall promulgate procedural administrative regulations to implement the provisions of this section.

**Approved March 9, 2000**

## CHAPTER 98

(HB 295)

AN ACT relating to homeless veterans.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Homeless Veterans Program is hereby created in the Kentucky Department of Veterans' Affairs, and shall be attached to the office of the commissioner for administrative purposes. The program shall develop a statewide network of:*
  - (a) *Services that provide treatment for addictions, including but not limited to alcohol, drug use, and gambling;*
  - (b) *Services that lead to permanent housing;*
  - (c) *Services that lead to employment; and*
  - (d) *Concerned citizens and nonprofit agencies that provide shelter.*

- (2) *The mission of the Kentucky Homeless Veterans Program shall be to work toward the elimination of homelessness and the prevention of the threat of homelessness and its causes in the veteran population of the Commonwealth.*
- (3) *The program shall provide assistance to persons who served in the United States Armed Forces or in forces incorporated as part of the United States Armed Forces, and who were discharged under conditions other than dishonorable.*
- (4) *The program shall provide assistance to persons whose need for services is based upon homelessness, or other circumstances as prescribed by administrative regulations promulgated by the department.*
- (5) *The primary components of the program shall be:*
  - (a) *Advocacy and public awareness. The program shall be an advocate for homeless veterans, and work to increase public awareness about the issue of homelessness among veterans and its root causes. The program shall advocate legislation and policies on the local, state, and national level to address these issues;*
  - (b) *Information services. The program shall monitor and research issues relating to homeless veterans and disseminate information and opportunities throughout its network;*
  - (c) *Technical assistance. The program, through conferences and training workshops with federal and state agencies, shall provide guidance and direction in applying for grants and benefits for homeless veterans. The program shall provide peer-to-peer consulting and on-site technical support; and*
  - (d) *Facilities. The program, through grants and other sources of funding, shall provide facilities as appropriate in support of the program.*
- (6) *A Homeless Veterans Service Coordinating Committee shall be established. The committee's membership shall be comprised of representatives of public and private agencies who provide services that may be used by homeless veterans. The commissioner of the Department of Veterans' Affairs shall designate the agencies represented on the committee. The committee shall discuss and research ways in which the services that it offers can be made more easily available and better focused to serve homeless veterans.*
- (7) *The program is authorized to accept and expend moneys as may be appropriated from time to time by the General Assembly, and any moneys that may be received from any source including donations and grants.*

Section 2. If 2000 Regular Session House Bill 139 becomes law, Section 1 of this Act shall be codified into KRS Chapter 40.

**Approved March 9, 2000**

## **CHAPTER 99**

**(HB 273)**

AN ACT relating to certified public accountants.

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

Section 1. KRS 325.220 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Board" means the State Board of Accountancy;
- (2) "State" includes and means any state, territory, or insular possession of the United States, or the District of Columbia;
- (3) "Public accountant" means a public accountant issued a ~~license~~~~permit~~ to practice by the Commonwealth of Kentucky under the Public Accounting Act of 1946 as amended;
- (4) "Attest," "attesting," or "attestation," when used with reference to financial information or the practice of public accountancy, means to issue, or the issuance of, opinions, reports, or other forms of language which state or imply assurance as to the reliability of any:
  - (a) Financial information; or

- (b) Facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, administrative regulations, grants, loans, and appropriations, together with any wording accompanying or contained in the opinion or certificate, when such opinions, reports, or other forms of language are accompanied by or include any name, title, or wording that indicates that the person or firm issuing them is:
1. An accountant or auditor;
  2. Has expert knowledge in accounting or auditing; or
  3. That his *or her* or the firm's work has been performed in accordance with the applicable professional standards for accounting or auditing services as established by the American Institute of Certified Public Accountants or other authorities, as recognized by the board by administrative regulation. The terms include forms of language which disclaim an opinion when the forms of language are conventionally understood to imply any assurance as to the reliability of the financial information referred to and expertise on the part of the person uttering the language; and any other form of language which is conventionally understood to imply such assurance and expertise; or which indicates certain procedures have been performed in accordance with applicable professional standards for accounting or auditing services as established by the American Institute of Certified Public Accountants or other authorities, as recognized by the board by administrative regulation;
- (5) "***Regulated activities***~~[Practice of or practicing public accountancy]~~" means the offering to perform or the performance for a client or potential client by a person or firm ***holding a license issued under this chapter***~~[holding himself or itself out to the public as a licensee]~~ of one (1) or more types of services involving the use of accounting or auditing skills, including the issuance of reports on financial statements, or one (1) or more types of management advisory, financial advisory, or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. This definition shall not prohibit anyone who is not a certified public accountant from performing accounting services, such as the preparation of tax returns or financial statements, for which attestation by the preparer is not required;
- (6) "Firm" means a sole proprietorship, partnership, professional service corporation, or any other form of business organization ***that is authorized to operate under***~~[engaged solely in the practice of public accountancy that is not otherwise prohibited from operating by]~~ the laws of this Commonwealth,~~[and which]~~ complies with the provisions of this chapter, ***and is issued a license to practice by the board***;
- (7) "***License***~~[Certificate]~~" means a ***license***~~[certificate]~~ as a "certified public accountant" issued pursuant to this chapter~~[or corresponding provisions of prior law]~~;
- (8) "Licensee" means a certified public accountant, firm, or public accountant, holding a ***license***~~[permit]~~ to practice~~[public accounting]~~ issued under this chapter;
- (9)~~["Quality enhancement review" means a study, appraisal, or review by the board of one (1) or more aspects of the professional work of a person or firm in the practice of public accountancy;~~
- ~~(10)~~ "***Peer***~~[Quality]~~ review" means a study, appraisal, or review of one (1) or more aspects of the professional work of a person or firm ***licensed to practice***~~[in the practice of public accountancy]~~ and may include a quality assurance or peer review, or any internal review or inspection that is required by professional standards relating to quality control policies and procedures~~[. The term shall not include a positive enforcement program of a state accountancy board]; [and]~~
- ~~(10)~~~~(11)~~ "Review committee" means any person or persons carrying out, administering, or overseeing a ***peer***~~[quality]~~ review program; ***and***
- (11) "***Substantial equivalency***" means a determination by the board or its designee that the education, examination, and experience requirements in the statutes and administrative regulations of another state for the licensing of a certified public accountant are comparable or better than those contained in the Uniform Accountancy Act issued by the American Institute of Certified Public Accountants (AICPA) and National Association of State Boards of Accountancy (NASB), or that an individual certified public accountant's education, examination, and experience qualifications are comparable or exceed these national standards.

Section 2. KRS 325.230 is amended to read as follows:



- (1) There is hereby created a State Board of Accountancy. The board shall consist of seven (7) members, appointed by the Governor. Six (6) of the members shall be certified public accountants. One (1) of the members shall be a citizen-at-large who is not a certified public accountant. Members serving on the board as of July 15, 1994, shall retain their appointments until their terms expire. Whenever an appointment is to be made, the Kentucky Society of Certified Public Accountants shall submit to the Governor the names of three (3) persons for each vacancy to be filled. All persons recommended shall be qualified for membership on the board, and the Governor shall appoint one (1) of the three (3) recommended. Members of the board shall be citizens of the United States and residents of this state and the certified public accountant members shall hold ~~licenses~~~~permits~~ to practice issued under the provisions of this chapter. Of the new members appointed to the board, as provided by this section, one (1) member shall be appointed for a term of one (1) year and one (1) member shall be appointed for a term of four (4) years from June 19, 1976. Succeeding appointments to the board shall be for a term of four (4) years. Vacancies occurring during a term shall be filled by appointment for the unexpired term. Upon the expiration of his term of office, a member shall continue to serve until his successor shall have been appointed and shall have qualified. The Governor shall remove from the board any member whose ~~license~~~~permit~~ to practice is not renewed or which has become void, revoked, or suspended, and may, after hearing, remove any member of the board for neglect of duty or other just cause.
- (2) Each member of the board shall be paid one hundred dollars (\$100) for each day spent in the discharge of his official duties and shall be reimbursed for his actual and necessary expenses therein incurred.

Section 3. KRS 325.240 is amended to read as follows:

The board shall elect annually a president, a secretary and a treasurer from its members. The office of secretary and treasurer may be held by the same individual. The board may ~~promulgate~~~~adopt~~, and amend from time to time, **administrative** regulations, in accordance with the provisions of KRS Chapter 13A, for the orderly conduct of its affairs and for the administration of this chapter. The board may also promulgate, and amend from time to time, rules of professional conduct appropriate to establish and maintain a high standard of integrity and dignity in the profession of public accounting. A majority of the board shall constitute a quorum for the transaction of business. The board shall have a seal which shall be judicially noticed. The board shall keep records of its proceedings, and in any proceeding in court, civil or criminal, arising out of or founded upon any provision of this chapter, copies of said records certified as correct under the seal of the board shall be admissible in evidence as tending to prove the content of said records. ~~[The board shall have printed and published for public distribution, in September of each year, an annual register which shall contain the names, arranged alphabetically by classifications, of all individuals and firms holding permits to practice under this chapter; the names of the members of the board; and such other matters as may be deemed proper by the board. Copies of said registers shall be mailed to each registered practitioner.]~~ The board may employ an executive director and such other personnel as it deems necessary in its administration and enforcement of this chapter. It may appoint such committees or persons, to advise or assist it in the administration and enforcement, as it may see fit. It may retain its own counsel to advise and assist it, in addition to such advice and assistance as is provided by the Attorney General of this state.

Section 4. KRS 325.261 is amended to read as follows:

~~[(1)]~~ The ~~license~~~~certificate~~ of "certified public accountant" shall be granted by the board to any person who satisfies the following requirements:

- ~~(1)~~~~(a)~~ Is no less than eighteen (18) years of age;
- ~~(2)~~~~(b)~~ Is of good moral character;
- ~~(3)~~~~(c)~~ Meets the following educational credentials prior to applying for the examination:
  - ~~(a)~~~~(1)~~ Has a baccalaureate degree or master's degree conferred by a college or university recognized by the board with a major or concentration program in accounting or its equivalent, as defined in administrative regulations promulgated by the board; or
  - ~~(b)~~~~(2)~~ Beginning in the year 2000 with a new examination applicant, approved to sit for the first examination of the year or subsequent examination, has completed one hundred and fifty (150) college semester hours which include a baccalaureate degree conferred by a college or university recognized by the board with a major or concentration program in accounting or its equivalent, as defined in administrative regulations promulgated by the board;
- ~~(4)~~~~(d)~~ Has one (1) year of ~~public~~ accounting *or attest* experience obtained while employed *in an accounting or auditing position*~~by~~ *in* ~~in~~ public *practice, academia, industry, or government that shall be verified*

~~by an accounting firm and under the supervision of~~ a certified public accountant who, *during the time being verified*, held *an active license* ~~a certificate and an active license or an active permit~~ to practice ~~public accountancy~~ from any state ~~as determined by administrative regulations promulgated by the board. The supervising certified public accountant's license or permit shall be active during the time he supervises the applicant~~;

(5) ~~(e)~~ Passes a board-approved written examination in accounting, auditing, and other related subjects as the board deems appropriate. To be eligible to apply for the examination, a person shall first satisfy requirements of *subsections (1), (2), and (3)* ~~subsection (1)(a), (b), and (c)~~ of this section; and

(6) ~~(f)~~ Submits *a complete* ~~an~~ application for a *license to practice* ~~certificate~~ as a certified public accountant *in accordance with Section 8 of this Act* ~~on a form prescribed by the board and accompanied by a fee not to exceed one hundred dollars (\$100)~~.

~~(2) The experience requirement of subsection (1)(d) of this section may alternatively be satisfied by having obtained two (2) years of experience while under the supervision of a certified public accountant who, during the time he supervised the applicant, held a certificate and an active license or an active permit to practice public accountancy from any state. This experience may be obtained in any of the ways set out in paragraphs (a) and (b) of this subsection, as determined by administrative regulations promulgated by the board:~~

~~(a) Private enterprise, a governmental agency, or an institution of higher education in an accounting or auditing position which required the performance of any auditing, accounting, or tax services; or~~

~~(b) Teaching of accounting in an institution of higher education that grants a degree which qualifies a person to sit for the Uniform Certified Public Accountants Examination under this chapter.~~

~~(3) Experience gained under subsection (1) (d) of this section may be combined with experience gained under subsection (2) of this section to satisfy the two (2) years of experience required by subsection (2) of this section.~~

Section 5. KRS 325.280 is amended to read as follows:

(1) The board may issue a *license* ~~certificate and permit~~ to practice by reciprocity, if the applicant submits an application for a *license* ~~certificate and permit~~ to practice public accountancy, upon forms approved by the board, that includes all required fees, in the amounts as determined by administrative regulation promulgated by the board, and meets the following requirements:

(a) The applicant received a grade on the Uniform Certified Public Accountants Examination in another state that was equivalent to a passing grade at the time in this Commonwealth;

(b) The applicant holds a valid *active license* ~~certificate, active permit~~, and is in good standing as a certified public accountant, issued under the laws of any other state; and

(c) 1. The applicant meets all current experience requirements in this Commonwealth at the time application is made; or

~~2. At the time of issuance of the applicant's certificate and permit to practice in the other state, the applicant met all experience requirements then in effect in this Commonwealth; or~~

~~3.~~ Within the ten (10) years immediately preceding the application had four (4) years of experience in the practice of public accountancy acceptable to the board upon which the *license* ~~certificate~~ was based.

(2) The board may issue a *license* ~~certificate and permit~~ to practice public accountancy without examination to an applicant who holds a valid *license* ~~certificate~~ to engage in the practice of public accountancy in good standing from a foreign country if:

(a) The applicant's foreign country makes similar provisions to allow a person who holds a valid *license* ~~certificate~~ to practice public accountancy issued by this Commonwealth to obtain that foreign country's comparable designation;

(b) The authority of the foreign country that issued the designation regulates the practice of public accountancy including the issuance of reports upon financial statements;

- (c) The foreign designation was granted upon education and examination requirements which were established by the foreign authority or law and were substantially equivalent to those in effect in this Commonwealth at the time the foreign designation was granted;
  - (d) The applicant satisfies the applicable experience requirement contained in paragraph (c) of subsection (1) of this section;
  - (e) The applicant has successfully passed a uniform qualifying examination on United States national standards and an examination on the law and administrative regulations of the board; and
  - (f) The applicant submits an application for a ~~license~~~~[certificate and permit]~~ to practice public accountancy, upon forms approved by the board, that includes all required fees, in the amounts as determined by administrative regulation promulgated by the board.
- (3) *The board may issue a license to practice to an applicant whose principal place of business is not in this state and who holds a valid license to practice as a certified public accountant in another state deemed by the board to have substantially equivalent licensing standards. The board shall determine the procedure for reviewing and determining the substantial equivalency of any state.*
- (4) *The applicant shall apply in accordance with administrative regulations promulgated by the board and meet the following requirements:*
- (a) *Submit an application and pay a fee not to exceed two hundred dollars (\$200);*
  - (b) *Agree to submit to the personal and subject matter jurisdiction and disciplinary authority of the board;*
  - (c) *Comply with the laws of this chapter and the board's administrative regulations;*
  - (d) *Agree to the appointment of the board that issued the license as the agent upon whom process may be served in any action or proceeding by the board against the applicant;*
  - (e) *Agree to immediately cease offering services if any of the information filed is false;*
  - (f) *Agree to renew the license by affirming continuing licensure in the home jurisdiction; and*
  - (g) *Recognize that if the applicant moves his or her principal place of business to Kentucky he or she shall notify the board and revise the license application to reflect this information.*

Section 6. KRS 325.290 is amended to read as follows:

- (1) Only an individual who has received a ~~license~~~~[certificate and a current permit]~~ to practice shall be styled and known as a "certified public accountant". A certified public accountant may also use the abbreviation "CPA" or "public accountant."
- (2) ~~Licensees~~~~[The achievement of the requirements necessary to be awarded a certificate shall not allow the use of the titles "certified public accountant" or "CPA," unless a permit to practice has been issued and is current. Permit holders]~~ granted a waiver from continuing professional education based on retirement may use "certified public accountant," "public accountant," or "CPA," but shall not *engage in regulated activities*~~[practice public accounting]~~.

Section 7. KRS 325.301 is amended to read as follows:

- (1) All firms *seeking to obtain a license to practice*~~[engaged in the practice of public accountancy]~~ in this Commonwealth shall meet the following requirements:
  - (a) *Licensees shall hold fifty-one percent (51%) or more of the ownership of the firm in terms of financial interests and voting rights of all partners, officers, shareholders, members, or managers of the firm*~~[The sole purpose and business of the firm shall be to practice public accountancy];~~
  - (b) *Nonlicensed owners of the firm shall be natural persons actively engaged in the firm's operations and shall satisfy additional requirements as promulgated by the board in administrative regulations;*
  - (c) The name of the firm shall *comply with the requirements of Section 13 of this Act*~~[include the name of at least one (1) current or former certified public accountant who holds or has held an ownership interest in the firm, subject to the conditions set out in KRS 325.380(9) and (10). The firm may use the words "certified public accountants" or the abbreviation "CPA's" in connection with its name];~~

- (d)(e) All **certified public accountants who are** partners, shareholders, members, officers, ~~or~~ directors, **or employees** of the firm, ~~and all certified public accountant employees of the firm,~~ who regularly practice in this Commonwealth, shall **maintain** ~~be certified public accountants with~~ current **licenses** ~~permits~~ to practice issued by the board;
- (e)(d) Any individual licensee who is responsible for supervising attest services and signs or authorizes someone to sign the report on the financial statements on behalf of the firm shall meet the competency requirements as promulgated by the board in administrative regulation ~~At least one (1) partner, shareholder, or other person holding an ownership interest in the firm shall be a certified public accountant with a current permit to practice issued by the board;~~ and
- (f)(e) The firm shall comply with the provisions of this chapter, the administrative regulations promulgated by the board, and all other laws of this Commonwealth applicable to the firm's particular form of business organization.
- (2) Before a firm may practice in this Commonwealth, it shall:
- (a) Submit an initial application to the board for a firm **license** ~~permit~~ to practice in this Commonwealth. This application shall be made upon forms approved by the board and signed by the firm manager, who shall also be the certified public accountant in charge of the administrative matters of the firm. The application for a firm **license** ~~permit~~ to practice shall include the name of the firm manager, the name of each certified public accountant **and nonlicensee** with an ownership interest in the firm, the name of each certified public accountant employee of the firm, the location of each office, and any other information as the board, by duly promulgated administrative regulation, may require; and
  - (b) With the exception of a sole proprietorship, pay a fee not to exceed two hundred dollars (\$200) set by an administrative regulation promulgated by the board.
- (3) The firm **license** ~~permit~~ to practice shall be renewed every two (2) years by the firm. The application for renewal shall be submitted by the manager of the firm on forms established in administrative regulations promulgated by the board. The renewal fee, not to exceed two hundred dollars (\$200), shall be established by administrative regulation promulgated by the board.
- (4) The firm **license** ~~permit~~ to practice shall be effective for a two (2) year period following the date of its issuance and shall expire on the first day of July in the year of expiration.
- (5) The manager of the firm shall notify the board, on a form established in administrative regulations promulgated by the board, of any change in its **licensing** ~~registration~~ information within thirty (30) days. Any change in the name of a firm shall require the filing of an initial application.
- (6) All firms that perform audits, reviews, or compilations shall ~~undergo a quality enhancement review as determined by administrative regulations promulgated by the board.~~
- ~~(7) Firms that perform audits shall~~ complete an approved **peer** ~~quality~~ review program with standards that are equivalent to or better than the **peer** ~~quality~~ review program administered by the American Institute of Certified Public Accountants as determined by administrative regulations promulgated by the board.
- (7)(8) Nothing contained in this chapter shall require a certified public accountant or firm of certified public accountants licensed by another state or foreign country to obtain a **license** ~~permit~~ to practice in this Commonwealth if the certified public accountant or firm of certified public accountants enter this Commonwealth solely to:
- (a) Conduct a **peer** ~~quality~~ review of a firm; or
  - (b) Perform attestation work, incidental to an engagement which was initiated with a client located outside of the Commonwealth and has extended into the Commonwealth due to common ownership or existence of a subsidiary, assets, or other operations located within the Commonwealth.

Section 8. KRS 325.330 is amended to read as follows:

- (1) An applicant for initial issuance of a **license** ~~permit~~ to practice shall ~~show~~:
- (a) **Satisfy all the requirements of Section 4 of this Act and the administrative regulations promulgated by the board** ~~That he has obtained a certificate as specified in this chapter;~~
  - (b) **Pay** ~~That he has paid~~ a fee not to exceed two hundred dollars (\$200); and

- (c) **Submit a completed**~~[That he has completed an]~~ application on a form issued by the board.
- (2) **Licenses**~~[Permits]~~ shall be initially issued and renewed for a period of two (2) years, and shall expire on the first day of July in the year of expiration.
- (3) **When an initial license to practice is granted, the board shall issue a nonrenewable document that indicates that the licensee has satisfied all requirements to receive an initial license as a certified public accountant**~~[In July, 1991, one half (1/2) of the permit holders on that date shall be issued permits with a one (1)-year expiration date, while the remaining permit holders shall be issued permits with a two (2)-year expiration date].~~
- (4) An applicant for renewal of a **license**~~[permit]~~ to practice, in good standing, shall complete a **license**~~[permit]~~ renewal form provided by the board showing the applicant has:
- Fulfilled the requirement of continuing professional education for professional enhancement as defined by the board by administrative regulation, but not to exceed eighty (80) hours during a two (2) year calendar period ending December 31 preceding the July 1 renewal date. Certified public accountants not **employed by a firm licensed by the board**~~[engaged in public accounting]~~ shall be required to achieve continuing professional education not to exceed sixty (60) hours during the two (2) year calendar period ending December 31 preceding the July 1 renewal date. The board shall provide for lesser, prorated requirements for applicants whose initial permit was issued substantially less than two (2) years prior to the renewal date;
  - Paid a fee not to exceed two hundred dollars (\$200) biennially;
  - Listed a permanent mailing address; and
  - Designated on the **license**~~[permit]~~ renewal application whether he is **employed by a firm licensed by the board**~~[engaged in any manner of public accounting]~~.
- (5) Any **license**~~[permit]~~ not renewed by the expiration date shall automatically expire and the holder of the expired **license**~~[permit]~~ shall be prohibited from practicing public accounting or holding himself out as a certified public accountant.
- (6) The holder of **a license that from the date of renewal has been expired for a period shorter than six (6) months, and**~~[an expired permit,]~~ who has not violated any other provision of this chapter, may renew the **license**~~[permit]~~ by meeting all of the requirements of this section and paying a late penalty fee not to exceed one hundred dollars (\$100).
- If the **license**~~[permit]~~ has expired for a period longer than **six (6)**~~[twelve (12)]~~ months, the applicant shall apply to the board for reinstatement. The board shall determine the eligibility for **license**~~[permit]~~ reissuance, including a late penalty fee not to exceed two hundred dollars (\$200) and additional continuing professional education hours.
  - Failure to receive a renewal notice shall not constitute an adequate reason for failing to renew the **license**~~[permit]~~ to practice in a timely manner.
- (7) The board may reduce or waive the **license**~~[permit]~~ to practice renewal requirements upon written request of the **licensee**~~[permit holder]~~ showing illness, extreme hardship, or age and complete retirement from practice as prescribed by the board by administrative regulation.

Section 9. KRS 325.340 is amended to read as follows:

- (1) After notice and hearing as provided in KRS Chapter 13B, the board may revoke~~[or suspend any certificate of a certified public accountant issued under this chapter or any registration of a public accountant granted under this chapter, or may revoke]~~, suspend, **impose a fine not to exceed one thousand dollars (\$1,000)**~~[or]~~ refuse to issue or renew any **license**~~[permit issued under this chapter, or may]~~ censure, **or**~~[the holder of the permit,]~~ place~~[any licensee]~~ on probation **any licensee**, all with or without terms, for any one (1) or any combination of the following causes:
- Fraud or deceit in obtaining~~[a certificate as certified public accountant, or in obtaining registration under this chapter, or in obtaining]~~ a **license issued**~~[permit to practice public accounting]~~ under this chapter;

- (b) Dishonesty, fraud, or negligence ***while performing any regulated activity***~~in the practice of public accounting~~, including fiscal dishonesty or an intentional breach of fiduciary responsibility of any kind, and also including, but not limited to, the following:
    - 1. Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information; and
    - 2. Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses;
  - (c) Violation of any of the provisions of this chapter or administrative regulations promulgated by the board under this chapter or violation of any order of the board;
  - (d) Violation of a rule of professional conduct promulgated by the board;
  - (e) ***Conviction of any felony, or of any crime in which dishonesty or fraud is an element, under the laws of any state or of the United States. Conviction includes but is not limited to*** pleading no contest, entering an Alford plea, ***or entry of a court order*** suspending the imposition of a criminal penalty ***to a crime***~~, or the conviction of a felony or any crime an element of which is dishonesty or fraud, under the laws of any state or of the United States~~;
  - (f) Cancellation, revocation, suspension, or refusal to renew the authority to practice as a certified public accountant or a public accountant in any state;
  - (g) Suspension or revocation of the right to practice before any state or federal agency;
  - (h) Conduct discreditable to the accounting profession; or
  - (i) Failure to respond to a board inquiry regarding any licensing or complaint matter.
- (2)~~The board may issue an order to a certificate holder to show cause why his certificate shall not be revoked for failure to renew his permit to practice. The order shall be sent to the certificate holder by certified mail, return receipt requested, to the mailing address given to the board by the certificate holder. If he fails to request a hearing on the order within twenty (20) days from the date of the order being mailed, the board may without a hearing, revoke the certificate. If a hearing is timely requested, it shall be conducted pursuant to KRS Chapter 13B.~~
- (3)~~In any proceeding in which a remedy provided by subsection (1) of this section is imposed, the board may also require the respondent licensee to pay the costs of the proceeding.~~

Section 10. KRS 325.350 is amended to read as follows:

- (1) After notice and hearing as provided in KRS Chapter 13B, the board shall revoke the ***license***~~registration and permit~~ to practice of a firm if at any time it does not have all the qualifications prescribed by this chapter under which it qualified for ***licensing***~~registration~~.
- (2) After notice and hearing as provided in KRS Chapter 13B, the board may~~revoke or suspend the registration or may~~ revoke, suspend, or refuse to renew the ***license***~~permit~~ to practice of a firm or may censure the ***licensee***~~holder of any permit~~ for any of the causes enumerated in KRS 325.340, and for the following additional causes:
  - (a) The revocation,~~or suspension of the certificate or registration or the revocation or~~ suspension, or refusal to renew the ***license***~~permit~~ to practice of any partner or shareholder, or any other person with an ownership interest; or
  - (b) The cancellation, revocation, suspension, or refusal to renew the authority of the firm or any partner or shareholder, or any other person with an ownership interest thereof to practice public accounting in any other state.

Section 11. KRS 325.360 is amended to read as follows:

- (1) The board may conduct investigations of suspected violations of this chapter or the administrative regulations promulgated by the board to determine whether there is probable cause to institute proceedings against any person or firm for any violation under this chapter; but an investigation under this section shall not be a prerequisite to proceedings. In aid of these investigations, the board or its designee may issue subpoenas to compel witnesses to testify and to produce evidence. Subpoenas may be served in person or by certified mail, return receipt requested.

- (2) The board may designate a member, or any other person of appropriate competence, to serve as investigating officer to conduct an investigation. Upon completion of an investigation, the investigating officer shall report to the board. The board shall then find probable cause or lack of probable cause, or it shall request that the investigating officer investigate further. Until there has been a determination of probable cause, the findings of the investigating officer, the testimony and documents gathered in the investigation, and the fact of pendency of the investigation shall be treated as confidential information and shall not be disclosed to any person except law enforcement authorities and, to the extent deemed necessary in order to conduct the investigation, the subject of the investigation, persons whose complaints are being investigated, and witnesses questioned in the course of the investigation.
- (3) Upon a finding of probable cause, if the subject of the investigation is a licensee, the board shall direct that a complaint be issued pursuant to this section; and if the subject of the investigation is not a licensee, the board shall take appropriate action pursuant to this chapter. Upon a finding of a lack of probable cause, the board shall close the matter.
- (4) In any case where probable cause has been determined pursuant to this section with respect to a violation by a licensee, or where the board has received a written complaint by any person furnishing grounds for a determination of probable cause about a violation or where the board has received notice of a decision by the board of accountancy of another state furnishing grounds, the board shall issue a complaint setting forth appropriate charges and set a date for a hearing which shall be conducted in accordance with KRS Chapter 13B.
- (5) A licensee, after having been served with the notice of hearing and complaint as provided for in subsection (4) of this section, shall file a written response within twenty (20) days from the date he was served. If the respondent licensee fails to file a timely response or fails to appear at the hearing, the board may hear evidence against him and may enter a final order as shall be justified by the evidence.
- (6) In a hearing under this section, the respondent licensee may appear in person or, in the case of a firm, through a partner, or shareholder or other person with an ownership interest.
- (7) The evidence supporting the complaint shall be presented by the investigating officer, by a board member designated for that purpose, or by counsel. A board member who presents the evidence, or who has conducted the investigation of the matter under this section, shall not participate in the board's decision of the matter.
- (8) In a hearing under this section before the board or in acting upon the recommended order of a hearing officer, a vote of a majority of all members of the board then in office, other than a member disqualified by reason of subsection (7) of this section, shall be required to sustain any charge and to impose any penalty with respect thereto.
- (9) Any person adversely affected by any order of the board may obtain a review thereof by filing a written petition for review with the Franklin Circuit Court in accordance with KRS Chapter 13B.
- (10) On rendering a final order to revoke, suspend, refuse to renew, or censure the holder of a **license**~~[certificate or a permit]~~ to practice issued under this chapter, the board shall examine its records to determine whether the respondent **is authorized or licensed to practice as a certified public accountant**~~[holds a certificate, a registration, or a permit to practice]~~ in any other state. If the board determines that the respondent **is authorized or licensed to practice**~~[holds a certificate, a registration, or a permit to practice]~~ in any other state, the board shall notify the board of accountancy of the other state of its action by mail within thirty (30) days of rendering the final order.
- (11) The board may exchange information relating to proceedings resulting in disciplinary action against licensees with the boards of accountancy of other states and with other public authorities or private organizations having an interest in the information.

Section 12. KRS 325.370 is amended to read as follows:

- (1) In any case where the board has suspended,~~[or]~~ revoked,~~[a certificate or a permit or]~~ refused to renew a **license**~~[permit]~~, the board may, upon application in writing by the person or firm affected and for good cause shown, modify the suspension or reissue the **license**~~[certificate and permit]~~.
- (2) The board shall by administrative regulation, specify the manner in which:
  - (a) Applications shall be made;

- (b) The times within which the applications shall be made, and the circumstances in which hearings, to be conducted in accordance with KRS Chapter 13B, shall be held thereon; and
- (c) Any corrective or remedial education, training, or review requirement for reinstatement.

Section 13. KRS 325.380 is amended to read as follows:

- (1) No person shall assume or use the title or designation "certified public accountant," "**public accountant**," or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant, unless the person ~~has received a certificate as a certified public accountant under this chapter and~~ holds a **license**~~permit~~ issued under this chapter ~~which has not been revoked or suspended, and all offices of the person in this Commonwealth for the practice of public accounting are maintained and registered as required under this chapter~~.
- (2) No firm shall assume or use the title or designation "certified public accountants," "**public accountants**," or the abbreviation "CPA's" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of certified public accountants, unless the firm ~~is registered as a firm of certified public accountants under this chapter~~, holds a **license**~~permit~~ issued under this chapter which has not been revoked or suspended, and all offices of the firm in this state ~~for the practice of public accounting~~ are maintained~~and registered~~ as required under this chapter.
- ~~(3) No individual shall assume or use the title or designation "public accountant" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the individual is a public accountant, unless the individual is registered as a public accountant under this chapter and holds a permit issued under this chapter which has not been revoked or suspended, and all offices of the individual in this state for the practice of public accounting are maintained and registered as required under this chapter, or unless the individual has received a certificate as a certified public accountant under this chapter and holds a permit issued under this chapter which has not been revoked or suspended, and all offices of the individual in this state for the practice of public accounting are maintained and registered as required under this chapter.~~
- ~~(4) No firm shall assume or use the title or designation "public accountants" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of public accountants, unless the firm is registered as a firm of public accountants under this chapter or as a firm of certified public accountants under this chapter and holds a permit issued under this chapter which has not been revoked or suspended, and all offices of the firm in this state for the practice of public accounting are maintained and registered as required under this chapter.~~
- ~~(5)~~ No individuals or firm shall assume or use the title or designation "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," "accredited auditor," "accounting practitioner," "accredited accountant," "expert accountant," "expert auditor," "certified auditor," or any other title or designation likely to be confused with "certified public accountant" and "public accountant" or any of the abbreviations "CA," "AP," "PA," "RA," "LA," or "AA" or similar abbreviations likely to be confused with "CPA."
- ~~(4)~~~~(6)~~ No person or firm shall sign or affix his name or a firm name to any document or prepare or issue any document which indicates that the person or firm performed the attest function in the preparation of the documents or that includes any language which indicates that he or the firm has expert knowledge in the use of the attest function, unless the person or firm holds a **license**~~permit~~ to practice **issued** under this chapter. This prohibition shall be applicable to issuance by **any unlicensed**~~a~~ person or firm ~~not holding a valid permit~~ of a report using any form of language conventionally used by licensees with respect to a compilation of financial statements. **The board shall issue safe harbor language, to be defined by the promulgation of administrative regulations, that nonlicensees may use in connection with a compilation of financial information.** The provisions of this subsection shall not prohibit any officer, employee, partner, or principal of any organization from affixing his signature to any statement or report in reference to the financial affairs of the organization with any wording designating the position, title, or office which he holds in the organization, nor shall the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties.
- ~~(5)~~~~(7)~~ No person shall assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a firm, or in conjunction with the designation "and Company" or "and Associates" or a similar designation if there is in fact no bona fide firm **licensed**~~registered~~ under this chapter.



~~(6)(8)~~ No firm performing functions permitted by this chapter shall use designations "and Company" or "and Associates" or a similar designation, if there is in fact only one (1) licensee with an ownership interest.

~~(7)(9)~~ No person or firm holding a *license*~~[permit]~~ under this chapter shall *use*~~[engage in the practice of public accountancy using]~~ a professional or firm name or designation which ***contains the names of any nonlicensees***, is misleading as to the legal form of the firm, or as to the persons who are partners, officers, shareholders, or any other owners of the firm, or as to any other matters. If more than one (1) certified public accountant has an ownership interest in the firm, the names of one (1) or more deceased, retired, or withdrawn partners, shareholders, or other certified public accountants with an ownership interest may be included in the name of a firm or its successor.

~~(8)(10)~~ If the death or retirement of a certified public accountant results in a firm having only one (1) certified public accountant with an ownership interest, the board may permit the firm to continue to use the firm name for no more than two (2) years from the certified public accountant's respective death or retirement.

Section 14. KRS 325.410 is amended to read as follows:

The display or uttering by a person of a card, sign, advertisement or other printed, engraved or written instrument or device, bearing a person's name in conjunction with the words "certified public accountant" or any abbreviation thereof, or "public accountant" shall be prima facie evidence in any action brought under KRS 325.400 or 325.990 that the person whose name is so displayed, caused or procured the display or uttering of such card, sign, advertisement or other printed, engraved or written instrument or device, and that such person is holding himself or itself out to be a certified public accountant *licensed*~~[or a public accountant holding a permit]~~ to practice under KRS 325.330. In any such action evidence of the commission of a single act prohibited by this chapter shall be sufficient to justify an injunction or a conviction without evidence of a general course of conduct.

SECTION 15. A NEW SECTION OF KRS CHAPTER 325 IS CREATED TO READ AS FOLLOWS:

***Persons registered with the board as "public accountants" by July 1, 1946, shall receive the designation of "Public Accountant Emeritus" and shall be exempt from the payment of licensing fees and the reporting of continuing education hours. No persons shall assume or use the title or designation "Public Accountant Emeritus" unless designated by the board under this section.***

Section 16. The following KRS sections are repealed:

325.310 Registration of public accountants -- Use of title "public accountant."

325.320 Partnership or corporation of public accountants -- Registration.

**Approved March 9, 2000**

## **CHAPTER 100**

**(HB 372)**

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 99-01, dated December 16, 1999, which abolishes the Unclaimed Property Branch within the Division of Disbursements and Accounting and creates the Division of Unclaimed Property within the Department of the Treasury. The newly created Division of Unclaimed Property shall assume the duties and responsibilities of the abolished Unclaimed Property Branch.

**Approved March 9, 2000**

## **CHAPTER 101**

**(HB 477)**

AN ACT relating to the provision of telecommunication services by municipalities and municipal utilities.

WHEREAS, the legislature finds and determines that:

(1) The United States Congress has passed sweeping legislation, known as the Telecommunications Act of 1996, that has opened the local exchange telecommunications market to competition;

(2) The Act requires, among other things, that incumbent local exchange carriers negotiate interconnection agreements with new competitive carriers covering the resale of retail services, the purchase of network facilities, and the interconnection of facilities;

(3) States have authority under the Act to arbitrate and approve interconnection agreements between carriers and to create a universal service fund supported by all competing carriers to advance and support universal service;

(4) The Kentucky Public Service Commission is the administrative agency created by the legislature to regulate telecommunications services in Kentucky;

(5) Municipalities and municipal utilities have begun to enter into the field of providing telecommunications services to the public for compensation;

(6) The provision of services by municipalities and municipal utilities creates a new participant into the increasingly competitive but regulated industry;

(7) Any competitive entry into the telecommunications market by municipalities or municipal utilities, which may create benefits for the citizens of the Commonwealth, correspondingly creates risks for existing providers of telecommunications services; and

(8) A statutory framework for the regulation of entry into the telecommunications market and provision of telecommunications services by municipalities and municipal utilities is in the best interest of the citizens of the Commonwealth;

NOW THEREFORE,

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 96 IS CREATED TO READ AS FOLLOWS:

***Any legislative body of any city of the first through the fifth class may provide telecommunications service. Any city that owns, operates or controls, either directly or indirectly, a municipal utility that provides telecommunications services as defined in subsection (3)(e) of Section 5 of this Act shall, as to telephone service solely, be subject to the provisions of KRS Chapter 278 in the same manner as other nonmunicipal providers of telephone services.***

Section 2. KRS 96.170 is amended to read as follows:

The legislative body of any city of the third class may, by ordinance, provide the city and its inhabitants with water, light, power, ***and*** heat, ~~and telephone service~~, by contract or by works of its own, located either within or beyond the boundaries of the city; make regulations for the management thereof, and fix and regulate the prices to private consumers and customers. ***Telecommunication service may be provided by any legislative body of any city of the third class by contract or by works of its own, except that any city of the third class that establishes municipal telephone service shall, for purposes of that service solely, be deemed a utility under KRS 278.010 and shall be regulated, as to telephone service, by the Public Service Commission.***

Section 3. KRS 96.190 is amended to read as follows:

(1) The legislative body of any city of the fourth class may provide the city and all persons in the city with water, gas, electric power, light, ***and*** heat, ~~telephone and telegraph service,~~ by contract with any person or by works and facilities owned or leased by the city and located within or beyond the city boundaries. ***Telecommunication service may be provided by any legislative body of any city of the fourth class by contract or by works of its own, except that any city of the fourth class that establishes municipal telephone service shall, for that service solely, be deemed a utility under KRS 278.010 and shall be regulated as to the telephone service, by the Public Service Commission.***

(2) In all cases where the person furnishing the services is operating under a charter or franchise granted by the General Assembly prior to the adoption of the present Constitution of Kentucky the city legislative body may make and enforce rules and regulations for the furnishing and sale of such services, fix and regulate the quality, character and standards of such services, and fix and regulate the rates charged consumers for such services.

Section 4. KRS 96.520 is amended to read as follows:

- (1) Any city of the second, third, fourth, fifth, or sixth class may purchase, establish, erect, maintain, and operate electric light, heat, and power plants, with extensions and necessary appurtenances, within or without the corporate limits of the city, for the purpose of supplying the city and its inhabitants with electric light, heat, power, and telecommunications. ***Any city-owned utility created under this section that provides telecommunications services shall be regulated as to that service by KRS Chapter 278. For the***~~and, for this~~***purpose of providing electric light, heat, power, and telephone services, a city of the second, third, fourth, fifth, or sixth class*** may enter into and fulfill the terms of an interconnection agreement with any electric or combination electric or gas utility whose rates and service are regulated by the Public Service Commission of Kentucky (or, if not so regulated, operating and having customers only outside of Kentucky), or an affiliate entirely owned by or under complete common ownership with an electric or combination electric and gas utility whose rates and service are regulated by the Public Service Commission of Kentucky. ***Any city of the second, third, fourth, fifth, or sixth class***~~and~~ may establish, erect, maintain, and operate plants, individually or jointly with any of these utilities or utility affiliate. In the case of any joint action, a city and utility or utility affiliate may provide by contract for their respective responsibilities, for operation and maintenance and for the allocation of expenses, revenues, and power. If in the accomplishment of this purpose a city at any time has capacity or energy surplus to the immediate needs of the city and its inhabitants, the surplus, if not disposed of for consumption outside this state, may be disposed of only to an electric or combination electric and gas utility whose rates and service are regulated by the Public Service Commission of Kentucky, or to an affiliate entirely owned by or under complete common ownership with such a utility.
- (2) The city shall proceed in the same manner and be governed by the same conditions as are set forth in KRS 96.360 to 96.510 for the acquisition and operation of a water system, with the following exceptions:
  - (a) A petition calling for an election on the proposition of purchasing an existing plant shall be signed by at least two hundred (200) qualified voters of the city, rather than by twenty-five percent (25%) of the qualified voters of the city who voted at the last preceding regular election.
  - (b) Notwithstanding any other laws, bonds may be issued bearing interest at a rate or rates and may be sold on a basis to yield interest at a rate or rates as may be determined upon the sale of the bonds.
  - (c) Bonds of an issue, or bonds of two (2) or more issues consolidated for the purposes of sale, which equal or exceed \$10,000,000 in the aggregate principal amount may be sold at public or private sale without compliance with KRS 424.360.
- (3) This section constitutes a method for the acquisition of an electric light, heat, and power plant by any city of the second, third, fourth, fifth, or sixth class in addition or as an alternate to any other method authorized by statute, provided that the city was operating an electric plant on June 1, 1942, and has not elected to operate under KRS 96.550 to 96.900. No proceedings shall be required for the acquisition of any electric light, heat, or power plant or the issuance of bonds under this section except the proceedings required by KRS 96.360 to 96.510.

Section 5. KRS 278.010 is amended to read as follows:

As used in KRS 278.010 to 278.450, and in KRS 278.990, unless the context otherwise requires:

- (1) "Corporation" includes private, quasipublic, and public corporations, and all boards, agencies and instrumentalities thereof, associations, joint-stock companies, and business trusts;
- (2) "Person" includes natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest;
- (3) "Utility" means any person except, ***for purposes of paragraphs (a), (b), (c), (d), and (f) of this subsection***, a city, who owns, controls,~~or~~ operates, or manages any facility used or to be used for or in connection with:
  - (a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses;
  - (b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses;
  - (c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;
  - (d) The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation;

- (e) The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation; or
- (f) The treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not subject to regulation by a metropolitan sewer district;
- (4) "Retail electric supplier" means any person, firm, corporation, association, or cooperative corporation, excluding municipal corporations, engaged in the furnishing of retail electric service;
- (5) "Certified territory" shall mean the areas as certified by and pursuant to KRS 278.017;
- (6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is being or has been substantially used to supply retail electric service and includes all lines from the distribution substation to the electric consuming facility but does not include any transmission facilities used primarily to transfer energy in bulk;
- (7) "Retail electric service" means electric service furnished to a consumer for ultimate consumption, but does not include wholesale electric energy furnished by an electric supplier to another electric supplier for resale;
- (8) "Electric-consuming facilities" means everything that utilizes electric energy from a central station source;
- (9) "Generation and transmission cooperative", or "G&T", means a utility formed under KRS Chapter 279 that provides electric generation and transmission services;
- (10) "Distribution cooperative" means a utility formed under KRS Chapter 279 that provides retail electric service;
- (11) "Facility" includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility;
- (12) "Rate" means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof;
- (13) "Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure, and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility;
- (14) "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service;
- (15) "Commission" means the Public Service Commission of Kentucky;
- (16) "Commissioner" means one (1) of the members of the commission; and
- (17) "Demand-side management" means any conservation, load management, or other utility activity intended to influence the level or pattern of customer usage or demand.

**Approved March 14, 2000**

## **CHAPTER 102**

### **(SB 59)**

AN ACT relating to the Department of Military Affairs.

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

Section 1. KRS 36.010 is amended to read as follows:

The Department of Military Affairs shall be attached to the Office of the Governor, have charge of and be responsible to the Governor for the proper functioning of the Kentucky National Guard, militia, and all other military or naval matters of the state, and shall consist of the following offices and divisions:

- (1) Office of Management and Administration, containing the:
  - (a) Division of Administrative Services;
  - (b) Division of Facilities;
  - (c) Bluegrass Station Division; and
  - (d) Division of Air Transport;
- (2) Division of **Emergency Management**~~{Disaster and Emergency Services}~~;
- (3) Office of the Chief of Staff for Federal Army Guard;
- (4) Office of the Chief of Staff for Federal Air Guard; and
- (5) Kentucky Civil Air Patrol.

In order to promote greater efficiency, economy, and improved administration, the divisional structure of the Department of Military Affairs may be changed, redesignated, or reorganized in accordance with KRS Chapter 12. Notwithstanding KRS Chapter 12, the department's attachment to the Office of Governor as a separate organizational unit not attached to any cabinet shall not be changed except by action of the General Assembly.

Section 2. KRS 17.167 is amended to read as follows:

- (1) As used in this section, "felony offender" means any person who has been convicted of, entered an Alford plea to, or pleaded guilty to the commission of a capital offense or a felony.
- (2) Any paid or volunteer fire department certified by the Commission on Fire Protection Personnel Standards and Education, ambulance service licensed by the Commonwealth of Kentucky, or rescue squad officially affiliated with a local disaster and emergency services organization or with the Division of **Emergency Management**~~{Disaster and Emergency Services}~~ may apply to the Justice Cabinet or the Administrative Office of the Courts for a felony offender record check on applicants for employment or membership with the fire department, ambulance service, or rescue squad.
- (3) Each application form, provided by a fire department, ambulance service, or rescue squad to an applicant for employment or membership, shall conspicuously state the following: "FOR EMPLOYMENT WITH OR MEMBERSHIP WITH A FIRE DEPARTMENT, AMBULANCE SERVICE, OR RESCUE SQUAD, STATE LAW PERMITS A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT OR MEMBERSHIP."
- (4) Any request for records under this section shall be on a form approved by the Justice Cabinet or the Administrative Office of the Courts. The Justice Cabinet and the Administrative Office of the Courts shall not charge a fee for making record checks.

Section 3. KRS 36.255 is amended to read as follows:

- (1) The Kentucky Community Crisis Response Board is hereby created as a separate administrative body of state government within the meaning of KRS Chapter 12 and attached for administrative purposes to the Department of Military Affairs.
- (2) The membership of the board shall consist of the following:
  - (a) The commissioner of the Department for Mental Health and Mental Retardation Services, or the commissioner's designee;
  - (b) The commissioner of the Department for Public Health, or the commissioner's designee;
  - (c) The commissioner of the Department of Education, or the commissioner's designee;
  - (d) The commissioner of the Kentucky State Police, or the commissioner's designee;
  - (e) The Kentucky state fire marshal, or the fire marshal's designee;
  - (f) The executive director of the Division of **Emergency Management**~~{Disaster and Emergency Services}~~, or the executive director's designee;
  - (g) The Attorney General, or the Attorney General's designee;
  - (h) One (1) representative of local community crisis response teams appointed by the Governor;

- (i) Four (4) members appointed by the Governor to represent mental health disciplines;
  - (j) Two (2) members appointed by the Governor to represent emergency services disciplines;
  - (k) One (1) member who is a mental health professional licensed for independent clinical practice, to be appointed by the Governor. The licensed mental health professional member shall serve as clinical director for the board;
  - (l) One (1) member, appointed by the Governor, from a state-wide chaplain's association involved in emergency services, who is trained in grief counseling and has experience in crisis response;
  - (m) One (1) member from the Kentucky Chapter of the American Red Cross; and
  - (n) The commissioner of the Department for Social Services or the commissioner's designee.
- (3) All board members appointed pursuant to subsection (2)(h) to (2)(l) of this section shall be approved members of the existing community crisis response team.
  - (4) All board members appointed pursuant to subsection (2)(h) to (2)(l) of this section shall have demonstrated a commitment to the provision of community crisis response services.
  - (5) The members of the board appointed by the Governor shall serve for two (2) years and may be reappointed for one (1) additional consecutive two (2) year term. All vacancies in appointed members' terms shall be filled by appointment of the Governor for the remainder of the unexpired term.
  - (6) The board shall elect annually from its membership a chairperson and shall establish other officers and committees as needed to execute the duties of the board.
  - (7) The board shall meet at least quarterly, and a majority of the members shall constitute a quorum for the transaction of the board's business.
  - (8) Except for hired and appointed staff, no board member or team member shall receive compensation. However, board members and crisis response team members may receive reimbursement for expenses incurred in the course of providing crisis response services or executing the duties of the board, consistent with state policy governing the reimbursement of state employees for food, travel, and lodging. Except as provided for in KRS 36.260, nothing in the provisions of KRS 36.250 to 36.270 shall be construed to create liability of a private party for expenses incurred or reimbursed under this subsection.

Section 4. KRS 75.470 is amended to read as follows:

Nothing in KRS 75.400 to 75.460 shall be construed to conflict with or supersede the authority of the Natural Resources and the Environmental Protection Cabinet, pursuant to the provisions of KRS Chapter 149, over management of forestry areas, and KRS Chapter 224, over management of hazardous wastes, nor the authority of the Division of **Emergency Management**~~(Disaster and Emergency Services)~~, pursuant to KRS Chapter 39, over response to disasters and emergencies.

Section 5. KRS 95A.020 is amended to read as follows:

- (1) There is hereby created the Commission on Fire Protection Personnel Standards and Education, hereinafter called "commission," which shall be attached to the state fire marshal's office in the Department of Housing, Buildings and Construction.
- (2) The commission shall be composed of seventeen (17) members, residents of the State of Kentucky, appointed by the Governor. These members should be persons well qualified by experience or education in the field of fire protection or related fields.
- (3) The membership of the commission shall include:
  - (a) Two (2) volunteer firefighters, neither of which is a fire chief or assistant fire chief;
  - (b) Three (3) paid firefighters, at least one (1) of whom shall be a full-time paid county firefighter and none of whom shall be a fire chief or assistant fire chief;
  - (c) One (1) trustee of a volunteer fire department or fire district who is not a volunteer firefighter;
  - (d) Two (2) fire chiefs of paid fire departments;
  - (e) One (1) licensed physician;

- (f) Two (2) fire chiefs of volunteer fire departments;
- (g) One (1) teacher or administrator representing the fire and rescue training service of the Kentucky Community and Technical College System;
- (h) One (1) representative of the Division of ***Emergency Management***~~[Disaster and Emergency Services]~~ of the Department of Military Affairs;
- (i) One (1) mayor of a Kentucky city;
- (j) One (1) county judge/executive;
- (k) One (1) representative of Kentucky industry or business enterprise; and
- (l) One (1) representative of the general public.

The chancellor for the Technical Institutions' Branch of the Kentucky Community and Technical College System and the state fire marshal, or their designees, shall serve as ex officio members of the commission. Their designees shall have full voting rights. Appointive members shall be appointed for a term of four (4) years. Any member chosen by the Governor to fill a vacancy created otherwise than by expiration of term shall be appointed for the unexpired term of the member he is chosen to succeed.

- (4) Members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their functions.
- (5) Members of the commission appointed pursuant to this section shall first be appointed on July 15, 1980. The terms of members appointed earlier shall terminate on July 15, 1980, but the Governor may reappoint those members who qualify under the provisions of this section.

**Approved March 14, 2000**

## CHAPTER 103

**(HB 417)**

AN ACT relating to cellular antenna towers.

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

Section 1. KRS 278.665 is amended to read as follows:

- (1) The commission shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish the minimum content of a uniform application, provided under KRS 100.985(5), for a certificate of convenience and necessity to construct cellular antenna towers, and the procedures to carry out the commission's responsibilities under KRS 100.987.
- (2) ***The commission, in establishing the public notice requirements of a uniform application as provided for in subsection (1) of this section, shall distinguish between areas of low and high population densities. At a minimum, when the site of the proposed cellular antenna tower is outside of an incorporated city or within a rural service area in an urban-county, the commission shall require that every person who owns property contiguous to the property where the proposed cellular antenna tower will be located receives notice by certified mail, return receipt requested, of the proposed construction, given the commission docket number under which the application will be processed, and informed of the opportunity to intervene in the application. The provisions of this subsection shall not apply to unincorporated areas within a county containing a city of the first class.***

**Approved March 14, 2000**

## CHAPTER 104

**(HB 436)**

AN ACT relating to coal mining.

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

Section 1. KRS 351.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:
  - (a) "Approved" means that a device, apparatus, equipment, machinery, or practice employed in the mining of coal has been approved by the commissioner of the Department of Mines and Minerals;
  - (b) "Assistant mine foreman" means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein;
  - (c) "Board" means the Mining Board created in KRS 351.105;
  - (d) "Commercial mine" means any coal mine from which coal is mined for sale, commercial use or exchange. This term shall in no instance be construed to include a mine where coal is produced for own use;
  - (e) "Commissioner" means commissioner of the Department of Mines and Minerals;
  - (f) "Department" means the Department of Mines and Minerals;
  - (g) "Drift" means an opening through strata or coal seams with opening grades sufficient to permit coal to be hauled therefrom or which is used for the purpose of ventilation, drainage, ingress, egress, and other purposes in connection with the mining of coal;
  - (h) "Excavations and workings" means the excavated portions of a mine;
  - (i) "Fire boss" (often referred to as mine examiner) means a person certified as a mine foreman or assistant mine foreman who is designated by management to examine a mine or part of a mine for explosive gas or other dangers before a shift crew enters;
  - (j) "Gassy mine" means any mine in which there is a record of methane having been ignited, or having been detected with a permissible flame safety lamp, or where methane in the amount of twenty-five hundredths percent (0.25%) or more has been found not less than twelve (12) inches from the roof, face, or rib, using approved methane testers or detectors or by analysis. However on and after June 19, 1976, all mines shall be classified as gassy or gaseous;
  - (k) "Intake air" means air that has not passed through the last working place of the split or by the unsealed entrances to abandoned workings and by analysis contains not less than nineteen and one-half percent (19.5%) oxygen, nor more than one-half of one percent (0.5%) of carbon dioxide, no dangerous quantities of flammable gas, and no harmful amounts of poisonous gas or dust;
  - (l) "Licensee" means any owner, operator, lessee, corporation, partnership, or other person who procures a license from the department to operate a coal mine;
  - (m) "Mine" means any open pit or any underground workings from which coal is produced for sale, exchange, or commercial use, and all shafts, slopes, drifts, or inclines leading thereto, and includes all buildings and equipment, above or below the surface of the ground, used in connection with the workings. Workings that are adjacent to each other and under the same management, ~~but and~~ which are administered as distinct units shall be considered a separate mine;
  - (n) "Mine foreman" means a certified person whom the licensee or superintendent places in charge of the workings of the mine and of the persons employed therein;
  - (o) "Open-pit mine" shall include open excavations and open-cut workings including *but not limited to* ~~auger operations and highwall mining systems~~ *mines* for the extraction of coal;
  - (p) "Operator" means the licensee, owner, lessee, or other person who operates or controls a coal mine;
  - (q) "Permissible" ~~refers to~~ ~~means that~~ any equipment, device, or explosive that has been approved by the United States Bureau of Mines, the Mining Enforcement and Safety Administration, or the Mine Safety and Health Administration *and that* meets all requirements, restrictions, exceptions, limitations, and conditions attached to the classification by the *approving agency* ~~bureau~~;
  - (r) "Preshift examination" means the examination of ~~a~~ ~~an underground~~ mine or any portion thereof where miners are scheduled to work or travel, which shall be conducted not more than three (3) hours before any on-coming shift;



- (s) "Return air" means air that has passed through the last active working place on each split, or air that has passed through abandoned, inaccessible, or pillared workings;
  - (t) "Shaft" means a vertical opening through the strata that is ~~is or may be~~ used in connection with the mining of coal, for the purpose of ventilation or drainage, or for hoisting men, coal, or materials;
  - (u) "Slope" means an inclined opening used for the same purpose as a shaft;
  - (v) "Superintendent" means the person who, on behalf of the licensee, has immediate supervision of one (1) or more mines; and
  - (w) "Supervisory personnel" means a person ~~or persons~~ certified under the provisions of this chapter to assist in the supervision of a portion or the whole of the mine or of the persons employed therein.
- (2) Except as the context otherwise requires, this chapter applies only to commercial coal mines.
  - (3) The definitions in KRS 352.010 apply also to this chapter, unless the context requires otherwise.

Section 2. KRS 351.020 is amended to read as follows:

- (1) The Department of Mines and Minerals shall be headed by the commissioner of the Department of Mines and Minerals.
- (2) The department shall administer all laws of *the Commonwealth* ~~(this state)~~ relating to mines.

Section 3. KRS 351.030 is amended to read as follows:

~~[The department shall hold one (1) or more hearings on each matter brought before it.]~~ All administrative hearings conducted by the department shall be conducted in accordance with KRS Chapter 13B. Following the hearing, the department shall decide each matter in controversy. No person shall be discharged or otherwise discriminated against *by his or her employer* for testifying, or for his failure to testify, at these hearings.

Section 4. KRS 351.040 is amended to read as follows:

- (1) Any party in interest dissatisfied with an order of the department may commence an equitable action against the department and other interested parties as defendants, to vacate or set aside, in whole or in part, any such order. The action ~~shall~~ ~~may~~ be brought in the Circuit Court of the county where the subject matter involved in the order, or the well or workable coal bed or part thereof, is located. The court may grant relief from any unlawful or unreasonable order of the department, and render such judgment as appears to it to be equitable and just.
- (2) The pendency of the action shall not of itself suspend the operation of the order of the department, but during the pendency of the action any party may secure from the court an order suspending or staying the operation of the order of the department pending the action by giving to the other parties adequate security, approved by the court, against loss due to the delay in enforcement of the order, in case the order under review is not set aside, and the court may, without security being given, suspend the operation of the order, in whole or in part, on such terms as it deems just and in accordance with the practice of courts of equity; provided, however, that the operation of an order pertaining to safety in coal mines shall not be suspended temporarily pending final decision of the court.
- (3) Appeals may be taken to the Court of Appeals as in other cases.

Section 5. KRS 351.090 is amended to read as follows:

- (1) The Governor shall appoint an adequate number of mine inspectors to insure at least two (2) inspections annually, provided the mine is in operation the entire year or the proportionate thereof, of all mines in the *Commonwealth* ~~(state)~~ and sufficient additional inspectors to enable the commissioner to provide adequate surveillance of ~~those underground~~ coal mines where conditions or management policy dictate that more inspections are needed to insure the safety of miners. One (1) or more of the appointees may be designated as electrical mine inspectors. The Governor shall also appoint an adequate number of mine safety analysts and mine safety instructors. The term of office of each mine inspector, each mine safety analyst, each electrical inspector, and each mine safety instructor shall be during the period of capable, efficient service and good behavior.
- (2) All mine inspectors, mine safety analysts, electrical inspectors, and mine safety instructors shall have a thorough knowledge of first aid and mine rescue and be able to instruct in first aid and mine rescue, and shall possess thoroughly the knowledge required of the commissioner by KRS 351.060, and shall have a thorough

and practical knowledge of mining gained by at least five (5) years' experience in coal mines in ~~the Commonwealth~~~~[this state]~~. All surface mine safety analysts shall have at least five (5) years' experience in surface mines in ~~the Commonwealth~~~~[this state]~~. For the purposes of this subsection, a degree in mining engineering from a recognized institution shall be deemed equivalent to two (2) years of practical experience in coal mines or an associate degree in mining technology from a recognized institution shall be deemed equivalent to one (1) year practical experience in coal mines. ~~A person~~~~[Persons]~~ desiring to use ~~a~~~~[their]~~ mining engineering or technology degree for practical experience credit shall file proof of having received ~~a~~~~[their]~~ degree prior to examination.

- (3) No person shall be appointed to the office of mine inspector, underground mine safety analyst, electrical inspector, or mine safety instructor unless he holds a current mine foreman's certificate. No person shall be appointed to the office of surface mine safety analyst unless he holds a current surface mine foreman's certificate. ~~A person~~~~[Persons]~~ appointed as mine ~~inspector~~~~[inspectors]~~, mine safety ~~analyst~~~~[analysts]~~, electrical ~~inspector~~~~[inspectors]~~, and mine safety ~~instructor~~~~[instructors]~~ shall pass an examination administered by the board. The commissioner may recommend to the Governor applicants for the positions of mine inspector, mine safety analyst, electrical inspector, or mine safety instructor who have successfully passed the examination and are proved by worth, training, and experience to be the most competent of the applicants.
- (4) Mine inspectors, mine safety analysts, electrical inspectors, and mine safety instructors shall be of good moral character and temperate habits and shall not, while holding office, act in any official capacity in operating any coal mine.
- (5) No reimbursement for traveling expenses shall be made except on an itemized accounting for the expenses submitted by inspectors, analysts, and safety instructors who shall verify upon oath that the expenses were incurred in the discharge of their official duties.
- (6) Each mine inspector, mine safety analyst, electrical inspector, and mine safety instructor shall take oath, which shall be certified by the officer administering it. The oath, in writing, and the certificate, shall be filed in the office of the Secretary of State.
- (7) Each mine inspector, mine safety analyst, electrical inspector, and mine safety instructor shall give bond with surety approved by the Governor.
- (8) Persons, other than those employed by a company, who by contractual or other rights, perform mine inspection work in any capacity, shall be familiar with mining and possess experience equal to that required of a state mine inspector. They shall also be held responsible for their conduct in the performance of their inspections and related acts. This subsection shall not apply to persons excluded by other laws or those who by agreement with the licensee make mine visits for technical and investigative work.

Section 6. KRS 351.103 is amended to read as follows:

- (1) All persons possessing valid certificates as mine inspectors, electrical inspectors, mine safety instructors, assistant mine foreman, mine foreman,~~[fire boss]~~ shotfirer, and other mining specialties as established by the board, or **certified** miner shall be eligible to work at any time as miners, provided they fulfill the annual requirements for retraining and reeducation as provided in KRS 351.105.
- (2) Supervisory, clerical, and technically-trained employees of the mine operator whose work contributes only indirectly to mine operations shall not be required to possess a miner's certificate of competency and qualification.

Section 7. KRS 351.105 is amended to read as follows:

- (1) The Board of Miner Training, Education, and Certification is abolished and shall be immediately replaced by the Mining Board.
- (2) The board shall be made up of eight (8) persons, all of whom shall be citizens of Kentucky and from the coal industry in Kentucky. The board's membership shall reflect a fair representation from eastern Kentucky and western Kentucky, large and small operations, and union and nonunion coal production. The Governor shall appoint the members of the board to include:
  - (a) Three (3) members representing management; the Alliance of Kentucky Coal shall submit three (3) nominees for each management position on the board;
  - (b) Three (3) members representing labor; the United Mine Workers of America shall submit three (3) nominees for each labor position on the board;

- (c) The commissioner of the Department of Mines and Minerals; and
- (d) The director of the Division of Miner Training, Education, and Certification.

The commissioner of the department shall serve as chairman. The director of the Division of Miner Training, Education, and Certification shall be a nonvoting member.

- (3) Excluding the commissioner and the director of the Division of Miner Training, Education, and Certification, initial appointments to the board shall be made in the following manner and shall reflect equal representation as to number and term regarding both the management and the labor positions: two (2) members for a period of two (2) years; two (2) members for a period of three (3) years; and two (2) members for a period of four (4) years. After the initial appointments, members of the board shall be appointed to four (4)-year terms. Members of the board, including members of the Board of Miner Training, Education, and Certification abolished by this section, may be reappointed at the expiration of their previous appointment at the pleasure of the Governor. Members shall continue to serve until a successor is appointed and qualified.
- ~~(4) [As soon as practicable after the members of the board have been appointed, the commissioner shall call an organizational meeting to implement the provisions of this section.]~~
- ~~(5) [~~Two (2) of the persons appointed to the board shall be employed in nonsupervisory positions at mines in this *Commonwealth*~~[state]~~ and shall have a minimum of five (5) years' underground experience in the industry and a mine foreman's certificate. Two (2) of the persons shall be employed in supervisory positions by coal companies operating in the *Commonwealth*~~[state]~~ and shall have a minimum of five (5) years' experience in the coal mining industry and a mine foreman's certificate. One (1) of each of the members holding supervisory and nonsupervisory mine positions shall have a minimum of five (5) years' practical experience working in a surface or underground coal mine. The director of the Division of Miner Training, Education, and Certification shall have a minimum of five (5) years' practical underground mining experience.
- ~~(5) [(6)]~~ Whenever a vacancy on the board occurs, appointments shall be made in the manner prescribed in this section. The vacancy shall be filled by the Governor within thirty (30) days from the date the vacancy occurs.
- ~~(6) [(7)]~~ A quorum of the board shall be five (5) voting members; the board may act officially by a majority of those members who are present, except that no action shall be taken without a majority of affirmative votes. Action concerning revocation, suspension, or probation of a mine's license or a miner's certification shall require two-thirds (2/3) of the voting members present. When necessary for the commissioner to be absent *or to recuse himself*, he is empowered to name an alternate to serve as chairman.
- ~~(7) [(8)]~~ Each member of the board shall receive one hundred fifty dollars (\$150) each day while actually engaged in the performance of the work of the board, shall receive mileage at the rate provided by the state's travel regulation for each mile actually traveled from the home of the member to the place of the meeting and returning therefrom, and shall receive reimbursement for food and lodging at a reasonable and customary rate, which shall be paid out of the State Treasury upon proper requisition approved by the commissioner.
- ~~(8) [(9)]~~ The board shall act on all matters brought before it by the department and, after hearing, issue orders with respect to these matters.
- ~~(9) [(10)]~~ The board shall meet periodically at the direction of the commissioner to review *this chapter and KRS Chapter*~~[Chapters 351 and]~~ 352 and make recommendations regarding the amendment of those chapters.
- ~~(10) [(11)]~~ The board shall review and approve all administrative regulations proposed by the department *that relate to the mining of coal or the certification of miners* before those *administrative regulations*~~[proposals]~~ are promulgated in accordance with KRS Chapter 13A.
- ~~(11) [(12)]~~ No member of the board shall be subject to any personal liability or accountability for any loss sustained or damage suffered on account of any action or inaction of the board.
- ~~(12) [(13)]~~ The board may conduct hearings, compel the attendance of witnesses, administer oaths, and conduct oversight activities as may be required to ensure the full implementation of its programs and standards.

Section 8. KRS 351.107 is amended to read as follows:

- (1) *A person*~~[Persons]~~ desiring to obtain experience as a shotfirer may not charge or detonate explosives in *an underground*~~[a]~~ mine unless *he or she is*~~[they are]~~ under the direction and within sight and sound of a certified shotfirer. No person shall charge or detonate explosives within *an underground*~~[a]~~ mine unless that person has successfully completed a training program and passed a test administered by the department. The test shall

include at a minimum a determination of the person's ability to test for mine gases and to safely handle and detonate explosives in an underground coal mine.

- (2) The commissioner shall issue a shotfirer's certificate to the person upon successfully passing the test.

~~[(3) The board shall determine when the training program for shotfirers is sufficiently available to the work force in the state and thereafter shall establish the effective date after which the requirements of this section shall apply to all persons detonating explosives in underground coal mines.]~~

Section 9. KRS 351.108 is amended to read as follows:

Mine superintendents shall hold a mine foreman certificate *issued by the commissioner*.

Section 10. KRS 351.109 is amended to read as follows:

- (1) An individual is a qualified and certified person, within the meaning of this chapter, to perform electrical work, other than work on energized surface, high voltage lines, if he has at least one (1) year of experience under direct supervision of a qualified electrician in performing electrical work underground in a coal mine, in the surface work areas of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment, and he attains a satisfactory grade on each of the series of written tests administered by the department and required in subsection (2) of this section.
- (2) The series of written tests shall include, but not be limited to, the following subjects:
  - (a) Direct current theory and application;
  - (b) Alternating current theory and application;
  - (c) Electric equipment and circuits;
  - (d) Permissibility of electric equipment;
  - (e) Requirements of both federal and state laws; and
  - (f) Pertinent sections of the National Electrical Code.
- (3) A score of at least eighty (80) percent on each of the written tests shall be deemed to be a satisfactory grade. Recognition shall be given to practical experience in that one (1) percentage point shall be added to an individual's score in each test for each additional year of experience beyond the one (1) year minimum requirement specified in subsection (1) of this section; however, in no case shall an individual be given more than five (5) percentage points for such practical experience.
- (4) An individual may, within thirty (30) days from the date on which he received notification from the department of his test scores, repeat those *sections* on which he received an unsatisfactory score. If further retesting is necessary after this initial repetition, a minimum of thirty (30) days from the date of receipt of notification of the initial retest scores shall elapse prior to such further retesting, whereupon the entire series of written tests shall be retaken.
- (5) An individual qualified and certified in accordance with this section shall, in order to retain qualification and certification, satisfactorily complete annually a retraining program approved by the department.

Section 11. KRS 351.120 is amended to read as follows:

- (1) The commissioner shall issue a certificate to each person who possesses the qualifications required by law for mine inspector, electrical inspector, surface or underground mine safety instructor, surface mine safety analyst, assistant mine foreman, mine foreman, shotfirer, and other mining specialties as established by the board, or miner who has passed the examination given by direction of the board for that position.
- (2) The certificate shall be in such form as the commissioner prescribes, shall be signed by the commissioner, and shall show that the holder has passed the required examination and possesses the qualifications required by law for mine inspector, electrical inspector, surface or underground mine safety instructor, surface mine safety analyst, assistant mine foreman, mine foreman, shotfirer, and other mining specialties as established by the board, or miner and is authorized to act as such.
- (3) Certificates issued to mine foremen and assistant mine foremen shall be classified as follows:
  - (a) Mine foreman certificates, authorizing the holder to act as foreman for all classes of coal mines; and

- (b) Assistant mine foreman certificates, authorizing the holder to act as assistant foreman.
- (4) Any mine foreman or assistant mine foreman may act as a fire boss or mine examiner. This shall not apply to persons holding a second class mine foreman certificate issued before June 16, 1972.
- (5) The class of mine foreman's certificate awarded shall be determined by the board according to the experience of the applicant.
- (6) No certificate shall be granted to any person who does not present to the board satisfactory evidence, in the form of affidavits, that the applicant has had the required practical experience in underground or surface coal mines. A data sheet shall be filed by each applicant showing places of employment, beginning month and year and ending month and year employed by each company and list jobs performed, showing at least the number of required years. Affidavit and data sheet forms shall be furnished by the department. For the purpose of this section, persons holding a four (4) year degree in mining engineering from a recognized institution shall be credited with the equivalent of two (2) years of practical experience in coal mines when applying for any mine foreman or assistant mine foreman certificate. Persons holding an associate degree in mining from a recognized institution shall be credited with the equivalent of two (2) years' experience when applying for a mine foreman certificate and one (1) year when applying for an assistant mine foreman certificate. Persons desiring to use their mining engineering or mining technology degree as credit for practical experience toward a mine foreman or assistant mine foreman certificate shall file proof of having received their degree prior to the examination.
- (7) Applicants for an underground mine foreman certificate shall have five (5) years' practical underground coal mining experience acquired after achieving the age of eighteen (18), with at least one (1) year of this experience acquired on an active working section of an underground mine. Applicants for an underground assistant mine foreman certificate shall have three (3) years' practical underground experience acquired after achieving the age of eighteen (18), with at least one (1) year of this experience acquired on an active working section of an underground mine.
- (8) Applicants for surface mine foremen certification shall have three (3) years' practical surface mine experience acquired after achieving the age of eighteen (18); for surface mine foreman certification with a specialty in coal extraction, at least one (1) year of the required practical experience shall have been acquired from direct involvement in the mining or extraction of coal at a surface mine. For a surface mine foreman certification with a specialty in postmining activities, at least one (1) year of the required experience shall have been acquired from direct involvement in the performance of such activities at a surface or underground mine, coal preparation plant, or other coal-handling facility. Notwithstanding any requirement in this subsection to the contrary, a person having three (3) years' of underground or surface mining experience shall qualify for a surface mine foreman certification with a specialty in postmining activities if the person has documented experience of at least one (1) year in the performance of these activities. Persons holding a surface mine foreman certificate prior to July 15, 1998, are not affected by this section.
- (9) Persons possessing certificates of qualifications to act as mine inspector, mine foreman, assistant mine foreman, or fire boss prior to July 15, 1982, are not affected by this section.
- (10) When approved by the commissioner, a person who has successfully completed any mine foreman or assistant mine foreman examination may be granted a temporary certification that is valid only until the board acts upon his or her certification at its next regularly scheduled meeting.
- (11) A member of the supervisory personnel shall be present at the working section except in cases of emergencies at all times employees under his supervision are at the working section on coal-producing shifts.

Section 12. KRS 351.1291 is amended to read as follows:

- (1) All inexperienced surface coal miners shall complete a sixteen (16) hour course of instruction devised or approved by the department in subjects including, but not limited to: accident prevention, cutting and welding, equipment operation, fire protection, first-aid methods, ground control and transportation, handling and use of explosives, mine communications, mine electrical safety standards, mining law, including *the statutory* ~~miners'~~ rights *of miners*, safety around bins and hoppers, and any other subjects deemed appropriate by the department. For purposes of this section, "inexperienced coal miners" means all persons who have not previously worked at least forty-five (45) days at a surface coal mine in this Commonwealth.
- (2) All surface coal miners shall complete an eight (8) hour course of annual retraining devised or approved by the department in the subjects identified in subsection (1) of this section.

- (3) The commissioner shall certify all surface coal miners who complete the courses of instruction required in subsections (1) and (2) of this section.

Section 13. KRS 351.160 is amended to read as follows:

- (1) The commissioner of the department shall annually make a report to the Governor of his proceedings during the preceding calendar year. The annual report shall be prepared and printed as soon as possible after the close of the calendar year. The annual report shall cover the complete operation of the mines in this **Commonwealth**~~[state]~~ during the preceding calendar year, enumerating all accidents occurring in or about any such mines during that year, and giving such other information as the commissioner deems useful, and making such suggestions as he deems important as to further legislation on the subject of mining.
- (2) The commissioner shall keep and index a permanent record of all inspections made by himself and of all reports relating to inspection of mines furnished to him by mine inspectors. All such records of the department shall be public records and shall, at all times, be open to the inspection of the public, and shall be laid before the Governor upon his request at any time.
- (3) The department shall furnish certified copies of any such records, when requested to do so, upon payment of such fee as is generally charged by courts of record for certified copies. Such fee shall be paid into the Treasury of the state.

Section 14. KRS 351.170 is amended to read as follows:

The licensee of each commercial coal mine shall give at the end of each calendar year accurate information, on **blank forms**~~[blanks]~~ furnished by the commissioner, as to the number of accidents that have occurred, the number of persons employed, the tons of coal mined, and any other related information that the commissioner requests.

Section 15. KRS 351.192 is amended to read as follows:

Any person who is qualified by a federal or state agency to perform mine rescue planning and recovery operations, including mine rescue instructors and mine rescue team members, and any person designated by an operator furnishing a mine rescue team to supervise, assist in planning, or provide service thereto, who in good faith performs, or fails to perform, any act or service in connection with such mine rescue planning and recovery operations shall not be liable for any civil damages as a result of any such acts or omissions~~], and shall not be required to participate, except voluntarily, in any investigation, including any administrative hearing, in connection therewith; provided however, that nothing contained herein shall be construed to exempt from liability any person responsible for an overall mine rescue operation, including an operator of an affected facility and any person assuming responsibility therefor under federal or state statutes or regulations].~~

Section 16. KRS 352.140 is amended to read as follows:

- (1) No operator or superintendent of any mine worked by shaft, slope, or incline shall place in charge of any engine or drum used for lowering or hoisting any persons employed in the mine any but competent and sober engineers or drum runners. Where automatic elevators are used and all safety devices are provided, the services of a hoisting engineer are not required. Hoisting engineers and drum runners shall pass a test as to their knowledge of hoisting equipment and the precautions to be taken when raising or lowering men or materials. Certification of hoisting engineers and drum runners shall be under such conditions and by tests prescribed by the **commissioner**~~[department]~~.
- (2) No engineer in charge of such machinery shall allow any person except such as may be designated for this purpose by the operator or superintendent to interfere with any part of the machinery.
- (3) No person shall interfere with or intimidate the engineer or drum runner in the discharge of his duties.
- (4) In a mine worked by shaft, slope, or incline, no more than twenty (20) persons shall ride in any cage or car at one (1) time, without the approval of the mine inspector and the commissioner of the department, and no person shall ride on a loaded cage or car, except that where special man-cars or cages are employed to haul workmen on inclines the commissioner may regulate the method and procedure of handling of man-cars, cages, and workmen. Each cage or elevator installed after June 16, 1972, which is used for lowering and raising men shall have at least two and one-half (2-1/2) square feet of floor space for each person.

Section 17. KRS 352.190 is amended to read as follows:

For every fifty (50) men and fraction thereof employed underground, the operator of each mine shall keep on hand at the mine one (1) properly constructed stretcher, one (1) waterproof and one (1) woolen blanket, and all other necessary equipment ~~required~~<sup>advised</sup> by the department.

Section 18. KRS 352.220 is amended to read as follows:

(1) The following shall apply to underground installations:

- (a) On all haulage roads, landings, and partings where men are required to regularly work or pass under bare power wires placed less than six and one-half (6-1/2) feet above the top of the rail, suitable protection shall be provided. This protection shall consist of channeling the roof, placing boards along the wires and extending below them, or the use of some other approved device that affords protection;
- (b) All machine feed wires shall be placed on insulators which shall be so placed as to prevent the wires coming in contact with the coal;
- (c) When the machine or feed wires are carried in the same entry as the trolley wire, they shall be placed on the same side as the trolley wire, between the trolley wire and rib, and shall be protected from contact therewith. Positive feed wires crossing places where persons~~[-or animals]~~ are required to travel shall be safely guarded or protected from the persons~~[-or animals]~~ coming in contact therewith, as provided in paragraph (a) of this subsection;
- (d) All trolley and positive feed wires shall be placed on opposite sides of track from refuge holes or necks of rooms when so ordered by the department, but wires, when protected as provided for in paragraph (a) of this subsection, may be placed across the necks of rooms. Switches or circuit breakers shall be provided to control the current at the mine and all important sections in the mine;
- (e) All power wires and cables in hoisting shafts or manway compartments shall be properly insulated, substantially fixed, and well protected;
- (f) Ground wires for low-voltage circuits shall be at least one-half (1/2) as large as the circuit wires;
- (g) Extra length or long trailing cables shall be spread out in long open loops on clean, well rock-dusted floor where the cable can be protected against mechanical injury, but cables in suspended long loops shall be acceptable;
- (h) One (1) temporary splice may be made in any trailing cable. No temporary splice shall be made in a trailing cable within twenty-five (25) feet of the machine except cable reel equipment. Temporary splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Trailing cables or hand cables which have exposed wires or which have splices that heat and spark under load shall not be used;
- (i) Single conductor trailing cables shall not be used on cutting machines;
- (j) Three-phase alternating-current circuits used underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the power center, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all the electrical equipment supplied power from that circuit;
- (k) The frames of hand-held electrically driven tools and portable sump pumps shall be properly grounded, and the hand-held tools and portable pumps shall be properly protected by fuses, circuit breakers, or other no less effective devices to provide the minimum overload and shortcircuit protection required by the department;
- (l) All pump frames and all pipe lines shall be grounded to the rail or the grounding system at~~[-about]~~ two hundred (200) foot intervals, except nonmetallic pipes or pipes using insulated type couplings or pipes installed remotely from track or power systems;
- (m) Where track is used for the return circuit, at least one (1) side shall be bonded to the full length of the trolley wire installation. Cross-bonds shall be installed not to exceed two hundred (200) foot intervals along the track;
- (n) ~~After June 16, 1972,~~ All underground high-voltage transmission cables shall be installed only in regularly inspected air courses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, guarded where men regularly work or pass under them unless they are six

and one-half (6-1/2) feet or more above the floor or rail, securely anchored, properly insulated, and guarded at ends, and covered, insulated, or placed to prevent contact with trolley wires and other low-voltage circuits. Underground high-voltage cables used in resistance grounded systems shall be equipped with metallic shields around each power conductor, with one (1) or more ground conductors having a total cross-sectional area of not less than one-half (1/2) the power conductor, and with an insulated internal or external conductor not smaller than No. 8 (AWG) for the ground continuity check circuit;

- (o) High voltage cables shall have disconnecting switches, overload protective devices, and lightning arresters at or near the outside end of the cable;
  - (p) Permanent battery charging stations, permanent pump installations, motor generator sets, rotary converters, and oil filled transformers and switches used underground shall be housed in fireproof enclosures ventilated by a separate split of air direct to the main return. Underground stations containing transformers or circuit breakers filled with inflammable oil shall be provided with door sills or their equivalent, which will confine the oil if leakage or rupture occur, and shall be of fireproof construction. Underground transformers purchased after June 16, 1972, shall be air cooled or cooled with noninflammable liquid or inert gas. Sectional type portable power centers, portable transformers, and distribution centers which are essentially fireproof are not required to be placed on separate splits of air but shall be stationed in well ventilated places out by last open crosscuts;
  - (q) All mine locomotives shall be fused or otherwise protected at the switch or at the nip;
  - (r) Suitable firefighting equipment shall be located at strategic points along the belt conveyor, and proper fire extinguishers shall be provided at the transfer points. The commissioner may prescribe any other safety measures for the prevention and combating of mine fires as they pertain to conveyor belts. ~~After June 16, 1972, only~~ Only approved flame resistant belting shall be taken into and used inside any mine, and all underground belt conveyors shall be provided with slippage and sequence switches and with controls at locations recommended by the mine inspector. This does not prevent the use of belting which is being used on June 16, 1972, but the use of rubber belting shall be under such conditions as may be prescribed by the commissioner;
  - (s) Telephone lines shall be provided with lightning arresters where the lines enter the mine and at the boxes on the outside;
  - (t) Telephone lines crossing trolley wires shall be carefully guarded in a nonconductive conduit;
  - (u) Insulating mats shall be placed in front of switchboards, beside stationary motors, in decks of locomotives, and all electrical installations where required;
  - (v) Ground wires in trailing cables shall be tested periodically for open circuit and high resistance joints;
  - (w) Power circuits in tipples, buildings, cleaning plants, etc., and all inside electrical circuits shall be deenergized when not in use over a long period; and
  - (x) Where electric circuits cross over or pass under belt conveyors the wiring shall be protected by conduit.
- (2) The following shall apply to surface installations:
- (a) High-voltage lines shall be at least twenty (20) feet above the ground where there is a possibility of contact by traffic passing underneath;
  - (b) Protective barriers shall be so constructed between high-voltage wires and telephone wires, trolley circuits, and any other similar conveyor wires or circuits as to prevent their failure by the falling of the high tension lines across the other circuits, wires, or conveyors;
  - (c) On four (4) wire circuits, the fourth or neutral wire terminating at transformers, or elsewhere, shall be of substantial construction to minimize any possibility of the wire being ~~severed~~~~cut in two (2)~~ or damaged mechanically;
  - (d) On low-voltage circuits, wires shall be supported on insulators except when cables made for use without insulators, which are of a design that can be safely used without insulators, are used;
  - (e) Lightning arresters shall be installed on all circuits entering a mine, regardless of voltage. Overload protection and disconnect switches of sizes and ratings approved by the department shall also be provided;



- (f) Every metallic building in which electricity is used or connected with any circuit shall be effectively grounded;
  - (g) All transformer tanks shall be effectively grounded;
  - (h) Switch boxes, contactors, controllers, and all other similar devices shall be kept free of dust accumulations; and
  - (i) Surface transformer stations shall be housed or fenced in when lower than fifteen (15) feet above the earth, and the fences shall be a minimum of six (6) feet in height.
- (3) (a) Notwithstanding any provisions of subsections (1) or (2) of this section, the department may authorize the construction, maintenance, operation, or conducting of any activity regulated by this section, to be constructed, maintained, operated, or conducted in a different manner than specified in any provision of subsections (1) or (2) of this section, when scientific or engineering information is made available to the department substantially indicating that the different manner would afford equal or greater protection and safety than the manner required in subsections (1) or (2) of this section; and
- (b) The department may prescribe ~~any other~~ administrative regulations with respect to the aboveground or underground installations in connection with any mine operation when information is made available indicating that regulation is reasonably necessary to prevent injury to, or loss of, life and property.

Section 19. KRS 352.230 is amended to read as follows:

- (1) ~~[After June 16, 1972,]~~ All electrical equipment purchased for face use in underground mines shall be of the permissible type. The commissioner or his authorized representative shall reject any modification to mining equipment which would endanger the health or safety of employees.
- (2) No person shall be placed in charge of electrical face equipment in any mine unless he is a qualified person, capable of determining the safety of the roof, face, and ribs of the working places and detecting the presence of explosive gas ~~[where necessary]~~. Operators of electrical face equipment shall undergo an examination to determine their fitness to detect explosive gas before they are permitted to have charge of electric face equipment and shall have a minimum of forty-five (45) days of actual mining experience. Safety committeemen, shotfirers, and others whose duty may require them to make examination for gas shall undergo and pass an examination or possess a mine foreman's certificate before using a flame-safety lamp underground. The examination shall be given by the mine inspector, blank forms therefor to be furnished by the department. A copy shall be retained on file at the mine office and the original shall be sent to the department fully made out and signed by the applicant and approved by the mine inspector.
- (3) No electric face equipment shall be brought ~~inby~~ ~~[within]~~ the last breakthrough next to the working face until the equipment operator has made an inspection for explosive gas using a flame-safety lamp or other approved device or instrument in the place where the equipment is to work, unless the examination is then made by some other competent person authorized and appointed for that purpose by the mine foreman. If any explosive gas is found in the place, the electric equipment shall not be taken in until the gas is removed.
- (4) While the electric equipment is operating at the face, an examination for gas shall be made at not more than twenty (20) minute intervals. If gas is found in excess of one percent (1%), the power shall be disconnected from the equipment and left disconnected until the gas is removed and the place reported safe by a certified official.
- (5) Headlights shall be installed and maintained in a permissible and working order on all mobile and face equipment at all times the equipment is in operation.
- (6) Headlights shall be mounted to provide maximum illumination where it will be most effective and shall be protected from damage by guarding or locations.
- (7) At all times when mining equipment is being used, it shall be maintained in safe working order.

Section 20. KRS 352.260 is amended to read as follows:

- (1) Any operator of a mine shall designate only certified persons as shotfirers to prepare the cartridge and set off and discharge the shots.
- (2) Shotfirers shall at all times be under the direction of *a certified* ~~[the]~~ mine foreman.
- (3) The following conditions apply when shooting coal from the solid:

- (a) ~~All licensees~~~~[After July 15, 1982, all coal mine operators]~~ engaged in shooting coal from the solid shall submit an application for a permit to the commissioner on a form prescribed by the department.
- (b) Before said permit is issued by the commissioner he shall have an investigation conducted of the mine to determine the adequacy of the proposed solid blasting plan in complying with **KRS Chapter 351 and this chapter**~~[all state laws]~~ and **administrative** regulations applicable to blasting **coal in an** underground **mine**~~[coal]~~.
- (c) The mine inspector shall have the authority to stop production at the mine by the issuance of a closure order to any operator who fails to obtain a permit when shooting coal from the solid.
- (4) When using the method of solid blasting, no more than one (1) face shall be charged or detonated simultaneously.
- (5) When shooting coal from the solid, not more than two (2) adjacent openers or cut holes shall be primed with detonators having the same delay period. The nominal delay intervals between the succeeding rows of horizons shall not be less than fifty (50) milliseconds nor more than one hundred (100) milliseconds.

Section 21. KRS 352.290 is amended to read as follows:

A suitable record book shall be kept at the mine office of every mine wherein fire bosses are employed, and immediately after the examination of the mine or any portion thereof, by a fire boss, he shall enter and sign a record of the examination in the book with ink~~[or indelible pencil]~~. The record shall clearly show the time taken in making the examination, the nature and location of any danger discovered in the mine, and what has been done to correct dangerous conditions. If any danger is discovered, the fire boss shall immediately report its location to the mine foreman, or in his absence to the assistant mine foreman in charge, who shall take immediate action to remove the danger. When a station is located inside a mine the fire boss shall enter and sign a report both in the record book kept there and in a record book in the mine office on the surface. The record books of the licensee shall at all times during working hours be accessible to the mine inspector and the miner or his representative.

Section 22. KRS 352.310 is amended to read as follows:

Any fire boss who fails to perform his duties, or who makes a false report of the condition of any place in the portion of the mine allotted to him for examination, shall be suspended by the mine foreman, and his name shall be given to the mine inspector for prosecution. If he is found guilty **by the board**, he shall return his certificate of qualification~~[as fire boss]~~ to the department.

Section 23. KRS 352.320 is amended to read as follows:

- (1) All commercial coal mines shall employ a certified mine foreman therein to properly carry out the plans and rules when approved by the commissioner of the department and to be responsible for compliance with the provisions of **KRS Chapter**~~[Chapters]~~ 351 and **this chapter**~~[352]~~.
- (2) When the mine workings become so extensive that the mine foreman is unable personally to carry out the duties required of him by law, the operator or superintendent shall employ a sufficient number of persons holding suitable certificates of qualifications to act as assistants to the mine foreman, and under his instructions.

Section 24. KRS 352.340 is amended to read as follows:

The mine foreman or his assistants shall visit and carefully examine each working place in the mine **at least** every four (4) hours~~[or oftener]~~ while the mine employees are at work. He shall examine as live workings, on regular inspections, all places in live sections that are temporarily abandoned. If the mine foreman finds any place to be in a dangerous condition, he shall not leave the place until it is made safe, or until the employees working therein are removed until the place is made safe. He shall see that every mine liberating explosive gas is kept free of standing gas in all working places and roadways, and that all accumulations of explosive or noxious gases in the worked-out or abandoned portions of any mine are removed as soon as possible after discovery. He shall ensure that all preshift examinations are conducted by a certified person and that examinations of conveyor belts have been conducted. He shall not allow any person who may be endangered by the presence of explosive or noxious gases to enter that portion of the mine until the gases have been removed. He shall direct and see that all dangerous places and the entrances to worked-out and abandoned places in all mines are properly barricaded across the openings, so that no person will enter, and that danger **signs**~~[signals]~~ are posted upon the barricade to warn persons of existing danger. He shall give prompt attention to the removal of all dangers reported to him by his assistants, the fire boss or any person working in the mine, and if it is impracticable to remove the danger at once he shall notify every person whose safety is menaced

thereby to remain away from the portion where the dangerous condition exists. He or his assistants, fire bosses, or other certified persons shall, at least once every week, travel and examine all air courses, escapeways, seals on the return, roads, and openings that give access to old workings or pillar falls, and make a record of the condition of all places where danger has been found. The record shall be made with ink ~~or indelible~~ pencil in the record book provided for that purpose.

Section 25. KRS 352.350 is amended to read as follows:

- (1) The mine foreman shall notify, in writing, the *licensee*~~operator~~ or superintendent of the mine of his inability to comply with any of the requirements of the mining laws, and the *licensee*~~operator~~ or superintendent shall at once attend to the matter complained of by the mine foreman so as to enable him to comply with the mining laws.
- (2) The mine foreman shall each day enter and sign plainly with ink ~~or indelible pencil~~, in a book provided for that purpose, a report of the condition of the mine. The report shall clearly state any danger that comes under his observation during the day or is reported to him by his assistants or by the fire bosses, and shall state what action was taken to correct such danger, whether or not there is a proper supply of material on hand for the safe working of the mine, and whether or not the mining laws are being complied with. The mine foreman shall each day read carefully, and countersign with ink ~~or indelible pencil~~, all reports entered in the record book of the fire bosses.
- (3) The mine superintendent, mine foreman and assistant foreman shall be held jointly responsible for the immediate compliance with the provisions of KRS *Chapter*~~Chapters~~ 351 and *this chapter*~~{352}~~.

Section 26. KRS 352.400 is amended to read as follows:

- (1) The licensee of any mine may adopt special rules consistent with KRS *Chapter*~~Chapters~~ 351 and *this chapter*~~{352}~~ for the government and operation of his mine, and covering all the work pertaining thereto in and out of the mine. Before the rules are put into effect they shall be approved in writing by the commissioner. The rules, when adopted and approved in writing by the commissioner, shall be printed on cardboard in the language spoken by seventy-five percent (75%) or more of the employees at the mine, and shall be posted on a bulletin board or some other conspicuous place about the mine where they may be seen by the employees at the mine. Before the rules are so adopted, approved and posted, the representative of the employees at the mine shall be given a copy thereof, and be deemed to have agreed thereto, before the employees are required to obey the rules.
- (2) The mine rules shall be printed in a form prescribed by the commissioner.
- (3) The licensee shall furnish each employee a copy of the mine rules, and each employee shall sign a statement indicating his receipt of a copy of the rules and his agreement to comply with them.
- (4) The mine rules shall be included in the subjects taught during annual retraining of the mine's employees.
- ~~{(5) On or after April 9, 1996, if new mine rules require special safety equipment or protective clothing to be used or worn by the employees, the licensee shall provide the equipment or clothing to the miners at no cost to them.}~~

Section 27. KRS 352.410 is amended to read as follows:

- (1) Each superintendent shall, on behalf and at the expense of the operator, keep on hand at or within convenient distance of the mine, not to exceed 500 feet, a sufficient quantity of all materials and supplies required to preserve the safety of employees, as ordered by the mine foreman and required by law. If the superintendent cannot procure the necessary materials or supplies, he shall at once notify the mine foreman, who shall withdraw the men from the mine until the materials or supplies are received.
- (2) The superintendent shall, at least once each week, read and examine carefully and countersign all reports entered in the mine record book of the mine foreman.
- (3) The operator or superintendent shall cooperate with the mine foreman and other officials in the fulfillment of their duties under KRS *Chapter*~~Chapters~~ 351 and *this chapter*~~{352}~~, and shall direct that the mine foreman and all other employees under him comply with the law, especially when his attention is called by the mine inspector or by the commissioner to any violations of the laws.
- (4) The superintendent shall keep on hand at the mine a supply of printed rules, notices, and record books required by this chapter. The superintendent shall see that rules, notices, and record books are delivered to the proper

persons at the mine and are properly cared for, and that the rules and notices are posted in conspicuous places at or near the entrance to the mine and kept legible.

Section 28. KRS 352.430 is amended to read as follows:

- (1) The operator or superintendent of every mine shall furnish the mine inspector proper facilities for entering the mine and making examinations or obtaining information.
- (2) If any inspector discovers that any mine does not conform to the provisions of KRS ~~Chapter~~**Chapter** 351 and this chapter in respect to the safety of employees, or that by reason of any defect or practice not specifically covered by these chapters in or about the mine, the lives or health of persons employed therein are endangered, he shall immediately issue an emergency order to the licensee or superintendent. If he deems it necessary for the immediate protection from imminent danger of bodily harm of the persons employed in the mine, he shall withdraw the men who may be endangered. If the entire mine is affected by the dangerous condition, all men shall be withdrawn and production shall be halted until all defects causing the imminently dangerous condition are corrected. If an imminent danger affects only a portion of the mine, the persons whose safety may be menaced thereby shall be withdrawn from the affected part of the mine and production halted in that area until the dangerous condition is corrected. However, where production is necessary to correct the unsafe condition, it shall be permitted to that extent, using only the necessary personnel. Production at the affected area of a mine from which men are withdrawn pursuant to this section may be resumed upon reinspection by a mine inspector and a finding by that inspector that the mine is no longer imminently unsafe.
- (3) In all emergency hearings, *a departmental attorney*, the Attorney General, the Commonwealth's attorney, or the county attorney of the judicial circuit or county in which the mine is situated shall appear for the ~~Commonwealth~~**state** and defend the action.

Section 29. KRS 352.460 is amended to read as follows:

If the operator or superintendent of any mine fails to furnish to the commissioner any map required by KRS 352.450 and 352.480, the commissioner may cause a correct survey and map of the mine or extensions thereof to be made at the expense of the owner, lessee or operator of the mine, and the cost of the map shall be recoverable from the owner, lessee or operator in the same manner as debts are recoverable by law. If at any time the commissioner has reason to believe that any map furnished under KRS 352.450 and 352.480 is materially incorrect, so that it will not serve the purpose for which it was intended, he may have a survey and map made or corrected, and the expense of making the survey, map or correction shall be paid by the owner, lessee or operator of the mine, or recovered in the same manner as debts are recoverable by law; but if the map furnished by the operator or superintendent is found to be correct, the expense of the survey and drafting of the map shall be paid by the ~~Commonwealth~~**state**.

Section 30. KRS 352.470 is amended to read as follows:

- (1) The correctness of each map provided for by KRS 352.450 or 352.460 shall be certified only by a professional engineer or land surveyor registered in Kentucky. KRS 322.290 requires registrants to practice only in areas of competence. The certification shall read as follows:

"I, the undersigned, hereby certify that, *to the best of my knowledge and belief*, this map is correct, ~~and that~~~~[shows to the best of my knowledge and belief]~~ all the information required by the mining laws of this ~~Commonwealth is set out within~~**state**, and covers the period ending ....., .... Certifying Agent

Acknowledged before me, a ....., this ..... day of .....

.....

.....SEAL"

- (2) The commissioner may reject any map as incomplete if its accuracy is not so attested.

Section 31. The following KRS sections are repealed:

351.128 Underground mine employing 2 to 25 persons required to employ person with first-aid training.

351.195 Miners required to wear safety glasses.

**Approved March 14, 2000**

**CHAPTER 105****(HB 456)**

AN ACT relating to tobacco.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

***The Commissioner shall promulgate administrative regulations establishing the height and weight requirements of a basket of tobacco when placed on a warehouse floor for the purpose of sale. In establishing the requirements, the Commissioner shall consider traditional height and weight standards for baskets of tobacco, and shall consider experimental marketing standards that may be applied from time to time.***

Section 2. KRS 248.990 is amended to read as follows:

- (1) Any tobacco warehouseman, agent, manager, solicitor, corporation or organization that violates any of the provisions of KRS 248.320 to 248.340 or subsection (3) of KRS 248.350 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100), and, if a corporation, it shall forfeit all corporate rights and privileges.
- (2) Any person who violates any of the provisions of KRS 248.400 shall be fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500).
- (3) Any person who violates any of the provisions of KRS 248.370, ~~or 248.390,~~ 248.440, or willfully violates ***an administrative***~~a~~ regulation of the department, or who refuses to pay the fee provided for by KRS 248.290, shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for not more than three (3) months, or both.
- (4) Any person who violates any of the provisions of KRS 248.410 or 248.420 shall be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000).
- (5) Any person who fails or refuses to post notices in accordance with subsection (1) of KRS 248.430 shall be fined not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for each day of failure or refusal.
- (6) Any person who violates subsection (2) of KRS 248.430 shall be fined five hundred dollars (\$500) for each offense.
- (7) Any person who violates any of the provisions of subsection (1) of KRS 248.450 shall be fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500) for each offense.
- (8) Any person who violates any of the provisions of subsection (2) of KRS 248.450 shall be fined not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for each day of violation.
- (9) Any person who violates KRS 248.610 shall be fined not less than \$100 nor more than \$1,000, or imprisoned in the county jail for not more than one (1) year, or both.
- (10) Any person who violates any of the provisions of subsection (1) or subsection (2) of KRS 248.350 shall for each offense be fined not less than fifteen hundred dollars (\$1,500) nor more than three thousand dollars (\$3,000), or be imprisoned for not less than three (3) months nor more than twelve (12) months, or both.

Section 3. The following KRS section is repealed:

248.390 Maximum height and weight of baskets of tobacco.

**Approved March 14, 2000**

**CHAPTER 106****(HB 466)**

AN ACT relating to sports.

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

Section 1. KRS 229.051 is amended to read as follows:

Before a permit is granted to any person to hold, ***promote, or act as a booker for*** a professional boxing or a wrestling match or exhibition, the applicant shall file with the commission a bond in the sum of five thousand dollars (\$5,000), to be approved as to form and the sufficiency of the sureties by the commission, conditioned for the payment of the tax imposed by KRS 229.031. Upon the approval of the bond, the commission shall issue to the applicant a certificate of filing and approval, which shall be filed by the applicant with the commission, with the application for the permit. ~~The~~~~[No such]~~ permit shall ***not*** be issued until ~~the~~~~[such]~~ certificate has been filed.

Section 2. KRS 229.081 is amended to read as follows:

~~A~~~~[No]~~ person shall ***not*** participate in a professional match in any of the following enumerated capacities ***or in any other capacity as set out in administrative regulations promulgated by the commission*** without holding a license issued by the commission and meeting all eligibility requirements as established by the commission by promulgation of administrative regulations:

- (1) Contestant;
- (2) Judge;
- (3) Manager;
- (4) Physician;
- (5) Referee;
- (6) Timekeeper; or
- (7) Trainer.

Licenses issued under this section shall expire on December 31 of the year in which they are issued. The commission may establish a schedule of compensation to be paid to officials for participating in a professional match by promulgation of administrative regulations. The compensation shall be paid by the person conducting the match, and by no other person.

Section 3. KRS 229.101 is amended to read as follows:

~~A~~~~[No]~~ boxing or wrestling match or exhibition shall ***not consist***~~[be]~~ of more than twelve (12) rounds~~[in length except championship matches, which shall be limited in the discretion of the commission].~~

Section 4. KRS 229.111 is amended to read as follows:

Contestants in a professional boxing or wrestling match or exhibition shall be examined by a reputable licensed physician appointed by the commission, and shall ***meet the health and fitness requirements as established in administrative regulations promulgated by the commission***~~[be in excellent health]~~ before participating in such a boxing or wrestling match or exhibition.

Section 5. KRS 229.240 is amended to read as follows:

All peace officers, ~~who are~~~~[on being]~~ informed or ~~who have~~~~[having]~~ reason to believe that a professional match that is ~~in violation of~~~~[not authorized under]~~ this chapter ***or administrative regulations promulgated in accordance with this chapter*** is about to take place, or that there is training or preparation for such a contest, in any place within their jurisdiction, shall suppress and prevent it. For this purpose any peace officer may enter any place where such contest is being~~[held]~~ or will be held or where there is training or preparation for such a contest and may arrest without a warrant any person who does not submit satisfactory proof that he ***or she*** has ~~the~~~~[whatever]~~ license or permit~~[is]~~ required by this chapter.

Section 6. KRS 229.991 is amended to read as follows:

- (1) Any person who violates subsection (1) of KRS 229.071 or subsection (1) of KRS 229.021 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoned in the county jail for not more than six (6) months, or both.
- (2) Any person who violates subsections (2), (3) or (4) of KRS 229.021 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned in the county jail for not more than ninety (90) days, or both.

- (3) Any person who violates KRS 229.081 where ~~the [such]~~ violation does not constitute a violation of KRS 229.021, shall be fined not less than **one hundred dollars (\$100)**~~[twenty five (\$25)]~~ nor more than five hundred dollars (\$500).
- (4) Any peace officer who willfully fails to execute the duties required of him by KRS 229.240 shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500).
- (5) Any person who violates any of the provisions of this chapter for which no specific penalty is provided shall be fined not less than ten **dollars** (\$10) nor more than one hundred dollars (\$100).
- (6) Any person who fails to pay the taxes required by KRS 229.031 or ascertained to be due under KRS 229.041 together with the expenses incurred in the examination, within twenty (20) days after notice to the delinquent person of the amount fixed by the commission shall ipso facto forfeit his license. In addition he shall forfeit and pay into the State Treasury an additional amount equal to the taxes found to be due.
- (7) Any person who violates the provisions of KRS 229.121 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) and no person who has been guilty of such an offense shall be allowed to participate in any boxing or wrestling match or exhibition for one (1) year after being found guilty of the offense.
- (8) Any person failing to make the report required by subsections (2) or (4) of KRS 229.031 shall be liable for any tax the Commonwealth may lose as a result of his failure to make the required report.

**Approved March 14, 2000**

## CHAPTER 107

### (HCR 12)

A CONCURRENT RESOLUTION confirming the appointment of Jennifer M. Headdy to the Kentucky Long-Term Policy Research Center Board.

WHEREAS, KRS 7B.030 requires the Governor to appoint six at-large members of the Kentucky Long-Term Policy Research Center Board, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by Executive Order 99-1338 and letter of October 5, 1999, the Governor appointed Jennifer M. Headdy and submitted her appointment for legislative confirmation; and

WHEREAS, the House of Representatives and the Senate find that Jennifer M. Headdy meets the age and residency requirements of KRS 7B.030 and has demonstrated an interest in the well-being and development of the Commonwealth, as required by that statute;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. That the House of Representatives and the Senate do confirm the appointment of Jennifer M. Headdy to the Kentucky Long-Term Policy Research Center Board for a term expiring October 6, 2003.

Section 2. That the Clerk of the House of Representatives shall send a copy of this Resolution, and notification of its adoption, to Ms. Jennifer M. Headdy, 914 North Main Street, Henderson, Kentucky 42420 and to Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601.

**Approved March 14, 2000**

## CHAPTER 108

### (HCR 81)

A CONCURRENT RESOLUTION confirming the appointment of Ronald J. Carson to the Kentucky Long-Term Policy Research Center Board.

WHEREAS, KRS 7B.030 requires the Governor to appoint six at-large members of the Kentucky Long-Term Policy Research Center Board, subject to confirmation by the House of Representatives and the Senate; and

WHEREAS, by Executive Order 99-1694 and letter of December 21, 1999, the Governor appointed Ronald J. Carson to an unexpired term on the Kentucky Long-Term Policy Research Center Board and submitted his appointment for legislative confirmation; and

WHEREAS, the House of Representatives and the Senate find that Ronald J. Carson meets the age and residency requirements of KRS 7B.030 and has demonstrated an interest in the well-being and development of the Commonwealth, as required by that statute;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. That the House of Representatives and the Senate do confirm the appointment of Ronald J. Carson to the Kentucky Long-Term Policy Research Center Board for an unexpired term ending October 6, 2002.

Section 2. That the Clerk of the House of Representatives shall send a copy of this Resolution, and notification of its adoption, to Mr. Ronald J. Carson, 215 Evergreen Road, Frankfort, Kentucky 40601 and to Governor Paul E. Patton, Room 100, State Capitol, Frankfort, Kentucky 40601.

**Approved March 14, 2000**

## **CHAPTER 109**

### **(HCR 29)**

A CONCURRENT RESOLUTION confirming the appointment of Judy Lyne to the Kentucky Long-Term Policy Research Center Board.

WHEREAS, KRS 7B.030 requires the Legislative Research Commission to appoint five at-large members of the Kentucky Long-Term Policy Research Center Board, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, on July 8, 1998, the Legislative Research Commission appointed Judy Lyne to the Long-Term Policy Research Center Board and by letter of December 14, 1999, has submitted her appointment for the General Assembly's confirmation; and

WHEREAS, the House of Representatives and the Senate find that Judy Lyne meets the age and residency requirements of KRS 7B.030 and has demonstrated an interest in the well-being and development of the Commonwealth, as required by that statute;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. That the House of Representatives and the Senate do confirm the appointment of Judy Lyne to the Kentucky Long-Term Policy Research Center Board for a term expiring July 13, 2002.

Section 2. That the Clerk of the House of Representatives shall send a copy of this Resolution, and notification of its adoption, to Mrs. Charles (Judy) Lyne, 1068 Lyne-Johnson Road, Olmstead, Kentucky 42265-9132.

**Approved March 14, 2000**

## **CHAPTER 110**

### **(HJR 15)**

A JOINT RESOLUTION directing the Transportation Cabinet to name the bridge currently under construction connecting US 25E and US 119 over the Cumberland River in honor of Joan Asher Cawood.

WHEREAS, Joan Asher Cawood, who was born on November 20, 1934, in Bell County, Kentucky, is the fourth generation of the Asher family to serve the people of Bell County, Eastern Kentucky, and the entire Commonwealth through public service both as elected officials and in appointed posts; and



WHEREAS, the Asher family name has become synonymous with development through the family's efforts in establishing the first railroad from Pikeville to Harlan and the building of roads and bridges that helped open up an isolated region; and

WHEREAS, Joan Asher Cawood's great-grandfather, Thomas Jefferson Asher, whose work in the coal and railroad industries helped provide jobs and foster development in Eastern Kentucky, was elected in 1913 by the citizens of Bell County to the office of County Judge and served without accepting a salary; and

WHEREAS, Joan Asher Cawood's grandfather, Hugh Howard Asher, served as State Highway Commissioner in the 1920's and later served as the Chairman of the Republican Party in Bell County; and

WHEREAS, Joan Asher Cawood's father, Thomas Edward Asher, was elected to serve as both Magistrate and Jailer in Bell County, served as Chief U.S. Marshal for the Eastern District of Kentucky from 1969 until his retirement in 1977, served as Republican Party Chairman, and was named to the Republican Hall of Fame in the 5th Congressional District for his extraordinary public service; and

WHEREAS, Joan Asher Cawood's contribution to her family's long history of public service began with her election as Bell County Clerk in 1977; and

WHEREAS, Joan Asher Cawood continues her uninterrupted service to the people of Bell County as County Clerk to this day; and

WHEREAS, Joan Asher Cawood, in the most recent election of 1998, was elected by the largest margin in a county election in the history of Bell County; and

WHEREAS, Joan Asher Cawood is a devoted and loving mother of three fine sons: Paul C. Cawood, Jr., William E. Cawood, and Howard A. Cawood; and

WHEREAS, Joan Asher Cawood has also been an active force in the civic and community life of Bell County through her involvement in the First Presbyterian Church, the Business and Professional Women's Club, and the Republican Women's Organization, among other organizations; and

WHEREAS, the accomplishments and service of Joan Asher Cawood and the entire Asher family deserve lasting recognition;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. The Transportation Cabinet is directed to name the bridge currently under construction connecting US 25E and US 119 over the Cumberland River the "Joan Asher Cawood Bridge".

Section 2. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "Joan Asher Cawood Bridge" to facilitate their erection upon completion of the bridge.

Section 3. A copy of this Resolution shall be sent to the Secretary of the Transportation Cabinet and to the District Highway Engineer in Manchester, Kentucky.

**Approved March 14, 2000**

## CHAPTER 111

### (HJR 39)

A JOINT RESOLUTION directing the Transportation Cabinet to name various roads and bridges in Floyd County in accordance with KRS 177.074.

WHEREAS, the Civil War was a defining moment in this great nation's history, a time when the very fate of the Union hung in the balance; and

WHEREAS, a strategic Civil War battle occurred on January 10, 1862, at Middle Creek in Floyd County, Kentucky; and

WHEREAS, the Battle of Middle Creek was the largest single Civil War battle in Eastern Kentucky; and

WHEREAS, the Confederate Forces in the Battle of Middle Creek were bravely led by Brigadier General Humphrey Marshall; and

WHEREAS, the Union Forces in the Battle of Middle Creek were led by Colonel James A Garfield, who would later become the 20th President of the United States; and

WHEREAS, Middle Creek Battlefield was named a National Historic Landmark by the United States Department of the Interior, National Park Service in October, 1992; and

WHEREAS, it is fitting that we remember this battle and the heroic men who fought in it;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. That the Transportation Cabinet is directed to name Kentucky Route 114 in Floyd County the "Middle Creek National Battlefield Parkway."

Section 2. That the Transportation Cabinet is directed to name Kentucky Route 404 in Floyd County the "Floyd County Civil War Highway."

Section 3. That the Transportation Cabinet is directed to name the bridge on Kentucky Route 404 over the Right Fork of Middle Creek in Floyd County the "Brigadier General Humphrey Marshall Bridge."

Section 4. That the Transportation Cabinet is directed to name the bridge on Kentucky Route 114 over Middle Creek at Kentucky Route 122 in Floyd County the "Colonel James A. Garfield Bridge."

Section 5. That the Transportation Cabinet is directed to name the bridge on Kentucky Route 114 over the CSX Railway at Kentucky Route 2555 in Floyd County the "Middle Creek National Battlefield Bridge."

Section 6. That the Transportation Cabinet shall immediately begin preparing the appropriate highway "brown" signs naming the routes described in Sections 1 to 5 of this Resolution to facilitate and coordinate their placement and erection with the Middle Creek Battlefield Foundation, Inc. upon the effective date of this Resolution.

Section 7. That the Clerk of the House of Representatives is directed to transmit copies of this Resolution to the Secretary of the Transportation Cabinet and to the District Highway Engineer in Pikeville, Kentucky.

**Approved March 14, 2000**

## **CHAPTER 112**

### **(HJR 72)**

A JOINT RESOLUTION directing the Transportation Cabinet to name a portion of Kentucky Route 15 in Perry County in memory of Edward L. "Buggy" Clemons.

WHEREAS, Edward L. "Buggy" Clemons was a life-long resident of Hazard, Kentucky; and

WHEREAS, Edward L. "Buggy" Clemons was a tireless supporter of local schools and was very involved in myriad civic organizations; and

WHEREAS, Edward L. "Buggy" Clemons, as a prominent local businessman, was a major employer in Perry County;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. The Transportation Cabinet is directed to name the portion of Kentucky Route 15 in Perry County from Hazard High School to Hazard Community College the "Edward L. "Buggy" Clemons Memorial Highway".

Section 2. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "Edward L. "Buggy" Clemons Memorial Highway" to facilitate their erection upon the effective date of this Resolution.

Section 3. The Clerk of the House of Representatives is directed to transmit copies of this Resolution to the Secretary of the Transportation Cabinet and to the District Highway Engineer in Jackson, Kentucky.

**Approved March 14, 2000**

**CHAPTER 113****(HJR 76)**

A JOINT RESOLUTION directing the Transportation Cabinet to rename Kentucky Route 168 in Boyd County in honor of former County Judge/Executive Paul F. Purvis.

WHEREAS, Paul F. Purvis became a resident of the City of Ashland in Boyd County at the age of three (3); and

WHEREAS, Paul F. Purvis worked and owned Valley Auto Supply in Ashland for many years; and

WHEREAS, Paul F. Purvis has been a dedicated activist in civic, community, and religious organizations for over forty-five (45) years; and

WHEREAS, Paul F. Purvis began his political career in 1973 when he was elected Boyd County Commissioner; and

WHEREAS, recognized as an altruistic public servant, the citizens of Boyd County elected Paul F. Purvis County Judge/Executive in 1977; and

WHEREAS, Paul F. Purvis served two (2) terms as Boyd County Judge/Executive before retiring from elected office;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. The Transportation Cabinet shall rename Kentucky Route 168 in Boyd County, from the junction with United States Route 23 at Catlettsburg to the junction with United States Route 23 north of the City of Ashland, in honor of former County Judge/Executive Paul F. Purvis.

Section 2. The Transportation Cabinet is directed to erect signs at each junction mentioned in Section 1 of this Resolution that read as follows: "The Paul F. Purvis Highway". The signs shall be erected within thirty (30) days of the effective date of this Resolution.

**Approved March 14, 2000**

**CHAPTER 114****(HJR 70)**

A JOINT RESOLUTION directing the Public Protection and Regulation Cabinet and the Natural Resources and Environmental Protection Cabinet to enter into a memorandum of understanding regarding the underground petroleum storage tank program and declaring an emergency.

WHEREAS, the Commonwealth has determined that the environmental risks from leaking underground petroleum storage tanks must be addressed by regulating the installation, operation, and closure of the tanks, corrective action for leaks from the tanks, and by providing a financial mechanism to help pay for correction action for those leaks; and

WHEREAS, the Public Protection and Regulation Cabinet, through its Office of Petroleum Storage Tank Environmental Assurance Fund, has the responsibility of administering the fund which is used to help pay for tank corrective action and the Natural Resources and Environmental Protection Cabinet has the responsibility to regulate the operation and closure of underground petroleum storage tanks, and corrective action for leaks from those tanks; and

WHEREAS, a failure of the two agencies to work more closely in making decisions on how site clean-ups should be conducted has led to persistent concerns about cost overruns, inappropriate expenses, and fraudulent claims; and

WHEREAS, better communication and coordination between the two agencies would help achieve the state purpose of managing the risks to human health, safety, and the environment arising from the use of underground petroleum storage tanks, while preserving the financial soundness of the fund, and allowing the fund to be used cost effectively to clean up more sites;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. The Public Protection and Regulation Cabinet and the Natural Resources and Environmental Protection Cabinet shall immediately negotiate and enter into a memorandum of understanding (MOU) for the following purposes:

(1) To clearly define the respective responsibilities, authority, and resources assigned to each agency to achieve the purposes set out in Subchapter 60 of KRS Chapter 224 and coordinate those responsibilities, authority, and resources to protect human health, safety, and the environment while making cost effective use of the fund;

(2) To set out that the Natural Resources and Environmental Protection Cabinet's technical review of site investigations and remediation plans be conducted in a way that requires protection of human health, safety, and the environment;

(3) To set out that the Public Protection and Regulation Cabinet's review of site investigations and remediation plans be conducted in a way that requires the most cost effective approach to protecting human health, safety, and the environment;

(4) To share information relating to identifying, investigating, and cleaning up releases at underground petroleum storage tank sites; and

(5) To jointly establish criteria to prioritize the investigation and clean-up of existing sites where releases have occurred and to estimate future site remediation needs and jointly establish a schedule to achieve clean-ups at these sites in a manner to protect human health, safety, and the environment through the most efficient and cost effective means.

Section 2. The agencies shall submit a draft memorandum of understanding to the House Committee on Natural Resources and Environment and the Senate Committee on Agriculture and Natural Resources, if the General Assembly is in session, or to Interim Joint Committee on Agriculture and Natural Resources if the General Assembly is not in session.

Section 3. The agencies shall jointly report to the Interim Joint Committee on Agriculture and Natural Resources by July 30 immediately preceding a regular session of the General Assembly on the status of the memorandum of understanding.

Section 4. Whereas coordination between the Public Protection and Regulation Cabinet and the Natural Resources and Environmental Protection Cabinet is necessary to protect human health, safety, and the environment through the efficient operation of the underground petroleum storage tank program and at the lowest effective cost to the fund, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved March 15, 2000**

## **CHAPTER 115**

**(HB 203)**

AN ACT relating to agricultural districts.

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

Section 1. KRS 262.850 is amended to read as follows:

- (1) This section shall be known as "the Agricultural District and Conservation Act."
- (2) It is the policy of the state to conserve, protect and to encourage development and improvement of its agricultural lands for the production of food and other agricultural products. It is also the policy of this state to conserve and protect the agricultural land base as a valuable natural resource which is both fragile and finite. The pressure imposed by urban expansion, transportation systems, water impoundments, surface mining of mineral resources, utility rights-of-way and industrial development has continually reduced the land resource base necessary to sufficiently produce food and fiber for our future needs. It is the purpose of this section to provide a means by which agricultural land may be protected and enhanced as a viable segment of the state's economy and as an important resource.

- (3) The local governing administrative body for an agricultural district shall be the conservation district board of supervisors. The Soil and Water Conservation Commission shall be responsible for statewide administration of the agricultural district program and shall have sole authority to certify or deny agricultural district petitions. The commission may apply for assistance and funds from the Federal Farmland Protection Act of 1981 (PL 97-377) which may be available for the development of the agricultural district program and may accept easements as provided in KRS 65.410 to 65.480.
- (4) Any owner or owners of land may submit a petition to the local conservation district board of supervisors requesting the creation of an agricultural district within the county. The petition shall include a description of the proposed area, description of each land parcel, location of the proposed boundaries, petitioners' names and addresses, adjacent landowners' names and addresses, and other pertinent information as required in the petition application. The boundary of an agricultural district shall be contiguous. No land shall be included in an agricultural district without the consent of the owner.
- (5) Upon receipt of a petition, the local conservation district board of supervisors shall notify the fiscal court and any local or regional planning or zoning body, if any, by sending a copy of the petition and accompanying materials to that body.
- (6) The following factors shall be considered by the local conservation district board of supervisors and the Soil and Water Conservation Commission when considering the formation of any agricultural district:
  - (a) The capability of the land to support agricultural production, as indicated by: soil, climate, topography or other natural factors;
  - (b) The viability of active farmlands, as indicated by: markets for farm products, extent and nature of farm improvements, present status of farming, anticipated trends in agricultural economic conditions and technology;
  - (c) That the proposed agricultural district meets the minimum size limit of two hundred fifty (250) contiguous acres, unless the local conservation district board and the Soil and Water Conservation Commission allow fewer than two hundred fifty (250) contiguous acres if the proposed area meets a minimum annual production performance established by the district board and approved by the commission;
  - (d) County development patterns and needs and the location of the district in relation to any urban development boundaries within the county;
  - (e) Any matter which may be relevant to evaluate the petition; and
  - (f) Whether an application is from more than one (1) farm owner, in which case a preference shall be given to the application.
- (7) The local soil and water conservation district board of supervisors shall review the petition application and submit a recommendation to the Soil and Water Commission within sixty (60) days of receipt. The local conservation district recommendation shall be submitted to the commission in the form of approval, approval with modifications, or denial of the petition accompanied by justification for such a denial.
- (8) The Soil and Water Conservation Commission shall review the recommendation of the district board of supervisors and certify or deny the agricultural district's petition within sixty (60) days of receipt.
- (9) Upon the approval of a petition by the Soil and Water Conservation Commission, the commission shall notify the area development district in which the agricultural district will lie, the local county clerk, and the secretary of the Governor's Cabinet.
- (10) Land within the boundary of an agricultural district shall not be annexed.
- (11) ***The owners of land within the boundary of an agricultural district shall be exempt under Section 2 of this Act from any assessment authorized for the extension of water service lines until the land is removed from the district and developed for nonagricultural use.*** Any member, or any successor heir of the member, of an agricultural district may withdraw from the district upon notifying the local conservation district board of supervisors in writing.
- (12) It shall be the policy of all state agencies to support the formation of agricultural districts as a means of preserving Kentucky's farmlands and to mitigate the impact of their present and future plans and programs upon the continued agricultural use of land within an agricultural district.

- (13) Agricultural districts shall be comprised only of agricultural land as defined in KRS 132.010.
- (14) An agricultural district shall be established for five (5) years with a review to be made by the local soil and water conservation district board of supervisors at the end of the five-year period and every five (5) years thereafter. Each owner of land shall agree to remain in the district for a five (5) year period, which is renewable at the end of the five (5) years. However, the board shall make a review any time upon the written request of a local government which demonstrates that the review is necessary in order to consider development needs of the local government. The board shall consider whether the continued existence of the district is justified, any adjustments which may be necessary due to urban or county development, and other factors the board finds relevant. The board shall revise the district as necessary based on the review and subject to approval of the State Soil and Water Conservation Commission. Before the state commission takes final action, all interested parties shall be given the opportunity to request the state commission to amend or overturn the local board's decision.
- (15) The withdrawal of a member from a district reducing the remaining acreage of agricultural district land to less than two hundred fifty (250) acres or resulting in the remaining land being noncontiguous shall not cause the decertification of the district.
- (16) Any member of an agricultural district who has received a summons of condemnation proceedings being instituted concerning the member's land located in the district may request the local soil and water conservation district board of supervisors to hold a public hearing on the proposed taking of land. However a hearing under this section shall not be held if the petitioner in the condemnation proceeding is a utility as defined in KRS 278.010(3) and obtained a certificate of convenience and necessity as required by KRS 278.020(1).
- (17) (a) The board shall notify the local property valuation administrator of the farms which belong to an agricultural district and whenever a farm is withdrawn from a district. The board shall also inform all members of a district of the right to have their land assessed by the local property valuation administrator at the land's agricultural use value and shall offer advice and assistance on obtaining such an assessment.
- (b) The board shall also notify the local property valuation administrator whenever a farm is released or withdrawn from an agricultural district.
- (18) The board may allow an amendment to an existing certified agricultural district if approved by the commission.

SECTION 2. A NEW SECTION OF KRS CHAPTER 74 IS CREATED TO READ AS FOLLOWS:

- (1) *When a water district extends its water lines within its district or extends its water lines under KRS 74.110 beyond the district's territorial limits, and the extension would benefit land within an agricultural district created under Section 1 of this Act, the assessment against the land within the agricultural district for the cost of the extension shall be deferred. The assessment shall become payable when the land is removed, in part or in its entirety, from the agricultural district and developed for nonagricultural use. If only part of the land is removed from the agricultural district, the deferred assessment shall be prorated and paid only on the portion of the land removed. The land remaining in the district shall continue to benefit from the deferred assessment.*
- (2) *The owner of land for which the assessment of costs for a water line extension has been deferred shall pay for any connection to provide water service from the water line extension to the land benefited by the deferred assessment.*

Approved March 16, 2000

CHAPTER 116

(HJR 9)

A JOINT RESOLUTION directing the Transportation Cabinet to name KY 101 from the Beaver Dam Chapel to KY 259 at Rhoda and KY 259 from Rhoda to KY 70 the "Veterans Memorial Highway" and to erect appropriate highway signs.

WHEREAS, it is the Armed Forces that defend our great nation from foreign powers that act against our national interests and seek to tarnish the principles of freedom and justice; and

WHEREAS, countless servicemen have sacrificed their lives in defense of the Constitution that makes our country the model for the free world; and

WHEREAS, hundreds of patriotic men and women of Edmonson County have answered their nation's call to service in times of great need; and

WHEREAS, our veterans deserve our gratitude and recognition for their devotion and service to our Commonwealth and our nation;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. The Transportation Cabinet is directed to name KY 101 from the Beaver Dam Chapel to KY 259 at Rhoda and KY 259 from Rhoda to KY 70 the "Veterans Memorial Highway".

Section 2. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "Veterans Memorial Highway" to facilitate their erection upon the effective date of this Resolution.

Section 3. A copy of this Resolution shall be sent to the Secretary of the Transportation Cabinet and the District Highway Engineer in Bowling Green, Kentucky.

**Approved March 16, 2000**

## CHAPTER 117

**(HB 175)**

AN ACT relating to farm safety.

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

Section 1. KRS 247.406 is amended to read as follows:

- (1) For a county organization to be eligible for funding, the following requirements shall be met:
  - (a) The organization shall be incorporated as nonprofit under KRS Chapter 273; and
  - (b) The organization shall submit a business plan to the department detailing how the corporation will operate and how it intends to incorporate a farm safety plan in its overall farm safety program.
- (2) If the county organization's business plan is approved by the department, and if funding is available, the department shall distribute a grant of ~~two~~~~one~~ thousand dollars ~~(\$2,000)~~~~(\$1,000)~~ to the organization.
- (3) The county organization shall make an annual written report to the department regarding the activities of the organization's farm safety program and the disposition of the grant money.

**Approved March 16, 2000**

## CHAPTER 118

**(SB 110)**

AN ACT relating to public utilities.

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

Section 1. KRS 278.010 is amended to read as follows:

As used in KRS 278.010 to 278.450, and in KRS 278.990, unless the context otherwise requires:

- (1) "Corporation" includes private, quasipublic, and public corporations, and all boards, agencies and instrumentalities thereof, associations, joint-stock companies, and business trusts;
- (2) "Person" includes natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest;
- (3) "Utility" means any person except a city, who owns, controls, or operates or manages any facility used or to be used for or in connection with:

- (a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses;
  - (b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses;
  - (c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;
  - (d) The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation;
  - (e) The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation; or
  - (f) The **collection, transmission, or** treatment of sewage for the public, for compensation, if the facility is a subdivision **collection, transmission, or** treatment facility plant **that is affixed to real property and is**~~is~~ located in a county containing a city of the first class or **is** a sewage **collection, transmission, or** treatment facility **that is affixed to real property, that is** located in any other county, and **that** is not subject to regulation by a metropolitan sewer district **or any sanitation district created pursuant to KRS Chapter 220;**
- (4) "Retail electric supplier" means any person, firm, corporation, association, or cooperative corporation, excluding municipal corporations, engaged in the furnishing of retail electric service;
  - (5) "Certified territory" shall mean the areas as certified by and pursuant to KRS 278.017;
  - (6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is being or has been substantially used to supply retail electric service and includes all lines from the distribution substation to the electric consuming facility but does not include any transmission facilities used primarily to transfer energy in bulk;
  - (7) "Retail electric service" means electric service furnished to a consumer for ultimate consumption, but does not include wholesale electric energy furnished by an electric supplier to another electric supplier for resale;
  - (8) "Electric-consuming facilities" means everything that utilizes electric energy from a central station source;
  - (9) "Generation and transmission cooperative", or "G&T", means a utility formed under KRS Chapter 279 that provides electric generation and transmission services;
  - (10) "Distribution cooperative" means a utility formed under KRS Chapter 279 that provides retail electric service;
  - (11) "Facility" includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility;
  - (12) "Rate" means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof;
  - (13) "Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure, and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility;
  - (14) "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service;
  - (15) "Commission" means the Public Service Commission of Kentucky;
  - (16) "Commissioner" means one (1) of the members of the commission; and
  - (17) "Demand-side management" means any conservation, load management, or other utility activity intended to influence the level or pattern of customer usage or demand.



## CHAPTER 119

## (HB 252)

AN ACT changing the classification of the City of Hebron Estates in Bullitt County.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Hebron Estates, in Bullitt County, is such as to justify its being classified as a city of the fifth class;

NOW THEREFORE,

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

Section 1. The City of Hebron Estates, in Bullitt County, is transferred from the sixth to the fifth class of cities.

**Approved March 16, 2000**

## CHAPTER 120

## (HB 277)

AN ACT relating to watershed conservancy districts.

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

Section 1. KRS 262.720 is amended to read as follows:

- (1) Within thirty (30) days after such petition has been filed with the board of supervisors, it shall cause due notice to be given as provided in KRS 262.010(4) of the hearing upon the practicability and feasibility of creating such subdistrict. All interested parties shall have the right to attend such hearing and be heard. If it shall appear at the hearing that other lands should be included or that lands included in the petition should be excluded, the board of supervisors may permit such inclusion or exclusion, provided the land area involved still meets the requirements of KRS 262.705.
- (2) If it appears upon the hearing that it may be desirable to include within the proposed district, territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of a further hearing shall be given throughout the entire area considered for inclusion in the district and a further hearing shall be held. After final hearing, if the board of supervisors determines, upon the facts presented at the hearing and upon other available information, that there is need, in the interest of the public health, safety and welfare for such a district to function in the territory considered, it shall make and record the determination and shall define, by metes and bounds, or by recognizable terrain features and description, the boundaries of the watershed district.
- (3) If the board determines after the hearing that it is not feasible for such district to function in the territory considered, it shall make and record the determination and shall deny the petition.
- (4) ***If the board determines that there is a need for a conservancy district, the board of supervisors shall establish a proposed maximum budget for the maintenance of the proposed conservancy district, to be funded either by millage or flat rate sufficient to meet the budget.***

Section 2. KRS 262.725 is amended to read as follows:

After the board of supervisors has made and recorded a determination that there is need, in the interest of the public health, safety and welfare, for creation of the proposed watershed conservancy district, it shall consider the question whether the operation of a district within the proposed boundaries with the powers conferred upon such districts in KRS 262.745 is administratively practicable and feasible. To assist the board of supervisors in this determination, the board shall, within a reasonable time after entry of the finding that there is need for the organization of the district and the determination of the boundaries of the district, hold a referendum within the ~~conservation~~<sup>proposed</sup> district upon the proposition of the creation of the district ***to identify boundaries and give notification of funding options***. Due notice of the referendum shall be given as provided in KRS 262.010 (4). Such notice shall state the date of holding the referendum, the hours of opening and closing the polls, and shall designate one or more places within the proposed district as polling places. The board shall appoint a polling superintendent and other necessary polling officers giving equal representation to the proponents and opponents of the question involved.

Section 3. KRS 262.760 is amended to read as follows:

Within the first quarter of each calendar year, the board of directors shall prepare an itemized budget of the funds needed for administration, construction, operation and maintenance of works of improvement. After approval of such budget by the board of supervisors, the board of directors shall, by order or resolution, levy a tax sufficient to meet such budget, *either by millage rate or per acre rate* ~~[not to exceed five (5) mills per dollar of the fair cash value, as equalized by the Revenue Cabinet, of all real property within the district, except any levy necessary to provide a sinking fund for retirement of bonds authorized by KRS 262.750 and except any levy necessary to provide for the improvement, continuing operation, or maintenance of works of improvement within the district authorized by KRS 262.748].~~ A copy of such budget and order or resolution shall be certified to the county clerk of the county or counties involved.

Section 4. KRS 262.763 is amended to read as follows:

- (1) An audit of the accounts of each watershed conservancy district shall take place *once every four (4) years unless the district receives or expends four hundred thousand dollars (\$400,000) or more in any year, in which case the district shall provide for the performance of an annual audit* ~~[annually]~~. The board of directors of each watershed conservancy district shall select to make the audit certified public accountants who have no personal interest in the financial affairs of the board of directors or in any of its officers or employees.
- (2) Immediately upon completion of each audit, the accountant shall prepare a report of his findings and recommendations. This report shall be to the board of directors and in such number of copies as specified by the board of directors. Immediately following receipt of the audit report, the board of directors shall cause a summary of the report or the text of the report to be advertised for the district by publication in a newspaper of general circulation in the area encompassed by the watershed conservancy district. The actual expense of any audit authorized under this section shall be borne by the watershed conservancy district.
- (3) The board of directors shall forward a copy of the newspaper in which the audit report appeared to the State Auditor of Public Accounts.

Section 5. KRS 262.765 is amended to read as follows:

- (1) The board of directors of a watershed conservancy district shall prepare and furnish to the property valuation administrator by January 1 each year a list of the landowners in each county involved showing the real property subject to assessment, and the property valuation administrator of the county or counties involved shall indicate, for the use of the clerk, such information on the tax rolls. The list furnished the property valuation administrator by the board of directors shall: list the landowners in alphabetical order by taxing districts as shown on the previous year's tax roll, list the total acreage and the acreage in the watershed conservancy district owned by each landowner, and show that part of the previous year's assessment attributable to real property within the watershed conservancy district on those parcels which are not entirely within the district.
- (2) When the property tax rolls are delivered to the county clerk by the property valuation administrator, as required by law, the county clerk shall compute the tax due the district from each landowner in accordance with the rate fixed by the board of directors and the value *or acreage* of the real property indicated on the tax roll. The computation shall be made on the regular tax bills in such manner as may be directed by regulation of the Revenue Cabinet.

**Approved March 16, 2000**

## **CHAPTER 121**

**(HB 423)**

AN ACT relating to the structure and function of cities upon reclassification to the second class and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 81 IS CREATED TO READ AS FOLLOWS:

- (1) *Any city located in a county containing a city of the first class which is reclassified as a city of the second class after the effective date of this Act shall be exempt from the provisions of KRS 90.300 to 90.400, KRS 95.430 to 95.500, and KRS 95.851 to 95.991 relating to the organization and structure of civil service systems, police departments, fire departments, and pension systems in cities of the second class.*

- (2) *In lieu of the requirements of these statutes, any city reclassified as a city of the second class shall ensure that police and fire protection services are provided for the citizens of the city in the same manner and at least at the same level of service as was being provided prior to the reclassification.*
- (3) *Nothing in this section shall prevent a city from restructuring or creating a new civil service system, police department, or fire department after a reclassification to a city of the second class. Any city that restructures or creates a new civil service system, police department, or fire department may adopt any of the provisions of KRS 90.300 to 90.400, KRS 95.430 to 95.500, and KRS 95.851 to 95.991 relating to the organization and structure of civil service systems, police departments, fire departments, and pension systems in cities of the second class.*
- (4) *If fire protection service is being provided by a fire protection district in any city that is reclassified as a city of the second class, the reclassification shall in no way affect the operations of the fire protection district and the services it provides. If at any time after a city is reclassified as a city of the second class, the fire protection district ceases to exist or fails to adequately provide for the fire protection needs of the city, the city shall have the right to create its own fire department or secure some other means for the provision of adequate fire protection services.*

Section 2. Whereas the reclassification of cities can only occur during a session of the General Assembly, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved March 16, 2000**

## CHAPTER 122

**(HB 424)**

AN ACT relating to elections.

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

Section 1. KRS 117.275 is amended to read as follows:

- (1) At the count of the votes in any precinct, any candidate or slate of candidates and any representatives to witness and check the count of the votes therein, who are authorized to be appointed as is provided in subsection (7) of this section, shall be admitted and be permitted to be present and witness the count.
- (2) As soon as the polls are closed, and the last voter has voted, the judges shall immediately lock and seal the operating lever, mechanism or other device of the voting equipment so that the voting and counting mechanism will be prevented from operation, and they shall sign a certificate stating:
  - (a) That the voting equipment has been locked against voting and sealed;
  - (b) The number of voters, as shown on the public counters;
  - (c) The number registered on the protective or accumulative counter or device, if any; and
  - (d) The number or other designation of the voting equipment, which certificate shall be returned by the judges of election to the officials authorized by law to receive it. The judges shall compare the number of voters, as shown by the counter of the voting equipment, with the number of those who have voted as shown by the protective or accumulative counter or device, if any.
- (3) Where voting equipment is used which does not print the candidates' names, lever numbers, and total votes received on a general return sheet or record for that equipment, the procedure to be followed shall be: the judges, in the presence of the representatives mentioned in subsection (1) of this section, if any, and of all other persons who may be lawfully within the polling place, shall make visible the registering counters, and, for that purpose, shall unlock and open the doors, or other covering concealing the counters, giving full view of all the counter numbers. The judges shall, under the scrutiny of the representatives, and in the order of the offices as their titles are arranged on the machine, read and announce, in distinct tones, the results as shown by the counter numbers for each candidate or slate of candidates and for and against each question voted on. The counters shall not be read consecutively along the party rows or columns, but shall always be read along the office columns or rows, completing the canvass for each office or question before proceeding to the next. The vote as registered shall be entered by the judges, in ink, on quadruplicate return sheets, and also on a general

return sheet and statement, all of which, after the canvass is completed, shall be signed by the election officers. The total votes cast for each candidate, and slate of candidates, and for and against each question, shall be entered on the general and quadruplicate return sheets and statement. The proclamation of the result of the votes cast shall be announced distinctly and audibly by one (1) of the judges, who shall read the name and the vote cast for each candidate, and slate of candidates, and the vote for and against each question submitted. During the proclamation, ample opportunity shall be given to any person lawfully present to compare the results so announced with the counter dials of the voting equipment, and any necessary corrections shall be made by the judges, and the door or other cover of the voting equipment shall then be closed and locked.

- (4) If any officer shall decline to sign the return, he shall state his reason in writing, and a copy thereof, signed by him, shall be enclosed with the return. Each of the return sheets shall be enclosed in an envelope, which shall be securely sealed, and each of the officers shall write his name across the fold of the envelope. One (1) of the quadruplicate return sheets, along with the general return sheet and the write-in roll, if any write-in votes were cast in the precinct, shall be directed to the county board of elections of the county in which the election is being held, one (1) to the county clerk of the county in which the election is being held and one (1) to the local governing body of each of the two (2) dominant political parties, ***but a local governing body of a dominant political party may decline a copy of the precinct election return by filing a written declination with the county board of elections prior to the election, and upon this declination, a printed copy shall not be issued to the political party so declining. The declination on file shall be effective for that election and any subsequent elections until revoked by the local governing body of a dominant political party by filing a written revocation with the county board of elections.*** The envelope shall have endorsed thereon a certificate of the election officers, stating the number of the machine, the precinct where it has been used, the number on the seal, and the number on the protective or accumulative counter or device at the close of the polls. Following the tabulation of all votes cast in the election, including absentee votes and write-in votes, the county board shall mail the tabulation sheets showing the results from each precinct to the State Board of Elections and the county clerk shall mail or deliver the precinct lists from each precinct to the State Board of Elections.
- (5) In primary elections at which each party's slates of candidates seeking the nomination of their parties for Governor and Lieutenant Governor are voted on, the Secretary of State, upon receiving the certified results of voting from each county's precincts for those offices, shall determine whether a runoff primary shall be necessary for either or both parties pursuant to KRS 118.245. The Secretary of State shall, within twenty-four (24) hours of making his determination, inform the affected slates of candidates, the county clerks, the county boards of elections, the State Board of Elections, the Registry of Election Finance, and the news media of his determination, and the date of the runoff primary, which shall be subject to change if an election contest or vote recount shall be requested.
- (6) As soon as possible after the completion of the count, the two (2) judges shall return to the county board of elections the keys to the voting machine received and receipted for by them, and the county clerk in which the precinct is located shall have the voting machine properly boxed or securely covered and removed to a proper and secure place of storage.
- (7) In primary elections, each candidate, slate of candidates, or group of candidates may designate to the county board of elections a representative to witness and check the vote count. In regular elections, the governing authority of each political party, each candidate for member of board of education, independent candidate, or independent ticket may designate a representative to the county board of elections to witness and check the vote count. The county board of elections shall authorize representatives of the news media to observe the taking of the tally of votes from the voting machine in each precinct in each primary, regular or special election.
- (8) If supplemental paper ballots have been approved, as provided in KRS 118.215, after the polls are closed, the precinct election officials shall stamp "Unused" on all supplemental paper ballots not used. The election officers shall string all used ballots' stubs upon a string provided for that purpose, and the stubs shall be placed in an envelope. The two (2) judges shall return to the county clerk's office the locked ballot box, all ballot stubs, spoiled ballots, and unused ballots at the same time as the tabulation of votes from the voting machine is delivered. The county clerk shall issue a receipt for the number of ballot stubs, unused ballots, spoiled ballots and the ballot box. The county board of elections, or its designee, shall count and tally the paper ballots manually or with the use of tabulating equipment which does not involve an additional voting system. The results of the vote tally shall be certified by the county board of elections to the county clerk and to the Secretary of State. The county board of elections shall authorize the candidates, slates of candidates, or their

representatives, and representatives of the news media to be present during the counting of the paper ballots. Except as otherwise required in this chapter that certain records and papers relating to specified elections be retained for twenty-two (22) months, the county clerk shall retain the paper ballots for sixty (60) days, after which time they shall be destroyed in a manner to render them unreadable by the county board of elections if no contest or recount action has been filed.

**Approved March 16, 2000**

## CHAPTER 123

**(HB 433)**

AN ACT relating to violating graves.

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

Section 1. KRS 525.115 is amended to read as follows:

- (1) A person is guilty of violating graves when he intentionally:
  - (a) Mutilates the graves, monuments, fences, shrubbery, ornaments, grounds, or buildings in or enclosing any cemetery or place of sepulture; or
  - (b) Violates the grave of any person by destroying, removing, or damaging the headstone or footstone, or the tomb over the enclosure protecting any grave; or
  - (c) Digs into or plows over or removes any ornament, shrubbery, or flower placed upon any grave or lot.
- (2) The provisions of subsection (1) of this section shall not apply to ordinary maintenance and care of a cemetery nor the removal and relocation of graves pursuant to procedures authorized by and in accordance with applicable statutes.
- (3) Violating graves is a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.
- (4) ***The court shall order the defendant to restore the cemetery to its pre-damage condition.***

**Approved March 16, 2000**

## CHAPTER 124

**(HB 497)**

AN ACT relating to traumatic brain injury.

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

Section 1. KRS 211.470 is amended to read as follows:

As used in KRS 211.470 to 211.478:

- (1) "Board" means the Traumatic Brain Injury Trust Fund Board created pursuant to KRS 211.472;
- (2) "Cabinet" means the Cabinet for ***Health Services***~~[Human Resources]~~;
- (3) "Traumatic brain injury" means a partial or total disability caused by injury to the central nervous system from physical trauma, damage to the central nervous system from anoxia, hypoxic episodes, allergic conditions, toxic substances, or other acute medical clinical incidents resulting in impaired cognitive abilities or impaired physical functioning. "Traumatic brain injury" does not include:
  - (a) Strokes that can be treated in nursing facilities providing routine rehabilitation services;
  - (b) Spinal cord injuries for which there are no known or obvious injuries to the ***intracranial***~~[intracranial]~~ central nervous system;
  - (c) Progressive dementias and other mentally impairing conditions;

- (d) Depression and psychiatric disorders in which there is no known or obvious central nervous system damage;
  - (e) Mental retardation and birth defect related disorders of long standing nature; or
  - (f) Neurological degenerative, metabolic, and other medical conditions of a chronic, degenerative nature.
- (4) "Trust fund" means the traumatic brain injury trust fund created pursuant to KRS 211.476.

Section 2. KRS 211.472 is amended to read as follows:

- (1) The Kentucky Traumatic Brain Injury Trust Fund Board is hereby created for the purpose of administering the trust fund. The board shall be composed of nine (9) members including the secretary of the Cabinet for **Health Services**~~[Human Resources]~~ or the secretary's designee, the executive director of the Brain Injury Association of Kentucky or the executive director's designee, the state medical epidemiologist, and the following members, to be appointed by the Governor:
- (a) One (1) member shall be a neurosurgeon;
  - (b) One (1) member shall be a neuropsychologist or psychiatrist;
  - (c) One (1) member shall be a rehabilitation specialist;
  - (d) One (1) member shall be a social worker experienced in working with brain-injured individuals; and
  - (e) Two (2) members shall be family members of or individuals with a brain injury.
- (2) Board members shall not be compensated for serving, but shall be reimbursed for ordinary travel expenses, including meals and lodging incurred in the performance of their duties.
- (3) The terms of appointed board members shall be four (4) years, except that the terms of initial members shall be staggered to end as follows:
- (a) Two (2) on June 30, 2000;
  - (b) Two (2) on June 30, 2001; and
  - (c) Two (2) on June 30, 2002.
- (4) At the end of a term, a member shall continue to serve until a successor is appointed and qualifies. A member who is appointed after a term has begun shall serve the rest of the term and until a successor is appointed and qualifies. A member who serves two (2) consecutive four (4) year terms shall not be reappointed for four (4) years after completion of those terms.
- (5) A majority of the full authorized membership shall constitute a quorum.
- (6) The board shall elect, by a majority vote, a director who shall be the presiding officer of the board, preside at all meetings, and coordinate the functions and activities of the board. The director shall be elected or reelected for each calendar year.
- (7) The board may establish any organizational structure it determines is necessary to accomplish its functions and duties, including the hiring of any necessary support personnel. The administrative costs of the board shall be limited to three percent (3%) of the proceeds from the trust fund.
- (8) Meetings of the board shall be held at least twice a year but may be held more frequently, as deemed necessary, subject to call by the director or by the request of a majority of the board members.
- (9) The board shall be attached to the cabinet for administrative purposes.

Section 3. KRS 211.474 is amended to read as follows:

The board shall:

- (1) Promulgate administrative regulations necessary to carry out the provisions of KRS 211.470 to 211.478;
- (2) Formulate policies and procedures for determining individual eligibility for assistance from the trust fund in accordance with the following guidelines:
  - (a) The trust fund shall serve as a funding source of last resort for residents of the Commonwealth of Kentucky. To be eligible for assistance from the trust fund, an individual must have exhausted all other funding sources that cover the type of services sought through the trust fund. Individuals who have

continuing health insurance benefits, including Medicaid, may access the trust fund for services that are needed but not covered by insurance or any other funding source. Individuals who qualify for institutional care through Medicaid shall not qualify for services through the trust fund;

- (b) All individuals receiving assistance from the fund shall receive case management services;
  - (c) Expenditures on behalf of any one (1) brain-injured individual may not exceed fifteen thousand dollars (\$15,000) for any twelve (12) month period, and may not exceed a lifetime maximum of sixty thousand dollars (\$60,000). At its discretion and subject to fund availability, the board may waive the expenditure or time limitations or both in special circumstances;
  - (d) Services covered by the trust fund shall include:
    - 1. Case management;
    - 2. Community residential services;
    - 3. Structured day program services;
    - 4. Psychological *and mental health* services;
    - 5. Prevocational services;
    - 6. Supported employment;
    - 7. Companion services;
    - 8. Respite care;
    - 9. Occupational therapy; and
    - 10. Speech and language therapy; ~~and~~
  - (e) Covered services shall not include institutionalization, hospitalization, *or* ~~environmental modifications, special medical equipment and supplies,~~ medications, ~~and behavioral programs~~;
- (3) Establish a confidential medical registry for traumatic brain and spinal cord injuries occurring in the Commonwealth of Kentucky, or to residents of the Commonwealth of Kentucky.
- (a) The board may promulgate administrative regulations requiring licensed or certified professionals or health services providers to report the occurrence of brain and spinal cord injuries, relevant medical and epidemiological information about the injuries, and other information describing the circumstances of the injury to the board or its designated agent. The reporting of data by licensed hospitals under this section shall be limited to that which is reported to the cabinet ~~for Human Resources~~ pursuant to KRS 216.2920 to 216.2929 and the board shall obtain this data from the cabinet ~~for Human Resources~~. Each licensed hospital shall grant the board, upon presentation of proper identification, access to the medical records of patients with reportable brain and spinal cord injuries for the sole purpose of collecting additional information that is not available in the data obtained from the cabinet ~~for Human Resources~~. All costs associated with copying medical records shall be borne by the board. No liability of any kind shall arise or be enforced against any licensed hospital or hospital employee for providing the board access to a patient's medical record.
  - (b) The board and its designated agent, if one is appointed, shall observe the same confidentiality requirements established for the Kentucky birth surveillance registry in KRS 211.670;
- (4) Investigate the needs of brain-injured individuals and identify gaps in current services;
  - (5) Assist the cabinet in developing programs for brain-injured individuals;
  - (6) Monitor and evaluate services provided by the trust fund; and
  - (7) Provide the Governor, the General Assembly, and the Legislative Research Commission an annual report by January 1 of each year summarizing the activities of the board and the trust fund.

**Approved March 16, 2000**

## CHAPTER 125

## (HB 515)

AN ACT relating to the Department for the Blind.

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

Section 1. KRS 163.470 is amended to read as follows:

- (1) There is created within the Cabinet for Workforce Development the Department for the Blind.
- (2) The commissioner shall be appointed by the Governor upon the recommendation of the secretary of the Cabinet for Workforce Development to whom he shall be directly responsible.
- (3) The department shall be the state agency responsible for all rehabilitation services for the blind and the visually impaired and other services as deemed necessary. The department shall be the agency authorized to expend all state and federal funds designated for rehabilitation services for the blind and visually impaired. The Office of the Secretary of the Cabinet for Workforce Development is authorized as the state agency to receive all state and federal funds and gifts and bequests for the benefit of rehabilitation services for the blind and visually impaired. The State Treasurer is designated as the custodian of all funds and shall make disbursements for rehabilitation purposes upon certification by the commissioner.
- (4) (a) The Kentucky Department for the Blind ***State Rehabilitation***~~[Advisory]~~ Council is hereby created and established to accomplish the purposes and functions enumerated in ***the Rehabilitation Act of 1973, as amended***~~[Title I, Subtitle B Section 126 of the Rehabilitation Act Amendments of 1992]~~. Members of the ~~[advisory]~~ council shall be appointed by the Governor from recommendations submitted by the Department for the Blind consistent with the federal mandate to include a majority of individuals who are blind or visually impaired representing specified organizations, service providers, and advocacy groups. The composition, qualifications, and terms of service of the ~~[advisory]~~ council shall conform to those prescribed by the federal law. There shall be statewide representation on the council.
  - (b) 1. ***Except as provided in subparagraph (2) of this paragraph, any vacancy occurring in the membership of the Department for the Blind State Rehabilitation Council shall be filled in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members of the council.***
  2. ***The Governor may delegate the authority to fill a vacancy to the remaining voting members of the council.***
- (c) Each member of the Department for the Blind ***State Rehabilitation***~~[Advisory]~~ Council may receive a per diem of one hundred dollars (\$100), not to exceed six hundred dollars (\$600) annually, for each regular or special meeting attended if the member is not employed or must forfeit wages from other employment. Each member may have travel expenses approved at the established state rate and expenses reimbursed at the established state agency rate for services such as personal assistance, child care, and drivers for attendance at council meetings, and in the performance of duties authorized by the Kentucky Department for the Blind ***State Rehabilitation***~~[Advisory]~~ Council. The per diem and expenses shall be paid out of the federal funds appropriated under ***the Rehabilitation Act of 1973, as amended***~~[Title I part A of the Rehabilitation Act Amendments of 1992, Pub. L. 102-569]~~.
- (5) The department shall establish and implement policies and procedures for the carrying out of the program of services for the blind.
- (6) At the close of each biennium, the department shall prepare a financial report and present it to the secretary of the Cabinet for Workforce Development and to the Governor. The biennial report shall be published. The biennial report shall also contain a precise review of the work of the department and contain necessary suggestions for improvement.
- (7) The department shall coordinate its functions with other appropriate public and private agencies.
- (8) The department shall perform all other duties as required of it by law.
- (9) The commissioner shall hire personnel as necessary to carry out the work of the department and the provisions of KRS 163.450 to 163.470. Preference shall be given to hiring qualified blind persons.~~[Hiring and~~



~~promotional personnel practices shall not be discriminatory because of age, sex, race, disability, or national origin. Department employees shall receive compensation and travel expenses as allowed other employees of the Commonwealth.]~~

- (10) There shall be created under the authority of the department, to be directed by the commissioner, a Division of Client Services which shall provide intake and rehabilitation counseling services; distribute or sell technical educational and other aids to the blind; provide educational materials such as recorded texts, braille or large-type texts, or such other materials as may be deemed necessary for the education of the blind; research into the development of new technical aids for the blind, mobility training, work evaluation, personal adjustment, independent living, and other services as needed for blind adults, and services for the blind who have other disabilities; and promote employment of the blind in public and private sectors.
- (11) There shall be established under the authority of the department to be directed by the commissioner, a Division of Business Enterprises. This division shall manage and supervise the Vending Facilities Program and license qualified blind persons as vendors. In connection therewith, the department shall be authorized to own or lease vending equipment for the operation of vending facilities in federal, state, private, and other buildings. The set-aside charges levied shall comply with the existing federal regulations as specified in 34 CFR 395.9. One (1) or more facility placement agents shall be employed to locate and establish additional vending facilities. The Department for the Blind shall make such surveys as may be deemed necessary to determine the vending facility opportunities for blind vendors in state buildings or on other property owned, leased, or otherwise occupied by the state government and shall install vending facilities in suitable locations on such property for the use of the blind. All of the net income from vending machines which are on the same property as a vending facility shall be paid to the blind vendor of the vending facility. Whenever there exists a conflict of interest between state agencies seeking to vend merchandise on the same state property, the agencies shall negotiate a fair agreement which shall protect the interest of both from unreasonable competition. The agreement shall be submitted to the custodial authority having jurisdiction over the property for approval. Provided, however, that in all situations the blind vendor shall be permitted to vend all items of merchandise customarily sold at similar vending facilities.
- (12) There shall be established under authority of the department, to be directed by the commissioner, a Division of Industries for the Blind which shall provide industrial evaluation, training, and employment. Emphasis shall be on placement in public employment and long-term sheltered employment at industries for the blind. The Division of Industries for the Blind shall be abolished, effective July 1, 2000. The department, at all times, shall be authorized to provide industrial evaluation, training, and employment.
- (13) The department shall provide staff services which shall include fiscal management, staff development and training, program development and evaluation, public information office, and other staff services as may be deemed necessary.
- (14) The provisions of any other statute notwithstanding, the commissioner is authorized to use receipt of funds from the Social Security reimbursement program for a direct service delivery staff incentive program. Incentives may be awarded if case service costs are reimbursed for job placement of Social Security or Supplemental Security Income recipients at the Substantial Gainful Activity (SGA) level for nine (9) months pursuant to 42 U.S.C. sec. 422 and under those conditions and criteria as are established by the federal reimbursement program.

**Approved March 16, 2000**

## **CHAPTER 126**

### **(HCR 19)**

A CONCURRENT RESOLUTION confirming the appointment of Bill Weinberg to the Kentucky Board of Education.

WHEREAS, pursuant to KRS 156.029, the Governor has appointed Bill Weinberg as a member of the Kentucky Board of Education representing the Seventh Supreme Court District for a term expiring April 14, 2002; and

WHEREAS, appointments to the Kentucky Board of Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of August 5, 1999, the Governor has delivered Bill Weinberg's name for confirmation as a member of the Kentucky Board of Education, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Bill Weinberg meets the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. The House of Representatives and the Senate hereby confirm the reappointment of Bill Weinberg to the Kentucky Board of Education for a term ending April 14, 2002.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Bill Weinberg, Post Office Box 727, Hindman, Kentucky 41822, in writing, of the General Assembly's action.

**Approved March 16, 2000**

## **CHAPTER 127**

### **(HCR 21)**

A CONCURRENT RESOLUTION confirming the reappointment of Craig True to the Kentucky Board of Education.

WHEREAS, in accordance with KRS 156.029, the Governor has reappointed Craig True as a member of the Kentucky Board of Education representing the Sixth Supreme Court District for a term expiring April 14, 2002; and

WHEREAS, appointments to the Kentucky Board of Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of August 5, 1999, the Governor has delivered Craig True's name for confirmation as a member of the Kentucky Board of Education, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Craig True meets the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. The House of Representatives and the Senate hereby confirm the reappointment of Craig True to the Kentucky Board of Education for a term ending April 14, 2002.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Craig True, 10 Memory Lane, Fort Thomas, Kentucky 41075, in writing, of the General Assembly's action.

**Approved March 16, 2000**

## **CHAPTER 128**

### **(HCR 23)**

A CONCURRENT RESOLUTION confirming the appointment of R. Keith Travis to the Kentucky Board of Education.

WHEREAS, pursuant to KRS 156.029, the Governor has appointed R. Keith Travis as a member of the Kentucky Board of Education representing the First Supreme Court District for a term expiring April 14, 2002; and

WHEREAS, appointments to the Kentucky Board of Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of August 5, 1999, the Governor has delivered R. Keith Travis' name for confirmation as a member of the Kentucky Board of Education, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that R. Keith Travis meets the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. The House of Representatives and the Senate hereby confirm the reappointment of R. Keith Travis to the Kentucky Board of Education for a term ending April 14, 2002.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and R. Keith Travis, 4290 Lakeview Church Road, Benton, Kentucky 42025, in writing, of the General Assembly's action.

**Approved March 16, 2000**

## CHAPTER 129

### (HCR 24)

A CONCURRENT RESOLUTION confirming the reappointment of Jane A. Venters to the Kentucky Board of Education.

WHEREAS, in accordance with KRS 156.029, the Governor has reappointed Jane A. Venters as a member of the Kentucky Board of Education representing the Third Supreme Court District for a term expiring April 14, 2002; and

WHEREAS, appointments to the Kentucky Board of Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of August 5, 1999, the Governor has delivered Jane A. Venters' name for confirmation as a member of the Kentucky Board of Education, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Jane A. Venters meets the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. The House of Representatives and the Senate hereby confirm the reappointment of Jane A. Venters to the Kentucky Board of Education for a term ending April 14, 2002.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Jane A. Venters, 302 North Maple Street, Somerset, Kentucky 42501, in writing, of the General Assembly's action.

**Approved March 16, 2000**

## CHAPTER 130

### (HCR 53)

A CONCURRENT RESOLUTION directing the Legislative Research Commission to study the impact of immigration on public services and the private sector.

WHEREAS, the United States Bureau of the Census indicates that immigration will be an increasing feature of population growth in the United States; and

WHEREAS, according to the March 1999 Current Population Survey, Kentucky is experiencing significant immigration growth, with an increase of eighty-eight percent in the number of immigrants coming into the Commonwealth from 1997 to 1999; and

WHEREAS, immigrants are a growing part of the Kentucky labor force, filling occupations experiencing a shortage of labor, such as physicians in rural Kentucky and agricultural workers in tobacco and horse farm areas; and

WHEREAS, the Center for Immigration Studies reports that immigrant households are more likely to live in poverty than native households; and

WHEREAS, there exists no comprehensive study of immigration's impact on Kentucky;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. That the House of Representatives and the Senate direct the Legislative Research Commission to study the impact of immigration on public services and the private sector in Kentucky. The study shall include a descriptive analysis of the current status of immigration in Kentucky and an analysis of the fiscal and economic impact of immigration on the state. The study shall address the following subjects:

- (1) The number of immigrants, their country of origin, and their demographic profile;
- (2) The location of immigrants within the state;
- (3) Length and duration of residence in the state;
- (4) Services immigrants are likely to need, the cost of the services, and the governmental or other organizations that bear the cost;
- (5) The state and federal benefits for which immigrant households are eligible;
- (6) Indirect costs and benefits from immigration;
- (7) Employment patterns of immigrants in Kentucky and their effect on the availability of labor in those sectors in which they are employed; and
- (8) The level of spending by immigrants and its impact on the local and state economy.

Section 2. The Legislative Research Commission shall transmit the results of the study required by Section 1 of this Resolution to the appropriate interim joint committees prior to the 2002 Regular Session of the General Assembly.

Section 3. Provisions of this Resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

**Approved March 16, 2000**

## **CHAPTER 131**

### **(HJR 48)**

A JOINT RESOLUTION directing the Transportation Cabinet to name KY 118 from US 421 to the Daniel Boone Parkway (the Hyden Spur) in Leslie County in honor of Tim Couch.

The memories of brisk autumn afternoons of the not too distant past are made sweeter because of this native son of Eastern Kentucky, who came out of the mountains of Appalachia to place the University of Kentucky among the pantheon of the nation's college gridiron elite, who has gone after too short a time to measure himself against the finest athletes in the world, and who, all the while, has represented his family, hometown, university, and state with aplomb and class: Tim Couch.

WHEREAS, the Commonwealth was deeply blessed when on July 31, 1977, Elbert and Janice Couch became the proud parents of a son, Timothy Scott Couch; and

WHEREAS, Tim Couch's athletic talent first garnered notice at Leslie County High School, where he was an All-State performer in both football and basketball; and

WHEREAS, Tim Couch was perhaps the finest high school football player ever produced in Kentucky, holding state and national high school career records with 872 pass completions, 12,104 passing yards, and 133 touchdown passes, and leading the Leslie County High School Eagles to a four year record of 38-13 and two trips to the Class AAA state semifinals; and

WHEREAS, Tim Couch, in his senior year of 1995, was named Kentucky's "Mr. Football", the Gatorade Circle of Champions "Kentucky Player of the Year", the USA Today "National Offensive Player of the Year", and was generally considered the best high school football player in the nation; and

WHEREAS, Tim Couch, after an intense recruiting battle that involved every major power in college football, decided to stay at home and help revive the flagging gridiron fortunes of the University of Kentucky Wildcats; and

WHEREAS, Tim Couch showed flashes of brilliance in his freshman season that were a foreshadowing of the two very special seasons to come; and

WHEREAS, Tim Couch, armed with the sophisticated "Air Raid" attack of new head coach Hal Mumme, set the college football world on fire during the 1997 season, engineering a monumental upset of Southeastern Conference power Alabama, marking the first time the Wildcats had beaten the Crimson Tide in 75 years; and

WHEREAS, because of his exploits during the 1997 season, Tim Couch was named honorable mention All-American by the Football News, second team All-SEC, and was a finalist for the Davey O'Brien Award, given to the nation's top quarterback; and

WHEREAS, Tim Couch continued his "Air Raid" on opponents in 1998, throwing for at least 300 yards in every game and leading the Wildcats to a 7-5 record and a trip to Kentucky's first New Year's Day bowl game in almost 50 years; and

WHEREAS, Tim Couch's achievements during the 1998 season earned him All-American honors from several sources, unanimous first team All-SEC honors, and a fourth-place finish in the 1998 Heisman Memorial Trophy balloting; and

WHEREAS, at the conclusion of his collegiate career, Tim Couch had practically rewritten the Kentucky and Southeastern Conference record books, holding almost every major single game, season, and career passing record; and

WHEREAS, Tim Couch, feeling that he must continue to test himself against the best, decided to forego his final year of eligibility at Kentucky and was subsequently selected by the expansion Cleveland Browns with the first overall selection of the 1999 NFL Draft; and

WHEREAS, Tim Couch has continued his pattern of preternatural athletic success in the professional ranks, being named Cleveland's starting quarterback in just his second professional game and being named the NFL's "Offensive Player of the Month" for October 1999, justifying Cleveland's decision to hitch its wagon to Tim Couch's star; and

WHEREAS, Tim Couch was voted Kentucky's "Sportsman of the Year" in a Lexington Herald-Leader statewide poll of sportswriters and broadcasters in both 1995 and 1997; and

WHEREAS, both the Lexington Herald-Leader and Sports Illustrated magazine named Tim Couch one of the fifty most significant Kentucky sports figures of the 20th century; and

WHEREAS, in addition to Tim Couch's athletic exploits, he has shown a willingness to assist in charitable and civic organizations; and has given his time to such causes as the DARE program and the Children's Miracle Network; and

WHEREAS, Tim Couch has brought honor and glory to himself, his family, his university, his state, and his hometown through his athletic feats and his service to the community;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. That the Transportation Cabinet is directed to name KY 118 from US 421 to the Daniel Boone Parkway in Leslie County (the Hyden Spur) the "Tim Couch Pass".

Section 2. That the Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "Tim Couch Pass" to facilitate their erection upon the effective date of this Resolution.

Section 3. That the Clerk of the House of Representatives is directed to transmit copies of this Resolution to Tim Couch, to the Secretary of the Transportation Cabinet, and to the District Highway Engineer in Manchester, Kentucky.

**Approved March 16, 2000**

## **CHAPTER 132**

### **(HJR 73)**

A JOINT RESOLUTION creating a Task Force on Senior Citizens and the Workforce, providing for the membership thereof, and specifying activities and responsibilities.

WHEREAS, the population of Kentucky aged 55-75 will grow nearly four times greater than the state's population aged 25-55 (46 percent to 12 percent) during the period 1990 to 2010; and

WHEREAS, the ratio of Kentuckians between ages 25-55 to Kentuckians aged 55 and older will decline by the year 2010 to 1.6:1 from its 1990 level of 2:1, with the disparity estimated to grow through the year 2025; and

WHEREAS, a full complement of skilled workers in the state's workforce is necessary for a healthy economy and successful economic development; and

WHEREAS, a strong ratio of workers to nonworkers is necessary to provide adequate financial support for programs addressing the retired and elderly; and

WHEREAS, senior citizens represent a reservoir of talent that must be retained in the workforce; and

WHEREAS, there is a trend both nationally and in the Commonwealth for workers to retire at an ever-increasing younger age; and

WHEREAS, a substantial number of senior citizens demonstrate an interest in remaining in the workforce, but under different schedules and in different jobs;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. There is hereby created a Task Force on Senior Citizens and the Workforce.

Section 2. The Task Force on Senior Citizens and the Workforce shall be composed of the following 18 members:

(1) Six members appointed by the Governor. The members may be employees of the Executive Branch of state government or may be at-large members;

(2) Six legislative members (three Representatives and three Senators) appointed by the Speaker of the House and the President of the Senate, respectively; and

(3) Six at-large members appointed by the Legislative Research Commission. In making the appointments the Commission shall consult with organizations including, but not limited to, organizations representing labor, management, senior citizens, and retired persons, and with the state's universities, community and technical colleges, and local governments. The Commission shall coordinate its appointments with the at-large appointments of the Governor.

Section 3. The Task Force on Senior Citizens and the Workforce shall:

(1) Identify the age characteristics of Kentucky's present and future workforce;

(2) Examine the role of senior citizens in the state's present and future workforce;

(3) Identify the accommodations and incentives necessary to attract and retain senior citizens in the workforce;

(4) Determine the needs of senior citizens to remain productive members of the workforce;

(5) Evaluate the ability of existing programs to attract and retain senior citizens in the workforce, including those intended to provide the necessary education to qualify for entry or retention in the workforce;

(6) Recommend improvements in existing programs and the creation of new programs, if indicated, addressing senior citizens in the workforce, including programs through which prospective employers can identify and access qualified senior citizens; and

(7) Promote public awareness of the value of senior citizens in the workforce and initiate dialogue between citizens and policymakers in this regard.

Section 4. The Task Force on Senior Citizens and the Workforce shall be authorized, subject to the approval by the Legislative Research Commission, to conduct meetings throughout the state and to sponsor a conference for the purpose of gaining and exchanging information and publicizing the activities of the Task Force.

Section 5. Co-chairs of the Task Force on Senior Citizens and the Workforce shall be appointed by the Legislative Research Commission from among the legislative members of the Task Force.

Section 6. The Task Force on Senior Citizens and the Workforce shall submit its findings and recommendations to the Governor and the Legislative Research Commission by September 30, 2001.

Section 7. Staff services for this task force shall be furnished by the Legislative Research Commission, with officers and agencies of the Executive Branch providing any assistance that may be requested by the Commission or its Director.

**Approved March 16, 2000**

## **CHAPTER 133**

**(HJR 78)**

A JOINT RESOLUTION directing the Transportation Cabinet to name the bridge on Kentucky Route 168 in Boyd County over the Little Hoods Creek in honor of W. Richard "Dick" Martin.

WHEREAS, W. Richard "Dick" Martin is well known throughout the Ashland and Boyd County communities for his lifelong commitment to radio; and

WHEREAS, W. Richard "Dick" Martin began his broadcasting career in 1946 with WCMI, the first AM radio station to serve Ashland, as well as all of the communities of northeastern Kentucky; and

WHEREAS, W. Richard "Dick" Martin worked not only as a sports broadcaster as the voice of the Ashland Tomcats from 1947 until 1975, but he also served as program director, general manager, and Vice President of WCMI; and

WHEREAS, in 1969 W. Richard "Dick" Martin brought the first FM radio station to the Ashland area; and

WHEREAS, W. Richard "Dick" Martin was instrumental in the formation of the Eastern Kentucky Economic Development Corporation in 1985; and

WHEREAS, W. Richard "Dick" Martin was a dedicated public servant who served as the Mayor of the City of Ashland from 1988 until 1991; and

WHEREAS, during his tenure as mayor, W. Richard "Dick" Martin helped the City of Ashland achieve the prestigious designation of "All Kentucky City"; and

WHEREAS, W. Richard "Dick" Martin has been active in civic, community, and religious organizations for over forty (40) years;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. The Transportation Cabinet is directed to name bridge number B00055 on Kentucky Route 168 in Boyd County located over Little Hoods Creek at the northwest city limits of the City of Ashland in honor of W. Richard "Dick" Martin.

Section 2. The Transportation Cabinet shall erect signs at each end of the bridge approach on Kentucky Route 168 naming the bridge the " W. Richard "Dick" Martin Bridge" within thirty (30) days of the effective date of this Resolution.

**Approved March 17, 2000**

**CHAPTER 134****(HB 507)**

AN ACT relating to absentee voting and declaring an emergency.

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

Section 1. KRS 117.085 is amended to read as follows:

- (1) All requests for an application for an absentee ballot may be transmitted by telephone, facsimile machine, by mail, or in person. Except as provided in paragraph (b) of this subsection, all applications for an absentee ballot shall be transmitted only by mail or in person at the option of the voter, except that the county clerk shall hand an application for an absentee ballot to a voter permitted to vote by absentee ballot who appears in person to request the application, or shall mail the application to a voter permitted to vote by absentee ballot who requests the application by telephone, facsimile machine, or mail. The absentee ballot application shall be restricted to the use of the voter or the spouse, parents, or children of the voter. Except for qualified voters who apply pursuant to the requirements of KRS 117.075 and 117.077, and those who are incarcerated in jail but have yet to be convicted and persons who qualify under subparagraph 5. of paragraph (a) of this subsection, no absentee ballots shall be mailed to a voter who resides within the county in which he is registered. In the case of ballots returned by mail, the county clerk shall provide an absentee ballot, two (2) official envelopes for returning the ballot, and instructions for voting to a voter who presents a completed application for an absentee ballot as provided in this section and who is properly registered as stated in his application.
- (a) The following voters may apply to cast their votes by absentee ballot at any time not later than the close of business hours seven (7) days before the election:
  1. Voters permitted to vote by absentee ballot pursuant to KRS 117.075;
  2. Residents of Kentucky who are members of the Armed Forces, dependents of members of the Armed Forces, and citizens residing overseas;
  3. Students who temporarily reside outside the county of their residence and other voters who temporarily reside outside the state but who are still eligible to vote in this state;
  4. Persons who are incarcerated in jail who have been charged with a crime but have not been convicted of the crime; and
  5. Persons who are prevented from voting in person at the polls on election day and from casting an absentee ballot in person in the county clerk's office on all days absentee voting is conducted prior to election day because their employment location requires them to be absent from the county all hours and all days absentee voting is conducted in the county clerk's office.
- (b) Residents of Kentucky who are members of the Armed Forces, dependents of members of the Armed Forces, and overseas citizens, may apply for an absentee ballot by means of the federal post-card application, which may be transmitted to the county clerk's office by mail or by facsimile machine. The application may be used to register, reregister, and to apply for an absentee ballot. If the federal post-card application is received at any time not less than seven (7) days before the election, the county clerk shall affix his seal to the application form upon receipt.
- (c) Any other qualified voter in the county who is not permitted to vote by absentee ballot under paragraph (a) of subsection (1) of this section who shall be absent from the county on any election day may, at any time during normal business hours on at least any of the twelve (12) working days before the election, make application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. A county board of elections may permit absentee voting to be conducted on a voting machine for a period longer than the twelve (12) working days before the election prescribed above.
- (d) Any member of the county board of elections, any precinct election officer appointed to serve in a precinct other than that in which he is registered, and any alternate precinct election officer may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, up to the close of normal business hours on the day before the election. The application form for those persons shall be prescribed by the State Board of



Elections and, in the case of application by precinct election officers, shall contain a verification of appointment signed by a member of the county board of elections. If an alternate precinct election officer or a precinct election officer appointed to serve in a precinct other than that in which he is registered receives his appointment while absentee voting is being conducted in the county, such officer may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, up to the close of normal business hours on the day before the election. In case of such voters, the verification of appointment shall also contain the date of appointment. The applications shall be restricted to the use of the voter only.

- (e) *Any pregnant woman who is in her last trimester of pregnancy at the time she wishes to vote under this paragraph may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections. She may vote at any time during business hours on at least any of the twelve (12) working days before the election up to the close of business hours on the day before the election. The application form for those persons shall be prescribed by the State Board of Elections, which shall contain the woman's sworn statement that she is in fact in her last trimester of pregnancy at the time she wishes to vote, and shall be made in person to the county clerk, at any time during any of the twelve (12) working days before the election. A county board of elections may permit absentee voting to be conducted on a voting machine for a period longer than the twelve (12) working days before the election as prescribed above.*
- (f) The members of the county board of elections or their designees who provide equal representation of both political parties may serve as precinct election officers, without compensation, for all absentee voting performed on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. If the members of the county board of elections or their designees serve as precinct election officers for the absentee voting, they shall perform the same duties and exercise the same authority as precinct election officers who serve on the day of an election. If the members of the county board of elections or their designees do not serve as precinct election officers for the absentee voting, the county clerk or deputy county clerks shall supervise the absentee voting.
- ~~(g)(f)~~ Any individual qualified to appoint challengers for the day of an election may also appoint challengers to observe all absentee voting performed at the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, and those challengers may exercise the same privileges as challengers appointed for observing voting on the day of an election at a regular polling place.
- (2) The clerk shall type the name of the voter permitted to vote by absentee ballot on the application form for that person's use and no other. The absentee ballot application form shall be in the form prescribed by the State Board of Elections, shall bear the seal of the county clerk, and shall contain the following information: name, residential address, precinct, party affiliation, statement of the reason the person cannot vote in person on election day, statement of where the voter shall be on election day, statement of compliance with residency requirements for voting in the precinct, and the voter's mailing address for an absentee ballot. The form shall be verified and signed by the voter. A notice of the actual penalty provisions in KRS 117.995(2) and (5) shall be printed on the application.
- (3) If the county clerk finds that the voter is properly registered as stated in his application and qualifies to receive an absentee ballot by mail, he shall mail to the voter an absentee ballot, two (2) official envelopes for returning the ballot, and instructions for voting. The county clerk shall complete a postal form for a certificate of mailing for ballots mailed within the fifty (50) states, and it shall be stamped by the postal service when the ballots are mailed. An absentee ballot may be transmitted by facsimile machine to a resident of Kentucky who is a member of the Armed Forces, a dependent of a member of the Armed Forces, or a citizen residing overseas.
- (4) Absentee ballots which are requested prior to the printing of the ballots shall be mailed by the county clerk to the voter within three (3) days of the receipt of the printed ballots; and absentee ballots which are requested subsequent to the receipt of the ballots by the county clerk shall be mailed to the voter within three (3) days of the receipt of the request.
- (5) The clerk shall cause ballots to be printed fifty (50) days prior to each primary or general election and fifteen (15) days prior to each runoff primary.

- (6) The outer envelope shall bear the words "Absentee Ballot" and the address and official title of the county clerk and shall provide space for the voter's signature, voting address, and precinct number. A detachable flap on the inner envelope shall provide space for the voter's signature, voting address, precinct number, and notice of penalty provided in KRS 117.995(5). The clerk shall type the voter's address and precinct number in the upper left hand corner of the outer envelope and of the detachable flap on the inner envelope immediately below the blank space for the voter's signature. The inner envelope shall be blank. The clerk shall retain the application and the postal form required by subsection (3) of this section for twenty-two (22) months after the election.
- (7) Any person who has received an absentee ballot by mail but who knows at least seven (7) days before the date of the election that he will be in the county on election day and who has not voted pursuant to the provisions of KRS 117.086 shall cancel his absentee ballot and vote in person. He shall return his absentee ballot to the county clerk's office no later than seven (7) days prior to the date of the election. Upon the return of the absentee ballot, the clerk shall mark on the outer envelope of the sealed ballot or the unmarked ballot the words "Canceled because voter appeared to vote in person." Sealed envelopes so marked shall not be opened. The clerk shall remove the voter's name from the list of persons who were sent absentee ballots, and the voter may vote in the precinct in which he is properly registered.

Section 2. KRS 117.086 is amended to read as follows:

- (1) The voter returning his absentee ballot by mail shall mark his ballot, seal it in the inner envelope and then in the outer envelope and mail it to the county clerk as shall be provided by this chapter. The voter shall sign the detachable flap and the outer envelope in order to validate the ballot. A resident of Kentucky who is a member of the Armed Forces, a dependent of a member of the Armed Forces, or a citizen residing overseas who has received an absentee ballot transmitted by facsimile machine shall transmit the voted ballot to the county clerk by mail only, conforming with ballot security requirements that may be promulgated by the state board by administrative regulation. In order to be counted, the ballots shall be received by the clerk by at least the time established by the election laws generally for the closing of the polls, which time shall not include the extra hour during which those voters may vote who were waiting in line to vote at the scheduled poll closing time.
- (2) Any voter who shall be absent from the county on election day, but who does not qualify to receive an absentee ballot by mail under the provisions of KRS 117.085, and all members of county boards of elections, ~~and~~ precinct election officers, **and pregnant women** qualified to vote prior to the election under the provisions of **Section 1 of this Act** ~~KRS 117.085~~, shall vote at the main office of the county clerk or other place designated by the county board of elections, and approved by the State Board of Elections, prior to the day of election. The clerk may provide for such voting by the voting equipment in general use in the county either at the precinct, the equipment as may be used to tabulate absentee ballots, or any other voting equipment approved by the State Board of Elections for use in Kentucky, except as follows:
  - (a) Any voter qualifying to vote in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, who receives assistance to vote shall complete the voter assistance form required by KRS 117.255.
  - (b) Any voter qualifying to vote in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, whose qualifications are challenged by any clerk or deputy shall complete an "Oath of Voter" affidavit.
- (3) When the clerk uses general voting equipment as provided for in subsection (2) of this section, each voter casting his vote at the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, shall sign an "Absentee Ballot Signature Roster."
- (4) The clerk shall designate a location within his office where the ballots shall be cast secretly. The county clerk, with the approval of the State Board of Elections, may establish locations other than his main office in which the voters may execute their ballots. Public notice of the locations shall be given pursuant to KRS Chapter 424 and similar notice by mail shall be given to the county chairmen of the two (2) political parties whose candidates polled the largest number of votes in the county at the last general election.
- (5) The State Board of Elections shall promulgate administrative regulations to provide for casting ballots as provided in subsection (2) of this section.
- (6) The clerk shall deposit all of the absentee ballots returned by mail in a locked ballot box immediately upon receipt without opening the outer envelope. The ballot box shall be locked with three (3) locks. The keys to the box shall be retained by the three (3) members of the central absentee ballot counting board, if one is appointed, or by the members of the board of elections, and the box shall remain locked until the ballots are

counted. All voting equipment on which ballots are cast as permitted in subsection (2) of this section shall also remain locked and the keys shall be retained by the three (3) members of the central absentee ballot counting board, if one is appointed, or by the members of the board of elections, and the equipment shall remain locked until the ballots are counted.

- (7) The clerk shall keep a list of all persons who return their absentee ballots by mail or cast their ballots in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, and send a copy of that list to the state board after election day. The county clerk and the Secretary of State shall keep a record of the number of votes cast by absentee ballots returned by mail and on the voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, cast in any election as a part of the official returns of the election.

Section 3. Whereas the provisions of this Act are necessary to administer the May primary election in a fair and effective manner with respect to pregnant voters, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved March 17, 2000**

## **CHAPTER 135**

**(HB 377)**

AN ACT relating to branching and acquisition of banks in Kentucky.

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

Section 1. KRS 287.180 is amended to read as follows:

- (1) Banks authorized under the laws of this state may, except as provided in subsections (2) or (3) of this section, exercise, only at their principal office, powers necessary to carry on the business of banking by discounting and negotiating notes, drafts, bills of exchange and other evidences of debt, and by purchasing bonds, receiving deposits and allowing interest on these items, buying and selling exchange, coin, and bullion, and lending money on personal or real security.
- (2) Any corporation presently or after July 13, 1990, engaged in the business of banking, and meeting the requirements of this subsection, may apply to the commissioner for permission to establish, within any *state, the District of Columbia, or a territory of the United States* ~~county in which its principal office or an existing branch is located~~, a branch at which all of the powers conferred in subsection (1) of this section may be exercised. Before the commissioner shall approve or disapprove any application made under this subsection he shall ascertain and determine that the public convenience and advantage will be served and promoted and that there is reasonable probability of the successful operation of the branch based upon the financial and managerial impact of the branch on the bank establishing the branch. The following conditions shall apply to applications for branches:
  - (a) The permission to open a branch shall lapse one (1) year after the commissioner has rendered a final order as defined in KRS 13B.010, unless it shall have been opened and business actually begun in good faith. If, for reasons beyond the control of the applicant, the branch is not opened within this time period, permission to open the branch may, with the approval of the commissioner, be extended for any period of time he deems to be necessary; and
  - (b) An application to establish a branch office shall be approved or disapproved by the commissioner based upon the facts existing at the date of filing of the application, except for the financial condition of the bank proposing to establish a branch office, which condition shall be subject to review until an order ruling on the application is made.
- (3) Any corporation which on January 1, 1966, was engaged in operating an agency or branch bank may continue to retain and operate the agency or branch bank under the general banking laws, and the requirements set forth in this section in respect to capital shall not apply to any existing agency or branch bank but only as to those agencies or branch banks which may be established in the future pursuant to the terms of this section.
- (4) The provisions of this section shall not be construed to prohibit the merger of banks in the same county and the operation by the merged corporation of the banks, nor to prohibit the sale of any bank to, and the purchase by, any other bank in the same county and the operation of the bank by the purchasing bank as a branch, provided

the commissioner shall determine that the public convenience and necessity will be served by the operation~~;~~ and ~~provided further that, at the time of the merger or purchase, each of the banks involved shall have been in operation for a period of five (5) years or more.~~ The bank which does not survive the merger shall surrender its charter.

- (5) Any national banking association or any state bank member of the Federal Reserve system whose principal office is located in this state may do all things and perform all acts which state banks are permitted to do or perform under this section, subject to the conditions and restrictions provided for banks as to exercise of these powers.
- (6) When a branch or agency bank has once been established any operation of the branch or agency bank shall not be discontinued, and the branch or agency bank shall not be closed until after ninety (90) days' notice in writing to the commissioner. In the discretion of the commissioner the branch or agency bank proposing to discontinue operation may be required to give notice of the date when its operation will cease.

Section 2. KRS 287.172 is amended to read as follows:

- (1) A national banking association may convert into or merge with a state bank under a state charter, provided that~~;~~
  - (a) ~~—~~ the action taken complies with federal law~~;~~
  - (b) ~~— In the case of a merger, the institutions to be merged are located in the same city or county.~~
- (2) In the case of each conversion, a written plan of conversion shall be submitted, in duplicate, to the commissioner. Such plan shall be in form satisfactory to the commissioner, shall prescribe the terms and conditions of the conversion and the mode of carrying it into effect, and shall have annexed thereto and forming a part thereof the proposed articles of incorporation of the state bank which is to result from the conversion. Such articles of incorporation shall be in the form prescribed by law for the organization of state banks, with such variations, if any, as shall be satisfactory to the commissioner. With such plan of conversion there shall be submitted, in duplicate, to the commissioner a certificate of the president, secretary or cashier of the national banking association certifying that all steps have been taken which are necessary under federal law to the consummation of the conversion. The commissioner shall approve or disapprove such plan of conversion within sixty (60) days of the submission thereof to him. In considering the approval or disapproval of the conversion plan the commissioner shall take into account:
  - (a) Any pending administrative or judicial action to which the bank or any officer or director of the bank is a party;
  - (b) The performance of the converting national bank for the five (5) years preceding the application for conversion as compared to similarly situated state-chartered banks; and
  - (c) The proposed name of the bank after conversion which shall not be the same as or deceptively similar to any existing state-chartered bank.

If the commissioner shall approve such plan, he shall file one (1) duplicate thereof, together with one (1) duplicate of such certificate submitted therewith and the original of the approval of the commissioner, in the office of the commissioner, and the other duplicate of such plan, together with a duplicate of such certificate and a duplicate of the commissioner's approval, shall be filed in the office of the clerk of the county in which the principal office of the state bank is to be located. After such filing in the office of the commission, the conversion shall become effective upon the filing and recording of the articles of incorporation as provided in KRS 287.050, unless a later date is specified in the plan, in which event the conversion shall become effective upon such later date. If the commissioner shall disapprove the conversion plan, he shall state his reasons for such disapproval in writing to which the converting national bank shall have the right of appeal as permitted by law.

- (3) In the case of each merger, a written plan of merger shall be submitted, in duplicate, to the commissioner. Such plan shall be in form satisfactory to the commissioner and shall prescribe the terms and conditions of the merger and the mode of carrying it into effect. Such plan may provide the name to be borne by the state bank, as receiving corporation, if such name is to be changed. Such plan may also name the persons who shall constitute the first board of directors of the state bank after the merger shall have been accomplished, provided that the number and qualifications of such person shall be in accordance with the provisions of KRS Chapter 287 relating to the number and qualifications of directors of a state bank; or such plan may provide for a meeting of the stockholders to elect a board of directors within sixty (60) days after such merger, and may

make provision for conducting the affairs of the state bank meanwhile. With such plan of merger there shall be submitted, in duplicate, to the commissioner the following:

- (a) By the national banking association, a certificate of the president, secretary or cashier of such association certifying that all steps have been taken which are necessary under federal law to the consummation of their merger;
  - (b) By the state bank, a certificate of the president, secretary or cashier certifying that such plan of merger has been approved by the board of directors of the state bank by a majority vote of all the members thereof, that such plan has been submitted to the stockholders of the state bank at a meeting thereof held; upon notice of at least fifteen (15) days, specifying the time, and place and object of such meeting and addressed to each stockholder at the address appearing upon the books of the state bank and published pursuant to KRS Chapter 424, and that such plan of merger has been approved at such meeting by the vote of the stockholders owning at least two-thirds (2/3) in amount of the stock of the state bank.
- (4) The commissioner shall approve or disapprove such plan of merger within sixty (60) days of such submission thereof to him. If the commissioner shall approve such plan, he shall file one (1) duplicate thereof, together with one (1) duplicate of each of such certificates and the original of the approval of the commissioner, in the office of the commissioner, and the other duplicate of such plan, together with a duplicate of each of such certificates and a duplicate of the commissioner's approval, shall be filed in the office of the clerk of the county in which the principal office of the state bank is to be located. Upon such filing in the office of the commissioner, the merger shall become effective, unless a later date is specified in the plan, in which event the merger shall become effective upon such later date.
- (5) At the time when such conversion or merger becomes effective:
- (a) The resulting state bank shall be considered the same business and corporate entity as the national banking association, although as to rights, powers and duties, the resulting bank is a state bank;
  - (b) All of the property, rights and powers and franchises of the national banking association shall vest in the resulting state bank and the resulting state bank shall be subject to and deemed to have assumed all of the debts, liabilities, obligations and duties of the national banking association and to have succeeded to all of its relationships, fiduciary or otherwise, as fully and to the same extent as if such property, rights, powers, franchises, debts, liabilities, obligations, duties and relationships had been originally acquired, incurred or entered into by the resulting state bank; provided, however, that the resulting state bank shall not, through such conversion or merger, acquire power to engage in any business or to exercise any right, privilege or franchise which is not conferred by the provisions of KRS Chapter 287 upon such resulting state bank;
  - (c) Any reference to the national banking association in any contract, will or document, whether executed or taking effect before or after the conversion or merger, shall be considered a reference to the resulting state bank if not inconsistent with the other provisions of the contract, will or document;
  - (d) A pending action or other judicial proceeding to which the national banking association is a party, shall not be deemed to have abated or to have discontinued by reason of the conversion or merger, but may be prosecuted to final judgment, order or decree in the same manner as if the conversion or merger had not been made; or the resulting state bank may be substituted as a party to such action or proceeding, and any judgment, order or decree may be rendered for or against it that might have been rendered for or against the national banking association if the conversion or merger had not occurred.

Section 3. KRS 287.900 is amended to read as follows:

- (1) For purposes of this section and KRS 287.905:
- (a) "Bank" means any institution organized under this chapter, the banking laws of another state, or the National Bank Act, as amended, to do a banking business~~}. However, it shall not include an "interim bank" chartered solely for the purpose of facilitating the acquisition of an existing bank unless the existing bank has been in existence for less than five (5) years};~~
  - (b) "Bank holding company," "company," and "control" have the meanings accorded them in the Federal Bank Holding Company Act of 1956, as amended (12 U.S.C. secs. 1841 et seq.). "Control" may be acquired by acquisition of voting securities, by purchase of assets, by merger or consolidation, by contract, or otherwise;

- (c) "Individual" means a natural person, partnership, association, business trust, voting trust, or similar organization. Individual does not include a corporation; and
  - (d) "Deposit" has the meaning accorded it in the Federal Deposit Insurance Act, as amended, and regulations promulgated thereunder; excluded, however, from deposits are all interbank deposits and all deposits in foreign branches and international banking facilities, as shown in the reports made by all federally-insured depository institutions to their respective supervisory authorities.
- (2) ~~Any individual, or any bank holding company having its principal place of business in this state, may acquire control of one (1) or more banks or bank holding companies wherever located, except that no individual, who on July 13, 1984, controls a bank or bank holding company wherever located, and no bank holding company wherever located, may acquire, directly or indirectly, control of a bank having its principal place of business in this state if the bank was chartered after July 13, 1984, and if, at the time of the acquisition, the bank has been in existence less than five (5) years. The provisions of this subsection shall not prohibit the organization of a one (1) bank holding company for the purpose of acquiring control of a bank even if the bank was chartered after July 13, 1984, and has been in existence less than five (5) years at the time of the acquisition.~~
- (3) No individual or bank holding company wherever located may acquire control of any bank or bank holding company if, upon the acquisition, the individual or bank holding company would control banks in this state holding more than fifteen percent (15%) of the total deposits and member accounts in the offices of all federally-insured depository institutions in this state as reported in the most recent year-end reports made by the institutions to their respective supervisory authorities which are available at the time of the acquisition.
- (3) ~~(4)~~ The limitations set forth in this section or any other provision of this chapter or any regulation promulgated thereunder, as now in effect or amended after July 13, 1984, shall not apply to the acquisition of a bank if, in his discretion, the commissioner, if the bank is organized under the laws of this state, or the comptroller of the currency, if the bank is a national bank, determines that an emergency exists and the acquisition is appropriate in order to prevent the probable failure of the bank which is closed or is in danger of closing.
- (4) ~~(5)~~ The provisions of this section shall not be construed to prohibit or restrict the merger or consolidation of banks or bank holding companies having their principal places of business in the same county and the operation by the merged or consolidated corporation of the banks, nor to prohibit the sale of any bank or bank holding company to, and the purchase thereof by, any other bank or bank holding company with its principal place of business in the same county and the operation of the bank as a branch so long as the provisions of KRS 287.180(4) have been satisfied.

Section 4. KRS 287.915 is amended to read as follows:

- (1) Notwithstanding any other provision of KRS Chapter 287:
  - (a) An individual or bank holding company that controls two (2) or more banks having their principal offices in this Commonwealth may, from time to time, combine any or all of the commonly controlled banks in this Commonwealth into and with any one (1) of the banks, and thereafter the surviving bank, which shall have its principal office in this Commonwealth, shall continue to operate its principal office and may operate the other authorized offices of the banks so combined as branches of the surviving bank; and
  - (b) Any combination authorized by this section shall not require the approval of the commissioner of financial institutions, but on or before thirty (30) days prior to consummation of any combination, the proposed surviving bank shall notify the commissioner of the combination, and on the effective date of any such combination the charter of any combined bank organized under the laws of this Commonwealth shall be surrendered.
- (2) Following any combination authorized by this section:
  - (a) The surviving bank may, subject to the approval of the commissioner as provided in KRS 287.180(2), establish and operate additional branches in any county where any bank involved in the combination had established a branch or main office;
  - (b) Any combined bank which is being operated as a branch of the surviving bank shall have a board of directors, a majority of which shall be residents of the combined bank's community, which shall meet not less often than quarterly to advise the branch in a nonfiduciary capacity with respect to the branch's community activities and affairs, customer relations, and local charitable activities;

- (c) The surviving bank shall maintain a record of the deposits in each of its offices resulting from such combination or thereafter established as provided in paragraph (a) of this subsection; and
- (d) With the approval of the commissioner, all of a bank's offices in a county may be transferred, by a purchase and assumption or other transaction, by the bank to a newly chartered bank having its principal office in the same county, or to an existing bank. ~~[If transferred to a newly chartered bank, the years in existence of the newly chartered bank shall be deemed to be in excess of five (5) years.]~~

(3) For purposes of this section:

- (a) The term "combine" or "combination" includes a merger or the acquisition of all or substantially all of the assets of a bank already controlled by an individual or bank holding company;
- (b) An individual or bank holding company "controls" a bank if that individual or company, directly or indirectly, owns, controls, or has the power to vote at least eighty percent (80%) of the issued and outstanding voting securities of the bank;
- (c) "Combined bank" means any bank participating in a combination authorized by this section other than the surviving bank;
- (d) "Surviving bank" means a bank into which a combined bank has been combined;
- (e) "Bank" includes a national bank, savings and loan association, and federal savings bank ~~[but does not include a bank which has been in existence less than five (5) years];~~ and
- (f) "Individual", "bank holding company" and "deposit" shall have the same meanings attributed to them in KRS 287.900(1).

Section 5. KRS 287.920 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

- (a) "Interstate merger transaction" means the merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; and
- (b) "Resulting bank" means a bank that has resulted from an interstate merger transaction under this section.

(2) A Kentucky state bank may establish, maintain, and operate one (1) or more branches in a state other than Kentucky pursuant to an interstate merger transaction in which the Kentucky state bank is the resulting bank, or if the other state permits, by acquisition of a branch or branches in the other state. Not later than the date on which the required application for the interstate merger transaction or branch acquisition is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the commissioner and pay the fee prescribed by KRS 287.480. The applicant shall also comply with the applicable provisions of KRS 287.180(2) and the commissioner shall base his approval or disapproval in the same manner as prescribed in KRS 287.180(2).

(3) An out-of-state state bank may establish, maintain, and operate one (1) or more branches in Kentucky pursuant to an interstate merger transaction in which the out-of-state state bank is the resulting bank. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the commissioner, pay the fee prescribed by KRS 287.480, and agree in writing to comply with the laws of this state applicable to its operation of branches in Kentucky. The applicant shall also comply with the applicable provisions of KRS 287.180(2) and the commissioner shall base his approval or disapproval in the same manner as prescribed in KRS 287.180(2).

(4) ~~[The bank to be acquired in an interstate merger transaction under the provisions of subsection (3) of this section shall have been involved in operation for a period of five (5) years or more.]~~ No interstate merger transaction under subsections (2) or (3) of this section shall be approved if the transaction would result in a bank holding company having control of banks or branches in this state holding more than fifteen percent (15%) of the total deposits and member accounts in the offices of all federally-insured depository institutions in this state as reported in the most recent year-end reports made by the institutions to their respective supervisory authorities which are available at the time of the transaction.

(5) An individual or bank holding company that controls two (2) or more banks may, from time to time, combine any or all of the commonly controlled banks in this Commonwealth into and with any one (1) of the banks, and

thereafter the surviving bank shall continue to operate its principal office and may operate the other authorized offices of the banks so combined as branches of the surviving bank.

- (6) A branch of an out-of-state state bank may conduct any activities that are authorized under the laws of this state for state banks. Additionally, the branch of an out-of-state state bank is authorized to conduct any activities relating to the administration of trusts that are authorized under the laws of its home state, if the activities are conducted in conformity with the laws of its home state.
- (7) A branch of a Kentucky state bank located in a host state may conduct any activities that are:
  - (a) Authorized under the laws of the host state for banks chartered by the host state; or
  - (b) Authorized for branches of national banks located in the host state, but whose principal location is in a state other than the host state.

**Approved March 17, 2000**

## CHAPTER 136

### (SB 14)

AN ACT relating to regulating emissions from mobile sources of air pollutants.

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

Section 1. KRS 77.115 is amended to read as follows:

- (1) The air pollution control board is hereby declared to be the governing body of an air pollution control district, and shall manage and control all the affairs and property of such district, and shall exercise all the powers of such district not otherwise delegated by this chapter. In a county where a city-county compact under KRS 79.310 to 79.330 is in effect, the air pollution control board shall assume all of the duties and responsibilities of the hearing board appointed under KRS 77.105, and the hearing board shall be abolished.
- (2) Notwithstanding any provision of this chapter to the contrary, in a county where a city-county compact under KRS 79.310 to 79.330 is in effect, the air pollution control board shall have regulatory authority for the district, and the city or county, as appropriate, shall exercise funding and administrative control of the district.
- (3) ***If an air pollution control board finds the need for and requires the implementation of a vehicle exhaust testing program, the program shall prohibit emissions of, regulate, or control only mobile sources of air pollutants regulated under the state program established in accordance with KRS 224.20-710 to 224.20-765.***

Section 2. KRS 77.170 is amended to read as follows:

- (1) ***Except for subsection (3) of this section,*** the General Assembly does not, by the provisions of this chapter, intend to occupy the field. ***Except for subsection (3) of this section,*** the provisions of this chapter do not prohibit the enactment or enforcement of any local ordinance stricter than the provisions of KRS 77.150 to 77.180 and stricter than the rules and regulations adopted pursuant to KRS 77.180 to 77.240, which local ordinance prohibits, regulates, or controls air pollution.
- (2) ***Except for subsection (3) of this section,*** the provisions of this chapter do not supersede any such local ordinance. If it should be held that the provisions of this chapter supersede the provisions of any local ordinance, such suspension shall not bar the prosecution or punishment of any violation of such ordinance which violation was committed when such ordinance, was in full force and effect.
- (3) ***Local ordinances prohibiting, regulating, or controlling emissions from mobile sources of air pollutants shall prohibit emissions of, regulate, or control only mobile sources of air pollutants regulated under the state program established in accordance with KRS 224.20-710 to 224.20-765.***

Section 3. KRS 224.20-130 is amended to read as follows:

- (1) Each county which pursuant to the provisions of KRS Chapter 77 has established or will establish a local air pollution control program, shall submit a synopsis of said program together with such standards and procedures as are enacted by regulations to the cabinet for approval within a period of ninety (90) days from the enactment hereof, or a period of ninety (90) days of the establishment of said local program.



- (2) If, after review by the cabinet, and a public hearing held in the county activating a district, the cabinet determines that the air pollution control district has adopted standards and procedures and has the necessary staff to implement the program in a manner consistent with the objectives of this chapter, concurrent jurisdiction may be granted the air pollution control district for the administration and enforcement of the aforesaid statutes. ***Except for the limit on authority established by subsection (1) of Section 3 of this Act***, the air pollution control district shall adopt no regulation or standard less stringent than a regulation or standard adopted by the cabinet, and shall submit prepared regulations and standards to the cabinet for prior concurrence. Periodic reports shall be made to the cabinet and to the commission as shall be provided for by regulation. If the cabinet shall determine, after hearing with notice, that a district program is not being administered in accordance with the statutes and regulations of the cabinet or the district, the grant of authority may be suspended, revoked, or modified by order of the cabinet. ***The enactment or enforcement of a regulation by an air pollution control district that finds the need for and requires the implementation of a vehicle exhaust testing program, if the program is not limited to prohibiting the emissions of, regulating, or controlling only mobile sources of air pollutants regulated under the state program established in accordance with KRS 224.20-710 to 224.20-765, shall cause an automatic revocation of an existing grant of authority or an automatic denial of a requested grant of authority.***
- (3) This provision shall in no way diminish the authority of the cabinet to administer and enforce the provisions of this chapter.
- (4) The cabinet shall be empowered to enforce any and all regulations or standards in any district when concurrent jurisdiction is granted.
- (5) When enforcement actions are taken by the district, the local Commonwealth's, county, and city prosecuting attorneys, instead of the Attorney General shall prosecute such actions.

**Approved March 17, 2000**

## CHAPTER 137

### (HB 126)

AN ACT relating to sick leave for public school teachers and employees.

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

Section 1. KRS 161.155 is amended to read as follows:

- (1) As used in this section:
  - (a) "Teacher" shall mean any person for whom certification is required as a basis of employment in the common schools of the state;
  - (b) "Employee" shall mean any person, other than a teacher, employed in the public schools, whether on a full or part-time basis;
  - (c) "Immediate family" shall mean the teacher's spouse, children including stepchildren, grandchildren, ***daughters-in-law and sons-in-law, brothers and sisters***, parents and spouse's parents, grandparents, and spouse's grandparents, without reference to the location or residence of said relative, and any other blood relative who resides in the teacher's home; and
  - (d) "Sick leave bank" shall mean an aggregation of sick leave days contributed by teachers for use by teachers who have exhausted all sick leave and other available paid leave days.
- (2) Each district board of education shall allow to each teacher in its common school system not less than ten (10) days of sick leave during each school year, without deduction of salary. Sick leave shall be granted to a teacher if he presents a personal affidavit or a certificate of a physician stating that the teacher was ill, that the teacher was absent for the purpose of attending to a member of his immediate family who was ill, or for the purpose of mourning a member of his immediate family. The ten (10) days of sick leave herein granted may be taken by a teacher on any ten (10) days of the school year and shall be granted in addition to accumulated sick leave days that have been credited to the teacher under the provisions of subsection (3) of this section.
- (3) Days of sick leave not taken by a teacher during any school year shall accumulate without limitation and be credited to that teacher. Accumulated sick leave may be taken in any school year. Any district board of

education may, in its discretion, allow teachers in its common school system sick leave in excess of the number of days prescribed in this section and may allow school district employees and teachers to use up to three (3) days' sick leave per school year for emergency leave pursuant to KRS 161.152(3). Any accumulated sick leave days credited to a teacher shall remain so credited in the event he transfers his place of employment from one (1) school district to another within the state or to the Kentucky Department of Education or transfers from the Department of Education to a school district after June 30, 1985.

- (4) Accumulated days of sick leave shall be granted to a teacher if, prior to the opening day of the school year, an affidavit or a certificate of a physician is presented to the district board of education, stating that the teacher is unable to commence his duties on the opening day of the school year, but will be able to assume his duties within a period of time that the board determines to be reasonable.
- (5) Any school employee may repurchase previously used sick leave days with the concurrence of the local school board by paying to the district an amount equal to the total of all costs associated with the used sick leave.
- (6) A district board of education may adopt a plan for a sick leave bank. The plan may include limitations upon the number of days a teacher may annually contribute to the bank and limitations upon the number of days a teacher may annually draw from the bank. Only those teachers who contribute to the bank may draw upon the bank. Days contributed will be deducted from the days available to the contributing teacher. The sick leave bank shall be administered in accordance with a policy adopted by the board of education.
- (7)
  - (a) A district board of education shall establish a sick leave donation program to permit teachers to voluntarily contribute sick leave to teachers in the same school district who are in need of an extended absence from school. A teacher who has accrued more than fifteen (15) days sick leave may request the board of education to transfer a designated amount of sick leave to another teacher who is authorized to receive the sick leave donated. A teacher may not request an amount of sick leave be donated that reduces his or her sick leave balance to less than fifteen (15) days.
  - (b) A teacher may receive donations of sick leave if:
    1. The teacher or a member of his or her immediate family suffers from a medically certified illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the teacher to be absent for at least ten (10) days;
    2. The teacher's need for the absence and use of leave are certified by a licensed physician;
    3. The teacher has exhausted his or her accumulated sick leave, personal leave, and any other leave granted by the school district; and
    4. The teacher has complied with the school district's policies governing the use of sick leave.
  - (c) While an employee is on sick leave provided by this section, he or she shall be considered a school district employee, and his or her salary, wages, and other employee benefits shall not be affected.
  - (d) Any sick leave that remains unused, is not needed by a teacher, and will not be needed in the future shall be returned to the teacher donating the sick leave.
  - (e) The board of education shall adopt policies and procedures necessary to implement the sick leave donation program.
- (8) A teacher may use up to thirty (30) days of sick leave following the birth or adoption of a child or children. Additional days may be used when the need is verified by a physician's statement.
- (9) After July 1, 1982, a district board of education may compensate, at the time of retirement, an employee or a teacher for each unused sick leave day. The rate of compensation for each unused sick leave day shall be based on a percentage of the daily salary rate calculated from the employee's or teacher's last annual salary, not to exceed thirty percent (30%). Payment for unused sick leave days shall be incorporated into the annual salary of the final year of service; provided that the member makes the regular retirement contribution for members on the sick leave payment. The accumulation of these days includes unused sick leave days held by the employee or teacher at the time of implementation of the program.
- (10) Any statute to the contrary notwithstanding, employees and teachers who transferred from the Department of Education to a school district, from a school district to the Department of Education, or from one (1) school district to another school district after July 15, 1981, shall receive credit for any unused sick leave to which the

employee or teacher was entitled on the date of transfer. This credit shall be for the purposes set forth in subsection (9) of this section.

**Approved March 17, 2000**

## **CHAPTER 138**

**(HB 346)**

AN ACT relating to utilities.

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

Section 1. KRS 278.160 is amended to read as follows:

- (1) Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced. The utility shall keep copies of its schedules open to public inspection under such rules as the commission prescribes.
- (2) No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.
- (3) ***The provisions of this section do not require disclosure or publication of a provision of a special contract that contains rates and conditions of service not filed in a utility's general schedule if such provision would otherwise be entitled to be excluded from the application of KRS 61.870 to 61.884 under the provisions of KRS 61.878 (1)(c)1.***

**Approved March 17, 2000**

## **CHAPTER 139**

**(HB 407)**

AN ACT relating to oil and gas.

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

Section 1. KRS 353.510 is amended to read as follows:

As used in KRS 353.500 to 353.720, unless the context otherwise requires:

- (1) "Department" means the Department of Mines and Minerals as defined in KRS 351.010;
- (2) "Commissioner" means the commissioner of the Department of Mines and Minerals as defined in KRS 351.010;
- (3) "Director" means the director of oil and gas conservation as provided in KRS 353.530;
- (4) "Commission" means the Kentucky Oil and Gas Conservation Commission as provided in KRS 353.565;
- (5) "Person" means any natural person, corporation, association, partnership, receiver, governmental agency subject to KRS 353.500 to 353.720, trustee, so-called common-law or statutory trust, guardian, executor, administrator, or fiduciary of any kind, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body;
- (6) "Correlative rights" means the reasonable opportunity of each person entitled thereto to recover and receive without waste the oil and gas in and under his tract or tracts, or the equivalent thereof;
- (7) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;
- (8) "Gas" means all natural gas, including casinghead gas, and all other hydrocarbons not defined in subsection (7) of this section as oil;

- (9) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both. Each productive zone of a general structure which is completely separated from any other zone in the structure, or which for the purpose of KRS 353.500 to 353.720 may be so declared by the department, is covered by the word "pool" as used herein;
- (10) "Field" means the general area which is underlaid or appears to be underlaid by at least one (1) pool; and "field" includes the underground reservoir containing oil or gas or both. The words "field" and "pool" mean the same thing when only one (1) underground reservoir is involved; however, "field," unlike "pool," may relate to two (2) or more pools;
- (11) "Just and equitable share of production" means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool underlying his tract or tracts;
- (12) "Abandoned," when used in connection with a well or hole, means a well or hole which has never been used, or which, in the opinion of the department, will no longer be used for the production of oil or gas or for the injection or disposal of fluid therein;
- (13) "Workable bed" means:
- (a) A coal bed actually being operated commercially;
  - (b) A coal bed that the department decides can be operated commercially and the operation of which can reasonably be expected to commence within not more than ten (10) years; or
  - (c) A coal bed which, from outcrop indications or other definite evidence, proves to the satisfaction of the commissioner to be workable, and which, when operated, will require protection if wells are drilled through it;
- (14) "Well" means a borehole drilled, ***shaft driven, or hole dug*** or ***such*** proposed ***or otherwise used***~~[-to be drilled,-]~~ for the purpose of producing natural gas or petroleum, or one through which natural gas or petroleum is being produced, or ~~a borehole drilled or proposed to be drilled~~ for the purpose of injecting any water, gas, or other fluid therein or one into which any water, gas, or other fluid is being injected;
- (15) "Shallow well" means any well drilled and completed at a depth less than four thousand (4,000) feet except, in the case of any well drilled and completed east of longitude line 84 degrees 30'; shallow well means any well drilled and completed at a depth less than four thousand (4,000) feet or above the base of the lowest member of the Devonian Brown Shale, whichever is the deeper in depth;
- (16) "Deep well" means any well drilled and completed below the depth herein provided for a shallow well;
- (17) "Operator" means any owner of the right to develop, operate, and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for himself or for himself and others; in the event that there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein shall be considered as "operator" to the extent of seven-eighths (7/8) of the oil and gas in that portion of the pool underlying the tract owned by such owner, and as "royalty owner" as to one-eighth (1/8) interest in such oil and gas; and in the event the oil is owned separately from the gas, the owner of the right to develop, operate, and produce the substance being produced or sought to be produced from the pool shall be considered as "operator" as to such pool;
- (18) "Royalty owner" means any owner of oil and gas in place, or oil and gas rights, to the extent that such owner is not an operator as defined in subsection (17) of this section;
- (19) "Drilling unit" generally means the maximum area in a pool which may be drained efficiently by one (1) well so as to produce the reasonable maximum recoverable oil or gas in such area. Where the regulatory authority has provided rules for the establishment of a drilling unit and an operator, proceeding within the framework of the rules so prescribed, has taken the action necessary to have a specified area established for production from a well, such area shall be a drilling unit;
- (20) "Underground source of drinking water" means those subsurface waters identified as such in regulations promulgated by the department which shall be consistent with the definition of underground source of drinking water in regulations promulgated by the Environmental Protection Agency pursuant to the Safe Drinking Water Act, 42 U.S.C. secs. 300(f) et seq.;
- (21) "Underground injection" means the subsurface emplacement of fluids by well injection but does not include the underground injection of natural gas for purposes of storage;

- (22) "Endangerment of underground sources of drinking water" means underground injection which may result in the presence in underground water, which supplies or can reasonably be expected to supply any public water system, of any contaminant and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons;
- (23) "Class II well" means wells which inject fluids:
  - (a) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;
  - (b) For enhanced recovery of oil or natural gas; and
  - (c) For storage of hydrocarbons which are liquid at standard temperature and pressure;
- (24) "Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

Section 2. KRS 353.565 is amended to read as follows:

- (1) There is hereby created in the Department of Mines and Minerals, the "Kentucky Oil and Gas Conservation Commission" which shall be composed of five (5) members. Four (4) of the members shall be appointed by the Governor and the fifth member, who shall serve as chairman of the commission, shall be the director of oil and gas conservation and who shall serve in an ex officio capacity as a nonvoting member except in the case of a tie. The four (4) members appointed by the Governor shall be residents of this state and not more than one (1) of them may be directly employed in the exploration for or the production of oil or gas, or deriving more than fifty percent (50%) of that person's income from the exploration for or production of oil or gas, or engaged in a business directly servicing or supplying these activities. No member of the commission shall participate in the deliberations of the commission or vote on any matter before the commission in which he, his employer, or any business unit in which he has a financial interest is an interested party, but a member of the commission is not prohibited from deliberating or voting on matters of general interest, such as the fixing of statewide spacing patterns, affecting him, his employer, or a business unit in which he has financial interest as a member of a class of persons to be affected by an administrative regulation or order of the commission. The commission shall not contain more than one (1) representative from any one (1) operator, including subsidiaries or affiliates. Of the four (4) members appointed by the Governor, two (2) shall be residents of eastern Kentucky and two (2) shall be residents of western Kentucky. Longitude 84 deg. 30 min. shall be deemed as the division line between eastern Kentucky and western Kentucky.
- (2) The members of the commission, except the chairman, shall be appointed for terms of four (4) years each, except that:
  - (a) The original appointments shall be for terms of one (1), two (2), three (3), and four (4) years respectively; and
  - (b) Of the members appointed after July 15, 1998, one (1) member appointed to fill the term expiring June 21, 1999, shall serve until January 21, 2000; one (1) member appointed to fill the term expiring June 21, 2000, shall serve until January 21, 2001; one (1) member appointed to fill one (1) of the two (2) terms expiring June 21, 2001, shall serve until January 21, 2002; and one (1) member appointed to fill the second of the two (2) terms expiring June 21, 2001, shall serve until January 21, 2003; and subsequent appointments shall be for four (4) year terms ending on January 21. Each member appointed by the Governor shall serve until his successor has been appointed and qualified. Members may be reappointed by the Governor to serve successive terms. The members of the commission, before performing any duty hereunder, shall take an oath which shall be certified by the officer administering it. The oath in writing and the certificate shall be filed in the office of the Secretary of State. Vacancies in the membership appointed by the Governor shall be filled by appointment by him and for the unexpired term of the member whose office shall be vacant, and the appointment shall be made by the Governor within sixty (60) days of the occurrence of a vacancy. Any member appointed by the Governor may be removed by the Governor in case of incompetency, neglect of duty, gross immorality, or malfeasance of office.
- (3) The commission shall meet at times and places as shall be designated by the chairman. The chairman may call a meeting of the commission at any time, and he shall call a meeting of the commission upon the written request of two (2) members. Notification of each meeting shall be given in writing to each member by the

chairman at least five (5) days in advance of the meeting. Any three (3) members, one (1) of which may be the chairman, shall constitute a quorum for the transaction of any business, including the holding of hearings. A majority of the commission present shall be required to determine any issue brought before it for decision.

- (4) Each member of the commission, except the chairman, shall receive *one hundred* fifty dollars ~~(\$150) [(\$50)]~~ per diem not to exceed one hundred (100) days per calendar year while actually engaged in the performance of his duties as a member of the commission. Each member of the commission, including the chairman, shall also be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the commission.
- (5) The commission shall execute and carry out, administer, and enforce the provisions of KRS 353.651 and 353.652. The commission may make any investigation of records and facilities as it deems proper.
- (6) If an emergency is found to exist by the commission which, in its judgment, requires the making, changing, renewal, or extension of an administrative regulation or order without first having a hearing, an emergency regulation may be promulgated in accordance with KRS Chapter 13A and an emergency order may be issued in accordance with KRS 13B.125.
- (7) The commission shall have specific authority to:
  - (a) Promulgate and enforce reasonable administrative regulations and issue orders reasonably necessary to prevent waste, protect correlative rights, govern the practice and procedure before the commission, and otherwise administer the provisions of KRS 353.651 and 353.652; and
  - (b) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams, and other pertinent documents, and administer oaths and affirmations to witnesses, whenever, in the judgment of the commission, it is necessary to do so for the effective discharge of its duties under the provisions of KRS 353.651 and 353.652.
- (8) Any interested person may have the commission call a hearing for the purpose of taking action in respect to any matter within the jurisdiction of the commission by making a request therefor in writing. Upon the receipt of any request, the commission promptly shall call a hearing thereon, and, after the hearing and with all convenient speed, and in any event within thirty (30) days after the conclusion of the hearing, shall take appropriate action with regard to the subject matter thereof as it may deem appropriate. If the hearing is adjudicatory in nature, it shall be conducted in accordance with KRS Chapter 13B.
- (9) Agreements made in the interest of conservation of oil or gas, or both, or for the prevention of waste, between and among owners or operators, or both, owning separate holdings in the same field or pool, or in any area that appears from geologic or other data to be underlain by a common accumulation of oil or gas, or both, and agreements between and among these owners or operators, or both, and royalty owners therein, for the purpose of bringing about the development and operation of the field, pool, or area, or any part thereof, as a unit, and for establishing and carrying out a plan for the cooperative development and operation thereof, when the agreements are approved by the commission, are hereby authorized and shall not be held or construed to violate any of the laws of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade.
- (10) Nothing in this section shall be construed as giving to the commission the right or authority to supersede the authority of the department in the administration of KRS 353.060.

Section 3. KRS 353.590 is amended to read as follows:

- (1) Any person seeking a permit required by KRS 353.570 shall submit to the department a written application in a form prescribed by the department.
- (2) Each application shall be accompanied by a specified fee as follows:
  - (a) The fee shall be three hundred dollars (\$300) for each well to be drilled, deepened, or reopened for any purpose relating to the production, repressuring, or storage of oil or gas, and for each water supply well, observation well, and geological or structure test hole.
  - (b) If the department receives delegation of authority for administration of the underground injection control program under Section 1425 of the Safe Drinking Water Act (Public Law 93-523 as amended), the department may, by administrative regulation, establish a fee or schedule of fees in an amount not to exceed fifty dollars (\$50) per well, in addition to the fees imposed by paragraph (a) of this subsection, upon each application to drill, deepen, or reopen a well for any purpose relating to the production,

repressuring, or storage of oil or gas, and for each water supply well, observation well, and geological or structure test hole. The fees or schedule of fees to be established by administrative regulation shall not exceed an amount sufficient to recover the costs incurred by the department in administering the Underground Injection Control Program less any other state or federal funds which are made available for this purpose.

- (c) All money paid to the State Treasurer for fees required by paragraph (b) of this subsection shall be for the sole use of the department in the administration of the Underground Injection Control Program under Section 1425 of the Safe Drinking Water Act (Public Law 93-523 as amended).
- (3) All money paid to the State Treasurer for licenses and fees required by KRS 353.500 to 353.720 shall be for the sole use of the department and shall be in addition to any moneys appropriated by the General Assembly for the use of the department.
- (4) Each application shall be accompanied by a plat, which shows the location and elevation of each well, prepared according to the administrative regulations promulgated under KRS 353.500 to 353.720. The plat shall be certified as accurate and correct by a professional land surveyor *licensed* in accordance with the provisions of KRS Chapter 322.
- (5) When any person submits to the Department of Mines and Minerals an application for a permit to drill a well, or to reopen, deepen, or temporarily abandon any well which is not covered by surety bond, the department shall, except as provided in this section, require from the well operator a bond in the sum of five hundred dollars (\$500) for a well to be drilled to a depth of five hundred (500) feet or less; one thousand dollars (\$1,000) for a well to be drilled to a depth between five hundred and one (501) feet and one thousand (1,000) feet; one thousand five hundred dollars (\$1,500) for a well to be drilled to a depth between one thousand and one (1,001) feet and one thousand five hundred (1,500) feet; two thousand dollars (\$2,000) for a well to be drilled to a depth between one thousand five hundred and one (1,501) feet and two thousand (2,000) feet; two thousand five hundred dollars (\$2,500) for a well to be drilled to a depth between two thousand and one (2,001) feet and two thousand five hundred (2,500) feet; three thousand dollars (\$3,000) for a well to be drilled to a depth between two thousand five hundred and one (2,501) feet and three thousand (3,000) feet; three thousand five hundred dollars (\$3,500) for a well to be drilled to a depth between three thousand and one (3,001) feet and three thousand five hundred (3,500) feet; four thousand dollars (\$4,000) for a well to be drilled to a depth between three thousand five hundred and one (3,501) feet and four thousand (4,000) feet; and five thousand dollars (\$5,000) for a well to be drilled to a depth of more than four thousand (4,000) feet. The bonds shall be made in favor of the Department of Mines and Minerals, conditioned that the wells upon abandonment shall be plugged in accordance with the administrative regulations of the department and that all records required by the department be filed as specified. An operator may petition the department to amend the drilling depth and bond amount applicable to a particular well and shall not proceed to drill to a depth greater than that authorized by the department until the operator is so authorized except pursuant to administrative regulations promulgated by the department. The commission may establish a bond in a sum greater than five thousand dollars (\$5,000) for any well to be drilled to a depth of more than four thousand (4,000) feet if the members of the commission determine that the particular circumstances of the drilling of the well warrant an increase in the bond amount established above. All bonds shall remain in effect until the plugging of the well is approved by the department, or the bond is released by the department. Any well operator in lieu of the bond may file with the department a blanket bond in a sum of ten thousand dollars (\$10,000), covering all wells drilled or to be drilled in the Commonwealth by the principal in the bond, and the acceptance and approval by the department of the blanket bond shall be in full compliance with the above provision requiring an individual well bond. A deposit in cash or a bank-issued irrevocable letter of credit may serve in lieu of either of the individual well or blanket bonds, and a property bond may be executed by an operator who owns all of the surface and mineral rights of a tract proposed for drilling. A certificate of deposit, the principal of which is pledged in lieu of a bond and whose interest is payable to the party making the pledge, may also be accepted by the department. If an operator is required to post individual well bonds exceeding a total of five thousand dollars (\$5,000) or elects to post a blanket bond, the certificate of deposit shall be accepted by the department in lieu of that portion of the amount of the bonds exceeding five thousand dollars (\$5,000). The bond or bonds referred to in this section shall be executed by the well operator as principal and, if a surety bond, by a corporate surety authorized to do business in the Commonwealth. A deposit in cash shall serve in lieu of either of the above bonds; all cash bonds accepted by the department shall be deposited into an interest-bearing account, with the interest thereon payable to the special agency account known as the oil and gas well plugging fund, created in subsection (9) of this section, to be used in accordance with the purposes described therein. All cash bonds being held by the department on July 13, 1990, shall likewise be deposited in the interest-bearing

account, with the proceeds to be used for the purposes established for the oil and gas well plugging fund. The bond amounts shall be applicable only to permits issued upon and after July 13, 1990. All bonds posted for permits issued prior to July 13, 1990, shall remain in full force and effect for the duration of the permits.

- (6) A successor to the well operator shall post bond, *pay a twenty-five dollar (\$25) fee per well to the department*, and notify the department in writing in advance of commencing use or operation of a well or wells. The successor shall assume the obligations of this chapter as to a particular well or wells and relieve the original permittee of responsibility under this chapter with respect to the well or wells. It shall be the responsibility of the selling operator to require the successor operator to post bond before use or operation is commenced by the successor and relief of responsibility under this chapter is granted to the original permittee.
- (7) If the requirements of subsection (5) of this section with respect to proper plugging upon abandonment and submission of all required records on all well or wells have not been complied with within the time limits set by the department, by administrative regulation, or by this chapter, the department shall cause a notice of noncompliance to be served upon the operator by certified mail, addressed to the permanent address shown on the application for a permit. The notice shall specify in what respects the operator has failed to comply with this chapter or the administrative regulations of the department. If the operator has not reached an agreement with the department or has not complied with the requirements set forth by it within forty-five (45) days after mailing of the notice, the bond shall be forfeited to the department.
- (8) A bond forfeited pursuant to the provisions of this chapter may be collected by an attorney for the department or by the Attorney General, after notice from the director.
- (9) All sums received under subsection (5) of this section or through the forfeiture of bonds shall be placed in the State Treasury and credited to a special agency account to be designated as the oil and gas well plugging fund, which shall be an interest-bearing account with the interest thereon payable to the fund. This fund shall be available to the department and shall be expended for the plugging of any abandoned wells coming within the authority of the department pursuant to this chapter. The plugging of any well pursuant to this subsection shall not be construed to relieve the operator or any other person from civil or criminal liability which would exist except for the plugging. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purpose of the fund until expended or until appropriated by subsequent legislative action.
- (10) Upon request by any person applying for a permit for a geological or structure test hole, the department shall keep the location and elevation of the hole confidential until the information is allowed to be released by the person obtaining the permit.
- (11) For the purpose of this chapter, "water supply well" shall not include:
  - (a) Any well for a potable water supply for domestic use or for livestock; or
  - (b) Any water well used primarily for cooling purposes in an industrial process.

Section 4. KRS 353.651 is amended to read as follows:

The following provisions of this section shall apply to any deep well:

- (1) Drilling units:
  - (a) The commission shall, after notice and a hearing, to be conducted in accordance with KRS Chapter 13B, regulate the drilling and location of wells in any pool and the production therefrom so as to prevent reasonably avoidable net drainage from each developed unit (that is, drainage which is not equalized by counterdrainage) so that each owner in a pool shall have the right and opportunity to recover his fair and equitable share of the recoverable oil and gas in such pool.
  - (b) For the prevention of waste, to protect and enforce the correlative rights of the owners in a pool, and to avoid the augmenting and accumulation of risks arising from the drilling of an excessive number of wells, the commission shall, after notice and a hearing, to be conducted in accordance with KRS Chapter 13B, establish drilling units for each pool. The spacing of wells in proved oil and gas fields shall be governed by administrative regulations promulgated for that particular field. Wells drilled in areas not covered by special field administrative regulations shall be governed by statewide administrative regulations promulgated by the commission.
  - (c) Each well permitted to be drilled upon any drilling unit shall be drilled in accordance with the administrative regulations promulgated by the commission and in accordance with a spacing pattern



fixed by the commission for the pool in which the well is located, with any exceptions that may be reasonably necessary where it is shown, in accordance with administrative regulations promulgated by the commission, that the unit is partly outside the pool or for some other reason a well otherwise located on the unit would not be likely to produce in paying quantities, or topographical conditions are such as to make the drilling at the location unduly burdensome. Whenever an exception is granted, the commission shall take action as will offset any advantage which the person securing the exception may have over other owners by reason of the drilling of the well as an exception.

- (d) No drilling unit established by the commission shall be smaller than the maximum area which can be drained efficiently by one (1) deep well so as to produce the reasonable maximum recoverable oil or gas in such area, unless an exception is granted in accordance with administrative regulations promulgated by the commission.
- (e) An order establishing drilling units may be modified, altered, extended, amended, or vacated by the commission after notice and hearing as prescribed above.

(2) Pooling of interests in drilling units:

- (a) When two (2) or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or a part of a drilling unit, the interested persons may pool their tracts or interests for the development and operation of the drilling unit. In the absence of voluntary pooling and upon application of any operator having an interest in the drilling unit, and after the commission has given notice to all persons reasonably known to own an interest in the oil or gas in the drilling unit, and after a hearing conducted in accordance with KRS Chapter 13B, the commission shall enter an order pooling all tracts or interests in the drilling unit for the development and operation thereof and for the sharing production therefrom. Each pooling order shall be upon terms and conditions which are just and reasonable.
- (b) All operations, including, but not limited to, the commencement, drilling, or operation of a deep well, upon any portion of a drilling unit for which a pooling order has been entered, shall be deemed for all purposes the conduct of those operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to a separately owned tract included in a drilling unit shall, when produced, be deemed for all purposes to have been actually produced from the tract by a deep well drilled thereon.
- (c) Any pooling order under the provisions of subsection (2) of this section shall authorize the drilling and operation of a deep well for the production of oil or gas from the pooled acreage; shall designate the operator to drill and operate such deep well; shall prescribe the time and manner in which all owners of operating interests in the pooled tracts or portions of tracts may elect to participate therein; shall provide that all reasonable costs and expenses of drilling, completing, equipping, operating, plugging, and abandoning the deep well shall be borne, and all production therefrom shared, by all owners of operating interests in proportion to the acreage in the pooled tracts owned or under lease to each owner; and shall make provision for payment of all reasonable costs thereof, including reasonable charge for supervision and for interest on past due accounts, by all those who elect to participate therein. Upon the application of any operator having an interest in the drilling unit, the person or persons selected to drill and operate the deep well shall be determined by competitive bids under the procedure set out in KRS 74.260.
- (d) Upon request, any pooling order shall provide just and equitable alternatives whereby an owner of an operating interest who does not elect to participate in the risk and cost of the drilling of a deep well may elect to surrender his interest or a portion thereof to the participating owners on a reasonable basis and for a reasonable consideration, which, if not agreed upon, shall be determined by the commission; or to participate in the drilling of the deep well on a limited or carried basis on terms and conditions which, if not agreed upon, shall be determined by the commission to be just and reasonable.
- (e) If an operator owning an interest in a pooled drilling unit elects not to participate in the risk and cost of drilling of a deep well thereon, and another operator owning an interest therein, shall drill and operate, or pay the costs of drilling and operating a deep well as provided in the commission's order, then the operating owner shall be entitled to the share of production from the tracts or portions thereof accruing to the interest of the nonparticipating owner, exclusive of any royalty or overriding royalty reserved in any leases, assignments thereof or agreements relating thereto, of the tracts or portions thereof, or exclusive of one-eighth (1/8) of the production attributable to all unleased tracts or portions thereof,

until the market value of the nonparticipating owner's share of the production, exclusive of any royalty, overriding royalty or one-eighth (1/8) of production, equals **two (2)**~~one and one fourth (1 1/4)~~ times the share of the costs payable by or charged to the interest of the nonparticipating owner.

- (f) If a dispute shall arise as to the costs of drilling and operating a deep well, the commission shall determine and apportion the costs, within ninety (90) days from the date of written notification to the commission of the existence of such dispute.
- (3) This section shall not apply to wells drilled, deepened, or reopened for the injection of water, gas, or other fluids into any subsurface formation.

**Approved March 17, 2000**

## **CHAPTER 140**

**(HB 429)**

AN ACT relating to blood testing.

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

Section 1. KRS 438.250 is amended to read as follows:

- (1) When a public servant, as defined in KRS 521.010, or victim of a crime is bitten by, suffers a puncture wound caused by, or is exposed to the blood or body fluids of a criminal defendant, inmate, parolee,~~or~~ probationer, ***or patient or resident of any health facility owned or operated by the Commonwealth***, or the blood or body fluids of a criminal defendant, inmate, parolee, or probationer have come into contact with the skin or unprotected clothing of a public servant during any incident in which the public servant and the criminal defendant, inmate, parolee, or probationer are involved, the criminal defendant, inmate, parolee, or probationer shall be ordered to submit to testing of the blood for human immunodeficiency virus (HIV), hepatitis~~A, B,~~ and C viruses, and ***any other disease, if testing for that disease is recommended by the most current guidelines of the Centers for Disease Control and Prevention, and if testing for any of these conditions is recommended, then testing will be conducted as recommended by the Centers for Disease Control and Prevention***~~tuberculosis~~.
- (2) The written results of the testing shall be made available to each public servant, criminal defendant, inmate, parolee, or probationer coming within the purview of subsection (1). However, the results shall not be public records and shall be disclosed to others only on a need-to-know basis.
- (3) If a criminal defendant, inmate, parolee, or probationer fails or refuses to be tested as ordered, he may be held in criminal contempt. A Circuit or District Judge shall compel the criminal defendant, inmate, parolee, or probationer to undergo the testing required herein if he fails or refuses to do so. Undergoing compulsory testing after a failure or refusal to be tested shall not relieve the criminal defendant, inmate, parolee, or probationer of the liability imposed by this subsection.
- (4) The costs of the testing shall be borne by the criminal defendant, inmate, parolee, or probationer unless he is determined unable to pay for the test by a court of competent jurisdiction for criminal defendants and probationers and by the Department of Corrections pursuant to their indigency standards for inmates and parolees, in which case the Commonwealth shall pay for the testing.
- (5) The provisions of subsections (1) to (4) of this section shall apply to juveniles falling within any category specified in subsections (1) to (4) of this section as well as to adults.

**Approved March 17, 2000**

## **CHAPTER 141**

**(HB 148)**

AN ACT relating to assisted living communities.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 15 of this Act:*

- (1) *"Activities of daily living" means normal daily activities, including bathing, dressing, grooming, transferring, toileting, and eating;*
- (2) *"Assistance with self-administration of medication" means:*
  - (a) *Reminding the client to take medications;*
  - (b) *Reading the medication's label;*
  - (c) *Confirming that medication is being taken by the client for whom it is prescribed;*
  - (d) *Opening the dosage packaging or medication container, but not removing or handling the actual medication;*
  - (e) *Storing the medication in a manner that is accessible to the client; and*
  - (f) *Making available the means of communicating with the client's physician and pharmacy for prescriptions by telephone, facsimile, or other electronic device;*
- (3) *"Assisted living community" means a series of living units on the same site, operated as one (1) business entity, and certified under Section 4 of this Act to provide services for five (5) or more adult persons not related within the third degree of consanguinity to the owner or manager;*
- (4) *"Client" means an adult person who has entered into a lease agreement with an assisted living community;*
- (5) *"Danger" means physical harm or threat of physical harm to one's self or others;*
- (6) *"Health services" has the same meaning as in KRS 216B.015;*
- (7) *"Instrumental activities of daily living" means activities to support independent living including, but not limited to, housekeeping, shopping, laundry, chores, transportation, and clerical assistance;*
- (8) *"Living unit" means a portion of an assisted living community occupied as the living quarters of a client under a lease agreement;*
- (9) *"Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place with the use of a device including, but not limited to, a walker, crutches, or wheelchair; and*
- (10) *"Office" means the Office of Aging Services.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *Each living unit in an assisted living community shall:*
  - (a) *Be at least two hundred (200) square feet for single occupancy, or for double occupancy if the room is shared with a spouse or another individual by mutual agreement;*
  - (b) *Include at least one (1) unfurnished room with a lockable door, private bathroom with a tub or shower, provisions for emergency response, window to the outdoors, and a telephone jack;*
  - (c) *Have an individual thermostat control if the assisted living community has more than twenty (20) units; and*
  - (d) *Have temperatures that are not under a client's direct control at a minimum of seventy-one (71) degrees Fahrenheit in winter conditions and a maximum of eighty-one (81) degrees Fahrenheit in summer conditions if the assisted living community has twenty (20) or fewer units.*
- (2) *Each client shall be provided access to central dining, a laundry facility, and a central living room.*
- (3) *Each assisted living community shall comply with applicable building and life safety codes.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *The assisted living community shall provide each client with the following services according to the lease agreement:*
  - (a) *Assistance with activities of daily living and instrumental activities of daily living;*
  - (b) *Three (3) meals and snacks made available each day;*

- (c) *Scheduled daily social activities that address the general preferences of clients; and*
- (d) *Assistance with self-administration of medication.*
- (2) *Clients of an assisted living community may arrange for additional services under direct contract or arrangement with an outside agent, professional, provider, or other individual designated by the client if permitted by the policies of the assisted living community.*
- (3) *Upon entering into a lease agreement, an assisted living community shall inform the client in writing about policies relating to the contracting or arranging for additional services.*
- (4) *Each assisted living community shall assist each client upon a move-out notice to find appropriate living arrangements. Each assisted living community shall share information provided from the office regarding options for alternative living arrangements at the time a move-out notice is given to the client.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *The Cabinet for Health Services shall establish by the promulgation of administrative regulation under KRS Chapter 13A, an initial and annual certification review process for assisted living communities that shall include an on-site visit. This administrative regulation shall establish procedures related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B.*
- (2) *No assisted living community shall operate unless its owner or manager has:*
  - (a) *Filed a current application for the assisted living community to be certified by the office; or*
  - (b) *Received certification of the assisted living community from the office.*
- (3) *No business shall market its services as an assisted living community unless its owner or manager has:*
  - (a) *Filed a current application for the assisted living community to be certified by the office; or*
  - (b) *Received certification of the assisted living community from the office.*
- (4) *The office shall determine the feasibility of recognizing accreditation by other organizations in lieu of certification from the office.*
- (5) *Individuals designated by the office to conduct certification reviews shall have the skills, training, experience, and ongoing education to perform certification reviews.*
- (6) *Upon conducting a certification review, the office shall assess an assisted living community certification fee in the amount of twenty dollars (\$20) per living unit that in the aggregate for each assisted living community is no less than three hundred dollars (\$300) and no more than one thousand six hundred dollars (\$1,600). The office shall submit to the Legislative Research Commission, by June 30 of each year, a breakdown of fees assessed and costs incurred for conducting certification reviews.*
- (7) *Notwithstanding any provision of law to the contrary, the office may request any additional information from an assisted living community or conduct additional on-site visits to ensure compliance with the provisions of Sections 1 to 15 of this Act.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *The office shall report to the Division of Licensing and Regulation any alleged or actual cases of health services being delivered by the staff of an assisted living community.*
- (2) *An assisted living community shall have written policies on reporting and recordkeeping of alleged or actual cases of abuse, neglect, or exploitation of an adult under KRS 209.030.*
- (3) *Any assisted living community staff member who has reasonable cause to suspect that a client has suffered abuse, neglect, or exploitation shall report the abuse, neglect, or exploitation under KRS 209.030.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

*A client shall meet the following criteria:*

- (1) *Be ambulatory or mobile nonambulatory, unless due to a temporary health condition for which health services are being provided in accordance with subsections (2) and (3) of Section 3 of this Act; and*
- (2) *Not be a danger.*

## SECTION 7. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

*A lease agreement, in no smaller type than twelve (12) point font, shall be executed by the client and the assisted living community and shall include:*

- (1) Client data, for the purpose of providing service, to include:*
  - (a) A functional needs assessment pertaining to the client's ability to perform activities of daily living and instrumental activities of daily living;*
  - (b) Emergency contact person's name;*
  - (c) Name of responsible party or legal guardian, if applicable;*
  - (d) Attending physician's name;*
  - (e) Information regarding personal preferences and social factors;*
  - (f) Advance directive under KRS 311.621 to 311.643, if desired by the client; and*
  - (g) Optional information helpful to identify services that meet the client's needs.*
- (2) Assisted living community's policy regarding termination of the lease agreement;*
- (3) Terms of occupancy;*
- (4) General services and fee structure;*
- (5) Information regarding specific services provided, description of the living unit, and associated fees;*
- (6) Provisions for modifying client services and fees;*
- (7) Minimum thirty (30) day notice provision for a change in the community's fee structure;*
- (8) Minimum thirty (30) day move-out notice provision for client nonpayment, subject to applicable landlord or tenant laws;*
- (9) Provisions for assisting any client that has received a move-out notice to find appropriate living arrangements prior to the actual move-out date;*
- (10) Refund and cancellation policies;*
- (11) Description of any special programming, staffing, or training if an assisted living community is marketed as providing special programming, staffing, or training on behalf of clients with particular needs or conditions;*
- (12) Other community rights, policies, practices, and procedures;*
- (13) Other client rights and responsibilities, including compliance with subsections (2) and (3) of Section 3 of this Act; and*
- (14) Grievance policies that minimally address issues related to confidentiality of complaints and the process for resolving grievances between the client and the assisted living community.*

## SECTION 8. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) An assisted living community shall provide any interested person with a:*
  - (a) Consumer publication, as approved by the office, that contains a thorough description of Kentucky laws and regulations governing assisted living communities;*
  - (b) Standard consumer checklist provided by the office; and*
  - (c) Description of any special programming, staffing, or training if the assisted living community markets itself as providing special programming, staffing, or training on behalf of clients with particular needs or conditions.*
- (2) An assisted living community may refer a request for information required in subsection (1)(a) of this section to the office.*

## SECTION 9. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *Staffing in an assisted living community shall be sufficient in number and qualification to meet the twenty-four (24) hour scheduled and unscheduled needs of its clients and the services provided.*
- (2) *One (1) awake staff member shall be on site at all times.*
- (3) *An assisted living community shall have a designated manager who is at least twenty-one (21) years of age, has at least a high school diploma or a General Educational Development diploma, and has demonstrated management or administrative ability to maintain the daily operations.*
- (4) *No employee who has an active communicable disease reportable to the Department for Public Health shall be permitted to work in an assisted living community if the employee is a danger to the clients or other employees.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

*Assisted living community staff and management shall receive orientation and in-service education on the following topics as applicable to the employee's assigned duties:*

- (1) *Client rights;*
- (2) *Community policies;*
- (3) *Adult first aid;*
- (4) *Cardiopulmonary resuscitation;*
- (5) *Adult abuse and neglect;*
- (6) *Alzheimer's disease and other types of dementia;*
- (7) *Emergency procedures;*
- (8) *Aging process;*
- (9) *Assistance with activities of daily living and instrumental activities of daily living;*
- (10) *Particular needs or conditions if the assisted living community markets itself as providing special programming, staffing, or training on behalf of clients with particular needs or conditions; and*
- (11) *Assistance with self-administration of medication.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *Any assisted living community that was open or under construction on or before the effective date of this Act shall be exempt from the requirement that each living unit have a bathtub or shower.*
- (2) *Any assisted living community that was open or under construction on or before the effective date of this Act shall have a minimum of one (1) bathtub or shower for each five (5) clients.*
- (3) *Any assisted living community that was open or under construction on or before the effective date of this Act shall be exempt from the requirement that each living unit shall be at least two hundred (200) square feet for single occupancy, or for double occupancy if the room is shared with a spouse or another individual by mutual agreement.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *Any assisted living community that provides services without filing a current application with the office or receiving certification by the office may be fined up to five hundred dollars (\$500) per day.*
- (2) *Any business that markets its services as an assisted living community without filing a current application with the office or receiving certification by the office may be fined up to five hundred dollars (\$500) per day.*

SECTION 13. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

*Religious orders providing assistance with activities of daily living, instrumental activities of daily living, and self-administration of medication to vowed members residing in the order's retirement housing shall not be required to comply with the provisions of Sections 1 to 15 of this Act.*

SECTION 14. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

*Any business, not licensed or certified in another capacity, that complies with some provisions of Sections 1 to 15 of this Act but does not provide assistance with any activities of daily living or assistance with self-administration of medication shall not be eligible for certification as an assisted living community under Sections 1 to 15 of this Act.*

SECTION 15. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

*If a person or business seeks financing for an assisted living community project, the office shall provide written correspondence to the lender, upon request, to denote whether the architectural drawings and lease agreement conditionally comply with the provisions of Sections 1 to 15 of this Act. The office may charge a fee of no more than two hundred fifty dollars (\$250) for the written correspondence to the lender.*

Section 16. KRS 216.785 is amended to read as follows:

As used in KRS 216.785 to 216.793, unless the context otherwise requires:

- (1) *"Assisted living community" shall have the same meaning as in Section 1 of this Act.*
- (2) "Crime" means a conviction of or a plea of guilty to a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or the commission of a sex crime. Conviction of or a plea of guilty to an offense committed outside the Commonwealth of Kentucky is a crime if the offense would have been a felony in Kentucky if committed in Kentucky.
- (3)~~(2)~~ "Direct service" means personal or group interaction between the employee and the nursing facility resident or the senior citizen.
- (4)~~(3)~~ "Nursing pool" means any person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in nursing facilities for medical personnel including, but not limited to, nurses, nursing assistants, nurses' aides, and orderlies.
- (5)~~(4)~~ "Senior citizen" means a person sixty (60) years of age or older.

Section 17. KRS 216.789 is amended to read as follows:

- (1) No long-term care facility as defined by KRS 216.535(1),~~or~~ nursing pool providing staff to a nursing facility, *or assisted living community* shall knowingly employ a person in a position which involves providing direct services to a resident *or client* if that person has been convicted of a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or a sexual crime.
- (2) A nursing facility,~~or~~ nursing pool providing staff to a nursing facility, *or assisted living community* may employ persons convicted of or pleading guilty to an offense classified as a misdemeanor if the crime is not related to abuse, neglect, or exploitation of an adult.
- (3) Each long-term care facility as defined by KRS 216.535(1),~~or~~ nursing pool providing staff to a nursing facility, *or assisted living community* shall request all conviction information from the Justice Cabinet for any applicant for employment pursuant to KRS 216.793.
- (4) The long-term care facility,~~or~~ nursing pool providing staff to a nursing facility, *or assisted living community* may temporarily employ an applicant pending the receipt of the conviction information.

Section 18. KRS 216.793 is amended to read as follows:

- (1) Each application form provided by the employer, or each application form provided by a facility either contracted or operated by the Department for Mental Health and Mental Retardation Services of the Cabinet for Health Services, to the applicant for initial employment in *an assisted living community*,~~a~~ nursing facility, or nursing pool providing staff to a nursing facility, or in a position funded by the Department for Social Services or the Office of Aging Services of the Cabinet for Families and Children and which involves providing direct services to senior citizens shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."
- (2) Any request for criminal records of an applicant as provided under subsection (1) of this section shall be on a form or through a process approved by the Justice Cabinet. The Justice Cabinet may charge a fee to be paid by the applicant or state agency in an amount no greater than the actual cost of processing the request and shall not exceed five dollars (\$5) per application.

Section 19. The following KRS section is repealed:

209.200 Assisted living residences -- Requirements for certification -- Procedures.

**Approved March 20, 2000**

## **CHAPTER 142**

**(HB 448)**

AN ACT relating to rape crisis centers.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *The Cabinet for Health Services shall designate one (1) nonprofit corporation in each area development district to serve as the regional rape crisis center. The designated agency shall serve as the regional planning authority for crisis and advocacy services for victims of sexual assault in the district in which the center is located.***
- (2) *The rape crisis center shall retain the designation unless it has been rescinded by the cabinet based on an annual review of the center's performance or the annual plan and budget submitted by the center to the cabinet for funding for the next fiscal year.***
- (3) *A rape crisis center designated by the cabinet shall provide services that include, but are not limited to:***
  - (a) *Crisis counseling;***
  - (b) *Mental health and related support services;***
  - (c) *Advocacy;***
  - (d) *Consultation;***
  - (e) *Public education; and***
  - (f) *The provision of training programs for professionals.***

SECTION 2. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding the provisions of KRS 210.410, the secretary of the Cabinet for Health Services or any other state or local government entity is hereby authorized to make state grants and other fund allocations to assist nonprofit corporations in the establishment and operation of regional rape crisis centers.***
- (2) *To be eligible for grants from any state government entity, a rape crisis center shall provide the services listed in subsection (3) of Section 1 of this Act and shall operate in a manner consistent with administrative regulations promulgated by the cabinet in accordance with KRS Chapter 13A.***

SECTION 3. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *A rape crisis center designated by the cabinet shall establish a board consisting of at least fifteen (15) members. At least one (1) member shall represent each county located in the area development district served by the center.***
- (2) *Each rape crisis center shall:***
  - (a) *Act as the administering authority for the regional rape crisis center;***
  - (b) *Assess the availability and quality of services to victims of sexual assault within the district;***
  - (c) *Facilitate working relationships with other criminal justice, mental health, and other agencies that will improve the delivery of services to victims of sexual assault;***
  - (d) *Submit to the cabinet annually a plan and budget for services to be provided in the next fiscal year;***
  - (e) *Recruit and promote local financial support for the center from private and public sources; and***
  - (f) *Oversee and be responsible for the management of the rape crisis center in accordance with the plan and budget adopted by the board and administrative regulations promulgated by the cabinet in accordance with KRS Chapter 13A.***



## SECTION 4. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

*All client records, requests for services, and reports that directly or indirectly identify a client or former client of a rape crisis center are confidential and shall not be disclosed by any person except as provided by law. The cabinet shall have access to client records, requests for services, and reports relating to any rape crisis center for the limited purpose of monitoring the center, and the cabinet shall promulgate an administrative regulation in accordance with KRS Chapter 13A that will set forth the process by which access to these documents will be gained, the nature of the monitoring that will take place, and the measures to be used to ensure confidentiality of the people identified in the records.*

Section 5. KRS 216B.015 is amended to read as follows:

Except as otherwise provided, for purposes of this chapter, the following definitions shall apply:

- (1) "Abortion facility" means any place in which an abortion is performed;
- (2) "Administrative regulation" means a regulation adopted and promulgated pursuant to the procedures in KRS Chapter 13A;
- (3) "Affected persons" means the applicant; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health facilities within that geographic area; health facilities located in the health service area in which the project is proposed to be located which provide services similar to the services of the facility under review; health facilities which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future; the cabinet and third-party payors who reimburse health facilities for services in the health service area in which the project is proposed to be located;
- (4) "Applicant" means any physician's office requesting a major medical equipment expenditure of one million five hundred thousand dollars (\$1,500,000) or more after July 15, 1996, adjusted annually, or any person, health facility, or health service requesting a certificate of need or license;
- (5) "Cabinet" means the Cabinet for Health Services;
- (6) "Capital expenditure" means an expenditure made by or on behalf of a health facility which:
  - (a) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance or is not for investment purposes only; or
  - (b) Is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part thereof;
- (7) "Capital expenditure minimum" means one million five hundred thousand dollars (\$1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether an expenditure exceeds the expenditure minimum, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the improvement, expansion, or replacement of any plant or any equipment with respect to which the expenditure is made shall be included. Donations of equipment or facilities to a health facility which if acquired directly by the facility would be subject to review under this chapter shall be considered a capital expenditure, and a transfer of the equipment or facilities for less than fair market value shall be considered a capital expenditure if a transfer of the equipment or facilities at fair market value would be subject to review;
- (8) "Certificate of need" means an authorization by the cabinet to acquire, to establish, to offer, to substantially change the bed capacity, or to substantially change a health service as covered by this chapter;
- (9) "Formal review process" means the ninety (90) day certificate-of-need review conducted by the cabinet;
- (10) "Health facility" means any institution, place, building, agency, or portion thereof, public or private, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care and includes alcohol abuse, drug abuse, and mental health services. This shall include, but shall not be limited to, health facilities and health services commonly referred to as hospitals, psychiatric hospitals, physical rehabilitation hospitals, chemical dependency programs, tuberculosis hospitals, skilled nursing facilities, nursing facilities, nursing homes, personal care homes, intermediate care facilities, family care homes, primary care centers, rural health clinics, outpatient clinics, ambulatory care facilities, ambulatory surgical centers, emergency care centers and services, ambulance providers, hospices, community mental health and mental retardation centers, home health agencies, kidney disease treatment centers and

freestanding hemodialysis units, facilities and services owned and operated by health maintenance organizations directly providing health services subject to certificate of need, and others providing similarly organized services regardless of nomenclature;

- (11) "Health services" means clinically related services provided within the Commonwealth to two (2) or more persons, including, but not limited to, diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services;
- (12) "Major medical equipment" means equipment which is used for the provision of medical and other health services and which costs in excess of the medical equipment expenditure minimum. For purposes of this subsection, "medical equipment expenditure minimum" means one million five hundred thousand dollars (\$1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether medical equipment has a value in excess of the medical equipment expenditure minimum, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of the equipment shall be included;
- (13) "Nonsubstantive review" means an expedited review conducted by the cabinet of an application for a certificate of need as authorized under KRS 216B.095;
- (14) "Nonclinically-related expenditures" means expenditures for:
  - (a) Repairs, renovations, alterations, and improvements to the physical plant of a health facility which do not result in a substantial change in beds, a substantial change in a health service, or the addition of major medical equipment, and do not constitute the replacement or relocation of a health facility; or
  - (b) Projects which do not involve the provision of direct clinical patient care including, but not limited to, the following:
    - 1. Parking facilities;
    - 2. Telecommunications or telephone systems;
    - 3. Management information systems;
    - 4. Ventilation systems;
    - 5. Heating or air conditioning, or both;
    - 6. Energy conservation; or
    - 7. Administrative offices;
- (15) "Party to the proceedings" means the applicant for a certificate of need and any affected person who appears at a hearing on the matter under consideration and enters an appearance of record;
- (16) "Person" means an individual, a trust or estate, a partnership, a corporation, an association, a group, state, or political subdivision or instrumentality including a municipal corporation of a state;
- (17) "Record" means, as applicable in a particular proceeding:
  - (a) The application and any information provided by the applicant at the request of the cabinet;
  - (b) Any information provided by a holder of a certificate of need or license in response to a notice of revocation of a certificate of need or license;
  - (c) Any memoranda or documents prepared by or for the cabinet regarding the matter under review which were introduced at any hearing;
  - (d) Any staff reports or recommendations prepared by or for the cabinet;
  - (e) Any recommendation or decision of the cabinet;
  - (f) Any testimony or documentary evidence adduced at a hearing;
  - (g) The findings of fact and opinions of the cabinet or the findings of fact and recommendation of the hearing officer; and
  - (h) Any other items required by administrative regulations promulgated by the cabinet;
- (18) "Secretary" means the secretary of the Cabinet for Health Services;

- (19) ***"Sexual assault examination facility" means a licensed health facility, emergency medical facility, primary care center, or a children's advocacy center or rape crisis center that is regulated by the Cabinet for Health Services or the Cabinet for Families and Children, and that provides sexual assault examinations under Section 6 of this Act;***
- (20) "State health plan" means the document prepared triennially, updated annually, and approved by the Governor;
- (21)~~(20)~~ "Substantial change in a health service" means:
- (a) The addition of a health service for which there are review criteria and standards in the state health plan;
  - (b) The addition of a health service subject to licensure under this chapter; or
  - (c) The reduction or termination of a health service which had previously been provided in the health facility;
- (22)~~(21)~~ "Substantial change in bed capacity" means the addition, reduction, relocation, or redistribution of beds by licensure classification within a health facility;
- (23)~~(22)~~ "Substantial change in a project" means a change made to a pending or approved project which results in:
- (a) A substantial change in a health service, except a reduction or termination of a health service;
  - (b) A substantial change in bed capacity, except for reductions;
  - (c) A change of location; or
  - (d) An increase in costs greater than the allowable amount as prescribed by regulation;
- (24)~~(23)~~ "To acquire" means to obtain from another by purchase, transfer, lease, or other comparable arrangement of the controlling interest of a capital asset or capital stock, or voting rights of a corporation. An acquisition shall be deemed to occur when more than fifty percent (50%) of an existing capital asset or capital stock or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one person from another person;
- (25)~~(24)~~ "To batch" means to review in the same review cycle and, if applicable, give comparative consideration to all filed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area;
- (26)~~(25)~~ "To establish" means to construct, develop, or initiate a health facility;
- (27)~~(26)~~ "To obligate" means to enter any enforceable contract for the construction, acquisition, lease, or financing of a capital asset. A contract shall be considered enforceable when all contingencies and conditions in the contract have been met. An option to purchase or lease which is not binding shall not be considered an enforceable contract; and
- (28)~~(27)~~ "To offer" means, when used in connection with health services, to hold a health facility out as capable of providing, or as having the means of providing, specified health services.

Section 6. KRS 216B.400 is amended to read as follows:

- (1) Where a person has been determined to be in need of emergency care by any person with admitting authority, no such person shall be denied admission by reason only of his inability to pay for services to be rendered by the hospital.
- (2) Every hospital of this state which offers emergency services shall provide that a physician or a sexual assault nurse examiner, who shall be a registered nurse licensed in the Commonwealth and credentialed by the Kentucky Board of Nursing as provided under KRS 314.142, is available on call twenty-four (24) hours each day for the examinations of persons reported to any law enforcement agency to be victims of sexual offenses as defined by KRS 510.010 to 510.140,~~and~~ KRS 530.020, **530.064, and 531.310.**
- (3) ***An examination provided in accordance with this section of a victim of a sexual offense may be performed in a sexual assault examination facility as defined in Section 5 of this Act. An examination under this section shall apply only to an examination of a victim.***
- (4) The physician or sexual assault nurse examiner, acting under a statewide medical protocol which shall be developed by the chief medical examiner, and promulgated by the secretary of justice pursuant to KRS Chapter

13A shall, upon the request of any peace officer or prosecuting attorney, and with the consent of the reported victim, or upon the request of the reported victim, examine such person for the purpose of gathering physical evidence. This examination shall include, but not be limited to:

- (a) Basic emergency room treatment and evidence gathering services; and
  - (b) Laboratory cultures and tests, as appropriate, to test for venereal disease of the victim.
- (5)(3) Each reported victim shall be informed of available services for treatment of venereal disease, pregnancy, and other medical and psychiatric problems. Pregnancy counseling will not include abortion counseling or referral information.
- (6)(4) Each reported victim shall be informed of available crisis intervention or other mental health services provided by regional rape crisis centers providing services to victims of sexual assault.
- (7)(5) Notwithstanding any other provision of law, a minor may consent to examination under this section. This consent is not subject to disaffirmance because of minority, and consent of the parents or guardians of the minor is not required for the examination.
- (8)(6) The examinations *provided in accordance with*~~required under~~ this section shall be paid for by the Office of the Attorney General at a rate to be determined by the Attorney General by administrative regulation. The state shall reimburse the hospital *or sexual assault examination facility*, and the physician or sexual assault nurse examiner as provided in administrative regulations promulgated by the Office of the Attorney General pursuant to KRS Chapter 13A. No charge shall be made to the victim for these examinations, either by the hospital, *the sexual assault examination facility*, the physician, the sexual assault nurse examiner, the victim's insurance carrier, or the Commonwealth.

Section 7. KRS 314.011 is amended to read as follows:

As used in KRS 314.011 to 314.161 and KRS 314.991, unless the context thereof requires otherwise:

- (1) "Board" shall mean Kentucky Board of Nursing.
- (2) "Delegation" means directing a competent person to perform a selected nursing activity or task in a selected situation under the nurse's supervision and pursuant to administrative regulations promulgated by the board in accordance with the provisions of KRS Chapter 13A.
- (3) "Nurse" shall mean a person licensed under the provisions of this chapter as a registered nurse or as a licensed practical nurse.
- (4) "Nursing process" means the investigative approach to nursing practice utilizing a method of problem-solving by means of:
  - (a) Nursing diagnosis, a systematic investigation of a health concern, and an analysis of the data collected in order to arrive at an identifiable problem; and
  - (b) Planning, implementation, and evaluation based on nationally-accepted standards of nursing practice.
- (5) "Registered nurse" shall mean one who is licensed under the provisions of this chapter to engage in registered nursing practice.
- (6) "Registered nursing practice" shall mean the performance of acts requiring substantial specialized knowledge, judgment, and nursing skill based upon the principles of psychological, biological, physical, and social sciences in the application of the nursing process in:
  - (a) The care, counsel, and health teaching of the ill, injured, or infirm.
  - (b) The maintenance of health or prevention of illness of others.
  - (c) The administration of medication and treatment as prescribed by a physician, physician assistant, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally-accepted organizations of registered nurses. Components of medication administration include, but are not limited to:
    - 1. Preparing and giving medications in the prescribed dosage, route, and frequency;

2. Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;
  3. Intervening when emergency care is required as a result of drug therapy;
  4. Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;
  5. Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and
  6. Instructing an individual regarding medications.
- (d) The supervision, teaching of, and delegation to other personnel in the performance of activities relating to nursing care.
- (e) The performance of other nursing acts which are authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally-accepted organizations of registered nurses.
- (7) "Advanced registered nurse practitioner" shall mean one who is registered and designated to engage in advanced registered nursing practice including, but not limited to, the nurse anesthetist, nurse midwife, and nurse practitioner pursuant to KRS 314.042.
- (8) "Advanced registered nursing practice" shall mean the performance of additional acts by registered nurses who have gained added knowledge and skills through an organized postbasic program of study and clinical experience and who are certified by the American Nurses' Association or other nationally-established organizations or agencies recognized by the board to certify registered nurses for advanced nursing practice. The additional acts shall, subject to approval of the board, include, but not be limited to, prescribing treatment, drugs, devices, and ordering diagnostic tests. Advanced registered nurse practitioners who engage in these additional acts shall be authorized to issue prescriptions for nonscheduled legend drugs as defined in KRS 217.905, under the conditions set forth in KRS 314.042. Nothing in this chapter shall be construed as requiring an advanced registered nurse practitioner designated by the board as a nurse anesthetist to obtain prescriptive authority pursuant to this chapter or any other provision of law in order to deliver anesthesia care. The performance of these additional acts shall be consistent with the certifying organization or agencies' scopes and standards of practice recognized by the board by administrative regulation.
- (9) "Licensed practical nurse" shall mean one who is licensed under the provisions of this chapter to engage in licensed practical nursing practice.
- (10) "Licensed practical nursing practice" shall mean the performance of acts requiring knowledge and skill such as are taught or acquired in approved schools for practical nursing in:
- (a) The observing and caring for the ill, injured, or infirm under the direction of a registered nurse, a licensed physician, or dentist.
  - (b) The giving of counsel and applying procedures to safeguard life and health, as defined and authorized by the board.
  - (c) The administration of medication or treatment as authorized by a physician, physician assistant, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board which is consistent with the National Federation of Licensed Practical Nurses or with Standards of Practice established by nationally-accepted organizations of licensed practical nurses.
  - (d) Teaching, supervising, and delegating except as limited by the board.
  - (e) The performance of other nursing acts which are authorized or limited by the board and which are consistent with the National Federation of Practical Nurses' Standards of Practice or with Standards of Practice established by nationally-accepted organizations of licensed practical nurses.
- (11) "School of nursing" shall mean a nursing education program preparing persons for licensure as a registered nurse or a practical nurse.
- (12) "Continuing education" shall mean offerings beyond the basic nursing program that present specific content planned and evaluated to meet competency based behavioral objectives which develop new skills and upgrade knowledge.

- (13) "Nursing assistance" shall mean the performance of delegated nursing acts by unlicensed nursing personnel for compensation under supervision of a nurse.
- (14) "Sexual assault nurse examiner" shall mean a registered nurse who has completed the required education and clinical experience and been credentialed by the board as provided under KRS 314.142 to conduct forensic examinations of victims of sexual offenses under the medical protocol issued by the State Medical Examiner pursuant to KRS 216B.400(4)~~[(2)]~~.

**Approved March 20, 2000**

### CHAPTER 143

(SB 190)

AN ACT relating to a state arboretum garden.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 2 IS CREATED TO READ AS FOLLOWS:

***The University of Kentucky-Fayette County Arboretum shall be designated as the official state botanical garden of the Commonwealth of Kentucky.***

**Approved March 21, 2000**

### CHAPTER 144

(HB 237)

AN ACT relating to children's advocacy centers.

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

Section 1. KRS 431.600 is amended to read as follows:

- (1) Each investigation of reported or suspected sexual abuse of a child shall be conducted by a specialized multidisciplinary team composed, at a minimum, of law enforcement officers and social workers from the Cabinet for Families and Children. Cabinet for Families and Children social workers shall be available to assist in all investigations under this section but shall be lead investigators only in those cases of reported or suspected sexual abuse of a child in which a person exercising custodial control or supervision, as defined in KRS 600.020, is the alleged or suspected perpetrator of the abuse. Additional team members may include Commonwealth's and county attorneys, ***children's advocacy center staff***, mental health professionals, medical professionals, victim advocates, educators, and other related professionals, as necessary, operating under protocols governing roles, responsibilities, and procedures developed by the Kentucky Multidisciplinary Commission on Child Sexual Abuse and promulgated by the Attorney General as administrative regulations pursuant to KRS Chapter 13A.
- (2) Local protocols shall be developed in each county or group of contiguous counties by the agencies and persons specified in subsection (1) of this section specifying how the state protocols shall be followed within the county or group of contiguous counties. These protocols shall be approved by the Kentucky Multidisciplinary Commission on Child Sexual Abuse.
- (3) If adequate personnel are available, each Commonwealth's attorney's office and each county attorney's office shall have a child sexual abuse specialist.
- (4) Commonwealth's attorneys and county attorneys, or their assistants, shall take an active part in interviewing and familiarizing the child alleged to have been abused, or who is testifying as a witness, with the proceedings throughout the case, beginning as early as practicable in the case.
- (5) If adequate personnel are available, Commonwealth's attorneys and county attorneys shall provide for an arrangement which allows one (1) lead prosecutor to handle the case from inception to completion to reduce the number of persons involved with the child victim.

- (6) Commonwealth's attorneys and county attorneys and the Cabinet for Families and Children and other team members shall minimize the involvement of the child in legal proceedings, avoiding appearances at preliminary hearings, grand jury hearings, and other proceedings when possible.
- (7) Commonwealth's attorneys and county attorneys shall make appropriate referrals for counseling, private legal services, and other appropriate services to ensure the future protection of the child when a decision is made not to prosecute the case. The Commonwealth's attorney or county attorney shall explain the decision not to prosecute to the family or guardian, as appropriate, and to the child victim.
- (8) ***To the extent practicable and when in the best interest of a child alleged to have been abused, interviews with a child shall be conducted at a children's advocacy center.***

Section 2. KRS 431.650 is amended to read as follows:

- (1) The Kentucky Multidisciplinary Commission on Child Sexual Abuse is hereby created.
- (2) The commission shall be comprised of the following members:
  - (a) The commissioner of the Department for Social Services or a designee;
  - (b) The commissioner of the Department for Mental Health and Mental Retardation Services or a designee;
  - (c) One (1) family service worker who is employed by the Department for Social Services to provide child protective services, who shall be appointed by the secretary of the Cabinet for Families and Children;
  - (d) One (1) therapist who provides services to sexually abused children, who shall be appointed by the secretary of the Cabinet for ***Health Services***~~[Families and Children]~~;
  - (e) The commissioner of the Kentucky State Police or a designee;
  - (f) One (1) law enforcement officer who is a detective with specialized training in conducting child sexual abuse investigations, who shall be appointed by the secretary of the Justice Cabinet;
  - (g) One (1) employee of the Administrative Office of the Courts appointed by the Chief Justice of the Supreme Court of Kentucky;
  - (h) Two (2) employees of the Attorney General's Office who shall be appointed by the Attorney General;
  - (i) One (1) Commonwealth's attorney who shall be appointed by the Attorney General;
  - (j) The commissioner of the Department of Education or a designee;
  - (k) One (1) school counselor, school psychologist, or school social worker who shall be appointed by the commissioner of the Department of Education;~~[and]~~
  - (l) ***The executive director of the Governor's Office of Child Abuse and Domestic Violence Services or a designee;***
  - (m) ***One (1) representative of a children's advocacy center who shall be appointed by the Governor;***
  - (n) ***One (1) physician appointed by the Governor; and***
  - (o) One (1) former victim of a sexual offense or one (1) parent of a child sexual abuse victim who shall be appointed by the Attorney General.

- (3) Appointees shall serve at the pleasure of the appointing authority but shall not serve longer than four (4) years without reappointment.
- (4) The commission shall elect a chairperson annually from its membership.

Section 3. KRS 431.660 is amended to read as follows:

- (1) The Kentucky Multidisciplinary Commission on Child Sexual Abuse shall:
  - (a) Prepare and issue a model protocol for local multidisciplinary teams regarding investigation and prosecution of child sexual abuse ***and the role of children's advocacy centers on multidisciplinary teams.***
  - (b) Review and approve protocols prepared by local multidisciplinary teams.
  - (c) Advise local multidisciplinary teams on the investigation and prosecution of child sexual abuse.

- (d) Receive data on child sexual abuse cases collected by the Prosecutors Advisory Council and issue annual reports.
  - (e) Collect data on the operation of local multidisciplinary teams.
  - (f) Seek funding to support special projects relating to the operation of local multidisciplinary teams.
  - (g) Receive and review complaints regarding local multidisciplinary teams, and make appropriate recommendations.
  - (h) Recommend to the Governor, Legislative Research Commission, and Supreme Court changes in state programs, legislation, administrative regulations, policies, budgets, and treatment and service standards which may facilitate effective intervention of child sexual abuse cases and the investigation and prosecution of perpetrators of child sexual abuse, and which may improve the opportunity for victims of child sexual abuse to receive treatment.
- (2) The Kentucky Multidisciplinary Commission on Child Sexual Abuse may, within budget limitations, establish and maintain necessary offices, appoint employees, and prescribe the duties and compensation for the appointed employees.

Section 4. KRS 620.020 is amended to read as follows:

The definitions in KRS Chapter 600 shall apply to this chapter. In addition, as used in this chapter, unless the context requires otherwise:

- (1) "Case permanency plan" means a document identifying decisions made by the cabinet, for both the biological family and the child, concerning action which needs to be taken to assure that the child in foster care expeditiously obtains a permanent home;
- (2) "Case progress report" means a written record of goals that have been achieved in the case of a child;
- (3) "Case record" means a cabinet file of specific documents and a running record of activities pertaining to the child;
- (4) **"Children's advocacy center" means an agency that advocates on behalf of children alleged to have been abused; that assists in the coordination of the investigation of child abuse by providing a location for forensic interviews and promoting the coordination of services for children alleged to have been abused; and that provides services that include, but are not limited to, forensic medical examinations, mental health and related support services, court advocacy, consultation, training, and staffing of multidisciplinary teams;**
- (5) "Foster care" means the provision of temporary twenty-four (24) hour care for a child for a planned period of time when the child is:
  - (a) Removed from his parents or person exercising custodial control or supervision and subsequently placed in the custody of the cabinet; and
  - (b) Placed in a foster home or private child-caring facility or child-placing agency but remains under the supervision of the cabinet;
- ~~(6)(5)}~~ "Local citizen foster care review board" means a citizen board which provides periodic permanency reviews of children placed in the custody of the cabinet by a court order of temporary custody or commitment under this chapter;
- ~~(7)(6)}~~ "Multidisciplinary teams" means local teams operating under protocols governing roles, responsibilities, and procedures developed by the Kentucky Multidisciplinary Commission on Child Sexual Abuse pursuant to KRS 431.600;
- ~~(8)(7)}~~ "Permanence" means a relationship between a child and an adult which is intended to last a lifetime, providing commitment and continuity in the child's relationships and a sense of belonging;
- ~~(9)(8)}~~ "Preventive services" means those services which are designed to help maintain and strengthen the family unit by preventing or eliminating the need for removal of children from the family;
- ~~(10)(9)}~~ "Reasonable efforts" means the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available to the community in accordance with the state plan for Public Law 96-272 which are necessary to enable the child to safely live at home;



- ~~(11)~~~~(10)~~ "Reunification services" means remedial and preventive services which are designed to strengthen the family unit, to secure reunification of the family and child where appropriate, as quickly as practicable, and to prevent the future removal of the child from the family; and
- ~~(12)~~~~(11)~~ "State citizen foster care review board" means a board created by KRS 620.310.

SECTION 5. A NEW SECTION OF KRS CHAPTER 620 IS CREATED TO READ AS FOLLOWS:

- (1) *The secretaries of the Cabinet for Families and Children, the Cabinet for Health Services, and the Justice Cabinet are authorized to make state grants and other fund allocations to assist nonprofit corporations in the establishment and operation of regional children's advocacy centers.*
- (2) *To be eligible for grants from any state government entity, a children's advocacy center shall meet the statutory definition of a children's advocacy center as provided in this chapter and shall operate consistent with administrative regulations promulgated by the Cabinet for Families and Children in accordance with KRS Chapter 13A.*

Section 6. KRS 620.040 is amended to read as follows:

- (1) Upon receipt of a report alleging abuse or neglect by a parent, guardian, or person exercising custodial control or supervision, pursuant to KRS 620.030(1) or (2), the recipient of the report shall forthwith notify the cabinet or its designated representative, the local law enforcement agency or Kentucky State Police, and the Commonwealth's or county attorney of the receipt of the report unless they are the reporting source. The cabinet shall investigate the matter immediately and within seventy-two (72) hours, exclusive of weekends and holidays, make a written report to the Commonwealth's or county attorney and the local enforcement agency or Kentucky State Police concerning the action which has been taken on the matter. If the report alleges abuse or neglect by someone other than a parent, guardian, or person exercising custodial control or supervision, the cabinet shall forthwith notify the Commonwealth's or county attorney and the local law enforcement agency or Kentucky State Police.
- (2) Upon receipt of a report alleging dependency pursuant to KRS 620.030(1) and (2), the recipient shall forthwith notify the cabinet or its designated representative. The cabinet shall investigate reports of alleged dependency not later than forty-eight (48) hours after receipt of the report but need not notify the local law enforcement agency or Kentucky State Police or county attorney or Commonwealth's attorney of such reports.
- (3) If the cabinet or its designated representative receives a report of abuse by other than a parent, guardian, or other person exercising custodial control or supervision of a child, it shall forthwith notify the local law enforcement agency or Kentucky State Police and the Commonwealth's or county attorney of the receipt of the report and its contents and they shall investigate the matter. The cabinet or its designated representative may participate in an investigation of noncustodial *physical* abuse *or neglect* at the request of the local law enforcement agency or the Kentucky State Police. *The cabinet shall participate in all investigations of reported or suspected sexual abuse of a child.*
- ~~(4)~~~~(3)~~ School personnel or other persons listed in KRS 620.030(2) do not have the authority to conduct internal investigations in lieu of the official investigations outlined in this section.
- ~~(5)~~~~(4)~~
  - (a) If, after receiving the report, the law enforcement officer, the cabinet, or its designated representative cannot gain admission to the location of the child, a search warrant shall be issued by the judge to the appropriate law enforcement official upon probable cause that the child is dependent, neglected, or abused. If, pursuant to a search under a warrant a child is discovered and appears to be in imminent danger, the child may be removed by the law enforcement officer.
  - (b) If a child who is in a hospital or under the immediate care of a physician appears to be in imminent danger if he is returned to the persons having custody of him, the physician or hospital administrator may hold the child without court order, provided that a request is made to the court for an emergency custody order at the earliest practicable time, not to exceed seventy-two (72) hours.
  - (c) Any appropriate law enforcement officer may take a child into protective custody and may hold that child in protective custody without the consent of the parent or other person exercising custodial control or supervision if there exist reasonable grounds for the officer to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents or other person exercising custodial control or supervision are unable or unwilling to protect the child. The officer or the person to whom the officer entrusts the child shall, within twelve (12) hours of taking the child into protective custody, request the court to issue an emergency custody order.

- (d) When a law enforcement officer, hospital administrator, or physician takes a child into custody without the consent of the parent or other person exercising custodial control or supervision, he shall provide written notice to the parent or other person stating the reasons for removal of the child. Failure of the parent or other person to receive notice shall not, by itself, be cause for civil or criminal liability.
- ~~(6)(5)~~ ***To the extent practicable and when in the best interest of a child alleged to have been abused, interviews with the child shall be conducted at a children's advocacy center.***
- (7)
  - (a) One (1) or more multidisciplinary teams may be established in every county or group of contiguous counties.
  - (b) Membership of the multidisciplinary team shall include, but is not limited to, family service workers employed by the Cabinet for Families and Children and law enforcement officers. Additional team members may include Commonwealth's and county attorneys, ***children's advocacy center staff***, mental health professionals, medical professionals, victim advocates, educators, and other related professionals, as deemed appropriate.
  - (c) The multidisciplinary team may review child sexual abuse cases referred by participating professionals, including those in which the alleged perpetrator does not have custodial control or supervision of the child, or is not responsible for the child's welfare. The purpose of the multidisciplinary team shall be to review investigations, assess service delivery, and to facilitate efficient and appropriate disposition of cases through the criminal justice system.
  - (d) The team shall hold regularly scheduled meetings if new reports of sexual abuse are received or if active cases exist. At each meeting, each active case shall be presented and the agencies' responses assessed.
  - (e) The multidisciplinary team shall provide an annual report to the public of nonidentifying case information to allow assessment of the processing and disposition of child sexual abuse cases.
  - (f) Multidisciplinary team members, and anyone invited by the multidisciplinary team to participate in a meeting, shall not divulge case information, including information regarding the identity of the victim or source of the report. Team members, and others attending meetings, shall sign a confidentiality statement that is consistent with statutory prohibitions on disclosure of this information.
  - (g) The multidisciplinary team shall, pursuant to KRS 431.600 and 431.660, develop a local protocol consistent with the model protocol issued by the Kentucky Multidisciplinary Commission on Child Sexual Abuse. The local team shall submit the protocol to the commission for review and approval.
  - (h) The multidisciplinary team review of a case may include information from reports generated by agencies, organizations, or individuals that are responsible for investigation, prosecution, or treatment in the case, KRS 610.320 to KRS 610.340 notwithstanding.
  - (i) ***To the extent practicable, multidisciplinary teams shall be staffed by the local children's advocacy center.***

Section 7. KRS 620.050 is amended to read as follows:

- (1) Anyone acting upon reasonable cause in the making of a report or acting under KRS 620.030 to 620.050 in good faith shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or action. However, any person who knowingly makes a false report and does so with malice shall be guilty of a Class A misdemeanor.
- (2) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding a dependent, neglected, or abused child or the cause thereof, in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding a dependent, neglected, or abused child.
- (3) Upon receipt of a report of an abused, neglected, or dependent child pursuant to this chapter, the cabinet as the designated agency or its delegated representative shall initiate a prompt investigation, take necessary action, and shall offer protective services toward safeguarding the welfare of the child. The cabinet shall work toward preventing further dependency, neglect, or abuse of the child or any other child under the same care, and preserve and strengthen family life, where possible, by enhancing parental capacity for adequate child care.

- (4) The report of suspected child abuse, neglect, or dependency and all information obtained by the cabinet or its delegated representative, as a result of an investigation made pursuant to this chapter, shall not be divulged to anyone except:
- (a) Persons suspected of causing dependency, neglect, or abuse;
  - (b) The custodial parent or legal guardian of the child alleged to be dependent, neglected, or abused;
  - (c) Persons within the cabinet with a legitimate interest or responsibility related to the case;
  - (d) Other medical, psychological, educational, or social service agencies, child care administrators, corrections personnel, or law enforcement agencies, including the county attorney's office, the coroner, and the local child fatality response team, that have a legitimate interest in the case;
  - (e) A noncustodial parent when the dependency, neglect, or abuse is substantiated;
  - (f) Members of multidisciplinary teams as defined by KRS 620.020 and which operate pursuant to KRS 431.600. ***Members may include staff from a children's advocacy center;*** or
  - (g) Those persons so authorized by court order.
- (5) The identity of informants shall not be divulged to anyone without a court order after the court has reviewed in camera the record of the state related to the report or complaint and has found it has reason to believe that the informant knowingly made a false report, excepting law enforcement agencies having a legitimate interest in the case.
- (6) Information may be publicly disclosed by the cabinet in a case where child abuse or neglect has resulted in a child fatality or near fatality.
- (7) When an adult who is the subject of information made confidential by subsection (4) of this section publicly reveals or causes to be revealed any significant part of the confidential matter or information, the confidentiality afforded by subsection (4) of this section is presumed voluntarily waived and confidential information and records about the person making or causing the public disclosure, not already disclosed but related to the information made public, may be disclosed if disclosure is in the best interest of the child or is necessary for the administration of the cabinet's duties under this chapter.
- (8) As a result of any report of suspected child abuse or neglect, photographs and X-rays or other appropriate medical diagnostic procedures may be taken or caused to be taken, without the consent of the parent or other person exercising custodial control or supervision of the child, as a part of the medical evaluation or investigation of such reports. Such photographs and X-rays or results of other medical diagnostic procedures may be introduced into evidence in any subsequent judicial proceedings. The person performing the diagnostic procedures or taking such photographs or X-rays shall be immune from criminal or civil liability for having performed the act. Nothing herein shall limit liability for negligence.

**Approved March 22, 2000**

## **CHAPTER 145**

**(HB 50)**

AN ACT relating to commercial insurance.

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

Section 1. KRS 304.11-020 is amended to read as follows:

- (1) Other than KRS 304.11-050, the provisions of KRS 304.11-020 to 304.11-050, shall not apply to any insurance company or underwriter issuing contracts of insurance to industrial insureds, ***government entity insureds, and exempt commercial policyholders***, nor to any contract of insurance issued to any one (1) or more industrial insureds.
- (2) For the purpose of this section:~~+~~
  - (a) An "industrial insured" is:

1. ~~[(a)]~~ An insured who procures the insurance of any risk or risks other than life and annuity contracts by use of the services of a full-time employee acting as an insurance manager or buyer or the services of a regularly and continuously retained qualified insurance consultant; and
  2. ~~[(b)]~~ An insured whose aggregate annual premiums for insurance on all risks total at least \$25,000; and
  3. ~~[(c)]~~ An insured having at least twenty-five (25) full-time employees; *and*
  4. *All entities that have qualified as industrial insureds as of July 1, 1999.*
- (b) *A "government entity insured" is an insured:*
1. *That is a government entity, municipal corporation, or public agency located in a city or county having a population of less than fifty thousand (50,000); and*
  2. *That procures the insurance of any risk or risks, other than life and annuity contracts, by use of the services of a full-time employee acting as an insurance manager or buyer, or by the use of the services of a regularly and continuously retained qualified insurance consultant; and*
  3. *Whose aggregate annual premiums for insurance on all risks total at least one hundred thousand dollars (\$100,000), exclusive of life, health, medical, or annuity premiums; and*
  4. *That has at least fifty (50) full-time employees; and*
  5. *That satisfies the criteria the commissioner promulgates by administrative regulation.*
- (c) 1. *An "exempt commercial policyholder" means an insured that employs the services of an insurance agent or broker, procures commercial insurance with the services of a full-time risk manager, or a licensed insurance consultant, pursuant to Subtitle 9 of this chapter and:*
- a. *Is a city, county, or urban-county with a population of at least fifty thousand (50,000) persons, or the Commonwealth, or a not-for-profit organization or a public entity with an annual budget of at least twenty-five million dollars (\$25,000,000) or assets of at least twenty-five million dollars (\$25,000,000) in the preceding fiscal year; or*
  - b. *Certifies that it meets all four (4) of the following criteria:*
    - i. *Possesses a net worth of more than twenty-five million dollars (\$25,000,000) at the time the policy of insurance is issued;*
    - ii. *Generated net revenue or sales of more than fifty million dollars (\$50,000,000) in the preceding fiscal year;*
    - iii. *Employs more than one hundred (100) employees per individual company or two hundred (200) employees per holding company aggregate at the time the policy of insurance is issued; and*
    - iv. *Paid annual aggregate insurance premiums of more than five hundred thousand dollars (\$500,000) in the preceding fiscal year.*
2. *As used in this subsection, "risk manager" means a person qualified to assess an exempt commercial policyholder's insurance needs and analyze and negotiate a policy of insurance on behalf of an exempt commercial policyholder. A risk manager shall be:*
- a. *A full-time employee of an exempt commercial policyholder who holds a professional designation relevant to the type of insurance to be purchased by the exempt commercial policyholder; or*
  - b. *A person retained by an exempt commercial policyholder who holds a professional designation relevant to the type of insurance to be purchased by the exempt commercial policyholder.*
- (d) *The requirements of this section shall not apply to a policy of insurance sold to an exempt commercial policyholder.*

- (e) *Policies issued to an exempt commercial policyholder shall contain a disclaimer in language similar to the following: "The rate provided for in this policy is exempt from the filing and approval requirements of this section."*
- (f) *The exemption of commercial policyholders under this section shall not apply to Subtitle 39 of this chapter, KRS Chapter 342, sections in Subtitle 13 of this chapter that pertain to workers' compensation insurance, and KRS 304.12-230.*
- (3) *Policies issued to industrial insureds, government entity insureds, and exempt commercial policyholders are exempt from the rate and policy form requirements of this chapter.*
- (4) *All industrial insureds, government entity insureds, and exempt commercial policyholders shall reapply to the commissioner for their respective insured status every three (3) years, on a form the commissioner shall promulgate by administrative regulation.*
- (5)~~(2)~~ KRS 304.11-020 to 304.11-050, inclusive, shall not apply to any life insurance company organized and operated, without profit to any private shareholder or individual, exclusively for the purpose of aiding educational or scientific institutions organized and operated without profit to any private shareholder or individual by issuing insurance and annuity contracts directly from the home office of the company and without agents or representatives in this state only to or for the benefit of such institutions and to individuals engaged in the services of such institutions, nor to any policy or contract which it issues; but this exemption shall be conditioned upon any such company complying with the following requirements:
  - (a) Payment of an annual registration fee;
  - (b) Filing a copy of any policy or contract issued to Kentucky residents with the commissioner;
  - (c) Filing a copy of its annual statement prepared pursuant to the laws of its state of domicile, as well as such other financial material as may be requested, with the commissioner; and
  - (d) Providing, in such form as may be acceptable for the appointment of the Secretary of State as its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against such company arising out of any policy or contract it has issued to, or which is currently held by, a Kentucky citizen and process so served against such company shall have the same force and validity as if served upon the company.

Section 2. KRS 304.11-050 is amended to read as follows:

- (1) Effective with all premiums collected during the calendar year 1968, except premiums on lawfully procured surplus lines insurance, every unauthorized insurer shall pay to the secretary of revenue before March 1, next succeeding the calendar year in which the insurance was so effectuated, continued, or renewed, a premium tax of two percent (2%) of gross premiums charged for such insurance on subjects resident, located, or to be performed in this state. The insurance whether procured through negotiation or an application, in whole or in part occurring or made within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, shall be deemed to be insurance procured or continued in this state. The term "premium" includes all premiums, membership fees, assessments, dues, and any other consideration for insurance. If the tax prescribed by this section is not paid within the time stated, the tax shall be increased by a penalty of twenty-five percent (25%) and by the amount of an additional penalty computed at the rate of one percent (1%) per month or any part thereof from the date the payment was due to the date paid.
- (2) If the policy covers risks or exposures only partly in the state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in the state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except those premiums as are properly allocated or apportioned and reported as taxable premiums to any other state or states.
- (3) Proration of premium taxes due from *those insureds specified in Section 1 of this Act*~~an industrial insured~~ under a contract procured from an unauthorized insurer having property in states other than Kentucky, shall be determined by administrative regulations promulgated by the secretary of revenue using the following criteria where applicable:
  - (a) Percentage of physical assets in Kentucky;

- (b) Percentage of employee payroll in Kentucky;
  - (c) Percentage of sales in Kentucky; and
  - (d) Percentage of taxable income reportable in Kentucky.
- (4) The secretary of revenue, or the Attorney General upon request of the secretary of revenue, shall proceed in the courts of this state or any other state or in any federal court or agency to recover tax not paid within the time prescribed in this section.

Section 3. KRS 304.3-230 is amended to read as follows:

- (1) Upon issuance of a certificate of authority to do business in this state, the following shall be deemed to have appointed the Secretary of State as their attorney to receive service of lawful process issued against them in this state:
  - (a) Foreign or alien insurers;
  - (b) Domestic reciprocal insurers;
  - (c) Domestic Lloyd's insurers;
  - (d) Qualified self-insurers.
- (2) Such appointment shall be irrevocable, shall bind any successor in interest or to the assets or liabilities of the insurer, and shall remain in effect as long as there is in force in this state or elsewhere a contract that would give rise to a cause of action in this state, made by the insurer, or liabilities or duties arising therefrom.
- (3) Service of lawful process against unauthorized insurers, except in contracts issued by insurers or underwriters to *those insureds specified* ~~industrial insureds as defined~~ in KRS 304.11-020, shall be made upon the Secretary of State, as provided in KRS 304.11-040.
- (4) Service of lawful process against authorized domestic insurers shall be had pursuant to KRS 271B.5-040.
- (5) If the Secretary of State is by law the lawful attorney for service of process, the clerk of the court in which action is brought shall issue a summons against the defendant named in the complaint and shall serve by certified mail, return receipt requested, two (2) true copies of the summons with two (2) attested copies of plaintiff's complaint to the Secretary of State. The Secretary of State shall immediately mail a copy of the summons and complaint to the defendant; if an authorized insurer, to the person designated pursuant to subsection (7) of KRS 304.3-150, and if an unauthorized insurer to the last known principal place of business. The letter shall be posted by prepaid certified mail, return receipt requested, and shall bear the return address of the Secretary of State. The Secretary of State shall make a return to the court showing that the acts contemplated by this statute have been performed, and shall attach to his return the registry receipt, if any. Summons shall be deemed to be served on the return of the Secretary of State and the action shall proceed as provided in the Kentucky Rules of Civil Procedure.
- (6) The Secretary of State shall keep a record of the date and hour of receipt of such lawful process, as well as the date it is forwarded to the defendant.
- (7) For the purpose of this section, "lawful process" shall include only the summons which initiates and commences a cause of action, and such other initial notices, rules, or orders which would be required by the Kentucky Rules of Civil Procedure to be by personal service.
- (8) The sheriff serving the summons upon the Secretary of State shall pay to him at the time of service a fee in the amount set forth in KRS 454.210, which shall be taxed as costs in the action.

**Approved March 23, 2000**

## **CHAPTER 146**

**(HB 123)**

AN ACT relating to the designation of the official rock of Kentucky.

WHEREAS, the colorful rock, Kentucky agate, bears the name of this great Commonwealth; and

WHEREAS, this beautiful Kentucky resource, characterized by delicate bands of blue, red, orange, black, yellow, or gray shades, is often displayed at local rock shows and used as an ornamental material and in semiprecious jewelry; and

WHEREAS, designation of a state rock will promote interest in geology, the hobby of mineral collecting, and the lapidary arts;

NOW, THEREFORE,

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 2 IS CREATED TO READ AS FOLLOWS:

***Kentucky agate is named and designated as the official rock of Kentucky.***

**Approved March 23, 2000**

## CHAPTER 147

**(HB 139)**

AN ACT relating to veterans.

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

Section 1. KRS 36.300 is repealed, reenacted as a new section of KRS Chapter 40 and amended to read as follows:

- (1) There is created the Department of Veterans' Affairs, which shall be attached to the Office of the Governor for administrative purposes. Notwithstanding KRS 12.028, the department's status as a separate organizational unit attached to the Office of the Governor shall not be changed except by action of the General Assembly. The department shall be headed by a commissioner appointed by the Governor pursuant to KRS 12.040. The Office of the Commissioner is created within the department.
- (2) The Department of Veterans' Affairs shall include the Advisory Board for Veterans' Affairs established by ***Section 2 of this Act***~~[KRS 36.310]~~.
- (3) The Department of Veterans' Affairs shall be responsible for providing services to veterans in accordance with ***Section 3 of this Act***~~[KRS 36.330]~~ and ***Section 5 of this Act***~~[36.350]~~ to ***Section 8 of this Act***~~[36.370]~~.

Section 2. KRS 36.310 is repealed and reenacted as a new section of KRS Chapter 40 to read as follows:

- (1) There is created a board to be known as the Advisory Board for Veterans' Affairs which shall be attached to the Department of Veterans' Affairs. The board shall be composed of five (5) members appointed by the Governor. Two (2) of said members shall serve for a period of three (3) years, two (2) for a period of two (2) years and one (1) for a period of one (1) year and all shall serve until their successors are appointed, and with all appointments after the original appointments being for three (3) years. It is further provided that said appointments shall be veterans with service during time of war or hostilities wherein American troops were engaged in conflict with an armed enemy. Insofar as practicable, the Governor, in making appointments to the board, shall give due consideration to a fair representation on the board of nationally recognized veterans' organizations active in Kentucky, based on size of the membership of such organizations in this state. The state headquarters of each said major veterans' organization may, from time to time, submit a list of not more than three (3) names to the Governor from which list original appointments may be made and vacancies filled in his discretion.
- (2) Members of the board shall meet at least once every two (2) months at the Department of Veterans' Affairs, and at such other times as the chairman may designate, and the members shall decide as to the specific meeting date.
- (3) Members of the board shall be paid for the actual expenses incurred upon attendance of meetings of the board subject to the Finance and Administration Cabinet regulations.
- (4) At its first meeting the members of the board shall select a chairman, vice chairman and secretary from among the members.

- (5) The board shall advise the Governor and the commissioner of the Department of Veterans' Affairs on the administration of veterans' services programs.
- (6) The board shall advise the General Assembly on matters relating to veterans' affairs.

Section 3. KRS 36.330 is repealed, reenacted as a new section of KRS Chapter 40 and amended to read as follows:

- (1) The Department of Veterans' Affairs shall collect all necessary data and information regarding facilities and services available to veterans, their families, and dependents, and shall cooperate with all information or service agencies throughout the state in informing such persons regarding the existence or availability of all educational, training, and retraining facilities; health, medical, rehabilitation, and housing services and facilities; employment and reemployment services; provisions of federal, state, and local laws affording rights, privileges, and benefits to said persons, their families, and dependents, and all other matters of similar related or appropriate nature. It shall likewise be the duty of the department to assist veterans and their families and dependents in the presentation, proof, and establishment of all claims, privileges, rights, and other benefits which they may have under federal, state, or local laws, and to cooperate with all national, state, and local government and private agencies securing services or any benefits to veterans, their families, and dependents.
- (2) The commissioner of the Department of Veterans' Affairs shall prepare and submit to the Governor and each member of the board an annual report with reference to claims presented on behalf of veterans and to otherwise report the activities and accomplishments of the department.
- (3) The Department of Veterans' Affairs shall be authorized to apply for and accept gifts, grants, and other contributions from the federal government, or from any other governmental unit which funds shall be administered by the department through use of trust and agency accounts.
- (4) Veterans as used in *Section 2 of this Act* ~~KRS 36.340~~ to *Section 3 of this Act* ~~36.330~~ include any individual who served on active duty during peace or war in the Armed Forces of the United States, and who has received an honorable discharge from such service.
- (5) The Department of Veterans' Affairs shall maintain full, adequate, and complete copies of all records pertaining to claims of veterans who file said claims for benefits through the department.
- (6) The commissioner of the Department of Veterans' Affairs may purchase liability insurance for the protection of employees of the Department of Veterans' Affairs to protect them from liability for acts, omissions, and claims arising in the course and scope of their employment or service to the department.

Section 4. KRS 36.340 is repealed and reenacted as a new section of KRS Chapter 40 to read as follows:

- (1) The Department of Veterans' Affairs shall establish and maintain state veterans' cemeteries in the Commonwealth for the purpose of providing for the interment of Kentucky veterans of the United States Armed Forces and for their next of kin, as determined by the department.
- (2) The Kentucky state veterans' cemeteries shall be under the administrative authority and control of the Department of Veterans' Affairs. The Department of Veterans' Affairs may promulgate administrative regulations necessary to operate the cemeteries in compliance with applicable state and federal statutes and regulations.
- (3) The Department of Veterans' Affairs is authorized to seek federal and private funding for the construction, renovation, and operation of Kentucky state veterans' cemeteries.

Section 5. KRS 36.350 is repealed, reenacted as a new section of KRS Chapter 40 and amended to read as follows:

The General Assembly has determined the establishment of state veterans' nursing homes to be in the best interests of the veterans of the Commonwealth and necessary to the well-being of our elderly and disabled veterans. Therefore, it is the purpose of *Section 6 of this Act* ~~KRS 36.355~~ to authorize the establishment of state veterans' nursing homes, to promote their construction or renovation, and to assign administrative responsibility for their planning and operation.

Section 6. KRS 36.355 is repealed and reenacted as a new section of KRS Chapter 40 to read as follows:

- (1) There shall be established and maintained in the Commonwealth of Kentucky state veterans' nursing homes to provide long-term care to veterans who are residents of Kentucky.



- (2) The Kentucky state veterans' nursing homes shall be attached to the Finance and Administration Cabinet. The Finance and Administration Cabinet may promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statutes and regulations.
- (3) The Department of Veterans' Affairs may seek federal and private funding for the construction or renovation, and operation of Kentucky state veterans' nursing homes.

Section 7. KRS 36.360 is repealed and reenacted as a new section of KRS Chapter 40 to read as follows:

For the purpose of financing the costs of the construction or renovation of Kentucky state veterans' nursing homes and all proper costs necessary or incidental thereto, the Department of Veterans' Affairs is hereby authorized to apply to the State Property and Buildings Commission for the issuance of revenue bonds and to enter into any leases or other financing agreements in respect of the Kentucky state veterans' nursing homes necessary or desirable to provide revenues to amortize and secure the revenue bonds.

Section 8. KRS 36.370 is repealed, reenacted as a new section of KRS Chapter 40 and amended to read as follows:

- (1) Revenue bonds issued under the provisions of *Section 7 of this Act*~~[KRS 36.360]~~ and this section shall state that they are issued pursuant to *Section 7 of this Act*~~[KRS 36.360]~~ and this section and to the provisions of KRS Chapters 56 and 58, as applicable. Revenue bonds issued under the provisions of *Section 7 of this Act*~~[KRS 36.360]~~ and this section and the interest thereon shall be exempt from all taxation by the Commonwealth and its political subdivisions. Revenue bonds issued under the provisions of *Section 7 of this Act*~~[KRS 36.360]~~ and this section shall have and are hereby declared to have all the incidents of negotiable instruments.
- (2) The State Property and Buildings Commission, in each resolution authorizing the issuance of revenue bonds under the provisions of *Section 7 of this Act*~~[KRS 36.360]~~ and this section, shall determine the following:
  - (a) The maturity date or dates of the revenue bonds;
  - (b) The manner in which interest shall be paid thereon;
  - (c) The terms of redemption applicable thereto; and
  - (d) Such other particulars of the revenue bonds not contrary to law or inconsistent with *Section 7 of this Act*~~[KRS 36.360]~~ and this section.
- (3) Notwithstanding the provisions of KRS Chapters 56 and 58, revenue bonds issued under the provisions of *Section 7 of this Act*~~[KRS 36.360]~~ and this section may be sold by the State Property and Buildings Commission, and the interest rates to be borne by such bonds shall be determined, in such manner as the State Property and Buildings Commission shall decide, including, without limitation, sale by private negotiation.
- (4) No consent of any department, division, commission, board, bureau, or agency of the Commonwealth other than the proceedings, conditions and other things which are specifically required by *Section 7 of this Act*~~[KRS 36.360]~~ and this section and KRS Chapters 56 and 58, shall be required for the issuance of revenue bonds under the provisions of *Section 7 of this Act*~~[KRS 36.360]~~ and this section.

Section 9. The following KRS section is repealed:

194.225 Transfer of veterans' affairs functions to Center for Veterans' Affairs.

**Approved March 23, 2000**

## CHAPTER 148

**(HB 105)**

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 98-1247, dated September 15, 1998, which amends Executive Order 98-1050, dated August 6, 1998 relating to the Public Protection and Regulation Cabinet, Office of the Petroleum Storage Tank Environmental Assurance Fund, which: creates the Division of Legal Services to be headed by a General Counsel appointed by the Secretary and approved by the Governor pursuant to

KRS 12.050 and KRS 12.210; creates the Division of Administrative Operations to be headed by a Division Director appointed by the Secretary pursuant to KRS 12.050; and, creates the Division of Technical Operations to be headed by a Division Director appointed by the Secretary pursuant to KRS 12.050.

**Approved March 23, 2000**

## **CHAPTER 149**

**(HB 158)**

AN ACT relating to property taxes.

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

Section 1. KRS 132.810 is amended to read as follows:

- (1) To qualify under the homestead exemption provision of the Constitution, each person claiming the exemption shall file an application with the property valuation administrator of the county in which the applicant resides, on forms prescribed by the Revenue Cabinet. The assessed value of property on which homestead exemption is claimed shall not be increased because of valuation expressed on the application form filed with the property valuation administrator, and whenever it becomes known that the valuation of property subject to the homestead tax exemption has been increased because of valuation expressed on the application form, adjustment shall be made the following year so that the total tax paid by the taxpayer is the same as if the increase had not been made.
- (2)
  - (a) Every person filing an application for exemption under the homestead exemption provision must be sixty-five (65) years of age or older during the year for which application is made or must have been classified as totally disabled under a program authorized or administered by an agency of the United States government or by ~~any[the Railroad]~~ retirement system ***either within or without the Commonwealth of Kentucky*** on January 1 of the year in which application is made.
  - (b) Every person filing an application for exemption under the homestead exemption provision must own and maintain the property for which the exemption is sought as his personal residence.
  - (c) Every person filing an application for exemption under the disability provision of the homestead exemption must have received disability payments pursuant to the disability and must maintain the disability classification ***for the entirety of the particular taxation period*** ~~[through December 31 of the year in which application is made].~~
  - (d) Every person filing for the homestead exemption who is totally disabled and is less than sixty-five (65) years of age must apply for the homestead exemption on an annual basis.
  - (e) Only one (1) exemption per residential unit shall be allowed even though the resident may be sixty-five (65) years of age and also totally disabled, and regardless of the number of residents sixty-five (65) years of age or older occupying the unit, but the sixty-five hundred dollars (\$6,500) exemption shall be construed to mean sixty-five hundred dollars (\$6,500) in terms of the purchasing power of the dollar in 1972. Every two (2) years thereafter, if the cost of living index of the United States Department of Labor has changed as much as one percent (1%), the maximum exemption shall be adjusted accordingly.
  - (f) The real property may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight (98) years. The exemption shall apply only to the value of the real property assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which his interest in the corporation bears to the assessed value of the property.
  - (g) A mobile home, recreational vehicle, when classified as real property as provided for in KRS 132.751, or a manufactured house shall qualify as a residential unit for purposes of the homestead exemption provision.
  - (h) When title to property which is exempted, either in whole or in part, under the homestead exemption is transferred, the owner, administrator, executor, trustee, guardian, conservator, curator, or agent shall report such transfer to the property valuation administrator.

- (3) Notwithstanding any statutory provisions to the contrary, the provisions of this section shall apply to the assessment and taxation of property under the homestead exemption provision for state, county, city, or special district purposes.
- (4) The provisions of this section shall become effective with the 1982 taxable year and persons eligible for a homestead exemption under this section, who have not previously filed under the age provision of the homestead exemption, shall file applications by December 31 of the taxation period.
  - (a) The homestead exemption for disabled persons shall terminate whenever those persons no longer meet the total disability classification~~[-or]~~ at the end of the taxation period for which the homestead exemption has been granted. ***In no case shall the exemption be prorated for persons who maintained the total disability classification at the end of the taxation period.***
  - (b) Any totally disabled person granted the homestead exemption under the disability provision shall report any change in disability classification to the property valuation administrator in the county in which the homestead exemption is authorized.
  - (c) Any person making application and qualifying for the homestead exemption before payment of his property tax bills for the year in question shall be entitled to a full or partial exoneration, as the case may be, of the property tax due to reflect the taxable assessment after allowance for the homestead exemption.
  - (d) Any person making application and qualifying for the homestead exemption after property tax bills have been paid shall be entitled to a refund of the property taxes applicable to the value of the homestead exemption.
- (5) ***In this section, "taxation period" means the period from January 1 through December 31 of the year in which application is made, unless the person maintaining the classification dies before December 31, in which case "taxation period" means the period from January 1 to the date of death.***

Section 2. This Act shall apply for tax assessments made on or after January 1, 2001.

**Approved March 23, 2000**

## CHAPTER 150

**(HB 412)**

AN ACT relating to sanitation districts.

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

Section 1. KRS 220.140 is amended to read as follows:

Within twenty (20) days after the commissioner certifies to the county clerk of each county in which the district is located that the district is incorporated, there shall be appointed a board of directors for the district, consisting of three (3) members, which shall control and manage the affairs of the district. If the district lies wholly within a single county, the county judge/executive of that county shall appoint all of the directors. If the district lies within two (2) counties, the county judge/executive of the county in which the greater portion of the population of the district resides may appoint two (2) directors and the county judge/executive of the other county shall appoint the third. If the district lies within more than two (2) counties, the county judges/executive of all the counties shall jointly select the directors, but each one so appointed must reside in a different county. Not less than two (2) of the directors shall be freeholders, and not more than two (2) of them shall belong to or be affiliated with the same political party. If the district is coextensive with the boundaries of two (2) or more counties, four (4) directors shall be appointed by the county judge/executive of the most populous county ***and***~~[-]~~ two (2) shall be appointed by the county judge/executive of ~~the next most populous county, and one (1) director shall be appointed by the county judge/executive of~~ each remaining county. All appointments by county judges/executive shall be subject to the approval of the respective fiscal courts. In a district which is coextensive with the boundaries of two (2) or more counties, not less than two-thirds (2/3) of the directors shall be freeholders. No director shall be in any way associated or connected with the ownership, operation or control of any privately owned public utility operating within the district. The terms of office of the first board of directors shall be two (2), three (3) and four (4) years, respectively, from the date of their appointment, the length of the term of office of each member to be determined by lot at their first meeting, but the individual holding such office shall do so at the pleasure of the county judge/executive by whom he is appointed, and he may be removed without

cause, with the approval of the respective fiscal court, by the county judge/executive by whom he was appointed and his unexpired term filled by another appointee of such county judge/executive. After the expiration of the respective terms of office of the first board, each director shall be appointed for a term of four (4) years, subject to the will of the county judge/executive making the appointment. Vacancies resulting from any cause other than expiration of term shall be filled only for the unexpired term. The county judge/executive of the county whose director has completed his term of office or whose office has otherwise been vacated shall fill the vacant office, except that when the district lies within more than three (3) counties, if each county is not represented, vacancies resulting from expiration of term shall be filled in rotation by the county judges/executive of those counties not represented by a director at the time a vacancy occurs. The directors shall at all times be residents of the district, and the office of any director who moves his residence outside the district shall automatically be vacated.

**Approved March 23, 2000**

## **CHAPTER 151**

**(HB 545)**

AN ACT relating to inheritance tax.

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

Section 1. KRS 140.160 is amended to read as follows:

- (1) The Revenue Cabinet shall have full supervision of the collection of all taxes due under the provisions of this chapter, including the power to institute suit in this and other states. It may employ attorneys and other persons necessary to carry out the full intent and purpose of this chapter. The cabinet shall furnish, upon application, blank forms covering information as may be necessary to determine the amount of tax due the state on the transfer of all property subject to tax.
- (2) The cabinet may cause personal representatives or beneficiaries to file all statements required by this chapter with the clerks of the proper courts and with the cabinet, and may require them to furnish any additional information deemed necessary to support the computation of the amount of tax that should be paid by the estate. ~~[- The personal representative shall in every case, when he files his inventory in the District Court, file a duplicate thereof with the cabinet.]~~ ***The personal representative, or the beneficiaries in the absence of a personal representative, shall compute the taxes imposed by this chapter on the tax return provided by the cabinet when:***
  - (a) ***1. A United States estate tax return is required to be filed under federal law and applicable regulations; and***
  - 2. The estate includes property over which Kentucky has jurisdiction for purposes of the taxes imposed by this chapter; or***
  - (b) ***Any assets from the estate subject to the taxes imposed by this chapter pass to a beneficiary taxable under KRS 140.070.***

The tax return, ***when required***, shall be filed with the cabinet within eighteen (18) months after the death of the decedent or at the time payment of the tax is made pursuant to KRS 140.210.

- (3) Except as herein provided, no action to enforce the collection of the tax imposed by this chapter shall be commenced more than ten (10) years after the cause of action first accrued. In case the settlement of an estate is delayed because of litigation or other unavoidable cause, the delay shall suspend the limitation, prescribed by this subsection, until the cause of delay is removed. In the case of a fraudulent return or any other fraudulent representation affecting the amount of or the liability for the tax imposed by this chapter notwithstanding any provision of limitation provided elsewhere, the tax due by reason thereof may at any time be assessed and collected by the methods set out in this chapter, including action in a court of competent jurisdiction.

Section 2. KRS 140.190 is amended to read as follows:

- (1) All taxes imposed by this chapter shall be computed and paid on the fair cash value of the property transferred at the rates provided. All personal representatives, trustees and beneficiaries shall be personally liable for the taxes until they are paid, but only to the extent that ***property from the estate*** ~~[- same -]~~ come into their hands, and in no case shall the personal representative or trustee be liable for a greater sum than passes through his administration.

- (2) The heir, devisee or other donee shall be personally liable for the tax on real property, as well as the personal representative or trustee, and if the personal representative or trustee pays the tax he may, unless the tax is made an expense of administration by the will or other instrument, recover the tax from the heir, devisee or other donee of the real property.
- ~~{(3) The taxes shall be and remain a lien upon the property transferred and upon all property acquired by the personal representative or trustee, until the taxes are paid or a bond given as provided in KRS 140.210. The lien may be enforced as other liens on similar property are enforced. The lien shall not affect any personal property after it has passed to a bona fide purchaser for value, but the owner of securities may not have them transferred to him by the issuing corporation until the permit required by this chapter has been filed. The lien upon any real property may be discharged by the payment of all taxes due and to become due.}~~
- ~~{(4) When a conveyance made by a decedent in his lifetime is subject to the tax, and the property thus conveyed is personal property without the state or is removed from the state before the tax is paid, the tax shall become a lien upon all property of the decedent; the personal representative shall collect the taxes due on account of the conveyance, and may be authorized to sell any property subject to the lien for the payment thereof, as in other cases.}~~

Section 3. KRS 132.420 is amended to read as follows:

- ~~{(1)}~~ The property valuation administrator shall, subject to the direction, instruction and supervision of the Revenue Cabinet, make the assessment of all property in his county except as otherwise provided, prepare property assessment records, and have ~~{such}~~ other powers and duties relating to assessment as may be prescribed by law or by the cabinet.
- ~~{(2) The cabinet may require the property valuation administrator to be present when safe deposit boxes or similar receptacles are opened under the provisions of KRS 140.250.}~~

Section 4. KRS 289.391 is amended to read as follows:

- (1) When a savings account is opened in any association or federal savings and loan association, in the names of two (2) or more persons, whether minor or adult, in ~~a{such}~~ form that the moneys in the account are payable to either or the survivor or survivors, then ~~the{such}~~ account and all additions ~~{thereto}~~ shall be the property of ~~the{such}~~ persons as joint tenants. The moneys in ~~the{such}~~ account may be paid to or on the order of any one (1) of ~~the{such}~~ persons during their lifetimes, or to or on the order of any one (1) of the survivors of them after the death of any one (1) or more of them. The opening of the account in ~~this{such}~~ form shall, in the absence of fraud or undue influence, be conclusive evidence in any action or proceeding to which either the association or the surviving party or parties is a party, of the intention of all of the parties to the account to vest title to ~~the{such}~~ account and the additions *to the account in the* ~~hereto in such~~ survivor or survivors. By written instructions given to the institution by all the parties to the account, the signatures of more than one (1) of ~~the{such}~~ persons during their lifetimes or of more than one (1) of the survivors after the death of any one (1) of them may be required on any check, receipt, or withdrawal order, in which case the institution shall pay the moneys in the amount only in accordance with ~~the{such}~~ instructions, but ~~no{such}~~ instructions shall limit the right of the survivor or survivors to receive the moneys in the account.
- (2) Payment of all or any of the moneys in ~~the{such}~~ account as provided in subsection (1) shall discharge the institution from liability with respect to the moneys ~~{so}~~ paid, prior to receipt by the institution of a written notice from any one (1) of them directing the institution not to permit withdrawals in accordance with the terms of the account or the instructions. After receipt of ~~the{such}~~ notice an institution may refuse, without liability, to honor any check, receipt, or withdrawal order on the account pending determination of the rights of the parties. ~~{Subject to the provisions of KRS 140.250, subsection (3).}~~ No liability shall attach to an institution paying any survivor in accordance with the terms of the account or the instructions. After receipt of ~~a{such}~~ notice an institution may refuse, without liability, to honor any check, receipt, or withdrawal order on the account pending determination of the rights of the parties.

Section 5. KRS 395.605 is amended to read as follows:

- (1) Upon the sworn application of any fiduciary, that the fiduciary is the sole beneficiary of any estate, the court may dispense with the requirements of this chapter regarding settlement of fiduciaries' ~~{t}~~ accounts and may dispense with the requirements of a surety for the fiduciary and shall accept from the fiduciary an informal settlement. The informal settlement shall be made, under oath, by the fiduciary and shall state that the estate was solvent; that all legal claims and debts have been paid, or if not paid, the manner in which ~~the{said}~~ claims and debts have been provided for; that *the requirements of the* ~~all~~ inheritance, estate or similar death ~~statutes{taxes}~~ have been *met and the tax* paid, *if due and payable* ~~{and a duplicate or photocopy of such tax}~~

~~releases shall be attached, if available~~; that all court costs have been paid; the name of the attorney(s), if any, representing the fiduciary, and the amount of the attorney's fee, and that the beneficiary has received his share. An informal settlement may be filed at any time after expiration of six (6) months from the fiduciary's appointment. Upon the filing of the informal settlement, the court may enter an order discharging the fiduciary, and his surety, if any. When a settlement is effected in the informal manner, no notice to any person shall be required nor shall the court be compelled to inquire into detailed items of income or disbursements.

- (2) If a proposed settlement of a fiduciary is accompanied by a verified waiver executed by all of the beneficiaries of an estate, and none of the beneficiaries is under a disability, the court shall accept from the fiduciary an informal settlement which meets the requirements of subsection (1) of this section. ~~Provided, however,~~ No verified waiver need be obtained from a nonresiduary legatee who has received and receipted for his legacy, the canceled check or signed receipt attached to the proposed settlement being sufficient evidence of satisfaction. The court may require the fiduciary to execute bond with or without surety to insure the application of the estate assets to the debts of the decedent.
- (3) In the event that one or more of the beneficiaries of the estate is under a disability, the court may allow the filing of an informal settlement if the court is of the opinion that the best interests of the person under the disability would be served.

Section 6. KRS 140.990 is amended to read as follows:

- (1) Any person charged with a duty in this chapter who fails or refuses to perform that duty shall be fined not less than five dollars (\$5) nor more than one hundred dollars (\$100).
- (2) Any person who violates subsection (3) of KRS 140.170 shall be fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500), or imprisoned in the county jail for sixty (60) days, or both, and in addition the court shall dismiss him from service as an appraiser.
- (3) Any person who violates subsection (4) of KRS 140.170 shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), or imprisoned in the county jail for not more than twelve (12) months, or both.

~~[(4) Any person who fails to comply with the provisions of KRS 140.250 shall be liable to a penalty of not more than twenty thousand dollars (\$20,000), in addition to the liability imposed by subsection (5) of KRS 140.250.]~~

Section 7. The following KRS sections are repealed:

- 140.064 Exemption of \$7,500 received by surviving spouse or surviving children from testator's estate.
- 140.151 Payment of taxes on farms or other closely held businesses.
- 140.152 Applicability of KRS 140.070, 140.080 and 140.151.
- 140.240 Advance payment of tax.
- 140.250 Regulation of property in safe deposit boxes or held in trust or bailment.
- 140.260 Payment of proceeds of insurance policy or annuity contract.
- 140.265 Payment of proceeds of profit sharing, stock bonus, thrift or pension plan.

**Approved March 23, 2000**

## **CHAPTER 152**

**(HB 562)**

AN ACT repealing various safety provisions.

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

Section 1. The following KRS sections are repealed:

- 228.010 Construction of chapter.
- 228.020 Application to department to engage in business required.
- 228.030 Fee to engage in business.

- 228.040 Inspection before issuance of permit or use of structures and equipment.
- 228.050 Commissioner may refuse, suspend or revoke permit.
- 228.060 Renewal of permits.
- 228.070 Permits to be exhibited -- Not assignable.
- 228.080 Location, structure and use of buildings.
- 228.090 Heating.
- 228.100 Pipes to be protected.
- 228.110 Lighting and electrical equipment.
- 228.120 Doors and windows.
- 228.130 Cleaning floors.
- 228.140 Ventilation.
- 228.150 Structural requirements of drying rooms.
- 228.160 Fire extinguishing apparatus.
- 228.170 Heating and spark-emitting devices prohibited, where.
- 228.180 Sewer connections -- Floor construction.
- 228.190 Requirements for dry cleaning, washing, extracting and redistilling equipment.
- 228.200 Liquids returned to storage tanks at close of operation -- Tanks to be marked.
- 228.210 Volatile substances, how carried.
- 228.220 Storage tanks for volatile substances.
- 228.230 Instilling or redistilling to be in fireproof room.
- 228.240 Storage tanks to be buried underground.
- 228.250 Storage tank vent pipes.
- 228.260 Storage tank filling pipe.
- 228.270 Pipes to connect tanks at top -- Valve to be kept closed.
- 228.280 Chapter does not apply to structures in use in 1922 unless subsequently altered.
- 228.290 Business considered abandoned, when.
- 228.300 Enforcement of chapter.
- 228.990 Penalties.

**Approved March 23, 2000**

## **CHAPTER 153**

**(HB 565)**

AN ACT relating to liquefied petroleum gas.

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

Section 1. KRS 234.120 is amended to read as follows:

- (1) Subject to the exceptions provided in subsection (2), no person shall engage in any of the businesses set out in this subsection without first having provided proof to the commissioner of ability to respond in damages for personal injury and property damages in the amount prescribed, and having obtained from the commissioner the required license or licenses and paid the prescribed fee therefor:

- (a) Selling or delivering to the ultimate consumer or user of liquefied petroleum gas; selling liquefied petroleum gas regulating equipment; repairing, installing, or connecting of containers, liquefied petroleum gas appliances, or liquefied petroleum gas utilization equipment; or filling of D.O.T. liquefied petroleum gas containers for ultimate consumer or wholesale dealer. In-state liquefied petroleum gas dealers, except those holding a valid license on July 15, 1994, shall maintain a liquefied petroleum gas storage facility with an eighteen thousand (18,000) gallon minimum capacity within the boundaries of Kentucky. Out-of-state liquefied petroleum gas dealers, except those holding a valid license on July 15, 1994, shall maintain an eighteen thousand (18,000) gallon minimum capacity liquefied petroleum gas storage facility within fifty (50) miles of the Kentucky border. ***Until January 1, 2002, the fee for this license shall be one hundred dollars (\$100). Beginning on January 1, 2002, the fee for this license shall be two hundred dollars (\$200), and the license shall be issued for a period of two (2) years.*** The minimum liability insurance for this license shall be one million dollars (\$1,000,000).
  - (b) Selling or delivering liquefied petroleum gas in prefilled or filled-on-site containers of one hundred (100) pound liquefied petroleum gas capacity or less; selling of liquefied petroleum gas regulating equipment; assembly, repairing, installing, or connecting of liquefied petroleum gas containers, liquefied petroleum gas appliances, or any liquefied petroleum gas utilization equipment. ***Until January 1, 2002, the fee for this license shall be fifty dollars (\$50). Beginning on January 1, 2002, the fee for this license shall be one hundred dollars (\$100), and the license shall be issued for a period of two (2) years.*** The minimum liability insurance for this license shall be five hundred thousand dollars (\$500,000).
  - (c) Selling or filling of D.O.T. liquefied petroleum gas containers of forty-five (45) pounds or less capacity, or selling liquefied petroleum gas at a specific site for use as a motor vehicle fuel. ***Until January 1, 2002, the fee for this license shall be fifty dollars (\$50). Beginning on January 1, 2002, the fee for this license shall be one hundred dollars (\$100), and the license shall be issued for a period of two (2) years.*** The minimum liability insurance for this license shall be five hundred thousand dollars (\$500,000).
  - (d) Storing, for resale, liquefied petroleum gas in D.O.T. containers of forty-five (45) pounds or less capacity, or selling D.O.T. containers, storage cabinets, racks, docks, for storage of forty-five (45) pound capacity or less. ***Until January 1, 2001, the fee for this license shall be twenty-five dollars (\$25). Beginning on January 1, 2001, the fee for this license shall be fifty dollars (\$50), and the license shall be issued for a period of two (2) years.*** The minimum liability insurance for this license shall be one hundred thousand dollars (\$100,000).
  - (e) Assembling, repairing, installing, or connecting of liquefied petroleum gas containers, or regulating equipment, or liquefied petroleum gas appliances, or any liquefied petroleum gas utilization equipment. ***Until January 1, 2001, the fee for this license shall be twenty-five dollars (\$25). Beginning on January 1, 2001, the fee for this license shall be fifty dollars (\$50), and the license shall be issued for a period of two (2) years.*** The minimum liability insurance for this license shall be five hundred thousand dollars (\$500,000).
- (2) ~~No person shall be required to obtain a license in order to engage in the following activities concerning liquefied petroleum gas:~~
- ~~(a) Storage, by the ultimate consumer, for consumption only;~~
  - ~~(b) Transportation, by the ultimate consumer, in quantities of ten (10) gallons or less;~~
  - ~~(c) Handling in quantities of less than one (1) gallon United States water capacity, where the gas is an integral part of a device for its utilization;~~
  - ~~(d) Use as a fuel, while in the fuel tank of a motor vehicle.~~
- (3) Any person engaged in any business for which a license is required under the provisions of subsection (1) and who engages in the business at more than one (1) office or place of business in this state shall obtain a separate license for each such office or place of business and shall pay therefor the required license fee; except that for the purposes of issuance of licenses under subsection (1) all facilities for the storage only of liquefied petroleum gas for resale within a radius of twenty (20) miles of an office or place of business shall be considered a part of the office or place of business and shall not require separate licensure.



- (3)~~(4)~~ The commissioner shall further have the authority to promulgate and enforce reasonable administrative regulations requiring proof of ability to respond in damages for personal injury and property damages in the minimum amounts required under the provisions of subsection (1), prior to the issuance of a license. The commissioner shall also have authority to suspend or revoke any license issued under this section for willful or gross negligence or for violation of any applicable administrative regulations promulgated under KRS 227.300, but any licensee whose license is suspended or revoked shall be afforded the opportunity for an administrative hearing conducted in accordance with KRS Chapter 13B.

Section 2. KRS 234.130 is amended to read as follows:

- (1) The licenses required under KRS 234.120 shall be issued on a **two (2)** calendar year basis and shall be procured from the commissioner prior to the time of beginning business. All licenses and renewals thereof shall expire on December 31 of **the second**~~each~~ year.
- ~~(2) Any person applying for a license after July 1 of any year shall be required to pay therefor only one half (1/2) of the applicable fee for that calendar year.~~
- ~~(3) Every person licensed under the provisions of KRS 234.100 to 234.160 who desires to continue in business shall, during January of the appropriate~~**each** ~~year, procure from the commissioner a renewal license for which he shall pay a fee equal to the original license fee. [Failure to procure a renewal license prior to January 31 of the year for which it is issued shall result in the imposition of a penalty equal to twenty percent (20%) of the renewal fee which shall be paid to the commissioner in addition to the renewal fee.]~~

Approved March 23, 2000

## CHAPTER 154

(HB 584)

AN ACT relating to the transient room tax.

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

Section 1. KRS 91A.392 is amended to read as follows:

- (1) In addition to the three percent (3%) transient room tax authorized by KRS 91A.390 and the one percent (1%) transient room tax authorized by KRS 153.440, the fiscal court in a county containing a city of the first **or second** class, ***except those counties that are included in a multicounty tourist and convention commission under KRS 91A.350***, may levy an additional transient room tax not to exceed two percent (2%) of the rent for every occupancy of a suite, room, or rooms charged by all persons, companies, corporations, or other similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or similar accommodations businesses.
- (2) All money collected from the tax authorized by this section shall be applied toward the retirement of bonds issued pursuant to KRS 91A.390(5) to finance in part the expansion ***or construction or operation of a governmental or nonprofit convention center or fine arts center useful to the promotion of tourism***~~[of a government owned facility]~~ located in the central business district of the city of the first **or second** class located in the county.
- (3) After the retirement of the bonds provided for in this section, the additional transient room tax levied pursuant to this section shall be void, and the fiscal court shall take action to repeal the ordinance which levied the tax.

Section 2. KRS 91A.390 is amended to read as follows:

- (1) The commission shall annually submit to the local governing body or bodies which established it a request for funds for the operation of the commission. The local governing body or bodies shall include the commission in the annual budget and shall provide funds for the operation of the commission by imposing a transient room tax, not to exceed three percent (3%) of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations businesses. In addition to the three percent (3%), the local governing body may impose a special transient room tax not to exceed one percent (1%) for the sole purpose of meeting the operating expenses of a convention center. A transient room tax imposed by an urban-county government shall not exceed four percent (4%) of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons,

groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations businesses. Transient room taxes shall not apply to the rental or leasing of an apartment supplied by an individual or business that regularly holds itself out as exclusively providing apartments. Apartment means a room or set of rooms, in an apartment building, fitted especially with a kitchen and usually leased as a dwelling for a minimum period of thirty (30) days or more. The local governing body or bodies that have established a commission by joint or separate action, shall enact an ordinance for the collection and the enforcement of the tax measure enacted pursuant to this section.

- (2) A portion of the money collected from the imposition of this tax, as determined by the tax levying body, may be used to finance the cost of acquisition, construction, operation, and maintenance of facilities useful in the attraction and promotion of tourist and convention business and shall include athletic stadiums. The balance of the money collected from the imposition of this tax shall be used for the purposes set forth in KRS 91A.350. Proceeds of the tax shall not be used as a subsidy in any form to any hotel, motel, or restaurant. Money not expended by the commission during any fiscal year shall be used to make up a part of the commission's budget for its next fiscal year.
- (3) An urban-county government may impose an additional tax, not to exceed one percent (1%) of the room rents included in this subsection. This additional tax shall be collected and administered in the same manner as the regular tax with the exception that this additional tax shall be used for the purpose of funding the purchase of development rights program provided for under KRS 67A.845.
- (4) ***Local governing bodies which have formed multicounty tourist and convention commissions as provided by KRS 91A.350(3) may impose an additional tax, not to exceed one percent (1%) of the room rents. This additional tax, if approved by each governing body, shall be collected and administered in the same manner as the regular tax, with the exception that this additional tax shall be used for the purpose of funding regional efforts relating to the promotion of tourist and convention business and convention centers. In no event shall any revenues collected as provided for under KRS 91A.350(3) be utilized for the construction, renovation, maintenance, or additions to any convention center that is located outside the boundaries of the Commonwealth of Kentucky.***
- (5) The commission, with the approval of the tax levying body, may borrow money to pay its obligations that cannot be paid at maturity out of current revenue from the transient room tax, but shall not borrow a sum greater than can be repaid out of the revenue anticipated from the transient room tax during the year the money is borrowed. The commission may pledge its securities for the repayment of any sum borrowed.
- ~~(6)(5)}~~ The fiscal court or legislative body of a city establishing a commission pursuant to subsection (1) or (2) of KRS 91A.350 and, in its own name, a commission established pursuant to subsection (1) of KRS 91A.350 is authorized and empowered to issue revenue bonds pursuant to KRS Chapter 58 for public projects. Bonds issued for the purposes of KRS 91A.350 to 91A.390, may be used to pay any cost for the acquisition of real estate, the construction of buildings and appurtenances, the preparation of plans and specifications, and legal and other services incidental to the project or to the issuance of the bonds. The payment of the bonds, with interest, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Bond and interest obligations issued pursuant to this section shall not constitute an indebtedness of the county or city. All bonds sold under the authority of this section shall be subject to competitive bidding as provided by law, and shall bear interest at a rate not to exceed that established for bonds issued for public projects under KRS Chapter 58.
- ~~(7)(6)}~~ A commission established pursuant to subsection (3) of KRS 91A.350 is authorized and empowered to issue revenue bonds in its own name, payable solely from its income and revenue, pursuant to KRS Chapter 58 for revenue bonds for public projects. Bonds issued for the purposes of KRS 91A.350 to 91A.390, may be used to pay any cost for the acquisition of real estate, the construction of buildings and appurtenances, the preparation of plans and specifications, and legal and other services incidental to the project or to the issuance of the bonds. The payment of the bonds, with interest, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Bond and interest obligations issued pursuant to this section shall not constitute an indebtedness of the county. All bonds sold pursuant to this section shall be subject to competitive bidding as provided by law, and shall not bear interest at rates exceeding those for bonds issued for public projects under KRS Chapter 58.

**CHAPTER 155****(HB 556)**

AN ACT relating to property taxes.

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

Section 1. KRS 134.500 is amended to read as follows:

- (1) Uncollectible tax claims shall bear interest at twelve percent (12%) per annum from the date the certificate of delinquency is issued. All tax bills on omitted property that were not turned over to the sheriff in time to be collected or to make the sale provided for in KRS 134.430 and 134.440 shall also be submitted to the fiscal court but shall be carried over as a charge against the sheriff at the time he makes his next regular settlement.
- (2) The cabinet shall be responsible for the collection of certificates of delinquency and delinquent personal property tax bills; however, the cabinet shall first offer the collection duties to the county attorney, unless the cabinet determines that the county attorney has previously failed to perform collection duties in a reasonable and acceptable manner. Any county attorney desiring to perform the duties associated with the collection of delinquent tax claims shall enter into a contract with the cabinet on an annual basis. The terms of the contract shall specify the duties to be undertaken by the county attorney. These duties shall include but are not limited to the following actions:
  - (a) Within fifty (50) days after the issuance of a certificate of delinquency to the state, county, and taxing district, the county attorney or the Revenue Cabinet shall cause a notice of the purchase to be mailed by regular mail to the property owner at the address on the records of the property valuation administrator. The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent (12%) per annum, and if not paid will be subject to collection by the county attorney as provided by law.
  - (b) The county attorney shall file in the office of the county clerk a list of the names and addresses to which the notice was mailed along with a certificate that the notice was mailed in accordance with the requirements of this section.
  - (c) All notices returned as undeliverable shall be submitted to the property valuation administrator. The property valuation administrator shall attempt to correct inadequate or erroneous addresses and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the notices with the corrected information to the county attorney prior to the expiration of the one (1) year tolling period provided in KRS 134.470.
  - (d) Within ninety (90) days after the expiration of the one (1) year tolling period provided in KRS 134.470, the county attorney shall cause a notice of his intention to enforce the lien to be mailed to all owners whose tax bills remain delinquent. No second notice shall be required for addresses previously determined to be undeliverable and for which the property valuation administrator has not provided corrected information.
  - (e) Failure to mail the notices shall not affect the validity of the claim of the state, county, and taxing district. The postal cost of mailing the notices shall be added to the certificate of delinquency and, upon collection, the county attorney shall be reimbursed for the postage. The county attorney shall deliver at the same time a list of the owners whose tax bills remain delinquent to the property valuation administrator. The property valuation administrator shall review this list in accordance with the provisions of KRS 132.220 to establish that the properties on the list can be identified and physically located.
- (3) The county attorney who enters into a contract with the cabinet shall have a period of two (2) years after the expiration of the one (1) year tolling period provided in KRS 134.470 to collect delinquent tax bills or to initiate court action for their collection. At the expiration of the two (2) years the cabinet may assume responsibility for all uncollected bills except those with pending court action.
- (4) The county attorney who enters into a contract with the cabinet and performs his duties in respect to the certificate of delinquency and delinquent personal property tax bills shall be entitled to twenty percent (20%) of the amount due each taxing unit, whether the tax claim is voluntarily paid or is paid through sale or under court order, and the fee shall be paid to him by the county clerk when making distribution, as provided in KRS

134.480. This fee shall be added to the amount of the tax claims and paid by the persons paying the tax claims. They shall not be paid by the taxing districts or deducted from the taxes due the taxing districts. If more than one (1) county attorney renders necessary services in an effort to collect a tax claim, the attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the fee. When the county attorney's office, in an effort to collect a certificate of delinquency, or delinquent personal property tax bills files a court action which is litigated by the taxpayer, an additional county's attorney fee equal to thirteen percent (13%) of the total tax plus ten percent (10%) penalty, may be added to the certificate or the bill and shall become part of the tax claim.

- (5) If a county attorney chooses not to contract for these collection duties or if a county attorney fails to perform the duties required by the contract, the cabinet shall assume responsibility for the collection process. In the performance of those duties, the cabinet shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of the amount due on the certificate of delinquency conferred generally upon the cabinet by Kentucky Revised Statutes including, but not limited to, KRS Chapters 131, 134, and 135. The twenty percent (20%) fee that would have otherwise been paid to the county attorney shall be paid to the cabinet for deposit in the delinquent tax fund provided for under KRS 134.400.
- (6) Any action on behalf of the state, county, and taxing districts authorized by this section or by KRS 134.470, 134.490, or 134.540 shall be filed on relation of the secretary, and the petition may be sent to the cabinet, which may require revision in instances where it deems revision or amendment necessary. The cabinet shall advise the county attorney in all actions, and may send him special assistance when the secretary deems assistance necessary. A copy of the judgment shall also be sent to the cabinet. If the cabinet sends assistance to a county attorney who contracts to prosecute the suits or proceedings, the county attorney shall be entitled to his full fee. On the same day that suit is filed, the county clerk shall be given notice of its filing. Costs incident to the suit shall become a part of the tax claim.
- (7) The cabinet may make its delinquent tax collection databases and other technical resources, including but not limited to income tax refund offsetting, available to the county attorney upon request from the county attorney. The county attorney seeking assistance shall enter into any agreements required by the cabinet to protect taxpayer confidentiality, to ensure database integrity, or to address other concerns of the cabinet.
- (8) ***The county attorney may, at any time after assuming collection duties, enter into an agreement with the delinquent taxpayer to accept installment payments on the delinquent tax bill. The agreement shall not waive the county attorney's right to initiate court action or other authorized collection activities if the taxpayer does not make payments in accordance with the agreement.***

**Approved March 23, 2000**

## CHAPTER 156

### (HB 610)

AN ACT relating to reorganization.

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

Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.

3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.
  - (c) Registry of Election Finance.
4. Department of Law.
  - (a) Attorney General.
5. Department of the Treasury.
  - (a) Treasurer.
6. Department of Agriculture.
  - (a) Commissioner of Agriculture.
  - (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
  - (a) Department of State Police.
  - (b) Department of Criminal Justice Training.
  - (c) Department of Corrections.
  - (d) Department of Juvenile Justice.
  - (e) Office of the Secretary.
  - (f) Offices of the Deputy Secretaries.
  - (g) Office of General Counsel.
  - (h) Division of Kentucky State Medical Examiners Office.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
  - (a) Department of Education.
    - (1) Kentucky Board of Education.
    - (2) Education Professional Standards Board.
  - (b) Department for Libraries and Archives.
  - (c) Kentucky Arts Council.
  - (d) Kentucky Educational Television.
  - (e) Kentucky Historical Society.
  - (f) Kentucky Teachers' Retirement System Board of Trustees.
  - (g) Kentucky Center for the Arts.
  - (h) Kentucky Craft Marketing Program.

- (i) Kentucky Commission on the Deaf and Hard of Hearing.
  - (j) Governor's Scholars Program.
  - (k) Governor's School for the Arts.
  - (l) Operations and Development Office.
  - (m) Kentucky Heritage Council.
  - (n) Kentucky African-American Heritage Commission.
  - (o) Board of Directors for the Center for School Safety.
3. Natural Resources and Environmental Protection Cabinet:
- (a) Environmental Quality Commission.
  - (b) Kentucky Nature Preserves Commission.
  - (c) Department for Environmental Protection.
  - (d) Department for Natural Resources.
  - (e) Department for Surface Mining Reclamation and Enforcement.
  - (f) Office of Legal Services.
  - (g) Office of Information Services.
4. Transportation Cabinet:
- (a) Department of Highways.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Administrative Services.
  - (d) Department of Fiscal Management.
  - (e) Department of Rural and Municipal Aid.
  - (f) Office of General Counsel.
  - (g) Office of Public Affairs.
  - (h) Office of Personnel Management.
  - (i) Office of Minority Affairs.
  - (j) Office of Environmental Affairs.
  - (k) Office of Policy and Budget.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
  - (b) Department of Job Development.
  - (c) Department of Financial Incentives.
  - (d) Department of Community Development.
  - (e) Tobacco Research Board.
  - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.
  - (b) Department of Insurance.
  - (c) Department of Housing, Buildings and Construction.

- (d) Department of Financial Institutions.
  - (e) Department of Mines and Minerals.
  - (f) Department of Public Advocacy.
  - (g) Department of Alcoholic Beverage Control.
  - (h) Kentucky Racing Commission.
  - (i) Board of Claims.
  - (j) Crime Victims Compensation Board.
  - (k) Kentucky Board of Tax Appeals.
  - (l) Backside Improvement Commission.
  - (m) Office of Petroleum Storage Tank Environmental Assurance Fund.
7. Cabinet for Families and Children:
- (a) Department for Social Insurance.
  - (b) Department for Social Services.
  - (c) Public Assistance Appeals Board.
  - (d) Office of the Secretary.
  - (e) Office of the General Counsel.
  - (f) Office of Program Support.
  - (g) Office of Family Resource and Youth Services Centers.
  - (h) Office of Technology Services.
  - (i) Office of the Ombudsman.
  - (j) Office of Aging Services.
8. Cabinet for Health Services.
- (a) Department for Public Health.
  - (b) Department for Medicaid Services.
  - (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission on Children with Special Health Care Needs.
  - (e) Office of Certificate of Need.
  - (f) Office of the Secretary.
  - (g) Office of the General Counsel.
  - (h) Office of Program Support.
  - (i) Office of the Inspector General.
9. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
  - (b) Office of Management and Budget.
  - (c) Office of Financial Management and Economic Analysis.
  - (d) Office of the Controller.
  - (e) Department for Administration.
  - (f) Department of Facilities Management.

- (g) Department of Information Systems.
  - (h) State Property and Buildings Commission.
  - (i) Kentucky Pollution Abatement Authority.
  - (j) Kentucky Savings Bond Authority.
  - (k) Deferred Compensation Systems.
  - (l) Office of Equal Employment Opportunity Contract Compliance.
  - (m) Office of Capital Plaza Operations.
  - (n) County Officials Compensation Board.
  - (o) Kentucky Employees Retirement Systems.
  - (p) Commonwealth Credit Union.
  - (q) State Investment Commission.
  - (r) Kentucky Housing Corporation.
  - (s) Governmental Services Center.
  - (t) Kentucky Local Correctional Facilities Construction Authority.
  - (u) Kentucky Turnpike Authority.
  - (v) Historic Properties Advisory Commission.
  - (w) Kentucky Kare Health Insurance Authority.
10. Labor Cabinet:
- (a) Department of Workplace Standards.
  - (b) Department of Workers' Claims.
  - (c) Kentucky Labor-Management Advisory Council.
  - (d) Occupational Safety and Health Standards Board.
  - (e) Prevailing Wage Review Board.
  - (f) Workers' Compensation Board.
  - (g) Kentucky Employees Insurance Association.
  - (h) Apprenticeship and Training Council.
  - (i) State Labor Relations Board.
  - (j) Kentucky Occupational Safety and Health Review Commission.
  - (k) Office of Administrative Services.
  - (l) Office of Labor-Management Relations and Mediation.
  - (m) Office of General Counsel.
  - (n) Workers' Compensation Funding Commission.
  - (o) Employers Mutual Insurance Authority.
11. Revenue Cabinet:
- (a) Department of Property Valuation.
  - (b) Department of Tax Administration.
  - (c) Office of Financial and Administrative Services.
  - (d) Department of Law.



- (e) Department of Information Technology.
- (f) Office of Taxpayer Ombudsman.
- 12. Tourism Development Cabinet:
  - (a) Department of Travel.
  - (b) Department of Parks.
  - (c) Department of Fish and Wildlife Resources.
  - (d) Kentucky Horse Park Commission.
  - (e) State Fair Board.
  - (f) Office of Administrative Services.
  - (g) Office of General Counsel.
- 13. Cabinet for Workforce Development:
  - (a) Department for Adult Education and Literacy.
  - (b) Department for Technical Education.
  - (c) Department of Vocational Rehabilitation.
  - (d) Department for the Blind.
  - (e) Department for Employment Services.
  - (f) State Board for Adult and Technical Education.
  - (g) ~~Governor's Council on Vocational Education.~~
  - ~~(h)~~ The State Board for Proprietary Education.
  - ~~(h)~~~~(i)~~ The Foundation for Adult Education.
  - ~~(i)~~~~(j)~~ **Office of Training and Reemployment**~~The Kentucky Job Training Coordinating Council~~.
  - ~~(j)~~~~(k)~~ Office of General Counsel.
  - ~~(k)~~~~(l)~~ Office of Communication Services.
  - ~~(l)~~~~(m)~~ Office of Development and Industry Relations.
  - ~~(m)~~~~(n)~~ Office of Workforce Analysis and Research.
  - ~~(n)~~~~(o)~~ Office for Administrative Services.
  - ~~(o)~~~~(p)~~ Office for Policy and Budget.
  - ~~(p)~~~~(q)~~ Office of Personnel Services.
  - ~~(q)~~~~(r)~~ Unemployment Insurance Commission.
- 14. Personnel Cabinet:
  - (a) Office of Administrative and Legal Services.
  - (b) Department for Personnel Administration.
  - (c) Department for Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.
  - (e) Kentucky Kare.
  - (f) Division of Performance Management.
  - (g) Division of Employee Records.
  - (h) Division of Staffing Services.

- (i) Division of Classification and Compensation.
- (j) Division of Employee Benefits.
- (k) Division of Communications and Recognition.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Council on Postsecondary Education.
  - (a) Kentucky Commission on Community Volunteerism and Service.
- 3. Department for Local Government.
- 4. Kentucky Commission on Human Rights.
- 5. Kentucky Commission on Women.
- 6. Department of Veterans' Affairs.
- 7. Kentucky Commission on Military Affairs.
- 8. Office of the Chief Information Officer.

Section 2. KRS 151B.020 is amended to read as follows:

- (1) The Cabinet for Workforce Development is hereby created, which shall constitute a cabinet of the state government within the meaning of KRS Chapter 12. The cabinet shall consist of a secretary and those administrative bodies and employees as provided by law.
- (2) The cabinet, subject to the provisions of KRS Chapter 12, shall be composed of the major organizational units listed below, and other departments, divisions, and sections as are from time to time deemed necessary for the proper and efficient operation of the cabinet:
  - (a) The Department for Adult Education and Literacy, which is created by KRS 151B.023;
  - (b) The Department for Technical Education, which is created by KRS 151B.025;
  - (c) The Department of Vocational Rehabilitation, which is created by KRS 151B.185;
  - (d) The Department for the Blind, established by KRS 163.470;
  - (e) The Department for Employment Services, which is created by KRS 151B.280;
  - (f) The State Board for Adult and Technical Education, which is created by KRS 151B.095;
  - ~~(g) The Governor's Council on Vocational Education, established by KRS 163.086;~~
  - ~~(h) The State Board for Proprietary Education, established by KRS 165A.340;~~
  - ~~(h)(i) The Foundation for Adult Education, established by KRS 151B.130;~~
  - ~~[(j) The Kentucky Job Training Coordinating Council, established by KRS 151B.220;]~~
  - ~~(i)(k) The Unemployment Insurance Commission established by KRS 341.110;~~
  - ~~(j)(l) The Office of Training and Reemployment created in KRS 151B.260; and~~
  - ~~(k)(m) The Office of School-to-Work, established by KRS 151B.250.~~
- (3) The executive officer of the cabinet shall be the secretary of the Cabinet for Workforce Development. The secretary shall be appointed by the Governor pursuant to KRS 12.040 and shall serve at the pleasure of the Governor. The secretary shall have general supervision and direction over all activities and functions of the cabinet and its employees and shall be responsible for carrying out the programs and policies of the cabinet. The secretary shall be the chief executive officer of the cabinet and shall have authority to enter into contracts, subject to the approval of the secretary of the Finance and Administration Cabinet, when the contracts are deemed necessary to implement and carry out the programs of the cabinet. The Office of the Secretary of the Cabinet for Workforce Development shall consist of the Offices of General Counsel, Communication Services, Development and Industry Relations, Workforce Analysis and Research, the Office for Policy and Budget, the Office of Personnel Services, and the Office for Administrative Services. The Office for Administrative

Services shall contain the Divisions of Fiscal Services, Computer Services, and Facilities Management. Each division shall be headed by a director appointed by the secretary of the Cabinet for Workforce Development pursuant to KRS 12.050.

- (4) The secretary of the Cabinet for Workforce Development and his designated representatives, in the discharge of the duties of the secretary, may administer oaths and affirmations, take depositions, certify official acts, and issue subpoenas to compel the attendance of witnesses and production of books, papers, correspondence, memoranda, and other records considered necessary and relevant as evidence at hearings held in connection with the administration of the cabinet.
- (5) The secretary of the Cabinet for Workforce Development may delegate any duties of his office to employees of the cabinet as he deems necessary and appropriate, unless otherwise prohibited by statute.
- (6) The secretary of the Cabinet for Workforce Development shall promulgate, administer, and enforce administrative regulations that are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds, and that are necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.

Section 3. KRS 151B.215 is amended to read as follows:

- (1) The Kentucky Occupational Information Coordinating Committee (KOICC) is hereby created and shall be attached to the Office for Workforce Analysis and Research within the Office of the Secretary of the Cabinet for Workforce Development.
- (2) The committee shall coordinate the development, gathering, aggregation, analysis, dissemination, and application of occupational, labor market, educational training, and career information for the purpose of planning and administering occupational, career, employment training, and economic development efforts and for its use in decision making by counselors, students, the unemployed, and others. The committee shall facilitate the integration of occupational, labor market, and educational training opportunities information into the program planning process. The committee shall use this information for the enhancement of economic development endeavors and the Kentucky Career Information System.
- (3) The committee shall do all things necessary to comply with the Adult and Education Act, 20 U.S.C. secs. 1201 et seq.; the Carl D. Perkins Vocational Education Act, 29 U.S.C. secs. 2301 et seq.; the Job Training Partnership Act, 29 U.S.C. secs. 1501 et seq.; and other related public laws which mandate the establishment of state occupational information coordinating committees, state occupational information systems, and state career information systems, including the filing of required reports and annual plans.
- (4) The objectives of the committee shall include, but shall not be limited to, the following:
  - (a) To coordinate and evaluate information which will be used to develop a comprehensive statewide policy relating to all job training, skills development, and related education programs funded or administered by any agency of the Commonwealth. This statewide policy shall be published and distributed by the committee;
  - (b) To promote communication, cooperation, and coordination between producers and users of data and information relating to education and training, employment, and economic development;
  - (c) To work toward providing one (1) commonly-accepted data and information base, based on standardized terminologies and estimating procedures, which can be utilized by all related organizations in meeting the program planning and counseling needs of users;
  - (d) To develop, implement, and operate an occupational information system for use by planners and administrators of educational training programs and economic development efforts;
  - (e) To develop, implement, and operate a Kentucky Career Information System for use by counselors, students, the unemployed, and others in the career decision making process;
  - (f) To provide information and training to user groups on new programs and resources which are available for utilization in the enhancement of common endeavors;
  - (g) To prepare, publish, and distribute, with or without charge as the committee may determine, technical studies, reports, bulletins, and other materials as it deems appropriate; and
  - (h) To collect, analyze, and disseminate to interested individuals, in cooperation with and through any agencies of federal, state, and municipal government, information concerning areas of present and

projected employment needs, programs of skills training and education consistent therewith, special occupational licensure requirements, wage data by occupation, and any other relevant information.

- (5) The Kentucky Occupational Information Coordinating Committee (KOICC) shall be composed of the following:
  - (a) The secretary of the Cabinet for Workforce Development, who shall serve as chairman;
  - (b) The commissioner of the Department for Employment Services, Cabinet for Workforce Development, who shall serve as vice chairman;
  - (c) The executive director of the Bluegrass State Skills Corporation;
  - (d) The **commissioner of the Department for Technical Education**~~executive director of the Governor's Council on Vocational Education~~;
  - (e) The commissioner of the Department of Vocational Rehabilitation;
  - (f) The commissioner of the Department for Adult Education and Literacy;
  - (g) The commissioner of the Department for the Blind;
  - (h) The two (2) chancellors of the Kentucky Community and Technical College System;
  - (i) A representative from the Kentucky Council on Postsecondary Education;
  - (j) A representative from the Kentucky Chamber of Commerce; and
  - (k) Five (5) additional representatives from the private sector representing employers, employees, and interested parties who shall be appointed by and serve at the pleasure of the Governor.
- (6) Committee members shall receive no compensation, with the exception of those members serving by virtue of public office, but members shall be reimbursed for their expenses in attending meetings and other authorized activities as provided by regulation.
- (7) The committee shall meet as often as necessary, but at least quarterly in the months of January, April, July, and October, to effectuate its purposes. Meetings shall be called by the chairman and notice of meetings shall be either in writing or other acceptable means of communications. For the purpose of conducting business, a majority of the committee shall constitute a quorum.
- (8) The committee shall be attached to the Cabinet for Workforce Development.
- (9) The committee may create subcommittees as needed to carry out the purposes of the full committee.

Section 4. KRS 165A.340 is amended to read as follows:

- (1) There is hereby established a State Board for Proprietary Education which shall be attached to the Cabinet for Workforce Development and shall consist of **eleven (11)**~~twelve (12)~~ voting members to be appointed by the Governor as follows:
  - (a) Three (3) members appointed from a list of seven (7) names submitted by the Kentucky Association of Career Colleges and Schools;
  - (b) Two (2) members representative of technical schools appointed from a list of seven (7) names submitted by the Kentucky Association of Career Colleges and Schools; **and**
  - (c) Six (6) members representative of the public at large~~;~~ **and**
  - ~~(d) One (1) ex officio member with voting powers, representative of the Governor's Council on Vocational Education.~~
- (2) Upon expiration of each of the respective terms of the members first appointed, the term of each successor shall be four (4) years or until his successor shall be appointed and qualified. At the time of the original appointments, the terms of board members will be staggered so that, as nearly as mathematically possible, they fall into three (3) classes. The first class will have two (2) year terms; the second class will have three (3) year terms; and the third class will have four (4) year terms.
- (3) Members of the board shall annually elect one (1) of their number as chairman and the board may employ and fix the compensation of the director and employ and fix the compensation of all personnel required by it for the administration of the provisions of this chapter. The board may make all rules and regulations, including the

establishment of fees and other charges consistent with the provisions of this chapter, as may be necessary to carry out the provisions and purposes of this chapter.

- (4) The board shall hold meetings at least four (4) times a year and as frequently as it deems necessary at the times and places as the board may designate and the majority of the members shall constitute a quorum.
- (5) The board may sue and be sued in its own name.
- (6) The members of the board shall receive one hundred dollars (\$100) per day for each meeting attended and may be paid their travel and other expenses while employed upon the business of the board.
- (7) The board shall administer the provisions of law pertaining to the conduct, operation, maintenance, and establishment of proprietary education institutions, and the activities of agents thereof when acting as such.
- (8) The board shall have the power to subpoena witnesses and school records as it deems necessary.

Section 5. The following KRS sections are repealed:

151B.220 Kentucky Job Training Coordinating Council.

163.086 Governor's Council on Vocational Education.

**Approved March 23, 2000**

## CHAPTER 157

**(HB 621)**

AN ACT relating to financial institutions.

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

Section 1. KRS 288.440 is amended to read as follows:

- (1) Each applicant at the time of making application shall pay two hundred fifty dollars (\$250) to the commissioner as a fee for investigating the application for the initial location in Kentucky, or a fee of one hundred fifty dollars (\$150) for additional locations, and the additional sum of **four hundred dollars (\$400)**~~three hundred seventy-five dollars (\$375)~~ as an annual license fee for each location for the period terminating on the last day of the current calendar year. If the application is filed after June 30 in any year, the payment shall be **two hundred dollars (\$200)**~~one hundred eighty-seven dollars (\$187)~~ as a license fee in addition to the fee for investigation.
- (2) If any person regulated by the department desires to purchase an existing licensed location or locations, the person shall submit an application to the commissioner containing the information as the commissioner may prescribe. The fee for this application shall be one hundred dollars (\$100) per location not to exceed one thousand dollars (\$1,000).

Section 2. KRS 288.450 is amended to read as follows:

- (1) The commissioner shall, after investigation, issue to the applicant a license to make loans in accordance with this chapter, if the commissioner:
  - (a) Approves the form of the application;
  - (b) Finds that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant is a partnership or association, and of the officers and directors thereof if the applicant is a corporation,~~are such as to~~ command the confidence of the community and to warrant the belief that the business of the applicant will be operated honestly, fairly, and efficiently in accordance with the purposes of this chapter; and
  - (c) Finds that the applicant has complied with KRS 288.440.
- (2) If the commissioner does not so find, he **or she** shall not issue a license and shall notify the applicant of the denial and return the sum paid by the applicant as a license fee, retaining the **two hundred** fifty dollars ~~(\$250)~~~~(\$50)~~ investigation fee to cover the cost of investigating the application.
- (3) The commissioner shall approve or deny every application for license within sixty (60) days from the filing thereof with the fees unless the time is extended by a written agreement between the applicant and the

commissioner. If the commissioner denies a license, the applicant may appeal, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

- (4) The official record of the hearing shall be filed in the office of the commissioner as public records, open to public inspection.

Section 3. KRS 288.460 is amended to read as follows:

- (1) Every license shall state the address of the office at which the business is to be conducted, the name of the licensee, and if the licensee is a partnership or association, **and** the names of the members thereof, ~~and if a corporation, the date and place of its incorporation~~.
- (2) The license shall be kept displayed in the office of the licensee and shall not be transferable or assignable. Not more than one **(1)** place of business shall be maintained under the same license but the commissioner may issue more than one **(1)** license to the same licensee upon compliance with all the provisions of this chapter for each license; provided, however, nothing herein shall be deemed to require a license for any place of business devoted to accounting, record-keeping or administrative purposes.
- (3) Whenever a licensee desires to change his **or her** place of business to another location within the same county ~~the [such]~~ licensee shall give written notice to the commissioner, who, if he **or she** finds that the interests of the community will be served thereby, shall indorse on the license a transfer to the new place of business, with the date of transfer, which indorsement shall be authority for the operation of ~~the [such]~~ business at the new location. No change in the place of business of a licensee to a location outside of the original county shall be permitted under the same license.

Section 4. KRS 288.533 is amended to read as follows:

Notwithstanding the provisions of KRS 288.530(10) or of any other law, in any extension of credit **in accordance with [pursuant to]** KRS Chapter 288, the licensee may charge and collect the following:

- (1) A fee, or premium for insurance, in lieu of perfecting a security interest to the extent that the fee or premium does not exceed the fee payable to public officials for perfecting the security interest; and
- (2) A bad check charge of fifteen dollars (\$15), or the amount passed on from other financial institutions, whichever is greater, for any check, draft, negotiable order of withdrawal, or like instrument returned or dishonored for any reason by a depository institution, which charge licensee may charge and collect, through regular billing procedures, or otherwise from the borrower; and
- (3) A reasonable attorney's fee, in connection with the collection of a loan, actually incurred by the licensee and paid to an attorney who is not an employee of the licensee; ~~and~~
- (4) A charge for credit investigations of one dollar (\$1) for each fifty dollars (\$50) or fraction thereof of the principal amount of the loan. This charge shall be permitted only on the first two thousand dollars (\$2,000) of the principal amount of the loan. No charge shall be collected unless a loan has been made as a result of the investigation; **and**
- (5) ***An alternative to the default charge described in KRS 288.530(4), not to exceed five percent (5%) of each scheduled installment, or ten dollars (\$10), whichever is greater. Only one (1) charge may be collected for each scheduled installment.***

Section 5. KRS 288.590 is amended to read as follows:

Each licensee shall annually on or before **January 30 [April 15]**, file with the commissioner a report for the preceding calendar year. ~~The [Such]~~ report shall give information with respect to the financial condition of ~~the [such]~~ licensee; balance sheets at the beginning and end of the accounting period; a statement of income and expenses for said period; a reconciliation of surplus or net earnings with the balance sheets; a schedule of assets used and useful in the consumer loan business; an analysis of charges, and types of security on loans of fifteen thousand dollars (\$15,000) or less; an analysis of delinquent accounts; analysis of suits, repossessions and sales of chattels and ~~[such]~~ other relevant information as the commissioner may reasonably require concerning the business and operations during the preceding calendar year of each licensed place of business conducted in the state. In the event any person or affiliated group of corporations ~~holds [hold]~~ more than one (1) license in the state, he, **she**, or they may file a composite annual report in lieu of separate reports for each licensed office. ~~The [Such]~~ report shall be made under oath in the form prescribed by the commissioner, who shall make and publish annually an analysis and recapitulation of ~~the [such]~~ reports.

Section 6. KRS 288.991 is amended to read as follows:

- (1) Any person who shall engage in the business regulated by this chapter without first securing a license therefor shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than five hundred dollars (\$500) nor more than ~~five~~<sup>one</sup> thousand dollars ~~(\$5,000)~~<sup>(\$1,000)</sup>. Any ~~such~~ loan contract made in violation of this chapter shall be void and the lender shall have no right to collect any principal, charges or recompense whatsoever.
- (2) Any ~~person~~<sup>licensee</sup> who *willfully violates any rule or order of the commissioner authorized under this chapter, shall be guilty of a Class A misdemeanor, but no person may be imprisoned for violation of any rule or order of which that person did not have actual knowledge.* ~~[, after a cease and desist order shall have been issued by the commissioner, shall violate any provision of this chapter shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) in addition to the penalty prescribed in KRS 288.530, if applicable, provided, however,]~~ This section shall not be deemed to limit the power of the commissioner to revoke any license as provided in KRS 288.490.

Section 7. KRS 290.055 is amended to read as follows:

- (1) A credit union may change its principal place of business within this state upon written authorization by the commissioner. If the commissioner has not notified a credit union of his *or her* action on an application to change the place of business within fifteen (15) calendar days of the date the application was received by the commissioner, the credit union may proceed with the change in its place of business.
- (2) A credit union may maintain service facilities, including automated ~~teller machines~~<sup>terminals</sup>, at locations other than its principal office upon written authorization by the commissioner *or as permitted by administrative regulation*. The maintenance of ~~these~~<sup>such</sup> facilities must be reasonably necessary to furnish service to its members.
- (3) A credit union may join with one (1) or more credit unions in the operation of a service facility to meet member needs, including an automated ~~teller machine~~<sup>terminal</sup>, upon written authorization by the commissioner *or as permitted by administrative regulation*.

Section 8. KRS 290.525 is amended to read as follows:

- (1) A credit union may make loans to its officers, directors, employees, loan officers, credit manager, and to members of its supervisory and credit committees, provided that:
  - (a) The loan complies with all lawful requirements under this chapter with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers; and
  - (b) Any loan or aggregate of loans to any ~~such~~ official which exceeds ~~twenty-five~~<sup>ten</sup> thousand dollars ~~(\$25,000)~~<sup>(\$10,000)</sup> plus pledged shares ~~shall~~<sup>must</sup> be approved by the board of directors.
- (2) A credit union may permit officers, directors, employees, loan officers, credit manager, and members of its supervisory and credit committees to act as comakers, guarantors or endorsers of loans to other members, except that when any such loan standing alone or when added to any outstanding loan or loans to the comaker, guarantor or endorser exceeds ten thousand dollars (\$10,000), approval of the board of directors is required.

Section 9. KRS 290.585 is amended to read as follows:

Funds not used in loans to members may be invested:

- (1) In securities, obligations, or other instruments of or issued by or fully guaranteed as to principal and interest by the United States of America or any agency thereof or in any trust or trusts established for investing directly or collectively in the same;
- (2) In obligations of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by Congress, or any political subdivision thereof;
- (3) In certificates of deposit or passbook-type accounts issued by a state or national bank, mutual savings bank, or savings and loan association;
- (4)
  - (a) In loans, not to exceed twenty-five percent (25%) of capital at the lending credit union, to; or
  - (b) In shares or deposits, not to exceed ~~twenty~~<sup>ten</sup> percent ~~(20%)~~<sup>(10%)</sup> of the capital of the investing credit union, of other credit unions, central credit unions, corporate credit unions, or a central liquidity facility established under state or federal law;

- (5) In shares, stocks, loans or other obligations of any organization, corporation, or association, provided the membership or ownership, as the case may be, of ~~the[such]~~ organization, corporation, or association is primarily confined or restricted to credit unions, or organizations of credit unions, and provided further the purpose for which it is organized is to strengthen or advance the development of credit unions or credit union organizations;
- (6) In shares of a cooperative society organized under the laws of this state or of the laws of the United States in the total amount not exceeding ten percent (10%) of the shares, deposits, and surplus of the credit union;
- (7) In stocks and bonds of corporations organized in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the several territories organized by Congress to an aggregate maximum of five percent (5%) of members' shares in stocks and an aggregate maximum of five percent (5%) of members' shares in bonds, provided that ~~such~~ investments shall be limited to stocks or bonds which appear on a list approved by the commissioner and published quarterly or annually, ~~the[such]~~ list to include not less than thirty (30) corporations.

Section 10. KRS 291.460 is amended to read as follows:

An industrial loan company organized under KRS 291.420 to 291.600 may:

- (1) Lend money and receive interest therefor at a rate of seven dollars (\$7) per one hundred dollars (\$100) per annum of the principal amount of the loan not exceeding seven thousand five hundred dollars (\$7,500) and require and receive uniform weekly or monthly installment payments. The amount of interest computed as provided in KRS 291.420 to 291.600 may be charged or received in advance or may be added to the principal amount of the loan. ~~The[such]~~ loans shall be repayable in substantially equal installments over a period not exceeding five (5) years and thirty-two (32) days, and the principal amount of the loan, (excluding charges) shall not exceed seven thousand five hundred dollars (\$7,500).
- (2) Sell or negotiate bonds, notes and certificates of investment for the payment of money at any time, either fixed or uncertain, and receive payments therefor in installments or otherwise; provided, that nothing herein contained shall be construed to create any liability on demand. No certificate holder making loans under KRS 291.420 to 291.600 shall directly or indirectly advertise for or accept deposits, demand or otherwise, except an industrial loan company organized under KRS 291.420 to 291.600 may advertise the sale of certificates of investment as authorized under KRS 291.420 to 291.600. Certificates of investment and any advertisement for the sale of certificates of investment shall clearly state in bold type on the certificate or in the advertisement that: "THIS CERTIFICATE OF INVESTMENT IS NOT INSURED BY ANY STATE OR FEDERAL GOVERNMENT AGENCY."
- (3) Charge for a loan made *in accordance with* ~~pursuant to~~ this section one dollar (\$1) for each fifty dollars (\$50) or fraction thereof loaned for expenses, including any examination or investigation of the character and circumstances of the borrower, comaker or surety, and the drawing and taking acknowledgment of necessary papers or other expenses incurred in making the loan. ~~This[such]~~ charge shall be permitted only on the first two thousand dollars (\$2,000) loaned. No charge shall be collected unless a loan has been made as a result of ~~an[such]~~ examination or investigation.
- (4) An industrial loan company organized under KRS 291.420 to 291.600 in addition to its powers heretofore granted shall be authorized to charge interest on loans or extensions of credit in the same manner and at the same rate as is permitted by KRS 287.215 for banks or trust companies or combined banks and trust companies, and provided further that the principal amount of ~~the[such]~~ loan or extension of credit exclusive of interest or other charges shall not exceed ten thousand dollars (\$10,000).
- (5) In addition to the powers granted in this section, an industrial loan company organized under this chapter may offer revolving credit plans in ~~a[such]~~ manner and amount and at the same rate as permitted by KRS 287.710 to 287.770 for banks and trust companies or combined banks and trust companies. ***This revolving credit plan may be accessed by a credit card, check, or other device as the plan provides.*** All revolving credit plans offered by industrial loan companies under this section shall be secured by either a first or second mortgage on residential property.

***In connection with the revolving credit plans, an industrial loan company may charge and collect from a borrower:***

- (a) ***A bad check charge of fifteen dollars (\$15) for the return or dishonor of a check or other instrument tendered as payment; and***



- (b) *An over-the-limit fee of twenty dollars (\$20) whenever a borrower exceeds the credit limit established under the plan.***

Section 11. KRS 291.530 is amended to read as follows:

- (1) Every corporation organized under the provisions of KRS 291.410 to 291.600 shall report to and be subject to examination, supervision and control by the Department of Financial Institutions.
- (2) KRS 291.410 to 291.600 shall be enforced by the commissioner, who may, after notice to holders of certificates and a hearing, promulgate regulations, referenced to the section or sections which set forth the legislative standards they interpret or apply, for the proper conduct of the business authorized under KRS 291.410 to 291.600.
- (3) ***On or before January 30 of each year, every industrial loan company shall file with the commissioner a report for the preceding calendar year. The report shall give information with respect to the financial condition of the industrial loan company, and other relevant information as the commissioner may reasonably require.***

Section 12. KRS 292.310 is amended to read as follows:

When used in this chapter, unless the context otherwise requires:

- (1) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities, except as otherwise provided in this chapter.
  - (a) "Agent" does not include an individual who represents:
    1. An issuer in:
      - a. Effecting a transaction in a security exempted by subsections (1), (2), (3), (10), or (11) of KRS 292.400, or subsections (5), (9), or (12) thereof if no commission or other remuneration is received for the sale of such securities or effecting a transaction in a security exempted by KRS 292.400(15) even if commission or other remuneration is received for the sale of such security provided that the individual offers or sells no other security except securities exempted by KRS 292.400(15);
      - b. Effecting transactions exempted by KRS 292.410 unless otherwise required;
      - c. Effecting transactions in a covered security under Section 18(b)(3) or 18(b)(4)(d) of the Securities Act of 1933 if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in Kentucky;
      - d. Effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or
      - e. Effecting other transactions if the individual primarily performs, or is intended primarily to perform upon completion of an offering of the issuer's own securities, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in the issuer's own securities and the individual's compensation is not based, in whole or in part, upon the amount of purchases or sales of the issuer's own securities effected for the issuer; or
    2. A broker-dealer in effecting transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934.
  - (b) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions is an "agent" only if he otherwise comes within the definition in this subsection;
- (2) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:
  - (a) An agent, issuer, bank, savings institution, or trust company;
  - (b) A person that effects transactions in this state exclusively in securities exempted by KRS 292.400(15); or
  - (c) A person who has no place of business in this state;

1. If he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or
  2. If during any period of twelve (12) consecutive months he does not direct more than fifteen (15) offers to sell or to buy into this state in any manner to persons other than those specified in this paragraph;
- (3) "Certified" means, when used in regard to financial statements, examined and reported upon in accordance with generally accepted auditing standards with an opinion expressed by a certified public accountant;
- (4) "Commissioner" means the commissioner of the Department of Financial Institutions or any individual employee of the Department of Financial Institutions expressly designated by order of the commissioner to act in the commissioner's place;
- (5) "Covered advisor" means any person who is registered under Section 203 of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-3;
- (6) "Covered security" means any security that is a covered security under Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated thereunder;
- (7) "Department" means the Department of Financial Institutions of the Commonwealth of Kentucky;
- (8) "Fraud," "deceit," and "defraud" are not limited to common-law deceit;
- (9) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends;
- (10) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:
- (a) A bank, savings institution, or trust company;
  - (b) A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;
  - (c) A broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them;
  - (d) A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;
  - (e) A person whose advice, analyses, or reports relate only to securities exempted by KRS 292.400(1);
  - (f) A person who has no place of business in this state if:
    1. His only clients in this state are other investment advisers, covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or
    2. During any period of twelve (12) consecutive months he does not have more than five (5) clients other than those specified in subparagraph 1;
  - (g) An investment adviser representative or a person excluded from the definition of investment adviser representative;
  - (h) A person who is excluded from the definition of investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940;
  - (i) A covered adviser; or
  - (j) Such other persons not within the intent of this subsection as the commissioner may by rule or order designate;
- (11) "Investment adviser representative" means:

- (a) With respect to any investment adviser registered or required to be registered under this chapter, any partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:
  - 1. Makes any recommendations or otherwise renders advice regarding securities;
  - 2. Manages accounts or portfolios of clients;
  - 3. Determines which recommendation or advice regarding securities should be given;
  - 4. Solicits, offers, or negotiates for the sale of or sells investment advisory services; or
  - 5. Supervises employees who perform any of the functions described in this paragraph; and
- (b) With respect to any covered adviser, any person defined as an investment adviser representative who has a place of business located in Kentucky, as those terms are defined in Rule 203A-3 ***promulgated in accordance to the Investment Advisors Act of 1940*** ~~of the Securities Exchange Act of 1934~~.
- (12) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued, and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of an interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of distribution;
- (13) "Nonissuer" means not directly or indirectly for the benefit of the issuer;
- (14) "Person" means an individual, a limited liability company, a corporation, a partnership, a registered limited liability partnership, a limited partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;
- (15) "Rule" or "regulation" means either or both administrative rules or administrative regulations promulgated by any governmental or other regulatory or self-regulatory entity, as the context requires;
- (16) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer, of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security;
- (17) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after January 1, 1961;
- (18) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest in or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period;
- (19) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico; and

- (20) Nothing in this section shall be construed to affect the classification of property for ad valorem tax purposes.

Section 13. KRS 292.320 is amended to read as follows:

- (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:
- (a) To employ any device, scheme, or artifice to defraud;
  - (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
  - (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.
- (2) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:
- (a) To employ any device, scheme, or artifice to defraud the other person; or
  - (b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.
- (3) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:
- (a) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;
  - (b) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and
  - (c) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.
- (4) Paragraph (a) of subsection (3) of this section does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment", as used in paragraph (b) of subsection (3) of this section includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one (1) or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.
- (5) ***Subsection (3) (a) of this section shall not apply to a contract with any person or class of persons that the commissioner by rule or regulation or by order upon application determines does not need the protections of subsection (3)(a) of this section. The commissioner may grant a conditional or unconditional exemption based on factors which include the person's or persons' financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, or other factors as the commissioner determines are consistent with this section.***

Section 14. KRS 292.330 is amended to read as follows:

- (1) It is unlawful for any person to transact business in this state as a broker-dealer or agent, unless he is registered under this chapter. It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. It is unlawful for any investment adviser that is required to be registered under this chapter to employ an investment adviser representative unless the investment adviser representative is registered under this chapter. It is unlawful for any person to transact business in this state as an investment adviser unless:
- (a) He is so registered under this chapter; or
  - (b) He is registered as a broker-dealer under this chapter.

(2) It is unlawful for any covered adviser to transact business in this state unless:

- (a) The person has made a notice filing with the commissioner consisting of a copy of those documents that have been filed by the covered adviser with the United States Securities and Exchange Commission and that the commissioner by rule or order requires to be filed together with consent to service of process and the fee prescribed in subsection (11)(b) of this section;
- (b) The person is registered as a broker-dealer under this chapter;
- (c) The person's only clients are investment companies as defined in the Investment Company Act of 1940, or insurance companies; or
- (d) The person is excluded from the definition of investment adviser under KRS 292.310(10)(a) to (h) and (j).

It is unlawful for an investment adviser representative to be employed by a covered adviser who is required to make a notice filing with the commissioner unless the investment adviser representative is registered under this chapter.

(3) A broker-dealer, agent, investment adviser, or investment adviser representative may apply for registration by filing with the commissioner or the commissioner's designee an application together with a consent to service of process pursuant to KRS 292.430 and payment of the fee prescribed in subsection (11).

- (a) Registration of a broker-dealer automatically constitutes registration of any agent who is a partner, officer, or director, or a person occupying a similar status or performing similar functions (except any partner, officer, or director or other such person whose registration as an agent is denied, suspended, or revoked under subsection (13)) without the filing of applications for registration as agents or the payment of fees for registration as agents.
- (b) Except for any partner, officer, director, or other person whose registration as an investment adviser representative is denied, suspended, or revoked under subsection (13) of this section, registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, officer, director, or a person occupying a similar status or performing similar functions, without the filing of applications for registration as investment adviser representatives or the payment of fees for registration, as investment adviser representatives.
- (c) The registration application shall contain whatever information the commissioner requires concerning such matters as:
  - 1. The applicant's form and place of organization;
  - 2. The applicant's proposed method of doing business;
  - 3. The qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; and in the case of an investment adviser, the qualifications and business history of an employee;
  - 4. Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and
  - 5. The applicant's financial condition and history.

(4) If no denial order is in effect and no proceeding is pending under subsection (13), registration becomes effective at noon of the thirtieth day after an application is filed, except as otherwise noted in this subsection:

- (a) The commissioner may specify an earlier effective date and he may by order defer the effective date until noon of the thirtieth day after the filing of any amendment.
- (b) The commissioner may by rule establish a procedure for transfer of an agent or an investment adviser representative whereby registration may become effective prior to the filing of an application; but any registration so transferred shall not be effective for more than thirty (30) days, unless within that thirty (30) days a properly completed application is filed.
- (c) The thirtieth day effective day is tolled if, before 5 p.m. EST of the thirtieth day, the commissioner notifies the applicant that the application is incomplete or that he intends to deny the application,

pending the completion of the application or a hearing and final order on the intent to deny the application or the waiver of a hearing through the failure to request a hearing with fifteen (15) days of receiving notice of the intent to deny the application, as applicable.

- (5) The commissioner may require as a condition of registration that the applicant (and, in the case of a corporation or partnership, the officers, directors, or partners) pass a written examination as evidence of knowledge of the securities business.
- (6) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and Section 222 of the Investment Advisers Act of 1940, the commissioner may by rule require the existence and maintenance of a minimum liquid net capital for registered broker-dealers and investment advisers and a minimum ratio between net capital and aggregate indebtedness, or both.
- (7) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and Section 222 of the Investment Advisers Act of 1940, the commissioner may by rule require registered broker-dealers, agents, and investment advisers to post surety bonds in an amount up to \$25,000, and may determine their conditions, except under this subsection that no such bond may be required of any registrant whose net capital exceeds \$100,000. An appropriate deposit of cash or securities shall be accepted in lieu of any required surety bond. Every surety bond shall provide for suit thereon by any person who has a cause of action under KRS 292.480, and every such bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within three (3) years after the later of the sale or other act upon which it is based or the discovery of the sale or act.
- (8) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934, the commissioner may by rule require registered broker-dealers to carry fidelity bonds, covering its agents, general partners, and officers, in such form, covering such risks, and in such amounts (not exceeding \$250,000) as he deems necessary for the protection of the public; and he may by rule require registered broker-dealers to furnish satisfactory evidence that they have such bonds.
- (9) Every registration of a broker-dealer, agent, investment adviser, and investment adviser representative and every notice filing shall be effective until December 31 of the year of registration or notice unless the commissioner by rule extends or lessens the registration or notice period may be renewed as hereinafter provided. The commissioner may by rule increase or reduce the registration fee or notice filing fee set forth in subsection (11) of this section should the registration period or notice period be extended or lessened.
  - (a) The registration of an agent is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application or a notice filed with the commissioner or the commissioner's designee. When an agent begins or terminates a connection with an issuer or registered broker-dealer, the agent and the issuer or broker-dealer shall promptly notify the commissioner or the commissioner's designee.
  - (b) The registration of an investment adviser representative is not effective during any period when he is not associated with an investment adviser specified in his application or with a covered adviser specified in a notice filed with the commissioner or the commissioner's designee. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser representative and the investment adviser shall promptly notify the commissioner or the commissioner's designee. When an investment adviser representative begins or terminates a connection with a covered adviser, the investment adviser representative shall notify the commissioner or the commissioner's designee.
- (10) Registration of a broker-dealer, agent, investment adviser, or investment adviser representative may be renewed by filing with the commissioner or the commissioner's designee prior to the expiration thereof an application containing the information the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, agent, investment adviser, or investment adviser representative filed with the commissioner or the commissioner's designee by the applicant, payment of the prescribed fee and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within ninety (90) days. A notice filing by a covered adviser may be renewed by filing with the commissioner or the commissioner's designee a notice filing consisting of any documents filed with the United States Securities and Exchange Commission as the commissioner may require by rule or order. A registered broker-dealer or investment adviser may file an application for registration of a successor and a covered adviser may file a notice filing for

a successor, whether or not the successor is then in existence, for the unexpired portion of the year without payment of any fee.

- (11) (a) The fee for initial or renewal registration shall be one hundred twenty dollars (\$120) for a broker-dealer, one hundred dollars (\$100) for an investment adviser, fifty dollars (\$50) for an agent, fifty dollars (\$50) for an investment adviser representative, and fifty dollars (\$50) for transfer of an agent or investment adviser representative, none of which fees shall be refundable.
- (b) The fee for notice filings shall be ~~one~~<sup>two</sup> hundred dollars ~~(\$100)~~~~(\$200)~~ for a covered adviser.
- (12) (a) Every registered broker-dealer, ***firm employing issuer agents***, and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books, and other records which the commissioner by rule prescribes. All records required shall be preserved for three (3) years unless the commissioner by rule prescribes otherwise for particular types of records. All required records shall be kept within this state or shall, at the request of the commissioner, be made available at any time for examination by him either in the principal office of the registrant or by production of exact copies thereof in this state. If a broker-dealer is registered with the United States Securities and Exchange Commission, the books and records required by this section are limited to those that the Securities Act of 1934 requires the broker-dealer to maintain. If an investment adviser has his principal place of business in another state, the requirements of this section shall be limited to those books and records requirements of that state, provided the adviser is registered in that state and in compliance with its recordkeeping requirements.
- (b) Every registered broker-dealer and investment adviser shall file such reports as the commissioner by rule prescribes. If a broker-dealer is registered with the United States Securities and Exchange Commission, the reports required by this section are limited to those required under the Securities Act of 1934. If an investment adviser has his principal place of business in another state, the requirements of this section shall be limited to the reporting requirements of that state, provided the adviser is registered in that state and in compliance with its reporting requirements.
- (c) If the information contained in any document filed with the commissioner or the commissioner's designee is or becomes inaccurate or incomplete in any material respect, the broker-dealer or investment adviser, as applicable, shall promptly file a correcting amendment. In the case of a covered adviser, the adviser shall file only copies of those documents required to be filed with the Securities and Exchange Commission.
- (d) The commissioner may make periodic examinations, within or without this state, of each broker-dealer, ***firm employing issuer agents***, and investment adviser at such times and in such scope as he determines. These examinations may be made without prior notice to the broker-dealer, ***firm employing issuer agents***, or investment adviser. The expense reasonably attributable to any such examination shall be paid by the broker-dealer, ***firm employing issuer agents***, or investment adviser whose business is examined but the expense so payable shall not exceed an amount which the commissioner by rule prescribes. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as he deems it practicable in administering this subsection, may cooperate with securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.
- (e) The commissioner may by rule prohibit unreasonable charges, profits, commissions, or other compensation of broker-dealers and investment advisers.
- (f) The commissioner may prescribe rules for the conduct of business by broker-dealers and investment advisers which he finds appropriate in the public interest and for the protection of investors.
- (g) The commissioner may enter into an arrangement, agreement, or other working relationship with federal, other state, and self-regulatory authorities whereby documents may be filed and maintained in a central depository system with the National Association of Securities Dealers or other agencies or authorities. It is the intent of this paragraph that the commissioner be provided power to reduce duplication of filings, reduce administrative costs, and establish uniform procedures, forms, and administration with the states and federal authorities. The commissioner may permit initial and renewal registration filings required under this chapter to be filed with the Securities and Exchange Commission, the National Association of Securities Dealers, or other similar authorities. The commissioner may

accept uniform securities examinations or other procedures designed to implement a uniform national securities regulatory system or facilitate common practices and procedures among the states.

- (13) (a) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, agent, investment adviser, or investment adviser representative, or bar or censure any registrant or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant, from employment with a registered broker-dealer or investment adviser, or restrict or limit a registrant as to any function or activity of the business for which registration is required in the Commonwealth of Kentucky, if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer, or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:
1. Has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;
  2. Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor law or any rule or order under this chapter or a predecessor law;
  3. Has been convicted, within the past ten (10) years, of any misdemeanor involving a security or any aspect of the securities business, or any felony, or has pending against him any such criminal charge;
  4. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;
  5. Is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative;
  6. Is the subject of any of the following orders that are currently effective and were issued within the last five (5) years:
    - a. An order by the securities agency or administrator of another state or Canadian province or territory, or by the Securities and Exchange Commission, entered after notice and opportunity for hearing, denying, suspending, limiting or revoking the person's license as a broker-dealer, sales representative, or investment adviser, or the substantial equivalent of those terms;
    - b. An order of a self-regulatory organization finding a violation of federal law or a rule of the self-regulatory organization;
    - c. A United States Postal Service fraud order;
    - d. A cease and desist or other administrative order entered after notice and opportunity for hearing by the commissioner, the securities agency or administrator of another state, or a Canadian province or territory, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or
    - e. An order by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act;
  7. Has engaged in dishonest or unethical practices in the securities business;
  8. Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the commissioner may not enter an order against a broker-dealer or investment adviser under this paragraph without a finding of insolvency as to the broker-dealer or investment adviser;
  9. Is not qualified on the basis of such factors as training, experience, or knowledge of the securities business, except as provided in paragraph (b) below; or the commissioner may by order, deny, suspend, or revoke any registration if he finds that the order is in the public interest and that the applicant or registrant:



- a. Has failed reasonably to supervise his agents if he is a broker-dealer or his employees or investment adviser representatives if he is an investment adviser; or
  - b. Has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected.
10. Has violated the law of a foreign jurisdiction governing or regulating any aspect of the business of securities or banking; or within the past five (5) years, has been the subject of an action of a securities regulator or a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, or investment adviser representative or is the subject of an action of any securities exchange or self-regulatory organization operating under the authority of the securities regulator of a state, federal, or foreign jurisdiction suspending or expelling the person from membership in the exchange or self-regulatory organization.

The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within the next thirty (30) days; or

- (b) The following provisions govern the application of subparagraph 9. of paragraph (a) of this subsection:
1. The commissioner may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer himself if he is an individual or an agent of the broker-dealer;
  2. The commissioner may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser himself if he is an individual or any other person who represents the investment adviser in doing any of the acts which make him an investment adviser;
  3. The commissioner may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both;
  4. The commissioner shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer;
  5. The commissioner shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. When he finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser or an investment adviser representative, he may by order condition the applicant's registration as a broker-dealer upon his not transacting business in this state as an investment adviser or an investment adviser representative;
  6. The commissioner may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as investment adviser representatives and persons who represent or will represent an investment adviser in doing any of the acts which make him an investment adviser.
- (c) The commissioner may by order summarily postpone an application for registration or suspend a registration pending final determination of any proceeding under this section. A summary suspension of an existing registration shall only be made based upon a finding by the commissioner that such action is in the public interest and that there is substantial evidence of a violation of law that constitutes an immediate danger to the public. KRS 13B.125 shall apply to the entry of a summary suspension of a registration. An appeal of a summary suspension shall address only the necessity of a summary action and shall not constitute an appeal of the merits of the underlying violation of the law. Upon the entry of the order, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons therefor and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

- (d) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser, or investment adviser representative, or is subject to an adjudication of mental disability or to the control of a conservator or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.
  - (e) Withdrawal from registration as a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty (30) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the commissioner by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may nevertheless institute a revocation or suspension proceeding under subparagraph 2. of paragraph (a) of this subsection within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective. A notice filing may be withdrawn or terminated by providing notice of the withdrawal or termination, as the case may be, to the commissioner; the withdrawal or termination is effective upon receipt by the commissioner of the notice.
  - (f) No order may be entered under any part of this section except the first sentence of paragraph (c) of this subsection without appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent or representative), opportunity for hearing, and written findings of fact and conclusions of law.
- (14) Notwithstanding subsection (1) of this section, any broker-dealer, agent, investment adviser or investment adviser representative, or transaction or class of transactions by such persons, for which the commissioner expressly by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors shall be exempt from registration under this section. The commissioner may require that persons exempted from registration under this provision file such forms and information for notice purposes and be bound by one (1) or several provisions of this section as the commissioner deems necessary and appropriate in the public interest or for the protection of investors and the commissioner may impose filing fees in connection therewith, provided however, that the amount of the fee shall not exceed the fee which would be due in the event the exempt person were required to obtain registration.

Section 15. KRS 292.470 is amended to read as follows:

Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order under this chapter, he may in his discretion bring any or all of the following remedies:

- (1) Issue a cease and desist order, with or without a prior hearing, appealable to Franklin Circuit Court, against the person or persons engaged in the prohibited activities directing that person or persons to cease and desist from illegal activity. In order to issue an order without a prior hearing, the commissioner must find that the delay in issuing a final cease and desist order will cause harm to the public;
- (2) An action in the Franklin Circuit Court or any other court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. Upon a proper showing by the commissioner, the court may enter an order of rescission, restitution, or disgorgement directed to any person who has engaged in any act constituting a violation of this chapter or any rule or order under this chapter. The commissioner may not be required to post a bond; or
- (3) Issue a final order, after notice and *an opportunity for* a hearing, containing findings of fact and conclusions of law, directing any person or persons found to have engaged in, or about to be engaged in, activity that constitutes a violation of this chapter or any rule or order under this chapter:
  - (a) To cease and desist from the activity;
  - (b) To perform any other reasonable mandates directed by the commissioner pursuant to an appropriate remedy fashioned by the commissioner and reasonably calculated to carry out the provisions of this chapter; or

(c) To pay fines assessed under KRS 292.500(14) and costs assessed under KRS 292.500(15).

Section 16. KRS 291.990 is amended to read as follows:

~~[(1) Any person who violates subsection (3) of KRS 291.020 shall be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000).~~

~~(2)~~ Any corporation or person which willfully violates any provision of KRS 291.410 to 291.600 is guilty of a misdemeanor and, upon conviction, shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

Section 17. KRS 287.720 is amended to read as follows:

- (1) A revolving credit plan, and all extensions of credit thereunder, may take such form and contain such provisions, not inconsistent with KRS 287.710 to 287.770 or otherwise prohibited by law, as the bank may from time to time establish and the debtor may accept, and each extension of credit made by the bank pursuant to such plan, evidenced in any manner provided in such plan, shall be evidence of a loan, which may be prepaid by the debtor under agreed conditions in whole or in part at any time, made by the bank to the debtor in the amount advanced by the bank.
- (2) Before opening any account under a revolving credit plan, the bank shall deliver or mail to the debtor a statement of the provisions of the plan containing, to the extent applicable, such information as may be required to be disclosed pursuant to ~~[KRS 360.210 to 360.265 and]~~ Title I of the Federal Consumer Credit Protection Act of 1968 (Public Law 90-321) and any amendments, additions or replacements thereto in effect after June 16, 1972, and containing a statement that the debtor may pay the unpaid balance of his account in whole or in part at any time. If two or more persons, all of whom have the same residence are authorized to obtain extensions of credit under the plan, the statement of provisions of the plan shall be delivered or mailed to one (1) of such persons as may be designated in the plan, and the billing statements required by KRS 287.730 shall be rendered to such person.
- (3) A statement of the provisions of a revolving credit plan in effect prior to June 16, 1972, delivered or mailed to a debtor prior to such effective date shall constitute, and be deemed to be, compliance with the provisions of subsection (2) of this section, if such revolving credit plan complies with the provisions of KRS 287.710 to 287.770 and such statement disclosed the information required by said subsection (2).

Section 18. KRS 287.730 is amended to read as follows:

- (1) For each billing cycle at the end of which there is an outstanding balance in the debtor's account or with respect to which a charge permitted by KRS 287.710 to 287.770 is imposed, the bank shall render a statement to the debtor containing, to the extent applicable, such information as may be required to be included therein pursuant to ~~[KRS 360.210 to 360.265 and]~~ Title I of the Federal Consumer Credit Protection Act of 1968 (Public Law 90-321) and any amendments, additions or replacements thereto in effect after June 16, 1972, and a legend to the effect that the debtor may at any time pay the aggregate balance owing by him or any part thereof.
- (2) In the event of an extension of credit by a bank hereunder that is affected by the use of a credit card for the purchase of goods or services and that results in payment by the bank directly to a third party, the finance charge as authorized by KRS 287.740 shall not be imposed upon the debtor on such extension if payment in full of the entire outstanding unpaid balances owing on the debtor's account is received at the place designated by the bank by the date of the statement for the next billing cycle.

Section 19. The following KRS sections are repealed:

- 291.010 Definitions for KRS 291.020 to 291.110.
- 291.012 Administrative hearing request.
- 291.020 Deposit, statement and license required.
- 291.030 Issuance of license -- Renewal -- Fee.
- 291.040 Annual statement of business.
- 291.050 Reserve fund.
- 291.060 Use of interest on securities deposited -- Exchange of.
- 291.070 Amount of loans -- Security.

- 291.080 Investment of capital and reserve.
- 291.090 Examination -- Effect of deficient assets.
- 291.100 Requirements for foreign companies -- License.
- 291.110 Deposits of foreign companies -- Retaliatory laws.
- 291.115 Liability of stockholders.
- 360.210 Policy and purpose of law.
- 360.212 Compliance with KRS 360.210 to 360.265 by compliance with federal law.
- 360.215 Definitions.
- 360.220 Closed-end transactions, information required.
- 360.225 Revolving credit transactions, information required.
- 360.230 Other credit transactions, information required.
- 360.235 Information as to finance charges, how given.
- 360.240 Applicability of law -- Transactions excluded.
- 360.245 Lending institutions regulated by other laws subject to disclosure provisions.
- 360.250 Rules and regulations, scope.
- 360.255 False advertising or representations as to credit transactions prohibited.
- 360.260 Regulations governing information as to how credit charges determined, powers of commissioner.
- 360.265 Willful failure to give information bars collection of financing charge.
- 360.991 Penalties.

**Approved March 23, 2000**

## CHAPTER 158

### (HB 656)

AN ACT relating to the levy of a transient room tax by urban-county governments.

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

Section 1. KRS 153.450 is amended to read as follows:

- (1) In addition to the four percent (4%) transient room tax authorized by KRS 91A.390 an urban-county government may levy an additional transient room tax not to exceed **two percent (2%)**~~one percent (1%)~~ of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations' businesses.
- (2) All additional moneys collected from the tax authorized by subsection (1) of this section shall be applied toward the retirement of bonds used to finance **a nonprofit corporation which is created for the funding, construction, and management of a convention center in an urban-county, and to defray the operating costs of the nonprofit corporation**~~the Lexington Center Corporation~~.
- ~~{(3) After the retirement of the bonds provided for in subsection (1) of this section the additional transient room tax levied by that subsection shall be null and void.}~~

**Approved March 23, 2000**

**CHAPTER 159****(HB 604)**

AN ACT changing the classification of the City of Jeffersontown, in Jefferson County.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Jeffersontown, in Jefferson County, is such as to justify its being classified as a city of the second class;

NOW, THEREFORE,

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

Section 1. The City of Jeffersontown, in Jefferson County, is transferred from the fourth to the second class of cities.

**Approved March 27, 2000**

**CHAPTER 160****(HB 10)**

AN ACT relating to the usage of tobacco by minors.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 438 IS CREATED TO READ AS FOLLOWS:

- (1) *No person under the age of eighteen (18) shall possess or use tobacco products.*
- (2) *Any tobacco product found in the possession of a person under the age of eighteen (18) and in plain view of the law enforcement officer shall be confiscated by the law enforcement officer making the charge.*
- (3) *This section shall not apply to persons exempted as provided by KRS 438.311 and 438.330.*

**Approved March 28, 2000**

**CHAPTER 161****(HB 76)**

AN ACT relating to alternative teacher certification.

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

Section 1. KRS 161.048 is amended to read as follows:

- (1) The General Assembly hereby finds that:
  - (a)
    1. There are persons who have distinguished themselves through a variety of work and educational experiences that could enrich teaching in Kentucky schools;
    2. There are distinguished scholars who wish to become teachers in Kentucky's public schools, but who did not pursue a teacher preparation program;
    3. There are persons who need to be recruited to teach in Kentucky schools to meet the diverse cultural and educational needs of students; and
    4. There should be alternative procedures to the traditional teacher preparation programs that qualify persons as teachers.
  - (b) There are hereby established alternative certification program options as described in subsections ~~(2) through (3)~~ through ~~(6) through (5)~~ of this section.
  - (c) It is the intent of the General Assembly that the Educational Professional Standards Board inform scholars, persons with exceptional work experience, and persons with diverse backgrounds who have

potential as teachers of these options and assist local boards of education in implementing these options and recruitment of individuals who can enhance the education system in Kentucky.

- (d) The Education Professional Standards Board shall promulgate administrative regulations establishing standards and procedures for the alternative certification options described in this section.
- (2) Option 1: Certification of a person with exceptional work experience. An individual who has exceptional work experience and has been offered employment at the secondary level in a local school district shall receive a one (1) year provisional teaching certificate with approval by the Education Professional Standards Board of a joint application by the individual and the employing school district under the following conditions:
- (a) The application contains documentation of all education and work experience;
  - (b) The candidate has documented ten (10) years of exceptional work experience in the area in which certification is being sought;
  - (c) The candidate possesses a bachelor's degree, with a grade point average of two and five-tenths (2.5) on a four (4) point scale from a nationally or regionally accredited postsecondary institution; and
  - (d) The candidate shall participate in the teacher internship program under subsections (5), (6), (7), and (8) of KRS 161.030. After successful completion of the internship, the candidate shall receive a regular provisional certificate.

An individual employed under this alternative shall be certified for one (1) year only, and may be approved for subsequent one (1) year renewals upon request of the local board of education and approval of the Education Professional Standards Board. A teacher who successfully completes three (3) contract years under the provisions of this section shall be awarded a regular provisional certificate, and subject to certificate renewal requirements the same as any other teacher with a regular provisional certificate.

- (3) Option 2: Certification through a local district training program. A local district or group of districts may seek approval for a training program. The state-approved local district training program is an alternative to the college teacher preparation program as a means of acquiring teacher certification for a teacher at any grade level. The training program may be offered for all teaching certificates approved by Education Professional Standards Board, including interdisciplinary early childhood education, except for specific certificates for teachers of exceptional children. To participate in a state-approved local district alternative training program, the candidate shall:
- (a) Possess a bachelor's degree with a grade point average of two and five tenths (2.5) on a four (4) point scale or, upon approval by the Education Professional Standards Board, at least a grade point average of two (2) on a four (4) point scale if the candidate has exceptional life experience related to teaching and has completed the bachelor's degree at least five (5) years prior to submitting an application to the program.
  - (b) Pass written tests designated by the Education Professional Standards Board for content knowledge in the specific teaching field of the applicant with minimum scores in each test as set by the Education Professional Standards Board. To be eligible to take a subject field test, the applicant shall have completed a thirty (30) hour major in the subject field or five (5) years of experience in the subject field as approved by the Education Professional Standards Board.
  - (c) Have been offered employment in a school district which has a training program approved by the Education Professional Standards Board.
  - (d) Upon meeting the participation requirements as established in this subsection, the candidate shall be issued a one (1) year provisional certificate by the Education Professional Standards Board. The regular provisional certificate shall be issued upon satisfactory completion of the program and the teacher testing internship program pursuant to KRS 161.030.
  - (e) The Education Professional Standards Board may reject the application of any candidate who is judged as not meeting academic requirements comparable to those for students enrolled in Kentucky teacher preparation programs.
- (4) Option 3: Certification of a professional from a postsecondary institution: A candidate who possesses the following qualifications may receive alternative certification for teaching at the secondary level:
- (a) A master's degree or doctoral degree in the academic subject area for which certification is sought;

- (b) A minimum of five (5) years of full-time teaching experience, or its equivalent, in the academic subject area for which certification is sought in a regionally or nationally accredited institution of higher education; and
  - (c) Successful completion of the teacher internship requirement imposed under KRS 161.030.
- (5) Option 4: Certification of an adjunct instructor. A person who has expertise in areas such as art, music, foreign language, drama, science, and other specialty areas may be employed as an adjunct instructor in a part-time position by a local board of education under KRS 161.046.
- (6) ***Option 5: Certification of a veteran of the Armed Forces. The Education Professional Standards Board shall issue a statement of eligibility, valid for five (5) years, to a veteran for teaching at the elementary, secondary, and secondary vocational education levels with the following qualifications:***
- (a) ***Discharged or released from active duty under honorable conditions after six (6) or more years of continuous active duty immediately before the discharge or release;***
  - (b) ***At least a bachelor's degree in the subject matter area or closely related area for which certification is sought, issued by a regionally or nationally accredited institution of higher education;***
  - (c) ***A grade point average of two and five-tenths (2.5) on a four (4) point scale for a bachelor's degree or an advanced degree; and***
  - (d) ***A passing score on the written exit assessment examination designated by the Education Professional Standards Board for content knowledge.***

***Upon an offer of employment by a school district, the eligible veteran shall receive a one (1) year provisional teaching certificate with approval by the Education Professional Standards Board of a joint application by the veteran and the employing school district. During this year, the veteran shall participate in the teacher internship program under subsections (5), (6), (7), and (8) of KRS 161.030. Upon successful completion of the internship program, the veteran shall receive a regular professional certificate.***

- (7) A teacher certified under subsections (2) to ~~(6)~~~~(5)~~ of this section shall be placed on the local district salary schedule for the rank corresponding to the degree held by the teacher.
- (8) ***Veterans who were discharged or released from active duty under honorable conditions after six (6) or more years of continuous active duty immediately before the discharge or release, and who have at least four (4) years of occupational experience in the area in which they seek certification as a vocational industrial education teacher, shall apply for certification under and meet the requirements of the administrative regulations promulgated by the Education Professional Standards Board.***
- ~~(9)~~~~(7)~~ Subsections (1) to (3) of this section notwithstanding, a candidate who possesses the following qualifications may receive certification for teaching programs for exceptional students:
  - (a) An out-of-state license to teach exceptional students;
  - (b) A bachelor's or master's degree in the certification area or closely related area for which certification is sought; and
  - (c) Successful completion of the teacher internship requirement required under KRS 161.030.

**Approved March 28, 2000**

## CHAPTER 162

**(HB 157)**

AN ACT relating to character education.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

***As used in KRS Chapters 156 and 158, unless the context requires otherwise, "character education" means instructional strategies and curricula that:***

- (1) *Instill and promote core values and qualities of good character in students including altruism, citizenship, courtesy, honesty, human worth, justice, knowledge, respect, responsibility, and self-discipline;*
- (2) *Reflect the values of parents, teachers, and local communities; and*
- (3) *Improve the ability of students to make moral and ethical decisions in their lives.*

Section 2. KRS 158.645 is amended to read as follows:

The General Assembly recognizes that public education involves shared responsibilities. State government, local communities, parents, students, and school employees must work together to create an efficient public school system. Parents and students must assist schools with efforts to assure student attendance, preparation for school, and involvement in learning. The cooperation of all involved is necessary to assure that desired outcomes are achieved. It is the intent of the General Assembly to create a system of public education which shall allow and assist all students to acquire the following capacities:

- (1) Communication skills necessary to function in a complex and changing civilization;
- (2) Knowledge to make economic, social, and political choices;
- (3) *Core values and qualities of good character to make moral and ethical decisions throughout his or her life;*
- (4) Understanding of governmental processes as they affect the community, the state, and the nation;
- ~~(5) (4)~~ Sufficient self-knowledge and knowledge of his mental and physical wellness;
- ~~(6) (5)~~ Sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;
- ~~(7) (6)~~ Sufficient preparation to choose and pursue his life's work intelligently; and
- ~~(8) (7)~~ Skills to enable him to compete favorably with students in other states.

Section 3. KRS 158.6451 is amended to read as follows:

- (1) The General Assembly finds, declares, and establishes that:
  - (a) Schools shall expect a high level of achievement of all students.
  - (b) Schools shall develop their students' ability to:
    1. Use basic communication and mathematics skills for purposes and situations they will encounter throughout their lives;
    2. Apply core concepts and principles from mathematics, the sciences, the arts, the humanities, social studies, and practical living studies to situations they will encounter throughout their lives;
    3. Become ~~a~~ self-sufficient *individuals* ~~(individual)~~ *of good character exhibiting the qualities of altruism, citizenship, courtesy, honesty, human worth, justice, knowledge, respect, responsibility, and self-discipline;*
    4. Become responsible members of a family, work group, or community, including demonstrating effectiveness in community service;
    5. Think and solve problems in school situations and in a variety of situations they will encounter in life; and
    6. Connect and integrate experiences and new knowledge from all subject matter fields with what they have previously learned and build on past learning experiences to acquire new information through various media sources.
  - (c) Schools shall increase their students' rate of school attendance.
  - (d) Schools shall reduce their students' dropout and retention rates.
  - (e) Schools shall reduce physical and mental health barriers to learning.
  - (f) Schools shall be measured on the proportion of students who make a successful transition to work, post-secondary education, and the military.



- (2) The Kentucky Board of Education shall disseminate to local school districts and schools a model curriculum framework which is directly tied to the goals, outcomes, and assessment strategies developed pursuant to this section and KRS 158.645 and 158.6453. The framework shall provide direction to local districts and schools as they develop their curriculum. The framework shall identify teaching and assessment strategies, instructional material resources, ideas on how to incorporate the resources of the community, a directory of model teaching sites, ~~and~~ alternative ways of using school time, **and strategies to incorporate character education throughout the curriculum.**

Section 4. KRS 156.095 is amended to read as follows:

- (1) The Kentucky Department of Education shall establish, direct, and maintain a statewide program of professional development to improve instruction in the public schools.
- (2) Each local school district superintendent shall appoint a certified school employee to fulfill the role and responsibilities of a professional development coordinator who shall disseminate professional development information to schools and personnel. Upon request by a school council or any employees of the district, the coordinator shall provide technical assistance to the council or the personnel that may include planning and evaluation assistance or coordination activities.
  - (a) The manner of appointment, qualifications, and other duties of the professional development coordinator shall be established by Kentucky Board of Education through promulgation of administrative regulations.
  - (b) The local district professional development coordinator shall participate in the Kentucky Department of Education annual training program for local school district professional development coordinators. The training program may include, but not be limited to, the demonstration of various approaches to needs assessment and planning; strategies for implementing long-term, school-based professional development; strategies for strengthening teachers' roles in the planning, development, and evaluation of professional development; and demonstrations of model professional development programs. The training shall include information about teacher learning opportunities relating to the core content standards. The Kentucky Department of Education shall regularly collect and distribute this information.
- (3) The Kentucky Department of Education shall provide or facilitate optional, professional development programs for certified personnel throughout the Commonwealth that are based on the statewide needs of teachers, administrators, and other education personnel. Programs may include classified staff and parents when appropriate. Programs offered or facilitated by the department shall be at locations and times convenient to local school personnel and shall be made accessible through the use of technology when appropriate. They shall include programs that: address the goals for Kentucky schools as stated in KRS 158.6451; engage educators in effective learning processes and foster collegiality and collaboration; and provide support for staff to incorporate newly acquired skills into their work through practicing the skills, gathering information about the results, and reflecting on their efforts. Professional development programs may include, but not be limited to, focus on the following areas:
  - (a) Curriculum content and methods of instruction for each content area;
  - (b) School-based decision making;
  - (c) Performance-based student assessment;
  - (d) Nongraded primary programs;
  - (e) Research-based instructional practices;
  - (f) Instructional uses of technology;
  - (g) Curriculum design to serve the needs of students with diverse learning styles and skills and of students of diverse cultures;
  - (h) Instruction of phonics;~~and~~
  - (i) Educational leadership; **and**
  - (j) **Strategies to incorporate character education throughout the curriculum.**
- (4) The department shall utilize its regional service centers, in addition to collaboration with postsecondary education institutions, education cooperative and consortia, and professional education organizations, to

provide local district personnel with access to high quality programming. The department shall assist school personnel in assessing the impact of professional development on their instructional practices and student learning.

- (5) The department shall assist districts with the development of long-term school and district improvement plans that include multiple strategies for professional development based on the assessment of needs at the school level.
  - (a) Professional development strategies may include, but are not limited to, participation in teacher networks, training institutes, workshops, seminars, and study groups; collegial planning; action research; mentoring programs; appropriate university courses; and other forms of professional development.
  - (b) In planning the use of the four (4) days for professional development under KRS 158.070, priority shall be given to programs that increase teachers' understanding of curriculum content and methods of instruction appropriate for each content area based on individual school plans. Up to one (1) day may be used to provide training that is mandated by state or federal law. Only those employees identified in the mandate or affected by the mandate shall be required to attend the training.
  - (c) State funds allocated for professional development may be used to support professional development initiatives that are consistent with local plans, throughout the year for all staff, including classified and certified staff and parents on school councils or committees.
- (6) The Department of Education shall contract with an outside agency to complete an analysis of the current status of the statewide professional development program. The analysis shall include a comparison of models of professional development used in high-performing and award-winning schools. The analysis shall include specific recommendations regarding:
  - (a) The effective advancement of a supply and demand system for vendors and consumers of professional development; and
  - (b) The development and dissemination through the Internet and other appropriate means of consumer information concerning specific professional development opportunities.

A written report shall be provided to the Department of Education by October 30, 1998. The Department of Education shall publicly report its actions within six (6) months of the release of the recommendations and subsequently issue annual reports on the status of the statewide professional development program.

- (7) During the 1998-1999 and 1999-2000 school years, the Department of Education shall conduct an intensive statewide professional development program to address the characteristics and instructional needs of exceptional students and students at risk of school failure. The professional development shall be developed to meet the specific needs of all certified and classified personnel depending on their relationship with exceptional students and students at risk of school failure. The professional development for instructional personnel shall be designed to provide and enhance skills of personnel to:
  - (a) Improve the academic achievement of exceptional students and students at risk of school failure;
  - (b) Significantly reduce the dropout rate of all students; and
  - (c) Prepare all students for a successful transition to adult life.

Section 5. KRS 158.060 is amended to read as follows:

- (1) Twenty (20) school days, or days in which teachers are actually employed in the schoolroom, shall constitute a school month in the common schools. School shall be closed on the day of a regular election. The legal holiday designated by the Kentucky Board of Education to be observed may include the first Tuesday after the first Monday in November of each year and shall be counted as a school day.
- (2) Each full-time teacher shall be provided with a duty-free lunch period each day during the regularly scheduled student lunch period. The duty-free lunch period shall be not less than the length of the lunch period specified in the school calendar approved by the chief state school officer. A full-time teacher may be assigned to lunch room duty during the regularly scheduled student lunch period only for an amount of time equal to the noninstructional time in excess of fifty-five (55) minutes included in the teacher's daily schedule. The calculation of noninstructional time shall not include the teacher's duty-free lunch period, the time teachers are required to be at school prior to the start of the student's instructional day, or the time teachers are required to remain at school after the students are dismissed.

- (3) Except for children with disabilities and children attending the primary school program who may attend a program of less than six (6) hours per day under policy adopted by the local school district board of education and approved by the commissioner of education and children attending a school district where the local board has approved a schedule that provides at least the equivalent of six (6) hours of daily instruction during the school year, a minimum of six (6) hours of actual school work shall constitute a school day. Kindergarten programs may be operated for less than six (6) hours without state board approval. The Kentucky Board of Education, upon recommendation of the chief state school officer, shall develop and approve regulations governing make up by school districts of whole days missed due to emergencies, or partial days missed as a result of shortening regularly scheduled school days due to emergencies.
- (4) Teachers shall be provided additional time for nonteaching activities. The nonteaching time shall be used to provide teachers opportunities for professional development activities as provided in KRS 156.095, instructional planning, school-based decision making as provided in KRS 160.345, curriculum development, and outreach activities involving their students' families and the community.
- (5) ***Character education programs and activities shall be considered valuable and legitimate components of the actual school work constituting a school day under subsection (3) of this section.***

Section 6. KRS 158.445 is amended to read as follows:

- (1) Each local school shall begin an assessment of school safety and student discipline during the 1998-1999 school year including a review of the following:
  - (a) Reports of school incidents relating to disruptive behaviors;
  - (b) The school's behavior and discipline codes for clarity and appropriate notice to students and parents;
  - (c) The school's hierarchy of responses to discipline problems and actual disciplinary outcomes;
  - (d) Training needs for instructional staff in classroom management, student learning styles, and other specialized training to enhance teachers' capacity to engage students and minimize disruptive behavior;
  - (e) The array of school services to students at risk of academic failure, dropping out, or truancy;
  - (f) The engagement of parents at the earliest stages of problem behavior;
  - (g) Training needs for students in ***the development of core values and qualities of good character***, anger reduction, conflict resolution, peer mediation, and other necessary skills;
  - (h) Training needs of parents;
  - (i) Existing school council policies relating to student discipline and student information;
  - (j) The school's physical environment;
  - (k) The school's student supervision plan;
  - (l) Existing components of the school improvement plan or consolidated plan that focus on school safety and at-risk students, and the effectiveness of the components; and
  - (m) Other data deemed relevant by the school council or school administration.

A school that does not complete an assessment process shall not be eligible for funds under the state school safety grant program in 1999-2000 and subsequent years.

- (2) By May 15, 1999, each local school district shall complete a district-level assessment of district-level data, resources, policies and procedures, and district-wide needs as identified from the individual school assessment process. The district shall engage local community agencies including law enforcement and the courts in the assessment process.
- (3) As a result of the district assessment and analysis of data, resources, and needs, each board of education shall adopt a plan for immediate and long-term strategies to address school safety and discipline. The development of the plan shall involve at least one (1) representative from each school in the district as well as representatives from the community as a whole, including representatives from the local juvenile delinquency prevention council if a council exists in that community. The process of planning shall be determined locally depending to a large extent on the size and characteristics of the district.

- (4) The district plan under subsection (3) of this section shall be the basis for any request for funds under the state school safety grant program for 1999-2000 and subsequent years. The district plan shall include the local code of acceptable behavior and discipline as required under KRS 158.148 and a description of instructional placement options for threatening or violent students.

**Approved March 28, 2000**

## **CHAPTER 163**

### **(HB 180)**

AN ACT relating to postsecondary education prepaid tuition and making an appropriation therefor.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 164A IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 7 of this Act, unless the context requires otherwise:*

- (1) *"Academic year" means the time period specified by each participating institution;*
- (2) *"Board" means the board of directors of the Commonwealth postsecondary education prepaid tuition trust fund;*
- (3) *"Fund" means the prepaid tuition payment fund created in Section 2 of this Act and known as the "Commonwealth Postsecondary Education Prepaid Tuition Trust Fund";*
- (4) *"Office" means the Tuition Account Program Office in the Office of the State Treasurer that is responsible for administering the prepaid tuition accounts;*
- (5) *"Participating institution" means any Kentucky public four (4) year institution or two (2) year community college or technical college that grants a postsecondary education credential, all of which are required to participate, and any Kentucky private college or university that is accredited by a national or regional accrediting agency, recognized by the United States Department of Education, that voluntarily requests to participate and is accepted for participation in the program by the board of directors created in Section 3 of this Act;*
- (6) *"Prepaid tuition" means the amount of tuition estimated by the board for the standard tuition plans and for each participating institution for the academic year specified in the prepaid tuition contract;*
- (7) *"Prepaid tuition academic year conversion" means the difference between the amount of prepaid tuition required in the original prepaid tuition contract and the amount of prepaid tuition required in an amended prepaid tuition contract as the result of the change in the academic year;*
- (8) *"Prepaid tuition academic year conversion shortfall" means the amount by which the prepaid tuition required in an amended prepaid tuition contract as the result of the change in the academic year exceeds the amount of prepaid tuition required in the original prepaid tuition contract;*
- (9) *"Prepaid tuition account" means the account for a qualified beneficiary as specified in the prepaid tuition contract;*
- (10) *"Prepaid tuition contract" means the contract entered into by the board and the purchaser for the purchase of prepaid tuition for a qualified beneficiary to attend any participating institution as provided in Sections 1 to 7 of this Act;*
- (11) *"Prepaid tuition conversion" means the difference between the prepaid tuition of a standard plan and the prepaid tuition at a participating institution or the difference between the prepaid tuition at one participating institution and the prepaid tuition at another participating institution;*
- (12) *"Prepaid tuition conversion shortfall" means the amount by which the prepaid tuition at a participating institution exceeds the amount of the prepaid tuition of a standard plan or the amount by which the prepaid tuition at a participating institution exceeds the amount of the prepaid tuition at another participating institution;*
- (13) *"Purchaser" means a person, corporation, association, partnership, or other legal entity who enters into a prepaid tuition contract;*

- (14) *"Qualified beneficiary" means any resident of Kentucky at the time a purchaser enters into a prepaid tuition contract on behalf of the resident or any nonresident who intends to attend a participating institution in Kentucky;*
- (15) *"Standard tuition plan" means the average of the estimated tuition for the:*
  - (a) *Commonwealth's community colleges;*
  - (b) *Technical colleges;*
  - (c) *Four (4) year universities; or*
  - (d) *Private colleges or universities;*
- (16) *"Tuition" means the actual charges and all mandatory fees required as a condition of full-time enrollment in an undergraduate program for an academic year for a qualified beneficiary to attend a participating institution. Tuition for a private college or university is calculated on the current year tuition rate, increased by the same percentage that the University of Kentucky tuition is increased on a per year basis;*
- (17) *"Tuition credit" means the discounted net present value of a unit equal to one twenty-fourth (1/24) of the prepaid tuition; and*
- (18) *"Tuition shortfall" means the amount by which tuition exceeds the prepaid tuition adjusted in proportion to the number of tuition credits purchased.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 164A IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby created an instrumentality of the Commonwealth to be known as the "Commonwealth Postsecondary Education Prepaid Tuition Trust Fund", to be governed by a board of directors and administered by the Tuition Account Program Office in the Office of the State Treasurer. The fund shall consist of payments received from prepaid tuition contracts under Sections 1 to 7 of this Act. Income earned from the investment of the fund shall remain in the fund and be credited to it. The fund shall not constitute an investment company as defined in KRS 291.010.*
- (2) *The purposes of the fund are:*
  - (a) *To provide affordable access to participating institutions for the qualified beneficiaries; and*
  - (b) *To provide students and their parents economic protection against rising tuition costs.*
- (3) *The office and the facilities of the State Treasurer shall be used and employed in the administration of the fund including, but not limited to, the keeping of records, the employment of staff to assist in the administration of the fund, the management of accounts and other investments, the transfer of funds, and the safekeeping of securities evidencing investments. The office of the Treasurer and the board of the Kentucky Higher Education Assistance Authority, shall work together to jointly market, as appropriate, the Commonwealth Prepaid Tuition Plan and the Savings Plan established in KRS 164A.300.*
- (4) *Assets of the fund shall constitute public funds of the Commonwealth and may be invested in any instrument, obligation, security, or property that constitutes legal investments for the investment of public funds in the Commonwealth that are deemed most appropriate by the board and may be pooled for investment purposes with any other investment of the Commonwealth that is eligible for asset pooling.*
- (5) *The fund, through the State Treasurer, may receive and deposit into the fund gifts made by any individual or agency as deemed acceptable by the board.*
- (6) *There is created a separate account within the State Treasurer's office to be known as the prepaid postsecondary tuition administrative account for the purposes of implementing and maintaining the Commonwealth postsecondary education prepaid tuition trust fund. Funds may be transferred from the property abandoned under KRS Chapter 393 to the administrative account and shall be repaid to the abandoned property fund no later than three (3) years after the transfer. The board may establish administrative fees for handling prepaid tuition contracts and deposit the money in this account.*
- (7) *Four (4) years after the effective date of this Act, the administration of the fund shall be transferred from the Office of the State Treasurer to the Kentucky Higher Education Assistance Authority unless the General Assembly shall decide that the administration of the fund shall remain in the Office of the State Treasurer.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 164A IS CREATED TO READ AS FOLLOWS:

- (1) *The fund shall be governed by an eleven (11) member board of directors. The board shall have five (5) ex officio voting members including the State Treasurer, the president of the Council on Postsecondary Education or designee, the secretary of the Finance Cabinet or designee, the secretary of the Revenue Cabinet or designee, the chair of the Association of Kentucky Independent Colleges and Universities or designee, three (3) members appointed by the State Treasurer, and three (3) members appointed by the Governor. The executive director of the Higher Education Assistance Authority or designee shall serve as a nonvoting member. The gubernatorial and State Treasurer appointees shall have experience in finance, accounting, or investment management.*
- (2) *Of the members to be appointed initially by the State Treasurer, one (1) shall be appointed for a three (3) year term, and two (2) shall be appointed for a four (4) year term; of the members to be appointed by the Governor, two (2) shall be appointed for a two (2) year term and one (1) for a three (3) year term. Thereafter, all appointments shall be for terms of four (4) years, except that appointments to fill vacancies shall be for the unexpired terms. No person shall be appointed to serve for more than two (2) successive four (4) year terms. No person holding a full-time office or position of employment with the state, any county or city, or any educational institution shall be eligible for gubernatorial appointment to the board.*
- (3) *Members of the board shall receive no compensation but shall be reimbursed expenses incurred in the performance of their duties at the same per diem and travel rate as is paid the employees of the state.*
- (4) *The State Treasurer shall be the chair and presiding officer of the board. The State Treasurer may appoint other officers as the board may deem advisable or necessary. A majority of the members of the board shall constitute a quorum for the transaction of the business of the fund.*
- (5) *The initial board appointments shall be made by October 1, 2000.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 164A IS CREATED TO READ AS FOLLOWS:

*The board shall:*

- (1) *Promulgate administrative regulations, set fees, and adopt procedures as are necessary to implement the provisions of Sections 1 to 7 of this Act;*
- (2) *Enter into contractual agreements, including contracts for legal, actuarial, financial, and consulting services;*
- (3) *Invest moneys in the fund in any instruments, obligations, securities, or property as permitted by law and deemed appropriate by the board;*
- (4) *Procure insurance to protect against any loss in connection with the fund's property, assets, or activities and to indemnify board members from personal loss or accountability from liability arising from any action or inaction as a board member;*
- (5) *Make arrangements with participating institutions in the Commonwealth to fulfill obligations under prepaid tuition contracts, including, but not limited to, payment from the fund of the tuition cost on behalf of a qualified beneficiary to attend a participating institution in which the beneficiary is admitted and enrolled;*
- (6) *Develop requirements, procedures, and guidelines regarding prepaid tuition contracts, including but not limited to, the termination, withdrawal, or transfer of payments under a prepaid tuition contract; tuition shortfalls; number of participants; time limitations for prepaid tuition contracts and the use of tuition benefits; tuition conversions; payment schedules; payroll deductions; penalties for failure of purchasers to adhere to contracts; and transfer of prepaid tuition credits towards private education in the Commonwealth or for out-of-state institutions;*
- (7) *Obtain appropriate actuarial assistance to establish, maintain, and certify a fund sufficient to defray the obligation of the fund, annually evaluate or cause to be evaluated, the actuarial soundness of the fund, and determine prior to each academic year the amount of prepaid tuition for each standard tuition plan and for each participating institution for specific academic years, the corresponding required amount of tuition credits, the amount of prepaid tuition conversion, and the amount of prepaid tuition academic year conversion;*
- (8) *Make an annual report each year to the Legislative Research Commission showing the fund's condition; and*
- (9) *Market and promote participation in the fund.*

## SECTION 5. A NEW SECTION OF KRS CHAPTER 164A IS CREATED TO READ AS FOLLOWS:

- (1) *The prepaid tuition contract entered into by the purchaser and the board shall constitute an irrevocable pledge and guarantee by the fund to pay for the tuition of a qualified beneficiary upon acceptance and enrollment at a participating institution in proportion to the number of tuition credits purchased. The fund shall pay this amount to the participating institution on behalf of the qualified beneficiary.*
- (2) *The fund shall pay the amount of any tuition shortfall to the participating institution on behalf of the qualified beneficiary.*
- (3) *The purchaser or qualified beneficiary shall pay to the participating institution the amount of any prepaid tuition academic year conversion shortfall and the amount of any prepaid tuition conversion shortfall.*
- (4) *A qualified beneficiary attending a participating institution may apply tuition credits to a specific academic year at the maximum course load or maximum number of credit hours generally permitted to full-time undergraduates at that institution.*
- (5) *The board and participating institutions may agree that tuition credits remaining in a prepaid tuition account after tuition is paid may be converted into other educational expense credits under administrative regulations promulgated by the board in compliance with Section 529 of the Internal Revenue Code. The board may permit the use of tuition credits for part-time undergraduate enrollment or graduate programs at participating institutions, after an appropriate conversion. Any prepaid tuition remaining in a prepaid tuition account, for reasons other than termination of the account as provided for in Section 7 of this Act, shall be refunded to the purchaser or the purchaser's designee.*
- (6) *The value of the prepaid tuition credits shall not be used in calculating personal asset contribution for determining eligibility and need for student loan programs, student grant programs or other student aid programs administered by any agency of the Commonwealth, except as otherwise may be provided by federal law.*

## SECTION 6. A NEW SECTION OF KRS CHAPTER 164A IS CREATED TO READ AS FOLLOWS:

- (1) *Purchasers buying tuition credits for a qualified beneficiary shall enter into prepaid tuition contracts with the board. These contracts shall be in a form as shall be determined by the office. The contract shall provide for the purchase of tuition credits for prepaid tuition for the qualified beneficiary from one (1) to four (4) specific academic years.*
- (2) *Upon written notification to the office a purchaser may amend the prepaid tuition contract to change:*
  - (a) *The qualified beneficiary;*
  - (b) *The academic year or years for which tuition credits are purchased;*
  - (c) *A standard plan designation to a participating institution designation;*
  - (d) *A standard plan designation to another standard plan designation; or*
  - (e) *One (1) participating institution designation to another participating institution designation. The value of the tuition credit shall be adjusted under requirements of administrative regulations promulgated by the board.*
- (3) *A prepaid tuition account shall not be subject to attachment, levy, or execution by any creditor of a purchaser or qualified beneficiary and shall be exempt from all state and local taxes including, but not limited to, the intangible personal property tax levied under KRS 132.020, the individual income tax levied under KRS 141.020 and the inheritance tax levied under KRS Chapter 140.*
- (4) *Nothing in Sections 1 to 7 of this Act or in a prepaid tuition contract shall be construed as a promise or guarantee that a qualified beneficiary shall be admitted to a participating institution, be allowed to continue to attend a participating institution after having been admitted, or be graduated from a participating institution.*
- (5) *Prepaid tuition contract payments shall not be made in real or personal property other than cash and shall not exceed the prepaid tuition. Prepaid tuition contract payments may be made in lump sum installments.*
- (6) *The purchaser shall designate the qualified beneficiary at the time the purchaser enters into a prepaid tuition contract. In the case of gifts made to the fund, the board shall designate a qualified beneficiary at the time of the gift.*

- (7) *The prepaid tuition contract shall provide that the purchaser and the qualified beneficiary shall not directly or indirectly or otherwise control the investment of the prepaid tuition account or earnings on the account. Payments made for prepaid tuition shall be accounted for separately for each qualified beneficiary. No interest or earnings on a prepaid tuition contract of the purchaser or qualified beneficiary shall be pledged or otherwise encumbered as security of a debt.*
- (8) *A prepaid tuition contract does not constitute a security as defined in KRS 292.310 or an annuity as defined in KRS 304.5-030.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 164A IS CREATED TO READ AS FOLLOWS:

- (1) *Upon termination of a prepaid tuition contract, the office shall pay from the fund to the purchaser or the purchaser's designee:*
  - (a) *The value of the tuition credits if the contract is terminated for any of the following:*
    - 1. *The death of the qualified beneficiary;*
    - 2. *The disability of the qualified beneficiary that, in the opinion of the office, would make attendance by the beneficiary at a participating institution impossible or unreasonably burdensome;*
  - (b) *The purchase price of the tuition credits if the contract is terminated for any of the following:*
    - 1. *Failure of the qualified beneficiary who, in the opinion of the office, has made a good faith attempt to gain admission to a participating or nonparticipating institution within the time limits imposed by the board; or*
    - 2. *The movement of a family of a qualified beneficiary from Kentucky to another state with a savings plan.*
- (2) *Upon termination of a prepaid tuition account as a result of a decision by the qualified beneficiary to attend a nonparticipating institution, the office at the direction of the beneficiary and upon presentation of proof of the beneficiary's acceptance by and enrollment in the nonparticipating institution, shall pay from the fund to the institution the value of the tuition credits as determined by the board of directors for the postsecondary education prepaid tuition program. If the cost of tuition exceeds the value of the tuition credits, it shall be the responsibility of the beneficiary to pay the difference. If the value of the tuition credits exceeds the cost of tuition, the beneficiary shall be given a refund equal to the difference.*
- (3) *At the option of the purchaser or the purchaser's designee, the purchase price of any unused tuition credits may be carried forward to another academic year or refunded by the office from the fund.*
- (4) *Upon termination of a tuition account as a result of a decision by the qualified beneficiary not to attend a participating or nonparticipating institution, within time limits determined by the board, the purchaser or purchaser's designee shall receive the purchase price of the tuition credits.*
- (5) *The office may impose a fee upon termination of the account for administrative costs and deduct the fee from the amount otherwise payable under this section.*
- (6) *If a qualified beneficiary is awarded a scholarship that covers tuition costs included in a prepaid tuition contract, the purchaser or the purchaser's designee shall receive a refund from the fund by the office consisting of the amount of the prepaid tuition for the number of tuition credits purchased for that academic year.*
- (7) *If the purchaser wishes to transfer funds from the prepaid tuition account to the Kentucky Higher Educational Savings Plan Trust, the purchaser may do so under administrative regulations promulgated by the board of directors of the Commonwealth postsecondary education prepaid tuition trust fund and the board of the Kentucky Higher Education Assistance Authority.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

*The Tuition Account Program Office is hereby established within the Office of the State Treasurer for the purpose of implementing and administering the prepaid tuition account program established in Sections 1 to 7 of this Act. The program shall provide for the purchase of tuition credits for a beneficiary to attend a participating postsecondary institution.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 393 IS CREATED TO READ AS FOLLOWS:



***Seventy-five percent (75%) of the balance of the abandoned property funds shall be available for support of the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund. Transfers from the abandoned property fund to the trust fund are authorized in order to meet any unfunded liability as determined by the board.***

Section 10. KRS 164A.350 is amended to read as follows:

For all purposes of Kentucky law, the following shall be applicable:

- (1) The participant shall retain ownership of all contributions made under any participation agreement up to the date of utilization for payment of higher education costs for the beneficiary, and all interest derived from the investment of the contributions made by the participant shall be deemed to be held in trust for the benefit of the beneficiary;
- (2) Any participant may cancel a participation agreement. In the event the participation agreement is terminated, the participant shall retain ownership of all contributions made under the participation agreement not previously expended for the higher education costs of the beneficiary and a reversionary right to receive interest on all the contributions at the rate of interest at which the contributions were invested, except that the participant shall be required to pay a penalty upon the interest that has been credited to the participant's account in accordance with subsection ~~(8)~~~~(7)~~ of this section;
- (3) ***Any participant may cancel a participation agreement and shall be permitted to transfer funds to the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund established in Section 2 of this Act, and in compliance with administrative regulations promulgated by the board for the savings plan trust.***
- (4) If the beneficiary graduates from an institution of higher education, and a balance remains in the participant's account, then the program administrator shall pay the balance to the participant, except that the participant shall be required to pay a penalty upon the interest that has been credited to the participant's account in accordance with subsection (7) of this section;
- ~~(5)~~~~(4)~~ The institution of higher education shall obtain ownership of the contributions made for the higher education costs paid to the institution at the time each payment is made to the institution;
- ~~(6)~~~~(5)~~ Any amounts which may be paid pursuant to the Kentucky Educational Savings Plan Trust which are not listed in this section, shall be owned by the trust;
- ~~(7)~~~~(6)~~ A participant may transfer ownership rights to another eligible participant, including, but not limited to, a gift of the ownership rights to a minor beneficiary pursuant to KRS Chapter 385, except that, notwithstanding KRS 385.202(1), the transfer shall be affected and the property distributed in accordance with administrative regulations promulgated by the board or the terms of the participation agreement;
- ~~(8)~~~~(7)~~ Notwithstanding any other law to the contrary, if any earnings on contributions are refunded due to cancellation of the participation agreement by the participant or nondistribution of the funds for payment of the beneficiary's higher education costs, the board shall charge a penalty to the participant against the earnings on contributions. No penalty shall be charged when a refund is made due to:
  - (a) The death, permanent disability, or mental incapacity of the beneficiary; or
  - (b) The beneficiary's receipt of a scholarship, an educational assistance allowance under Chapters 30, 31, 32, 34, or 35 of Title 38, United States Code, or a payment exempt from income taxation by any law of the United States, other than a gift, bequest, devise, or inheritance within the meaning of Section 102(a) of the Internal Revenue Code, 26 U.S.C. sec. 102(a), for educational expenses, or attributable to attendance at an institution of higher education, to the extent that the amount refunded does not exceed the amount of the scholarship, allowance, or payment; and
- ~~(9)~~~~(8)~~ Notwithstanding any other provision of law to the contrary, contributions and earnings on contributions held by the trust shall be exempt from levy of execution, attachment, garnishment, distress for rent, or fee bill by a creditor of the participant or the beneficiary. No interest of the participant or beneficiary in the trust shall be pledged or otherwise encumbered as security for a debt.

Section 11. KRS 164.746 is amended to read as follows:

- (1) The authority shall be governed, all of its powers shall be exercised, and its duties and functions shall be performed by a board of directors. The board shall consist of seven (7) voting members who shall be appointed by the Governor. In addition, the president of the Council on Postsecondary Education, ***the State Treasurer***, and the secretary of the Department of Finance shall serve as nonvoting ex-officio members. The term of office

of appointed members shall be four (4) years. Each member shall serve for the term for which he is appointed and until his successor is appointed.

- (2) Appointments to fill vacancies on the board shall be made in the same manner as regular appointments. The person appointed shall hold the position for the unexpired portion of the term only.
- (3) The board shall elect from its voting membership a chairman and chairman-elect who shall each serve for a term of one (1) year. At the conclusion of the chairman's term of office, the chairman-elect shall become chairman for the succeeding year and the board shall elect from its voting membership a new chairman-elect.
- (4) Board members shall receive compensation for their services, in the amount of sixty-five dollars (\$65) per day, and may be reimbursed for actual and necessary expenses incurred in the performance of their duties under KRS 164.740 to 164.785.
- (5) The board shall provide for the holding of regular meetings and special meetings.
  - (a) A majority of the voting members shall constitute a quorum for the transaction of any business, special meetings shall be called by the chairman in accordance with KRS 61.823, and either the chairman or the chairman-elect shall be present for the transaction of any business.
  - (b) In lieu of personal attendance by members of the board of directors at the same location, the board of directors may conduct meetings by teleconference or other available technological means suitable for conducting its business. Meetings of the board shall be open and accessible to the public in accordance with KRS 61.805 to 61.850, and any alternate method of conducting a meeting in lieu of personal attendance shall ensure public access.
- (6) The board shall adopt bylaws and policies governing its internal affairs and the conduct of its business, and shall adopt administrative regulations pursuant to KRS Chapter 13A, not inconsistent with law, in connection with the administration of the authority's programs and the performance of its functions and duties.
- (7) The board may:
  - (a) Appoint such officers and employees as necessary and may fix their compensation, and shall prescribe their duties notwithstanding personnel limits established by KRS 18A.010 or the biennial budget and its related documents; and
  - (b) Adopt the provisions of KRS 45A.345 to 45A.460, pursuant to KRS 45A.343.
- (8) ***The Office of the Treasurer and the board of the Kentucky Higher Education Assistance Authority shall work together to jointly market, as appropriate, the Commonwealth Prepaid Tuition Plan and the Savings Plan established in KRS 164A.300.***

Section 12. Initial purchase of prepaid tuition credits through the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund shall commence no sooner than the academic year 2001-2002.

Section 13. During the 2000-2002 biennium, the prepaid postsecondary tuition administrative account is authorized to borrow a maximum of \$1,000,000 from the abandoned property account.

**Approved March 28, 2000**

## **CHAPTER 164**

**(HB 204)**

AN ACT relating to child protection.

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

Section 1. KRS 620.040 is amended to read as follows:

- (1) (a) Upon receipt of a report alleging abuse or neglect by a parent, guardian, or person exercising custodial control or supervision, pursuant to KRS 620.030(1) or (2), the recipient of the report shall ***immediately***~~(forthwith)~~ notify the cabinet or its designated representative, the local law enforcement agency or Kentucky State Police, and the Commonwealth's or county attorney of the receipt of the report unless they are the reporting source.

- (b) *Based upon the allegation in the report, the cabinet shall immediately make an initial determination as to the risk of harm and immediate safety of the child. Based upon the level of risk determined, the cabinet shall investigate the allegation or accept the report for an assessment of family needs and, if appropriate, may provide or make referral to any community-based services necessary to reduce risk to the child and to provide family support. A report of sexual abuse shall be considered high risk and shall not be referred to any other community agency.*
  - (c) The cabinet shall, ~~investigate the matter immediately and~~ within seventy-two (72) hours, exclusive of weekends and holidays, make a written report to the Commonwealth's or county attorney and the local enforcement agency or Kentucky State Police concerning the action ~~that~~~~which~~ has been taken on the ~~investigation~~~~matter~~.
  - (d) If the report alleges abuse or neglect by someone other than a parent, guardian, or person exercising custodial control or supervision, the cabinet shall ~~immediately~~~~forthwith~~ notify the Commonwealth's or county attorney and the local law enforcement agency or Kentucky State Police.
- (2) (a) Upon receipt of a report alleging dependency pursuant to KRS 620.030(1) and (2), the recipient shall ~~immediately~~~~forthwith~~ notify the cabinet or its designated representative.
- (b) *Based upon the allegation in the report, the cabinet shall immediately make an initial determination as to the risk of harm and immediate safety of the child. Based upon the level of risk, the cabinet shall investigate the allegation or accept the report for an assessment of family needs and, if appropriate, may provide or make referral to any community-based services necessary to reduce risk to the child and to provide family support. A report of sexual abuse shall be considered high risk and shall not be referred to any other community agency.*
  - (c) The cabinet ~~shall investigate reports of alleged dependency not later than forty eight (48) hours after receipt of the report but~~ need not notify the local law enforcement agency or Kentucky State Police or county attorney or Commonwealth's attorney of ~~such~~ reports *made under this subsection*.
- (3) If the cabinet or its designated representative receives a report of abuse by *a person* other than a parent, guardian, or other person exercising custodial control or supervision of a child, it shall ~~immediately~~~~forthwith~~ notify the local law enforcement agency or Kentucky State Police and the Commonwealth's or county attorney of the receipt of the report and its contents and they shall investigate the matter. The cabinet or its designated representative ~~shall~~~~may~~ participate in an investigation of noncustodial abuse at the request of the local law enforcement agency or the Kentucky State Police.
- ~~(4)(3)~~ School personnel or other persons listed in KRS 620.030(2) do not have the authority to conduct internal investigations in lieu of the official investigations outlined in this section.
- ~~(5)(4)~~ (a) If, after receiving the report, the law enforcement officer, the cabinet, or its designated representative cannot gain admission to the location of the child, a search warrant shall be *requested from, and may be* issued by, the judge to the appropriate law enforcement official upon probable cause that the child is dependent, neglected, or abused. If, pursuant to a search under a warrant a child is discovered and appears to be in imminent danger, the child may be removed by the law enforcement officer.
- (b) If a child who is in a hospital or under the immediate care of a physician appears to be in imminent danger if he is returned to the persons having custody of him, the physician or hospital administrator may hold the child without court order, provided that a request is made to the court for an emergency custody order at the earliest practicable time, not to exceed seventy-two (72) hours.
  - (c) Any appropriate law enforcement officer may take a child into protective custody and may hold that child in protective custody without the consent of the parent or other person exercising custodial control or supervision if there exist reasonable grounds for the officer to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents or other person exercising custodial control or supervision are unable or unwilling to protect the child. The officer or the person to whom the officer entrusts the child shall, within twelve (12) hours of taking the child into protective custody, request the court to issue an emergency custody order.
  - (d) When a law enforcement officer, hospital administrator, or physician takes a child into custody without the consent of the parent or other person exercising custodial control or supervision, he *or she* shall

provide written notice to the parent or other person stating the reasons for removal of the child. Failure of the parent or other person to receive notice shall not, by itself, be cause for civil or criminal liability.

- (6)(5) (a) One (1) or more multidisciplinary teams may be established in every county or group of contiguous counties.
- (b) Membership of the multidisciplinary team shall include, but ~~shall~~ *is* not *be* limited to, family service workers employed by the Cabinet for Families and Children and law enforcement officers. Additional team members may include Commonwealth's and county attorneys, mental health professionals, medical professionals, victim advocates, educators, and other related professionals, as deemed appropriate.
- (c) The multidisciplinary team may review child sexual abuse cases referred by participating professionals, including those in which the alleged perpetrator does not have custodial control or supervision of the child, or is not responsible for the child's welfare. The purpose of the multidisciplinary team shall be to review investigations, assess service delivery, and to facilitate efficient and appropriate disposition of cases through the criminal justice system.
- (d) The team shall hold regularly scheduled meetings if new reports of sexual abuse are received or if active cases exist. At each meeting, each active case shall be presented and the agencies' responses assessed.
- (e) The multidisciplinary team shall provide an annual report to the public of nonidentifying case information to allow assessment of the processing and disposition of child sexual abuse cases.
- (f) Multidisciplinary team members~~[-]~~ and anyone invited by the multidisciplinary team to participate in a meeting~~[-]~~ shall not divulge case information, including information regarding the identity of the victim or source of the report. Team members~~[-]~~ and others attending meetings~~[-]~~ shall sign a confidentiality statement that is consistent with statutory prohibitions on disclosure of this information.
- (g) The multidisciplinary team shall, pursuant to KRS 431.600 and 431.660, develop a local protocol consistent with the model protocol issued by the Kentucky Multidisciplinary Commission on Child Sexual Abuse. The local team shall submit the protocol to the commission for review and approval.
- (h) The multidisciplinary team review of a case may include information from reports generated by agencies, organizations, or individuals that are responsible for investigation, prosecution, or treatment in the case, KRS 610.320 to KRS 610.340 notwithstanding.

Section 2. KRS 620.050 is amended to read as follows:

- (1) Anyone acting upon reasonable cause in the making of a report or acting under KRS 620.030 to 620.050 in good faith shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or action. However, any person who knowingly makes a false report and does so with malice shall be guilty of a Class A misdemeanor.
- (2) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding a dependent, neglected, or abused child or the cause thereof, in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding a dependent, neglected, or abused child.
- (3) Upon receipt of a report of an abused, neglected, or dependent child pursuant to this chapter, the cabinet as the designated agency or its delegated representative shall initiate a prompt investigation *or assessment of family needs*, take necessary action, and shall offer protective services toward safeguarding the welfare of the child. The cabinet shall work toward preventing further dependency, neglect, or abuse of the child or any other child under the same care, and preserve and strengthen family life, where possible, by enhancing parental capacity for adequate child care.
- (4) The report of suspected child abuse, neglect, or dependency and all information obtained by the cabinet or its delegated representative, as a result of an investigation *or assessment* made pursuant to this chapter, shall not be divulged to anyone except:
  - (a) Persons suspected of causing dependency, neglect, or abuse;
  - (b) The custodial parent or legal guardian of the child alleged to be dependent, neglected, or abused;
  - (c) Persons within the cabinet with a legitimate interest or responsibility related to the case;

- (d) Other medical, psychological, educational, or social service agencies, child care administrators, corrections personnel, or law enforcement agencies, including the county attorney's office, the coroner, and the local child fatality response team, that have a legitimate interest in the case;
  - (e) A noncustodial parent when the dependency, neglect, or abuse is substantiated;
  - (f) Members of multidisciplinary teams as defined by KRS 620.020 and which operate pursuant to KRS 431.600; or
  - (g) Those persons so authorized by court order.
- (5) ***Identifying information concerning the individual initiating the report under KRS 620.030 shall not be disclosed except:***
- (a) ***To law enforcement officials that have a legitimate interest in the case;***
  - (b) ***To the agency designated by the cabinet to investigate or assess the report;***
  - (c) ***To members of multidisciplinary teams as defined by KRS 620.020 that operated under KRS 431.600; or***
  - (d) ***Under a court order, after the court has conducted an in camera review of the record of the state related to the report and has found reasonable cause to believe that the reporter knowingly made a false report***~~*[The identity of informants shall not be divulged to anyone without a court order after the court has reviewed in camera the record of the state related to the report or complaint and has found it has reason to believe that the informant knowingly made a false report, excepting law enforcement agencies having a legitimate interest in the case].*~~
- (6) Information may be publicly disclosed by the cabinet in a case where child abuse or neglect has resulted in a child fatality or near fatality.
- (7) When an adult who is the subject of information made confidential by subsection (4) of this section publicly reveals or causes to be revealed any significant part of the confidential matter or information, the confidentiality afforded by subsection (4) of this section is presumed voluntarily waived, and confidential information and records about the person making or causing the public disclosure, not already disclosed but related to the information made public, may be disclosed if disclosure is in the best interest of the child or is necessary for the administration of the cabinet's duties under this chapter.
- (8) As a result of any report of suspected child abuse or neglect, photographs and X-rays or other appropriate medical diagnostic procedures may be taken or caused to be taken, without the consent of the parent or other person exercising custodial control or supervision of the child, as a part of the medical evaluation or investigation of ~~these[such]~~ reports. ~~These[Such]~~ photographs and X-rays or results of other medical diagnostic procedures may be introduced into evidence in any subsequent judicial proceedings. The person performing the diagnostic procedures or taking ~~[such]~~ photographs or X-rays shall be immune from criminal or civil liability for having performed the act. Nothing herein shall limit liability for negligence.

**Approved March 28, 2000**

## **CHAPTER 165**

**(HB 294)**

AN ACT relating to charitable gaming.

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

Section 1. KRS 238.535 is amended to read as follows:

- (1) Any charitable organization conducting charitable gaming in the Commonwealth of Kentucky shall be licensed by the division. A charitable organization qualifying under subsection (8) of this section but not exceeding the limitations provided in this subsection shall be exempt from the licensure requirements when conducting the following charitable gaming activities:
  - (a) Bingo in which the gross receipts do not exceed a total of fifteen thousand dollars (\$15,000) per year;

- (b) A raffle or raffles for which the gross receipts do not exceed fifteen thousand dollars (\$15,000) per year; and
- (c) A charity fundraising event or events that do not involve special limited charitable games and the gross gaming receipts for which do not exceed fifteen thousand dollars (\$15,000) per year.

However, at no time shall a charitable organization's total limitations under this subsection exceed fifteen thousand dollars (\$15,000).

- (2) Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall notify the division in writing, on a form issued by the division, of its intent to engage in exempt charitable gaming and the address at which the gaming is to occur. Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall comply with all other provisions of this chapter, except:
  - (a) Payment of the fee imposed under the provisions of KRS 238.570; and
  - (b) The reporting requirements imposed under the provisions of KRS 238.550(2), unless the exempt charitable organization obtains a retroactive license pursuant to subsection (5) of this section.
- (3) If an organization exceeds the limit imposed by any subsection of this section it shall:
  - (a) Report the amount to the division; and
  - (b) Apply for a retroactive charitable gaming license.
- (4) Upon receipt of a report and application for a retroactive charitable gaming license, the division shall investigate to determine if the organization is otherwise qualified to hold the license.
- (5) If the division determines that the applicant is qualified, it shall issue a charitable gaming license retroactive to the date on which the exemption limit was exceeded. The retroactive charitable gaming license shall be issued in the same manner as regular charitable gaming licenses.
- (6) If the division determines that the applicant is not qualified it shall deny the license and take enforcement action, if appropriate.
- (7) Once a retroactive or regular gaming license is issued to an organization, that organization shall not be eligible for exempt status in the future and shall maintain a charitable gaming license if it intends to continue charitable gaming activities, unless the charitable organization has not exceeded the exemption limitations of subsection (1) of this section for a period of two (2) years prior to its exemption request.
- (8) In order to qualify for licensure, a charitable organization shall:
  - (a)
    - 1. Possess a tax exempt status under 26 U.S.C. secs. 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19), or be covered under a group ruling issued by the Internal Revenue Service under authority of those sections; or
    - 2. Be organized within the Commonwealth of Kentucky as a common school as defined in KRS 158.030, as an institution of higher education as defined in KRS 164A.305, or as a state college or university as provided for in KRS 164.290;
  - (b) Have been established and continuously operating within the Commonwealth of Kentucky for charitable purposes, other than the conduct of charitable gaming, for a period of three (3) years prior to application for licensure;
  - (c) Have been actively engaged in charitable activities during the three (3) years immediately prior to application for licensure and be able to demonstrate, to the satisfaction of the division, reasonable progress in accomplishing its charitable purposes during this period. As used in this paragraph, "accomplishing its charitable purposes" means relief of poverty, advancement of education, protection of health, relief from disease, relief from suffering or distress, protection of the environment, conservation of wildlife, advancement of civic, governmental, or municipal purposes, or advancement of those purposes delineated in KRS 238.505(3); and
  - (d) Have maintained an office or place of business, other than for the conduct of charitable gaming, for one (1) year in the county in which charitable gaming is to be conducted. The office or place of business shall be a separate and distinct address and location from that of any other licensee of the division; except that up to three (3) licensed charitable organizations may have the same address if they

legitimately share office space. For the conduct of a raffle, the county in which charitable gaming is to be conducted shall be the county in which the raffle drawing is to be conducted. ***However, a charitable organization that has established and maintained an office or place of business in the county for a period of at least one (1) year may hold a raffle drawing in a Kentucky county other than that in which the organization's office or place of business is located if the organization notifies the division in writing of the organization's intent to change the drawing's location at least thirty (30) days before the drawing takes place. This written notification may be transmitted in any commercially reasonable means, authorized by the division, including facsimile and electronic mail. The notification shall set out the place and the county in which the drawing will take place. Approval by the division shall be received prior to the conduct of the raffle drawing at the new location.*** Any charitable organization that was registered with the county clerk to conduct charitable gaming in a county on or before March 31, 1992, shall satisfy this requirement if it maintained a place of business or operation, other than for the conduct of charitable gaming, for one (1) year prior to application in a Kentucky county adjoining the county in which they were registered. Any licensed charitable organization that qualifies to conduct charitable gaming in an adjoining county under this paragraph, shall be permitted to conduct in its county of residence a charity fund raising event.

- (9) In applying for a license, the information to be submitted shall include, but not be limited to, the following:
- (a) The name and address of the charitable organization;
  - (b) The date of the charitable organization's establishment in the Commonwealth of Kentucky and the date of establishment in the county in which charitable gaming is to be conducted;
  - (c) A statement of the charitable purpose or purposes for which the organization was organized. If the charitable organization is incorporated, a copy of the articles of incorporation shall satisfy this requirement;
  - (d) A statement explaining the organizational structure and management of the organization. For incorporated entities, a copy of the organizations bylaws shall satisfy this requirement;
  - (e) A detailed accounting of the charitable activities in which the charitable organization has been engaged for the three (3) years preceding application for licensure;
  - (f) The names, addresses, dates of birth, and Social Security numbers of all officers of the organization;
  - (g) The names, addresses, dates of birth, and Social Security numbers of all employees and members of the charitable organization who will be involved in the management and supervision of charitable gaming. No fewer than two (2) employees or members of the charitable organization who are involved in the management and supervision of charitable gaming, along with the chief executive officer or the director of the applicant organization, shall be designated as chairpersons;
  - (h) The address of the location at which charitable gaming will be conducted and the name and address of the owner of the property, if it is owned by a person other than the charitable organization;
  - (i) A copy of the letter or other legal document issued by the Internal Revenue Service to grant tax-exempt status;
  - (j) A statement signed by the presiding or other responsible officer of the charitable organization attesting that the information submitted in the application is true and correct and that the organization agrees to comply with all applicable laws and administrative regulations regarding charitable gaming;
  - (k) An agreement that the charitable organization's records may be released by the federal Internal Revenue Service to the division; and
  - (l) Any other information the division deems appropriate.
- (10) The division may issue a license for a specified period of time, based on the type of charitable gaming involved and the desired duration of the activity.
- (11) The division shall charge a fee for each license issued and renewed, not to exceed three hundred dollars (\$300). Specific fees to be charged shall be prescribed in a graduated scale promulgated by administrative regulations and based on type of license, type of charitable gaming, actual or projected gross receipts, or other applicable factors, or combination of factors.

Section 2. KRS 238.540 is amended to read as follows:

- (1) ***Except as provided in subsection (8)(d) of Section 1 of this Act***, charitable gaming shall be conducted by a licensed charitable organization at only one (1) location and at the date and time which shall be stated on the license. A license holder shall notify the division at least thirty (30) days in advance of its intent to change its location, date, or time and approval by the division shall be received by the licensee prior to the conduct of charitable gaming at a new location.
- (2) All premises or facilities on which or in which charitable gaming is conducted shall meet all applicable federal, state, and local code requirements relating to life, safety, and health.
- (3) A license to conduct charitable gaming shall be prominently displayed on or in the premises where charitable gaming is conducted, in a conspicuous location that is readily accessible to gaming patrons as well as employees of the division, law enforcement officials, and other interested officials.
- (4) At least one (1) chairperson who is listed on the application for licensure shall be at each charitable gaming activity conducted by the charitable organization and shall be responsible for the charitable gaming activity. No person shall serve as chairperson for more than one (1) charitable organization. The chairperson shall be readily identifiable as the chairperson and shall be present on the premises continuously during the charitable gaming activity. Charitable gaming shall be conducted and administered solely by officers, members, and bona fide employees of the licensed charitable organization. Volunteer personnel, who may or may not be members of the licensed charitable organization, may be utilized if each volunteer is readily identifiable as a volunteer. No person engaged in the conduct and administration of charitable gaming shall receive any compensation for services related to the charitable gaming activities, including tipping. Any effort or attempt to disguise any other type of compensation shall be considered an unauthorized diversion of funds and shall be actionable under KRS 238.995.
- (5) No licensed charitable organization shall contract with, or otherwise utilize the services of, any management company, service company, or consultant in managing or conducting any aspect of charitable gaming.
- (6) A licensed charitable organization shall not purchase or lease charitable gaming supplies and equipment from any person not licensed as a distributor in the Commonwealth of Kentucky.
- (7) A licensed charitable organization shall not accept any merchandise prizes donated by any owner, officer, employee, or contractee of a licensed manufacturer, distributor, charitable gaming facility, or any of their affiliates, or any member of their immediate families.
- (8) Any advertisement of charitable gaming, regardless of the medium used, shall contain the name of the charitable organization conducting the charitable gaming and its license number.

**Approved March 28, 2000**

## CHAPTER 166

**(HB 348)**

AN ACT relating to manufactured homes.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 186A IS CREATED TO READ AS FOLLOWS:

- (1) ***When a manufactured home is or is to be permanently affixed to real estate, the owner may execute and file an Affidavit of Conversion to Real Estate with the county clerk of the county in which the real estate is located. The affidavit shall attest to the fact that the home has been or will be permanently affixed to the real estate and be accompanied by a surrender of the Kentucky certificate of title. The county clerk shall file the Affidavit of Conversion to Real Estate in the miscellaneous record book.***
- (2) ***A county clerk shall not accept a surrender of a Kentucky certificate of title which displays an unreleased lien unless it is accompanied by a release of the lien. When the county clerk files the Affidavit of Conversion to Real Estate, the county clerk shall furnish a copy to the property valuation administrator for inclusion in the real property tax rolls of the county. A filing of an Affidavit of Conversion to Real Estate and a surrender of a Kentucky certificate of title shall be deemed a conversion of the property as an improvement to the real estate upon which it is located.***

Section 2. KRS 132.720 is amended to read as follows:



As used in KRS 132.260 and 132.751, unless the context otherwise requires:

- (1) **"Manufactured home" has the same meaning as in KRS 186.650.**
- (2) "Mobile home," "recreational vehicle," "mobile home park," and "recreational vehicle park" have the same meanings as in KRS 219.320.
- ~~(3)(2)~~ "Unit" means any single mobile home, **manufactured home**, or recreational vehicle.
- ~~(4)(3)~~ "Permanent, fixed foundation" means a foundation permanent in nature which is so constructed as to be fixed upon the surface of the land.

Section 3. KRS 132.751 is amended to read as follows:

- (1) Mobile homes **or manufactured homes** not held for resale by a dealer shall be classified as real property for the purpose of the levy and assessment of ad valorem taxes, regardless of whether or not the wheels or mobile parts have been removed and whether or not the unit rests on a permanent, fixed foundation.
- (2) Recreational vehicles shall be classified as real property if the wheels or mobile parts have been removed and the unit rests on a permanent, fixed foundation.

**Approved March 28, 2000**

## **CHAPTER 167**

**(HB 663)**

AN ACT relating to small and farm wineries.

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

Section 1. KRS 243.155 is amended to read as follows:

- (1) A small winery license shall authorize the licensee to perform the following functions without having to obtain separate licenses, except that each off-premises retail site shall be separately licensed:
  - (a) Manufacture wines and bottle wines produced by that small winery in an amount not to exceed fifty thousand (50,000) gallons in one (1) year;
  - (b) Serve on the premises or at off-premise retail sites complimentary samples of wine produced by it in amounts not to exceed six (6) ounces per patron per day, if the small winery or off-premise retail site is located in wet territory;
  - (c) Sell by the drink or by the package on premises, at off-premise retail sites, and at fairs, festivals, and other similar types of events, wine produced on the premises of the small winery or produced by a licensed farm winery, at retail to consumers if all sales sites are located in wet territory;
  - (d) Sell and transport wine produced on the premises of the small winery to wholesale license holders and to retail package or retail drink license holders, if the wine has been offered for sale to wholesale license holders and the wine is sold at the wholesale price to the retail package or retail drink license holders;~~and~~
  - (e) Consume on the premises wine produced by the small winery or a licensed farm winery and purchased by the drink or by the package at the licensed premises, if the small winery is located in wet territory;  
**and**
  - (f) **Ship to a customer wine produced by a small winery or a farm winery if:**
    - 1. The wine is purchased by the customer in person at the small winery;**
    - 2. The wine is shipped by licensed common carrier; and**
    - 3. The amount of wine shipped is limited to two (2) cases per customer.**
- (2) In accordance with administrative regulations promulgated by the board, the holder of a small winery license or farm winery license, upon affidavit filed with the board that grapes, grape juice, other fruits, other fruit juices, or honey produced in Kentucky are not obtainable, may apply for a permit to import these products. The

burden of proof shall be upon the applicant to show that the grapes, grape juice, other fruits, other fruit juices, or honey are not available from any other source within the Commonwealth of Kentucky.

- (3) If a licensed small winery is located in a dry territory, KRS 242.230 to 242.430 shall apply, *unless a local option election is held in accordance with the provisions of this subsection. A limited sale precinct election may be held in a precinct containing a licensed small winery in a dry territory. The election shall be held in the same manner as prescribed by KRS 242.010 to 242.040 and 242.060 to 242.120. The proposition to be voted on shall state, "Are you in favor of the sale of wine at the (name of the licensed small winery or wineries)?" If the proposition is approved, a small winery within the precinct may sell wine in accordance with subsection (1) of this section.*
- (4) Other provisions of this chapter and KRS Chapter 244 notwithstanding, a small winery license holder may also hold a restaurant wine license and a retail malt beverage license, provided the issuance of these licenses is in connection with the establishment and operation of a restaurant, hotel, inn, bed and breakfast, conference center, or any similar business enterprise the purpose of which is to promote viticulture, enology, and tourism.
- (5) This section shall not exempt the holder of a small winery license from the provisions of KRS Chapters 241, 242, 243, and 244, nor from the administrative regulations of the board, nor from regulation by the board at all premises licensed by the small winery, except as expressly stated in this section.

Section 2. KRS 243.156 is amended to read as follows:

- (1) A farm winery license shall authorize the licensee to perform the following functions without having to obtain separate licenses:
  - (a) Manufacture wines and bottle wines at a winery located on a Kentucky farm with a producing vineyard, orchard, or similar growing area, in an amount not to exceed twenty-five thousand (25,000) gallons in one (1) year;
  - (b) Serve on the premises or at an off-premise retail site complimentary samples of wine produced by it in amounts not to exceed four (4) ounces per patron per day, if the farm winery or off-premise retail site is located in wet territory;
  - (c) Sell wine produced on the premises of the farm winery or produced by a licensed small winery by the drink or by the package at retail to consumers, if the farm winery or off-premise retail site is located in wet territory and the wine produced by the small winery is made with Kentucky products;
  - (d) Sell and transport wine produced on the premises of the farm winery to wholesale liquor license holders and to retail package or retail drink license holders, if the wine has been offered for sale to wholesale license holders and the wine is sold at the wholesale price to the retail package or retail drink license holders;
  - (e) Serve complimentary samples or sell wine produced on the premises of the farm winery at another farm winery or small winery sales site, if the other farm winery or small winery sales site is located in wet territory;
  - (f) Consume on the premises wine produced by the farm winery or a small winery and purchased by the drink or by the package at the licensed premises, if the farm winery is located in wet territory;~~and~~
  - (g) Sell by the drink or by the package wine produced by the farm winery or a licensed small winery at a fair, festival, or other similar type of event, if the event is held in a wet territory; *and*
  - (h) *Ship to a customer wine produced by a farm winery or a small winery if:*
    1. *The wine is purchased by the customer in person at the farm winery;*
    2. *The wine is shipped by licensed common carrier; and*
    3. *The amount of wine shipped is limited to two (2) cases per customer.*
- (2) A licensed farm winery may establish one (1) off-premise retail sales outlet, if it is located in wet territory.
- (3) All of the fresh fruits, fruit juices, or honey used to manufacture wine at a farm winery shall be grown or produced in the Commonwealth of Kentucky.
- (4) If a licensed farm winery is located in a dry territory, KRS 242.230 to 242.430 shall apply, *unless a local option election is held in accordance with the provisions of this subsection. A limited sale precinct election*

*may be held in a precinct containing a licensed farm winery in a dry territory. The election shall be held in the same manner as prescribed by KRS 242.010 to 242.040 and 242.060 to 242.120. The proposition to be voted on shall state, "Are you in favor of the sale of wine at the (name of the licensed farm winery or wineries)?" If the proposition is approved, a farm winery within the precinct may sell wine in accordance with subsection (1) of this section.*

- (5) Other provisions of this chapter and KRS Chapter 244 notwithstanding, a farm winery license holder may also hold a restaurant wine license and a retail malt beverage license, provided the issuance of these licenses is in connection with the establishment and operation of a restaurant, hotel, inn, bed and breakfast, conference center, or any similar business enterprise the purpose of which is to promote viticulture, enology, and tourism.
- (6) This section shall not exempt the holder of a farm winery license from the provisions of KRS Chapters 241, 242, 243, and 244, nor from administrative regulations of the board, except as expressly stated in this section.

Section 3. KRS 243.884 is amended to read as follows:

- (1) For the privilege of making "wholesale sales" or "sales at wholesale" of beer, wine, or distilled spirits, a tax is hereby imposed upon all wholesalers of wine and distilled spirits at the rate of nine percent (9%) and upon all distributors of beer at the rate of nine percent (9%) of the gross receipts of any such wholesaler or distributor derived from "sales at wholesale" or "wholesale sales" made within the Commonwealth except as provided in subsection (2) of this section. Wholesalers of distilled spirits and wine and distributors of malt beverages shall pay and report the tax levied by this section on or before the 20th day of the calendar month next succeeding the month in which possession or title of the distilled spirits, wine or malt beverages is transferred from the wholesaler or distributor to retailers or consumers in this state, in accordance with rules and regulations of the Revenue Cabinet designed reasonably to protect the revenues of the Commonwealth.
- (2) Gross receipts from sales at wholesale or wholesale sales shall not include the following sales:
  - (a) Sales made between wholesalers or between distributors;
  - (b) Sales made by a small winery or farm winery or wholesaler of wine produced by a small winery or farm winery, if the grapes, grape juice, other fruits, other fruit juices, or honey from which the wine is made are produced in Kentucky;
  - (c) Until June 30, ~~2004~~~~[1999]~~, sales from a small winery or wholesaler of wine produced by a small winery, if the grapes, grape juice, other fruits, other fruit juices, or honey from which the wine is made are not produced in Kentucky.

Section 4. KRS 100.111 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Administrative official" means any department, employee, or advisory, elected or appointed body which is authorized to administer any provision of the zoning regulation, subdivision regulations, and if delegated, any provision of any housing or building regulation or any other land use control regulation;
- (2) "Agricultural use" means the use of a tract of at least five (5) contiguous acres for the production of agricultural or horticultural crops, including but not limited to livestock, livestock products, poultry, poultry products, grain, hay, pastures, soybeans, tobacco, timber, orchard fruits, vegetables, flowers or ornamental plants, including provision for dwellings for persons and their families who are engaged in the above agricultural use on the tract, but not including residential building development for sale or lease to the public, ***and shall also include, regardless of the size of the tract of land used, small wineries licensed under Section 1 of this Act, and farm wineries licensed under the provisions of Section 2 of this Act;***
- (3) "Board" means the board of adjustment unless the context indicates otherwise;
- (4) "Citizen member" means any member of the planning commission or board of adjustment who is not an elected or appointed official or employee of the city or county;
- (5) "Commission" means planning commission;
- (6) "Conditional use" means a use which is essential to or would promote the public health, safety, or welfare in one (1) or more zones, but which would impair the integrity and character of the zone in which it is located, or in adjoining zones, unless restrictions on location, size, extent, and character of performance are imposed in addition to those imposed in the zoning regulation;

- (7) "Conditional use permit" means legal authorization to undertake a conditional use, issued by the administrative official pursuant to authorization by the board of adjustment, consisting of two (2) parts:
- (a) A statement of the factual determination by the board of adjustment which justifies the issuance of the permit; and
  - (b) A statement of the specific conditions which must be met in order for the use to be permitted;
- (8) "Development plan" means written and graphic material for the provision of a development, including any or all of the following: location and bulk of buildings and other structures, intensity of use, density of development, streets, ways, parking facilities, signs, drainage of surface water, access points, a plan for screening or buffering, utilities, existing manmade and natural conditions, and all other conditions agreed to by the applicant;
- (9) "Fiscal court" means the chief body of the county with legislative power, whether it is the fiscal court, county commissioners, or otherwise;
- (10) "Housing or building regulation" means the Kentucky Building Code, the Kentucky Plumbing Code and any other building or structural code promulgated by the Commonwealth or by its political subdivisions;
- (11) "Legislative body" means the chief body of the city with legislative power, whether it is the board of aldermen, the general council, the common council, the city council, the board of commissioners, or otherwise; at times it also implies the county's fiscal court;
- (12) "Mayor" means the chief elected official of the city whether the official designation of his office is mayor or otherwise;
- (13) "Nonconforming use or structure" means an activity or a building, sign, structure or a portion thereof which lawfully existed before the adoption or amendment of the zoning regulation, but which does not conform to all of the regulations contained in the zoning regulation which pertain to the zone in which it is located;
- (14) "Planning operations" means the formulating of plans for the physical development and social and economic well-being of a planning unit, and the formulating of proposals for means of implementing the plans;
- (15) "Planning unit" means any city or county, or any combination of cities, counties, or parts of counties engaged in planning operations;
- (16) "Plat" means the map of a subdivision;
- (17) "Political subdivision" means any city or county;
- (18) "Several" means two (2) or more;
- (19) "Public facility" means any use of land whether publicly or privately owned for transportation, utilities, or communications, or for the benefit of the general public, including, but not limited to, libraries, streets, schools, fire or police stations, county buildings, municipal buildings, recreational centers including parks, and cemeteries;
- (20) "Street" means any vehicular way;
- (21) "Structure" means anything constructed or made, the use of which requires permanent location in or on the ground or attachment to something having a permanent location in or on the ground, including buildings and signs;
- (22) "Subdivision" means the division of a parcel of land into three (3) or more lots or parcels except in a county containing a city of the first, second or third class or in an urban-county government where a subdivision means the division of a parcel of land into two (2) or more lots or parcels; for the purpose, whether immediate or future, of sale, lease, or building development, or if a new street is involved, any division of a parcel of land; provided that a division of land for agricultural use and not involving a new street shall not be deemed a subdivision. The term includes resubdivision and when appropriate to the context, shall relate to the process of subdivision or to the land subdivided; any division or redivision of land into parcels of less than one (1) acre occurring within twelve (12) months following a division of the same land shall be deemed a subdivision within the meaning of this section;
- (23) "Unit" means planning unit; and

- (24) "Variance" means a departure from dimensional terms of the zoning regulation pertaining to the height, width, or location of structures, and the size of yards and open spaces where such departure meets the requirements of KRS 100.241 to 100.247.

**Approved March 28, 2000**

## CHAPTER 168

**(HB 722)**

AN ACT relating to fish and wildlife.

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

Section 1. KRS 150.395 is amended to read as follows:

- (1) No person or group of persons may deliberately cast the rays of a spotlight or other artificial light ~~[with the intent to poach,]~~ into any field, pasture, woodlands, or forest, whether public or private, where wildlife or domestic livestock may reasonably be expected to be located, **or into any inhabited building**. This section shall not apply to the rays of headlights of vehicles engaged in a normal course of travel; to employees or agents of the department while on official business; to peace officers in the line of duty; to those engaged in legitimate agricultural activities; or to anyone involved in activities legitimate to his business, occupation, or circumstances including lawful hunting **and fishing** activities, or any landowner, his immediate family, or any paid employee while working on his land at that time.
- (2) Any person who violates the provisions of this section shall be fined **one hundred fifty dollars (\$150), which shall be prepayable** ~~[not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000)].~~

**Approved March 28, 2000**

## CHAPTER 169

**(SB 65)**

AN ACT relating to controlled substances.

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

Section 1. KRS 218A.1412 is amended to read as follows:

- (1) A person is guilty of trafficking in a controlled substance in the first degree when he knowingly and unlawfully traffics in: a controlled substance, ~~[except a substance that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers or,]~~ that is classified in Schedules I or II which is a narcotic drug; a controlled substance analogue; lysergic acid diethylamide; ~~[or]~~ phencyclidine; **or a controlled substance that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.**
- (2) Any person who violates the provisions of subsection (1) of this section shall:
  - (a) For the first offense be guilty of a Class C felony.
  - (b) For a second or subsequent offense be guilty of a Class B felony.

Section 2. The following KRS section is repealed:

218A.1435 Trafficking in methamphetamine -- Penalties.

**Approved March 28, 2000**

## CHAPTER 170

**(SB 100)**

AN ACT relating to adult day health care programs.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall, on or before August 1, 2000, promulgate administrative regulations addressing the scope of services for licensed adult day health care programs.*
- (2) *The cabinet shall, on or prior to December 1, 2000, study and promulgate administrative regulations regarding the way case management for adult day health care patients is administered.*

Approved March 28, 2000

## CHAPTER 171

(SB 272)

AN ACT relating to cremation.

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

Section 1. KRS 367.97524 is amended to read as follows:

- (1) ~~A[No]~~ crematory authority shall **not** conduct any cremations, nor accept a body for cremation, unless it has a cremation authorization form signed by the authorizing agent clearly stating the disposition to be made of the cremated remains.
- (2) Cremated remains shall be disposed of by placing them in a grave, crypt, or niche; by scattering them in a scattering area; or in any manner on the private property of a consenting owner. The crematory authority may deliver, either in person or by registered mail, the cremated remains to the designated individual specified on the cremation authorization form. Upon receipt of the cremated remains, the individual receiving them may keep or transport them in any manner in this Commonwealth without a permit. After delivery, the crematory authority shall be discharged from any legal obligation or liability concerning the cremated remains relative to disposition.
- (3) *A crematory authority or a licensed funeral director arranging a cremation shall not be held liable for good faith reliance on representations made by the authorizing agent regarding the authority to cremate.*

Section 2. KRS 367.97527 is amended to read as follows:

- (1) A person, or anyone who has legal authority to act on behalf of that person, may authorize his **or her** own cremation and the final disposition of his **or her** cremated remains, by executing, as the authorizing agent, a preneed cremation authorization form. The original preneed cremation authorization form shall be retained by the entity with which the arrangements are made. A copy of the preneed cremation authorization form shall be provided to the person signing the preneed arrangements. The person prearranging his own cremation shall have the right to transfer or cancel this authorization at any time prior to death, by notifying the entity with which the preneed cremation authorization form is filed by certified mail.
- (2) In the event that no different or inconsistent instructions are provided to the crematory authority at the time of death, the crematory authority shall release or dispose of the cremated remains as indicated in the preneed agreement.
- (3) In the event that there is a conflict between the decedent's prearrangement and the demands of the next class of authorizing agent in the order set forth in KRS 367.97501(1) regarding cremation, the crematory shall not accept for cremation those human remains without an order deciding the issues entered by the District Court of the county of the decedent's residence **or the county where the funeral home or the crematory authority is located**. This order may be issued by the court after a petition for resolution has been initiated by any natural person listed in KRS 367.97501(1) or the crematory authority. Unless extraordinary circumstances exist, the court shall give due deference to the desires of the deceased as expressed in the prearrangement.
- (4) *Neither the crematory authority nor a licensed funeral director arranging a cremation shall be held liable for the crematory authority's or the funeral director's good faith reliance on representations made by the authorizing agent regarding the authority or decision to cremate.*

Approved March 28, 2000

**CHAPTER 172****(SB 300)**

AN ACT relating to fertilizer and pesticide use and application.

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

Section 1. KRS 217B.040 is amended to read as follows:

For the purposes of this chapter, unless the context requires otherwise:

- (1) "Pest" means:
  - (a) Any insect, snail, slug, rodent, nematode, fungus, weed; ~~or~~ ~~and~~
  - (b) Any other form of plant or animal life, or virus, bacteria, or other microorganism, except viruses, bacteria, or other microorganisms on or in living man or other living animals, which is normally considered to be a pest, or which the department declares to be a pest;
- (2) "Pesticide" means:
  - (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, attract, or mitigate any pest;
  - (b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; ~~or~~ ~~and~~
  - (c) Any substance or mixture of substances intended to be used as a spray adjuvant, **once they have been mixed with an EPA registered product**;
- (3) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission;
- (4) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues;
- (5) "Plant regulator" means any substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of plants, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments;
- (6) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six (6) legged, usually winged forms, as for example beetles, bugs, bees, wasps, and flies, and includes other allied classes of arthropods whose members are wingless and usually have more than six (6) legs, as for example spiders, mites, ticks, centipedes, and wood lice, and also nematodes and other worms, and any other invertebrates which are destructive, constitute a liability, and may be classed as pests;
- (7) "Fungi" means all nonchlorophyll-bearing thallophytes, that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts, as for example, rusts, smuts, mildews, molds, yeasts, bacteria, and viruses, except those on or in living man or other living animals, and except those in or on processed food, beverages, or pharmaceuticals;
- (8) "Fertilizer" means any substance containing one (1) or more recognized plant nutrients, which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other products exempted by administrative regulation;
- (9) "Weed" means any plant which grows where not wanted;
- (10) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, and may also be called nemas or eelworms;
- (11) "Snails or slugs" include all harmful mollusks;

- (12) "Person" means any individual, partnership, association, or any organized group of persons whether incorporated or not;
- (13) "Equipment" means any type of ground, water, or aerial equipment, device, or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in the land, but shall not include any pressurized hand-sized household device used to apply any pesticide;
- (14) "Restricted use pesticide" means any pesticide classified for restricted use by the administrator, EPA, or by administrative regulation of the department;
- ~~(15) "Engage in business" means any application of pesticide by any person upon lands of another;~~
- ~~(16)~~ (17) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, devices, and contrivances and machinery appurtenant ~~to the~~ or situated **on them** ~~thereon~~, fixed or mobile, including any used for transportation;
- ~~(16)~~ (17) "Pesticide applicator" means any **individual employed or supervised by a pesticide operator to apply pesticides. The term does not include trainees** ~~[person who owns or manages a pesticide application business which is engaged in the business of applying pesticides upon the lands of another];~~
- ~~(17)~~ (18) "Pesticide operator" means any **individual who owns or manages a pesticide application business that is engaged in the business of applying pesticides upon the lands of another** ~~[person employed by a pesticide applicator who operates equipment for the application of pesticides or applies pesticides manually. This term does not include employees who work only under direct "on the job" supervision of a licensed pesticide applicator or licensed pesticide operator];~~
- ~~(18)~~ (19) "Pest control consultant" means any person who, for a fee, offers or supplies technical advice, supervision, or aid, or recommends the use of specific pesticides for the purpose of controlling insect pests, plant diseases, weeds, and other pests;
- ~~(19)~~ (20) "**Noncommercial applicator**" ~~[Public operator]~~ means any **individual employed** ~~[person in charge of any equipment used]~~ by **golf courses**, municipal corporations, public utilities, or other governmental agencies **making applications of pesticides to lands owned, occupied, or managed by his or her employer** ~~[applying pesticides];~~
- ~~(20)~~ (21) "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests; including, but not limited to mammals, birds, and aquatic life;
- ~~(21)~~ (22) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive, and, having received, deliver or offer to deliver any pesticides in this state excepting internal distribution within a company or organization;
- ~~(22)~~ (23) "EPA" means the United States Environmental Protection Agency;
- ~~(23)~~ (24) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or to any of its containers or wrappers;
- ~~[(25) "Restricted use pesticide dealer" means any person who distributes restricted use pesticides except manufacturers of restricted use pesticides who distribute their products solely to "restricted use pesticide dealers";]~~
- ~~(24)~~ (26) "Spray adjuvant" means any wetting agent, spreading agent, sticker, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent intended to be used with any other pesticide as an aid to the application or to the effect **of it** ~~thereof~~, and which is in a package or container separate from that of the other pesticide with which it is to be used; ~~and~~
- ~~(25)~~ (27) "Commissioner" means the Commissioner of the Department of Agriculture;
- (26) "**Dealer**" means any person that engages in the storage of bulk fertilizer or a restricted use pesticide for the purpose of redistribution or direct resale, or engages in the business of applying any pesticide to the lands of another. A "dealer" shall not include a manufacturer of a restricted use pesticide or a fertilizer who distributes his or her product solely to a dealer;
- (27) "**Trainee**" means an individual who has been employed by a dealer and is working under the direct on-the-job supervision of a licensed operator or applicator;



- (28) *"Direct on-the-job supervision" means having a licensed operator or licensed applicator physically on site and directly supervising or training an individual in the application of a pesticide;*
- (29) *"Branch office" means any location of a dealer other than its designated principal place of business location, but does not include on-premises and off-premises bulk storage or receiving warehouses used solely for the purpose of customer order filling;*
- (30) *"Applicant" means a person applying for a license or registration under this chapter;*
- (31) *"Pesticide sales agent" means an individual who sells or distributes restricted use pesticides or an individual who sells and makes recommendations for the use or application of pesticides to the final user;*
- (32) *"Limited license" means a license that is issued by the department for noncommercial use, and shall be valid only when an individual is making applications of pesticides to lands owned, occupied, or managed by his or her employer; and*
- (33) *"Certified crop advisor" means an individual who has met the requirements of and has been certified by the Kentucky Certified Crop Advisor Board.*

Section 2. KRS 217B.050 is amended to read as follows:

- (1) The department shall administer and enforce the provisions of this chapter and ~~promulgate~~~~issue~~ administrative regulations to carry out the provisions of this chapter and in the administrative regulations may prescribe methods to be used in the storage of fertilizers and pesticides, and application of pesticides. Where the department finds that the administrative regulations are necessary to carry out the purpose and intent of this chapter, the administrative regulations may relate to the time, place, manner, and method of storage and application of the pesticides and storage of fertilizers and pesticides, may restrict or prohibit use of pesticides in designated areas during specified periods of time, and shall encompass all reasonable factors which the department deems necessary to prevent damage or injury by drift or misapplication to:
  - (a) Plants, including forage plants, on adjacent or nearby lands;
  - (b) Wildlife in the adjoining or nearby areas;
  - (c) Fish and other aquatic life in waters in reasonable proximity to the area to be treated; and
  - (d) Pollinating insects, animals, or persons.
- (2) In ~~promulgating~~~~issuing~~ the administrative regulations, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state and of the federal government.
- (3) The department may by administrative regulation adopt a list of "restricted use pesticides" for the state or for designated areas within the state if it finds that the characteristics of the pesticides require restricting their use to prevent injury on lands other than the land to which they are applied, or to persons, animals, crops, or pests or vegetation other than the pests or vegetation which they are intended to destroy. For the purpose of uniformity of requirements between the states and the federal government, the department may adopt the list of "restricted use pesticides" as established by the Environmental Protection Agency or other federal or state agencies.
- (4) The department may establish additional classifications of applicator *or operator* licenses as required for conformance with the Federal Environmental Pesticide Control Act of 1972. The classifications may include private farmer applicators, commercial establishment applicators, and government employee applicators not specifically mentioned in this chapter. The administrative regulations may specify licensing conditions, procedures, and fees not to exceed those fees specified for other licensees under this chapter.

Section 3. KRS 217B.060 is amended to read as follows:

- (1) The department may classify licenses to be issued under this chapter. ~~The~~~~Such~~ classifications may include but not be limited to ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual methods used by any licensee to apply pesticides. Each classification shall be subject to separate testing procedures and requirements. ~~[- No person shall be required to pay an additional license fee if such person desires to be licensed in one (1) or all of the license classifications provided for by the department under the authority of this section.]~~
- (2) *Application for a license shall be made in writing to the department on a designated form obtained from the department. Each application for a license shall contain information regarding the applicant's*

*qualifications and proposed operations, and license classification or classifications the applicant is applying for, and shall include the following:*

- (a) *The full name of the person applying for the license;*
  - (b) *If the applicant is a receiver, trustee, firm, partnership, association, corporation, or other organized group of persons whether or not incorporated, the full name of the receiver or trustee, the full name of each member of the firm or partnership, or the names of the officers of the association, corporation, or group;*
  - (c) *The principal business address of the applicant in the state and elsewhere;*
  - (d) *The name and address of a person, who may be the Secretary of State, whose domicile is in the state, and who is authorized to receive and accept services of summons and legal notice of all kinds for the applicant;*
  - (e) *The model, make, horsepower, and size of any equipment used by the applicant to apply pesticides; and*
  - (f) *Any other necessary information prescribed by the department.*
- (3) *The department shall require an applicant for a license to show upon examination that the applicant possesses adequate knowledge concerning the proper use and application of pesticides in the classifications he or she has applied for. The applicant shall also demonstrate a knowledge of the proper use of and calibration of the various equipment that he or she may have applied for a license to operate, including any pressurized, hand-sized devices. The examination shall require a working knowledge of:*
- (a) *The proper use of the equipment;*
  - (b) *The hazards that may be involved in applying pesticides, including:*
    - 1. *The effect of drift of the pesticides on adjacent and nearby lands and other nontarget organisms;*
    - 2. *The proper meteorological conditions for the application of pesticides and the precautions to be taken;*
    - 3. *The effect of the pesticides on plants or animals in the area, including the possibility of damage to plants or animals or the possibility of illegal pesticide residues resulting on them;*
    - 4. *The effect of the application of pesticides to wildlife in the area, including aquatic life;*
    - 5. *The identity and classification of pesticides used and the effects of their application in particular circumstances; and*
    - 6. *The likelihood of contamination of water or injury to persons, plants, livestock, pollinating insects, and vegetation;*
  - (c) *Calculating the concentration of pesticides to be used in particular circumstances;*
  - (d) *Identification of pests to be controlled by common name only and the damages caused by the pests;*
  - (e) *Protective clothing and respiratory equipment required during the handling and application of pesticides;*
  - (f) *General precautions to be followed in the disposal of containers as well as the cleaning and decontamination of the equipment that the applicant proposes to use; and*
  - (g) *Applicable state and federal pesticide laws and regulations.*
- (4) *If the department finds the applicant qualified to apply pesticides in the classifications he or she has applied for, if the applicant files the bond or insurance required under Section 15 of this Act, and if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Agency and the Transportation Cabinet to operate the equipment described in the application, the department shall issue a pesticide applicator license limited to the classifications for which he or she is qualified, which shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior to that by the department for cause, or the financial security required under Section 15 of this Act is not dated to expire at an earlier date, in which case the license shall be dated to expire upon the expiration date of the financial security.*

Section 4. KRS 217B.070 is amended to read as follows:

- (1) No person shall engage in the business of applying pesticides to the lands of another within this state at any time without a pesticide *operator's*~~{applicator's}~~ license issued by the department. The department shall require an annual fee of *twenty-five dollars (\$25)*~~[\$25]~~ for each pesticide *operator's*~~{applicator's}~~ license issued~~{and, in addition, an inspection fee of \$10 for each aircraft to be licensed and \$10 for each piece of ground equipment to be licensed. Should any equipment fail to pass inspection under KRS 217B.160, making it necessary for a second inspection to be made, the department shall require an added inspection fee of \$5. In addition to the required inspection, unannounced inspections may be made without charge to determine if equipment is properly calibrated and maintained in conformance with laws and regulations}~~.
- (2) *No license shall be issued unless the applicant holds a valid certification within this category*~~{Application for a license shall be made in writing to the department on a designated form obtained from the department. Each application for a license shall contain information regarding the applicant's qualifications and proposed operations, license classification or classifications the applicant is applying for, and shall include the following:~~
  - (a) ~~The full name of the person applying for the license;~~
  - (b) ~~If the applicant is an individual, receiver, trustee, firm, partnership, association, corporation, or other organized group of persons whether or not incorporated, the full name of each member of the firm or partnership, or the names of the officers of the association, corporation, or group;~~
  - (c) ~~The principal business address of the applicant in the state and elsewhere;~~
  - (d) ~~The name and address of a person, who may be the Secretary of State, whose domicile is in the state, and who is authorized to receive and accept services of summons and legal notice of all kinds for the applicant;~~
  - (e) ~~The model, make, horsepower, and size of any equipment used by the applicant to apply pesticides;~~
  - (f) ~~Any other necessary information prescribed by the department}~~.
- (3) *No license shall be issued unless the applicant is registered as a dealer or is employed by a person who is registered as a dealer*~~{The department shall require an applicant for a license to show upon examination that he possesses adequate knowledge concerning the proper use and application of pesticides in the classifications he has applied for, manually or with the various equipment that he may have applied for a license to operate. The examination shall require a working knowledge of:~~
  - (a) ~~The proper use of the equipment.~~
  - (b) ~~The hazards that may be involved in applying pesticides, including:~~
    1. ~~The effect of drift of the pesticides on adjacent and nearby lands and other nontarget organisms;~~
    2. ~~The proper meteorological conditions for the application of pesticides and the precautions to be taken therewith;~~
    3. ~~The effect of the pesticides on plants or animals in the area, including the possibility of damage to plants or animals or the possibility of illegal pesticide residues resulting on them;~~
    4. ~~The effect of the application of pesticides to wildlife in the area, including aquatic life;~~
    5. ~~The identity and classification of pesticides used and the effects of their application in particular circumstances;~~
    6. ~~The likelihood of contamination of water or injury to persons, plants, livestock, pollinating insects, and vegetation.~~
  - (c) ~~Calculating the concentration of pesticides to be used in particular circumstances.~~
  - (d) ~~Identification of pests to be controlled by common name only and the damages caused by such pests.~~
  - (e) ~~Protective clothing and respiratory equipment required during the handling and application of pesticides.~~
  - (f) ~~General precautions to be followed in the disposal of containers as well as the cleaning and decontamination of the equipment which the applicant proposes to use.~~
  - (g) ~~Applicable state and federal pesticide laws and regulations.~~

- (4) ~~If the department finds the applicant qualified to apply pesticides in the classifications he has applied for and, if the applicant files the bond or insurance required under KRS 217B.130, and if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Agency and the Transportation Cabinet to operate the equipment described in the application, the department shall issue a pesticide applicator license limited to the classifications for which he is qualified, which shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior thereto by the department for cause or the financial security required under KRS 217B.130 is not dated to expire at an earlier date, in which case said license shall be dated to expire upon expiration date of said financial security}.~~

Section 5. KRS 217B.080 is amended to read as follows:

- (1) *Except as provided in Section 6 of this Act*, it shall be unlawful for any person to act as an employee of a pesticide **operator or dealer**~~{applicator}~~ and apply pesticides manually, or as the **applicator**~~{operator}~~ directly in charge of any equipment which is licensed or should be licensed under the provisions of this chapter for the application of any pesticide, without having obtained an **applicator's**~~{operator's}~~ license from the department.~~{Such}~~ An **applicator's**~~{operator's}~~ license shall be in addition to any other license or permit required by law for the operation or use of any~~{such}~~ equipment. Any person applying for ~~{such}~~ an **applicator's**~~{operator's}~~ license shall file an application on a form prescribed by the department on or before January 1 of each year. Application for a license to apply pesticides shall be accompanied by a license fee of **ten dollars**~~(\$10)~~~~(\$10)~~. The provisions of this section shall not apply to any individual who has passed the examination provided for in subsection (3) of *Section 3 of this Act*~~[KRS 217B.070]~~, and is a licensed pesticide **operator**~~{applicator}~~. If the department finds the applicant qualified to apply pesticides in the classifications he has applied for after examinations as provided for in subsection (3) of *Section 3 of this Act*~~[KRS 217B.070]~~, and if the applicant applying for a license to engage in aerial applications of pesticides has met all of the requirements of the Federal Aviation Agency and the Transportation Cabinet to operate the equipment described in the application, the department shall issue a pesticide **applicator**~~{operator}~~ license limited to the classifications for which he is qualified which shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior to ~~that~~~~{thereto}~~ by the department for cause as provided for in KRS 217B.120.
- (2) *No license shall be issued unless the applicant holds a valid certification within this category.*
- (3) *No license shall be issued unless the applicant is employed or supervised by a person who holds a valid operator's license.*

Section 6. KRS 217B.090 is amended to read as follows:

- (1) *It shall be unlawful for any person to act as a noncommercial applicator without having obtained a noncommercial applicator license from the department. Any person applying for a noncommercial applicator's license shall file an application on a form prescribed by the department on or before January 1 of each year. The provisions of this section shall not apply to any individual who is a licensed pesticide operator or applicator. If the department finds the applicant qualified to apply pesticides, the department shall issue a limited license without a fee to a noncommercial applicator, which shall be valid only when the individual is applying pesticides on land owned, occupied, or managed by his or her employer. The noncommercial applicator license shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior to that by the department for cause as provided for in Section 14 of this Act.*~~[Municipal corporations, and public utilities, or any other governmental agency except state agencies shall be subject to the provisions of this chapter and rules adopted thereunder; the public operator in charge of any equipment used by any municipal corporations, public utilities, or any governmental agencies, shall be subject to the provisions of KRS 217B.070(3) and 217B.080, and the department shall issue a limited license without a fee to such public operators which shall be valid only when such public operators are acting as operators on equipment used by such entities. Government research personnel shall be exempt from this licensing requirement when applying pesticides to experimental plots. Such agencies, municipal corporations, and public utilities,]~~
- (2) *Employers of noncommercial applicators* shall be subject to legal recourse by any person damaged by ~~the~~~~{such}~~ application of any pesticide, and ~~the~~~~{such}~~ action may be brought in the county where the damage or some part of ~~the damage~~~~{thereof}~~ occurred.
- (3) *No license shall be issued unless the applicant holds a valid certification within this category.*
- (4) *A limited license cannot be upgraded without retesting.*

Section 7. KRS 217B.100 is amended to read as follows:

- (1) No person shall perform services as a pest control consultant without first procuring from the department a license in the classifications he has applied for under KRS 217B.060. Application for a license shall be on a form prescribed by the department and shall include the applicable information stipulated in subsection (2) of *Section 3 of this Act* ~~[KRS 217B.070]~~. The application for a license shall be accompanied by an annual fee of *fifty dollars (\$50)* ~~[\$50]~~.
- (2) Each applicant for a pest control consultant's license shall be required to present to the department satisfactory evidence of training and experience providing a basic background to understand pest control principles. ~~The~~ ~~[Such]~~ applicant shall be required to pass satisfactorily a written examination to be prescribed by the department to demonstrate the applicant's specific knowledge under subsection (3) of *Section 3 of this Act* ~~[KRS 217B.070]~~.
- (3) *If an applicant provides a copy of a valid Kentucky Certified Crop Advisor certification to the department, the test and fee for a consultant license may be waived.*

Section 8. KRS 217B.103 is amended to read as follows:

- (1) The department may suspend for not longer than ten (10) days, pending inquiry, and, after opportunity for a hearing, the department may deny, suspend, revoke, or modify the provision of any license issued under KRS 217B.100 if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this section:
  - (a) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized or sold;
  - (b) Made a pesticide recommendation not in accordance with the label registered *as provided by* ~~[pursuant to]~~ KRS 217.541 to 217.640;
  - (c) Violated any provision of this chapter or any *administrative* ~~[rule or]~~ regulation *promulgated* ~~[adopted]~~ by the department or of any lawful order of the department;
  - (d) Failed to pay the original or renewal license fee when due ~~[, and continue to sell restricted use pesticides without paying the license fee, or sold restricted use pesticides without a license];~~
  - (e) Was guilty of gross negligence, incompetency, or misconduct in acting as a *consultant, or* ~~[pesticide dealer];~~
  - ~~(f) Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required;~~
  - ~~(g) Made false or fraudulent records, invoices, or reports;~~
  - ~~(h) used fraud or misrepresentation in making an application for a license or renewal of a license ~~[, or in selling or offering to sell restricted use pesticides];~~~~
  - ~~(f) ~~(i)~~ Refused or neglected to comply with any limitations or restrictions on or in a duly issued license;~~
  - ~~(g) ~~(j)~~ Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, combined or conspired with ~~[such]~~ a licensed or unlicensed person to evade the provisions of this chapter, or allowed one's license to be used by an unlicensed person; or~~
  - ~~(h) ~~(k)~~ Impersonated any state, county, or city inspector or official;~~
  - ~~(l) Stored or disposed of containers or pesticides by means other than those prescribed on the label or adopted regulations}.~~
- (2) Any licensee whose license is revoked under the provisions of this section shall not be eligible to apply for a new license ~~[hereunder]~~ until *the* ~~[such]~~ time has elapsed from the date of the order revoking *the* ~~[said]~~ license as established by the department, not to exceed two (2) years, or if an appeal is taken from *the* ~~[said]~~ order or revocation, not to exceed two (2) years from the date of the order or final judgment sustaining *the* ~~[said]~~ revocation.

Section 9. KRS 217B.105 is amended to read as follows:

- (1) No person shall act in the capacity of a ~~[pesticide]~~ dealer, or shall engage or offer to engage in the business of, advertise as, or assume to act as a ~~[restricted use pesticide]~~ dealer *without having registered as a dealer with*

~~the department unless he is licensed annually as provided in this section. A separate license and fee shall be required for each location or outlet from which restricted use pesticides are distributed.~~

- (2) Application for a ~~pesticide~~ dealer **registration**~~license~~ shall be in the form and shall contain the information prescribed by the department. Each application shall be accompanied by a fee of **fifty dollars (\$50)**~~five dollars (\$5)~~. All **registrations**~~licenses~~ issued under this section shall expire on December 31 of the year for which they are issued. The **registration**~~license~~ for a ~~pesticide~~ dealer may be renewed annually upon application to the department, accompanied by a fee of **fifty dollars (\$50)**~~five dollars (\$5)~~ for each **registration**~~license~~, on or before the first day of January of the calendar year for which the **registration**~~license~~ is issued.
- (3) **No person shall be registered as a dealer without proof of financial responsibility as required by Section 15 of this Act.**
- (4) **A dealer shall register each branch office location.**
- (5) **Application for a branch office registration shall be in the form and shall contain the information prescribed by the department. Each application shall be accompanied by a fee of twenty-five dollars (\$25). All registrations issued under this section shall expire on December 31. The registration for a branch office may be renewed annually upon application to the department, accompanied by a fee of twenty-five dollars (\$25) for each registration, on or before the first of January of the calendar year for which the registration is issued. No branch office registration may be issued unless the applicant is registered as a dealer.**
- (6) The department shall issue to each applicant who satisfies the requirements of this section a **registration**~~license~~ which entitles the applicant to conduct the business described in the application for the calendar year for which the **registration**~~license~~ is issued, unless the **registration**~~license~~ is sooner revoked or suspended.
- (7)~~(4)~~ The department shall **promulgate administrative**~~prescribe~~ regulations requiring~~restricted use pesticide~~ dealers to maintain~~such~~ records with respect to their operations as it determines are necessary for the effective enforcement of this chapter. **The**~~Such~~ records shall include, but not be limited to~~;~~ brands and amounts of restricted use pesticides sold, **and the**~~;~~ buyer's name, address, **use of the pesticide**, and **certification**~~applicator's license~~ number.~~;~~ ~~provided that, no~~ Records required under this section shall extend to financial data, sales data,~~other than amount and~~ shipment data,~~pricing data~~ and personnel data. **The**~~Such~~ records are to be retained for a period of two (2) years from the time of sale. For the purposes of enforcing the provisions of this chapter, any~~pesticide~~ dealer shall, upon request of the department, furnish or permit the department at all reasonable times to have access to, and to copy, records as required by this section.

Section 10. KRS 217B.107 is amended to read as follows:

Each~~pesticide~~ dealer shall be responsible for the actions of every person who acts as his employee or agent in the solicitation or sale of restricted use pesticides, and in all claims and recommendations for use or application of restricted use pesticides.

SECTION 11. A NEW SECTION OF KRS CHAPTER 217B IS CREATED TO READ AS FOLLOWS:

- (1) **The department shall establish a licensure program for pesticide sales agents. The department shall require an applicant for licensure to show upon examination that the applicant possesses adequate knowledge concerning the proper use and application of pesticides.**
- (2) **Application for a pesticide sales agent license shall be in the form and shall contain information prescribed by the department. Each application shall be accompanied by a fee of five dollars (\$5). All licenses issued under this section shall expire on December 31 of the year issued. The license for a pesticide sales agent may be renewed annually upon application to the department, accompanied by a fee of five dollars (\$5) for each license, on or before the first day of January of the calendar year for which the license is issued.**
- (3) **The department shall issue to each applicant who meets the requirements of this section a license that entitles the applicant to hold himself or herself out as a pesticide sales agent.**
- (4) **No person shall hold himself or herself out as a pesticide sales agent unless that person is licensed as provided for in this section.**
- (5) **No person shall make recommendations for the use or application of pesticides unless that person is licensed as provided for in this section.**

- (6) *No person shall sell or distribute restricted use pesticides to the final user unless that person is licensed as provided for in this section.*
- (7) *No license shall be issued unless the applicant holds a valid certification within this category.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 217B IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall establish and administer a program to register trainees.*
- (2) *A dealer shall not employ a trainee to apply pesticides manually or as the applicator directly in charge of any equipment that is licensed or should be licensed under the provisions of this chapter for the application of any pesticide without registering the trainee with the department. It shall be unlawful for any person to act as a trainee without being registered.*
- (3) *Application for a trainee registration shall be in the form and shall contain the information prescribed by the department. Each application shall be accompanied by a fee of five dollars (\$5).*
- (4) *Trainee registration shall be valid for ninety (90) days and shall not be reissued or renewed.*

Section 13. KRS 217B.110 is amended to read as follows:

- (1) If the application for renewal of any license *or registration* provided for in this chapter is not filed prior to March 1 in any year, a penalty of twenty-five percent (25%) shall be assessed and added to the original fee and shall be paid by the applicant before the renewal ~~is~~~~license shall be~~ issued~~;~~~~such penalty shall not apply if the applicant furnishes an affidavit certifying that he has not engaged in the business subsequent to the expiration of his license~~.
- (2) Any person holding a current valid license may renew ~~the~~~~such~~ license for the next year without taking another examination unless the department determines that new knowledge related to classifications for which the applicant has applied makes a new examination necessary. However, if the license is not renewed by June 1 of each year, then ~~the~~~~such~~ licensee shall ~~again~~ be required to take another examination.
- (3) *No license will be issued or renewed unless certification is valid for the calendar year or the applicant has met training requirements that will allow for a renewal of certification within the calendar year for the license.*

Section 14. KRS 217B.120 is amended to read as follows:

The department may *assess civil penalties as provided by Section 20 of this Act, or may* suspend, revoke, *delay issuing*, or modify the provision of any ~~applicant's, operator's, or consultant's~~ license *or registration* issued under this chapter, if it finds that the applicant or ~~holder~~~~licensee~~ has committed any of the following acts, each of which is declared to be a violation of this chapter:

- (1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;
- (2) Made a pesticide recommendation or application not in accordance with the label registered by the department under KRS 217.541 to 217.640;
- (3) Applied known ineffective or improper materials;
- (4) Operated faulty or unsafe equipment;
- (5) Operated *application equipment* in a ~~faulty~~ careless~~;~~ or negligent manner;
- (6) Refused or, after notice, neglected to comply with the provisions of this chapter, the *administrative regulations promulgated under this chapter*~~rules adopted hereunder~~, or of any lawful order of the department;
- (7) Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required;
- (8) Made false or fraudulent records, invoices, or reports;
- (9) Engaged in the business of the application of a pesticide without having a licensed applicator or operator in direct "on-the-job" supervision;
- (10) Operated *unregistered*~~unlicensed~~ equipment;

- (11) Used fraud or misrepresentation in making an application for a license **or registration** or renewal of a license **or registration**;
- (12) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or **registration**~~permit~~;
- (13) Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, combined or conspired with~~such~~ a licensed or an unlicensed person to evade the provisions of this chapter, or allowed one's license to be used by an unlicensed person;
- (14) Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;~~or~~
- (15) Impersonated any state, county, or city inspector or official;
- (16) **Made a sale to, or distributed a restricted use pesticide to, an uncertified applicator;**
- (17) **Failed to obtain any license or registration required by this chapter;**
- (18) **Failed to obtain or maintain financial responsibility required by this chapter;**
- (19) **Failed to comply with the provisions of Section 19 of this Act;**
- (20) **Failed to provide direct on-the-job supervision of a trainee by a licensed operator or applicator in the application of a pesticide;**
- (21) **Failed to follow notification and information requirements in accordance with Section 22 of this Act, including:**
  - (a) **Failure to provide customer written information prior to application;**
  - (b) **Failure to place lawn marker;**
  - (c) **Failure to meet minimum requirements for lawn marker;**
  - (d) **Failure to furnish customer proper information at application; or**
  - (e) **Failure to furnish prior notification of application when requested; or**
- (22) **Failed to follow notification and information requirements in accordance with Section 23 of this Act, including:**
  - (a) **Failure to place golf course marker immediately after application;**
  - (b) **Failure to meet minimum requirements for golf course marker; or**
  - (c) **Failure to furnish prior notification of application when requested.**

Section 15. KRS 217B.130 is amended to read as follows:

- (1) The department shall not issue **or renew a dealer registration to a dealer applying pesticides to the lands of others**~~pesticide applicator license in the category of right of way pest control or in any aerial pesticide application category~~ until the applicant has furnished evidence of financial responsibility with the department consisting either of a surety bond or a liability insurance policy, or certification **of the bond or policy**~~thereof~~, protecting persons who may suffer legal damages as a result of the applicant.~~All other categories shall be exempt from the requirement to furnish financial responsibility.~~
- (2) The amount of the surety bond or liability insurance as provided for in this section shall be not less than **one million dollars (\$1,000,000)**~~one hundred thousand dollars (\$100,000) for public liability and not less than twenty five thousand dollars (\$25,000) for property damage, including loss or damage arising out of the actual use of any pesticide. Such~~ surety bond or liability insurance shall be maintained at not less than **that amount**~~those amounts~~ at all times during the licensed period. The department shall be notified ten (10) days prior to any reduction at the request of the applicant or cancellation of **the**~~such~~ surety bond or liability insurance by the surety or insurer. The total and aggregate of the surety and insurer for all claims shall be limited to the face of the bond or liability insurance policy. The department may accept a liability insurance policy or surety bond in the proper sum which has a deductible clause in an amount not exceeding one thousand dollars (\$1,000) for all applicators for the total amount of liability insurance or surety bond required~~herein~~. If the applicant has not satisfied the requirements of the deductible amount in any prior legal claim, **the**~~such~~ deductible clause shall not be accepted by the department unless **the**~~such~~ applicant furnishes the



department with a security bond or liability insurance which shall satisfy the amount of the deductible as to all claims that may arise in his application of pesticides.

- (3) Should the surety furnished become unsatisfactory, ~~the~~<sup>said</sup> applicant shall upon notice execute a new bond or insurance and shall he fail to do so, the department shall cancel ~~the registration~~<sup>his license</sup> and it shall be unlawful ~~thereafter~~ for ~~the~~<sup>such</sup> person to engage in ~~the~~<sup>said</sup> business of applying pesticides until the bond or insurance is brought into compliance with the requirements of subsection (2) of this section and ~~the registration~~<sup>his license</sup> is reinstated by the department.
- (4) Nothing in this chapter shall be construed to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though ~~the~~<sup>such</sup> use conforms to the ~~administrative~~<sup>rules and</sup> regulations of the department.

Section 16. KRS 217B.140 is amended to read as follows:

- (1) The person claiming damages from pesticide application shall ~~file~~<sup>have filed</sup> with the department a written statement claiming that he has been damaged, on a form prescribed by the department, within sixty (60) days after the date that damages occurred, or prior to the time that twenty-five percent (25%) of a crop damaged ~~has~~<sup>shall have</sup> been harvested. ~~The~~<sup>Such</sup> statement shall contain, but shall not be limited ~~to~~<sup>thereto</sup>, the name of the person responsible for the application of ~~the~~<sup>said</sup> pesticide, the name of the owner or lessee of the land on which the crop is grown and for which damages are claimed, and the date on which it is alleged that the damage occurred. The department shall prepare a form to be furnished to persons to be used in ~~those~~<sup>such</sup> cases and ~~the~~<sup>such</sup> form shall contain ~~such~~ other requirements as the department may deem proper. The department shall, upon receipt of ~~the~~<sup>such</sup> statement, notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility, for the damages claimed, and furnish copies of ~~the~~<sup>such</sup> statements as may be requested.
- (2) The filing of ~~a~~<sup>such</sup> report or the failure to file ~~such~~ a report need not be alleged in any complaint which might be filed in a court of law, and the failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action. The failure to file ~~such~~ a report shall not be a violation of this chapter. ~~However,~~ If the person failing to file ~~the~~<sup>such</sup> report is the only one injured from ~~the~~<sup>such</sup> use or application of a pesticide by others, the department may, when in the public interest, refuse to hold a hearing for the denial, suspension, or revocation of a license or ~~registration~~<sup>permit</sup> issued under this chapter until ~~the~~<sup>such</sup> report is filed.
- (3) When damage is alleged to have been done, the claimant shall permit the licensee, **registration holder**, and his representatives, such as bondsman or insure, to observe within reasonable hours the lands or nontarget organism alleged to have been damaged in order that ~~the~~<sup>such</sup> damage may be examined. Failure of the claimant to permit ~~the~~<sup>such</sup> observation and examination of the damaged lands shall automatically bar the claim against the licensee **or registration holder**.

Section 17. KRS 217B.170 is amended to read as follows:

- (1) *The department shall require an annual fee of ten dollars (\$10) for each aircraft to be registered and a fee of ten dollars (\$10) for each piece of ground equipment to be registered, in the business of applying pesticides to the lands of another within this state. Should any equipment fail to pass inspection under KRS 217B.160, the department shall, pending inquiry and reinspection, suspend or revoke the registration. In addition to the required inspection, unannounced inspections may be made without charge to determine if equipment is properly calibrated and maintained in conformance with applicable laws and administrative regulations.*
- (2) All ~~registered~~<sup>licensed</sup> equipment shall be identified by a license plate or decal furnished by the department, ~~and at no cost to the licensee, which plate~~ shall be affixed in a location and manner upon ~~the~~<sup>such</sup> equipment as prescribed by the department.

Section 18. KRS 217B.180 is amended to read as follows:

- (1) The provisions of KRS 217B.020 to 217B.180 relating to licenses **or registration** and requirements for their issuance shall not apply to any farmer owner of ground equipment applying nonrestricted use pesticides for himself or his farmer neighbors ~~if, provided, that:~~
  - (a) ~~—~~ he applies the pesticides for his farmer neighbors without compensation other than trading of personal services;

- (b) ~~All equipment not engaged in the application of pesticides for hire shall be identified by a license plate or decal furnished by the department at no cost to the owner with an inscription informing persons that such equipment is not to be used in the application of pesticides for hire under KRS 217B.070. It is the responsibility of the owner to inform the department in writing if any changes in status are to be made.~~
- (2) The licensing *or registration* provisions of KRS 217B.020 to 217B.180 shall not apply to any person using handpowered equipment, devices, or contrivances to apply nonrestricted use pesticides to lawns, or to ornamental shrubs and trees not in excess of twelve (12) feet high, as an incidental part of his activity of taking care of his household lawn and yard or those of his neighbors, on the condition that ~~the[such]~~ person shall not publicly hold himself out as being in the business of applying pesticides, and shall not accept compensation other than the trading of personal services for ~~the[such]~~ activity.
- (3) KRS 217B.020 to 217B.180 shall not apply to operators presently licensed and regulated under the provisions of KRS 249.250 to 249.340 on June 17, 1978, except that if required by EPA regulations ~~the[such]~~ persons may be issued, without additional fees or examination, an applicator's license to enable them to purchase and use restricted use pesticides *in accordance with* ~~[pursuant to]~~ the requirements of the Federal Environmental Pesticide Control Act of 1972.
- (4) *The registration provisions of Section 9 of this Act shall not apply to any noncommercial applicator.*
- (5) *The licensing provisions of Section 5 of this Act shall not apply to any trainee.*

Section 19. KRS 217B.190 is amended to read as follows:

- (1) No person shall discard or store any pesticide or pesticide containers in ~~such~~ a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, *or* pollinating insects, or to pollute any waterway in a way harmful to any wildlife ~~therein~~.
- (2) No person shall use any registered pesticide in a manner not in accordance with its label.
- (3) No person shall purchase, use, or supervise the use of, a restricted use pesticide unless ~~the[such]~~ person *is certified* ~~[be licensed]~~ in a classification which permits ~~the[such]~~ purchase, use, or supervision of use.
- (4) No person shall distribute a restricted use pesticide to a person who *does not have the appropriate certification, registration, or license* ~~[is not licensed as a restricted use pesticide dealer or applicator]~~ as prescribed in this chapter.

Section 20. KRS 217B.193 is amended to read as follows:

- (1) ~~If [When]~~ any of the requirements of this chapter or administrative regulations promulgated *under this chapter* ~~[pursuant thereto]~~ have not been complied with, the Commissioner shall cause a notice of violation to be issued ~~[upon the permit holder]~~. The Commissioner *may issue an order for immediate compliance and assess the civil penalty provided for in this section and in KRS 217B.990, or the Commissioner may* ~~[shall]~~ set forth in his notice a reasonable time period, but not more than ninety (90) days, for the abatement of the violation. If any *licensee or registration* ~~[license]~~ holder has not abated the violation within the period of time prescribed in the notice of violation, the Commissioner shall issue an order for immediate compliance and assess the civil penalty provided for in this section and in KRS 217B.990. The notice of noncompliance shall be mailed to the *licensee or registration* ~~[license]~~ holder by certified mail, return receipt requested, addressed to the ~~[license holder's]~~ permanent address as shown on department records. The notice of noncompliance shall specify in what respect the *licensee or registration* ~~[license]~~ holder has failed to comply with this chapter or administrative regulations promulgated *under this chapter* ~~[pursuant thereto, and the period of time established for abatement]~~. If the *licensee or registration* ~~[license]~~ holder has not complied with the requirements set forth in the notice of noncompliance within the time limit allowed, the license *or registration* may be revoked as provided in this chapter.
- (2) The Commissioner shall develop a method for calculating the civil penalty for *a violation, or* failure to abate a violation, within the prescribed time period as authorized by this section, and he shall promulgate a schedule of the civil penalties in an administrative regulation.

Section 21. KRS 217B.220 is amended to read as follows:

The department may issue subpoenas to compel the attendance of witnesses *or* ~~[and/or]~~ production of books, documents, and records anywhere in the state in any hearing affecting the authority or privilege granted by a license *or registration* ~~[permit]~~ issued under the provisions of this chapter.

Section 22. KRS 217B.300 is amended to read as follows:

(1) The following definitions apply to this section:

- (a) "Application" means the spreading of lawn chemicals in liquid or dry form on a lawn;
- (b) "Applicator for hire" means any person who makes an application of lawn chemicals to a lawn for compensation, including applications made by an employee to lawns owned, occupied or managed by his employer;
- (c) "Customer" means a person who makes a contract, either written or verbal, with an applicator for hire to apply a pesticide to a lawn;
- (d) ~~"Fertilizer" means any substance containing nitrogen, phosphorus, potassium or other recognized plant nutrient or compound which is used for its plant nutrient content;~~
- ~~(e)~~ "Lawn" means land area covered with turf kept closely mown, except land areas used for agricultural production~~, golf courses~~, commercial production of turf, or land situated within three (3) feet of the foundation of a structure when a pesticide is applied to this area as a preventive or control measure for structural pests;
- ~~(e)~~~~(f)~~ "Lawn chemicals" means fertilizers, pesticides, or defoliants applied or intended for application to lawns;
- ~~(f)~~~~(g)~~ "Structural pest" means a pest which commonly invades or attacks dwellings or structures; and
- ~~(g)~~~~(h)~~ "Turf" means the upper stratum of soils bound by grass and plant roots into a thick mat.

(2) The following notification requirements shall be met:

- (a) An applicator for hire shall provide a customer at the time of entering into a contract, ~~either written or verbal, or a reasonable time thereafter,~~ with written information concerning lawn chemicals, application procedures, and other general guidelines about the safe use of lawn chemicals; ~~and~~
- (b) Immediately following application of lawn chemicals to a lawn, the applicator shall place a lawn marker at a prominent location in the lawn; ~~and~~
- (c) The lawn marker shall consist of, at a minimum, a four (4) inch by five (5) inch white sign attached to the upper portion of a dowel or other supporting device of not less than twelve (12) inches in length; ~~and~~
- (d) Lettering on the lawn marker shall be in a contrasting color and shall read on one side "LAWN CARE APPLICATION - PLEASE STAY OFF GRASS UNTIL DRY" in letters easily readable and not less than three-eighths (3/8) *inches in height*~~inch~~. The lawn marker may also display a symbol depicting the required message and the name, logo, and service mark of the applicator; ~~and~~
- (e) The lawn marker shall be removed and discarded by the property owner or resident, or other person authorized by the property owner or resident, the day following application; ~~and~~
- (f) For applications to residential properties of three (3) families or less, the applicator shall place one (1) lawn marker per property; *and* ~~and~~
- (g) For applications to properties other than residential property of three (3) families or less, the applicator shall place lawn markers at primary points of entry to the property to provide notice that lawn chemicals have been applied to the lawn.

(3) At the time of application of lawn chemicals to a lawn, an applicator for hire shall provide the following information to the customer, either homeowner or landlord, for each lawn chemical used, *and shall record and maintain at the business address the following information relating to the application of each lawn chemical:*

- (a) The brand name or common name of the pesticide applied;
- (b) The pesticide type;
- (c) The fertilize rate *and* ~~for~~ analysis;
- (d) The reason for use;

- (e) The concentration of end use product applied to the lawn,~~and~~ the rate of application, ***and the total gallons of end use product applied to the lawn;***
  - (f) Any special instruction appearing on the label of the lawn chemical product applicable to the customer's use of the lawn following application and any other precautionary or hazard information appearing on the label as applicable to the end use concentration;~~and~~
  - (g) The name and the state applicator license or certificate number of the individual actually making the application;
  - (h) ***Customer name, address, and date of application; and***
  - (i) ***Total area of lawn treated.***
- (4) Any customer of an applicator for hire, or a neighbor whose residence is adjoining to a customer of an applicator for hire, may ***request***~~receive~~ prior notification twenty-four (24) to forty-eight (48) hours in advance of an application by contacting the applicator for hire and providing his name, address, and telephone number. In this event, the applicator for hire shall provide notification in writing, in person, or by telephone, of the date and approximate time of application. If an applicator for hire is unable to provide prior notification to a customer or neighbor because of the absence or inaccessibility of the individual, the applicator shall leave a written notice at the residence.

~~[(5) Violations of this section shall be punishable by a civil fine of not more than one hundred dollars (\$100) for each violation.]~~

SECTION 23. A NEW SECTION OF KRS CHAPTER 217B IS CREATED TO READ AS FOLLOWS:

- (1) ***The provisions of Section 22 of this Act relating to notification and information requirements shall not apply to any golf course or its employees.***
- (2) ***As used in this section:***
  - (a) ***"Application" means the spreading of plant-regulating materials in liquid or dry form on a golf course;***
  - (b) ***"Golf course" means land on which turf and ornamental care, including application of pesticides or fertilizer and storage of pesticides or fertilizer, is done for the purpose of preparing the land for use in the game of golf;***
  - (c) ***"Plant-regulating materials" means fertilizers, pesticides, or defoliants applied or intended for application to a golf course; and***
  - (d) ***"Turf" means the upper stratum of soils bound by grass and plant roots into a thick mat.***
- (3) ***The following shall be required by a golf course relating to records, notification, and information requirements:***
  - (a) ***Immediately following application of plant-regulating materials on a golf course, the applicator shall place a golf course marker on the number-one (1) and number-ten (10) tees;***
  - (b) ***The golf course marker shall consist of, at a minimum, a four (4) inch by five (5) inch white sign attached to the upper portion of a dowel or other supporting device of not less than twelve (12) inches in length;***
  - (c) ***Lettering on the golf course marker shall be in a contrasting color and shall read on one side "PLANT-REGULATING MATERIALS HAVE BEEN APPLIED. IF DESIRED, YOU MAY CONTACT THE GOLF COURSE SUPERINTENDENT FOR FURTHER INFORMATION" in letters easily readable and not less than three-eighths (3/8) inches in height. The golf course marker may also display a symbol depicting the required message and the name, logo, and service mark of the applicator;***
  - (d) ***The golf course marker may be removed by the applicator or other personnel authorized by the golf course management the day following application;***
  - (e) ***Any person whose residence directly adjoins a golf course may request prior notification of a plant-regulating material application by contacting the golf course superintendent's office and providing his or her name, address, and telephone number. If requested, the golf course shall provide***

*notification in writing, in person, or by telephone. In the event the golf course cannot provide advance notice, the person shall be contacted at the time of application. If the golf course is unable to provide prior notification or direct notification to a resident because of the absence or unavailability of the resident, the golf course shall leave a written notice at the residence; and*

- (f) *Material safety data sheets for each plant-regulating material shall be in an area of the superintendent's office where they can be easily read and accessible by patrons of the golf course.*
- (4) *At the time of application of plant-regulating materials to a golf course, an applicator shall record and maintain the following information for each plant-regulating material used:*
  - (a) *The brand name or common name of the pesticide applied;*
  - (b) *The pesticide type;*
  - (c) *The fertilize rate and analysis;*
  - (d) *The reason for use;*
  - (e) *The concentration of end use product applied to the golf course, the rate of application, and the total gallons of end use product applied to the golf course;*
  - (f) *The location of area treated;*
  - (g) *Any special instruction appearing on the label of the plant-regulating material applicable to the golf course use following application and any other precautionary or hazard information appearing on the label as applicable to the end use concentration; and*
  - (h) *The name and the state applicator license or certification number of the individual actually making the application.*
- (5) *This record shall be maintained in the golf course superintendent's office and shall be readily available to review on request. This record shall be retained for three (3) years and be an inspectable item for the department.*

**Approved March 28, 2000**

## **CHAPTER 173**

### **(SCR 61)**

A CONCURRENT RESOLUTION recognizing the Catbird 500 Air Derby as the official Kentucky Air Derby.

WHEREAS, one of the top seven air races in the country is held annually in Kentucky, and we are proud to recognize the Kentucky Bluegrass 99s of the Women's International Pilot Association as the host of the Catbird 500 Air Derby and Safety Seminars, sponsored by United Parcel Service, American Airlines, Chevron, Kentucky Aviation Association, and private individuals; and

WHEREAS, all proceeds raised by the Catbird 500 Air Derby go to charity, and the 1999 Air Derby raised over \$1,700 for the Marine Corps Toys for Tots, \$100 for the Special Olympics and \$100 for the Crusade for Children, and approximately 200 people attended the Safety Seminars and outside exhibits; and

WHEREAS, the Catbird 500 Air Derby is a contest of speed and proficiency; it grew from five racing teams at the onset to fifteen teams in the 1999 race, including teams from twelve states and Canada; the Air Derby's 500 flight miles included seven different airports in Kentucky, beginning and ending at Bowman Field in Louisville; and

WHEREAS, the next annual Catbird 500 Air Derby will be held on October 14, 2000, and it is fitting and proper for this honorable body to recognize this Kentucky Aviation Project;

NOW, THEREFORE,

*Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky, the House of Representatives concurring therein:*

Section 1. The General Assembly is indeed proud and honored to recognize the Catbird 500 Air Derby as the official Kentucky Air Derby, and we wish to the Kentucky Bluegrass 99s of the Women's International Pilot Association success in all future endeavors.

Section 2. When the Senate adjourns this day, it does so in honor of the Catbird 500 Air Derby as the official Kentucky Air Derby.

Section 3. The Clerk of the Senate is hereby directed to transmit a copy of this Resolution to Ms. Sylvia Sue Hall, Chairman, Kentucky Bluegrass 99s, 5001 Carpenter Drive, Crestwood, Kentucky 40014-2157.

**Approved March 28, 2000**

## **CHAPTER 174**

### **(HB 4)**

AN ACT relating to identity theft.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 514 IS CREATED TO READ AS FOLLOWS:

- (1) A person is guilty of the theft of the identity of another when, without the other's consent, he or she knowingly possesses or uses any identifying information of the other person, such as one's name, Social Security number, birth date, personal identification number or code, which is kept in documents, photo or electrical copies, computer storage, or any other form of document retrieval and storage, and the theft is committed with the intent to represent that he or she is the other person for the purpose of:*
  - (a) Depriving the other person of property;*
  - (b) Obtaining benefits or property to which he or she would otherwise not be entitled;*
  - (c) Making financial or credit transactions using the other person's identity;*
  - (d) Avoiding detection; or*
  - (e) Commercial or political benefit.*
- (2) Theft of identity is a Class D felony.*
- (3) This section shall not apply when a person obtains the identity of another to misrepresent his or her age for the purpose of obtaining alcoholic beverages, tobacco, or another privilege denied to minors.*
- (4) This section does not apply to credit or debit card fraud under KRS 434.550 to 434.730.*
- (5) Where the offense consists of theft by obtaining or trafficking in the personal identity of another person, the venue of the prosecution may be in either the county where the offense was committed or the county where the other person resides.*
- (6) A person found guilty of violating any provisions of this section shall forfeit any lawful claim to the identifying information, property, or other realized benefit of the other person as a result of such violation.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 514 IS CREATED TO READ AS FOLLOWS:

- (1) A person is guilty of trafficking in stolen identities when without the other's consent, he manufactures, sells, transfers, purchases, or possesses with intent to manufacture, transfer, purchase, or sell the personal identity of another person for any purpose listed in subsection (1) of Section 1 of this Act. The personal identity of an individual includes any identifying information of that person, such as one's name, Social Security number, birth date, personal identification number or code, which is kept in documents, photo or electrical copies, computer storage, or any other form of document retrieval and storage.*
- (2) Possession of five (5) or more separate identities shall be prima facie evidence that the identities are possessed for the purpose of trafficking.*
- (3) Trafficking in stolen identities is a Class C felony.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

- (1) Anyone who is a victim under Section 1 or Section 2 of this Act shall have a cause of action, either where the victim resides or the defendant resides, for compensatory and punitive damages against anyone who violates Section 1 or Section 2 of this Act.*

- (2) *The statute of limitations for cases under the provisions of this section shall be five (5) years from the date of the discovery of the violation of Section 1 or Section 2 of this Act.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

- (1) *A person found guilty of violating any provisions of Section 1 or Section 2 of this Act shall, in addition to any other punishment, be ordered to make restitution for financial loss sustained by a victim as a result of the violation. Financial loss may include any costs incurred by the victim in correcting the credit history of the victim or any costs incurred in connection with any civil or administrative proceeding to satisfy any debt or other obligation of such victim, including lost wages and attorney's fees.*
- (2) *A person found guilty of violating any provisions of Section 1 or Section 2 of this Act shall pay restitution to the person or entity that suffers the financial loss. In addition to the financial loss detailed in subsection (1) of this section, the person or entity may include a financial institution, insurance company, or bonding association that suffers direct financial loss as a result of the violation.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

*The Attorney General shall have concurrent jurisdiction with Commonwealth's attorneys and county attorneys for the prosecution of offenses under and the enforcement of the provisions of Sections 1, 2, 3, and 4 of this Act.*

**Approved March 28, 2000**

## **CHAPTER 175**

**(HB 62)**

AN ACT changing the classification of the City of Pioneer Village, in Bullitt County.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Pioneer Village, in Bullitt County, is such as to justify its being classified as a city of the fourth class;

NOW THEREFORE,

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

Section 1. The City of Pioneer Village, in Bullitt County, is transferred from the fifth to the fourth class of cities.

**Approved March 28, 2000**

## **CHAPTER 176**

**(HB 141)**

AN ACT relating to police radios.

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

Section 1. KRS 432.570 is amended to read as follows:

- (1) It shall be unlawful for any person except a member of a police department or police force or an official with written authorization from the head of a department which regularly maintains a police radio system authorized or licensed by the Federal Communications Commission, to have in his or her possession, or in an automobile or other vehicle, or to equip or install in or on any automobile or other vehicle, any mobile radio set or apparatus capable of either receiving or transmitting radio or other messages or signals within the wave length or channel now or which may hereafter be allocated by the Federal Communications Commission, or its successor, for the purpose of police radios, or which may in any way intercept or interfere with the transmission of radio messages by any police or other peace officers. It shall be unlawful for any car, automobile, or other vehicle other than one publicly owned and entitled to an official license plate issued by the state issuing a license for the car, to have, or be equipped with the sets or apparatus even though the car is owned by an officer. This section shall not apply to any automobile or vehicle owned or operated by a member of a sheriff's department authorized by the fiscal court to operate a radio communications system that is licensed by the Federal Communications Commission or other federal agency having the authority to license same. Nothing in this section shall preclude a probation and parole officer employed by the Department of

Corrections from carrying on his person or in a private vehicle while conducting his official duties an authorized, state-issued portable radio apparatus capable of transmitting or receiving signals.

- (2) Any person guilty of violating any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than fifty dollars (\$50) and not exceeding five hundred dollars (\$500), or imprisonment not exceeding twelve (12) months, or both so fined and imprisoned.
- (3) It shall be the duty of any and all peace officers to seize and hold for evidence any and all equipment had or used in violation of the provisions of this section, and, upon conviction of the person having, equipping or using such equipment, it shall be the duty of the trial court to order such equipment or apparatus destroyed, forfeited, or escheated to the Commonwealth of Kentucky, and said property may be ordered destroyed, forfeited, or escheated as above provided without a conviction of the person charged with violating this section.
- (4) Nothing contained in this section shall prohibit the possession of a radio by:
  - (a) An individual who is a retailer or wholesaler and in the ordinary course of his business offers such radios for sale or resale;
  - (b) A commercial or educational radio or television station, licensed by the Federal Communications Commission, at its place of business; or
  - (c) An individual who possesses such a radio, provided it is capable of receiving radio transmissions only and is not capable of sending or transmitting radio messages, at his place of residence; licensed commercial auto towing trucks; newspaper reporters and photographers; emergency management agency personnel authorized in writing by the director of the division of emergency management (for state personnel) or chief executive of the city or county (for their respective personnel); a person holding a valid license issued by the Federal Communications Commission in the amateur radio service; peace officers authorized in writing by the head of their law enforcement agency, Commonwealth's attorneys and their assistants, county attorneys and their assistants, except that it shall be unlawful to use such radio to facilitate any criminal activity or to avoid apprehension by law enforcement officers. Violation of this section shall, in addition to any other penalty prescribed by law, result in a forfeiture to the local law enforcement agency of such radio.
- (5) *The provisions of this section shall not apply to a paid or volunteer member of a fire department or a paid or volunteer member of a public ambulance service licensed in Kentucky who has been given permission in writing by the chief of the fire department and the chief of each law enforcement agency whose frequency is to be monitored, or the director of the ambulance service and the chief of each law enforcement agency whose frequency is to be monitored, to possess a radio capable of receiving on a frequency allocated to a police department or law enforcement agency, whether the radio is in a vehicle or not.*
- (6) The secretary of the Finance and Administration Cabinet is hereby empowered by issuance of a secretary's order to exempt from the prohibitions and penalties of this section the possession and use of any and all radio communication equipment that he finds is necessary to be owned and used by members of the general public and other nonpolice persons for utilization in the N.O.A.A. weather radio system.

**Approved March 28, 2000**

## **CHAPTER 177**

### **(HB 301)**

AN ACT relating to fire chiefs and assistant chiefs in cities of the second class.

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

Section 1. KRS 95.500 is amended to read as follows:

- (1) The chief of the fire department in cities of the second class or urban-county governments, or an officer acting under his authority, shall be present at all fires and investigate their cause. He may examine witnesses, compel the production of testimony, administer oaths, make arrests, and enter any building for the purpose of examination that, in his opinion, is in danger from fires. He shall report his proceedings to the city legislative body when required.



- (2) The chief shall direct and control the operations of the members of the fire department in the discharge of their duties. He shall have access to and use of all cisterns, fireplugs, the waters of the waterworks, and the cisterns of private persons, for the purpose of extinguishing fires. He shall have the right to examine all cisterns, and all plugs and pipes of the waterworks, to see that they are in condition for use in case of fire. He shall have control of all buildings, hose, engines, and other equipment provided for the fire department. He shall perform such other duties as the legislative body shall, by ordinance, prescribe.
- (3) The fire department of each ~~second class~~ city **of the second class** or urban-county government shall be divided into three (3) platoons. Each platoon, ***excluding the chief and the assistant chief in fire departments in cities of the second class***, shall be on duty for twenty-four (24) consecutive hours, after which the platoon serving twenty-four (24) hours shall be allowed to remain off duty for forty-eight (48) consecutive hours, except in cases of dire emergency. The chief of the fire department shall arrange the schedule of working hours to comply with the provisions of this section. The pay, rank, or benefits of the members and officers of the fire department shall not be reduced as a result of this subsection.
- (4) In each city of the second class or urban-county government, all employees of the fire department shall be given not less than two (2) weeks leave of absence annually, with full pay.

**Approved March 28, 2000**

## CHAPTER 178

**(HB 335)**

AN ACT relating to city civil service positions.

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

Section 1. KRS 90.300 is amended to read as follows:

- (1) In KRS 90.310 to 90.410, unless the context requires otherwise:
  - (a) "Administrative or directorial position" means the head of a department of municipal government.
  - (b) "Appointing authority" means the officer, commission, board or body having the power of appointment or removal in any office, department, commission, board or institution.
  - (c) "Civil service" means the offices and positions of trust or employment in the service of the city not specifically excluded by KRS 90.310 to 90.410 or by ordinance of the city as provided in KRS 90.310.
  - (d) "Commission" means the board of civil service commissioners as established under KRS 90.310.
  - (e) "Dismissal" means the discharge of an employee.
  - (f) "Employee" means any person employed in the conduct of municipal affairs, but the term shall not include the mayor or city manager, an administrative or directorial position established for cities of the second or third class, except that the legislative body, no later than December 31, 1982, may elect by ordinance to designate persons in administrative or directorial positions as employees, however, any person employed in an administrative or directorial position on July 15, 1982, shall continue to be covered by the provisions of KRS 90.310 to 90.410 for ~~the~~ **such** time as he is employed in ~~a~~ **such** position notwithstanding the removal of the position from the definition of "employee" and in cities of the second class it shall not include the offices of the board of health, members of the planning and zoning commission, the board of trustees of the public library, members of the housing authority, municipal hospital commission or the trustees, members or corresponding officers of similar boards or commissions of cities of the second class, persons employed on temporary and special projects or to persons whose regular employments with the city are seasonal and are less than nine (9) months in any one (1) year, ***persons in a class of employees designated by ordinance to be non-civil service positions***, and the city clerk or city assessor of a city of the second class operating under the commission form of government.
  - (g) "Pension fund" means the moneys derived from the employees and the levy of a special tax, either or both, or any other sum derived from any other source, to be used for the retirement of employees after the prescribed years of service and for the benefit of disabled employees, and surviving spouses and

dependent children in the case of death of an employee within the scope of his employment according to the terms of KRS 90.310 to 90.410 and the ordinance of the city.

- (2) The provisions of KRS 90.310 to 90.410 are independent of and do not affect the laws governing the police and fire departments, nor their pension funds, in cities of the second and third classes.

Section 2. KRS 90.310 is amended to read as follows:

- (1) Any city of the second or third class may elect to operate under KRS 90.310 to 90.410, and, by ordinance, create a civil service commission which shall hold examinations as to the qualifications of applicants for municipal employment within the several departments of the city that are designated by ordinance. ~~{In cities of the second class in which a civil service ordinance was adopted before June 19, 1946, the city shall, by ordinance, create civil service classifications for all employees consistent with the actual work to be performed by such employees;}~~ In *all* ~~other~~ cities of the second class, and in cities of the third class, the city may, by ordinance, classify employees and designate the class of employees it desires to include.
- (2) The mayor, subject to the approval of the city legislative body, shall appoint at least three (3) but no more than five (5) persons who shall constitute the civil service commission of that city. Each appointee shall be at least thirty (30) years of age and not related by either blood or marriage to the mayor or any member of the city legislative body. The appointees shall originally be appointed one (1) for a term of three (3) years, one (1) for a term of two (2) years and all remaining appointments shall be for a term of one (1) year, and the successors to these appointees shall be appointed in like manner, each for a period of three (3) years and until his successor is appointed and qualified. A vacancy shall be filled for the unexpired term in the same manner as original appointments. At the time of any appointment, if the mayor elects to appoint only three (3) commissioners, not more than two (2) commissioners shall be adherents of the same political party. If the mayor elects to appoint more than three (3) commissioners not more than three (3) commissioners shall be adherents of the same political party. The appointee originally appointed for the term of three (3) years shall be secretary of the commission. Each appointee shall qualify by taking an oath of office as required by law. The salaries of the members of the commission may be fixed by the city legislative body.
- (3) If the appointing authority of any city fails to appoint a civil service commission within thirty (30) days after he has the power to so appoint or after a vacancy exists, the mayor pro tem shall make the appointment and the appointee shall hold office until the expiration of the term and until his successor is appointed and qualified.
- (4) The civil service commission shall make and enforce rules, not inconsistent with the provisions of KRS 90.310 to 90.410 or the ordinances of the city, for examinations and registrations therefor.

**Approved March 28, 2000**

## **CHAPTER 179**

**(HB 358)**

AN ACT relating to animal control.

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

Section 1. KRS 258.095 is amended to read as follows:

As used in KRS 258.095 to 258.365 and KRS 258.990(3) and (4), unless the context requires otherwise:

- (1) "Department" means the Department of Agriculture;
- (2) "Commissioner" means the Commissioner of Agriculture;
- (3) "Committee" means the advisory committee created by KRS 258.115;
- (4) "Dog" means any member of the canine family, six (6) months of age or over;
- (5) "Owner," when applied to the proprietorship of a dog, includes every person having a right of property in the dog and every person who keeps or harbors the dog, or has it in his care, or permits it to remain on or about premises owned or occupied by him;
- (6) "Livestock" includes horses, stallions, colts, geldings, mares, sheep, rams, lambs, bulls, bullocks, steers, heifers, cows, calves, mules, jacks, jennets, burros, goats, kids, swine and confined and domesticated hares and rabbits;

- (7) "Poultry" includes all domesticated fowl and all game birds which are legally kept in captivity;
- (8) "Kennel" means any establishment where dogs are kept for the purpose of breeding, sale, show or sporting purposes, and which is so constructed that dogs cannot stray therefrom;
- (9) "Livestock fund" means the fund created by KRS 258.125 for the purpose of administering its provisions;
- (10) "Attack" means a dog's attempt to bite or successful bite of a human being. This definition shall not apply to a dog's attack of a person who has illegally entered or is trespassing on the dog owner's property in violation of KRS 511.060, 511.070, 511.080, or 511.090;
- (11) "Vicious dog" means any individual dog declared by a court to be a vicious dog;~~and~~
- (12) "Animal control officer" means an individual employed by a city, county, urban-county government, or charter county government who enforces the provisions of this chapter and local dog control ordinances; **and**
- (13) ***"Designated license facility" means any person, facility, or business designated by resolution of the fiscal court to collect license fees under Section 3 of this Act.***

Section 2. KRS 258.119 is amended to read as follows:

- (1) The "Animal Control and Care Fund" is hereby created as a special fund in the State Treasury. The fund may also receive gifts, grants from public and private sources, ***state appropriations***, and federal funds. Any unallotted or unencumbered balances in this fund shall be invested as provided for in KRS 42.500(9). Income earned from the investments shall be credited to the fund. Any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year, and moneys in this fund shall be continuously appropriated only for the purposes specified in this section.
- (2) Moneys ~~from the fund~~ shall be ~~allocated for distribution from the fund as follows:~~
  - ~~(a) Fifty percent (50%) of the fund balance shall be allocated annually for distribution to eligible counties. Each eligible county shall receive an equal allotment from the fund. To be eligible for an annual allotment, a county shall have an established animal control and care program meeting the requirements provided in subsection (3) of this section, or an approved plan to establish an animal control and care program as provided in subsection (4) of this section; and~~
  - ~~(b) Fifty percent (50%) of the fund balance shall be transferred annually to the Department of Agriculture. This money shall be~~ used by the Animal Control Advisory Board for board expenses, for the creation and support of statewide programs related to animal control and care, and for training dog wardens and animal control officers. "Statewide programs" includes, but is not limited to, the reimbursement of costs for preexposure rabies vaccinations for all animal control and care workers. ***When determining the distribution of the moneys relating to training, the need of the applicant shall be one of the criteria considered by the board.*** Based on recommendations of the Animal Control Advisory Board, any moneys not expended under this ~~subsection~~~~paragraph~~ may be distributed annually as grants to counties with an established animal control and care program meeting the requirements of subsection (3) of this section or approved plan to establish an animal control and care program under subsection (4) of this section.
- (3) As used in this section, "animal control and care program" means a program in which the county:
  - (a) Employs a dog warden or an animal control officer as required by KRS 258.195, who is a high school graduate and has completed the training requirements set forth by the Animal Control Advisory Board; and
  - (b) Maintains a dog pound or animal shelter, or contracts with an adjoining county, to provide services that:
    - 1. Segregate male and female animals in runs and holding areas;
    - 2. Provide separate runs or holding areas for ill or injured animals;
    - 3. Provide quarantine for dogs and cats presented to the shelter when quarantine by the owner is not feasible or desirable, the cost of quarantine to be borne by the animal owner at the shelter's regular housing costs and fees. Quarantined dogs and cats shall be held in isolation for observation of symptoms of rabies for a period of ten (10) days from the date the dog or cat bit or scratched a person. If the dog or cat dies or is euthanized while in quarantine, it shall be submitted to the local health department for testing for the presence of the rabies virus. The cost

of the testing shall be borne by the animal owner or the local health department may bear the cost at its discretion;

4. Provide holding areas with protection from the weather, including heated quarters during cold weather;
  5. Provide runs and cages built of materials which can be readily cleaned and disinfected, including floors made of an impervious material or a minimum of three (3) inches of gravel;
  6. Provide access to the public for no less than twenty-four (24) hours in one (1) week, with the hours that the facility is open to the public posted in a visible location;
  7. Employ euthanasia methods recommended by the American Veterinary Medical Association; and
  8. Provide other minimum standards as developed by the Animal Control Advisory Board and approved by the commissioner.
- (4) ~~[To be eligible for moneys distributed under paragraph (a) of subsection (2) of this section, counties shall submit documentation to the Animal Control Advisory Board, on a form prescribed by the Department of Agriculture, of an established animal control and care program or an approved plan to establish an animal control and care program.]~~ Counties submitting plans proposing to establish an animal control and care program for approval by the Animal Control Advisory Board shall comply with the requirements of:
- (a) Paragraph (a) of subsection (3) of this section within twelve (12) months of the date the documentation is submitted; and
  - (b) Paragraph (b) of subsection (3) of this section within twenty-four (24) months of the date the documentation is submitted.
- (5) To be eligible for any moneys distributed as grants to counties under ~~[paragraph (b) of]~~ subsection (2) of this section, counties shall submit an application to the commissioner, on a form prescribed by the Department of Agriculture, by July 15 of each year. Moneys shall be used for construction, equipment, educational supplies, and other uses or programs approved by the advisory board, but shall not be used to increase wages of dog wardens or other personnel. Counties receiving money from the Department of Agriculture shall comply with the terms of the plan or program. If the terms of the plan or program are not complied with, the county shall refund the money to the Department of Agriculture.
- (6) The commissioner shall promulgate administrative regulations that relate to the animal control and care fund provisions of this section.

Section 3. KRS 258.135 is amended to read as follows:

- (1) On or before July 1, 1954, and on or before July 1 of each year thereafter, the owner of any dog six (6) months old or over shall apply to the dog warden *or designated license facility* of the county in which he resides for a license for each dog owned or kept by him. The application shall be accompanied by a license fee of one dollar and fifty cents (\$1.50) for each dog, except as provided in KRS 258.500. Any license issued for the year of 1954 before July 1, 1954, shall be effective until July 1, 1955. Dog wardens *and designated license facilities* shall be agents of the Commonwealth in the collection of the license fees ~~[provided for herein]~~, unless the department determines, with the approval of the Governor, to issue all licenses either directly or through other agents. For services rendered in collecting and paying over the fee, dog wardens *or designated license facilities* shall be allowed to retain the sum of twenty-five cents (\$0.25) for each license. The balance of the license fee collected shall be paid to the department *quarterly* ~~[on or before the fifteenth day of each next succeeding month]~~ and shall be credited to the livestock fund. If the committee finds it to be in the interest of maximum enforcement of this chapter to permit certain other portions of the license fee to be retained by the respective counties for use in enforcement, the department may allow these portions of the license fee to be so retained by the counties.
- (2) Any county may choose to issue additional licenses in conjunction with effective dates of a valid rabies vaccination, provided the dog shall be licensed each fiscal year.

Section 4. KRS 258.185 is amended to read as follows:

Each dog warden shall keep a record of all dog and kennel licenses issued, *including licenses issued by designated license facilities*, and shall report to the department *quarterly* ~~[those monthly his]~~ license sales on a form prescribed

and supplied by the department. ***Designated license facilities shall make quarterly reports to the dog warden in order for the warden to report to the department.*** The record maintained shall be a public record.

Section 5. KRS 258.215 is amended to read as follows:

- (1) Peace officers, dog wardens, or animal control officers shall seize and impound any dog which does not bear a proper license tag or other legible identification which is found running at large, but if an officer, dog warden, or animal control officer, after diligent effort to do so, should fail to seize ~~the [such a]~~ dog, it shall then become his duty to destroy the dog by any reasonable and humane means. Any ~~[such]~~ dog which an officer, dog warden, or animal control officer seizes shall be impounded for ***a period of five (5) or seven (7) days, to be determined by the local animal shelter.*** ~~and~~ If ***the dog is*** not claimed by the owner or sold in accordance with other provisions of this chapter, then ~~the [such]~~ dog may be destroyed in some humane manner. ***Any animal shelter, public or private, which takes in stray dogs and does not have regular hours for public access, shall post semimonthly either in a local newspaper or the newspaper with the highest circulation in the county, the shelter location, hours of operation, the period that impounded dogs shall be held, and a contact number.***
- (2) A hound or other hunting dog which has been released from confinement for hunting purposes shall be deemed to be under reasonable control of its owner or handler while engaged in or returning from hunting, and, if ~~a [such]~~ hunting dog becomes temporarily lost from a pack or wanders from actual control or sight of its owner or handler, ~~the [such]~~ owner or handler shall not be deemed to be in violation of the provisions of this section as a result of ~~the [such]~~ dog's having become temporarily lost or having wandered from immediate control or sight of the owner or handler.

Section 6. The following KRS section is repealed:

258.121 Animal shelter trust fund -- Allocation of moneys.

Section 7. Any moneys remaining in the Animal Shelter Trust Fund on the effective date of this Act shall be transferred to the Animal Control and Care Fund created by Section 2 of this Act.

**Approved March 28, 2000**

## CHAPTER 180

**(HB 482)**

AN ACT relating to license plates.

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

Section 1. KRS 186.240 is amended to read as follows:

- (1) It shall be the duty of the cabinet to carry out the provisions of KRS 186.005 to 186.260, and:
  - (a) Prepare and furnish to the clerk in each county a sufficient supply of all forms and blanks provided for in KRS 186.005 to 186.260. The forms for receipts shall be designated for the writing of not less than triplicate copies, the originals of which shall be numbered consecutively for each county, the second and third copies bearing the same number as the original. Receipts to be used as duplicates for lost receipts, as provided in KRS 186.180(1), shall be in duplicate only, and shall not be numbered;
  - (b) Keep a numerical record of all registration numbers issued in the state, for which they may use the second copy of receipts forwarded by the clerk of each county, and also keep a record of motor or vehicle identification numbers required by KRS 186.160; and
  - (c) Furnish to each clerk, originally each year upon estimate, and thereafter upon requisition at all times, a sufficient supply of plates and other insignia evidencing registration for all classes of vehicles required to be registered. The cabinet shall prescribe a plate of practical form and size for police identification purposes that shall contain:
    1. The registration number;
    2. The word "Kentucky;" and
    3. The name of the county in which the plate is issued, or in lieu thereof the words "Official," "Transportation," "Executive," or "Farm." Plates for commercial vehicles, shall contain the year

the license expires and words or information the Department of Vehicle Regulation may prescribe by administrative regulation, pursuant to KRS Chapter 13A. Numerals indicating a year shall not be placed upon any license plate issued pursuant to KRS 186.060, relating to the licensing of vehicles owned exclusively by the state and KRS 186.061, relating to the licensing of vehicles owned exclusively by a nonprofit volunteer fire department, volunteer fire prevention unit, and volunteer fire protection unit. A state slogan may be placed upon the plate.

- (2) License plates issued pursuant to KRS 186.050(1) shall conform to the provisions of subsection (1)(c) of this section except:
  - (a) The word "Kentucky" shall be centered above the county name in which the plate is issued;
  - (b) The words "Bluegrass State" shall be centered at the top of the plate above the registration number; and
  - (c) The name of the county in which the plate is issued shall be centered in the lower portion of the plate below the registration number and shall be printed in letters that are the same size as those used to print the word "Kentucky." Beginning January 1, 1993, the Transportation Cabinet shall provide for the issuance of reflectorized plates for all motor vehicles, and shall collect a fee, in addition to the fee set out in KRS Chapter 186 and KRS 281.860, of fifty cents (\$0.50). *The fifty cents (\$0.50) fee to reflectorize license plates shall be used by the cabinet as provided in subsection (3) of this section;*
- (3) *The reflectorized license plate program fund is established in the state road fund and appropriated on a continual basis to the cabinet to administer the moneys as provided in this subsection. The fifty cents (\$0.50) fee collected by the cabinet to reflectorize license plates shall be deposited into the program fund and used to issue reflectorized license plates every five (5) years. If at the end of a fiscal year, money remains in the program fund, it shall be retained in the fund and shall not revert to the state road fund. The interest and income earned on money in the program fund shall also be retained in the program fund to carry out the provisions of this subsection. The Transportation Cabinet shall begin issuing the new reflectorized license plate under the provisions of this subsection on January 1, 2003, and shall continue to issue a new reflectorized license plate every five (5) years thereafter*~~[(a) Upon initial application or registration renewal in calendar year 1991, persons registering a motor vehicle according to KRS 186.050(1) or (3)(a) shall receive a "bicentennial" license plate, in lieu of the registration plate described in subsection (2) of this section. Applications shall be accompanied by payment of the regular registration fee;~~
  - ~~(b) The "bicentennial" license plate shall be designed by the Bicentennial Commission and approved by the Transportation Cabinet and shall be issued for calendar year 1991 and shall expire at the end of the applicant's renewal month in 1993 and shall not be renewable thereafter. At the time of renewal in 1992, the clerk shall issue a renewal decal designed by the commission and as approved by the Transportation Cabinet;~~
  - ~~(c) The registration plate under this subsection shall be issued for a period of two (2) years, replacing the regular registration plate, and shall be subject to the registration provisions of KRS Chapter 186, the provisions of this section notwithstanding;~~
- (4) *Except as directed under subsection (3) of this section,* the Transportation Cabinet shall receive all moneys forwarded by the clerk in each county and turn it over to the State Treasurer for the benefit of the state road fund;
- (5) The Transportation Cabinet shall require an accounting by the clerk in each county for any moneys received by him under the provisions of this chapter, after the deduction of his fees under this chapter, and for all receipts, forms, plates, and insignia consigned to him. The Auditor of Public Accounts, pursuant to KRS 43.071, shall annually audit each county clerk concerning his responsibilities for the collection of various fees and taxes associated with motor vehicles. The secretary of the Transportation Cabinet, with the advice, consultation, and approval of the Auditor, shall develop and implement an inventory and accounting system which shall insure that the audits mandated in KRS 43.071 are performed in accordance with generally accepted auditing standards. The Transportation Cabinet shall pay for the audits mandated by KRS 43.071; and
- (6) When applied for under KRS 186.160, motor or vehicle numbers assigned shall be distinctive to show that they were designated by the cabinet.

**CHAPTER 181****(HB 431)**

AN ACT changing the classification of the City of Henderson, in Henderson County.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Henderson, in Henderson County, is such as to justify its being classified as a city of the second class;

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

Section 1. The City of Henderson, in Henderson County, is transferred from the third to second class of cities.

**Approved March 28, 2000**

**CHAPTER 182****(HB 472)**

AN ACT relating to distilled spirits and wine.

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

Section 1. KRS 243.030 is amended to read as follows:

The following kinds of distilled spirits and wine licenses may be issued by the administrator of the distilled spirits unit, the fees for which shall be:

- |      |  |            |
|------|--|------------|
| (1)  | Distiller's license, per annum .....   | \$2,500.00 |
| (2)  | Rectifier's license, per annum .....   | \$2,500.00 |
| (3)  | Blender's license, per annum .....   | \$2,500.00 |
| (4)  | Vintner's license, per annum .....   | \$1,000.00 |
| (5)  | Small winery license, per annum .....  | \$100.00   |
|      | (a) Small winery off-premises retail license, per annum .....  | \$25.00    |
| (6)  | Wholesaler's license, per annum .....  | \$2,000.00 |
| (7)  | Retail package license, per annum:   |            |
|      | (a) In counties containing cities of the first class .....   | \$800.00   |
|      | (b) In counties containing cities of the second class .....  | \$700.00   |
|      | (c) In counties containing cities of the third class .....   | \$600.00   |
|      | (d) In counties containing cities of the fourth class .....  | \$500.00   |
|      | (e) In all other counties .....  | \$400.00   |
| (8)  | Retail drink license, motel drink license, restaurant drink license, or supplemental bar license, per annum: |            |
|      | (a) In counties containing cities of the first class .....   | \$1,000.00 |
|      | (b) In counties containing cities of the second class .....  | \$700.00   |
|      | (c) In counties containing cities of the third class .....   | \$600.00   |
|      | (d) In counties containing cities of the fourth class .....  | \$500.00   |
| (9)  | Transporter's license, per annum .....   | \$100.00   |
| (10) | Dining car license, per annum .....  | \$100.00   |
| (11) | Special nonbeverage alcohol vendor's license, per annum .....  | \$50.00    |
| (12) | Special industrial alcohol license, per annum .....  | \$50.00    |

(13)	Special nonindustrial alcohol license, per annum .....	\$50.00
(14)	Special agent's or solicitor's license, per annum .....	\$25.00
(15)	Special storage or warehouse license and bottling house storage license, per annum .....	\$500.00
(16)	Special temporary liquor license, per event .....	\$100.00
(17)	Special private club license, per annum .....	\$300.00
(18)	Special Sunday retail drink license, per annum .....	\$500.00
(19)	Nonresident, special agent or solicitor's license, per annum .....	\$100.00
(20)	Transport permit, nonresident license, per annum .....	\$100.00
(21)	Through transporter's license, per annum .....	\$100.00
(22)	Freight forwarder's license, per annum .....	\$100.00
(23)	Restaurant wine license, per annum .....	\$500.00
(24)	Farm winery license, per annum .....	\$100.00
(a)	Farm winery, off-premises retail outlet license, per annum .....	\$25.00
(25)	Special temporary wine license, per event .....	\$50.00
(26)	Caterer's license, per annum .....	\$800.00
(27)	Souvenir retail liquor license, per annum .....	\$500.00
(28)	Special temporary distilled spirits and wine auction license, per event .....	\$100.00
(29)	Airport drink license, per annum .....	\$1,000.00
(30)	Convention center or convention hotel complex license, per annum .....	\$5,000.00
(31)	Extended hours, supplemental license, per annum .....	\$2,000.00
(32)	Horse race track license, per annum .....	\$2,000.00
(33)	Air or rail system license, per annum .....	\$2,000.00
(34)	Riverboat license, per annum .....	\$1,000.00
(35)	Bottling house license, per annum .....	\$1,000.00
(36)	Hotel in-room license, per annum .....	\$200.00
(37)	Bonded warehouse license, per annum .....	\$1,000.00
(38)	Air transporter liquor license, per annum .....	\$500.00
(39)	<b><i>Sampling license, per annum .....</i></b>	<b><i>\$100.00</i></b>
(40)	Replacement or duplicate license .....	\$25.00
(41)	Other special licenses the board finds necessary for the proper regulation and control of the traffic in distilled spirits and wine and provides for by administrative regulation. In fixing the amount of license taxes that are required to be fixed by the board, it shall have regard for the value of the privilege granted.	

A nonrefundable application fee of fifty dollars (\$50) shall be charged to process each new application under this section, except for subsections (5), (9), (11), (12), (13), (14), (16), (19), (20), (21), (22), (24), (25), (28), and ~~(40)~~~~(39)~~. The application fee shall be applied to the licensing fee if the application is issued and shall be retained by the department if the license is denied.

Section 2. KRS 244.050 is amended to read as follows:



- (1) No retail licensee shall give away any alcoholic beverage in any quantity, or deliver it in any quantity for less than a full monetary consideration, except as provided by KRS 243.155, 243.156,~~and~~ 243.157, *and subsection (2) of this section.*
- (2) *A retailer licensed to sell distilled spirits and wine under subsections (7) or (27) of Section 1 of this Act may, after acquiring a license under subsection (39) of Section 1 of this Act, allow customers to sample distilled spirits and wine under the following conditions:*
  - (a) *Sampling shall be permitted only on licensed premises and, for retailers licensed under subsection (27) of Section 1 of this Act, during regular business hours;*
  - (b) *A licensee shall not charge for the samples provided to customers;*
  - (c) *Sample sizes shall not exceed:*
    1. *One (1) ounce for wine; and*
    2. *One-half (1/2) ounce for distilled spirits; and*
  - (d) *A licensee shall limit a customer to:*
    1. *Two (2) distilled spirits samples per day; and*
    2. *Six (6) wine samples per day.*
- (3) *Retailers licensed under subsection (7) of Section 1 of this Act shall:*
  - (a) *Notify the Department of Alcoholic Beverage Control at least seven (7) days in advance of conducting a sampling event; and*
  - (b) *Limit a sampling event to a period not to exceed four (4) consecutive hours between 12 noon and 8 p.m.*

**Approved March 28, 2000**

## CHAPTER 183

**(HB 503)**

AN ACT relating to real estate appraisers.

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

Section 1. KRS 324A.025 is amended to read as follows:

- (1) The board shall elect a chairman each year at the first meeting called after appointment of new members. A majority of the board shall constitute a quorum and may exercise all powers and duties established by the provisions of KRS 324A.020.
- (2) The board shall meet at least once each calendar quarter.
- (3) Each member of the board shall receive actual and necessary expenses and mileage and shall receive one hundred dollars (\$100) per day as compensation for each day spent on duties as a member of the board.~~[The board shall receive administrative and staff support from the Kentucky Real Estate Commission. If the support provision of this subsection or the application thereof is determined not to conform with federal law or the regulations promulgated thereunder, the board shall receive administrative and staff support from the Division of Occupations and Professions in the Finance and Administration Cabinet.]~~

**Approved March 28, 2000**

## CHAPTER 184

**(HB 536)**

AN ACT relating to remittance of tax.

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

Section 1. KRS 131.155 is amended to read as follows:

- (1) As used in this section the term "electronic fund transfer" means an electronic data processing medium that takes the place of a paper check for debiting or crediting an account and of which a permanent record is made.
- (2) Notwithstanding any statutory provisions to the contrary, the cabinet may require ~~all taxpayers and~~ any ~~other~~ person who is required to collect or remit taxes and fees administered by the cabinet ***or any person who acts on the taxpayer's behalf*** to remit those taxes and fees to the cabinet by electronic fund transfer. The transfer shall be made on or before the date the tax is due ***using the debit method or other means as prescribed by the cabinet by the promulgation of an administrative regulation.*** ~~and~~ The cabinet may permit the filing of the tax return following the date of the tax payment. ***Payment by electronic fund transfer may be required if:***
  - (a) ***The average payment per reporting period is ten thousand dollars (\$10,000) or more for each tax or fee required to be collected or remitted;***
  - (b) ***The payment for each tax or fee required to be collected or remitted is made on behalf of one hundred (100) or more taxpayers; or***
  - (c) ***The aggregate of the funds to be remitted on behalf of others is ten thousand dollars (\$10,000) or more for each tax or fee required to be collected or remitted.*** ~~Taxpayers or any other person who is required to collect or remit taxes and fees administered by the cabinet whose average payment per reporting period is less than twenty five thousand dollars (\$25,000) as of August 1, 1998, seventeen thousand five hundred dollars (\$17,500) as of July 1, 1999, and ten thousand dollars (\$10,000) as of July 1, 2000 and thereafter for each tax or fee required to be collected or remitted shall not be required to remit the payments by electronic fund transfer.~~
- (3) The cabinet shall promulgate administrative regulations establishing electronic fund transfer requirements for the payment of taxes and fees administered by the cabinet.
- (4) The cabinet may waive the requirement that a qualifying taxpayer remit the payment by electronic fund transfer if the taxpayer is unable to remit funds electronically.
- (5) Taxpayers and any other persons who are required to collect or remit taxes administered by the cabinet by electronic fund transfer shall be entitled to receive refunds for any overpayment of taxes or fees, on or after July 1, 2001, by electronic fund transfer.

Section 2. This Act takes effect on August 1, 2000.

**Approved March 28, 2000**

## **CHAPTER 185**

### **(HCR 6)**

A CONCURRENT RESOLUTION requesting the Legislative Research Commission to reestablish the Subcommittee on Veteran's Affairs.

WHEREAS, Kentucky's veterans have many concerns meriting legislative attention; and

WHEREAS, the Subcommittee to Study Problems of Vietnam Veterans in Kentucky requested that the Legislative Research Commission establish a permanent committee on Veteran's affairs; and

WHEREAS, the Legislative Research Commission created the Subcommittee on Veteran's Affairs in 1988; and each interim thereafter; and

WHEREAS, the nearly one hundred state and nationally affiliated veterans organizations representing 355,000 Kentucky Veterans have relied upon the Subcommittee on Veteran's Affairs to inform Legislators of their special concerns and needs; and

WHEREAS, Kentucky owes its veterans a debt of gratitude for service in defense of their country;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. The Kentucky Legislative Research Commission is requested to reestablish a Subcommittee on Veteran's Affairs to operate during the 2000 - 2001 interim and present recommendations to the Kentucky General Assembly.

Section 2. It is recommended that the subcommittee be appointed by the Legislative Research Commission.

Section 3. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

**Approved March 28, 2000**

## **CHAPTER 186**

### **(HCR 54)**

A CONCURRENT RESOLUTION directing a study of limiting bill requests or introductions.

WHEREAS, the Kentucky General Assembly's regular sessions are limited to sixty legislative days every two years; and

WHEREAS, it is crucial to conserve legislative time for substantive policy proposals; and

WHEREAS, at least twenty-one state legislative chambers currently impose limits on members' bill requests or bill introductions; and

WHEREAS, respondents to a National Conference of State Legislatures' survey indicated that introduction limits have generally been successful in reducing the number of bills entering the legislative process; and

WHEREAS, it appears that a bill request or bill introduction deadline might streamline the legislative process and reduce staff, bill processing, and paper costs;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. The Interim Joint Committee on State Government shall conduct a study of the feasibility and advisability of establishing a limit on the number of bills members of the General Assembly may request or may introduce in a legislative session. The study shall include examination of the experiences of other states with bill request or bill introduction limits. The Committee shall report its findings and recommendations to the Legislative Research Commission prior to the 2001 Organizational Session of the General Assembly.

Section 2. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

**Approved March 28, 2000**

## **CHAPTER 187**

### **(HJR 100)**

A JOINT RESOLUTION directing the Transportation Cabinet to name United States Route 68 from Lexington to Maysville the "Simon Kenton Highway".

WHEREAS, Simon Kenton, pioneer settler, was born April 3, 1755, in Fauquier County, Virginia, the son of Mark and Mary Miller Kenton; and

WHEREAS, Simon Kenton's early travels led him, in 1775, to establish camp and become the first permanent settler in what is today Mason County, Kentucky; and

WHEREAS, Simon Kenton's heroics were evident when he saved the life of famed Kentucky pioneer Daniel Boone during a raid on Fort Boonesborough in 1777; and

WHEREAS, in 1778, Simon Kenton joined the colonists' revolution against British rule of America and had many adventures in combat; and

WHEREAS, after the war, Simon Kenton established the Kenton's Station settlement on Lawrence Creek in Mason County and defended it from attacks; and

WHEREAS, Simon Kenton's lifelong heroism and adventurous spirit helped tame the land we know today as Kentucky; and

WHEREAS, it is appropriate that Simon Kenton is honored and remembered for his role in the history of our Commonwealth;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. The Transportation Cabinet is directed to name United States Route 68 from Lexington to Maysville the "Simon Kenton Highway".

Section 2. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "Simon Kenton Highway" to facilitate their erection upon the effective date of this Resolution.

Section 3. That the Clerk of the House of Representatives is directed to transmit copies of this Resolution to the Secretary of the Transportation Cabinet and to the District Highway Engineers in Lexington, Kentucky and Flemingsburg, Kentucky.

**Approved March 28, 2000**

## **CHAPTER 188**

### **(HCR 112)**

A CONCURRENT RESOLUTION urging Kentucky's Congressional delegation to pursue the placement of a brigade-size combat team at Fort Knox, Kentucky.

WHEREAS, Fort Knox is the home of the Army's Armor and Cavalry Center, the United States Army Recruiting Command, and is critical to the defense of our nation; and

WHEREAS, Fort Knox employs more than 11,000 military and civilian workers and contributes nearly \$600 million in payroll and contracts to the economy of the Commonwealth; and

WHEREAS, the Army's budget cuts and downsizing initiative have had an adverse economic impact on Fort Knox; and

WHEREAS, as a result, Fort Knox has lost over 5,475 soldiers, 1,000 civilian employees, and \$215 million in annual payroll and contracts; and

WHEREAS, the conflict in Bosnia and Kosovo revealed the Army's inability to move heavy forces to respond to our national interests; and

WHEREAS, the Army plans to transform to a lighter and more lethal force over the next five years in order to operate more effectively in places like the Balkans; and

WHEREAS, the Army plans to immediately reconfigure itself to a more responsive, deployable, and mobile force by creating five brigade-size combat teams; and

WHEREAS, platform demonstrations for the vehicles to equip the lighter brigade-size combat teams were done at Fort Knox because it was ideally suited with terrain mirroring combat conditions where lighter brigades are most expected to fight; and

WHEREAS, the Mounted Urban Combat Training facility and modern ranges at Fort Knox were crucial in the demonstration and testing of our war fighting capabilities but have not received funding from the Army; and

WHEREAS, although the two initial brigade-size combat teams will be stationed at Ft. Lewis, the Army has not made a decision on where to station the additional brigade-sized combat teams; and

WHEREAS, Fort Knox has clearly demonstrated that it possesses the resources and capacity to accommodate a brigade-size combat team; and

WHEREAS, a brigade-size combat team would have a significant positive impact on the economic well-being of our local communities which were adversely affected by the loss of the 194<sup>th</sup> Armored Brigade;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. That the General Assembly urges our Congressional Delegation to pursue the placement of a brigade-size combat team at Fort Knox, Kentucky, where the terrain and weather best mirror the locations where forces are likely to be used in the future, and where the Army's premier Mounted Urban Combat Training facility and the Western Kentucky Training Center are immediately available to train soldiers to face combat and peacekeeping missions in urban environments.

Section 2. That the Clerk of the House of Representatives send a copy of this Resolution to each member of Kentucky's Congressional delegation in Washington, D.C.

**Approved March 28, 2000**

## CHAPTER 189

**(HB 647)**

AN ACT relating to the consolidation of local governments in counties containing cities of the first class.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

- (1) *The governmental and corporate functions vested in any city of the first class shall, upon approval by the voters of the county at a regular or special election, be consolidated with the governmental and corporate functions of the county containing the city. This single government replaces and supersedes the governments of the pre-existing city of the first class and its county.*
- (2) *A consolidated local government shall have all powers and privileges that cities of the first class and their counties are, or may hereafter be, authorized to exercise under the Constitution and the general laws of the Commonwealth of Kentucky, including but not limited to those powers granted to cities of the first class and their counties under their respective home rule powers. A consolidated local government shall continue to exercise these powers and privileges notwithstanding repeal or amendment of any of the laws upon which the powers and privileges are based unless expressly repealed or amended for consolidated local governments. In addition, a consolidated local government shall have other powers and privileges as the government may be authorized to exercise under the Constitution and general laws of the Commonwealth of Kentucky.*
- (3) *A consolidated local government shall have power and authority to:*
  - (a) *Levy and collect taxes upon all property taxable for state purposes within the territorial limits of the consolidated local government not exempt by law from taxation;*
  - (b) *License, tax, and regulate privileges, occupations, trades, and professions authorized by law, to be uniform throughout the jurisdiction;*
  - (c) *Make appropriations for the support of the consolidated local government and provide for the payment of all debts and expenses of the consolidated local government and the debts and expenses of the county and city of which it is the successor;*
  - (d) *Issue or cause to be issued bonds and other debt instruments that counties containing a city of the first class are authorized to issue or enter into all other financial transactions as may be permitted by law;*
  - (e) *Purchase, lease, construct, maintain, or otherwise acquire, hold, use, and operate any property, real or personal, for any public purpose, and sell, lease, or otherwise dispose of any property, real or personal, belonging to a consolidated local government;*
  - (f) *Exercise the power of eminent domain for any public purpose subject to the limitations and exceptions prescribed by the Constitution and the general laws of the Commonwealth of Kentucky;*

- (g) *Accept federal or state funds and other sources of revenue that are applicable to counties and cities of the first class;*
  - (h) *Establish, erect, maintain, and operate facilities for the confinement, detention, and rehabilitation of persons convicted of the violation of the ordinances and laws of a consolidated local government or the Commonwealth of Kentucky;*
  - (i) *Pass and enforce by fines and penalties, if necessary, all ordinances, not inconsistent with law, as are expedient in maintaining the peace, good government, health, and welfare of the inhabitants of the county and prevent, abate, and remove nuisances;*
  - (j) *Collect and dispose of garbage, junk, and other refuse, and regulate the collection and disposal of garbage, junk, and other refuse by others;*
  - (k) *Provide for the redevelopment, renewal, or rehabilitation of blighted, deteriorated, or dilapidated areas;*
  - (l) *Enforce zoning regulations;*
  - (m) *Enter into contracts and agreements with other governmental entities and with private persons, firms, and corporations;*
  - (n) *Adopt procedures for collective bargaining with its employees and for the certification of exclusive bargaining agents for groups of employees in accordance with the Constitution and general laws of the Commonwealth of Kentucky and its ordinances; and*
  - (o) *Exercise all other powers and authorities granted to counties and cities of the first class by the general laws of the Commonwealth of Kentucky.*
- (4) *The powers of the consolidated local government shall be construed broadly in favor of the consolidated local government. The specific mention, or failure to mention, of particular powers in this section shall not be construed as limiting in any way the general or specific powers of a consolidated local government.*
  - (5) *A consolidated local government shall have power and jurisdiction throughout the total area embraced by the official jurisdictional boundaries of the county.*
  - (6) *A consolidated local government shall be known as Greater ....., which shall be the name of the largest city in existence on the date of the adoption of the consolidated government.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

- (1) *The legislative authority of a consolidated local government, except as otherwise specified in Sections 1 to 19 of this Act, shall be vested in a consolidated local government council. The members of the council shall be nominated and elected by district. There shall be only one (1) council member elected from each council district.*
- (2) *There shall be twenty-six (26) council districts. The initial boundaries, population, and numerical designation of the council districts shall be as specified by Section 18 of this Act. The population of the council districts shall be as nearly equal as is reasonably possible. For any newly consolidated local governments whose officials take office in 2003, upon taking office, the legislative council may take action to adjust the boundaries and population of the districts in order to equalize the population of the districts which may have changed as a result of recent census information. Any changes made to alter the boundaries of council districts shall be based on the population of the county as determined by the most recent United States Census or official census estimates as provided by the United States Bureau of the Census.*
- (3) *Following the official publication of each decennial census by the United States Bureau of the Census for the area embraced by a consolidated local government, the council shall adopt an ordinance, if necessary, to redistrict the council districts. A redistricting ordinance shall provide for the distribution of population among the council districts as nearly equal as is reasonably possible. Every council district shall be compact and contiguous and shall respect existing neighborhood, community, and city boundaries whenever possible.*
- (4) *The consolidated local government council members shall serve for a term of four (4) years beginning on the first Monday in January following their election except that the initial election of council members shall be in a manner as to provide for staggered terms for council members. At the initial election of the members*

*of a consolidated local government council, those representing even-numbered districts shall be elected for a two (2) year term. Those representing odd-numbered districts shall be elected for a four (4) year term. Thereafter, all council members shall be elected for four (4) year terms.*

- (5) The members of a consolidated local government council shall be nominated and elected from the district in which they reside in partisan elections. After the initial terms of office of the first elected council members, council members shall be elected in the same election years as other local government officials as regulated by the regular election laws of the Commonwealth and as provided in subsection (4) of this section.*
- (6) No person shall be eligible to serve as a member of a consolidated local government council unless he or she is at least twenty-one (21) years old, a qualified voter, and a resident within the territory of the consolidated local government and the district that he or she seeks to represent for at least one (1) year immediately prior to the person's election. A council member shall continue to reside within the district from which he or she was elected throughout the term of office.*
- (7) The presiding officer of a consolidated local government council shall be a president who shall be chosen annually by a majority vote of the entire council from among its members at the first meeting of the council in January. The council president has the right to introduce any resolution or recommend any ordinance and shall be entitled to vote on all matters.*
- (8) The consolidated local government council shall upon notice meet within seven (7) days after its members have taken office, and shall thereafter hold at least two (2) regular meetings per month.*
- (9) A majority of the members of the consolidated local government council shall constitute a quorum, but a smaller number may adjourn from day to day. The consolidated local government council may enforce the attendance of members by rules or ordinances with appropriate fines. The mayor or two-thirds (2/3) of the entire membership of the council may call a special meeting at any time. Meetings shall be held in such places in the county as are provided by ordinance, and the place of meetings shall not be changed except by an ordinance for which two-thirds (2/3) of the members of the consolidated local government council have voted.*
- (10) The council shall determine its own rules and order of business, and keep and provide a public record of its proceedings. The council shall provide for the publication of all ordinances in a composite code of ordinances.*
- (11) Council ordinances that prescribe penalties for their violation shall be enforced through the entire area of the consolidated local government unless:*
  - (a) Otherwise provided by statute; or*
  - (b) The legislative body of any city within the consolidated local government area has adopted an ordinance pertaining to the same subject matter that is the same as or more stringent than the standards set forth in the consolidated local government's ordinance.*
- (12) In the case of a vacancy on the consolidated local government council by reason of death, resignation, or removal, it shall be filled by appointment of the Governor, in accordance with Section 152 of the Constitution, for the unexpired term. Upon notification of the vacancy by the county clerk, the Governor shall appoint a person to fill a vacancy on the consolidated local government council not later than thirty (30) days after the date on which the vacancy occurs.*
- (13) All legislative powers of a consolidated local government are vested in the consolidated local government council. The term "legislative power" is to be construed broadly and shall include the power to:*
  - (a) Enact ordinances, orders, and resolutions, and override a veto of the mayor by a two-thirds (2/3) majority of the membership of the legislative council;*
  - (b) Review the budgets of and appropriate money to the consolidated local government;*
  - (c) Adopt a budget ordinance;*
  - (d) Levy taxes, subject to the limitations of the Constitution and the laws of the Commonwealth of Kentucky;*
  - (e) Establish standing and temporary committees; and*

- (f) *Make independent audits and investigations concerning the affairs of the consolidated local government.*
- (14) *The consolidated local government council shall be known as the legislative council of Greater ....., which shall be completed by the name of the largest city in existence in the county on the date of the consolidation.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

- (1) *All executive and administrative power of the government shall be vested in the office of the mayor. The term "executive and administrative power" shall be construed broadly. The mayor shall be the chief executive of a consolidated local government formed under the provisions of Sections 1 to 19 of this Act.*
- (2) *The mayor shall be nominated and elected in partisan elections for a term of four (4) years in the same election years as other local government officials as regulated by the regular election laws of the Commonwealth. The mayor shall assume office on the first Monday in January following his or her election. He or she shall serve until a successor qualifies and may serve for no more than three (3) consecutive terms after which time he or she shall be prohibited from running for election or being appointed as mayor for a period of at least four (4) years.*
- (3) *The mayor shall be at least twenty-five (25) years old, a qualified voter, a member of his or her political party, and a resident of the territory encompassing the consolidated local government for a period of at least one (1) year prior to his or her election as mayor. The mayor shall continue to reside within the geographic boundary of the consolidated local government throughout his or her term of office.*
- (4) *Except as otherwise provided in Sections 1 to 19 of this Act, the mayor shall have all the power and authority that the mayor of the city of the first class and the county judge/executive exercised under the Constitution and the general laws of the Commonwealth of Kentucky prior to the consolidation.*
- (5) *The mayor is authorized to supervise, administer, and control all departments and agencies as may be created by Sections 1 to 19 of this Act or created by ordinance. The mayor shall appoint all department and agency directors. The appointees shall serve at the pleasure of the mayor. Specifically, the mayor shall:*
  - (a) *Prepare and submit an annual report coinciding with the fiscal year, on the state of the consolidated local government, to be presented at a public meeting of the council;*
  - (b) *Submit an annual budget;*
  - (c) *Oversee the administration and implementation of the adopted budget ordinance;*
  - (d) *Enforce the ordinances of the consolidated local government;*
  - (e) *Supervise all officers, agents, employees, cabinets, departments, offices, agencies, functions, and duties of the consolidated local government;*
  - (f) *Call special meetings of the consolidated local government council;*
  - (g) *Appoint and remove his or her own staff at his or her own pleasure;*
  - (h) *Execute written contracts or obligations of the consolidated local government; and*
  - (i) *Approve or veto ordinances and resolutions adopted by the consolidated local government council.*
- (6) *In case the office of mayor becomes vacant by reason of death, resignation, or removal, it shall be filled by appointment of the Governor, in accordance with Section 152 of the Constitution, for the unexpired term. The Governor shall appoint a person to fill a vacancy in the office of mayor not later than thirty (30) days after the date on which the vacancy occurs. If a vacancy occurs in the office of mayor, the members of the legislative body of the consolidated local government shall elect one (1) of their members to serve as temporary mayor until the Governor fills the vacancy in the office, notwithstanding the provisions of KRS 61.080(2) to the contrary.*
- (7) *The mayor of a consolidated local government shall be known as the mayor of Greater ....., which shall be completed by the name of the largest city in existence in the county on the date of the consolidation.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:



- (1) *Upon public approval at a regular or special election of a consolidation of a city of the first class and their county, all regular employees of the city of the first class and the county shall become employees of the consolidated local government.*
- (2) *All rights, privileges, and protections attributed to all regular employees by a civil service or classified service system established by a city of the first class or a county containing a city of the first class shall continue in effect until changed by statute or ordinance when applicable.*
- (3) *A consolidated local government shall recognize and shall continue to bargain with any bargaining unit consisting of public employees recognized by either the previously existing city or county government.*
- (4) *All labor contracts in existence in a city of the first class or a county containing a city of the first class on the effective date of a local government consolidation shall continue in effect until the expiration of the terms of the contracts at which time new contracts shall be renegotiated between the consolidated local government and affected labor representatives.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

*A consolidated local government shall be deemed a county and shall be deemed an incorporated city of the first class under the Constitution and the general laws of the Commonwealth of Kentucky for the purpose of applying for or receiving any aid or grant-in-aid from the Commonwealth of Kentucky or the government of the United States.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

- (1) *All cities other than those of the first class located within the territory of the consolidated local government, upon the successful passage of the question to consolidate a city of the first class and its county, shall remain incorporated unless dissolved in accordance with KRS 81.094 and shall continue to exercise all powers and perform the functions permitted by the Constitution and general laws of the Commonwealth of Kentucky applicable to the cities of the class to which they have been assigned.*
- (2) *Upon the adoption of a consolidated local government in a county containing a city of the first class, there shall be no further incorporations of cities within the county.*
- (3) *Upon the adoption of a consolidated local government in a county containing a city of the first class, there shall be no annexations for a period of twelve (12) years by any city remaining in the county. After that time, any proposed annexation by a city in that county shall first receive the approval of the legislative council of the consolidated local government prior to the city proceeding under the provisions of KRS Chapter 81A. The city shall request the approval of the consolidated legislative council by ordinance. The consolidated legislative council's decision shall be made by ordinance and within sixty (60) days of the receipt of the request by the affected city. If an ordinance has not been enacted by the consolidated legislative council within sixty (60) days, the request for a city to proceed with an annexation proposal shall be deemed to be approved by the consolidated legislative council.*
- (4) *The adoption of a consolidated local government in a county containing a city of the first class shall not prevent the merger or dissolution of any existing cities as provided by law or the merger of any remaining cities with the newly consolidated local government.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

*All taxing districts, fire protection districts, sanitation districts, water districts, and any other special taxing or service districts of any kind existing upon the successful passage of the question to consolidate a city of the first class and its county shall continue in existence unless dissolved in the manner prescribed by law and shall continue to exercise all the powers and functions permitted by the Constitution and the general laws of the Commonwealth of Kentucky.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

- (1) *Upon the successful passage of the question to consolidate a city of the first class and its county, the ordinances, regulations, and orders of the previously existing city of the first class and the county shall initially govern the consolidated local government along with any new ordinances, resolutions, or orders that may be enacted.*
- (2) *Any ordinance, regulation, or order in effect in a city of the first class or its county on the date of the adoption of a consolidated local government shall expire five (5) years from the date the new government takes effect unless amended or reenacted by the new consolidated local government.*

- (3) *The county attorney shall serve as the legal advisor and representative to the consolidated local government.*
- (4) *The county attorney shall review all ordinances, resolutions, and orders in effect in the city of the first class and the county in order to identify conflicting language between the varying ordinances, resolutions, and orders. The county attorney shall present a listing of the conflicts between the ordinances, resolutions, and orders to the legislative body of the consolidated local government at its first meeting.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

- (1) (a) *It shall be the policy of the consolidated local government to ensure that opportunities generated directly or indirectly by the consolidated local government are equally available to all citizens without regard to race, color, religion, national origin, marital status, physical handicap, sex, or age.*
- (b) *It shall also be the policy of the consolidated local government to include the minority community in all aspects of governance in the consolidated local government. Minority citizens and business shall be represented in all actions of the consolidated government, including but not limited to government employment, appointments to boards or commissions, contracting, and purchasing.*
- (2) *The percentage of minority citizens who shall be employed by the consolidated local government or appointed to each of its boards and commissions shall be no less than the percentage of minority citizens in the community, or the percentage of minority representatives on the consolidated local government's legislative body, whichever is greater.*
- (3) *The consolidated local government shall adopt ordinances and develop policies to achieve the mandate set forth in this section.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

- (1) *The consolidated local government shall have an affirmative action plan that complies with all current federal guidelines and requirements relevant to local governments.*
- (2) *The mayor shall prepare and implement an affirmative action plan.*
- (3) *There shall be established under the direction of the mayor an office that shall be called the "Affirmative Action Office."*
- (4) *The Affirmative Action Office shall aid the mayor in preparing the plan, and shall be responsible for the day-to-day operation and implementation of the affirmative action plan.*
- (5) *An affirmative action plan, in addition to following all federal requirements, shall include good faith efforts to:*
  - (a) *Determine the extent to which minorities and women are underutilized in major categories;*
  - (b) *Identify and eliminate the specific causes of the underutilization;*
  - (c) *Identify and eliminate all employment practices that have an adverse impact on minorities, women, and others protected by applicable law and the relationship of which to job performance has not been clearly established;*
  - (d) *Rely exclusively on practices that are based on merits and other valid job related criteria;*
  - (e) *Develop, substantial applicant pools of validly qualified minorities and women, special recruitment efforts, and other measures to insure that sufficient numbers of these groups are included to help reduce their underutilization;*
  - (f) *Develop, through special recruitment efforts and other measures, applicant pools in which handicapped persons are represented equitably;*
  - (g) *Project goals and timetables to include estimates of the representation of minorities and women likely to result from the operation of this affirmative action plan; and*
  - (h) *Establish organizational structures and monitoring systems that will ensure effective operation of its goals, and means for modification of the plan as needed.*
- (6) *All contracts, leases, or other agreements for materials, supplies, equipment, or, contractual services other than professional that, in the aggregate, exceed ten thousand dollars (\$10,000) in any calendar year shall be awarded in compliance with KRS 424.260 or with KRS 45A.343 to 45A.460, if applicable.*

- (7) *Notwithstanding anything to the contrary in this section, the provisions of this section shall apply to every person, firm, corporation, and association that has been awarded contracts, leases, or other agreements as provided by KRS 424.260 or with KRS 45A.343 to 45A.460, if applicable, that, in the aggregate, exceed ten thousand dollars (\$10,000) in any calendar year.*
- (8) *Employment opportunities generated directly or indirectly by the government of the consolidated local government shall be equally available to all citizens without regard to race, color, religion, national origin, marital status, physical handicap, sex, or age. In order to ensure that employment opportunities generated directly or indirectly by the consolidated local government are equally available, contractors and vendors shall be approved as provided by this section prior to the awarding of any contract, lease, or other agreement that requires an expenditure in excess of ten thousand dollars (\$10,000) with the consolidated local government.*
- (9) *No person, firm, corporation, or association shall be awarded a contract, lease, or other agreement that requires an expenditure in excess of ten thousand dollars (\$10,000) until and unless that person, firm, corporation, or association has been prequalified as determined by procedures and requirements enacted by ordinance by the consolidated local government.*
- (10) *No officer, employee, or agent of the consolidated local government shall accept a contract, lease, or other agreement that requires an expenditure in excess of ten thousand dollars (\$10,000) with the consolidated local government until and unless that person, firm, corporation, or association has been prequalified as determined by procedures and requirements enacted by ordinance by the consolidated local government.*
- (11) *All persons, firms, corporations, or associations seeking to bid on contracts, leases, or other agreements that require an expenditure exceeding ten thousand dollars (\$10,000) with the consolidated local government shall submit a request for prequalification as an eligible contractor, pursuant to the procedures and requirements enacted by ordinance by the consolidated local government.*
- (12) *The consolidated local government shall make available a list of all bidders who have been prequalified and shall distribute the list to the appropriate purchasing officers, employees, or agents of the consolidated local government.*
- (13) *Any person, firm, corporation, or association that submits an otherwise qualified bid for a contract, lease, or other agreement pursuant to the provisions of KRS 424.260, but that has not prequalified pursuant to this section, may be approved by the consolidated local government as provided by this section. Any person, firm, or corporation that is approved by the consolidated local government shall thereafter be qualified and considered eligible for award for a contract, lease, or other agreement.*
- (14) *The consolidated local government shall prequalify persons, firms, corporations, and associations seeking a contract, lease, or other agreement that requires an expenditure exceeding ten thousand dollars (\$10,000) with the consolidated local government if on an analysis of the workforce of that entity the consolidated local government determines that:*
  - (a) *The entity is not deficient in the utilization of minority groups or women;*
  - (b) *The entity has an acceptable, bona fide affirmative action plan;*
  - (c) *The entity is a small business that employs ten (10) or fewer individuals;*
  - (d) *The entity has a federally approved affirmative action program; or*
  - (e) *The consolidated local government has made a finding based on other reasonable criteria, and after consideration of the provisions of 41 C.F.R. 60-2, determines the entity does not require an affirmative action plan.*
- (15) *An acceptable affirmative action plan for an entity seeking a contract, lease, or other agreement with a consolidated local government shall include:*
  - (a) *An analysis of the areas of the entity's workforce within which it is deficient in the utilization of minority groups and women; and*
  - (b) *Timetables to which the entity's good faith efforts shall be directed to correct the deficiencies and to achieve prompt and full utilization of minorities and women at all levels and in all segments of its workforce where deficiencies exist.*

- (16) *A bona fide affirmative action plan for an entity seeking a contract, lease, or other agreement with a consolidated local government shall include a set of specific and result-oriented procedures, goals, and timetables to which an entity commits itself to apply every good faith effort in order to achieve equal employment opportunity. Procedures without effort to make them work are meaningless and effort undirected by specific and meaningful procedures is inadequate.*
- (17) *In reviewing an affirmative action plan for an entity seeking a contract, lease, or other agreement with a consolidated local government, the consolidated local government shall be guided by the relevant provisions of 41 C.F.R. 60-2 which outlines the requirements of affirmative action plans for federal contractors and vendors.*
- (18) *The consolidated local government shall use its best efforts, directly and through contracting agencies, other interested federal, state, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work pursuant to contracts, leases, and agreements that are the subject matter of this section or any agency referring workers or providing or supervising apprenticeship or training for or in the course of this work to cooperate in the implementation of the purposes of this section.*
- (19) *The consolidated local government on its own motion or on motion of any interested party shall cause hearings as it deems necessary for compliance or enforcement of this section.*
- (20) *The consolidated local government shall hold a hearing prior to imposing or recommending the imposition of penalties and sanctions for violation of this section. No penalty that would prohibit any contractor from obtaining future contracts under this section shall be made without affording the contractor an opportunity for a hearing.*
- (21) *Notice of any final decision or determination of the consolidated local government that affects the running of time for taking an appeal shall be mailed to all parties in the matter, including the proposed contractor, lessor or other party, and the affected local government offices.*
- (22) *The consolidated local government shall establish an affirmative action appeals board for purposes of hearing appeals from any final decision relating to matters pertaining to this section. The board shall be composed of the county attorney, or his or her designee, the council president of the consolidated local government, or his or her designee, and a representative of the financial department of the consolidated local government, or his or her designee.*
- (23) *Any appeal from a decision of the consolidated local government shall be hand-delivered or mailed by certified mail to the affirmative action appeals board not later than thirty (30) days from the date of the local government's decision. The appeal shall set forth the grounds for the appeal. The appeals board shall notify all parties in writing of the time and place of a hearing. The hearing committee may issue subpoenas for any witnesses requested by either of the parties or in the appeals board's opinion necessary to the proper disposition of the matter to be heard. All parties shall be allowed legal representation, witnesses may be cross-examined, and the proceeding shall be recorded. The local government shall transmit, within ten (10) days after receipt of notice of appeal, all the original papers in action to the appeals board.*
- (24) *The appeals board shall have the power to require the contractor to furnish all necessary records and give testimony as to enable the board to render a fair and competent decision. The duty of the board shall be to review all records, hear all testimonies of witnesses, and determine whether the decision of the local government was correct. The decision of the appeals board shall be final. The decision of the appeals board shall be transmitted in writing to the appropriate offices of the local government for implementation and shall set forth specifically its findings of fact and conclusions relative to its determination. The administration of sanctions and penalties in accordance with that determination shall be the duty of the appropriate department or contracting agency of the consolidated local government.*
- (25) (a) *On request of the adversely affected party the appeals board may, on terms as are just, relieve a party from its final order of determination on the following grounds:*
  1. *Mistake, inadvertence, surprise, or excusable neglect;*
  2. *Newly discovered evidence that by due diligence could not have been discovered in time for the hearing;*
  3. *Perjury or falsified evidence; or*
  4. *Fraud affecting the proceedings other than perjury or falsified evidence.*

- (b) *The request shall be made within thirty (30) days after notification of the appeals board's final determination. A request under this subsection does not affect the finality of the order or determination or suspend its operation.*
- (26) *In accordance with the enforcement provisions of this section, the consolidated local government may cancel, terminate, suspend, or cause to be canceled, terminated, or suspended, any contract, lease, or agreement that is the subject matter of this section for failure of the contractor or vendor to comply. Contracts, leases, and agreements may be canceled, terminated, or suspended absolutely or continuance of contracts, leases, and agreements may be conditioned on a program for future compliance as approved by the consolidated local government.*
- (27) *Any contracting agency shall refrain from entering into further contracts or extensions or other modifications of existing contracts, with any noncomplying contractor, until the contractor has established and will carry out personnel and employment policies in compliance with the provisions of this section.*
- (28) *Whenever the consolidated local government makes a determination regarding noncompliance by a contractor pursuant to this section, it shall promptly notify the appropriate contracting agency and other affected local government agencies and offices of the action recommended. The contracting agency shall take the action recommended and shall report the results of that action to the consolidated local government.*
- (29) *If the appeals board shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this order or submits a program for compliance acceptable to the consolidated local government.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

- (1) *All offices provided for in Section 99 of the Constitution of Kentucky shall remain in existence upon the consolidation of a city of the first class with its county. However, all existing powers and duties of these offices shall be assigned to the consolidated local government. To the extent permitted by the Constitution of Kentucky, the office of county judge/executive, justices of the peace, and county commissioners may be statutorily limited in a consolidated local government.*
- (2) *Nothing in Sections 1 to 19 of this Act shall alter or affect the election or term of any county court clerk, county attorney, sheriff, jailer, coroner, surveyor, or assessor. Nor shall any provision of Sections 1 to 19 of this Act be construed to alter or affect the powers, duties, or responsibilities of these officers as prescribed by the Constitution and laws of the Commonwealth of Kentucky. Any funding responsibilities or oversight of any constitutional officers or their employees previously exercised by the county, which shall include the approval of the annual budget of the sheriff's and the county clerk's offices, shall be transferred to the consolidated local government.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

*The tax structure, tax rates, and level of services in effect in the city of the first class and its county upon the adoption of a consolidated local government shall remain in effect after the adoption of the consolidated local government and shall remain the same until changed by the newly elected consolidated local government council.*

SECTION 13. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

*Notwithstanding any other provision of Sections 1 to 19 of this Act or any subsequent enactment of a general nature of the General Assembly of the Commonwealth of Kentucky, a consolidated local government shall not levy any tax on real property at a rate or rates in excess of that allowed by KRS 68.245 and KRS 132.027. The limitations in those statutes shall apply to the consolidated local government in the same manner as applied to all other counties and cities.*

SECTION 14. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

*Any cooperative compact in existence in a county containing a city of the first class on the effective date of this Act shall remain in effect unless a consolidated local government is adopted as provided in Sections 1 to 19 of this Act. The terms and agreements within a cooperative compact shall remain the same and in effect until the installation of the officers of the newly consolidated local government. If the voters in a county containing a city of the first class fail to approve a proposal for a consolidated local government then the cooperative compact shall remain in effect for the duration of the terms of the compact agreement.*

## SECTION 15. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

*The salary of the mayor of a newly consolidated local government created by the provisions of Sections 1 to 19 of this Act shall be the same as that allowed for a mayor of a city of the first class as provided by Section 246 of the Kentucky Constitution.*

## SECTION 16. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

- (1) *The salary of the members of the legislative council of a newly consolidated local government created by the provisions of Sections 1 to 19 of this Act shall be eighty percent (80%) of that amount that is permitted for county commissioners on the effective date of this Act as provided by Section 246 of the Kentucky Constitution. In order to equate the compensation of legislative council members with the purchasing power of the dollar, the Department for Local Government shall compute by the second Friday in February of every year the annual increase or decrease in the consumer price index of the preceding year. The Department for Local Government shall notify the appropriate governing bodies charged by law to fix the compensation of the above elected officials of the annual rate of compensation to which the elected officials are entitled in accordance with the increase or decrease in the consumer price index. Upon notification from the Department for Local Government, the appropriate governing body may set the annual compensation of the above elected officials at a rate no greater than that stipulated by the Department for Local Government.*
- (2) *Each legislative council member may hire one (1) full-time staff person.*

## SECTION 17. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

*The Auditor of Public Accounts, in order to insure the authorized, legal, regular, and safe handling, administration, or expenditure of public funds, shall annually audit the funds budgeted by any consolidated local government in a county containing a city of the first class. Actions taken by the Auditor and the local government for compliance with this section shall be the same as those required by KRS Chapters 43 and 424 and by KRS 43.070, 64.810, 64.820, 64.830, 64.840, and 64.850 relating to financial administration and the responsibilities of the handling of public funds.*

## SECTION 18. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

- (1) *After certification of the election at which the voters of a county containing a city of the first class have approved the consolidation of a city of the first class and the county and after receipt of the 2000 census data, a plan to divide the county into twenty-six (26) legislative council districts shall be submitted to the fiscal court in order to establish the initial boundaries of the legislative council districts for the newly consolidated government.*
- (2) *The district plan for the legislative council shall be prepared and submitted by representatives of a department of geography from the largest public university that exists within the county.*
- (3) *Upon submission of the plan that lays out the initial boundaries of the legislative council districts, the fiscal court shall approve the plan within thirty (30) days as submitted and without amendment.*
- (4) *The boundaries of the districts shall be drawn so that the districts are compact and contiguous, and the population of each district shall be as nearly equal as is reasonably possible.*
- (5) *Thereafter, and not less than every ten (10) years, the legislative council shall initiate reapportionment proceedings in May of the first year following the decennial census of the United States to review the districts and reapportion them if necessary.*
- (6) *To initiate a reapportionment proceeding, the legislative council shall publish notice of the planned reapportionment in accordance with KRS Chapter 424.*
- (7) *In no event shall districts be reapportioned during the period from thirty (30) days prior to the last date for filing for candidacy for local government office as provided in KRS 118.165 and the regular election for candidates for local government office.*
- (8) *Precinct lines shall be drawn when necessary in accordance with the provisions of law. No precinct shall be in more than one (1) district.*
- (9) *Within twenty (20) days of the establishment of the districts by the legislative council, any registered voter of the county may bring an action in the Circuit Court to enforce the provisions of this section. The Circuit Court shall hear the action and, on a finding that the legislative council has violated the provisions of this*

*section, remand the matter to the legislative council. The Circuit Court, in its discretion, may allow the prevailing party, other than the legislative council, a reasonable attorney's fee, to be paid from the treasury of the local government, as part of the costs.*

SECTION 19. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

- (1) *In every county containing a city of the first class in existence on the effective date of this Act, a question regarding the consolidation of the city of the first class and their county as provided by Sections 1 to 19 of this Act shall be submitted to the voters of the county at the regular election to be held in November of 2000. The election shall be governed by the general election laws of the Commonwealth. Approval of the proposal shall require a simple majority of those voting on the question.*
- (2) *The question to be submitted to the voters shall read as follows:*  
*"Are you in favor of combining the City of ..... and ..... County into a single government with a mayor and legislative council, keeping all other cities, fire protection districts and special districts in existence?"*

Section 20. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of the Act are severable.

**Approved March 28, 2000**

## **CHAPTER 190**

**(HB 322)**

AN ACT relating to safety and security at postsecondary education institutions.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 2, 3, and 4 of this Act, unless the context requires otherwise:*

- (1) *"Campus" means all property owned, managed, or controlled by an institution of postsecondary education including, but not limited to, academic buildings; student housing and recreational facilities; residential facilities operated by any officially recognized student organization; all sections of public property such as streets, sidewalks, and parking facilities immediately contiguous to campus buildings; and remote facilities leased for use as classroom space or student living.*
- (2) *"Campus security authority" means campus police, security officers, and any official at a postsecondary education institution who has significant responsibility for student and campus activities, including student discipline, student housing, student judicial affairs, and student life administration. Professional mental health, pastoral, and other licensed counselors when functioning in that capacity are not considered campus security authorities.*
- (3) *"Crime" means murder, manslaughter, reckless homicide, assault, menacing, wanton endangerment, terroristic threatening, stalking, forcible or nonforcible sex offenses, burglary, criminal damage to property, arson, theft, motor vehicle theft, robbery, weapons possession and criminal attempt for any of the aforementioned crimes, and arrests for drug-related violations and liquor law violations.*
- (4) *"Postsecondary education institution" means any Kentucky public four (4) year institution or two (2) year community college or technical college that grants a postsecondary education credential, and any private college or university that is licensed by the Council on Postsecondary Education under KRS 164.945 to 164.947.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *Crime log:*
  - (a) *Each postsecondary education institution shall make, keep, and maintain a daily log, written in a form approved by the Council on Postsecondary Education that can be easily understood, recording all crimes occurring on campus and reported to campus security authorities or local law enforcement agencies, including:*

1. *The category of crime, and a description of the incident, date, time, and general location of each crime; and*
  2. *The disposition of the complaint if known, including referral for prosecution, institutional disciplinary proceedings, or investigation by another state agency. The disposition shall include a reference to an investigation or incident report number.*
- (b) *All entries in the campus crime log shall be made available for public inspection within twenty-four (24) hours after the first report of an incident was made to any campus security authority or local law enforcement officials.*
1. *If there is clear and convincing evidence that the release of the information would cause a suspect to flee or evade detection, would result in the destruction of evidence, or is prohibited from release by law, the information may be withheld until that damage is no longer likely to occur from the release of the information. Only the information that is absolutely necessary to withhold for the reasons stated in this paragraph may be withheld; all other information shall be released.*
  2. *In the event information is withheld under the provisions of paragraph (a) of this subsection, the crime shall still be reported and made available for public inspection.*
- (c) *The campus crime log required by this section shall be readily accessible and open for public inspection at all times and shall be made available on campus computer networks to which students, employees, and other campus community members have access. Each semester the institution shall notify currently enrolled students, students applying to the institution, and employees of the availability of the campus crime log, where it can be accessed, and the exact electronic address on the computer network.*
- (2) *Special reports: In addition to the campus crime log, each postsecondary education institution shall make timely reports to the campus community on crimes reported to campus security authorities or local law enforcement authorities determined by those authorities to present a safety or security threat to students or employees.*
- (a) *The reports shall be made available to students and employees within twenty-four (24) hours after an incident is first reported.*
  - (b) *The information shall be reported in a manner that will aid in the prevention of similar occurrences.*
  - (c) *Institutions shall use computer networks and post the reports in each residential facility. The institution may also use flyers and other campus publications including newspapers, and other media.*
  - (d) *Each institution shall adopt a policy to comply with this requirement and the policy shall be included in the postsecondary education institution's annual campus safety and security report published in compliance with Section 4 of this Act.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *Under the provisions of KRS Chapter 227, the state fire marshal shall have jurisdiction over all property in the state including property of public postsecondary education institutions and property of any private college or university that is licensed by the Council on Postsecondary Education as provided for by KRS 164.945 to 164.947, insofar as it is necessary for the administration and enforcement of any duty imposed on the office by law or administrative regulation and all laws, ordinances, regulations, and orders designed to protect the public from fire loss.*
- (2) *The state fire marshal or the fire marshal's employee or appointee may, without delay or advance notice and at all reasonable hours of the day or night, enter in, or upon any property defined under KRS 227.200 located on the campus to make an inspection, investigation, or any other action necessary for the purpose of preventing fire loss or determining the origin of any fire.*
- (3) *No person shall obstruct, hinder, or delay such an officer in the performance of his or her duty.*
- (4) *Upon learning of a fire or threat of fire, campus security authorities shall immediately report each fire or threat of fire to the state fire marshal's office in Frankfort and the local deputies, assistants, and employees appointed under KRS 227.230.*



## SECTION 4. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

*Effective September 1, 2000, and each year thereafter, each postsecondary education institution shall submit to the Council on Postsecondary Education a statement of current policies concerning campus safety and security including, but not limited to:*

- (1) *The enforcement authority of security personnel, including their working relationship with state and local police agencies;*
- (2) *A description of programs designed to inform students and employees about the campus safety and security procedures and practices, how to report crimes, and how to prevent crimes; and*
- (3) *Statistics concerning the occurrence of crimes on campus during the most recent calendar year. The statistical data shall be reported by the number of occurrences based on:*
  - (a) *Location, broken down in the following classifications:*
    1. *Total number on campus:*
      - a. *Subtotal of occurrences indicating specifically those in dormitories or other residential facilities;*
      - b. *Subtotal of occurrences indicating specifically those in or on noncampus buildings or property; and*
    2. *On public property contiguous to the campus.*
  - (b) *Category of crime committed:*
    1. *As defined in Section 1 of this Act; and*
    2. *By category of prejudice, any crime reported to local police agencies or to a campus security authority, that manifests evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability.*

## SECTION 5. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *In complying with the statistical and reporting requirements mandated in Sections 1 to 7 of this Act, an institution shall make a reasonable, good-faith effort to obtain statistics and crime reports from outside agencies. An institution that makes such an effort is not responsible for an outside agency's failure to provide statistics or crime reports or for verifying the accuracy of the statistics or reports that are provided.*
- (2) *The Council on Postsecondary Education shall specify formats for reporting to ensure uniformity.*

## SECTION 6. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

*Any person violating the provisions of Sections 2 and 3 of this Act, or who knowingly induces another, directly or indirectly, to violate the provisions of those sections, shall be fined not less than five hundred dollars (\$500), nor more than one thousand five hundred dollars (\$1,500), or imprisoned in the county jail for up to thirty (30) days, or both.*

## SECTION 7. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

*Sections 1 to 7 of this Act may be cited as the Michael Minger Act.*

**Approved March 28, 2000**

## CHAPTER 191

**(HB 321)**

AN ACT relating to students with disabilities.

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

## SECTION 1. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, unless the context requires otherwise, "disability" has the same meaning as the definition given in KRS 344.010.*

- (2) *The Council on Postsecondary Education shall develop guidelines for the adoption of policies by postsecondary education institutions with residence facilities that provide students with a disability a safe environment in which to live and study.*
- (3) *Each institution shall develop a housing and security policy in compliance with the council's guidelines that shall be visibly posted in each residence facility, made available on campus computer networks to which students have access, and included in all student housing information. The policies shall include, but not be limited to, an appeals process that may be used by students, their parents, or their advocates when they have reason to believe that the institution's policy or the student's housing assignment does not reasonably accommodate the student's disability or endangers the student's safety or health. The appeals process shall mandate that the body assigned to hear the appeal shall not include representatives of the original department that made the housing assignment that is being appealed.*
- (4) *Each institution shall prepare at the beginning of each semester a list with the name and residency assignment of each student with a disability, as reported to the institution by the student or the student's parent or advocate, as appropriate. The list shall be given to the campus housing and security authorities to be used in an emergency to identify, locate, and act to help, protect, and if necessary, rescue the student with a disability.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

*Any person who knowingly violates the provisions of Section 1 of this Act, or who knowingly induces another, directly or indirectly, to violate the provisions of Section 1 of this Act, shall be fined not less than five hundred dollars (\$500), nor more than one thousand five hundred dollars (\$1,500).*

**Approved March 28, 2000**

## **CHAPTER 192**

**(SB 240)**

AN ACT relating to tuition.

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

Section 1. KRS 164.020 is amended to read as follows:

The Council on Postsecondary Education in Kentucky shall:

- (1) Develop and implement the strategic agenda with the advice and counsel of the Strategic Committee on Postsecondary Education. The council shall provide for and direct the planning process and subsequent strategic implementation plans based on the strategic agenda as provided in KRS 164.0203;
- (2) Revise the strategic agenda and strategic implementation plan with the advice and counsel of the committee as set forth in KRS 164.004;
- (3) Develop a system of public accountability related to the strategic agenda by evaluating the performance and effectiveness of the state's postsecondary system. The council shall prepare a report in conjunction with the accountability reporting described in KRS 164.095, which shall be submitted to the committee, the Governor, and the General Assembly by December 1 annually. This report shall include a description of contributions by postsecondary institutions to the quality of elementary and secondary education in the Commonwealth;
- (4) Review, revise, and approve the missions of the state's universities and the Kentucky Community and Technical College System. The Council on Postsecondary Education shall have the final authority to determine the compliance of postsecondary institutions with their academic, service, and research missions;
- (5) Establish and ensure that all postsecondary institutions in Kentucky cooperatively provide for an integrated system of postsecondary education. The council shall guard against inappropriate and unnecessary conflict and duplication by promoting transferability of credits and easy access of information among institutions;
- (6) Engage in analyses and research to determine the overall needs of postsecondary education in the Commonwealth;
- (7) Develop plans that may be required by federal legislation. The council shall for all purposes of federal legislation relating to planning be considered the "single state agency" as that term may be used in federal

legislation. When federal legislation requires additional representation on any "single state agency," the Council on Postsecondary Education shall establish advisory groups necessary to satisfy federal legislative or regulatory guidelines;

- (8) Determine tuition and approve the minimum qualifications for admission to the state postsecondary educational system. In determining the tuition for non-Kentucky residents, the council shall consider the fees required of Kentucky students by institutions in adjoining states, the resident fees charged by other states, the total actual per student cost of training in the institutions for which the fees are being determined, and the ratios of Kentucky students to non-Kentucky students comprising the enrollments of the respective institutions, and other factors the council may in its sole discretion deem pertinent;
- (9) Devise, establish, and periodically review and revise policies to be used in making recommendations to the Governor for consideration in developing recommendations to the General Assembly for appropriations to the universities and the Kentucky Community and Technical College System. The council has sole discretion, with advice of the Strategic Committee on Postsecondary Education and the executive officers of the postsecondary education system, to devise policies that provide for allocation of funds among the universities and the Kentucky Community and Technical College System;
- (10) Lead and provide staff support for the biennial budget process as provided under KRS Chapter 48, in cooperation with the committee;
- (11)
  - (a) Except as provided in paragraph (b) of this subsection, review and approve all capital construction projects covered by KRS 45.750(1)(f), including real property acquisitions, and regardless of the source of funding for projects or acquisitions. Approval of capital projects and real property acquisitions shall be on a basis consistent with the strategic agenda and the mission of the respective universities and the Kentucky Community and Technical College System.
  - (b) The organized groups that are establishing community college satellites as branches of existing community colleges in the counties of Laurel, Leslie, and Muhlenberg, and that have substantially obtained cash, pledges, real property, or other commitments to build the satellite at no cost to the Commonwealth, other than operating costs that shall be paid as part of the operating budget of the main community college of which the satellite is a branch, are authorized to begin construction of the satellite on or after January 1, 1998;
- (12) Require reports from the executive officer of each institution it deems necessary for the effectual performance of its duties;
- (13) Develop a university track program within the Kentucky Community and Technical College System consisting of sixty (60) hours of instruction that can be transferred and applied toward the requirements for a bachelor's degree at the public universities. The track shall consist of general education courses and pre-major courses as prescribed by the council. Courses in the university track program shall transfer and apply toward the requirements for graduation with a bachelor's degree at all public universities. Successful completion of the university track program shall meet the academic requirement for transfer to a public university as a junior. By fall semester of 1997, requirements for track programs shall be established for all majors and baccalaureate degree programs;
- (14) Define and approve the offering of all postsecondary education technical, associate, baccalaureate, graduate, and professional degree, certificate, or diploma programs in the public postsecondary education institutions. The council shall expedite wherever possible the approval of requests from the Kentucky Community and Technical College System board of regents relating to new certificate, diploma, technical, or associate degree programs of a vocational-technical and occupational nature. Without the consent of the General Assembly, the council shall not abolish or limit the total enrollment of the general program offered at any community college to meet the goal of reasonable access throughout the Commonwealth to a two (2) year course of general studies designed for transfer to a baccalaureate program. This does not restrict or limit the authority of the council, as set forth in this section, to eliminate or make changes in individual programs within that general program;
- (15) Eliminate, in its discretion, existing programs or make any changes in existing academic programs at the state's postsecondary educational institutions, taking into consideration these criteria:
  - (a) Consistency with the institution's mission and the strategic agenda;
  - (b) Alignment with the priorities in the strategic implementation plan for achieving the strategic agenda;
  - (c) Elimination of unnecessary duplication of programs within and among institutions; and

- (d) Efforts to create cooperative programs with other institutions through traditional means, or by use of distance learning technology and electronic resources, to achieve effective and efficient program delivery;
- (16) Ensure the governing board and faculty of all postsecondary education institutions are committed to providing instruction free of discrimination against students who hold political views and opinions contrary to those of the governing board and faculty;
- (17) Review proposals and make recommendations to the Governor regarding the establishment of new public community colleges, technical institutions, and new four (4) year colleges;
- (18) Postpone the approval of any new program at a state postsecondary educational institution, unless the institution has met its equal educational opportunity goals, as established by the council. In accordance with administrative regulations promulgated by the council, those institutions not meeting the goals shall be able to obtain a temporary waiver, if the institution has made substantial progress toward meeting its equal educational opportunity goals;
- (19) Ensure the coordination, transferability, and connectivity of technology among postsecondary institutions in the Commonwealth including the development and implementation of a technology plan as a component of the strategic agenda;
- (20) Approve the teacher education programs in the public institutions that comply with standards established by the Education Professional Standards Board pursuant to KRS 161.028;
- (21) Constitute the representative agency of the Commonwealth in all matters of postsecondary education of a general and statewide nature which are not otherwise delegated to one (1) or more institutions of postsecondary learning. The responsibility may be exercised through appropriate contractual relationships with individuals or agencies located within or without the Commonwealth. The authority includes, but is not limited to, contractual arrangements for programs of research, specialized training, and cultural enrichment;
- (22) Maintain procedures for the approval of a designated receiver to provide for the maintenance of student records of the public institutions of higher education and the colleges as defined in KRS 164.945, and institutions operating pursuant to KRS 165A.310 which offer collegiate level courses for academic credit, which cease to operate. Procedures shall include assurances that, upon proper request, subject to federal and state laws and regulations, copies of student records shall be made available within a reasonable length of time for a minimum fee;
- (23) Monitor and transmit a report on compliance with KRS 164.351 to the director of the Legislative Research Commission for distribution to the Health and Welfare Committee;
- (24) Develop in cooperation with each state postsecondary educational institution a comprehensive orientation program for new members of the council and the governing boards. The orientation program shall include, but not be limited to, the information concerning the roles of the council, the strategic agenda and the strategic implementation plan, and the respective institution's mission, budget, plans, policies, strengths, and weaknesses;
- (25) Develop a financial reporting procedure to be used by all state postsecondary education institutions to ensure uniformity of financial information available to state agencies and the public;
- (26) Select and appoint a president of the council under KRS 164.013;
- (27) Employ consultants and other persons and employees as may be required for the council's operations, functions, and responsibilities;
- (28) Promulgate administrative regulations, in accordance with KRS Chapter 13A, governing its powers, duties, and responsibilities as described in this section;
- (29) Prepare and present by January 31 of each year an annual status report on postsecondary education in the Commonwealth to the Governor, the Strategic Committee on Postsecondary Education, and the Legislative Research Commission;
- (30) Ensure that the state postsecondary system does not unnecessarily duplicate services and programs provided by private postsecondary institutions and shall promote maximum cooperation between the state postsecondary system and private postsecondary institutions;

- (31) Create advisory groups representing the presidents, faculty, nonteaching staff, and students of the public postsecondary education system and the independent colleges and universities;
- (32) Develop a statewide policy to promote employee and faculty development in all postsecondary institutions ***and in state and locally operated secondary area technology centers*** through the waiver of tuition for college credit coursework in the public postsecondary education system. Any regular full-time employee of a postsecondary public institution ***or a state or locally operated secondary area technology center*** may, with prior administrative approval of the course offering institution, take a maximum of six (6) credit hours per term at any public postsecondary institution. The institution shall waive the tuition up to a maximum of six (6) credit hours per term; and
- (33) Exercise any other powers, duties, and responsibilities necessary to carry out the purposes of this chapter. Nothing in this chapter shall be construed to grant the Council on Postsecondary Education authority to disestablish or eliminate any college of law which became a part of the state system of higher education through merger with a state college.

**Approved March 29, 2000**

## CHAPTER 193

**(HB 296)**

AN ACT relating to juvenile justice.

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

Section 1. KRS 600.020 is amended to read as follows:

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

- (1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child:
  - (a) Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;
  - (b) Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;
  - (c) Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005(12);
  - (d) Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;
  - (e) Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;
  - (f) Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;
  - (g) Abandons or exploits the child; or
  - (h) Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;
- (2) ***"Beyond the control of school" means any child who has been found by the court to have repeatedly violated the lawful regulations for the government of the school as provided in KRS 158.150, and as documented in writing by the school as a part of the school's petition or as an attachment to the school's petition. The petition or attachment shall describe the student's behavior and all intervention strategies attempted by the school;***

- (3) ***"Beyond the control of parents" means a child who has repeatedly failed to follow the reasonable directives of his or her parents, legal guardian, or person exercising custodial control or supervision other than a state agency which behavior results in danger to the child or others, and which behavior does not constitute behavior that would warrant the filing of a petition under KRS Chapter 645;***
- (4) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet;
- (5)~~(3)~~ "Cabinet" means the Cabinet for Families and Children;
- (6)~~(4)~~ "Certified juvenile~~[-holding]~~ facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training ***in juvenile detention*** developed and approved by, the Department of Juvenile Justice after consultation with other appropriate state agencies;
- (7)~~(5)~~ "Child" means any person who has not reached his eighteenth birthday unless otherwise provided;
- (8)~~(6)~~ "Child-caring facility" means any facility or group home other than a state facility, Department of Juvenile Justice contract facility or group home, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility;
- (9)~~(7)~~ "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;
- (10)~~(8)~~ "Clinical treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;
- (11)~~(9)~~ "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Families and Children, Department of Juvenile Justice, or another facility or agency until the child attains the age of eighteen (18) unless the commitment is discharged under KRS Chapter 605 or the committing court terminates or extends the order;
- (12)~~(10)~~ "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the Department of Juvenile Justice or the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;
- (13)~~(11)~~ "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;
- (14)~~(12)~~ "Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;
- (15)~~(13)~~ "Court-designated worker" means that organization or individual delegated by the administrative office of the courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;
- (16)~~(14)~~ "Deadly weapon" has the same meaning as it does in KRS 500.080;
- (17)~~(15)~~ "Department" means the Department for Social Services;
- (18)~~(16)~~ "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;
- (19) ***"Detention" means the safe and temporary custody of a juvenile who is accused of conduct subject to the jurisdiction of the court who requires a restricted environment for his or her own or the community's protection***~~(17) — "Detain" means, upon a valid court order, to confine a child pending further proceedings in an intermittent holding facility, a juvenile holding facility, a secure juvenile detention facility, or an alternative form of detention~~;
- (20) ***"Detention hearing" means a hearing held by a judge or trial commissioner within twenty-four (24) hours, exclusive of weekends and holidays, of the start of any period of detention prior to adjudication;***

- (21)~~((18))~~ "Diversion agreement" means an agreement entered into between a court-designated worker and a child charged with the commission of offenses set forth in KRS Chapters 630 and 635, the purpose of which is to serve the best interest of the child and to provide redress for those offenses without court action and without the creation of a formal court record;
- (22)~~((19))~~ "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;
- (23)~~((20))~~ "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in the child's ability to function within a normal range of performance and behavior with due regard to his age, development, culture, and environment as testified to by a qualified mental health professional;
- (24)~~((21))~~ "Family service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;
- (25)~~((22))~~ "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;
- (26)~~((23))~~ "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;
- (27)~~((24))~~ "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;
- (28)~~((25))~~ "Habitual truant" means any child who has been found by the court to have been **reported as a truant as defined in KRS 159.150 three (3) or more times**~~[absent from school without valid excuse for three (3) or more days]~~ during a one (1) year period~~[or tardy for three (3) or more days on at least three (3) occasions during a one (1) year period]~~;
- (29)~~((26))~~ "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;
- (30)~~((27))~~ "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;
- (31)~~((28))~~ "Informal adjustment" means an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;
- (32)~~((29))~~ "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;
- (33)~~((30))~~ "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, **in which a child accused of a public offense may be detained for a period not to exceed twenty-four (24) hours, exclusive of weekends and holidays prior to a detention hearing as provided for in KRS 610.265, and** in which children are supervised and observed on a regular basis **by certified juvenile facility staff**;
- (34)~~((31))~~ "Juvenile holding facility" means a physically secure **facility**~~[setting]~~, approved by the Department of Juvenile Justice, which is an entirely separate~~[facility or]~~ portion or wing of a building containing an adult jail, which provides total **sight and sound** separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile~~[holding]~~ facility staff to provide twenty-four (24) hours per day supervision~~[. Employees of jails who meet the qualifications of the Department of Juvenile Justice may supervise juvenile as well as adult prisoners]~~;
- (35)~~((32))~~ "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; **or protection of the community**, and is conducted at the suitable available facility closest to the child's place of residence;

- (36)~~((33))~~ "Motor vehicle offense" means any violation of the nonfelony provisions of KRS Chapters 186, 189 or 189A, KRS 177.300, 304.39-110, or 304.39-117;
- (37)~~((34))~~ "'Near fatality" means an injury that, as certified by a physician, places a child in serious or critical condition;
- (38)~~((35))~~ "Needs of the child" means necessary food, clothing, health, shelter, and education.
- (39)~~((36))~~ "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;
- (40) ***"Nonsecure setting" means a nonsecure facility or a residential home, including a child's own home, where a child may be temporarily placed pending further court action. Children before the court in a county that is served by a state operated secure detention facility, who are in the detention custody of the Department of Juvenile Justice, and who are placed in a nonsecure alternative by the Department of Juvenile Justice, shall be supervised by the Department of Juvenile Justice;***
- (41)~~((37))~~ "Parent" means the biological or adoptive mother or father of a child;
- (42)~~((38))~~ "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;
- (43)~~((39))~~ "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;
- (44)~~((40))~~ "Physical injury" means substantial physical pain or any impairment of physical condition;
- (45) ***"Physically secure facility" means a facility that relies primarily on the use of construction and hardware such as locks, bars, and fences to restrict freedom;***
- (46)~~((41))~~ "Public offense action" means an action, excluding contempt, brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;
- (47)~~((42))~~ "Qualified mental health professional" means:
- (a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;
  - (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;
  - (c) A licensed psychologist at the doctoral level or certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under KRS Chapters 600 to 645;
  - (d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center; or
  - (e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;



- (48)~~((43))~~ "Residential treatment facility" means a facility or group home with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of children;
- (49)~~((44))~~ "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;
- (50)~~((45))~~ "School personnel" means those certified persons under the supervision of the local public or private education agency;
- (51)~~((46))~~ "Secretary" means the secretary of the Cabinet for Families and Children;
- (52)~~((47))~~ "Secure juvenile detention facility" means any **physically secure** facility used for the secure detention of children other than~~[ a jail, police station, lockup, intermittent holding facility, or any building which is a part of, or attached to, ]~~ any facility in which adult prisoners are confined~~[ or which shares staff with a facility in which adult prisoners are confined ]~~;
- (53)~~((48))~~ "**Staff** Secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;
- (54)~~((49))~~ "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily member or organ;
- (55)~~((50))~~ "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions in which the parent, guardian, or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;
- (56)~~((51))~~ "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;
- (57)~~((52))~~ "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew or possession of alcoholic beverages;
- (58)~~((53))~~ "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;
- (59) "**Valid court order**" means a court order issued by a judge to a child alleged or found to be a status offender:
- (a) **Who was brought before the court and made subject to the order;**
  - (b) **Whose future conduct was regulated by the order;**
  - (c) **Who was given written and verbal warning of the consequences of the violation of the order at the time the order was issued and whose attorney or parent or legal guardian was also provided with a written notice of the consequences of violation of the order, which notification is reflected in the record of the court proceedings ; and**
  - (d) **Who received, before the issuance of the order, the full due process rights guaranteed by the Constitution of the United States.**
- (60)~~((54))~~ "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;

~~(61)~~~~(55)~~ "Youth alternative center" means a nonsecure facility, approved by the Department of Juvenile Justice, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in KRS 610.267 and the administrative regulations promulgated thereunder; and

~~(62)~~~~(56)~~ "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

Section 2. KRS 610.010 is amended to read as follows:

- (1) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the District Court of each county shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his eighteenth birthday or of any person who at the time of committing a public offense was under the age of eighteen (18) years, who allegedly:
  - (a) Has committed a public offense prior to his eighteenth birthday, except a motor vehicle offense involving a child sixteen (16) years of age or older. A child sixteen (16) years of age or older taken into custody upon the allegation that he has committed a motor vehicle offense shall be treated as an adult and shall have the same conditions of release applied to him as an adult. A child taken into custody upon the allegation that he has committed a motor vehicle offense who is not released under conditions of release applicable to adults shall be held, pending his appearance before the District Court, in a secure juvenile detention facility or a juvenile holding facility or, if neither is available, in an intermittent holding facility. Children sixteen (16) years of age or older who are convicted of, or plead guilty to, a motor vehicle offense shall, if sentenced to a term of confinement, be placed in a secure juvenile detention facility or a juvenile holding facility. The term "motor vehicle offense" shall not be deemed to include the offense of stealing or converting a motor vehicle nor operating the same without the owner's consent nor any offense which constitutes a felony;
  - (b) ***Is beyond the control of the school or beyond the control of parents as defined in Section 1 of this Act***~~[Has not subjected himself to the reasonable control of his parent or guardian, school personnel, or other person exercising custodial control or supervision of the child];~~
  - (c) Is an habitual truant from school;
  - (d) Is an habitual runaway from his parent or other person exercising custodial control or supervision of the child;
  - (e) Is dependent, neglected, or abused; or
  - (f) Is mentally ill.
- (2) Actions brought under subsection (1)(a) of this section shall be considered to be public offense actions.
- (3) Actions brought under subsection (1)(b), (c), and (d) of this section shall be considered to be status offense actions.
- (4) Actions brought under subsection (1)(e) of this section shall be considered to be dependency actions.
- (5) Actions brought under subsection (1)(f) of this section shall be considered to be mental health actions.
- (6) Nothing in this chapter shall deprive other courts of the jurisdiction to determine the custody or guardianship of children upon writs of habeas corpus or to determine the custody or guardianship of children when such custody or guardianship is incidental to the determination of other causes pending in such other courts; nor shall anything in this chapter affect the jurisdiction of Circuit Courts over adoptions and proceedings for termination of parental rights. The court shall have no jurisdiction to make permanent awards of custody of a child, but if the court finds an emergency to exist affecting the welfare of a child, it may make temporary orders for his custody; however, if the case involves allegations of dependency, neglect, or abuse, no emergency removal or temporary custody orders shall be effective unless the provisions of KRS Chapter 620 are followed. Such orders shall be entirely without prejudice to the proceedings for permanent custody of the child and shall remain in effect until modified or set aside by the court. Upon the entry of a temporary or final judgment in the Circuit Court awarding custody of such child, all prior orders of the juvenile session of the District Court in conflict therewith shall be deemed canceled. This section shall not work to deprive the Circuit Court of jurisdiction over cases filed in Circuit Court.
- (7) The court of each county wherein a public offense, as defined in paragraph (a) of subsection (1) of this section, is committed by a child who is a resident of another county of this state shall have concurrent jurisdiction over

such child with the court of the county wherein the child resides or the court of the county where the child is found. Whichever court first acquires jurisdiction of such child may proceed to final disposition of his case, or in its discretion may make an order transferring the case to the court of the county of his residence or the county wherein the offense was committed, as the case may be.

- (8) Nothing in this chapter shall prevent the District Court from holding a child in contempt of court to enforce valid court orders previously issued by the court.
- (9) Except as provided in KRS 635.060(3), nothing in this chapter shall confer upon the District Court jurisdiction over the actions of the Department of Juvenile Justice or the cabinet in the placement, care, or treatment of a child committed to the Department of Juvenile Justice or the cabinet; or to require the department or the cabinet to perform, or to refrain from performing, any specific act in the placement, care, or treatment of any child committed to the department or the cabinet.
- (10) Unless precluded by KRS Chapter 635 or 640, in addition to informal adjustment, the court shall have the discretion to amend the petition to reflect jurisdiction pursuant to the proper chapter of the Kentucky Unified Juvenile Code.
- (11) The court shall have continuing jurisdiction over a child pursuant to subsection (1) of this section, to review dispositional orders, and to conduct dispositional hearings under 42 U.S.C. sec. 675(5)(c) until the child is placed for adoption, returned home to his parents with all the court imposed conditions terminated, or reaches the age of eighteen (18) years.

Section 3. KRS 610.100 is amended to read as follows:

- (1) Unless there is a suitable prior disposition investigation report or unless waived by the child ***who is represented by counsel***, before making disposition of the case of a child brought before the court under the provisions of KRS Chapters 630 or 635, whether by complaint pursuant to KRS 610.020, or by reason of having been taken into custody pursuant to KRS 610.190, the judge shall cause an investigation to be made concerning the nature of the specific act complained of and any surrounding circumstances which suggest the future care and guidance which should be given the child. The investigation shall include an inquiry into the child's age, habits, school record, general reputation, and everything that may pertain to his life, and character. The investigation shall also include an inquiry into the home conditions, life, and character of the person having custody of the child. The investigation shall also include an assessment of the parent or guardian's ability to pay all or part of the cost of the child's care and treatment should the child be ordered into a treatment program or placed on supervised probation. The result of the investigation shall be reported in writing to the court and to counsel for the parties three (3) days prior to the child's dispositional hearing and shall become a part of the record of the proceedings. The child may waive the three (3) day requirement. Objections by counsel at the dispositional hearing to portions of the dispositional report shall be noted in the record.
- (2) The investigation shall be conducted by ~~volunteer or salaried probation officers of the juvenile court or by~~ a suitable public or private agency. The cabinet and the Department of Juvenile Justice may furnish investigation services under agreements with the individual juvenile courts. For this purpose, any county judge/executive or chief executive officer of an urban-county government may enter into a contract on behalf of his county with the Department of Juvenile Justice or the cabinet for the furnishings of such services.
- (3) Upon the court's motion or the motion of any party, an informal adjustment may be made at any time during the proceedings and with the victim and with those persons specified in KRS 610.070 having prior notification of the motion.

Section 4. KRS 610.220 is amended to read as follows:

- (1) If an officer takes or receives a child into custody, the child may be held at a police station, secure juvenile detention facility, juvenile holding facility, intermittent holding facility, ***a nonsecure facility***, ~~the offices of the court designated worker,~~ or, as necessary, in a hospital or clinic for the following purposes:
  - (a) Identification and booking;
  - (b) Attempting to notify the parents or person exercising custodial control or supervision of the child, a relative, guardian, or other responsible person;
  - (c) Photographing;
  - (d) Fingerprinting;

- (e) Physical examinations, including examinations for evidence;
  - (f) Evidence collection, including scientific tests;
  - (g) Records checks;
  - (h) Determining whether the child is subject to trial as an adult; and
  - (i) Other inquiries of a preliminary nature.
- (2) A child may be held in custody pursuant to this section for a period of time not to exceed two (2) hours, unless an extension of time is granted. Permission for an extension of time may be granted by the court, trial commissioner, or court-designated worker pursuant to KRS 610.200(5)(d) and the child may be retained in custody **for up to an additional ten (10) hours at a facility of the type ~~in facilities~~** listed in subsection (1) of this section **except for an intermittent holding facility** for the period of retention.
- (3) **Any child held in custody pursuant to this section shall be sight and sound separated from any adult prisoners held in secure custody at the same location.**

Section 5. KRS 610.265 is amended to read as follows:

- (1) Any child who is ***alleged to be a status offender or who is*** accused of ***being in contempt of court on an underlying finding that the child is a status offender may be detained in a nonsecure facility, a secure juvenile detention facility, or a juvenile holding facility for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays, pending a detention hearing. Any child who is accused of*** committing a ~~status or~~ public offense or of being in contempt of court ***on an underlying public offense*** may be detained in a secure juvenile detention facility or juvenile holding facility ***for a period of time not to exceed forty-eight (48) hours, exclusive of weekends and holidays*** or, if neither is reasonably available, an intermittent holding facility, for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays ***pending a detention hearing.***
- (2) (a) Within ~~twenty-four (24) hours of the start of~~ the period of detention described in subsection (1) of this section, exclusive of weekends and holidays, a ***detention*** hearing shall be held by the judge or trial commissioner of the court for the purpose of determining whether the child shall be further detained. At the hearing held pursuant to this subsection, the court shall consider the nature of the offense, the child's background and history, and other information relevant to the child's conduct or condition.
- (b) If the court orders ~~a~~ ***the*** child detained further ~~and~~ ***after the detention hearing, that detention shall be served as follows:***
1. If the child is charged with a capital offense, Class A felony, or Class B felony, detention shall occur in either a secure juvenile detention facility or a juvenile holding facility pending the child's next court appearance subject to the court's review of the detention order prior to that court appearance.
  2. ***If it is alleged that the child is a status offender, detention shall occur in a nonsecure setting approved by the Department of Juvenile Justice pending the child's next court appearance subject to the court's review of the detention order prior to the next court appearance.***
  3. ***If a status offender is charged with violating a valid court order, and the court orders the child to serve detention, that detention shall be served in a nonsecure setting approved by the Department of Juvenile Justice unless the court issues an order in accordance with the requirements of subparagraph 4. of this paragraph.***
  4. ***Prior to ordering a status offender who is subject to a valid court order securely detained because the child violated the valid court order, the court shall:***
    - a. ***Affirm that the requirements for a valid court order were met at the time the original order finding the child to be a status offender was issued;***
    - b. ***Make a determination during the detention hearing that there is probable cause to believe that the child violated the valid court order; and***
    - c. ***Within seventy-two (72) hours of the initial detention of the child, exclusive of weekends and holidays, receive an oral report in court and on the record delivered by an appropriate public agency other than the court or a law enforcement agency, or receive***

*and review a written report prepared by an appropriate public agency other than the court or a law enforcement agency that reviews the behavior of the child and the circumstances under which the child was brought before the court, determines the reasons for the child's behavior, and determines whether all dispositions other than secure detention have been exhausted or are inappropriate. If a sufficient prior written report is included in the child's file, that report may be used to satisfy this requirement. The child may be securely detained for a period not to exceed seventy-two (72) hours pending receipt and review of the report by the court. The court shall conduct a violation hearing within twenty-four (24) hours of the receipt of the report. If the report is available at the time of the detention hearing, the violation hearing may be conducted at the same time as the detention hearing. The hearing shall be conducted in accordance with the provisions of KRS 610.060. The findings required by this subsection shall be included in any order issued by the court which results in the secure detention of a status offender.*

5. *If the child is charged with a public offense, or contempt of court on an underlying public offense, and the county in which the case is before the court is not served by a state operated secure detention facility under the statewide detention plan, detention may occur in a secure juvenile detention facility, juvenile holding facility, or a nonsecure setting approved by the Department of Juvenile Justice pending the child's next court appearance, subject to the court's review of the detention order prior to that court appearance.*
  6. *If the child is charged with a public offense, or contempt on a public offense, and the county in which the case is before the court is served by a state operated secure detention facility under the statewide detention plan, the child*~~[Any other child ordered to be detained in a state-operated facility pursuant to the statewide detention plan]~~ *shall be referred to the Department of Juvenile Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance.*~~[The security assessment shall be done at the facility where the juvenile is initially detained]~~
- (c) If the child is not released, the court-designated worker shall notify the parent, person exercising custodial control or supervision, a relative, guardian, or other responsible adult.

Section 6. KRS 610.280 is amended to read as follows:

- (1)~~[(a) — If a child is detained pursuant to KRS 610.265 for the alleged commission of a public offense and not released, a hearing shall be held as soon as practical, but not to exceed twenty four (24) hours, exclusive of weekends and holidays, of the commencement of detention if the child is detained in an intermittent holding facility. If the child is detained in a secure juvenile detention facility or a juvenile holding facility, then a hearing shall be held as soon as practical, but not to exceed forty eight (48) hours, exclusive of weekends and holidays, of the commencement of detention.]~~
- ~~[(b) — If a child is detained for the alleged commission of a status offense and not released, a hearing shall be held as soon as practical, but not to exceed twenty four (24) hours, exclusive of weekends and holidays, of the commencement of detention.]~~
- (2)~~[(a) — If a child is detained pursuant to KRS 610.265 for the alleged commission of a public offense and not released, a hearing shall be held as soon as practical, but not to exceed twenty four (24) hours, exclusive of weekends and holidays, of the commencement of detention if the child is detained in an intermittent holding facility. If the child is detained in a secure juvenile detention facility or a juvenile holding facility, then a hearing shall be held as soon as practical, but not to exceed forty eight (48) hours, exclusive of weekends and holidays, of the commencement of detention.]~~
- At the detention*~~[The]~~ *hearing held pursuant to Section 5 of this Act, the court shall make separate findings as follows*~~[shall address the following issues]:~~
- (a) If there is probable cause to believe that an offense has been committed and that the accused child committed that offense. Probable cause may be established in the same manner as in a preliminary hearing in cases involving adults accused of felonies. The child shall be afforded the right to confront and cross-examine witnesses. The Commonwealth shall bear the burden of proof, and if it should fail to establish probable cause, the child shall be released and the complaint or petition dismissed unless the court determines further detention is necessary to assure the appearance of the child in court on another pending case;~~[and]~~
  - (b) In determining *whether a child should be further detained*~~[detention]~~, the court shall consider the seriousness of the alleged offense, the possibility that the child would commit an offense dangerous to himself or the community pending disposition of the alleged offense, the child's prior record, if any, and whether there are other charges pending against the child.~~[Any child ordered to be detained in a state-operated facility pursuant to the statewide detention plan shall be referred to the Department of Juvenile~~

~~Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance. The security assessment shall be done at the facility where the juvenile is initially detained]~~

- (3) If, after completion of the detention hearing, the court is of the opinion that detention is necessary, the order shall state on the record the specific reasons for detention.

Section 7. KRS 610.290 is amended to read as follows:

- (1) Unless a hearing is held *within the time frame established by Section 5 of this Act*, and the necessity for detention properly established, the child shall be released to the custody of his parents, person exercising custodial control or supervision or other responsible adult pending further disposition of the case. A child shall have a right to counsel at his detention hearing determining his right to freedom pending the disposition of his case, and his parents, person exercising custodial control or supervision or other responsible adult shall have a right to attend the hearing if such attendance will not unnecessarily delay the hearing. Any person aggrieved by a proceeding under this subsection may proceed by habeas corpus to the Circuit Court.
- (2) Whether the child is released before or after a hearing, or is detained as a result of such hearing, the child and his parents, person exercising custodial control or supervision or other responsible adult shall be given written notice of the time and place of the adjudicatory hearing concerning the child and an account of the specific charges against the child, including the specific statute alleged to have been violated. Such notice shall be given at least seventy-two (72) hours prior to the initial hearing on the case.

Section 8. KRS 630.010 is amended to read as follows:

In addition to those purposes set forth in KRS 600.010, this chapter shall be interpreted and construed to effectuate the following purposes regarding status offenders:

- (1) The Commonwealth's courts shall utilize a separate and distinct set of guidelines for status offenders which reflect their individual needs;
- (2) It shall be declared to be the policy of this Commonwealth that all its efforts and resources be directed at involving the child and the family in remedying the problem for which they have been referred;
- (3) ***Status offenders shall not be detained***~~[Detention of status offenders]~~ in secure juvenile detention facilities or juvenile holding facilities ***after the initial detention hearing unless the child is accused of, or has an adjudication that the child has violated a valid court order, in which case the child may be securely detained for up to seventy-two (72) hours, exclusive of weekends and holidays, pending receipt of the report required under subsection (3) of Section 12 of this Act. Any period of secure detention prior to the detention hearing shall not exceed twenty-four (24) hours, exclusive of weekends and holidays;***~~[should only be used for very specific and constructive purposes, when all other less restrictive alternatives to detention have been attempted and are not feasible; and]~~
- (4) ***Status offenders accused of violating a valid court order shall not be securely detained in intermittent holding facilities; and***
- (5) ***Status offenders accused of or found guilty of violating a valid court order***~~[Status offenders]~~ shall not be converted into public offenders by virtue of ***this***~~[status]~~ conduct.

Section 9. KRS 630.020 is amended to read as follows:

The court shall have exclusive jurisdiction in proceedings concerning any child living, or found within the district, who allegedly:

- (1) Has been an habitual runaway from his parent or person exercising custodial control or supervision of the child;
- (2) ***Is beyond the control of the school or beyond the control of parents as defined in Section 1 of this Act***~~[Has not subjected himself to the reasonable control of his parent or guardian or school personnel or person exercising custodial control or supervision of the child]; or~~
- (3) Has been an habitual truant from school.

Section 10. KRS 630.040 is amended to read as follows:

Any person taking a child into custody, with all reasonable speed, shall in this sequence:

- (1) Deliver the child suffering from a physical condition or illness which requires prompt medical treatment to a medical facility or physician. Children suspected of having a mental or emotional illness shall be evaluated in accordance with the provisions of KRS Chapter 645;
- (2) Contact a court designated worker who shall have the responsibility for determining appropriate placement pursuant to KRS 610.200(5);
- (3) If the court designated worker determines that the placements designated in KRS 610.200(5) and subsection (1) of this section have been exhausted ***or are not appropriate***, a child may be delivered to a secure juvenile detention facility, ~~a [or] juvenile holding facility~~, ***or a nonsecure setting approved by the Department of Juvenile Justice pending the detention hearing***;
- (4) When the child has not been released to his parents or person exercising custodial control or supervision, the person taking the child into custody shall make a reasonable effort promptly to give oral notice to the parent or person exercising custodial control or supervision of the child;
- (5) In all instances the peace officer taking a child into custody shall provide a written statement to the court designated worker of the reasons for taking the child into custody;
- (6) If the child is placed in an emergency shelter or medical facility, during the adjudication and disposition of his case, the court may order his parents to be responsible for the expense of his care; and
- (7) The peace officer taking the child into custody shall within three (3) hours of taking a child into custody file a complaint with the court, stating the ***basis for taking the child into custody***~~[status offense charged by KRS number]~~ and the reason why the child was not released to the parent or other adult exercising custodial control or supervision of the child, relative or other responsible adult, a court designated agency, an emergency shelter or medical facility. Pending further disposition of the case, the court or the court designated worker may release the child to the custody of any responsible adult who can provide adequate care and supervision.

Section 11. KRS 630.070 is amended to read as follows:

No ***status offender***~~[child]~~ shall be placed in a secure juvenile detention facility or juvenile holding facility as a means or form of punishment except following a finding that ***the child has violated a valid court order***~~[he is in contempt of court. When a child is detained for the alleged commission of a status offense, a detention hearing shall be held as soon as is practical, but within forty eight (48) hours of the detention, exclusive of weekends and holidays].~~

Section 12. KRS 630.080 is amended to read as follows:

- (1) In order for the court to detain ~~a [the] child [in a secure juvenile detention facility or juvenile holding facility]~~ after the ***detention hearing***~~[twenty four (24) hour period]~~, the Commonwealth shall establish probable cause at the detention hearing that ***the child is a status offender and that further detention of the child is necessary for the protection of the child or the community***~~[a status offense has been committed and that the child committed the offense]~~. If the Commonwealth fails to establish ***probable cause that the child is a status offender***~~[these grounds]~~, the complaint shall be dismissed and the child shall be released. ***If the Commonwealth establishes probable cause that the child is a status offender, but that further detention of the child is not necessary for the protection of the child or the community, the child shall be released to the parent or person exercising custodial control or supervision of the child.*** ~~If [the] grounds are established that the child is a status offender, and that further detention is necessary, the child may be placed in a nonsecure setting approved by the Department of Juvenile Justice [held in a secure juvenile detention facility or juvenile holding facility, as provided in subsection (3) of KRS 630.040, pending an adjudicatory hearing only if the Commonwealth shows probable cause to believe one (1) of the following:~~
  - ~~(1) All alternatives to secure detention have been exhausted;~~
  - ~~(2) The child has, within the last year, failed to appear at court hearings and requires detention to assure his presence at subsequent hearings;~~
  - ~~(3) The child has run away from a secure or nonsecure facility;~~
  - ~~(4) The child has run away from his home, and his parent, guardian, or person exercising similar custodial control or supervision of the child has orally agreed to assume physical custody or pay for his transportation within forty eight (48) hours. The child may on his own motion present to the court reasons why he should not be returned to his parents or person exercising similar custodial control or supervision of the child. Upon consideration of such motion or if the parents refuse to assume custody of the child, the court may in its~~

~~discretion place the youth in a nonsecure facility and concurrently order that a protective services investigation be commenced as allowed by KRS Chapter 620];~~

- (2)~~[(5)]~~ *A status offender may be securely detained if the cabinet has initiated or intends to initiate transfer of the youth by competent document under the provisions of the interstate compact pursuant to KRS Chapter 615;[or]*
- (3) *A status offender who is subject to a valid court order may be securely detained upon a finding that the child violated the valid court order if the court does the following prior to ordering that detention:*
- (a) *Affirms that the requirements for a valid court order were met at the time the original order finding the child to be a status offender was issued;*
  - (b) *Makes a determination during the detention hearing that there is probable cause that the child violated the valid court order; and*
  - (c) *Within seventy-two (72) hours of the initial detention of the child, exclusive of weekends and holidays, receives an oral report in court and on the record delivered by an appropriate public agency other than the court or a law enforcement agency, or receives and reviews a written report prepared by an appropriate public agency other than the court or a law enforcement agency that reviews the behavior of the child and the circumstances under which the child was brought before the court, determines the reasons for the child's behavior, and determines whether all dispositions other than secure detention have been exhausted or are inappropriate. If a sufficient prior written report is included in the child's file, that report may be used to satisfy this requirement. The child may be securely detained for a period not to exceed seventy-two (72) hours pending receipt and review of the report by the court. The court shall conduct a violation hearing within twenty-four (24) hours of the receipt of the report, exclusive of weekends and holidays. If the report is available at the time of the detention hearing, the violation hearing may be conducted at the same time as the detention hearing. The hearing shall be conducted in accordance with the provisions of KRS 610.060. The findings required by this subsection shall be included in any order issued by the court which results in the secure detention of a status offender.*

~~[(6)] The child is a danger to himself or others, unless he is suspected of having a mental or emotional illness and requires medical attention in which case the provisions of KRS Chapter 645 shall be followed.]~~

Section 13. KRS 630.100 is amended to read as follows:

*Except as otherwise provided in this chapter, no adjudicated status offender shall be securely detained*~~held in a secure juvenile detention facility or juvenile holding facility as provided in KRS 630.040 pending disposition for a period exceeding ten (10) days after the adjudicatory hearing, unless waived by the child and the court considers it in the child's best interest. A child shall not be held in a secure juvenile detention facility or juvenile holding facility more than ten (10) days after the exercise of this waiver].~~

Section 14. KRS 630.120 is amended to read as follows:

- (1) *All dispositional hearings conducted under this chapter shall be conducted in accordance with the provisions of KRS 610.060 and 610.070. In addition, the court shall, at the time the dispositional order is issued:*
- (a) *Give the child adequate and fair warning of the consequences of the violation of the order; and*
  - (b) *Provide the child and the child's attorney, parent, or legal guardian a written statement setting forth the conditions of the order and the consequences for violating the order.*

*An order issued pursuant to this section is a valid court order and any child violating that order may be subject to the provisions of subsection (3) of Section 12 of this Act.*~~[The general conduct of the dispositional hearings under this section relating to status offenders shall follow the procedures pursuant to KRS 610.070 and.]~~

- (2) The court shall consider all appropriate local remedies to aid the child and *the child's*~~[his]~~ family subject to the following conditions:
- (a) Residential and nonresidential treatment programs for status offenders shall be community-based and nonsecure; and



- (b) With the approval of the education agency, the court may place the child in a nonsecure public or private education agency accredited by the Department of Education.
- (3)(2) At the disposition of a child adjudicated on a petition brought pursuant to this chapter, all information helpful in making a proper disposition, including oral and written reports, may be received by the court provided that the child, ***the child's***~~his~~ parents, their counsel, the prosecuting attorney, the child's counsel, or other interested parties as determined by the judge shall be afforded an opportunity to examine and controvert the reports. For good cause, the court may allow the admission of hearsay evidence.
- (4)(3) The court shall ***affirmatively***~~first~~ determine that all appropriate remedies have been considered and exhausted to assure that the least restrictive alternative method of treatment is utilized.
- (5)(4) The court may order the child and ***the child's***~~his~~ family to participate in any programs which are necessary to effectuate a change in the child and the family.
- (6)(5) When all appropriate resources have been reviewed and considered insufficient to adequately address the needs of the child and ***the child's***~~his~~ family, the court may commit the child to the cabinet for such services as may be necessary. The cabinet shall consider all appropriate local remedies to aid the ***child***~~youth~~ and ***the child's***~~his~~ family subject to the following conditions:
- (a) Treatment programs for status offenders shall be, unless excepted by federal law, community-based and nonsecure;
  - (b) The cabinet may place the child in a nonsecure public or private education agency accredited by the department of education;
  - (c) The cabinet may initiate proceedings pursuant to KRS 610.160 when the parents fail to participate in the cabinet's treatment programs; and
  - (d) The cabinet may discharge the child from commitment after providing ten (10) days' prior written notice to the committing court which may object to such discharge by holding court review of the commitment under KRS 610.120.

Section 15. KRS 635.055 is amended to read as follows:

No child who is found to be in contempt of court shall be committed as a public offender as a result of such finding, nor detained because of such finding in a facility other than a secure juvenile detention facility,~~or~~ juvenile holding facility, ***or a nonsecure detention alternative.***

SECTION 16. A NEW SECTION OF KRS CHAPTER 630 IS CREATED TO READ AS FOLLOWS:

***Notwithstanding any provision of KRS Chapter 520 to the contrary, no child accused of being or who has been adjudicated as a status offender or who has been accused of or held in contempt of court based upon an underlying finding that the child is a status offender who is absent without leave from a nonsecure detention option or home detention, or who fails to comply with the conditions of supervised placement, shall be charged with escape for being absent without leave or failing to comply with the conditions of supervised placement.***

Section 17. KRS 508.025 is amended to read as follows:

- (1) A person is guilty of assault in the third degree when the actor:
- (a) Recklessly, with a deadly weapon or dangerous instrument, or intentionally causes or attempts to cause physical injury to:
    1. A state, county, city, or federal peace officer;
    2. An employee of a detention facility, or state residential treatment facility or state ***staff*** secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender;
    3. An employee of the Department for Social Services employed as a social worker to provide direct client services, if the event occurs while the worker is performing job related duties; or
    4. A probation and parole officer; or
  - (b) Being a person confined in a detention facility, or state residential treatment facility or state ***staff*** secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile

charged with or adjudicated delinquent because of a public offense or as a youthful offender, inflicts physical injury upon or throws or causes feces or urine to be thrown upon an employee of the facility.

- (2) Assault in the third degree is a Class D felony.

SECTION 18. A NEW SECTION OF KRS CHAPTER 600 IS CREATED TO READ AS FOLLOWS:

***Notwithstanding any other provision of KRS Chapter 600 to 645, the inherent contempt power of the court shall not be diminished.***

Section 19. The following KRS sections are repealed:

- 610.250 Conditional releases.
- 630.090 Limitations on detention of alleged status offender.
- 630.110 Conduct of adjudicatory hearing.
- 630.130 Limitations on detention of status offender after disposition.

**Approved March 29, 2000**

## **CHAPTER 194**

**(HB 595)**

AN ACT relating to insurance.

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

SECTION 1. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 and 2 of this Act:*

- (1) *A "specialty credit insurance producer" is an individual or business entity licensed by the commissioner to solicit applications or enrollments for group or individual credit life, credit health, credit personal property, and credit unemployment insurance contracts on behalf of an insurer; and if authorized to do so by the insurer, to effectuate them.*
- (2) *A "managing employee" is a salaried full-time employee of the licensed business entity that is responsible for the supervision of the other employees engaged in the placement of insurance under this section.*
- (3) *A license issued under this section shall permit credit insurance sales by the license holder, its subsidiaries, and affiliates.*

SECTION 2. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The commissioner may issue to an applicant qualified under this section a license to act as a specialty credit insurance producer for the following lines of insurance only:*
  - (a) *Credit life;*
  - (b) *Credit health;*
  - (c) *Credit personal property;*
  - (d) *Credit involuntary unemployment; and*
  - (e) *Any other credit-related insurance approved by the commissioner as promulgated by administrative regulation.*
- (2) *For a specialty license to be issued under this section, the applicant shall submit to the commissioner all of the following:*
  - (a) *A written application, signed by the applicant, on a form prescribed by the commissioner, that contains the information prescribed by the commissioner, including a list of physical locations where activities authorized by the specialty license will be conducted;*

- (b) *A certification by an insurer authorized to do business in this state, signed and affirmed as true under penalty of perjury by an officer stating that:*
  - 1. *The insurer has satisfied itself that the named applicant is trustworthy and competent to act as the insurer's agent; and*
  - 2. *The insurer has appointed the managing employee and business entity applicants to act as agents for the type of insurance specified;*
- (c) *The applicable fee set forth in KRS 304.4-010.*
- (3) *A specialty license issued under this section authorizes an employee or representative of the license holder to participate in any aspect of selling the types of insurance specified in this section, without being licensed, registered, or otherwise individually identified, if all of the following are true:*
  - (a) *The employee or representative operates with permission from and under the supervision of a managing employee license holder;*
  - (b) *The employee or representative has been instructed by the managing employee license holder with respect to the disclosures that may be required to be made to consumers in connection with the sale of credit insurance; and*
  - (c) *The employee or representative is not primarily compensated based on the amount of insurance sold by the employee or representative.*
- (4) *A specialty license holder may not in any manner advertise, represent, or otherwise hold out the license holder or any employee or representative of the license holder as a licensed insurance agent under another section of this subtitle, unless the entity or individual actually holds the applicable license.*
- (5) *Insurance shall not be transacted under this section at any location unless the sale of insurance includes the consumer protection disclosures set forth in Regulation Z of the Federal Truth in Lending Act, 15 U.S.C. sec. 501 et seq.*
- (6) *If a specialty credit insurance producer violates this chapter, the commissioner may, after notice and the opportunity for a hearing, impose any penalties set forth in KRS 304.2-360, 304.9-440, and 304.99-020.*
- (7) *An examination is not required for issuance of a license under this section and continuing education requirements do not apply to a license issued under this section. A business entity shall continuously maintain at least one (1) managing employee licensed under this section, but shall not be required to license any of its officers, directors, or other employees individually.*
- (8) *A licensee under this section may receive commissions or other compensation for services rendered in connection with the sale of credit insurance under this section.*
- (9) *Licenses shall be renewed biennially as set forth in KRS 304.9-260 and 304.9-270.*
- (10) *The commissioner shall establish revenue-neutral license, location, and renewal fees by administration regulation in an amount sufficient to maintain the department's revenues generated by credit-limited license fees for the fiscal year ending June, 2000, indexed annually for inflation.*

SECTION 3. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*The requirements set forth in Section 1 and 2 of this Act shall not apply to any bank licensed to do business in the Commonwealth.*

**Approved March 29, 2000**

## CHAPTER 195

**(HJR 101)**

A JOINT RESOLUTION directing the Kentucky Department of Education to promote strategies to assist school districts in providing a safe student transportation system.

WHEREAS, local school districts transport approximately 428,000 students to and from school each day; and

WHEREAS, student discipline is essential for safely transporting these students; and

WHEREAS, effective student transportation discipline policies require the cooperation of students, parents, bus drivers, principals, and local district superintendents;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. The Kentucky Department of Education shall promote strategies to assist school districts in providing a safe student transportation system to include, but not be limited to, the following:

(1) Identifying and disseminating model school and district policies and procedures for maintaining student discipline on school buses, and training school bus drivers to address student discipline problems; and

(2) Providing a procedure for bus drivers, students, and parents to report unsafe school transportation situations not satisfactorily addressed at the local level. The Kentucky Department of Education shall investigate and work to resolve all problems.

Section 2. The Kentucky Department of Education shall provide the Interim Joint Committee on Education a report on its efforts by January 1, 2001.

Section 3. The Clerk of the House of Representatives shall send a copy of this resolution to the Commissioner of Education, 500 Mero Street, Frankfort, Kentucky 40601.

**Approved March 29, 2000**

## **CHAPTER 196**

**(SB 53)**

AN ACT relating to education finance.

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

Section 1. KRS 164.7891 is amended to read as follows:

- (1) It is the intent of the General Assembly to establish a scholarship program to provide eligible Kentucky students the opportunity to attend an accredited osteopathic school of medicine located in the Commonwealth and become certified practitioners rendering medical service in the Commonwealth.
- (2) The Kentucky Higher Education Assistance Authority may award scholarships, to the extent funds are available for that purpose, to persons who declare an intent to become osteopaths and practice in the Commonwealth and who are eligible under subsection (4) of this section.
- (3) The authority may award scholarships to students who meet the following criteria:
  - (a) Kentucky residents who are United States citizens as determined by the institution in accordance with criteria established by the Council on Postsecondary Education for the purposes of admission and tuition assessment;
  - (b) Students who are enrolled or accepted for enrollment in an eligible program of study accredited by the Bureau of Professional Education of the American Osteopathy Association or its successor, on a full-time basis, or eligible students who have a disability defined by Title II of the Americans with Disabilities Act, 42 U.S.C. secs. 12131 et seq., certified by a licensed physician to be unable to attend the eligible program of study full-time because of the disability;
  - (c) Students who agree to render one (1) year of qualified service in the Commonwealth for each year the scholarship was awarded. "Qualified service" means a full-time practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy for a majority of the calendar year in the fields of family practice, general practice, general internal medicine, general pediatrics, general obstetrics, or gynecology, except that an individual having a disability defined by Title II of the Americans with Disabilities Act, 42 U.S.C. secs. 12131 et seq., whose disability, certified by another licensed physician, prevents him or her from practicing full-time, shall be deemed to perform qualified service by practicing the maximum time permitted by the attending physician; and
  - (d) Students who sign a promissory note as evidence of the scholarship awarded and the obligation to repay the scholarship amount or render medical service as agreed in lieu of payment.

- (4) The amount of the scholarship awarded to an eligible student by the authority shall be equal to the difference between:
- (a) The *average of the* prevailing amount charged for in-state tuition at the University of Kentucky School of Medicine and the University of Louisville School of Medicine; and
  - (b) The prevailing amount charged for tuition at the osteopathic school of medicine in which the student is enrolled.
- (5) The authority shall require a promissory note to be executed by the student as evidence of the obligation. The recipient shall render one (1) year of qualified service for each year the scholarship was awarded. Upon completion of each year of qualified service, the authority shall cancel the appropriate number of promissory notes. Promissory notes shall be canceled by qualified service in the order in which the promissory notes were executed. Service credit shall not include residency service. In the event a recipient fails to complete an eligible program of study, or fails to render qualified medical service as a primary care physician as agreed in subsection (3) of this section, the recipient shall be liable for the total repayment of the amount of the scholarship awarded.
- (6) A scholarship shall not be awarded or a promissory note cancellation shall not be granted to any person who is in default on any obligation to the authority under any program administered by the authority under KRS 164.740 to 164.785 until financial obligations to the authority are satisfied, except that ineligibility for this reason may be waived by the authority for cause.
- (7) A repayment obligation imposed by this section shall not be voidable by reason of the age of the recipient at the time of executing the promissory note.
- (8) Failure to meet repayment obligations imposed by this section shall be cause for the revocation of the scholarship recipient's license to practice medicine, subject to the procedures set forth in KRS Chapter 311.
- (9) Notwithstanding KRS 164.753(3), the authority shall establish by administrative regulation procedures for the administration of this program, including the execution of appropriate contracts and promissory notes, cancellation of the obligation, repayment of outstanding debt, and the priority of awarding scholarships if funds are insufficient to honor all requests.
- (10) Notwithstanding any other statute to the contrary, the maximum interest rate applicable to repayment of a promissory note under this section shall be twelve percent (12%) per annum, except that if a judgment is rendered to recover payment, the judgment shall bear interest at the rate of five percent (5%) greater than the rate actually charged on the promissory note.
- (11) (a) The "Osteopathic Medicine Scholarship Program" is hereby created as a special trust fund in the State Treasury administered by the Kentucky Higher Education Assistance Authority for the purpose of providing funds for scholarships to eligible students studying osteopathic medicine in schools in the Commonwealth.
- (b) Funding shall be transferred to the special trust fund from the coal severance tax revenues levied under KRS 143.020 in an amount that permits each Kentucky resident eligible under subsection (3) of this section to be awarded a scholarship in the amount established under subsection (4) of this section. No more than four percent (4%) of the coal severance tax revenues levied under KRS 143.020 and collected annually shall be transferred to the trust fund. To the extent this appropriation and other funds are available, the authority shall award scholarships to all renewal applicants and eligible students in accordance with the formula for determining the amount of the scholarship award established in this section.
- (c) The trust fund may also receive state appropriations, gifts, and grants from public and private sources, and federal funds. Any unallotted or unencumbered balances in the trust fund shall be invested as provided in KRS 42.500(9). Income earned from the investments shall be credited to the trust fund. Any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year and continuously appropriated only for the purposes specified in this section. A general statement that all continuing appropriations are repealed, discontinued, or suspended shall not operate to repeal, discontinue, or suspend this fund or to repeal this section.
- (12) On or before August 1 of each year, sixty-five percent (65%) of the amount of funding provided in subsection (11)(b) of this section shall be transferred to the special trust fund and the remaining thirty-five percent (35%)

shall be transferred on or before December 1 of each year. The revenue transfers shall be based upon the revenue estimates prevailing at the time each transfer is due.

- (13) The calculation and transfer of funds under subsection (11) of this section shall be made only after the quarterly installment of the annual nineteen million dollars (\$19,000,000) allocation of coal severance tax revenues has been credited to the benefit reserve fund within the Workers' Compensation Funding Commission as required by KRS 342.122.

**Approved March 29, 2000**

## **CHAPTER 197**

**(SB 56)**

AN ACT relating to the National Guard Tuition Award Program.

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

Section 1. KRS 164.5169 is amended to read as follows:

Upon certification by the Department of Military Affairs that the member is eligible, the Kentucky Higher Education Assistance Authority shall, to the extent that funds have been appropriated and are available to the National Guard Tuition Award Program, pay to the educational institution an amount *up to or* equal to the in-state tuition costs of full-time or part-time study.

**Approved March 29, 2000**

## **CHAPTER 198**

**(SB 125)**

AN ACT relating to the Kentucky Educational Excellence Scholarship.

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

Section 1. KRS 164.7874 is amended to read as follows:

As used in KRS 164.7871 to 164.7885:

- (1) "Academic term" means a semester or other time period specified in an administrative regulation promulgated by the council;
- (2) "Academic year" means a period consisting of at least the minimum school term, as defined in KRS 158.070;
- (3) "ACT score" means the composite score achieved on the American College Test *at a national test site on a national test date* or an equivalent score, as determined by the council, on the Scholastic Assessment Test;
- (4) "Authority" means the Kentucky Higher Education Assistance Authority;
- (5) "Award period" means two (2) consecutive academic terms;
- (6) ~~"Commonwealth merit scholarship" means a scholarship provided to an eligible student to attend a participating institution;~~
- (7) ~~"Commonwealth merit scholarship curriculum" means five (5) courses of study in an academic year as determined by administrative regulation promulgated by the council;~~
- (8) ~~"Commonwealth merit scholarship trust fund" means the Wallace G. Wilkinson Commonwealth merit scholarship trust fund;~~
- (9) ~~"Council" means the Council on Postsecondary Education created under KRS 164.011;~~
- (7)(10) "Eligible *high school* student" means any person who is a *citizen, national, or permanent resident of the United States and* Kentucky resident enrolling in a Kentucky high school, after July 1, 1998, who, while meeting the *Kentucky Educational Excellence* ~~Commonwealth merit~~ Scholarship curriculum requirements, has a grade point average of 2.5 or above at the end of any academic year beginning after July 1, 1998, and who is not a convicted felon;

- (8) *"Eligible postsecondary student" means a citizen, national, or permanent resident of the United States and Kentucky resident, as determined by the participating institution in accordance with criteria established by the council for the purposes of admission and tuition assessment, who:*
- (a) *Earned a Kentucky Educational Excellence Scholarship base, supplemental, or base and supplemental final award;*
  - (b) *Has the required postsecondary G.P.A. required under KRS 164.7881;*
  - (c) *Has remaining semesters of eligibility under KRS 164.7881;*
  - (d) *Is enrolled in a participating institution as a part-time or full-time student; and*
  - (e) *Is not a convicted felon;*
- (9)~~(11)~~ *"Full-time student" means a student enrolled in a postsecondary program of study that meets the full-time student requirements of the participating institution in which the student is enrolled;*
- (10)~~(12)~~ *"Grade point average" means the grade point average earned by an eligible student based on a scale of 4.0 or its equivalent if the high school or participating institution that the student attends does not use the 4.0 grade scale;*
- (11)~~(13)~~ *"High school" means any Kentucky public high school, and any private, parochial, or church school that has been certified by the Kentucky Board of Education as voluntarily complying with curriculum, certification, and textbook standards established by the Kentucky Board of Education under KRS 156.160;*
- (12) *"KEES" means Kentucky Educational Excellence Scholarship;*
- (13) *"KEES curriculum" means five (5) courses of study in an academic year as determined by administrative regulation promulgated by the council;*
- (14) *"Kentucky Educational Excellence Scholarship" means a scholarship provided under KRS 164.7871 to 164.7885;*
- (15) *"Kentucky Educational Excellence Scholarship Trust Fund" means the Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund;*
- (16)~~(14)~~ *"Maximum award amount" means the sum of the ~~proportionate~~ base scholarship amount earned by an eligible **high school** student in each academic year of high school study ~~plus and~~ any supplemental award earned by an eligible **high school** student **or earned pursuant to KRS 164.7879(3)(c)**. The amount so determined shall be the maximum amount available to the eligible **postsecondary** student for any award period;*
- (17)~~(15)~~ *"Participating institution" means an "institution" as defined in KRS 164.001 that actively participates in the federal Pell Grant program, executes a contract with the authority on terms the authority deems necessary or appropriate for the administration of its programs, and:*
- (a)
    - 1. Is publicly operated; or
    - 2. Is licensed by the Commonwealth of Kentucky and has operated for at least ten (10) years, offers an associate or baccalaureate degree program of study not comprised solely of sectarian instruction, and admits as regular students only high school graduates or recipients of a general equivalency diploma or students transferring from another accredited degree granting institution; and
  - (b) Continues to commit financial resources to student financial assistance programs and provides annual documentation to the authority of compliance;
- (18)~~(16)~~ *"Part-time student" means a student enrolled in a postsecondary program of study who does not meet the full-time student requirements of the participating institution in which the student is enrolled and who is enrolled for at least six (6) credit hours or the equivalent for an institution that does not use credit hours; and*
- (19)~~(17)~~ *"Supplemental award" means commitment of ~~additional~~ scholarship funds under KRS 164.7879(3) ~~to an eligible student based on the eligible student's ACT score~~.*

Section 2. KRS 164.7877 is amended to read as follows:

- (1) There is established in the State Treasury a permanent and perpetual fund to be known as the "Wallace G. Wilkinson **Kentucky Educational Excellence**~~[Commonwealth Merit]~~ Scholarship Trust Fund" to which shall

be credited net lottery revenues transferred in accordance with KRS 154A.130; gifts; bequests; endowments; grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private.

- (2) The moneys in the fund are hereby continuously appropriated only for the purposes set forth in KRS 164.7871 to 164.7885 and KRS 164.7889.
- (3) The council shall administer the ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarship trust fund. Upon the approval of the council, the authority may expend funds from the ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarship trust fund that are necessary and reasonable to meet the expenses of administering the ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarship~~[trust fund]~~.

Section 3. KRS 164.7879 is amended to read as follows:

- (1) ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarship awards shall be based upon an established base scholarship amount and an eligible ***high school*** student's grade point average. The base scholarship amount for students attaining a grade point average *of at least*~~[between]~~ 2.5~~[and 4.0]~~ for the 1998-1999 academic year shall be as follows:

GPA	Amount	GPA	Amount
2.50	\$125.00	3.30	\$325.00
2.60	\$150.00	3.40	\$350.00
2.70	\$175.00	3.50	\$375.00
2.75	\$187.00 <del>[50]</del>	3.60	\$400.00
2.80	\$200.00	3.70	\$425.00
2.90	\$225.00	3.75	\$437.00 <del>[50]</del>
3.00	\$250.00	3.80	\$450.00
3.10	\$275.00	3.90	\$475.00
3.20	\$300.00	4.00	\$500.00
3.25	\$312.00 <del>[50]</del>		

The council shall review the base amount of the ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarship beginning with the 1999-2000 academic year and each academic year thereafter and may promulgate an administrative regulation to make adjustments after considering the availability of funds.

- (2) The authority shall commit to provide to each eligible ***high school*** student the base amount of the Commonwealth merit scholarship for each academic year of high school study in the Commonwealth merit scholarship curriculum that the student has attained at least a 2.5 grade point average. The award shall be based upon the eligible student's grade point average at the close of each academic year. An award attributable to a past academic year shall not be increased after the award has been earned by an eligible ***high school*** student, regardless of any subsequent increases made to the base amount of the ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ scholarship through the promulgation of an administrative regulation by the council.
- (3) (a) The authority shall commit to provide to each eligible ***high school*** student graduating from high school before June 30, 1999, and achieving a score of at least 15 on the American College Test, a supplemental award for the award period beginning in the fall of 1999, based on the eligible ***high school*** student's highest ACT score attained by the date of graduation from high school. The amount of the supplemental award shall be determined as follows:

Annual		Annual	
ACT Score	Bonus	ACT Score	Bonus
15	\$21	22	\$171
16	\$43	23	\$193



17	\$64	24	\$214
18	\$86	25	\$236
19	\$107	26	\$257
20	\$129	27	\$279
21	\$150	28 or above	\$300

Subsequent supplemental awards for eligible **high school** students graduating before June 30, 1999, shall be determined in accordance with the provisions of paragraph (b) of this subsection.

- (b) The authority shall commit to provide to each eligible **high school** student upon achievement after June 30, 1999, of an ACT score of at least 15 on the American College Test a supplemental award based on the eligible student's highest ACT score attained by the date of graduation from high school. The amount of the supplemental award shall be determined as follows:

ACT Score	Amount	ACT Score	Amount
15	\$36	22	\$286
16	\$71	23	\$321
17	\$107	24	\$357
18	\$143	25	\$393
19	\$179	26	\$428
20	\$214	27	\$464
21	\$250	28 and above	\$500

The council shall review the base amount of the supplemental award beginning with the 2001-2002 academic year and each academic year thereafter and may promulgate an administrative regulation to make adjustments after considering the availability of funds.

- (c) The council shall promulgate administrative regulations establishing the eligibility criteria and procedures for making a supplemental award to Kentucky residents who **are citizens, nationals, or permanent residents of the United States and who** graduate from a nonpublic ~~secondary~~<sup>high</sup> school not certified by the Kentucky Board of Education and Kentucky residents **who are citizens, nationals, or permanent residents of the United States and** who obtain a General Educational Development (GED) diploma within five (5) years of their high school graduating class.

Section 4. KRS 164.7881 is amended to read as follows:

- (1) ~~Every~~ Eligible **high school students**~~student~~ who ~~have~~<sup>has</sup> graduated from high school **and eligible postsecondary students**~~and~~ who ~~have~~<sup>has</sup> earned a **Kentucky Educational Excellence**~~Commonwealth merit~~ Scholarship,~~or~~ a **Kentucky Educational Excellence**~~Commonwealth merit~~ Scholarship and a supplemental award, **or a supplemental award only pursuant to KRS 164.7879(3)(c)**, shall be eligible to receive the **Kentucky Educational Excellence**~~Commonwealth merit~~ Scholarship,~~or~~ the **Kentucky Educational Excellence**~~Commonwealth merit~~ scholarship and the supplemental award, **or a supplemental award only** for a maximum of eight (8) academic terms in an undergraduate or other postsecondary program of study at a participating institution, except as provided in subsection (6) of this section.
- (2) To receive the **Kentucky Educational Excellence**~~Commonwealth merit~~ Scholarship,~~or~~ a **Kentucky Educational Excellence**~~Commonwealth merit~~ Scholarship and supplemental award, **or a supplemental award only**, an eligible **high school or postsecondary** student shall:
  - (a) Enroll in and attend a participating institution as a full-time student or a part-time student; and
  - (b) Maintain eligibility as provided in subsection (3) of this section.
- (3) Eligibility for a **Kentucky Educational Excellence**~~Commonwealth merit~~ Scholarship or a **Kentucky Educational Excellence**~~Commonwealth merit~~ Scholarship and supplemental award shall terminate upon the earlier of:

- (a) The expiration of five (5) years following the student's graduation from high school, except as provided in subsection (5) or (6) of this section; or
  - (b) The successful completion of an undergraduate or other postsecondary course of study. However, any student who successfully completes the requirements for a degree or certification involving a postsecondary course of study that normally requires less than eight (8) academic terms to complete may continue to receive the benefits of a **Kentucky Educational Excellence**~~[Commonwealth merit]~~ Scholarship,~~[or]~~ a **Kentucky Educational Excellence**~~[Commonwealth merit]~~ Scholarship and supplemental award, **or a supplemental award only**, for a cumulative total of eight (8) academic terms if the student enrolls **as at least a part-time student**~~[full-time]~~ in a four (4) year program.
- (4) (a) The maximum award amount shall be determined by the council and shall be adjusted as provided in this subsection. The award amount ultimately determined to be available to an eligible **postsecondary** student for an award period shall be disbursed by the authority to the eligible **postsecondary** student in two (2)~~[equal]~~ installments, with one (1) installment being disbursed in each of the two (2) academic terms during the award period.
- (b) The authority shall, by promulgation of administrative regulations, provide for the proportionate reduction of the maximum award amount for an eligible **postsecondary** student for any academic term in which the student is enrolled on a part-time basis. Each academic term for which any scholarship or supplemental award funds are accepted by an eligible **postsecondary** student shall count as a full academic term, even if the award amount was reduced to reflect the part-time status of the eligible **postsecondary** student.
- (c) 1. An eligible **postsecondary** student who is enrolled full-time in an undergraduate program of study shall receive the maximum award amount for the first award period that the student is enrolled in and attending the program of study. To retain the maximum award for the second award period, an eligible **postsecondary** student shall have **at least** a 2.5 grade point average at the end of the first award period. To retain the maximum award amount for subsequent award periods, an eligible **postsecondary** student shall have a cumulative grade point average of 3.0 or greater at the end of the prior award period.
2. Any eligible **postsecondary** student who maintains a cumulative grade point average of less than 3.0 but at least 2.5 at the completion of any award period shall receive a reduction in the maximum award amount equal to fifty percent (50%) of the maximum award amount for the next award period.
3. Any eligible **postsecondary** student who maintains a cumulative grade point average of less than 2.5 at the completion of any award period shall lose his or her award for the next award period.
4. Each participating institution shall certify to the authority at the close of each award period the cumulative grade point average of each **Kentucky Educational Excellence Scholarship recipient**~~[eligible student]~~ enrolled as a full-time or part-time student at the participating institution.
5. Any student who loses eligibility through failure to maintain the required cumulative grade point average may regain eligibility in a subsequent award period upon reestablishing at least a 2.5 cumulative grade point average or its equivalent during a subsequent award period, as certified by the participating institution.
- (5) The expiration of a student's five (5) year eligibility shall be extended by the authority upon a determination that the student was unable to enroll for or complete an academic term due to any of the following circumstances:
- (a) A serious and extended illness or injury of the student, certified by an attending physician;
  - (b) The death or serious and extended illness or injury of an immediate family member of the student, certified by an attending physician, which would render the student unable to attend classes;
  - (c) Natural disasters that would render a student unable to attend classes; or
  - (d) Active duty status for the student in the United States Armed Forces or as an officer in the Commissioned Corps of the United States Public Health Service, or active service by the student in the Peace Corps Act or the Americorps, for up to three (3) years.

- (6) An eligible **postsecondary** student who is enrolled at a participating institution in a five (5) year undergraduate degree program designated in an administrative regulation promulgated by the council shall be eligible to receive the **Kentucky Educational Excellence**~~[Commonwealth merit]~~ Scholarship,~~—or~~ the **Kentucky Educational Excellence**~~[Commonwealth merit]~~ Scholarship and the supplemental award, **or the supplemental award only** for a maximum of ten (10) academic terms. The expiration of an eligible **postsecondary** student's five (5) year eligibility shall be extended to six (6) years for eligible **postsecondary** students meeting the requirements of this subsection.
- (7) Each eligible **high school** student who attains a 28 or above on the ACT and a 4.0 grade point average for all four (4) years of high school shall be designated as a "Senator Jeff Green Scholar" in honor of the late Senator Jeff Green of Mayfield, Kentucky, First District, **and shall be recognized by the high school in a manner consistent with recognition given by the high school to other high levels of academic achievement.**

Section 5. KRS 164.7885 is amended to read as follows:

- (1) Not later than August 1, 1999, and each June 30 thereafter, each Kentucky high school shall submit to the Kentucky Department of Education, which shall transmit to the authority, a compiled list of all **high school**~~[eligible]~~ students during the academic year. The list shall identify the high school and shall contain each **high school**~~[eligible]~~ student's name, social security number, address, grade point average for the academic year, expected or actual graduation date, and highest ACT score. **The list need not contain the ACT score if the authority receives the ACT score directly from the testing services.** The authority shall notify each eligible **high school** student of his or her **Kentucky Educational Excellence**~~[Commonwealth merit]~~ Scholarship award earned each academic year. The authority shall determine the final **Kentucky Educational Excellence**~~[Commonwealth merit]~~ scholarship and supplemental award based upon the actual final grade point average and highest ACT score and shall notify each eligible **high school** student of the final determination. The authority shall make available a list of eligible **high school and postsecondary** students to participating institutions.
- ~~(2) [Not later than January 30, 1999, and each January 30 thereafter, each Kentucky high school shall submit to the Kentucky Department of Education, which shall transmit to the authority, a compiled list of all eligible students expected to graduate during the academic year. The list shall identify the high school and shall contain each eligible student's name, Social Security number, address, grade point average for the fall academic period of the current academic year, and highest ACT score. The authority shall then calculate each eligible student's projected Commonwealth merit scholarship and supplemental award based on the eligible student's data available to the Authority and shall make available to participating institutions by April 1 of each academic year a comprehensive list of prospective graduates who are eligible students and their projected scholarship and supplemental award amounts. The authority shall notify each prospective high school graduate who is an eligible student of his or her projected Commonwealth merit scholarship and supplemental award amount.]~~
- ~~(3) [~~ The authority shall provide data access only to participating institutions that have either received an admission application from an eligible **high school or postsecondary** student or have been listed by the eligible **high school or postsecondary** student on the Free Application For Federal Student Aid.
- ~~(3) [(4)]~~ For each eligible **postsecondary** student enrolling in a participating institution after July 1, 1999, the participating institution shall verify to the authority:
- (a) The student's initial eligibility for a **Kentucky Educational Excellence**~~[Commonwealth merit]~~ Scholarship, **Kentucky Educational Excellence**~~[Commonwealth merit]~~ Scholarship and supplemental award, **or supplemental award only pursuant to KRS 164.7879(3)(c)** through the comprehensive list compiled by the authority or an alternative source satisfactory to the authority;
  - (b) The student's highest ACT score attained by the date of graduation from high school, **provided that the participating institution need not report the ACT score if the authority receives the ACT score directly from the testing services;**
  - (c) The eligible **postsecondary** student's full-time or part-time enrollment status at the beginning of each academic term; and
  - (d) The eligible **postsecondary** student's cumulative grade point average after the completion of each award period.
- ~~(4) [(5)]~~ Each participating institution shall submit to the authority a report, in a form satisfactory to the authority, of all eligible **postsecondary** students enrolled for that academic term. **Kentucky Educational**

~~***Excellence***~~~~[Commonwealth merit]~~ Scholarships and supplemental awards shall be disbursed by the authority to each eligible ***postsecondary*** student attending a participating institution during the academic term within thirty (30) days after receiving a satisfactory report.

(5)~~(6)~~ ~~[Except as provided in this subsection,]~~ The ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarship and the supplemental award shall not be reduced, ~~[-~~

(a) ~~— except as provided in KRS 164.7881(4)~~~~[If the sum of the Commonwealth merit scholarship and the supplemental award plus other student financial assistance from all sources exceeds the eligible student's total cost of education, as defined in 20 U.S.C. sec. 1087H, need based financial assistance awards administered by the authority and the participating institution shall be reduced by the amount that all student financial assistance exceeds the total cost of education].~~

(6)~~(b)~~ ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarships and supplemental awards shall not be awarded ***or disbursed*** to any eligible ***postsecondary*** students who are in default on any obligation to the authority under any programs administered by the authority~~[under KRS 164.785]~~ until financial obligations to the authority are satisfied, except that ineligibility may be waived by the authority for cause.

(7) Notwithstanding the provisions of KRS 164.753, the authority may promulgate administrative regulations for the administration of ***Kentucky Educational Excellence***~~[Commonwealth merit]~~ Scholarships and supplemental awards under the provisions of KRS 164.7871 to 164.7885 and KRS 164.7889.

**Approved March 29, 2000**

## **CHAPTER 199**

### **(SB 166)**

AN ACT relating to the duties of the secretary of the Cabinet for Workforce Development.

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

Section 1. KRS 151B.020 is amended to read as follows:

- (1) The Cabinet for Workforce Development is hereby created, which shall constitute a cabinet of the state government within the meaning of KRS Chapter 12. The cabinet shall consist of a secretary and those administrative bodies and employees as provided by law.
- (2) The cabinet, subject to the provisions of KRS Chapter 12, shall be composed of the major organizational units listed below, and other departments, divisions, and sections as are from time to time deemed necessary for the proper and efficient operation of the cabinet:
  - (a) The Department for Adult Education and Literacy, which is created by KRS 151B.023;
  - (b) The Department for Technical Education, which is created by KRS 151B.025;
  - (c) The Department of Vocational Rehabilitation, which is created by KRS 151B.185;
  - (d) The Department for the Blind, established by KRS 163.470;
  - (e) The Department for Employment Services, which is created by KRS 151B.280;
  - (f) The State Board for Adult and Technical Education, which is created by KRS 151B.095;
  - (g) The Governor's Council on Vocational Education, established by KRS 163.086;
  - (h) The State Board for Proprietary Education, established by KRS 165A.340;
  - (i) The Foundation for Adult Education, established by KRS 151B.130;
  - (j) The Kentucky Job Training Coordinating Council, established by KRS 151B.220;
  - (k) The Unemployment Insurance Commission established by KRS 341.110;
  - (l) The Office of Training and Reemployment created in KRS 151B.260; and
  - (m) The Office of School-to-Work, established by KRS 151B.250.

- (3) The executive officer of the cabinet shall be the secretary of the Cabinet for Workforce Development. The secretary shall be appointed by the Governor pursuant to KRS 12.040 and shall serve at the pleasure of the Governor. The secretary shall have general supervision and direction over all activities and functions of the cabinet and its employees and shall be responsible for carrying out the programs and policies of the cabinet. The secretary shall be the chief executive officer of the cabinet and shall have authority to enter into contracts, subject to the approval of the secretary of the Finance and Administration Cabinet, when the contracts are deemed necessary to implement and carry out the programs of the cabinet. ***The secretary shall have the authority to require coordination and nonduplication of services provided under the Federal Workforce Investment Act of 1998, 20 U.S.C. sec. 9201 et seq. The secretary shall have the authority to mandate fiscal responsibility dispute resolution procedures among state organizational units for services provided under the Federal Workforce Investment Act of 1998, 20 U.S.C. sec. 9201 et seq.*** The Office of the Secretary of the Cabinet for Workforce Development shall consist of the Offices of General Counsel, Communication Services, Development and Industry Relations, Workforce Analysis and Research, the Office for Policy and Budget, the Office of Personnel Services, and the Office for Administrative Services. The Office for Administrative Services shall contain the Divisions of Fiscal Services, Computer Services, and Facilities Management. Each division shall be headed by a director appointed by the secretary of the Cabinet for Workforce Development pursuant to KRS 12.050.
- (4) The secretary of the Cabinet for Workforce Development and his designated representatives, in the discharge of the duties of the secretary, may administer oaths and affirmations, take depositions, certify official acts, and issue subpoenas to compel the attendance of witnesses and production of books, papers, correspondence, memoranda, and other records considered necessary and relevant as evidence at hearings held in connection with the administration of the cabinet.
- (5) The secretary of the Cabinet for Workforce Development may delegate any duties of his office to employees of the cabinet as he deems necessary and appropriate, unless otherwise prohibited by statute.
- (6) The secretary of the Cabinet for Workforce Development shall promulgate, administer, and enforce administrative regulations that are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds, and that are necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.

**Approved March 29, 2000**

## CHAPTER 200

(SB 143)

AN ACT relating to teacher tribunals.

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

Section 1. KRS 161.790 is amended to read as follows:

- (1) The contract of a teacher shall remain in force during good behavior and efficient and competent service by the teacher and shall not be terminated except for any of the following causes:
  - (a) Insubordination, including but not limited to violation of the school laws of the state or administrative regulations adopted by the Kentucky Board of Education, ***the Education Professional Standards Board***, or lawful rules and regulations established by the local board of education for the operation of schools, or refusal to recognize or obey the authority of the superintendent, principal, or any other supervisory personnel of the board in the performance of their duties;
  - (b) Immoral character or conduct unbecoming a teacher;
  - (c) Physical or mental disability;
  - (d) Inefficiency, incompetency, or neglect of duty, when a written statement identifying the problems or difficulties has been furnished the teacher or teachers involved.
- (2) Charges under subsections (1)(a) and (1)(d) of this section shall be supported by a written record of teacher performance by the superintendent, principal, or other supervisory personnel of the district, except when the charges are brought as a result of a recommendation made under KRS 158.6455.

- (3) No contract shall be terminated except upon notification of the board by the superintendent. Prior to notification of the board, the superintendent shall furnish the teacher with a written statement specifying in detail the charge against the teacher. The teacher may within ten (10) days after receiving the charge notify the chief state school officer and the superintendent of his intention to answer the charge, and upon failure of the teacher to give notice within ten (10) days, the dismissal shall be final.
- (4) Upon receiving the teacher's notice of his intention to answer the charge, the chief state school officer shall appoint a three (3) member tribunal, consisting of one (1) teacher, one (1) administrator, and one (1) lay person, none of whom reside in the district, to conduct an administrative hearing in accordance with KRS Chapter 13B within the district. The chief state school officer shall name the chairman and set the date and time for the hearing. The hearing shall begin no later than forty-five (45) days after the teacher files the notice of intent to answer the charge.
- (5) ***A hearing officer shall have final authority to rule on dispositive prehearing motions.***
- (6) The hearing may be public or private at the discretion of the teacher. At the hearing, a hearing officer appointed by the chief state school officer shall preside with authority to rule on procedural matters, but the tribunal shall be the ultimate trier of fact. The local board shall pay each member of the tribunal a per diem of one hundred dollars (\$100) and travel expenses.
- (7)~~(6)~~ Upon hearing both sides of the case, the tribunal may by a majority vote render its decision or may defer its action for not more than five (5) days. Provisions of KRS Chapter 13B notwithstanding, the tribunal decision shall be a final order and may be rendered on the record.
- (8)~~(7)~~ The superintendent may suspend the teacher pending final action to terminate the contract, if, in his judgment, the character of the charge warrants the action. If after the hearing the decision of the tribunal is against termination of the contract, the suspended teacher shall be paid his full salary for any period of suspension.
- (9)~~(8)~~ The teacher shall have the right to make an appeal to the Circuit Court having jurisdiction in the county where the school district is located in accordance with KRS Chapter 13B. ***The review of the final order shall be conducted by the Circuit Court as required by KRS 13B.150.***
- (10)~~(9)~~ As an alternative to termination of a teacher's contract, the superintendent upon notifying the board and providing written notification to the teacher of the charge may impose other sanctions, including, suspension without pay, public reprimand, or private reprimand. The procedures set out in subsection (3) of this section shall apply ***if the teacher is suspended without pay or publicly reprimanded***~~[, except to a private reprimand].~~ The teacher may appeal the action of the superintendent ***if these sanctions are imposed***~~[, except a private reprimand,]~~ in the same manner as established in subsections (4) to (9)~~(8)~~ of this section. Upon completion of a suspension period, the teacher may be reinstated.

**Approved March 29, 2000**

## CHAPTER 201

(SB 174)

AN ACT relating to uniform child support orders.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

***All forms, child support orders, wage withholding orders, or orders amending an existing child support order, entered in any case in Circuit, District, or Family Court that require entry into the state case registry pursuant to KRS 205.712(3), shall be entered on forms adopted by the Administrative Office of the Courts in coordination with the Cabinet for Families and Children. If the provisions of a child support order are contained in an order that is narrative in nature, the adopted forms shall be used in addition to the narrative order.***

**Approved March 29, 2000**

**CHAPTER 202****(SB 202)**

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 99-1722, dated December 28, 1999, which designates the Office of Training and Reemployment, Workforce Development Cabinet, established under KRS 151B.260, as the administrator for Title I of the Workforce Investment Act and the State Workforce Investment Board. The General Assembly also confirm, that part of Executive Order 99-1722 providing that under Title I, the eight percent (8%) Job Training and Partnership Act positions, funds, and functions administered by the Office of Policy and Budget, Workforce Development Cabinet, shall be moved to the Office of Training and Reemployment as part of the office's new responsibility.

**Approved March 29, 2000**

**CHAPTER 203****(SB 233)**

AN ACT relating to reorganization.

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

Section 1. KRS 156.760 is repealed, reenacted as a new section of KRS Chapter 194B, and amended to read as follows:

- (1) As used in KRS 156.760 to 156.766, "commission" means the Kentucky Commission on Community Volunteerism and Service.
- (2) The Kentucky Commission on Community Volunteerism and Service is created and shall be attached to the **Office of the Secretary of the Cabinet for Families and Children**~~{Council on Postsecondary Education}~~ for **oversight, technical, and administrative support** purposes~~{only. Initial temporary staffing for the commission shall be provided jointly by existing staff of the Council on Postsecondary Education and the Department of Education}~~. A director and other appropriate staff shall be hired by the commission when federal funds become available.

Section 2. KRS 156.762 is repealed and reenacted as a new section of KRS Chapter 194B to read as follows:

The commission shall initially consist of twenty-five (25) voting members who shall be appointed by the Governor. Membership on the commission shall be for a three (3) year term, with the exception that initially one third (1/3) of the members shall serve for a term of one (1) year, one-third (1/3) of the members shall serve for a term of two (2) years, and one-third (1/3) of the members shall serve for a term of three (3) years. After the first six (6) months of operations, the Governor reserves the option to request the commission to submit recommendations for any additional members deemed necessary to balance the commission's perspective, provided that the commission's membership does not exceed twenty-five (25). The commission shall annually select from its membership a chair to serve for a term of one (1) year.

Section 3. KRS 156.764 is repealed and reenacted as a new section of KRS Chapter 194B to read as follows:

The purpose of the commission is to engage in statewide strategic planning, establish relevant policies, provide administrative oversight, and promote programs and strengthen the service ethic among the Commonwealth's citizens by facilitating the development of strategic programs that enable citizens to address serious societal problems including, but not limited to, education reform through service to local communities.

Section 4. KRS 156.766 is repealed and reenacted as a new section of KRS Chapter 194B to read as follows:

The commission shall:

- (1) Develop a strategic plan for service in Kentucky which covers a three (3) year period, and supporting efforts to achieve the goals of this plan. The plan shall be updated annually;

- (2) Oversee and submit Kentucky's annual applications to the Corporation for National Service, the federal funding authority, and other funding sources for the continuation and any expansion of the current KentuckyServe initiative;
- (3) Conduct a competitive application process to determine the organizations that will be awarded subgrants to operate national service programs;
- (4) Fulfill any other responsibilities required by the Corporation for National Service and other funding sources; and
- (5) Promulgate administrative regulations pursuant to KRS Chapter 13A to establish operational guidelines for the commission.

Section 5. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.
  - (c) Registry of Election Finance.
4. Department of Law.
  - (a) Attorney General.
5. Department of the Treasury.
  - (a) Treasurer.
6. Department of Agriculture.
  - (a) Commissioner of Agriculture.
  - (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
  - (a) Department of State Police.
  - (b) Department of Criminal Justice Training.
  - (c) Department of Corrections.
  - (d) Department of Juvenile Justice.
  - (e) Office of the Secretary.



- (f) Offices of the Deputy Secretaries.
  - (g) Office of General Counsel.
  - (h) Division of Kentucky State Medical Examiners Office.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
- (a) Department of Education.
    - (1) Kentucky Board of Education.
    - (2) Education Professional Standards Board.
  - (b) Department for Libraries and Archives.
  - (c) Kentucky Arts Council.
  - (d) Kentucky Educational Television.
  - (e) Kentucky Historical Society.
  - (f) Kentucky Teachers' Retirement System Board of Trustees.
  - (g) Kentucky Center for the Arts.
  - (h) Kentucky Craft Marketing Program.
  - (i) Kentucky Commission on the Deaf and Hard of Hearing.
  - (j) Governor's Scholars Program.
  - (k) Governor's School for the Arts.
  - (l) Operations and Development Office.
  - (m) Kentucky Heritage Council.
  - (n) Kentucky African-American Heritage Commission.
  - (o) Board of Directors for the Center for School Safety.
3. Natural Resources and Environmental Protection Cabinet:
- (a) Environmental Quality Commission.
  - (b) Kentucky Nature Preserves Commission.
  - (c) Department for Environmental Protection.
  - (d) Department for Natural Resources.
  - (e) Department for Surface Mining Reclamation and Enforcement.
  - (f) Office of Legal Services.
  - (g) Office of Information Services.
4. Transportation Cabinet:
- (a) Department of Highways.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Administrative Services.
  - (d) Department of Fiscal Management.
  - (e) Department of Rural and Municipal Aid.

- (f) Office of General Counsel.
  - (g) Office of Public Affairs.
  - (h) Office of Personnel Management.
  - (i) Office of Minority Affairs.
  - (j) Office of Environmental Affairs.
  - (k) Office of Policy and Budget.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
  - (b) Department of Job Development.
  - (c) Department of Financial Incentives.
  - (d) Department of Community Development.
  - (e) Tobacco Research Board.
  - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.
  - (b) Department of Insurance.
  - (c) Department of Housing, Buildings and Construction.
  - (d) Department of Financial Institutions.
  - (e) Department of Mines and Minerals.
  - (f) Department of Public Advocacy.
  - (g) Department of Alcoholic Beverage Control.
  - (h) Kentucky Racing Commission.
  - (i) Board of Claims.
  - (j) Crime Victims Compensation Board.
  - (k) Kentucky Board of Tax Appeals.
  - (l) Backside Improvement Commission.
  - (m) Office of Petroleum Storage Tank Environmental Assurance Fund.
7. Cabinet for Families and Children:
- (a) Department for Social Insurance.
  - (b) Department for Social Services.
  - (c) Public Assistance Appeals Board.
  - (d) Office of the Secretary.
- 1. *Kentucky Commission on Community Volunteerism and Service.***
- (e) Office of the General Counsel.
  - (f) Office of Program Support.
  - (g) Office of Family Resource and Youth Services Centers.
  - (h) Office of Technology Services.
  - (i) Office of the Ombudsman.

- (j) Office of Aging Services.
- 8. Cabinet for Health Services.
  - (a) Department for Public Health.
  - (b) Department for Medicaid Services.
  - (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission on Children with Special Health Care Needs.
  - (e) Office of Certificate of Need.
  - (f) Office of the Secretary.
  - (g) Office of the General Counsel.
  - (h) Office of Program Support.
  - (i) Office of the Inspector General.
- 9. Finance and Administration Cabinet:
  - (a) Office of Legal and Legislative Services.
  - (b) Office of Management and Budget.
  - (c) Office of Financial Management and Economic Analysis.
  - (d) Office of the Controller.
  - (e) Department for Administration.
  - (f) Department of Facilities Management.
  - (g) Department of Information Systems.
  - (h) State Property and Buildings Commission.
  - (i) Kentucky Pollution Abatement Authority.
  - (j) Kentucky Savings Bond Authority.
  - (k) Deferred Compensation Systems.
  - (l) Office of Equal Employment Opportunity Contract Compliance.
  - (m) Office of Capital Plaza Operations.
  - (n) County Officials Compensation Board.
  - (o) Kentucky Employees Retirement Systems.
  - (p) Commonwealth Credit Union.
  - (q) State Investment Commission.
  - (r) Kentucky Housing Corporation.
  - (s) Governmental Services Center.
  - (t) Kentucky Local Correctional Facilities Construction Authority.
  - (u) Kentucky Turnpike Authority.
  - (v) Historic Properties Advisory Commission.
  - (w) Kentucky Kare Health Insurance Authority.
- 10. Labor Cabinet:
  - (a) Department of Workplace Standards.
  - (b) Department of Workers' Claims.

- (c) Kentucky Labor-Management Advisory Council.
  - (d) Occupational Safety and Health Standards Board.
  - (e) Prevailing Wage Review Board.
  - (f) Workers' Compensation Board.
  - (g) Kentucky Employees Insurance Association.
  - (h) Apprenticeship and Training Council.
  - (i) State Labor Relations Board.
  - (j) Kentucky Occupational Safety and Health Review Commission.
  - (k) Office of Administrative Services.
  - (l) Office of Labor-Management Relations and Mediation.
  - (m) Office of General Counsel.
  - (n) Workers' Compensation Funding Commission.
  - (o) Employers Mutual Insurance Authority.
11. Revenue Cabinet:
- (a) Department of Property Valuation.
  - (b) Department of Tax Administration.
  - (c) Office of Financial and Administrative Services.
  - (d) Department of Law.
  - (e) Department of Information Technology.
  - (f) Office of Taxpayer Ombudsman.
12. Tourism Development Cabinet:
- (a) Department of Travel.
  - (b) Department of Parks.
  - (c) Department of Fish and Wildlife Resources.
  - (d) Kentucky Horse Park Commission.
  - (e) State Fair Board.
  - (f) Office of Administrative Services.
  - (g) Office of General Counsel.
13. Cabinet for Workforce Development:
- (a) Department for Adult Education and Literacy.
  - (b) Department for Technical Education.
  - (c) Department of Vocational Rehabilitation.
  - (d) Department for the Blind.
  - (e) Department for Employment Services.
  - (f) State Board for Adult and Technical Education.
  - (g) Governor's Council on Vocational Education.
  - (h) The State Board for Proprietary Education.
  - (i) The Foundation for Adult Education.

- (j) The Kentucky Job Training Coordinating Council.
  - (k) Office of General Counsel.
  - (l) Office of Communication Services.
  - (m) Office of Development and Industry Relations.
  - (n) Office of Workforce Analysis and Research.
  - (o) Office for Administrative Services.
  - (p) Office for Policy and Budget.
  - (q) Office of Personnel Services.
  - (r) Unemployment Insurance Commission.
14. Personnel Cabinet:
- (a) Office of Administrative and Legal Services.
  - (b) Department for Personnel Administration.
  - (c) Department for Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.
  - (e) Kentucky Kare.
  - (f) Division of Performance Management.
  - (g) Division of Employee Records.
  - (h) Division of Staffing Services.
  - (i) Division of Classification and Compensation.
  - (j) Division of Employee Benefits.
  - (k) Division of Communications and Recognition.
- III. Other departments headed by appointed officers:
- 1. Department of Military Affairs.
  - 2. Council on Postsecondary Education.
  - ~~[(a) — Kentucky Commission on Community Volunteerism and Service.]~~
  - 3. Department for Local Government.
  - 4. Kentucky Commission on Human Rights.
  - 5. Kentucky Commission on Women.
  - 6. Department of Veterans' Affairs.
  - 7. Kentucky Commission on Military Affairs.
  - 8. Office of the Chief Information Officer.

Section 6. KRS 18A.115 is amended to read as follows:

- (1) The classified service to which KRS 18A.005 to 18A.200 shall apply shall comprise all positions in the state service now existing or hereafter established, except the following:
  - (a) The General Assembly and employees of the General Assembly, including the employees of the Legislative Research Commission;
  - (b) Officers elected by popular vote and persons appointed to fill vacancies in elective offices;
  - (c) Members of boards and commissions;

- (d) Officers and employees on the staff of the Governor, the Lieutenant Governor, the Office of the secretary of the Governor's Cabinet, and the Office of Program Administration;
- (e) Cabinet secretaries, commissioners, office heads, and the administrative heads of all boards and commissions, including the executive director of Kentucky Educational Television;
- (f) Employees of Kentucky Educational Television who have been determined to be exempt from classified service by the Kentucky Authority for Educational Television, which shall have sole authority over such exempt employees for employment, dismissal, and setting of compensation, up to the maximum established for the executive director and his principal assistants;
- (g) One (1) principal assistant or deputy for each person exempted under subsection (1)(e) of this section;
- (h) One (1) additional principal assistant or deputy as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the commissioner approves such an addition on petition of the relevant cabinet secretary or department head and such other principal assistants, deputies, or other major assistants as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the board may approve such an addition or additions on petition of the department head approved by the commissioner;
- (i) Division directors subject to the provisions of KRS 18A.170. Division directors in the classified service as of January 1, 1980, shall remain in the classified service;
- (j) Physicians employed as such;
- (k) One (1) private secretary for each person exempted under subsection (1)(e), (g), and (h) of this section;
- (l) The judicial department, referees, receivers, jurors, and notaries public;
- (m) Officers and members of the staffs of state universities and colleges and student employees of such institutions; officers and employees of the Teachers' Retirement System; and officers, teachers, and employees of local boards of education;
- (n) Patients or inmates employed in state institutions;
- (o) Persons employed in a professional or scientific capacity to make or conduct a temporary or special inquiry, investigation, or examination on behalf of the General Assembly, or a committee thereof, or by authority of the Governor, and persons employed by state agencies for a specified, limited period to provide professional, technical, scientific, or artistic services under the provisions of KRS 45A.690 to 45A.725;
- (p) Interim employees;
- (q) Officers and members of the state militia;
- (r) State Police troopers and sworn officers in the Department of State Police, Justice Cabinet;
- (s) University or college engineering students or other students employed part-time or part-year by the state through special personnel recruitment programs; provided that while so employed such aides shall be under contract to work full-time for the state after graduation for a period of time approved by the commissioner or shall be participants in a cooperative education program approved by the commissioner;
- (t) Superintendents of state mental institutions, including heads of mental retardation centers, and penal and correctional institutions as referred to in KRS 196.180(2);
- (u) Staff members of the Kentucky Historical Society, if they are hired in accordance with KRS 171.311;
- (v) County and Commonwealth's attorneys and their respective appointees;
- (w) Chief district engineers and the state highway engineer;
- (x) Veterinarians employed as such by the Kentucky State Racing Commission or the Kentucky Harness Racing Commission;
- (y) Employees of the Kentucky Peace Corps;

- (z) Employees of the Council on Postsecondary Education;~~[-and]~~
  - (aa) Chief information officer of the Commonwealth; *and*
  - (ab) ***Employees of the Kentucky Commission on Community Volunteerism and Service.***
- (2) Nothing in KRS 18A.005 to 18A.200 is intended, or shall be construed, to alter or amend the provisions of KRS 150.022 and 150.061.
  - (3) Nothing in KRS 18A.005 to 18A.200 is intended or shall be construed to affect any nonmanagement, nonpolicy-making position which must be included in the classified service as a prerequisite to the grant of federal funds to a state agency.
  - (4) Career employees within the classified service promoted to positions exempted from classified service shall, upon termination of their employment in the exempted service, revert to a position in that class in the agency from which they were terminated if a vacancy in that class exists. If no such vacancy exists, they shall be considered for employment in any vacant position for which they were qualified pursuant to KRS 18A.130 and 18A.135.
  - (5) Nothing in KRS 18A.005 to 18A.200 shall be construed as precluding appointing officers from filling unclassified positions in the manner in which positions in the classified service are filled except as otherwise provided in KRS 18A.005 to 18A.200.
  - (6) The positions of employees who are transferred, effective July 1, 1998, from the Cabinet for Workforce Development to the Kentucky Community and Technical College System shall be abolished and the employees' names removed from the roster of state employees. Employees that are transferred, effective July 1, 1998, to the Kentucky Community and Technical College System under KRS Chapter 164 shall have the same benefits and rights as they had under KRS Chapter 18A and have under KRS 164.5805; however, they shall have no guaranteed reemployment rights in the KRS Chapter 151B or KRS Chapter 18A personnel systems. An employee who seeks reemployment in a state position under KRS Chapter 151B or KRS Chapter 18A shall have years of service in the Kentucky Community and Technical College System counted towards years of experience for calculating benefits and compensation.

Section 7. KRS 194B.030 is amended to read as follows:

The cabinet consists of the following major organizational units, which are hereby created:

- (1) Office of the Secretary. The Office of the Secretary for Families and Children may, in addition to the secretary for families and children, include other personnel as are necessary to direct and carry out the missions and goals of the cabinet, including a deputy secretary if deemed necessary by the secretary of the cabinet and upon approval of the Governor. ***The Kentucky Commission on Community Volunteerism and Service shall be attached to the Office of the Secretary for oversight, technical, and administrative support purposes.***
- (2) Office of the General Counsel. The Office of the General Counsel shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of the General Counsel shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney and shall administer all personal service contracts of the cabinet for legal services. The Office of the General Counsel shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor under KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be responsible to the secretary. The Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general under the provisions of KRS 15.105.
- (3) Office of Program Support. The Office of Program Support shall be responsible for providing administrative and management support, planning, and appraisal of need services within the Cabinet for Families and Children. All personnel, fiscal, budgetary, contract monitoring, quality assurance, quality control, outcome assessment, and facility management functions of the cabinet shall be vested in the Office of Program Support. The Office of Program Support shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The executive director shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The executive director shall exercise authority over the Office of Program Support under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.
- (4) Department for Social Services. The Department for Social Services shall develop and operate all social service programs of the cabinet. The Department for Social Services shall be headed by a commissioner for

social services who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for social services shall be a person who by education, professional qualification, training, and experience in the administration and management of social service programs is qualified to perform the duties of this office. The commissioner for social services shall exercise authority over the Department for Social Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.

- (5) Department for Social Insurance. The Department for Social Insurance shall develop and operate programs of the cabinet that provide income maintenance or income supplementation services and social insurance benefit programs not assigned to another department. The Department for Social Insurance shall also be responsible for all eligibility determination and certification functions associated with these programs. The Department for Social Insurance shall be headed by a commissioner for social insurance who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for social insurance shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner is under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.
- (6) Office of Family Resource and Youth Services Centers. The Office of Family Resources and Youth Services Centers shall be responsible for the administration, management, and operations of the Family Resources and Youth Services Centers Program. The Office of Family Resources and Youth Services Centers shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050.
- (7) Office of the Ombudsman. The Office of the Ombudsman shall provide professional support in the evaluation of programs, including, but not limited to, a review and resolution of citizen complaints about programs or services of the cabinet when those complaints are unable to be resolved through normal administrative remedies; contract monitoring; and professional development and training. The Office of the Ombudsman shall be headed by an ombudsman who shall be appointed by the secretary with the approval of the Governor under KRS 12.050.
- (8) Office of Technology Services. The Office of Technology Services shall develop and maintain technology and information management systems in support of all units of the cabinet. The Office of Technology Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The executive director for technology services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The executive director for technology services shall exercise authority of the Office of Technology Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary.
- (9) Office of Aging Services. The Office of Aging Services shall serve as the state unit on aging as required by the Older Americans Act of 1965, as amended by 42 U.S.C. secs. 3001 et seq., including having responsibility for the development of the state plan on aging, advocacy, planning, coordination, information sharing, brokering, reporting and evaluation of contract and service provider agreement implementation. The Office of Aging Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The Office of Aging Services shall also administer grants, programs, and initiatives designed to assist older Kentuckians, administer the long-term care ombudsman program for Kentucky, and provide and coordinate services to persons with Alzheimer's disease and related disorders and their caregivers.

Section 8. The General Assembly confirms Executive Order 2000-8, issued by the Governor on January 4, 2000, to the extent that it is not otherwise confirmed by this Act.

**Approved March 29, 2000**

## **CHAPTER 204**

**(SB 236)**

AN ACT relating to education advisory groups.

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

Section 1. KRS 157.317 is amended to read as follows:



- (1) The Kentucky Board of Education through administrative regulations shall develop and implement a statewide Early Childhood Education Program which shall include basic principles of child development, early childhood education, and all other related concepts which deal with generally accepted early childhood programs, including the delivery of health and social services to children as needed.
- (2)
  - (a) The Kentucky Early Childhood Advisory Council is created to advise the chief state school officer on the implementation of early childhood education programs. The Department of Education shall provide staff and administrative support for the council.
  - (b) The Kentucky Early Childhood Advisory Council shall consist of one (1) member of the Kentucky Board of Education appointed by the chairman and sixteen (16) members appointed by the Governor. The sixteen (16) appointed members shall include one (1) representative from each of the following agencies or groups: preschool teachers, public school teachers, elementary school principals, parents, child-care providers, community education, *a representative of the Interagency Task Force on Family Resource Centers* ~~or and~~ Youth Services Centers, the Head Start Association, the Head Start director, the Head Start Program, the Infant/Toddler Coordinating Council, the Department for Public Health, the Department for *Community Based* ~~Social~~ Services, *a local district superintendent* ~~the Department for Social Insurance~~, the colleges of education, and the colleges of home economics.
  - (c) Members shall serve a four (4) year term, except initial appointments shall be set so that four (4) members shall serve one (1) year, four (4) members shall serve two (2) years, four (4) members shall serve three (3) years, and four (4) members shall serve four (4) years.

Section 2. KRS 158.794 is amended to read as follows:

- (1) The Early Reading Incentive Grant Steering Committee is hereby created for the purpose of advising the Kentucky Board of Education and the Department of Education concerning the implementation and administration of the early reading incentive grant fund created by KRS 158.792. The committee shall be composed of fifteen (15) members including the commissioner of education or the commissioner's designee, the president of the Council on Postsecondary Education or the president's designee, *the commissioner of the Department* ~~a representative from the Advisory Council~~ for Adult Education and Literacy *or the commissioner's designee* ~~to be selected by its membership~~, and the following members, to be appointed by the Governor:
  - (a) Two (2) primary program teachers with a specialty or background in reading and literacy;
  - (b) Eight (8) university professors with a specialty or background in reading and literacy representing each of the public universities; and
  - (c) Two (2) individuals from the state at large with background and interest in reading and literacy.
- (2) Each member of the committee, other than members who serve by virtue of their position, shall serve for a term of three (3) years or until a successor is appointed and qualified, except that upon initial appointment, four (4) members shall serve a one (1) year term, four (4) members shall serve a two (2) year term, and four (4) members shall serve a three (3) year term.
- (3) A majority of the full authorized membership shall constitute a quorum.
- (4) The committee shall elect, by majority vote, a chair, who shall be the presiding officer of the committee, preside at all meetings, and coordinate the functions and activities of the committee. The chair shall be elected or reelected each calendar year.
- (5) The committee shall be attached to the Department of Education for administrative purposes.
- (6) The committee shall:
  - (a) Identify needs in schools throughout the state regarding reading and literacy programs;
  - (b) Develop criteria for the solicitation, review, and approval of grant applications provided under KRS 158.792;
  - (c) Develop a process for monitoring grants that are awarded; and
  - (d) Recommend approval of grant applications based upon criteria established by the committee.

Section 3. KRS 167.037 is amended to read as follows:

- (1) There shall be established a Kentucky School for the Deaf Advisory Board, composed of ***nine (9)***~~seven (7)~~ members appointed by the Kentucky Board of Education upon recommendation of the chief state school officer. At the first regular meeting in each fiscal year, the board shall elect a chairman and vice chairman. A member may serve no more than two (2) consecutive years as chairman. Members shall be appointed for regular terms of four (4) years. Members of the board shall serve without compensation but shall be reimbursed for necessary expenses incurred in performance of their duties.
- (2) Advisory board members for the Kentucky School for the Deaf shall be selected from nominations submitted by the Kentucky Association of the Deaf Inc., the Parent-Teacher-Cottage Parent Association, the Kentucky School for the Deaf Alumni Association Inc., ***the Kentucky Association of School Administrators***, and the chief state school officer. Membership on the board shall be statewide and shall consist of two (2) parents of deaf children, one (1) professional in education of the deaf, one (1) former student of the Kentucky School for the Deaf, one (1) member of the Kentucky Association for the Deaf, ***two (2) members who shall represent school districts***, and two (2) members at large. ***A majority of the board's membership shall be persons who are deaf or hard of hearing.***
- (3) The board shall act in an advisory capacity to assist the school superintendent in conducting the activities of the school. The board shall also make recommendations to the chief state school officer concerning all areas relating to the effective operation of the school, including but not limited to:
  - (a) Goals and objectives,
  - (b) Budget requests,
  - (c) Student services,
  - (d) Public relations,
  - (e) Construction and maintenance, and
  - (f) Program evaluation.

**Approved March 29, 2000**

## CHAPTER 205

### (SB 316)

AN ACT relating to supersedeas bonds and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

- (1) ***If the appellee in a civil action obtains a judgment for punitive or exemplary damages and the appellant seeks a stay of enforcement of the judgment in order to obtain review by an appellate court, the supersedeas bond for the punitive damages portion of the judgment on appeal shall not exceed one hundred million dollars (\$100,000,000).***
- (2) ***If the appellee proves by a preponderance of the evidence that a party bringing an appeal, for whom the supersedeas bond requirement has been limited, is purposefully dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding ultimate payment of the punitive damages judgment, the limitation granted under subsection (1) of this section shall be rescinded and the bond requirement shall be reinstated for the full amount of the judgment.***

Section 2. KRS 426.965 is amended to read as follows:

- (1) If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.
- (2) If the judgment debtor shows the court any ground upon which enforcement of a judgment of any court of this state would be stayed, ***including the ground that an appeal from the foreign judgment is pending or will be taken, or that the time for taking such an appeal has not yet expired***, the court shall stay enforcement of the

foreign judgment for an appropriate period ***until all available appeals are concluded or the time for taking all appeals has expired***, upon requiring the same security for satisfaction of the judgment which is required in this state, ***subject to Section 1 of this Act***.

Section 3. The provisions of Sections 1 and 2 of this Act are hereby expressly declared to be retroactive and may be applied to all civil actions, including those on appeal, presently docketed in the courts of this Commonwealth.

Section 4. Whereas the business environment of the state is under an unreasonable burden and the protection of the economy of this state is a matter directly related to the well-being of the citizens of the Commonwealth, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved March 29, 2000**

## CHAPTER 206

(SB 68)

AN ACT relating to the pledge of allegiance to the flag of the Commonwealth of Kentucky.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 2 IS CREATED TO READ AS FOLLOWS:

***The following shall be the official pledge of allegiance to the flag of the Commonwealth of Kentucky: "I pledge allegiance to the Kentucky flag, and to the Sovereign State for which it stands, one Commonwealth, blessed with diversity, natural wealth, beauty, and grace from on High."***

**Approved March 29, 2000**

## CHAPTER 207

(SB 72)

AN ACT relating to municipal finances.

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

Section 1. KRS 91A.060 is amended to read as follows:

- (1) The executive authority shall designate as the city's official depositories one (1) or more banks, federally insured savings and loan companies or trust companies within the Commonwealth. The amount of funds on deposit in an official depository shall be fully insured by deposit insurance or ***collateralized in accordance with 12 U.S.C. sec. 1823, to the extent uninsured, by any obligations, including*** surety bonds ***permitted by KRS 41.240(4)***.
- (2) All receipts from any source of city money or money for which the city is responsible, which has not been otherwise invested or deposited in a manner authorized by law, shall be deposited in official depositories. All city funds shall be disbursed by written authorization approved by the executive authority which shall state the name of the person to whom funds are payable, the purpose of the payment and the fund out of which the funds are payable. Each authorization shall be numbered and recorded.

**Approved March 29, 2000**

## CHAPTER 208

(SB 73)

AN ACT relating to municipal budgets.

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

Section 1. KRS 91A.020 is amended to read as follows:

- (1) Each city shall keep its accounting records and render financial reports in such a way as to:

- (a) Determine compliance with statutory provisions; *and*
- (b) Determine fairly and with full disclosure the financial operations of constituent funds and account groups of the city in conformity with generally accepted governmental accounting principles~~[- and~~
- ~~(c) — Readily provide such financial data as may be required by the Federal Revenue Sharing Program].~~
- (2) Municipal accounting systems shall be organized and operated on a fund basis.

**Approved March 29, 2000**

## CHAPTER 209

(SB 86)

AN ACT relating to sales and use taxes.

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

Section 1. KRS 139.472 is amended to read as follows:

- (1) "Prescription medicine" shall mean and include:
  - (a) Any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which is commonly recognized as a substance or preparation intended for such use which is prescribed for the treatment of a human being by a person authorized to prescribe the medicines and dispensed on prescription by a registered pharmacist in accordance with law; and
  - (b) Medical oxygen when purchased by the patient for private use.
- (2) "Prosthetic devices and physical aids" for the purpose of this section shall mean and include artificial devices prescribed by a licensed physician, or individually designed, constructed or altered solely for the use of a particular crippled person so as to become a brace, support, supplement, correction or substitute for the bodily structure including the extremities of the individual; artificial limbs, artificial eyes, hearing aids prescribed by a licensed physician, or individually designed, constructed or altered solely for the use of a particular disabled person; crutches, walkers, hospital beds, wheelchairs, *wheelchair repair and replacement parts*, and wheelchair lifting devices for the use of invalids and crippled persons; colostomy supplies, *urostomy supplies, ileostomy supplies*, insulin and diabetic supplies, such as hypodermic syringes and needles, and sugar (urine and blood) testing materials purchased for use by diabetics.
- (3) The terms "sale at retail," "retail sale," "use," "storage" and "consumption" as used in this chapter shall not include the sale, use, storage or consumption of prescription medicine, prosthetic devices and physical aids.

Section 2. The provisions of this Act shall apply to sales made on or after August 1, 2000.

**Approved March 29, 2000**

## CHAPTER 210

(SB 87)

AN ACT relating to retirement.

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

Section 1. KRS 16.505 is amended to read as follows:

As used in KRS 16.510 to 16.652, unless the context otherwise requires:

- (1) "System" means the State Police Retirement System created by KRS 16.510 to 16.652;
- (2) "Board" means the board of trustees of the Kentucky Retirement Systems;
- (3) "Employer" or "State Police" means the Department of State Police, or its successor;

- (4) "Current service" means the number of years and completed months of employment as an employee subsequent to July 1, 1958, for which creditable compensation was paid by the employer and employee contributions deducted except as otherwise provided in KRS 61.555;
- (5) "Prior service" means the number of years and completed months of employment as an employee prior to July 1, 1958, for which creditable compensation was paid to the employee by the Commonwealth. Twelve (12) months of current service in the system are required to validate prior service;
- (6) "Service" means the total of current service and prior service;
- (7) "Accumulated contributions" at any time means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the member's contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4), together with interest credited on such amounts as provided in KRS 16.510 to 16.652, and any other amounts the member shall have contributed, including interest credited;
- (8) "Creditable compensation" means all salary and wages paid to the employee as a result of services performed for the employer which are includable on the member's federal form W-2 wage and tax statement, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4); living allowances, expense reimbursements, payments received after the date of termination of employment for accrued vacation leave, and other items determined by the board shall be excluded. Creditable compensation shall also include amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code;
- (9) "Final compensation" at any time means the creditable compensation of a member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during the three (3) year period, multiplied by twelve (12); the three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than **twenty-four (24)**~~twenty-eight (28)~~, one (1) or more additional fiscal years shall be used;
- (10) "Final rate of pay" means the actual rate upon which earnings of a member were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, one thousand nine hundred fifty (1,950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, or one (1) year;
- (11) "Retired member" means any former member receiving a retirement allowance or any former member who has filed the necessary documents for retirement benefits and is no longer contributing to the retirement system;
- (12) "Retirement allowance" means the retirement payments to which a retired member is entitled;
- (13) "Actuarially equivalent benefits" means benefits which are of equal value when computed upon the basis of actuarial tables adopted by the board, except that, in case of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;
- (14) "Authorized leave of absence" means any time during which a person is absent from employment but retained in the status of an employee in accordance with the personnel policy of the Department of State Police;
- (15) "Normal retirement date" means the first day of the month following a member's fifty-fifth birthday, except that for members over age fifty-five (55) on July 1, 1958, it shall mean January 1, 1959. A member of the State Police Retirement System, a member of the County Employees Retirement System, or a member of the Kentucky Employees Retirement System covered by this section with twenty (20) or more years of service credit, at least fifteen (15) of which are current, may declare his "normal retirement date" to be some date prior to his fifty-fifth birthday;
- (16) "Disability retirement date" means the first day of the month following total and permanent disability or hazardous disability;
- (17) "Dependent child" means a child en ventre sa mere and a natural or legally adopted child of the member who has neither attained age eighteen (18) nor married or who is an unmarried full-time student who has not attained age twenty-two (22);

- (18) "Optional allowance" means an actuarially equivalent benefit elected by the member in lieu of all other benefits provided by KRS 16.510 to 16.652;
- (19) "Act in line of duty" means an act occurring or a thing done, which, as determined by the board, was required in the performance of the duties specified in KRS 16.060. For employees in hazardous positions under KRS 61.592, an "act in line of duty" shall mean an act occurring which was required in the performance of the principal duties of the position as defined by the job description;
- (20) "Early retirement date" means the retirement date declared by a member who is not less than fifty (50) years of age and has fifteen (15) years of service;
- (21) "Member" means any officer included in the membership of the system as provided under KRS 16.520 whose membership has not been terminated under KRS 61.535;
- (22) "Regular full-time officers" means the occupants of positions as set forth in KRS 16.010;
- (23) "Hazardous disability" as used in KRS 16.510 to 16.652 means a disability which results in an employee's total incapacity to continue as an employee in a hazardous position, but the employee is not necessarily deemed to be totally and permanently disabled to engage in other occupations for remuneration or profit;
- (24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, "beneficiary" does not mean an estate, trust, or trustee;
- (26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;
- (27) "Person" means a natural person;
- (28) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (29) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula adopted by the board for purchase of service under KRS 61.552(9), except the employee shall pay a single payment of fifty percent (50%) of the total cost of the service with no cost to the employer, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member;
- (30) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543, 61.543, or 78.615 to the retirement office in order for the employee to receive current service credit for the month;
- (31) "Objective medical evidence" means medical histories; reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable laboratory diagnostic techniques, including, but not limited to, chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests;
- (32) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year; and
- (33) "Participating" means an employee is currently earning service credit in the system as provided in KRS 16.543.

Section 2. KRS 61.510 is amended to read as follows:

As used in KRS 61.515 to 61.705, unless the context otherwise requires:

- (1) "System" means the Kentucky Employees Retirement System created by KRS 61.515 to 61.705;
- (2) "Board" means the board of trustees of the system as provided in KRS 61.645;

- (3) "Department" means any state department or board or agency participating in the system in accordance with appropriate executive order, as provided in KRS 61.520. For purposes of KRS 61.515 to 61.705, the members, officers, and employees of the General Assembly and any other body, entity, or instrumentality designated by executive order by the Governor, shall be deemed to be a department, notwithstanding whether said body, entity, or instrumentality is an integral part of state government;
- (4) "Examiner" means the medical examiners as provided in KRS 61.665;
- (5) "Employee" means the members, officers, and employees of the General Assembly and every regular full-time, appointed or elective officer or employee of a participating department, including the Department of Military Affairs. The term does not include persons engaged as independent contractors, seasonal, emergency, temporary, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 61.515 to 61.705;
- (6) "Employer" means a department or any authority of a department having the power to appoint or select an employee in the department, including the Senate and the House of Representatives, or any other entity, the employees of which are eligible for membership in the system pursuant to KRS 61.525;
- (7) "State" means the Commonwealth of Kentucky;
- (8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;
- (9) "Service" means the total of current service and prior service as defined in this section;
- (10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1956, except that for members, officers, and employees of the General Assembly this date shall be January 1, 1960, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided in KRS 61.552(7) and 61.555, and each member, officer, and employee of the General Assembly shall be credited with a month of current service for each month he occupies the position during a legislative biennium subsequent to January 1, 1960;
- (11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1956, for which creditable compensation was paid; except that for members, officers, and employees of the General Assembly, this date shall be January 1, 1960. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work; provided, however, that each member, officer, and employee of the General Assembly shall be credited with a month of prior service for each month he occupied the position during a legislative biennium prior to January 1, 1960. Twelve (12) months of current service in the system are required to validate prior service; except that for an employee participating in any of the three (3) systems administered by the Kentucky Retirement Systems whose prior service was in a position in an office of a Commonwealth's attorney the prior service may be validated by at least twelve (12) months of current service in the Kentucky Employees Retirement System or by at least fifteen (15) years of current service in the County Employees Retirement System. An employee participating in any of the three (3) systems administered by the Kentucky Retirement Systems who wishes to validate prior service in a position in an office of a Commonwealth's attorney with fifteen (15) years of County Employees Retirement System service shall notify the Kentucky Retirement Systems of his or her eligibility for the service prior to January 1, 1999;
- (12) "Accumulated contributions" at any time means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4), together with interest credited on such amounts and any other amounts the member shall have contributed thereto, including interest credited thereon;
- (13) "Creditable compensation" means all salary, wages, tips to the extent the tips are reported for income tax purposes, and fees paid to the employee as a result of services performed for the employer which are includable on the member's federal form W-2 wage and tax statement, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4), except that for members of the General Assembly, it shall mean an assumed salary of twenty-seven thousand five hundred dollars (\$27,500) per annum which shall include per diem and expense payments authorized by KRS Chapter 6. The creditable compensation of members, officers, and employees of the General Assembly shall be calculated as having been received in equal amounts for each month of the biennium. In cases where compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Creditable

compensation shall also include amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code;

(14) "Final compensation" of a member means:

- (a) *For a member who is not employed in a hazardous position, as provided in Section 3 of this Act, the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12), except that for members of the General Assembly who retire pursuant to KRS 61.600, or who die in office, "final compensation" shall be twenty-seven thousand five hundred dollars (\$27,500). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;*
- (b) *For a member who is employed in a hazardous position, as provided in Section 3 of this Act, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used;*

(15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4). In the case of members of the General Assembly, the "final rate of pay" shall be the creditable compensation. The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, nineteen hundred fifty (1,950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;

(16) "Retirement allowance" means the retirement payments to which a member is entitled;

(17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables that are from time to time adopted by the board, except in cases of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;

(18) "Normal retirement date" means the sixty-fifth birthday of a member, unless otherwise provided in KRS 61.515 to 61.705;

(19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year;

(20) "Officers and employees of the General Assembly" means the occupants of those positions enumerated in KRS 6.150 and the assistants if employed by the General Assembly for at least six (6) legislative bienniums;

(21) "Regular full-time positions," as used in subsection (5) of this section, shall mean all positions that average one hundred (100) or more hours per month determined by using the number of months actually worked within a calendar or fiscal year, including all positions except:

- (a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and which may recur regularly from year to year, the period of time shall not exceed nine (9) months;
- (b) Emergency positions which are positions which do not exceed thirty (30) working days and are nonrenewable;
- (c) Temporary positions which are positions of employment with a participating department for a period of time not to exceed nine (9) months; and
- (d) Part-time positions which are positions which may be permanent in duration, but which require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty;



- (22) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula adopted by the board for purchase of service under KRS 61.552(9), except the employee shall pay a single payment of fifty percent (50%) of the total cost of the service with no cost to the employer, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434;
  - (23) "Parted employer" means a department, portion of a department, board, or agency, such as Outwood Hospital and School, which previously participated in the system, but due to lease or other contractual arrangement is now operated by a publicly held corporation or other similar organization, and therefore is no longer participating in the system;
  - (24) "Retired member" means any former member receiving a retirement allowance or any former member who has filed the necessary documents for retirement benefits and is no longer contributing to the retirement system;
  - (25) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
  - (26) "Beneficiary" means the person or persons or estate or trust or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, "beneficiary" does not mean an estate, trust, or trustee;
  - (27) "Recipient" means the retired member or the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;
  - (28) "Level-percentage-of-payroll amortization method" means a method of determining the annual amortization payment on the unfunded past service liability as expressed as a percentage of payroll over a set period of years. Under this method, the percentage of payroll shall be projected to remain constant for all years remaining in the set period and the unfunded past service liability shall be projected to be fully amortized at the conclusion of the set period;
  - (29) "Increment" means twelve (12) months of service credit which are purchased. The twelve (12) months need not be consecutive. The final increment may be less than twelve (12) months;
  - (30) "Person" means a natural person;
  - (31) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
  - (32) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543, 61.543, or 78.615 to the retirement office in order for the employee to receive current service credit for the month;
  - (33) "Objective medical evidence" means medical histories; reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable laboratory diagnostic techniques, including, but not limited to, chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests; and
  - (34) "Participating" means an employee is currently earning service credit in the system as provided in KRS 61.543.
- Section 3. KRS 61.592 is amended to read as follows:

- (1) "Hazardous position" means any position whose principal duties involve active law enforcement, including the positions of probation and parole officer and Commonwealth detective, active fire suppression or prevention, or other positions, including, but not limited to, pilots of the Transportation Cabinet and paramedics and emergency medical technicians, with duties that require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning. Hazardous positions shall include positions in the Department of Corrections in state correctional institutions and the Kentucky Correctional Psychiatric Center with duties that regularly and routinely require face-to-face contact with inmates.

- (2) Each employer may request of the board hazardous duty coverage for those positions as defined in subsection (1) of this section, but a county, narrowly defined as one (1) of Kentucky's one hundred and twenty (120) counties, the provisions of KRS 78.510(3) notwithstanding, shall request hazardous duty coverage for its full-time paid firefighters. Upon request, each employer shall certify to the system, in the manner prescribed by the board, the names of all employees working in a hazardous position as defined in subsection (1) of this section for which coverage is requested. The certification of the employer shall bear the approval of the agent or agency responsible for the budget of the department or county indicating that the required employer contributions have been provided for in the budget of the employing department or county. The system shall determine whether the employees whose names have been certified by the employer are working in positions meeting the definition of a hazardous position as provided by subsection (1) of this section.
- (3)
  - (a) An employee participating in the Kentucky Employees Retirement System who is determined by the system to be working in a hazardous position in accordance with subsection (2) of this section shall contribute, for each pay period for which he receives compensation, **eight percent (8%)** ~~seven percent (7%)~~ of his creditable compensation. An employee participating in the County Employees Retirement System who is determined by the system to be working in a hazardous duty position in accordance with subsection (2) of this section shall contribute, for each pay period for which he receives compensation, eight percent (8%) of his creditable compensation;
  - (b) Each employer shall pay employer contributions based on the creditable compensation of the employees determined by the system to be working in a hazardous position at the employer contribution rate as determined by the board. The rate shall be determined by actuarial methods consistent with the provisions of KRS 61.565;
  - (c) If the employer participated in the system prior to electing hazardous duty coverage, the employer may pay to the system the cost in order that the nonhazardous service be credited as hazardous service, or the employer may establish a payment schedule for payment of the cost of the hazardous service above that which would be funded within the existing employer contribution rate. The employer may extend the payment schedule to a maximum of thirty (30) years. Payments made by the employer under this subsection shall be deposited to the retirement allowance account of the proper retirement system and these funds shall not be considered accumulated contributions of the individual members. If the employer elects not to make the additional payment, the employee may make the lump-sum payment in his own behalf or may pay by increments. Payments made by the employee under this subsection shall not be picked up, as described in KRS 61.560(4), by the employer. If neither the employer nor employee makes the payment, the service prior to hazardous coverage shall remain nonhazardous.
- (4) ~~[Except for the employee contribution by members of the Kentucky Employees Retirement System,] The normal retirement age, retirement allowance, other benefits, eligibility requirements, rights, and responsibilities of a member in a hazardous position, as prescribed by subsections (1), (2), and (3) of this section, and the responsibilities, rights, and requirements of his employer shall be as prescribed for a member and employer participating in the State Police Retirement System as provided for by KRS 16.510 to 16.652. ~~[The employee contribution for a member of the Kentucky Employees Retirement System shall be seven percent (7%).]~~~~
- (5) Any person employed in a hazardous position after July 1, 1972, shall be required to undergo a thorough medical examination by a licensed physician, and a copy of the medical report of the physician shall be retained on file by the employee's department or county and made available to the system upon request.
- (6) If doubt exists regarding the benefits payable to a hazardous position employee under this section, the board shall determine the benefits payable under KRS 61.515 to 61.705, or 78.520 to 78.852, or 16.510 to 16.652.

Section 4. KRS 78.510 is amended to read as follows:

As used in KRS 78.520 to 78.852, unless the context otherwise requires:

- (1) "System" means the County Employees Retirement System;
- (2) "Board" means the board of trustees of the system as provided in KRS 78.780;
- (3) "County" means any county, or nonprofit organization created and governed by a county, counties, or elected county officers, sheriff and his employees, county clerk and his employees, circuit clerk and his deputies, former circuit clerks or former circuit clerk deputies, or political subdivision or instrumentality, including school boards, charter county government, or urban-county government participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the

agency, organization, or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;

- (4) "School board" means any board of education participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;
- (5) "Examiner" means the medical examiners as provided in KRS 61.665;
- (6) "Employee" means every regular full-time appointed or elective officer or employee of a participating county and the coroner of a participating county, whether or not he qualifies as a regular full-time officer. The term shall not include persons engaged as independent contractors, seasonal, emergency, temporary, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 78.520 to 78.852;
- (7) "Employer" means a county, as defined in subsection (3) of this section, the elected officials of a county, or any authority of the county having the power to appoint or elect an employee to office or employment in the county;
- (8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;
- (9) "Service" means the total of current service and prior service as defined in this section;
- (10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1958, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided in KRS 61.552(7), 61.555, and 78.530;
- (11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1958, for which creditable compensation was paid. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work. Twelve (12) months of current service in the system shall be required to validate prior service;
- (12) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4), together with interest credited on the amounts, and any other amounts the member shall have contributed thereto, including interest credited thereon;
- (13) "Creditable compensation" means all salary, wages, and fees paid to the employee as a result of services performed for the employer which are includable on the member's federal form W-2 wage and tax statement, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). If compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Creditable compensation shall also include amounts that are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code;
- (14) "Final compensation" means:
  - (a) For a member who is employed in a nonhazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;
  - (b) For a member who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than **twenty-four (24)**~~twenty-eight (28)~~, one (1) or more additional fiscal years shall be used;

- (15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, and shall include employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2080) hours for eight (8) hour workdays, nineteen hundred fifty (1950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;
- (16) "Retirement allowance" means the retirement payments to which a member is entitled;
- (17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables as are from time to time adopted by the board, except in case of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;
- (18) "Normal retirement date" means the sixty-fifth (65th) birthday of a member unless otherwise provided in KRS 78.520 to 78.852;
- (19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year;
- (20) "Agency reporting official" means the person designated by the participating agency who shall be responsible for forwarding all employer and employee contributions and a record of the contributions to the system and for performing other administrative duties pursuant to the provisions of KRS 78.520 to 78.852;
- (21) "Regular full-time positions," as used in subsection (6) of this section, shall mean all positions that average one hundred (100) or more hours per month, determined by using the number of hours actually worked in a calendar or fiscal year, or eighty (80) or more hours per month in the case of noncertified employees of school boards, determined by using the number of hours actually worked in a calendar or school year, unless otherwise specified, except:
  - (a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and that may recur regularly from year to year, in which case the period of time shall not exceed six (6) months in any event;
  - (b) Emergency positions that are positions that do not exceed thirty (30) working days and are nonrenewable;
  - (c) Temporary, also referred to as probationary, positions that are positions of employment with a participating agency for a period of time not to exceed twelve (12) months and not renewable; or
  - (d) Part-time positions that are positions that may be permanent in duration, but that require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty, except in case of noncertified employees of school boards, the school term average shall be eighty (80) hours of work per month, determined by using the number of months actually worked in a calendar or school year, in the performance of duty;
- (22) "Alternate participation plan" means a method of participation in the system as provided for by KRS 78.530(3);
- (23) "Retired member" means any former member receiving a retirement allowance or any former member who has on file at the retirement office the necessary documents for retirement benefits and is no longer contributing to the system;
- (24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, beneficiary shall not mean an estate, trust, or trustee;
- (26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement

allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;

- (27) "Person" means a natural person;
- (28) "School term or year" means the twelve (12) months from July 1 through the following June 30;
- (29) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (30) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula adopted by the board for purchase of service under KRS 61.552(9), except the employee shall pay a single payment of fifty percent (50%) of the total cost of the service with no cost to the employer, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434; and
- (31) "Participating" means an employee is currently earning service credit in the system as provided in KRS 78.615.

Section 5. KRS 61.637 is amended to read as follows:

- (1) A retired member who is receiving monthly retirement payments under any of the provisions of KRS 61.515 to 61.705 and 78.520 to 78.852 and who is reemployed as an employee by a participating agency shall have his retirement payments suspended for the duration of reemployment, except as provided in subsection (7) of this section. Monthly payments shall not be suspended for a retired member who is reemployed if he anticipates that he will receive less than the maximum permissible earnings as provided by the Federal Social Security Act in compensation as a result of reemployment during the calendar year. The payments shall be suspended at the beginning of the month in which the reemployment occurs.
- (2) Employer and employee contributions shall be made as provided in KRS 61.515 to 61.705 and 78.520 to 78.852 on the compensation paid during reemployment, except where monthly payments were not suspended as provided in subsection (1) of this section or would not increase the retired member's last monthly retirement allowance by at least one dollar (\$1), and the member shall be credited with additional service credit.
- (3) In the month following the termination of reemployment, retirement allowance payments shall be reinstated under the plan under which the member was receiving payments prior to reemployment.
- (4)
  - (a) Notwithstanding the provisions of this section, the payments suspended in accordance with subsection (1) of this section shall be paid retroactively to the retired member, or his estate, if he does not receive more than the maximum permissible earnings as provided by the Federal Social Security Act in compensation from participating agencies during any calendar year of reemployment;
  - (b) If the retired member is paid suspended payments retroactively in accordance with this section, employee contributions deducted during his period of reemployment, if any, shall be refunded to the retired employee, and no service credit shall be earned for the period of reemployment;
  - (c) If the retired member is not eligible to be paid suspended payments for his period of reemployment as an employee, his retirement allowance shall be recomputed under the plan under which the member was receiving payments prior to reemployment as follows:
    - 1. The retired member's final compensation shall be recomputed using creditable compensation for his period of reemployment; however, the final compensation resulting from the recalculation shall not be less than that of the member when his retirement allowance was last determined;
    - 2. If the retired member initially retired on or subsequent to his normal retirement date, his retirement allowance shall be recomputed by using the formula in KRS 61.595(1);
    - 3. If the retired member initially retired prior to his normal retirement date, his retirement allowance shall be recomputed using the formula in KRS 61.595(2), except that the member's age used in computing benefits shall be his age at the time of his initial retirement increased by the number of months of service credit earned for service performed during reemployment;
    - 4. The retirement allowance payments resulting from the recomputation under this subsection shall be payable in the month following the termination of reemployment in lieu of payments under subparagraph 3. The member shall not receive less in benefits as a result of the recomputation than he was receiving prior to reemployment or would receive as determined under KRS 61.691;

5. Any retired member who was reemployed prior to March 26, 1974, shall begin making contributions to the system in accordance with the provisions of this section on the first day of the month following March 26, 1974.
- (5) A retired member, or his estate, shall pay to the retirement fund the total amount of payments which are not suspended in accordance with subsection (1) of this section if the member received more than the maximum permissible earnings as provided by the Federal Social Security Act in compensation from participating agencies during any calendar year of reemployment, except the retired member or his estate may repay the lesser of the total amount of payments which were not suspended or fifty cents (\$0.50) of each dollar earned over the maximum permissible earnings during reemployment if under age sixty-five (65), or one dollar (\$1) for every three dollars (\$3) earned if over age sixty-five (65).
- (6) (a) "Reemployment" or "reinstatement" as used in this section shall not include a retired member who has been ordered reinstated by the Personnel Board under authority of KRS 18A.095; and  
 (b) A retired member who has been ordered reinstated by the Personnel Board under authority of KRS 18A.095 or by court order or by order of the Human Rights Commission and accepts employment by an agency participating in the Kentucky Employees Retirement System or County Employees Retirement System shall void his retirement by reimbursing the system in the full amount of his retirement allowance payments received.
- (7) If a member is retired from a hazardous position, as defined by KRS 61.592, the member shall be permitted to seek and hold an elected city or county office under the provisions of this subsection:
  - (a) The member may receive the pay for the elected city or county office but shall not contribute to, receive benefits from, or otherwise participate in the office's retirement system; and
  - (b) The member's pension and benefits received because of retirement from the hazardous position shall not be affected if he holds an elected city or county office.
- (8) Effective August 1, 1998, the provisions of subsections (1) to (4) of this section shall no longer apply to a retired member who is reemployed in a position covered by the same retirement system from which the member retired. Reemployed retired members shall be treated as new members upon reemployment. Any retired member whose reemployment date preceded August 1, 1998, who does not elect, within sixty (60) days of notification by the retirement systems, to remain under the provisions of subsections (1) to (4) of this section shall be deemed to have elected to participate under this subsection.
- (9) *Any former recipient of a disability retirement allowance from the Kentucky Retirement Systems who had at least two hundred forty (240) months of service credit and whose disability retirement allowance was terminated September 1, 1998, who is reemployed as of the effective date of this Act shall be treated under the provisions of subsections (1) to (4) of this section, except that the maximum permissible earnings as used in subsection (1) shall be the maximum permissible earnings under the Federal Social Security Act for calendar year 1998.*

**Approved March 29, 2000**

## CHAPTER 211

(SB 114)

AN ACT relating to vocational rehabilitation.

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

Section 1. KRS 151B.240 is amended to read as follows:

- (1) The Statewide Independent Living Council is hereby created and attached to the Department of Vocational Rehabilitation for administrative purposes to accomplish the purposes enumerated in 29 U.S.C. sec. 796d (Title VII, Part A, Section 705 of the Rehabilitation Act Amendments of ~~1998~~~~1992~~). Members of the council shall be appointed by the Governor from recommendations submitted by the Department of Vocational Rehabilitation consistent with the federal mandate to include a majority of individuals with disabilities representing geographical and disability diversity as well as representatives from identified service providers and other entities. The composition, qualifications, and terms of service of the council shall conform to the federal law.

- (2) (a) *Except as provided in paragraph (b) of this subsection, any vacancy occurring in the membership of the Statewide Independent Living Council shall be filled in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members of the council.*
- (b) *The Governor may delegate the authority to fill a vacancy to the remaining voting members of the council.*
- (3) Each member of the Statewide Independent Living Council may receive a per diem of one hundred dollars (\$100), not to exceed six hundred dollars (\$600) annually, for each regular or special meeting attended if the member is not employed or must forfeit wages from other employment. Each member may have travel expenses approved at the established state rate and expenses reimbursed at the established state agency rate for services such as personal assistance, child care, and drivers for attendance at council meetings, and in the performance of duties authorized by the Statewide Independent Living Council. The per diem and expenses shall be paid out of the federal funds appropriated under Title VII, **Chapter 1**, Part A, and Title **VII**, **Chapter 1**, ~~Part C of the Rehabilitation Act Amendments of 1998~~~~[1992]~~, Pub. L. **105-220**~~[102-569]~~.

Section 2. KRS 151B.245 is amended to read as follows:

- (1) The Statewide~~[Advisory]~~ Council for Vocational Rehabilitation is hereby created within the Department of Vocational Rehabilitation to accomplish the purposes and functions enumerated in 29 U.S.C. sec. 725 (Title I, **Part A**~~[Subtitle B]~~, Section **105**~~[126]~~ of the Rehabilitation Act Amendments of **1998**~~[1992]~~). Members of the council shall be appointed by the Governor from recommendations submitted by the Department of Vocational Rehabilitation consistent with the federal mandate to include a majority of individuals with disabilities not employed by the department as well as representatives of specified organizations, service providers, and advocacy groups. The compensation, qualifications, and terms of service of the council shall conform to the federal law.
- (2) (a) *Except as provided in paragraph (b) of this subsection, any vacancy occurring in the membership of the Statewide Council for Vocational Rehabilitation shall be filled in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members of the council.*
- (b) *The Governor may delegate the authority to fill a vacancy to the remaining voting members of the council.*
- (3) Each member of the Statewide~~[Advisory]~~ Council on Vocational Rehabilitation may receive a per diem of one hundred dollars (\$100), not to exceed six hundred dollars (\$600) annually, for each regular or special meeting attended if the member is not employed or must forfeit wages from other employment. Each member may have travel expenses approved at the established state rate and expenses reimbursed at the established state agency rate for services such as personal assistance, child care, and drivers for attendance at council meetings, and in the performance of duties authorized by the Statewide~~[Advisory]~~ Council on Vocational Rehabilitation. The per diem and expenses shall be paid out of the federal funds appropriated under Title I part A of the Rehabilitation Act Amendments of **1998**~~[1992]~~, Pub. L. **105-220**~~[102-569]~~.

**Approved March 29, 2000**

## CHAPTER 212

(SB 265)

AN ACT relating to school councils.

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

Section 1. KRS 160.345 is amended to read as follows:

- (1) For the purpose of this section:
  - (a) "Minority" means American Indian; Alaskan native; African-American; Hispanic, including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin; Pacific islander; or other ethnic group underrepresented in the school.

- (b) "School" means an elementary or secondary educational institution that is under the administrative control of a principal or head teacher and is not a program or part of another school. The term "school" does not include district-operated schools that are:
    - 1. Exclusively vocational-technical, special education, or preschool programs;
    - 2. Instructional programs operated in institutions or schools outside of the district; or
    - 3. Alternative schools designed to provide services to at-risk populations with unique needs.
  - (c) "Teacher" means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers.
  - (d) "Parent" means:
    - 1. A parent, stepparent, or foster parent of a student; or
    - 2. A person who has legal custody of a student pursuant to a court order and with whom the student resides.
- (2) ~~[By January 1, 1991,]~~ Each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy may include a requirement that each school council make an annual report at a public meeting of the board describing the school's progress in meeting the educational goals set forth in KRS 158.6451 and district goals established by the board. The policy shall also address and comply with the following:
- (a) Except as provided in paragraph (b)2. of this subsection, each participating school shall form a school council composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. ***A parent representative on the council shall not be an employee or a relative of an employee of the school in which that parent serves, nor shall the parent representative be an employee or a relative of an employee in the district administrative offices. A parent representative***~~[The teacher representatives shall be Kentucky residents. The parent representatives on the council shall not be employees of the district or employees' relatives, nor]~~ shall ~~not~~***be a local board member or a board member's***~~[his]~~ spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees.
  - (b)
    - 1. The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. The parent representatives shall be elected for one (1) year terms. The parent members shall be elected by the parents of students preregistered to attend the school during the term of office in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. A school council, once elected, may adopt a policy setting different terms of office for parent and teacher members subsequently elected, but the terms shall not exceed two (2) years nor be consecutive. The principal or head teacher shall be the chair of the school council.
    - 2. School councils in schools having eight percent (8%) or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member. If the council formed under paragraph (a) of this subsection does not have a minority member, the principal, in a timely manner, shall be responsible for carrying out the following:
      - a. Organizing a special election to elect an additional member. The principal shall call for nominations and shall notify the parents of the students of the date, time, and location of the election to elect a minority parent to the council by ballot; and
      - b. Allowing the teachers in the building to select one (1) minority teacher to serve as a teacher member on the council. If there are no minority teachers who are members of the faculty, an additional teacher member shall be elected by a majority of all teachers. Term limitations shall not apply for a minority teacher member who is the only minority on faculty.



- (c) 1. The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.
- 2. If a school council establishes committees, it shall adopt a policy to facilitate the participation of interested persons, including, but not limited to, classified employees and parents. The policy shall include the number of committees, their jurisdiction, composition, and the process for membership selection.
- (d) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy.
- (e) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply.
- (f) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals.
- (g) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council.
- (h) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council, ***consistent with subsection (2)(i)10. of this section.*** Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. The superintendent shall provide additional applicants upon request when qualified applicants are available.
- (i) The school council shall adopt a policy to be implemented by the principal in the following additional areas:
  - 1. Determination of curriculum, including needs assessment and curriculum development;
  - 2. Assignment of all instructional and noninstructional staff time;
  - 3. Assignment of students to classes and programs within the school;
  - 4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;
  - 5. Determination of use of school space during the school day;
  - 6. Planning and resolution of issues regarding instructional practices;
  - 7. Selection and implementation of discipline and classroom management techniques as a part of a comprehensive school safety plan, including responsibilities of the student, parent, teacher, counselor, and principal;
  - 8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision;~~{and}~~
  - 9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal; ***and***

- 10. Procedures to assist the council with consultation in the selection of personnel by the principal, including but not limited to, meetings, timelines, interviews, review of written applications, and review of references.**
- (j) ***Each school council shall annually review data on its students' performance as shown by the Commonwealth Accountability Testing System. The data shall include, but not be limited to, information on performance levels of all students tested, and information on the performance of students disaggregated by race, gender, disability, and participation in the federal free and reduced price lunch program. After completing the review of data, each school council shall adopt a plan to ensure that each student makes progress toward meeting the goals set forth in KRS 158.645 and 158.6451(1)(b). The Kentucky Department of Education shall provide each school council the data needed to complete the review required by this paragraph no later than December 31 of each year. If a school does not have a council, the review shall be completed by the principal.***
- (3) The policy adopted by the local board to implement school-based decision making shall also address the following:
- (a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;
  - (b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;
  - (c) School improvement plans, including the form and function of strategic planning and its relationship to district planning, as well as the school safety plan and requests for funding from the Center for School Safety under KRS 158.446;
  - (d) Professional development plans developed pursuant to KRS 156.095;
  - (e) Parent, citizen, and community participation including the relationship of the council with other groups;
  - (f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;
  - (g) Requirements for waiver of district policies;
  - (h) Requirements for record keeping by the school council; and
  - (i) A process for appealing a decision made by a school council.
- (4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.
- (5) After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision making shall do so. By June 30, 1991, each local board shall submit to the chief state school officer the name of at least one (1) school which shall implement school-based decision making the following school year. The board shall select a school in which two-thirds (2/3) of the faculty vote to implement school-based decision making. If no school in the district votes to implement school-based decision making, the local board shall designate one (1) school of its choice. All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon favorable vote of a majority of the faculty at the school and a majority of at least twenty-five (25) voting parents of students enrolled in the school, a school performing above its threshold level requirement as determined by the Department of Education pursuant to KRS 158.6455 may apply to the Kentucky Board of Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. The voting by the parents on the matter of exemption from implementing school-based decision making shall be in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.
- (6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making. School council members elected for the first time shall complete

a minimum of six (6) clock hours of training in the process of school-based decision making, and school council members who have served on a school council at least one (1) year shall complete a minimum of three (3) clock hours of training in the process of school-based decision making. School council training required under this subsection shall be conducted by trainers endorsed by the Department of Education, and school council members shall complete the required training no later than thirty (30) days after the beginning of the service year for which they are elected to serve. School council members elected to fill a vacancy shall complete the applicable training within thirty (30) days of their election.

- (7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making including, but not limited to, a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the chief state school officer and the Kentucky Board of Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.
- (8) The Kentucky Board of Education, upon recommendation of the chief state school officer, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council. Included in the school council formula shall be an allocation for professional development that is at least sixty-five percent (65%) of the district's per pupil state allocation for professional development for each student in average daily attendance in the school. The school council shall plan professional development with the district's coordinator and other school councils. Small schools shall be encouraged to work with other school councils to maximize professional development opportunities.
- (9)
  - (a) No board member, superintendent of schools, district employee, or member of a school council shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (i) of subsection (2) of this section.
  - (b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the Kentucky Board of Education.
  - (c) The Kentucky Board of Education shall conduct a hearing in accordance with KRS Chapter 13B for complaints referred by the Office of Education Accountability.
  - (d) If the state board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent, a member of a school council, or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.

Section 2. KRS 158.6455 is amended to read as follows:

It is the intent of the General Assembly that schools succeed with all students and receive the appropriate consequences in proportion to that success.

- (1) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate administrative regulations in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A to establish a system for identifying and rewarding successful schools. A reward shall be distributed to successful schools based on the number of full-time, part-time, and itinerant certified staff employed in the school on the last working day of the year of the reward to be used for school purposes as determined by the school council or, if none exists, the principal. The Kentucky Board of Education shall identify reports, paperwork requirements, and administrative regulations from which high performing schools shall be exempt.
- (2) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate by administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A the formula for a school accountability index to classify schools every

two (2) years based on whether they have met their threshold level for school improvement, with school years 1998-2000 serving as the baseline. The formula shall reflect the school goals described in KRS 158.6451, except there shall be no measurement of the goals included in subsection (1)(b)3. and (1)(b)4.

- (3) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate an administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A to establish appropriate consequences for schools failing to meet their threshold. The consequences shall be designed to improve teaching and learning and may include, but not be limited to:
  - (a) A scholastic audit process under subsection (4) of this section to determine the appropriateness of a school's classification and to recommend needed assistance;
  - (b) School improvement plans;
  - (c) Eligibility to receive Commonwealth school improvement funds under KRS 158.805;
  - (d) Education assistance from highly skilled certified staff under KRS 158.782;
  - (e) Evaluation of school personnel; and
  - (f) Student transfer to successful schools.
- (4) (a) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate an administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A establishing the guidelines for conducting scholastic audits, which shall include the process for:
  1. Appointing and training team members. The team shall include at least a highly skilled certified educator under KRS 158.782, a teacher, a principal or other local district administrator, a parent, and a university faculty member;
  2. Reviewing a school's learning environment, efficiency, and academic performance of students ***and the quality of the school council's data analysis and planning in accordance with subsection (2)(j) of Section 1 of this Act;***
  3. Evaluating each certified staff member assigned to the school. Only certified members of the audit team shall evaluate personnel; and
  4. Making a recommendation to the Kentucky Board of Education about the appropriateness of a school's classification and a recommendation concerning the assistance required by the school to improve teaching and learning.
- (b) For information purposes, the board shall also conduct scholastic audits in a sample of schools that achieved their goal ***and report to the public on the resulting findings regarding each aspect of the schools' operations required under paragraph (a)2. of subsection (4) of this section.***
- (5) (a) Notwithstanding subsections (2), (3), and (4) of this section and KRS 158.645 to 158.805, the Kentucky Board of Education, after receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, shall promulgate an administrative regulation in conformity with the provisions of KRS 158.6471 and 158.6472 and in accordance with KRS Chapter 13A, establishing a formula for school accountability and a school improvement goal for each school for the 1998-1999 and 1999-2000 school years, with the 1996-97 and 1997-98 school years serving as the baseline. The formula shall be based on the academic and nonacademic components that are administered in a consistent manner during the four (4) year period.
- (b)
  1. The Kentucky Board of Education shall reward schools that exceed their improvement goal and have an annual average dropout rate below eight percent (8%).
  2. Schools failing to improve as identified by the board shall be reviewed by a scholastic audit team appointed by the state board under subsection (4) of this section. The audit shall not include a formal evaluation of each certified staff member. The team shall determine whether the school shall have highly skilled education assistance for advisory purposes. All schools failing to

achieve their goal shall develop a school improvement plan and shall be eligible for school improvement funds under KRS 158.805.

- (6) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education may promulgate by administrative regulation, in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A, a system of district accountability that includes establishing a formula for accountability, goals for improvement over a two (2) year period, rewards for leadership in improving teaching and learning in the district, and consequences that address the problems and provide assistance when the district fails to achieve its goals set by the board.
- (7) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate administrative regulations in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A, to establish a process whereby a school shall be allowed to appeal a performance judgment which it considers grossly unfair. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. The state board may adjust a performance judgment on appeal when evidence of highly unusual circumstances warrants the conclusion that the performance judgment is based on fraud or a mistake in computations, is arbitrary, is lacking any reasonable basis, or when there are significant new circumstances occurring during the biennial assessment period which are beyond the control of the school.

**Approved March 29, 2000**

## **CHAPTER 213**

**(HB 15)**

AN ACT relating to firearms and ammunition for firearms.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *The authority to bring suit and right to recover against any firearms or ammunition manufacturer, trade association, or dealer by or on behalf of any city, county, urban-county, charter county, special district, or other local governmental unit created by or pursuant to an act of the General Assembly or Constitution of Kentucky, or any department, agency, or authority thereof, for damages, abatement, or injunctive relief resulting from or relating to the lawful design, manufacture, marketing, or sale of firearms or ammunition to the public shall be reserved exclusively to the Commonwealth.*
- (2) *This section shall not prohibit a city, county, urban-county, charter county, special district, or other local governmental unit created by or pursuant to an act of the General Assembly or Constitution of Kentucky from bringing an action against a firearms or ammunition manufacturer or dealer for breach of contract or warranty as to firearms or ammunition purchased by that unit of local government.*

Section 2. As of the effective date of this Act, the provisions of Section 1 of this Act shall apply to any lawsuit by, or on behalf of, entities prohibited from filing a lawsuit pursuant to Section 1 of this Act that has been filed and not concluded prior to the effective date of this Act. Any lawsuit in progress which violates Section 1 of this Act shall, as of the effective date of this Act, be dismissed.

**Approved March 29, 2000**

## **CHAPTER 214**

**(HB 40)**

AN ACT relating to reorganization.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *There shall be a nominating commission for each community college board of directors to provide names of nominees to the Governor for appointment to the board of directors.*
- (2)
  - (a) *Each nominating commission shall be composed of five (5) members appointed by the Governor who shall reside in the service area of the community college at the time of their appointment. Commission members shall have no conflict of interest in accordance with KRS 45A.340 or have a relative employed by a public postsecondary institution, the Council on Postsecondary Education, the Kentucky Higher Education Assistance Authority, the Kentucky Higher Education Student Loan Corporation, or the Kentucky Authority for Educational Television.*
  - (b) *Members of the nominating commission shall serve four (4) year terms, or until a successor shall be appointed, except the initial appointments shall be as follows:*
    1. *One (1) member shall serve a one (1) year term;*
    2. *Two (2) members shall serve a two (2) year term;*
    3. *One (1) member shall serve a three (3) year term; and*
    4. *One (1) member shall serve a four (4) year term.*
- (3) *The Governor shall appoint commission members who reflect, inasmuch as possible, equal representation of the two (2) sexes and in the context of the total membership of all of the commissions, shall approximate the proportional representation of the two (2) leading political parties and the minority racial composition of the state.*
- (4)
  - (a) *The nominating commission shall submit to the Governor the names of three (3) nominees for each position on the board of directors who meet the eligibility criteria for membership under KRS 164.600.*
  - (b) *In the selection of the nominees, the nominating commission shall consider the needs of the respective community college, locate potential appointees, review candidates' qualifications and references, conduct interviews, and carry out other search and screening activities as necessary. The commission shall consider the goals for diversity of membership as set out in subsection (3) of this section.*
  - (c) *Each appointment to the board of directors shall be made thirty (30) days prior to the expiration of a term or as soon as practicable following an unforeseen vacancy. The Governor may reject all names of nominees and request the submission of three (3) additional names for consideration.*
- (5) *The members of the commissions shall be reimbursed for actual and necessary expenditures incurred in the performance of their duties.*
- (6) *The nominating commissions shall be attached to the Kentucky Community and Technical College System and the Governor's office staff shall provide staffing and administrative assistance.*

Section 2. KRS 164.600 is amended to read as follows:

- (1) As used in this section, "relative" means father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.
- (2) There shall be a board of directors for each community college under the Kentucky Community and Technical College System, except as provided in KRS 165.160. Each board of directors shall:
  - (a) Recommend one (1) candidate for the community college president from three (3) candidates provided by the president of the Kentucky Community and Technical College System. The president shall have the authority to make the final appointment and shall not be bound by the recommendation from the board of directors;
  - (b) Evaluate the community college president and advise the chancellor of his or her performance. The president has final authority for the appointment and termination of the community college president;
  - (c) Approve budget requests for recommendation to the Kentucky Community and Technical College System;
  - (d) Adopt and amend an annual operating budget and submit it to the board of regents of the Kentucky Community and Technical College System for approval as to the compliance with its guidelines;

- (e) Approve and implement a strategic plan that is developed in coordination with local employers, civic leaders, campus constituents, and other postsecondary institutions in the region and that is consistent with the strategic agenda of the General Assembly.
- (3) The president of each community college shall have full authority and discretion regarding the use and management of the budget approved by the board of regents for the Kentucky Community and Technical College System under KRS 164.350.
- (4) Each board of directors shall consist of nine (9) members, seven (7) of whom shall be appointed by the Governor *from nominees of the respective community college nominating commission established under Section 1 of this Act* for a term set by law pursuant to Section 23 of the Constitution of Kentucky. The other two (2) board members shall be one (1) member of the teaching faculty and one (1) member of the student body. An appointed member's term shall be six (6) years.
- (5) The faculty member shall be on the teaching or research faculty of the community college. He shall be elected by secret ballot of all full-time faculty members of the community college. Faculty members shall serve for terms of three (3) years and until their successors are elected and qualified. Faculty members shall be eligible for reelection, but they shall be ineligible to continue to serve as members of the boards if they cease to be members of the teaching staff of the community college. Elections to fill vacancies shall be for the unexpired term in the same manner as provided for original election.
- (6) The student member shall be the president of the student body of the community college. If the president of the student body is not a full-time student who maintains permanent residency in the Commonwealth of Kentucky, a special election shall be held to select a full-time student who does maintain permanent residency in this Commonwealth as the student member.
- (7) The members of the board of directors shall receive no compensation for their services but shall be paid for their actual and necessary expenses.
- (8) No citizen member of the board of directors shall *have a conflict of interest in accordance with KRS 45A.340* or be a relative of any employee of the community college under its jurisdiction. A person who is a member of the board on July 15, 1998, who is a relative of an employee of the community college may finish out the appointed term of office but the member may not be reappointed.
- (9) The board of regents of the Kentucky Community and Technical College System may extend this type of local governance authority to each postsecondary technical institution under its control, subject to review and approval by the Council on Postsecondary Education.

Section 3. The General Assembly hereby confirms Executive Order 98-636, dated May 28, 1998 and Executive Order 98-1591, dated December 2, 1998, to the extent they are not otherwise confirmed or superseded by this Act.

**Approved March 29, 2000**

## CHAPTER 215

**(HB 52)**

AN ACT relating to operators of motor vehicles.

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

Section 1. KRS 189.930 is amended to read as follows:

- (1) Upon the approach of an emergency vehicle equipped with, and operating, one (1) or more flashing, rotating, or oscillating red or blue lights, visible under normal conditions from a distance of five hundred (500) feet to the front of such vehicle; or the driver is given audible signal by siren, exhaust whistle, or bell, the driver of every other vehicle shall yield the right-of-way, immediately drive to a position parallel to, and as close as possible to, the edge or curb of the highway clear of any intersection, and stop and remain in such position until the emergency vehicle has passed, except when otherwise directed by a police officer or firefighter.
- (2) Upon the approach of any emergency vehicle, operated in conformity with the provisions of subsection (1) of this section, the operator of every vehicle shall immediately stop clear of any intersection and shall keep such position until the emergency vehicle has passed, unless directed otherwise by a police officer or firefighter.

- (3) No operator of any vehicle, unless he is on official business, shall follow any emergency vehicle being operated in conformity with the provisions of subsection (1) of this section closer than five hundred (500) feet, nor shall he drive into, or park the vehicle into, or park the vehicle within, the block where the vehicle has stopped in answer to an emergency call or alarm unless he is directed otherwise by a police officer or firefighter.
- (4) No vehicle, train, or other equipment shall be driven over any unprotected hose of a fire department when the hose is laid down on any street, private driveway, or track for use at any fire or fire alarm unless the fire department official in command consents that the hose be driven over.
- (5) *Upon approaching a stationary emergency vehicle, when the emergency vehicle is giving a signal by displaying alternately flashing red, red and white, red and blue, or blue lights, a person who drives an approaching vehicle shall, while proceeding with due caution:*
  - (a) *Yield the right-of-way by moving to a lane not adjacent to that of the authorized emergency vehicle, if;*
    - 1. *The person is driving on a highway having at least four (4) lanes with not fewer than two (2) lanes proceeding in the same direction as the approaching vehicle; and*
    - 2. *If it is possible to make the lane change with due regard to safety and traffic conditions; or*
  - (b) *Reduce the speed of the vehicle, maintaining a safe speed to road conditions, if changing lanes would be impossible or unsafe.*
- (6) *This section does not operate to relieve the person who drives an emergency vehicle from the duty to operate the vehicle with due regard for the safety of all persons using the highway.*

**Approved March 29, 2000**

## CHAPTER 216

### (HB 69)

AN ACT relating to licensing of motor vehicle dealers, manufacturers, and distributors.

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

Section 1. KRS 190.030 is amended to read as follows:

- (1) A motor vehicle dealer, new, used, or auction motor vehicle dealer, motor vehicle leasing dealer, restricted motor vehicle dealer, motorcycle dealer, broker, wholesaler, automotive recycling dealer, or a salesman of motor vehicles shall not engage in business in this state without a license as provided in KRS 190.010 to 190.080. If a person acts as a motor vehicle salesman, he shall secure a motor vehicle salesman's license in addition to a license for a motor vehicle dealer. The motor vehicle commission may provide by administrative regulation for other licensee activities and an appropriate fee.
- (2) A manufacturer of motor vehicles, factory branch, distributor, distributor branch, or wholesaler shall not engage in business in this state without a license as provided in KRS 190.010 to 190.080.
- (3) A factory representative or distributor representative shall not engage in business in this state without a license as provided in KRS 190.010 to 190.080.
- (4) Application for license shall be made to the licensor, at a time, in a form, and containing information the licensor shall require and shall be accompanied by the required fee. The licensor may require in the application, or otherwise, information relating to the applicant's solvency, his financial standing, or other pertinent matter commensurate with the safeguarding of the public interest in the locality in which the applicant proposes to engage in business. The information may be considered by the licensor in determining the fitness of the applicant to engage in business as set forth in this section.
- (5) All licenses shall be granted or refused within thirty (30) days after submission of a complete application and shall expire, unless revoked or suspended, on December 31 of the calendar year for which they are granted. If a complaint of unfair cancellation of dealer franchise is in the process of being heard, a replacement application for the franchise shall not be considered until a decision is rendered by the commission.
- (6) The license fee for a calendar year, or part thereof, shall be as follows:



- (a) For new motor vehicle dealers, one hundred dollars (\$100) for each office or branch or agent thereof, plus one hundred dollars (\$100) for a supplemental license for each used car lot not immediately adjacent to the office or to a branch.
  - (b) For used motor vehicle dealers, one hundred dollars (\$100) for each office or branch or agent thereof.
  - (c) For motor vehicle leasing dealers, one hundred dollars (\$100) for each office or branch or agent thereof.
  - (d) For restricted motor vehicle dealers, one hundred dollars (\$100) for each office or branch or agent thereof.
  - (e) For motorcycle dealers, one hundred dollars (\$100) for each office, branch, or agent thereof.
  - (f) For motor vehicle manufacturers, one hundred dollars (\$100); and for each factory branch in this state, one hundred dollars (\$100).
  - (g) For distributors, motor vehicle auction dealers or wholesalers, the same as for dealers.
  - (h) For motor vehicle salesmen, ten dollars (\$10).
  - (i) For factory representatives, or distributor branch representatives, one hundred dollars (\$100).
- (7) The licenses of dealers, manufacturers, factory branches, distributors, and distributor branches shall specify the location of the office or branch and shall be conspicuously displayed there. If the location is changed, the licensor shall ~~endorse~~~~[indorse]~~ the change of location on the license~~[ without charge if it is within the same municipality, if the licensee meets the requirements set forth by the commission through administrative regulations and pays a fee of one hundred dollars (\$100)]~~. ***A licensee shall not be charged a fee for changing locations.*** A change of location~~[to another municipality]~~ shall require a new ***application***~~[license]~~.
- (8) Every salesman, factory representative, or distributor representative shall carry his license when engaged in business, and display it upon request. The license shall name his employer; and in case of a change of employer, the salesman shall immediately mail his license to the licensor who shall indorse the change on the license without charge.
- (9) If the licensor has reasonable cause to doubt the financial responsibility or the compliance by the applicant or licensee with the provisions of this statute, the licensor may require the applicant or licensee to furnish and maintain a bond in a form, amount and with sureties not less than fifteen thousand dollars (\$15,000), conditioned upon the applicant or licensee complying with the provisions of the statutes applicable to the licensee. The bonds shall be executed in the name of the State of Kentucky for the benefit of any aggrieved parties, but the penalty of the bond shall not be invoked except after a court adjudication. The commission may promulgate administrative regulations to permit the applicant to submit evidence, in lieu of posting bond, that reliable financial arrangements, deposits, or commitments exist providing assurance, substantially equivalent to that afforded by a bond complying with this subsection, for payment on conditions and indemnity set forth in this subsection. The bonding requirements of this subsection shall not apply to manufacturers, factory branches, and their agents.
- (10) Application for dealer's license shall be submitted to the commission and contain information the commission may require. A motor vehicle dealer, unless licensed under KRS 190.010 to 190.080, shall not be permitted to register, receive, or use any motor vehicle registration plates.
- (11) Every motor vehicle dealer licensed in accordance with the provisions of this section shall make reports to the licensor at intervals and show information the licensor may require.

Section 2. KRS 190.040 is amended to read as follows:

- (1) A license may be denied, suspended, or revoked on the following grounds:
- (a) Proof of financial or moral unfitness of applicant;
  - (b) Material misstatement in application for license;
  - (c) Filing a materially false or fraudulent tax return as certified by the Revenue Cabinet;
  - (d) Willful failure to comply with any provision of this chapter or any administrative regulation promulgated under this chapter;
  - (e) Willfully defrauding any retail buyer to the buyer's damage;

- (f) Willful failure to perform any written agreement with any buyer;
  - (g) Failure or refusal to furnish and keep in force any bond required;
  - (h) Having made a fraudulent sale, transaction, or repossession;
  - (i) False or misleading advertising;
  - (j) Fraudulent misrepresentation, circumvention, or concealment through subterfuge or device of any of the material particulars or the nature of them required to be stated or furnished to the retail buyer;
  - (k) Employment of fraudulent devices, methods, or practices in connection with compliance with the requirements under the statutes of this state with respect to the retaking of goods under retail installment contracts and the redemption and resale of goods;
  - (l) Having violated any law relating to the sale, distribution, or financing of motor vehicles;
  - (m) Being a manufacturer of motor vehicles, factory branch, distributor, field representative, officer, agent, or any representative of the motor vehicle manufacturer or factory branch, who has induced, coerced, or attempted to induce or coerce any automobile dealer to accept delivery of any motor vehicle, vehicles, parts, accessories, or any other commodities that shall not have been ordered by the dealer;
  - (n) Being a manufacturer of motor vehicles, factory branch, distributor, field representative, officer, agent, or any representative of a motor vehicle manufacturer or factory branch, who has attempted to induce or coerce, or has induced or coerced, any automobile dealer to enter into any agreement with a manufacturer, factory branch, or representative, or to do any other act unfair to the dealer, by threatening to cancel any franchise existing between a manufacturer, factory branch, or representative and the dealer;
  - (o) Being a manufacturer, factory branch, distributor, field representative, officer, agent, or any representative of a motor vehicle manufacturer or factory branch, who has unfairly, without due regard to the equities of the dealer and without just provocation, canceled the franchise of any motor vehicle dealer. The nonrenewal of a franchise or selling agreement without just provocation or cause shall be deemed an evasion of this section and shall constitute an unfair cancellation;
  - (p) Being a **manufacturer, factory branch, distributor, field representative, officer, agent, or any representative of a motor vehicle manufacturer or factory branch**, or wholesaler who makes, attempts to make, or aids or abets the making of a sale of a motor vehicle to a person other than a licensed motor vehicle dealer. This section shall not prevent any **manufacturer**~~license holder~~ from **offering discounts or rebates on**~~selling~~ any motor vehicle to any of its employees;
  - (q) Being a dealer who advertises for sale a new motor vehicle unless he is a dealer operating under a franchise with a licensed manufacturer, factory branch, or distributor authorizing the sale of the new motor vehicle being advertised.
- (2) The licensor may deny the application for a license within thirty (30) days after receipt thereof by written notice to the applicant, stating the grounds for denial. Upon request by the applicant whose license has been denied, the licensor shall set the time and place of hearing a review of denial, to be conducted in accordance with KRS Chapter 13B.
  - (3) A license shall not be suspended or revoked except after a hearing conducted in accordance with KRS Chapter 13B.
  - (4) The commission may inspect the pertinent books, letters, records, and contracts of a licensee.
  - (5) If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension, or revocation of a license that any officer, director, or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be cause for refusing, suspending, or revoking a license to the party as an individual. Each licensee shall be responsible for the acts of any or all of his salesmen while acting as his agent, if the licensee approved of or had knowledge of the acts and after approval or knowledge retained the benefit, proceeds, profits, or advantages accruing from the acts.
  - (6) Any licensee or other person in interest who is dissatisfied with a final order of the commission may appeal to the Franklin Circuit Court and to the Court of Appeals in the manner provided by KRS Chapter 13B.

**CHAPTER 217****(HB 85)**

AN ACT relating to reorganization.

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

Section 1. KRS 196.026 is amended to read as follows:

The Department of Corrections shall consist of the following organizational units:

- (1) Office of General Counsel;
- (2) Division of Administrative Services;
- (3) Division of Corrections Training;
- (4) Division of Institutional Operations;
- (5) Division of Mental Health Programs;
- (6) Division of Correctional Industries;
- (7) Division of Medical Services;
- (8) Division of Probation and Parole;
- (9) Division of Local Facilities;
- (10) ***Western Region Division and Eastern Region Division, Adult Institutions.*** Each state penal correctional institution referenced in KRS 197.010 shall be considered a division for organizational purposes. Each institution shall be headed by a warden pursuant to KRS 196.160.

Section 2. The General Assembly confirms Executive Order 98-730, dated June 16, 1998, relating to the reorganization of the Department of Corrections, Justice Cabinet, to the extent that it is not otherwise confirmed by this Act.

**Approved March 29, 2000**

**CHAPTER 218****(HB 86)**

AN ACT relating to reorganization.

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

Section 1. KRS 15A.030 is amended to read as follows:

The Justice Cabinet, in addition to the departments set forth in KRS 15A.020, shall consist of the following organizational units which are hereby created or reestablished:

- (1) Office of the Secretary of Justice comprised of the secretary of justice, the Commission on Correction and Community Service, the Kentucky State Corrections Commission, ***the Office of the Criminal Justice Council***, and the Criminal Justice Council. The Parole Board shall be attached to the Office of the Secretary for administrative and support purposes only.
- (2) Offices of Deputy Secretaries of Justice.
- (3) Office of the General Counsel.
- (4) Division of Kentucky State Medical Examiners Office.

SECTION 2. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

***The Office of the Criminal Justice Council is hereby established and shall be comprised of the Long Range Planning Branch and the Grants Management Branch. The office shall be responsible for the functions and duties vested in the Criminal Justice Council, as described in Section 3 of this Act, and for state and federal grants***

***management including, but not limited to, the administration of Section 4 of this Act. The office shall be headed by the executive director of the Criminal Justice Council appointed by the secretary of the Justice Cabinet with the approval of the Governor in accordance with KRS 12.050. The executive director shall be responsible to the Secretary of the Justice Cabinet.***

Section 3. KRS 15A.040 is amended to read as follows:

- (1) The Criminal Justice Council shall advise and recommend to the Governor and the General Assembly policies and direction for long-range planning regarding all elements of the criminal justice system. The council shall review and make written recommendations on subjects including but not limited to administration of the criminal justice system, the rights of crime victims, sentencing issues, capital litigation, a comprehensive strategy to address gangs and gang problems, and the Penal Code. Recommendations for these and all other issues shall be submitted to the Governor and the Legislative Research Commission at least six (6) months prior to every regular session of the Kentucky General Assembly. The council shall:
  - (a) Make recommendations to the justice secretary with respect to the award of state and federal grants and ensure that the grants are consistent with the priorities adopted by the Governor, the General Assembly, and the council;
  - (b) Conduct comprehensive planning to promote the maximum benefits of grants;
  - (c) Develop model criminal justice programs;
  - (d) Disseminate information on criminal justice issues and crime trends;
  - (e) Work with community leaders to assess the influence of gangs and the problems that gangs cause for local communities, assist local communities in mobilizing community resources to address their problems, sponsor multidisciplinary training to help communities focus on proven strategies to address gang problems, and conduct an ongoing assessment of gang problems in local communities;
  - (f) Recommend any modifications of law necessary to insure that the laws adequately address problems identified in local communities relating to gangs;
  - (g) Provide technical assistance to all criminal justice agencies;
  - (h) Review and evaluate proposed legislation affecting criminal justice; and
  - (i) All reports and proposed legislation shall be presented to the Interim Joint Committee on Judiciary not later than July 1 of the year prior to the beginning of each regular session of the General Assembly.
- (2) Membership of the Criminal Justice Council shall consist of the following:
  - (a) The secretary of the Justice Cabinet or his designee;
  - (b) The director of the Administrative Office of the Courts or his designee;
  - (c) The Attorney General or his designee;
  - (d) Two (2) members of the House of Representatives as designated by the Speaker of the House;
  - (e) Two (2) members of the Senate as designated by the President of the Senate;
  - (f) A crime victim, as defined in KRS Chapter 346, to be selected and appointed by the Governor;
  - (g) A victim advocate, as defined in KRS 421.570, to be selected and appointed by the Governor;
  - (h) A Kentucky college or university professor specializing in criminology, corrections, or a similar discipline to be selected and appointed by the Governor;
  - (i) The public advocate or his designee;
  - (j) The president of the Kentucky Sheriffs' Association;
  - (k) The commissioner of state police or his designee;
  - (l) A person selected by the Kentucky State Lodge of the Fraternal Order of Police;
  - (m) The president of the Kentucky Association of Chiefs of Police;
  - (n) A member of the Prosecutors Advisory Council as chosen by the council;

- (o) The Chief Justice or a justice or judge designated by him;
  - (p) One (1) member of the Kentucky Association of Criminal Defense Lawyers, appointed by the president of the organization;
  - (q) One (1) member of the Kentucky Jailers' Association appointed by the president of the organization;
  - (r) One (1) member of the Circuit Clerks' Association;
  - (s) Three (3) criminal law professors, one each from the University of Kentucky College of Law, the Louis D. Brandeis School of Law at the University of Louisville, and the Salmon P. Chase College of Law at Northern Kentucky University, to be selected and appointed by the Governor;
  - (t) One (1) District Judge, designated by the Chief Justice;
  - (u) One (1) Circuit Judge, designated by the Chief Justice;
  - (v) One (1) Court of Appeals Judge, designated by the Chief Justice;
  - (w) One (1) representative from an organization dedicated to restorative principles of justice involving victims, the community, and offenders; and
  - (x) One (1) individual with a demonstrated commitment to youth advocacy, to be selected and appointed by the Governor.
- (3) The secretary of justice shall serve ex officio as chairman of the council. Each member of the council shall have one (1) vote. Members of the council shall serve without compensation but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties.
- (4) The council shall meet at least once every three (3) months.
- (5) The council may hold additional meetings:
- (a) On the call of the chairman;
  - (b) At the request of the Governor to the chairman; or
  - (c) At the written request of the members to the chairman, signed by a majority of the members.
- (6) Two-thirds (2/3) members of the council shall constitute a quorum for the conduct of business at a meeting.
- (7) Failure of any member to attend two (2) meetings within a six (6) month period shall be deemed a resignation from the council and a new member shall be named by the appointing authority.
- (8) The council is authorized to establish committees and appoint additional persons who may not be members of the council as necessary to effectuate its purposes, including but not limited to:
- (a) Uniform Criminal Justice Information System committee;
  - (b) Committee on sentencing; and
  - (c) Penal Code committee.
- (9) The council's administrative functions shall be performed by a full-time executive director, *who also shall serve as the executive director of the Office of the Criminal Justice Council*, appointed by the secretary of the Justice Cabinet and supported by the administrative, clerical, and other staff as allowed by budgetary limitations and as needed to fulfill the council's role and mission and to coordinate its activities.

Section 4. KRS 15A.060 is amended to read as follows:

The Office of Secretary of Justice shall serve as the state planning agency for purposes of compliance with the Federal Crime Control and Safe Streets Act of 1968, as amended, or subsequently adopted federal criminal justice legislation, and provide staff services to the *Criminal Justice Council* ~~Kentucky Crime Commission~~ relating to the administration of *these* federally supported programs ~~pursuant to the above referenced acts~~.

Section 5. The General Assembly confirms Executive Order 98-964, dated July 23, 1998, relating to the creation of the Office of the Criminal Justice Council within the Justice Cabinet to the extent it is not otherwise confirmed by this Act.

**Approved March 29, 2000**

**CHAPTER 219****(HB 87)**

AN ACT relating to reorganization.

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

Section 1. The General Assembly hereby confirms Executive Order 98-1405, dated October 20, 1998, which creates the Division of Training Support and changes the name of the Division of Training to the Division of Training Operations within the Department of Training, Justice Cabinet.

**Approved March 29, 2000**

**CHAPTER 220****(HB 89)**

AN ACT relating to reorganization.

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

Section 1. KRS 15A.040 is amended to read as follows:

- (1) The Criminal Justice Council shall advise and recommend to the Governor and the General Assembly policies and direction for long-range planning regarding all elements of the criminal justice system. The council shall review and make written recommendations on subjects including but not limited to administration of the criminal justice system, the rights of crime victims, sentencing issues, capital litigation, a comprehensive strategy to address gangs and gang problems, and the Penal Code. Recommendations for these and all other issues shall be submitted to the Governor and the Legislative Research Commission at least six (6) months prior to every regular session of the Kentucky General Assembly. The council shall:
  - (a) Make recommendations to the justice secretary with respect to the award of state and federal grants and ensure that the grants are consistent with the priorities adopted by the Governor, the General Assembly, and the council;
  - (b) Conduct comprehensive planning to promote the maximum benefits of grants;
  - (c) Develop model criminal justice programs;
  - (d) Disseminate information on criminal justice issues and crime trends;
  - (e) Work with community leaders to assess the influence of gangs and the problems that gangs cause for local communities, assist local communities in mobilizing community resources to address their problems, sponsor multidisciplinary training to help communities focus on proven strategies to address gang problems, and conduct an ongoing assessment of gang problems in local communities;
  - (f) Recommend any modifications of law necessary to insure that the laws adequately address problems identified in local communities relating to gangs;
  - (g) Provide technical assistance to all criminal justice agencies;
  - (h) Review and evaluate proposed legislation affecting criminal justice; and
  - (i) All reports and proposed legislation shall be presented to the Interim Joint Committee on Judiciary not later than July 1 of the year prior to the beginning of each regular session of the General Assembly.
- (2) Membership of the Criminal Justice Council shall consist of the following:
  - (a) The secretary of the Justice Cabinet or his designee;
  - (b) The director of the Administrative Office of the Courts or his designee;
  - (c) The Attorney General or his designee;
  - (d) Two (2) members of the House of Representatives as designated by the Speaker of the House;
  - (e) Two (2) members of the Senate as designated by the President of the Senate;

- (f) A crime victim, as defined in KRS Chapter 346, to be selected and appointed by the Governor;
  - (g) A victim advocate, as defined in KRS 421.570, to be selected and appointed by the Governor;
  - (h) A Kentucky college or university professor specializing in criminology, corrections, or a similar discipline to be selected and appointed by the Governor;
  - (i) The public advocate or his designee;
  - (j) The president of the Kentucky Sheriffs' Association;
  - (k) The commissioner of state police or his designee;
  - (l) A person selected by the Kentucky State Lodge of the Fraternal Order of Police;
  - (m) The president of the Kentucky Association of Chiefs of Police;
  - (n) A member of the Prosecutors Advisory Council as chosen by the council;
  - (o) The Chief Justice or a justice or judge designated by him;
  - (p) One (1) member of the Kentucky Association of Criminal Defense Lawyers, appointed by the president of the organization;
  - (q) One (1) member of the Kentucky Jailers' Association appointed by the president of the organization;
  - (r) One (1) member of the Circuit Clerks' Association;
  - (s) Three (3) criminal law professors, one each from the University of Kentucky College of Law, the Louis D. Brandeis School of Law at the University of Louisville, and the Salmon P. Chase College of Law at Northern Kentucky University, to be selected and appointed by the Governor;
  - (t) One (1) District Judge, designated by the Chief Justice;
  - (u) One (1) Circuit Judge, designated by the Chief Justice;
  - (v) One (1) Court of Appeals Judge, designated by the Chief Justice;
  - (w) One (1) representative from an organization dedicated to restorative principles of justice involving victims, the community, and offenders;~~and~~
  - (x) One (1) individual with a demonstrated commitment to youth advocacy, to be selected and appointed by the Governor; *and*
  - (y) *The Governor's chief information officer.*
- (3) The secretary of justice shall serve ex officio as chairman of the council. Each member of the council shall have one (1) vote. Members of the council shall serve without compensation but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties.
  - (4) The council shall meet at least once every three (3) months.
  - (5) The council may hold additional meetings:
    - (a) On the call of the chairman;
    - (b) At the request of the Governor to the chairman; or
    - (c) At the written request of the members to the chairman, signed by a majority of the members.
  - (6) Two-thirds (2/3) members of the council shall constitute a quorum for the conduct of business at a meeting.
  - (7) Failure of any member to attend two (2) meetings within a six (6) month period shall be deemed a resignation from the council and a new member shall be named by the appointing authority.
  - (8) The council is authorized to establish committees and appoint additional persons who may not be members of the council as necessary to effectuate its purposes, including but not limited to:
    - (a) Uniform Criminal Justice Information System committee;
    - (b) Committee on sentencing; and
    - (c) Penal Code committee.

- (9) The council's administrative functions shall be performed by a full-time executive director appointed by the secretary of the Justice Cabinet and supported by the administrative, clerical, and other staff as allowed by budgetary limitations and as needed to fulfill the council's role and mission and to coordinate its activities.

Section 2. The General Assembly confirms Executive Order 99-319, dated March 10, 1999, relating to the reorganization of the Criminal Justice Council, to the extent it is not otherwise confirmed by this Act.

**Approved March 29, 2000**

## **CHAPTER 221**

### **(HB 96)**

AN ACT relating to establishment of the Kentucky Tobacco Settlement Trust Corporation.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

**(1) *As used in this section:***

- (a) *"Settlement trust" means the national tobacco grower settlement trust established between tobacco companies and states with tobacco growers and tobacco quota owners in accordance with the master settlement agreement between certain tobacco companies and states' Attorneys General dated November 23, 1998;*
- (b) *"Settlement trust agreement" means the agreement to provide economic assistance from the national tobacco grower settlement trust directly to tobacco growers and tobacco quota holders in the Commonwealth;*
- (c) *"Trustee of the settlement trust" means the entity legally responsible for management of the national tobacco grower settlement trust; and*
- (d) *"Corporation" means the Kentucky Tobacco Settlement Trust Corporation created by this section.*

- (2) *The Kentucky Tobacco Settlement Trust Corporation is created and established as a de jure municipal corporation and political subdivision of the Commonwealth to perform essential governmental and public functions by assisting in the implementation of the national tobacco grower settlement trust agreement. The corporation shall be attached to the Finance and Administration Cabinet for administrative purposes. The corporation shall be a public agency within the meaning of KRS 61.805, KRS 61.870, and other applicable statutes.*

**(3) *The corporation shall be directed by a board of directors, which shall include:***

- (a) *The Governor, who shall serve as chair of the corporation;*
- (b) *The Commissioner of Agriculture, who shall serve as vice chair of the corporation;*
- (c) *The Attorney General, who shall serve as secretary of the corporation;*
- (d) *One (1) member of the Senate appointed by the President of the Senate to serve as an ex officio, nonvoting member of the board;*
- (e) *One (1) member of the House of Representatives appointed by the Speaker of the House of Representatives to serve as an ex officio, nonvoting member of the board;*
- (f) *Six (6) citizen members who are tobacco growers or tobacco quota owners appointed by the Governor for a term of four (4) years;*
- (g) *One (1) citizen member with a distinguished record of public service appointed by the Governor for a term of four (4) years; and*
- (h) *Two (2) members appointed by the Governor for a term of four (4) years from a list of six (6) nominees selected and submitted to the Governor by the state's congressional delegation.*

- (4) *Members of the board shall not receive compensation for their services but be reimbursed for necessary travel and lodging expenses incurred in the performance of their duties.*



- (5) *A quorum of the board shall consist of six (6) voting members. A majority of the voting members present may act upon any matter legally before the corporation. The board shall keep minutes and records of all meetings of the corporation and shall record all official actions.*
- (6) *The corporation shall be a body corporate with full corporate powers. The board may develop articles of incorporation and other appropriate documentation to establish the corporation's existence as a corporation authorized by law. The corporation shall not in any form hold, receive, or manage any proceeds from the settlement trust.*
- (7) *The corporation's duties shall include, but not be limited to:*
  - (a) *Performing all duties and responsibilities of a state certification body as defined and directed under the terms of the settlement trust agreement;*
  - (b) *Preparing and submitting a plan to the trustee of the settlement trust for its approval. The plan shall identify those tobacco growers and tobacco quota owners who are to receive direct payment from the settlement trust and shall determine the respective amount each of the tobacco growers or tobacco quota owners is to receive;*
  - (c) *Determining the amount of any administrative expenses to be paid to the corporation under the terms of the settlement trust agreement;*
  - (d) *Appointing an officer to conduct executive functions for the corporation. The officer may be a state officer or employee who shall serve as a borrowed servant at no cost to the corporation;*
  - (e) *Requesting the trustee of the settlement trust to set aside reserve amounts in anticipation of a decrease in annual payments;*
  - (f) *Submitting information required by the trustee of the settlement trust;*
  - (g) *Establishing policies and procedures and contracting with other persons or entities if necessary to effectuate its purposes and functions;*
  - (h) *Discharging additional powers, duties, and functions as necessary or convenient to carry out the purposes of this section; and*
  - (i) *Enacting bylaws concerning the conduct of its business and other administrative procedures as it deems necessary.*
- (8) *There shall be no liability on the part of, and no cause of action for damages shall arise against, the corporation or any member, officer, administrator, agent, or employee of the corporation, either as a part of the corporation's operations or as an individual as a result of any act, omission, proceeding, conduct, or decision relating to the official duties, functions, and responsibilities of the corporation.*

Section 2. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

- 1. The Governor.
- 2. Lieutenant Governor.
- 3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.

- (c) Registry of Election Finance.
  - 4. Department of Law.
    - (a) Attorney General.
  - 5. Department of the Treasury.
    - (a) Treasurer.
  - 6. Department of Agriculture.
    - (a) Commissioner of Agriculture.
    - (b) Kentucky Council on Agriculture.
  - 7. Superintendent of Public Instruction.
  - 8. Auditor of Public Accounts.
  - 9. Railroad Commission.
- II. Program cabinets headed by appointed officers:
- 1. Justice Cabinet:
    - (a) Department of State Police.
    - (b) Department of Criminal Justice Training.
    - (c) Department of Corrections.
    - (d) Department of Juvenile Justice.
    - (e) Office of the Secretary.
    - (f) Offices of the Deputy Secretaries.
    - (g) Office of General Counsel.
    - (h) Division of Kentucky State Medical Examiners Office.
    - (i) Parole Board.
    - (j) Kentucky State Corrections Commission.
    - (k) Commission on Correction and Community Service.
  - 2. Education, Arts, and Humanities Cabinet:
    - (a) Department of Education.
      - (1) Kentucky Board of Education.
      - (2) Education Professional Standards Board.
    - (b) Department for Libraries and Archives.
    - (c) Kentucky Arts Council.
    - (d) Kentucky Educational Television.
    - (e) Kentucky Historical Society.
    - (f) Kentucky Teachers' Retirement System Board of Trustees.
    - (g) Kentucky Center for the Arts.
    - (h) Kentucky Craft Marketing Program.
    - (i) Kentucky Commission on the Deaf and Hard of Hearing.
    - (j) Governor's Scholars Program.
    - (k) Governor's School for the Arts.

- (l) Operations and Development Office.
  - (m) Kentucky Heritage Council.
  - (n) Kentucky African-American Heritage Commission.
  - (o) Board of Directors for the Center for School Safety.
3. Natural Resources and Environmental Protection Cabinet:
- (a) Environmental Quality Commission.
  - (b) Kentucky Nature Preserves Commission.
  - (c) Department for Environmental Protection.
  - (d) Department for Natural Resources.
  - (e) Department for Surface Mining Reclamation and Enforcement.
  - (f) Office of Legal Services.
  - (g) Office of Information Services.
4. Transportation Cabinet:
- (a) Department of Highways.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Administrative Services.
  - (d) Department of Fiscal Management.
  - (e) Department of Rural and Municipal Aid.
  - (f) Office of General Counsel.
  - (g) Office of Public Affairs.
  - (h) Office of Personnel Management.
  - (i) Office of Minority Affairs.
  - (j) Office of Environmental Affairs.
  - (k) Office of Policy and Budget.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
  - (b) Department of Job Development.
  - (c) Department of Financial Incentives.
  - (d) Department of Community Development.
  - (e) Tobacco Research Board.
  - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.
  - (b) Department of Insurance.
  - (c) Department of Housing, Buildings and Construction.
  - (d) Department of Financial Institutions.
  - (e) Department of Mines and Minerals.
  - (f) Department of Public Advocacy.

- (g) Department of Alcoholic Beverage Control.
  - (h) Kentucky Racing Commission.
  - (i) Board of Claims.
  - (j) Crime Victims Compensation Board.
  - (k) Kentucky Board of Tax Appeals.
  - (l) Backside Improvement Commission.
  - (m) Office of Petroleum Storage Tank Environmental Assurance Fund.
7. Cabinet for Families and Children:
- (a) Department for Social Insurance.
  - (b) Department for Social Services.
  - (c) Public Assistance Appeals Board.
  - (d) Office of the Secretary.
  - (e) Office of the General Counsel.
  - (f) Office of Program Support.
  - (g) Office of Family Resource and Youth Services Centers.
  - (h) Office of Technology Services.
  - (i) Office of the Ombudsman.
  - (j) Office of Aging Services.
8. Cabinet for Health Services.
- (a) Department for Public Health.
  - (b) Department for Medicaid Services.
  - (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission on Children with Special Health Care Needs.
  - (e) Office of Certificate of Need.
  - (f) Office of the Secretary.
  - (g) Office of the General Counsel.
  - (h) Office of Program Support.
  - (i) Office of the Inspector General.
9. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
  - (b) Office of Management and Budget.
  - (c) Office of Financial Management and Economic Analysis.
  - (d) Office of the Controller.
  - (e) Department for Administration.
  - (f) Department of Facilities Management.
  - (g) Department of Information Systems.
  - (h) State Property and Buildings Commission.
  - (i) Kentucky Pollution Abatement Authority.

- (j) Kentucky Savings Bond Authority.
  - (k) Deferred Compensation Systems.
  - (l) Office of Equal Employment Opportunity Contract Compliance.
  - (m) Office of Capital Plaza Operations.
  - (n) County Officials Compensation Board.
  - (o) Kentucky Employees Retirement Systems.
  - (p) Commonwealth Credit Union.
  - (q) State Investment Commission.
  - (r) Kentucky Housing Corporation.
  - (s) Governmental Services Center.
  - (t) Kentucky Local Correctional Facilities Construction Authority.
  - (u) Kentucky Turnpike Authority.
  - (v) Historic Properties Advisory Commission.
  - (w) Kentucky Kare Health Insurance Authority.
  - (x) ***Kentucky Tobacco Settlement Trust Corporation.***
10. Labor Cabinet:
- (a) Department of Workplace Standards.
  - (b) Department of Workers' Claims.
  - (c) Kentucky Labor-Management Advisory Council.
  - (d) Occupational Safety and Health Standards Board.
  - (e) Prevailing Wage Review Board.
  - (f) Workers' Compensation Board.
  - (g) Kentucky Employees Insurance Association.
  - (h) Apprenticeship and Training Council.
  - (i) State Labor Relations Board.
  - (j) Kentucky Occupational Safety and Health Review Commission.
  - (k) Office of Administrative Services.
  - (l) Office of Labor-Management Relations and Mediation.
  - (m) Office of General Counsel.
  - (n) Workers' Compensation Funding Commission.
  - (o) Employers Mutual Insurance Authority.
11. Revenue Cabinet:
- (a) Department of Property Valuation.
  - (b) Department of Tax Administration.
  - (c) Office of Financial and Administrative Services.
  - (d) Department of Law.
  - (e) Department of Information Technology.
  - (f) Office of Taxpayer Ombudsman.

12. Tourism Development Cabinet:
  - (a) Department of Travel.
  - (b) Department of Parks.
  - (c) Department of Fish and Wildlife Resources.
  - (d) Kentucky Horse Park Commission.
  - (e) State Fair Board.
  - (f) Office of Administrative Services.
  - (g) Office of General Counsel.
13. Cabinet for Workforce Development:
  - (a) Department for Adult Education and Literacy.
  - (b) Department for Technical Education.
  - (c) Department of Vocational Rehabilitation.
  - (d) Department for the Blind.
  - (e) Department for Employment Services.
  - (f) State Board for Adult and Technical Education.
  - (g) Governor's Council on Vocational Education.
  - (h) The State Board for Proprietary Education.
  - (i) The Foundation for Adult Education.
  - (j) The Kentucky Job Training Coordinating Council.
  - (k) Office of General Counsel.
  - (l) Office of Communication Services.
  - (m) Office of Development and Industry Relations.
  - (n) Office of Workforce Analysis and Research.
  - (o) Office for Administrative Services.
  - (p) Office for Policy and Budget.
  - (q) Office of Personnel Services.
  - (r) Unemployment Insurance Commission.
14. Personnel Cabinet:
  - (a) Office of Administrative and Legal Services.
  - (b) Department for Personnel Administration.
  - (c) Department for Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.
  - (e) Kentucky Kare.
  - (f) Division of Performance Management.
  - (g) Division of Employee Records.
  - (h) Division of Staffing Services.
  - (i) Division of Classification and Compensation.
  - (j) Division of Employee Benefits.

(k) Division of Communications and Recognition.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.
2. Council on Postsecondary Education.
  - (a) Kentucky Commission on Community Volunteerism and Service.
3. Department for Local Government.
4. Kentucky Commission on Human Rights.
5. Kentucky Commission on Women.
6. Department of Veterans' Affairs.
7. Kentucky Commission on Military Affairs.
8. Office of the Chief Information Officer.

Section 3. KRS 42.016 is amended to read as follows:

The following corporate bodies and instrumentalities of the Commonwealth shall be attached to the Office of the Secretary for administrative purposes and staff services:

- (1) State Property and Buildings Commission;
- (2) Kentucky Pollution Abatement Authority;
- (3) Kentucky Savings Bond Authority;
- (4) County Officials Compensation Board;
- (5) Kentucky Turnpike Authority;
- (6) State Investment Commission;
- (7) Kentucky Housing Corporation;~~{and}~~
- (8) Governmental Services Center; *and*
- (9) ***Kentucky Tobacco Settlement Trust Corporation.***

Section 4. The initial citizen members of the Kentucky Tobacco Settlement Trust Corporation Board shall be those appointed in accordance with, and for the terms specified in, Executive Order 99-1000.

Section 5. The General Assembly hereby confirms Executive Order 99-1000, issued by the Governor on July 15, 1999, to the extent that it is not otherwise confirmed by this Act.

**Approved March 29, 2000**

## CHAPTER 222

### (HB 120)

AN ACT relating to underground facility damage prevention.

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

Section 1. KRS 367.4903 is amended to read as follows:

As used in KRS 367.4903 to 367.4917:

- (1) "Underground facility" means ***an underground***~~{a}~~ line or system used for producing, storing, conveying, transmitting, or distributing telecommunications, electricity, gas, petroleum, petroleum products, cable television, hazardous liquids, water, steam, or sewerage, including storm drainage.
- (2) "Damage" means weakening of structural or lateral support or penetration of a facility coating, housing, or other protective device. It also means the partial or complete dislocation or severance of underground facilities.

- (3) "Demolition" means any operation by which a structure or mass of material is wrecked, razed, moved, or removed by means of mechanized equipment, or discharge of explosives.
- (4) ~~"Mechanized equipment" means any equipment or tool energized by other than human or animal power.~~
- (5) ~~"Excavator" means any entity or individual, *other than those exempted by Section 5 of this Act*, engaged in a trade or business or government service which includes excavation or demolition. ["Excavator" does not mean a utility operator or utility operator subcontractor performing work to provide or repair utility customer service.]~~
- (5) ~~(6)~~ "Operator" means any entity or individual owning underground facilities to serve the public.
- (6) ~~(7)~~ "Excavation" means any activity that results in the movement, placement, probing, **boring**, or removal of earth, rock, or other material in or on the ground by the use of **any tools or** ~~mechanized~~ equipment, or by the discharge of explosives.
- (7) ~~(8)~~ "Emergency" means there exists substantial likelihood that loss of life, property, or utility service will result before procedures required under KRS 367.4909 to 367.4913 can be completed.
- (8) ~~(9)~~ "Protection notification center" means an operator-provided notification center through which an excavator can contact the operator to enable the operator to provide the excavator with the approximate location of underground facilities.
- (9) ~~(10)~~ "One-call center" means a private sector, multimember protection notification center providing a single telephone contact number through which an excavator may contact all operator one-call center members and all affected operators may receive information to enable them to provide the excavator with the approximate location of underground facilities.
- (10) ~~(11)~~ "Routine road maintenance" means preservation, including road repairs and resurfacing, but not construction at the subgrade level; and surface ditch grading, but not grading below the original surface ditch depth.
- (11) ~~(12)~~ "Approximate location," **when referring to an underground facility**, means:
- (a) For underground metallic facilities and underground nonmetallic facilities with metallic tracer wire, a distance not to exceed the combined width of the underground facility plus eighteen (18) inches measured from the outer edge of each side of the underground facility; or
  - (b) For nonmetallic facilities without metallic tracer wire, the underground facility shall be located as accurately as possible from field location records.
- (12) ~~(13)~~ "Business day" means from 8 a.m. to 5 p.m. every day except Saturday, Sunday, and holidays established by federal or state statute.

Section 2. KRS 367.4909 is amended to read as follows:

- (1) Each operator shall provide protection notification center access to excavators.
- (2) Voluntary operator membership in a one-call protection notification center shall satisfy the requirement of subsection (1) of this section.
- (3) Each operator member of a one-call center shall provide and update as needed to the one-call center the general location of its facilities, the operator identity and business address, and emergency notification telephone numbers.
- (4) An operator shall, within two (2) business days after receiving notification from an excavator:
  - (a) Inform the excavator of the approximate location and description of any of the operator's facilities that may be damaged or pose a safety concern because of excavation or demolition;
  - (b) Inform the excavator of any other information that would assist in locating and avoiding contact with or damage to **underground** ~~operator~~ facilities; ~~and~~
  - (c) Unless permanent facility markers are provided, ~~the operator shall~~ provide temporary markings to inform the excavator of the **ownership and** approximate location of the underground facility; **and**
  - (d) **Notify the requesting party if underground facilities are not in conflict with the excavation or demolition.**



- (5) Temporary underground facility markers shall consist of paint, chalk, flags, stakes, or any combination thereof and shall conform to the following *standards of the American Public Works Association uniform* color code:
- (a) Electric power distribution and transmission Safety Red
  - (b) Municipal electric systems Safety Red
  - (c) Gas distribution and transmission High visibility safety yellow
  - (d) Oil distribution and transmission High visibility safety yellow
  - (e) Dangerous materials, product lines High visibility safety yellow
  - (f) Telecommunication systems *and cable television* Safety alert orange
  - (g) *Temporary survey markings*~~[Cable television]~~ *Safety pink*~~[Purple]~~
  - (h) Police and fire communications Safety alert orange
  - (i) Water systems Safety precaution blue
  - (j) Sewer and storm drainage systems Safety green
  - (k) Proposed excavation or construction boundaries White
  - (l) *Reclaimed water, slurry, and irrigation facilities* *Purple*
- (6) *If extraordinary circumstances exist, an operator shall notify the excavator of the operator's inability to comply with this section. Extraordinary circumstances include extreme weather conditions, disasters, or civil unrest that make timely response difficult or impossible.*

Section 3. KRS 367.4911 is amended to read as follows:

- (1) Each excavator planning excavation or demolition work shall, not less than two (2) business days nor more than ten (10) business days prior to commencing work, notify each affected operator of the excavator's intended work and work schedule. Contacting the applicable protection notification centers shall satisfy this requirement.
- (2) Each excavator shall provide each applicable protection notification center with adequate information regarding:
  - (a) The name of the individual making the notification;
  - (b) The *excavator's*~~[complete company]~~ name, address, and *a*~~[business]~~ telephone number;
  - (c) The *excavation or demolition*~~[work]~~ site location *or locations, each of which shall not exceed two thousand (2,000) feet in length unless the excavator and operator agree to a larger area, the city or community, county and* street address, including the *nearest* cross street~~[where applicable]~~;
  - (d) The type *and*~~[,]~~ extent~~[, duration, and scheduled starting date and time]~~ of *excavation or demolition*~~[work]~~ to be performed;
  - (e) A contact name and telephone number of the person responsible for the work to be performed.
- (3) *If more than one excavator will operate at the same site, each excavator shall notify the protection notification centers individually. Notification by an excavator will serve as notification for any of that excavator's employees. Failure by an excavator to notify the protection notification center does not relieve individual employees of responsibility.*
- (4) The excavator shall inform and provide to *excavation or demolition*~~[each work]~~ site *employees*~~[employee]~~:
  - (a) The *underground* facility location~~[and safety information]~~ provided by each operator;
  - (b) *Any related safety information provided by each operator; and*
  - (c) *The locate request identification number assigned by the protection notification center.*
- (5)~~(4)~~ The excavator shall protect and preserve temporary underground facility markers until the scheduled *excavation or demolition*~~[work]~~ is completed.

- (6) *If, after the two (2) day period provided by subsection (4) of Section 2 of this Act, the excavator finds evidence of an unmarked underground facility at the site, he shall immediately notify the protection notification center.*
- (7) *The excavator shall contact the protection notification center to request remarking every twenty-one (21) days while excavation or demolition continues or if:*
  - (a) *The markings of any underground facility have been removed or are no longer visible; or*
  - (b) *The excavator has changed the work plan or location previously filed;*
- ~~(5) Each excavator shall request each operator to remark its facilities if the temporary facility markers become nonfunctional or the excavator materially alters his work plan or location.~~
- ~~(8){{(6)}} Each excavator who conducts or is responsible for any excavation or demolition that results in underground facility damage~~[or which causes concern for public or workplace safety]~~ shall~~[, immediately upon discovery of same,]~~ cease excavation ~~or~~~~[and]~~ demolition activities and notify all affected operators of the location and nature of the~~[safety concern or]~~ underground facility damage. *If the underground facility damage causes concern for public or workplace safety, the excavator shall notify appropriate public safety agencies of the location and nature of the safety concern.*~~
- (9) *When excavation or demolition is necessary within the approximate location of the underground facility, the excavator shall hand-dig or use nonintrusive means to avoid damage to the underground facility.*
- ~~(10){{(7)}} Upon request by an operator, an excavator shall mark the boundaries of the location to be excavated using the procedure set forth in KRS 367.4909(5). This marking shall not alter, or relieve the excavator from complying with, the requirements of KRS 367.4905 to 367.4917.~~

Section 4. KRS 367.4913 is amended to read as follows:

Each protection notification center shall:

- (1) Operate the protection notification center during all business days.
- (2) *Provide a locate request identification number to the excavator for each excavation or demolition location request.*
- (3) *Promptly~~[Immediately]~~ after receiving an excavation or demolition work notification from an excavator, provide to each of its affected operator members the excavator information required by KRS 367.4911(2).*
- ~~(4){{(3)}} Maintain a list of all its operator member's identities, business address and business and emergency telephone numbers and record this information in accordance with KRS 64.012 with the county clerk of each county where the operator member has underground facilities. The county clerk shall provide this information upon request for the actual cost of providing a copy, to be paid by the requesting party to the county clerk. The county clerk shall assume no liability associated with the receipt of this information from the protection notification center or for subsequent provision of this same information to the requesting party.~~
- ~~(5){{(4)}} Make the operator members information list available to any person for inspection at its place of business without charge or provide a copy of the list to any person for any county upon request for a fee not to exceed the actual cost of providing a copy.~~

Section 5. KRS 367.4915 is amended to read as follows:

The requirements of KRS 367.4905 to 367.4917 shall not apply to the following:

- ~~(1) Excavation after all involved excavators and operators have completed joint working agreements and documented that all proposed excavation and demolition was reviewed and notification provided.~~
- ~~(2) Excavation by an operator on its own easement except where that easement is crossed by another operator's facilities.~~
- ~~(2){{(3)}} Routine road maintenance *or railroad maintenance or repairs.*~~
- ~~{{(4)}} Excavation using only nonpowered hand tools or animal power.~~
- ~~(3){{(5)}} Tilling of soil for agricultural purposes.~~

- ~~(4)(6)~~ **Excavators**~~[Persons, other than those in the excavation business for hire,]~~ excavating on ~~private~~~~[residential]~~ property, **using nonmechanized equipment, if there is no encroachment on any operator's right-of-way or easement.**
- ~~(5)(7)~~ The opening of a grave in a cemetery.
- ~~(6)(8)~~ A solid waste disposal site which is properly permitted.
- ~~(7)(9)~~ Coal mining operations which are currently regulated under KRS Chapter 350.
- (8) **A utility operator or utility operator subcontractor performing work to provide or repair utility customer service.**

Section 6. KRS 367.4917 is amended to read as follows:

- (1) **An excavator who fails to comply with any provision of Section 3 of this Act, or an operator who fails to comply with any provision of Section 2 of this Act, shall be guilty of endangering underground facilities and may be subject to a fine of no more than two hundred and fifty dollars (\$250) for the first offense, no more than one thousand dollars (\$1000) for the second offense within one (1) year, and no more than three thousand dollars (\$3,000) for the third and any subsequent offense.**
- (2) **A protection notification center that fails to comply with any provision of Section 4 of this Act shall be subject to a fine not to exceed one thousand dollars (\$1,000) for each offense.**

~~Any person who violates any provision of KRS 367.4905 to 367.4913 shall be subject to a civil penalty of one thousand dollars (\$1,000) for each violation, except that the civil penalty shall be two hundred and fifty dollars (\$250) for the first violation and five hundred dollars (\$500) for the second violation. This penalty shall not apply for persons or acts excluded under KRS 367.4903(5), 367.4907, and 367.4915. Action to recover the penalty provided for in this section may be brought by the Attorney General at the request of the injured party in the county in which the cause arose or in which the defendant has its principal in state place of business or residence. The Attorney General may engage the assistance of the county attorney or Commonwealth attorney in the appropriate jurisdiction. Each involved enforcement authority may recover its enforcement cost incurred under this section. Reimbursement of enforcement authority costs shall be administered by the Attorney General. All penalties recovered in an action under this section shall be paid to the Attorney General, who shall deduct enforcement costs from the recovered penalties and remit the remainder to the general fund. If enforcement costs exceed recovered penalties, the violator may be held responsible for any remaining enforcement costs.~~

Approved March 29, 2000

## CHAPTER 223

### (HB 127)

AN ACT relating to the disposition of real and personal property by counties.

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

Section 1. KRS 67.080 is amended to read as follows:

- (1) The fiscal court may:
- (a) Appropriate county funds according to the provisions of KRS 68.210 through 68.360 for lawful purposes;
  - (b) Sell and convey any real estate **or personal property** belonging to the county, and buy land for the use of the county, when necessary, for the lawful purposes of the county as provided for in this section and KRS 67.083. The fiscal court may appoint one (1) or more commissioners to sell or buy real estate under this subsection, subject to the approval of the fiscal court, and convey it to the purchaser, under the direction of the court, or have it conveyed to the court, by deed properly executed and recorded.
    - I.** When real property is purchased, the county shall pay no more than the highest appraised value, as determined by a Kentucky certified real property appraiser as defined in KRS 324A.010, or the price determined through exercising the power of eminent domain, if that power is used. A valuation of the **real** property shall not be required if the purchase price is forty thousand dollars (\$40,000) or less;

2. *When real property is conveyed or sold, the county shall convey or sell it in accordance with Section 2 of this Act; and*
  3. *When personal property is conveyed or sold, the county shall convey or sell it in accordance with Section 2 of this Act.*
- (c) Regulate and control the fiscal affairs of the county;
  - (d) Cause correct accounts and records to be kept of all receipts and disbursements of the public funds of the county, employ a competent person to keep such accounts and records, pay such person a reasonable compensation for such services, and have the accounts of the county and all county officers audited, when necessary and in accordance with the provisions of KRS 43.070 and 64.810;
  - (e) Exercise all the corporate powers of the county unless otherwise provided by law;
  - (f) Establish all appointive offices, set the duties of those offices, and approve all appointments to those offices; and
  - (g) Investigate all activities of the county government.
- (2) The fiscal court shall:
    - (a) Appropriate county funds, according to the provisions of KRS 68.210 to 68.360, for purposes required by law;
    - (b) As needed, cause the construction, operation, and maintenance of all county buildings and other structures, grounds, roads and other property;
    - (c) Adopt an administrative code for the county; and
    - (d) Provide for the incarceration of prisoners according to the provisions of KRS Chapter 441.
  - (3) The fiscal court shall not exercise executive authority except as specifically assigned by statute.
- SECTION 2. A NEW SECTION OF KRS CHAPTER 67 IS CREATED TO READ AS FOLLOWS:
- (1) *A county may sell or otherwise dispose of any of its real or personal property.*
  - (2) *Before selling or otherwise disposing of any real or personal property, the county shall make a written determination setting forth and fully describing:*
    - (a) *The real or personal property;*
    - (b) *Its intended use at the time of acquisition;*
    - (c) *The reasons why it is in the public interest to dispose of it; and*
    - (d) *The method of disposition to be used.*
  - (3) *Real or personal property may be:*
    - (a) *Transferred, with or without compensation, to another governmental agency,*
    - (b) *Sold at public auction following publication of the auction in accordance with KRS 424.130(1)(b);*
    - (c) *Sold by electronic auction following publication of the auction, including the uniform resource link (URL) for the site of the electronic auction, in accordance with KRS 424.130(1)(b); or*
    - (d) *Sold by sealed bids in accordance with the procedure for sealed bids under subsections (3) and (4) of KRS 45A.365.*
  - (4) *If a county receives no bids for the real or personal property, either at public auction or by sealed bid, the property may be disposed of, consistent with the public interest, in any manner deemed appropriate by the county. In those instances, a written description of the property, the method of disposal, and the amount of compensation, if any, shall be made. Any compensation resulting from the disposal of this real or personal property shall be transferred to the general fund of the county.*

Approved March 29, 2000

## CHAPTER 224

## (HB 143)

AN ACT relating to relocated cities.

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

Section 1. KRS 81.380 is amended to read as follows:

- (1) Any city, located in a county containing a city of the first class, which is located within an area which is adversely affected by a public project that has been initiated by a city of the first class, or by action of a joint agency of a city of the first class and the county, after June 30, 1998, or upon the expiration of the initial twelve (12) year term provided in KRS 79.310(2) of a cooperative compact which is in effect in the county pursuant to KRS 79.310 to 79.330, may by ordinance relocate the corporate boundaries of the city to an unincorporated area of the county. The ordinance shall set out by metes and bounds that unincorporated area of the county where the city will be relocated. The area designated for relocation shall not exceed the acreage within the then existing boundaries of the relocating city.
- (2) All financial assets and legal obligations of the city shall not be altered or interrupted by a relocation.
- (3) A city of the first class shall relinquish all priority rights or any rights pursuant to the terms of a cooperative compact for annexation to that unincorporated area which is designated for the relocation of a city as provided for in subsection (1) of this section. Any priority rights or any rights pursuant to the terms of a cooperative compact for annexation which are relinquished for the relocation of a city shall then be attached in the name of the city of the first class to that area which has been abandoned by the relocating city pursuant to subsection (5) of this section. The relocating city shall forward a copy of the ordinance adopted pursuant to subsection (1) of this section to the mayor of the city of the first class and the county judge/executive of the county.
- (4) The right of a city to relocate is in no way meant to amend any provision of the statutes which govern the formation and operation of a cooperative compact created pursuant to KRS 79.310 to 79.330.
- (5) Upon the relocation of a city, the city clerk shall forward to the Secretary of State within one (1) year from the date of the relocation, a document listing the name of the city, the date of the relocation, the present classification of the city, and a certified copy of the ordinance adopted pursuant to subsection (1) of this section. If a city fails to comply with this ~~subsection~~[section], it shall be barred from receiving state moneys until the city complies.
- (6) Until ninety percent (90%) of the residential properties located within the relocating city's boundaries are acquired for the public project, the boundaries of the city shall include both the old city site and the area designated for the location of the new site of the city.
- (7) After ninety percent (90%) of the residential properties have been acquired as set forth in subsection (6) of this section, the boundaries of the city shall no longer include the area where the city existed before relocation.
- (8) ***A city that has been relocated according to the provisions of this section may change the name of the city by the adoption of an ordinance by the city legislative body. Any person objecting to renaming the relocated city under this section may present a petition objecting to the renaming of the city by submitting the petition to the county clerk of the county in which the city is located. The petition shall be in the following form: "The registered voters living within (provide the name of the existing relocated city) hereby object to the question of the renaming of the city." If the petition is signed and dated by at least twenty-five percent (25%) of the registered voters residing in the relocated city, an election shall be held on the question of renaming the city. The county clerk shall examine the petition and verify the validity of the signatures. If a petition containing at least twenty-five percent (25%) of the registered voters residing in the relocated city is submitted to the county clerk, and certified by the county clerk as sufficient, by the second Tuesday in August, the question of renaming the relocated city shall be placed on the ballot for the next general election. The ballot shall contain at least two (2) but no more than four (4) names as potential new names for the relocated city.***
- (9) ***Upon the act of renaming a city, the city clerk shall forward to the Secretary of State, within one (1) year from the date of the renaming, a document listing the new name of the city, the date of the renaming, the present classification of the city, and a certified copy of the ordinance adopted in accordance with KRS***

**83A.060. If a city fails to comply with the provisions of this subsection, it shall be barred from receiving state moneys until the city complies.**

**Approved March 29, 2000**

## **CHAPTER 225**

**(HB 249)**

AN ACT relating to procurement authority.

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

Section 1. KRS 45A.100 is amended to read as follows:

- (1) Procurements may be made in accordance with small purchase administrative regulations promulgated by the secretary of the Finance and Administration Cabinet, pursuant to KRS Chapter 13A, as follows:
  - (a) Up to ten thousand dollars (\$10,000) per project for construction and one thousand dollars (\$1,000) for purchases by any state governmental body, except for those state administrative bodies specified in paragraphs (b) and (c) of this subsection; and
  - (b) Up to ~~forty~~~~[twenty]~~ thousand dollars ~~(\$40,000)~~~~(\$20,000)~~ per project for construction or purchases by the Finance and Administration Cabinet, state institutions of higher education, and the legislative branch of government.
- (2) Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section. At least every two (2) years, the secretary shall review the prevailing costs of labor and materials and may make recommendations to the next regular session of the General Assembly for the revision of the then current maximum small purchase amount as justified by intervening changes in the cost of labor and materials.
- (3) The secretary of the Finance and Administration Cabinet may grant to any state agency with a justifiable need a delegation of small purchasing authority which exceeds the agency's small purchase limit provided in subsection (1) of this section. Delegations of small purchasing authority shall be granted or revoked by the secretary of the Finance and Administration Cabinet, in accordance with administrative regulations promulgated by the cabinet pursuant to KRS Chapter 13A. These administrative regulations shall establish, at a minimum, the criteria for granting and revoking delegations of small purchasing authority, including the requesting agency's past compliance with purchasing regulations, the level of training of the agency's purchasing staff, and the extent to which the agency utilizes the Kentucky Automated Purchasing System. The administrative regulations may permit the secretary of the Finance and Administration Cabinet to delegate small purchase procurements up to the maximum amount specified in subsection (1)(b) of this section.

Section 2. KRS 56.491 is amended to read as follows:

- (1) No state agency shall have power or authority to make plans and specifications, provide public notice of invitations for bids, let contracts, or incur any financing commitments, either in the way of a charge against public funds or in the way of negotiations for issuance of revenue bonds, for any capital construction projects involving the improvement of lands or the construction, alteration, reconstruction, or major repair of any building or other structure, or sewage disposal or water supply system, requiring the expenditure of more than ~~two~~~~[one]~~ hundred ~~and twenty five~~ thousand dollars ~~(\$200,000)~~~~(\$125,000)~~ without first securing the approval of the Finance and Administration Cabinet.
- (2) The state agency seeking the approval shall submit to the Finance and Administration Cabinet a general description of the proposed project, with the detailed information the cabinet may require. Review of construction plans for conformance with the Uniform State Building Code shall be conducted by the Department of Housing, Buildings and Construction. The Finance and Administration Cabinet shall not approve any project requiring its approval in any instance if it finds that: the project is not needed; the proposed method of financing is not sound; the project will exceed the amount of the funds available therefor; the work contemplated will be insufficient to accomplish the purpose of the project; or after providing for the ordinary recurring expenses of government and debt service and for payments under existing allotments for extraordinary expenses and capital outlay, cash will not be available in the State Treasury to promptly pay for the work during the biennium, or except as provided in subsection (5) of this section, that the work is to be done by employees of the agency.

- (3) The finding of the Finance and Administration Cabinet shall be final, except in cases where the issuance and sale of bonds is proposed, in which cases the cabinet shall submit its findings to the commission for final approval, modification, or disapproval.
- (4) Any capital construction project, the total cost of completion of which the Finance and Administration Cabinet determines will exceed ~~two~~~~one~~ hundred~~and twenty five~~ thousand dollars ~~(\$200,000)~~~~(\$125,000)~~, shall be contracted for on a competitive bid basis, and the execution of the contracts shall be approved and authorized by the cabinet. When a capital construction project has been approved as provided in this section, in whole or in part, the cabinet shall prepare the plans and specifications, provide public notice of invitations for bids, award the contracts, supervise the construction, and handle the financial negotiations on behalf of the requesting state agency; or with prior written approval, the cabinet may authorize a state agency to do so with delegated authority of the cabinet.
- (5) A capital construction project, the total cost of completion of which the Finance and Administration Cabinet determines will not exceed ~~two~~~~one~~ hundred~~and twenty five~~ thousand dollars ~~(\$200,000)~~~~(\$125,000)~~, may be performed by the employees of the requesting agency or by individuals hired specifically for the project who shall be exempt from the requirements of KRS Chapter 18A, if the project is approved and authorized by the cabinet. Necessary materials and supplies shall be procured in accordance with the standard purchasing procedures and policies of the cabinet as defined in KRS Chapter 45A.
- (6) This section shall not apply to capital outlays to the Department of Highways for roads and bridges.
- (7) This section shall not apply to capital outlays by the Justice Cabinet for repair, maintenance, improvement, or expansion of present correctional facilities on which projects inmates are used. Any capital construction project to be performed by the Justice Cabinet shall be approved and authorized by the Finance and Administration Cabinet.

Section 3. KRS 424.260 is amended to read as follows:

- (1) Except where a statute specifically fixes a larger sum as the minimum for a requirement of advertisement for bids, no city, county, or district, or board or commission of a city or county, or sheriff or county clerk, may make a contract, lease, or other agreement for materials, supplies except perishable meat, fish, and vegetables, equipment, or for contractual services other than professional, involving an expenditure of more than ~~twenty~~~~ten~~ thousand dollars ~~(\$20,000)~~~~(\$10,000)~~ without first making newspaper advertisement for bids.
- (2) If the fiscal court requires that the sheriff or county clerk advertise for bids on expenditures of less than ~~twenty~~~~ten~~ thousand dollars ~~(\$20,000)~~~~(\$10,000)~~, the fiscal court requirement shall prevail.
- (3)
  - (a) Nothing in this statute shall limit or restrict the ability of a local school district to acquire supplies and equipment outside of the bidding procedure if those supplies and equipment meet the specifications of the contracts awarded by the Division of Purchases or a federal, local, or cooperative agency and are available for purchase elsewhere at a lower price. A board of education may purchase those supplies and equipment without advertising for bids if, prior to making the purchases, the board of education obtains certification from the district's finance or purchasing officer that the items to be purchased meet the standards and specifications fixed by state price contract, federal (GSA) price contract, or the bid of another school district whose bid specifications allow other districts to utilize their bids, and that the sales price is lower than that established by the various price contract agreements or available through the bid of another school district whose bid specifications would allow the district to utilize their bid.
  - (b) The procedures set forth in paragraph (a) of this subsection shall not be available to the district for any specific item once the bidding procedure has been initiated by an invitation to bid and a publication of specifications for that specific item has been published. In the event that all bids are rejected, the district may again avail itself of the provisions of paragraph (a) of this subsection.
- (4) This requirement shall not apply in an emergency if the chief executive officer of the city, county, or district has duly certified that an emergency exists, and has filed a copy of the certificate with the chief financial officer of the city, county, or district, or if the sheriff or the county clerk has certified that an emergency exists, and has filed a copy of the certificate with the clerk of the court where his necessary office expenses are fixed pursuant to KRS 64.345 or 64.530, or if the superintendent of the board of education has duly certified that an emergency exists, and has filed a copy of the certificate with the chief state school officer.

Section 4. KRS 154.47-045 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS Chapter 45A, each state agency that has the responsibility for the expenditure of funds in excess of fifty thousand dollars (\$50,000) for secondary wood products to be used in state capital construction or renovation projects, including state park renovations, as determined by the secretary of Finance and Administration Cabinet, shall ~~contract with the Kentucky Wood Products Competitiveness Corporation to~~:
- (a) *Provide the Kentucky Wood Products Competitiveness Corporation with a monthly list of proposed projects, which are in excess of fifty thousand dollars (\$50,000) in construction, or renovation of state facilities. This list shall include, but shall not be limited to:*
    - 1. *Name and location of the project;*
    - 2. *Status of the project;*
    - 3. *Scope of the work;*
    - 4. *Funds allocated to the project; and*
    - 5. *Projected time lines for the project;*
  - (b) *Include in the request for proposals, language which requests that bidders contact the Kentucky Wood Products Competitiveness Corporation for suggested vendors of Kentucky secondary wood products; and*
  - (c) *Request a list of suggested vendors from the Kentucky Wood Products Competitiveness Corporation when the secondary wood products are in excess of fifty thousand dollars (\$50,000) and on multivendor commodity price contracts or are one time commodity purchases.*
- (2) *The Kentucky Wood Products Competitiveness Corporation may:*
- (a) ~~[(1)]~~ *Assist in the solicitation of ~~[Solicit]~~ bids from Kentucky secondary wood products firms;*
  - (b) ~~[(2)]~~ *Assist firms in preparing and submitting bids;*
  - (c) ~~[(3)]~~ *Assist firms to form networks for the purpose of competing for bids on state capital construction and renovation projects; and*
  - (d) ~~[(4)]~~ *Assist firms in training workers, designing products, developing product lines, and otherwise as necessary to perform under state contracts.*

**Approved March 29, 2000**

## CHAPTER 226

### (HB 314)

AN ACT relating to motor vehicle emission inspection programs.

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

Section 1. KRS 224.20-710 is amended to read as follows:

As used in KRS 224.20-710 to 224.20-765, unless the context clearly indicates otherwise:

- (1) "Compliance certificate" means an official emission inspection certificate issued by the cabinet or a county, air pollution control district, contractor, or fleet operator authorized by the cabinet, indicating that a vehicle has been tested in accordance with KRS 224.20-710 to 224.20-765 and complies with all applicable emission standards;
- (2) "Independent contractor" means any person, business firm, partnership, or corporation with whom the cabinet or a fiscal court may negotiate an agreement providing for construction, equipment, maintenance, personnel, management, and operation of an official emission inspection station;
- (3) "Control system" means equipment designed for installation or installed on a motor vehicle for the purpose of reducing the air contaminants emitted from the vehicle or a system or engine adjustment or modification which causes a reduction of air contaminants emitted from the vehicle;



- (4) "Exemption certificate" means an official exemption certificate issued by the cabinet or a county, contractor, or fleet operator authorized by the cabinet, indicating that a vehicle is exempt from certain requirements of KRS 224.20-710 to 224.20-765;
- (5) "Inspection station" means an official vehicle emission inspection facility whether placed in a permanent structure or in a mobile unit for conveyance among various locations within this Commonwealth, to conduct emission inspections of vehicles required to be inspected pursuant to KRS 224.20-710 to 224.20-765;
- (6) ***"Reciprocal certificate" means an official certificate issued by the cabinet or a county, air pollution control district, contractor, or fleet operator authorized by the cabinet, honoring an out-of-state certificate that indicates the vehicle was tested and either successfully passed the inspection or was exempt from the inspection in a state that is required to conduct vehicle emission testing by the Federal Environmental Protection Agency. A reciprocal certificate shall be valid for one (1) year from the date it is issued.***
- (7) "Vehicle" means any automobile or truck registered in this Commonwealth having a combined manufacturer's weight of vehicle and maximum load to be carried of up to eighteen thousand (18,000) pounds, which is equivalent to eight thousand one hundred eighty-two (8,182) kilograms, or less and used upon the public highways of the Commonwealth for the purpose of transporting persons or property; and
- ~~(8)~~~~(7)~~ "Vehicle emission control program" means a program developed by the cabinet pursuant to KRS 224.20-710 to 224.20-765 which provides for the control of vehicle emissions of any air contaminant.

SECTION 2. A NEW SECTION OF KRS 224.20-710 TO 224.20-765 IS CREATED TO READ AS FOLLOWS:

- (1) ***A person registering a motor vehicle in a county required to conduct vehicle emission testing under this chapter, who is transferring the registration of the vehicle from another state that is also required to conduct vehicle emission testing by the Federal Environmental Protection Agency, shall be issued a reciprocal certificate upon presenting to the cabinet or a county, air pollution control district, contractor, or fleet operator authorized by the cabinet, a valid certificate issued by the other state indicating the vehicle was tested and either successfully passed the inspection or was exempt from the inspection.***
- (2) ***An out-of-state certificate shall be deemed to be valid in the Commonwealth for a period not to exceed one (1) year from the date it was issued and shall be presented to the cabinet or a county, air pollution control district, contractor, or fleet operator authorized by the cabinet, to conduct vehicle emission testing under this chapter.***
- (3) ***A person issued a reciprocal certificate shall not be required to have the vehicle inspected under the provisions of this chapter until the reciprocal certificate expires.***

Section 3. KRS 224.20-755 is amended to read as follows:

- (1) A county fiscal court may apply to the cabinet for authority to operate a vehicle emission control program. The cabinet may delegate authority when it has found that the applicant:
  - (a) Has obtained approved machinery, tools, and equipment approved by the cabinet and adequate to conduct the required emission inspections;
  - (b) Has provided for a sufficient number of facilities to ensure minimum waiting time for vehicles to be inspected;
  - (c) Employs properly trained personnel with whom to perform the necessary inspections;
  - (d) Has adopted minimum emission standards for vehicles at least as stringent as those adopted by the cabinet; and
  - (e) Agrees to provide information prescribed by the cabinet concerning the implementation, administration, and operation of the vehicle emission control program.
- (2) ***Any county that has received authority to operate a vehicle emission control program shall honor and issue reciprocal certificates as required under Section 2 of this Act. The provisions of this subsection shall supersede any existing local ordinance involving the inspection of motor vehicles under a vehicle emission control program administered by a county. All counties, cities, special districts, and other units of local government shall be prohibited from enacting an ordinance contrary to the provisions of this subsection.***

- (3) Any county which has received authority to operate a vehicle emission control program may charge an inspection fee. There shall be established an emission inspection account in the county. Unless an independent contractor is authorized pursuant to KRS 224.20-740 to collect inspection fees, the county clerk shall collect the fee at the time of registration renewal in the manner provided for cabinet programs. The inspection fees collected by the county clerk shall be immediately transferred to the county emission inspection account, except for a sum of no more than twenty-five cents (\$0.25) per vehicle which the county clerk may retain.
- ~~(4)(3)}~~ A county which has received authority to operate a vehicle emission control program shall transmit to the cabinet's vehicle emission control fund two percent (2%) of the funds received from inspection fees or from the independent contractor authorized pursuant to KRS 224.20-740.
- ~~(5)(4)}~~ The county may use the county's emission inspection fund to acquire any special equipment, tools, employees, material, or facilities needed to adequately administer, investigate, or enforce the provisions of KRS 224.20-710 to 224.20-765.
- ~~(6)(5)}~~ The county may enter into a contract with the cabinet and receive state funds charged to the cabinet's vehicle emission control fund to start a vehicle emission control program.
- ~~(7)(6)}~~ A county applying for delegation pursuant to this section may enter into a contract with one (1) or more independent contractors subject to the provisions of KRS 224.20-740 to provide for construction, equipment, establishment, maintenance and operation of inspection stations for the purpose of obtaining delegation pursuant to KRS 224.20-710 to 224.20-765.
- ~~(8)(7)}~~ If the cabinet determines, after a hearing with notice, that a delegated vehicle emission control program is not being administered in accordance with KRS 224.20-710 to 224.20-765, the delegation of authority may be revoked by order of the cabinet and all unexpended money, equipment and facilities acquired by the county with funds granted by the cabinet shall be transferred to the cabinet.

Section 4. KRS 224.20-760 is amended to read as follows:

- (1) ***Except as provided in subsection (2) of this section,*** the provisions of KRS 224.20-710 to 224.20-765 shall not detract from the authority provided air pollution control districts in KRS Chapters 77 and 224.
- (2) ***Any air pollution control district that has received authority to operate a vehicle emission control program shall honor and issue reciprocal certificates as required under Section 2 of this Act. The provisions of this subsection shall supersede any existing local ordinance involving the inspection of motor vehicles under a vehicle emission control program administered by an air pollution control district. All counties, cities, special districts, and other units of local government shall be prohibited from enacting an ordinance contrary to the provisions of this subsection.***
- (3) The authority in KRS 224.20-720 is provided to air pollution control districts provided:
- The air pollution control district may function and exercise its powers pursuant to resolution or ordinance as provided in ***this section and*** KRS Chapter 77; and
  - The air pollution control district has been granted concurrent jurisdiction by the cabinet pursuant to KRS 224.20-130.
- ~~(4)(3)}~~ Actions taken by an air pollution control district for violations of KRS 224.20-710 to 224.20-765 shall be enforced in accordance with the provisions of KRS 224.20-130(5).

Section 5. KRS 224.20-720 is amended to read as follows:

- (1) A compliance certificate shall be issued for each vehicle which meets and passes the annual inspection requirements. An exemption certificate may be issued under conditions adopted by the issuing authority, ***except that vehicles registered to military personnel on active duty whose duty station is outside of a county where a vehicle exhaust testing program is implemented shall receive an exemption certificate.*** A certificate shall be issued to a vehicle only at an official emissions inspection station established and operated under a valid permit issued by the cabinet. All certificates shall be serially numbered or otherwise identified. Certificates shall be strictly accounted for by the issuing authority.
- (2) No vehicle registered in counties required by the cabinet to have a vehicle emission control program shall have its registration renewed pursuant to KRS Chapter 186 without a valid compliance certificate or exemption certificate issued pursuant to KRS 224.20-710 to 224.20-765. Vehicles with state or official registration

routinely operating in these counties shall be inspected at least once within each twelve (12) month period following the original registration.

Section 6. KRS 77.115 is amended to read as follows:

- (1) The air pollution control board is hereby declared to be the governing body of an air pollution control district, and shall manage and control all the affairs and property of such district, and shall exercise all the powers of such district not otherwise delegated by this chapter. In a county where a city-county compact under KRS 79.310 to 79.330 is in effect, the air pollution control board shall assume all of the duties and responsibilities of the hearing board appointed under KRS 77.105, and the hearing board shall be abolished.
- (2) Notwithstanding any provision of this chapter to the contrary, in a county where a city-county compact under KRS 79.310 to 79.330 is in effect, the air pollution control board shall have regulatory authority for the district, and the city or county, as appropriate, shall exercise funding and administrative control of the district.
- (3) ***In a county where the air pollution control board makes a finding of the need for and requires the implementation of a vehicle exhaust testing program, the board shall exempt from the program vehicles registered to military personnel on active duty whose duty station is outside of the county.***

Section 7. KRS 77.170 is amended to read as follows:

- (1) The General Assembly does not, by the provisions of this chapter, intend to occupy the field ***except for requiring a county air pollution control board to exempt from the requirements of a vehicle exhaust testing program vehicles registered to military personnel on active duty whose duty station is outside of a county.*** The provisions of this chapter do not prohibit the enactment or enforcement of any local ordinance stricter than the provisions of KRS 77.150 to 77.180 and stricter than the rules and regulations adopted pursuant to KRS 77.180 to 77.240, which local ordinance prohibits, regulates, or controls air pollution.
- (2) ***Except for requiring a county air pollution control board to exempt from the requirements of a vehicle exhaust testing program vehicles registered to military personnel on active duty whose duty station is outside of a county,*** the provisions of this chapter do not supersede any such local ordinance. If it should be held that the provisions of this chapter supersede the provisions of any local ordinance, such suspension shall not bar the prosecution or punishment of any violation of such ordinance which violation was committed when such ordinance, was in full force and effect.

Section 8. All counties and air pollution control districts that have authority to operate a vehicle emission control program under the provisions of KRS 224.20-710 to 224.20-765 shall be required to begin issuing reciprocal certificates upon the effective date of this Act. Any county, city, special district, or other unit of local government, including an air pollution control district, that currently has an ordinance requiring the inspection of motor vehicles under a locally administered vehicle emission control program, shall amend the ordinance within thirty (30) days of the effective date of this Act to require the issuance of reciprocal certificates. Any local government that fails to amend an ordinance to issue reciprocal certificates in violation of this section shall have the local government's authority to administer a vehicle emission control program immediately suspended until the offending ordinance is amended.

**Approved March 29, 2000**

## **CHAPTER 227**

**(HB 356)**

AN ACT relating to the Flood Control Advisory Commission.

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

Section 1. KRS 151.560 is amended to read as follows:

- (1) There is hereby created the Flood Control Advisory Commission, which shall be composed of sixteen (16) members appointed by the Governor as follows:
  - (a) Two (2) state legislators, one (1) from the Senate and one (1) from the House of Representatives; two (2) mayors; and two (2) county judges/executive; and
  - (b) One (1) member from each of the following river basins: Big Sandy; Licking; Kentucky; Salt; Green; Ohio River Main Stem; Tennessee; Mississippi; and Upper Cumberland; and

- (c) The commissioner of the Department for Local Government or commissioner's designee.
- (2) Except for the commissioner of the Department for Local Government, each member shall serve a four (4) year term, except the first commission members were appointed by the Legislative Research Commission to serve terms as follows:
  - (a) Three (3) members to serve for terms of two (2) years from the date of appointment;
  - (b) Three (3) members to serve for terms of three (3) years from the date of appointment; and
  - (c) Three (3) members to serve for terms of four (4) years from the date of appointment.
- (3) Commission members may be reappointed. A vacancy in an unexpired term shall be filled for the unexpired portion of the term in the same manner as the original appointment to that term.
- (4) Any member who misses three (3) consecutive meetings of the commission shall be deemed to have vacated the office. The commission shall declare the office vacant, and the office shall be filled as provided by subsection (3) of this section.
- (5) Two (2) of the commission members shall be elected by the commission to serve on the Water Resources Authority of Kentucky, which service shall cease with the expiration of the term of appointment on the commission, if not sooner.
- (6) The commission shall annually elect one (1) of its members as chairperson. The commission shall meet quarterly or more often if necessary. A quorum for the transaction of business shall be nine (9) members, and a majority of the members present at a meeting may take action on any matter legally before it.
- (7) Members shall be paid their necessary expenses incurred in attending meetings and in the performance of their official duties, ***and shall receive a one hundred dollar (\$100) stipend per meeting attended.***
- (8) The commission shall be attached for administrative purposes to the Department for Local Government which shall provide the staff services and resources necessary to support the commission in the performance of its statutory duties through the Division of Flood Control established by KRS 147A.009.
- (9) The commission shall promulgate administrative regulations as necessary to control internal procedures. The commission shall promulgate by administrative regulation the boundary for each river basin referred to in subsection (1)(b) of this section.

**Approved March 29, 2000**

## CHAPTER 228

### (HB 317)

AN ACT relating to reorganization.

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

Section 1. KRS 154.12-203 is amended to read as follows:

- (1) There is created the Kentucky Commission on Military Affairs. The commission shall be a separate administrative body of state government within the meaning of KRS Chapter 12.
- (2) It shall be the purpose of the Kentucky Commission on Military Affairs to:
  - (a) Address matters of military significance to Kentucky;
  - (b) Maintain a cooperative and constructive relationship between state agencies and the military entities in Kentucky, as necessary to ensure coordination and implementation of unified, comprehensive, statewide strategies involved with, or affected by, the military;
  - (c) Advise the Governor, the General Assembly, the Kentucky congressional delegation, and other appropriate government officials on all matters in which the military services and the Commonwealth have mutual interests, needs, and concerns;
  - (d) Take action to promote and optimize state and Department of Defense initiatives that will improve the military value of Kentucky's National Guard, active, and reserve military force structure and installations, and improve the quality of life for military personnel residing in the Commonwealth;

- (e) Coordinate, as necessary, the state's interest in future Department of Defense base closure and restructuring activities;
  - (f) Recommend state, federal, and local economic development projects which would promote, foster, and support economic progress through military presence in the Commonwealth;
  - (g) Promote and assist the private sector in developing spin-off investments, employment, and educational opportunities associated with high-technology programs and activities at Kentucky's military installations;
  - (h) Recommend to the Kentucky Economic Development Partnership the long-range options and potential for the defense facilities located in Kentucky; and
  - (i) Develop strategies to encourage military personnel to retire and relocate in Kentucky and promote those leaving the military as a viable quality workforce for economic development and industrial recruitment; and
  - (j) Allocate available grant money to qualified applicants to further the purposes of paragraphs (a) to (i) of this subsection.
- (3) The Kentucky Commission on Military Affairs shall consist of:
- (a) The Governor, or his designated representative;
  - (b) The secretary of the Cabinet for Economic Development, or his designated representative;
  - (c) The adjutant general of the Commonwealth, or his designated representative;
  - (d) The executive director of the Kentucky Long-Term Policy Research Center, or his designated representative;
  - (e) The secretaries of the following cabinets, or their designees:
    - 1. Finance and Administration;
    - 2. Families and Children;
    - 3. Justice;
    - 4. Natural Resources and Environmental Protection;
    - 5. Transportation;
    - 6. Workforce Development;~~{and}~~
    - 7. Education, Arts, and Humanities;
    - 8. ***Health Services;***
    - 9. ***Revenue; and***
    - 10. ***Labor;***
  - (f) The Attorney General, or his designee;
  - (g) ***The commissioner of the Department of Veterans' Affairs or a designee;***
  - (h) ***The executive director of the Kentucky Commission on Military Affairs or a designee;***
  - (i) Kentucky's Civilian Aide to the Secretary of the United States Army;
  - (j) ***Two (2) members of the Kentucky General Assembly, with experience in or an interest in military and defense-related issues, one (1) member to be appointed by the President of the Senate, and one (1) member to be appointed by the Speaker of the House;***
  - (k)~~{(h)}~~ The commander or ~~the~~~~{his}~~ designee of ***the commander of*** each of the following as nonvoting, ex officio members:
    - 1. Fort Campbell;
    - 2. Fort Knox;
    - 3. United States Army Recruiting Command;

4. Bluegrass Army Depot;
  5. Louisville District of the United States Army Corps of Engineers;
  6. The One Hundredth Training Division;
  7. **Technology Park of Greater Louisville**~~[Louisville/Jefferson County Redevelopment Authority];~~ and
  8. Any other installation or organization, **including but not limited to the United States Coast Guard, Air Force, Navy, and Marine Corps**, with a ~~major~~ military mission in the Commonwealth; and
- ~~(1)(4)~~ Five (5) at-large members appointed by the Governor who shall be residents of counties significantly impacted by military installations.
- (4) The terms of the five (5) at-large members shall be staggered so that two (2) appointments shall expire at two (2) years, one (1) appointment shall expire at three (3) years, and two (2) appointments shall expire at four (4) years, from the dates of initial appointment.
  - (5) (a) The commission shall establish an executive committee consisting of the secretary of the Cabinet for Economic Development, the adjutant general of the Commonwealth, **the commissioner of the Department of Veterans' Affairs, the executive director of the Kentucky Commission on Military Affairs**, and the five (5) at-large members. **The chair and vice chair of the Kentucky Commission on Military Affairs shall be appointed by the Governor from among the members of the executive committee.**~~[The Governor shall appoint the chair and vice chair of the commission from the five (5) at-large members, by September 30, 1996. The chair shall call a meeting of the commission by October 31, 1996, for the purpose of creating an executive committee.]~~
    - (b) The chair and vice chair of the commission shall **also** serve as chair and vice chair of the executive committee.
    - (c) The executive committee shall serve as the search committee for an executive director of the commission and shall have any other authority the commission delegates to it.
  - (6) The commission shall meet two (2) times each year, and may meet at other times on call of the chair, to establish the commission's goals and to review issues identified and recommendations made by the executive committee. A majority of the members shall constitute a quorum for the transaction of the commission's business. Members' designees shall have voting privileges at commission meetings.
  - (7) Members of the commission shall serve without compensation, but shall be reimbursed for their necessary travel expenses actually incurred in the discharge of their duties on the commission, subject to Finance and Administration Cabinet administrative regulations.
  - (8) The commission may establish committees or work groups composed of commission members and citizens as necessary to advise the commission in carrying out its responsibilities, duties, and powers. Citizen members of committees or work groups shall not have a vote.
  - (9) The commission may promulgate necessary administrative regulations as prescribed by KRS Chapter 13A.
  - (10) The commission may adopt bylaws and operating policies necessary for its efficient and effective operation.
  - (11) There shall be an executive director, who shall be the administrative head and chief executive officer of the commission, recommended by the executive committee, approved by the commission, and appointed by the Governor. The executive director shall have authority to hire staff, contract for services, expend funds, and operate the normal business activities of the commission~~[with approval of the executive committee]~~.
  - (12) The Kentucky Commission on Military Affairs and its executive committee shall be an independent agency attached to the Office of the Governor.

Section 2. The General Assembly hereby confirms Executive Order 99-1592, dated December 3, 1999, to the extent it is not otherwise confirmed or superseded by this Act.

**Approved March 29, 2000**

## CHAPTER 229

## (HB 386)

AN ACT relating to farm milk.

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

Section 1. KRS 260.775 is amended to read as follows:

As used in KRS 260.775 to 260.845, unless the context requires otherwise:

- (1) **"Board" means the Kentucky Milk Handlers Advisory Board**~~["Buyer" shall include any person, partnership, corporation, association, organization, company, firm, bargaining agent, receiving station, milk plant, or agent thereof who receives milk or cream from producers and pays the producers for it on basis of volume, or weight, and test, except that it does not include persons who buy milk or cream for their own consumption];~~
- (2) **"Buy[,]" means**~~["buying," or "bought" shall mean]~~ the receiving of milk~~[or cream]~~ from producers or their agents and paying for **the milk**~~[it]~~ on **the** basis of volume **and test**, or weight and test;
- (3) **"Director" means the director of the Agricultural Experiment Station, College of Agriculture, University of Kentucky, or his or her designee**~~["Milk tester" shall include any person who tests milk or cream, bought by buyers from producers, to determine the constituents or quality of such milk or cream and uses, or submits for use, these tests in determining the price paid for it];~~
- (4) **"Handler" means any person who receives, bargains, brokers, or issues payment for or purchases milk from Kentucky permitted producers or the permitted producers agents**~~["Sampler weigher" shall include any person who samples, weighs, or measures milk or cream received by buyers from producers and uses or submits for use, these tests or weights in determining the price paid for it];~~
- (5) **"Laboratory" means the location or work area where milk analysis or testing takes place**~~["License to buy" means the license issued to buyers of milk or cream purchased from producers or their agents on basis of its volume, or weight and tests];~~
- (6) **"Laboratory license" means the license issued to a milk laboratory**~~["License to test" means the license issued to milk testers];~~
- (7) **"License to handle" means the license is issued to a handler of milk;**
- (8) **"License to sample and weigh" means the license issued to a milk sampler-weigher;**
- ~~(8) "Board" means the creamery license board;]~~
- (9) **"License to test" means the license issued to a milk tester**~~["Director" means the director of the Agricultural Experiment Station, College of Agriculture, University of Kentucky, or his designee];~~
- (10) **"Location" means each separate business place where permitted producers' milk or milk samples are received, stored, or processed, or where records pertaining to permitted producers' milk tests or payments are kept**~~["Producer" means any person, partnership, corporation, association, organization, or concern keeping milk cows for the production of milk or cream for sale to a milk buyer];~~
- (11) **"Milk" means the lacteal secretion and all of its components, obtained by the milking of animals**~~["Buying location" means each separate business place where nonpackaged milk or cream is received by buyers such as milk receiving stations, and milk plants; transfer stations are not considered buying locations];~~
- (12) **"Milk importer" means any person who delivers milk from producers outside the Commonwealth of Kentucky to processors in this state**~~["Nonpackaged milk" means milk as it is usually received from the farm before it is processed and put in bottles, cartons or other containers for consumer use];~~
- (13) **"Milk processor" means any location where milk or milk products are collected, handled, processed, stored, pasteurized, bottled, or prepared for distribution by a milk handler**~~["Standard testware" means all testing equipment inspected and approved by the director for use in Kentucky and meeting all specifications of the National Bureau of Standards];~~
- (14) **"Milk receiving station" means any location where producers' raw farm milk is collected, handled, or stored by a milk handler**~~["Transfer station" means any place, premise, or establishment where farm bulk milk~~

~~is transferred directly from one transport tank to another and producers' bulk tank milk samples are collected, handled, stored, and transported to a laboratory for analysis;~~

- (15) *"Permitted producer" means any producer issued a permit by the Kentucky Cabinet for Health Services to offer milk for sale*~~["Milk equivalent" means the amount of whole milk required to make other dairy products; thus, to convert milkfat to milk equivalent, multiply the pounds of milkfat by twenty-five (25), for four percent (4%) milk];~~
- (16) *"Person" shall mean any individual, bargaining agent, broker, processor, milk plant operator, partnership, cooperation, concern, corporation, organization, company, firm, trustee, association, or agent thereof*~~["Milk receiving station" means any place, premise, or establishment where producers' raw farm milk is collected, handled, and stored by a milk buyer];~~
- (17) *"Producer" means any person keeping animals for the production of milk*~~["Milk plant" means any place, premise, or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, bottled, or prepared for distribution by a milk buyer];~~
- (18) *"Record" means any information relating to milk weights, tests, transfers, purchases, receipts, and sales*~~["Transfer station license" means the license issued to operate a transfer station];~~
- (19) *"Sampler-weigher" means any person who samples, weighs, or measures milk from producers and submits these samples, weights, or measurements for use in determining the price paid for milk;*
- (20) *"Test" means to analyze a milk sample to determine the amount of a milk component or to determine milk quality;*
- (21) *"Tester" means any person who tests milk from permitted producers to determine its components or quality, or submits these tests for use in determining the price paid for milk;*
- (22) *"Transfer station" means any location where farm bulk milk is transferred directly from one (1) tank to another and producers' milk samples are collected, handled, stored, and transported to a laboratory for analysis; and*
- (23) *"Transfer station license" means the license issued to operate a transfer station*~~["Person" shall mean any individual, milk plant operator, partnership, corporation, company, firm, trustee, or association].~~

SECTION 2. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

- (1) *The requirements and prohibitions of KRS 260.775 to 260.845 shall not apply to persons who buy milk for their own consumption.*
- (2) *It is unlawful for any person who is not licensed under KRS 260.775 to 260.845 to transact business with a permitted producer of this state.*

SECTION 3. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

*Each laboratory location where permitted producers' milk is tested shall be licensed. Application for a license shall be made to the director. The license fee provided for in Section 18 of this Act shall accompany the application. Each licensee shall notify the director, in writing, within thirty (30) days of a change of address.*

SECTION 4. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

*All milk importers who deliver milk to processors in this state shall be licensed or permitted to sample and weigh milk by the state from which the milk originated and shall comply with KRS 260.775 to 260.845.*

SECTION 5. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

*Each transfer station location where permitted producers' milk is handled shall be licensed. Application for a license shall be made to the director. The license fee provided for in Section 18 of this Act shall accompany the application. Each licensee shall notify the director, in writing, within thirty (30) days of a change of address.*

Section 6. KRS 260.795 is amended to read as follows:

*Each location that handles permitted producers' milk in accordance with KRS 260.775 to 260.845 shall obtain a license to handle from the director. Application for a license to handle shall be made to the director. The license fee provided for in Section 18 of this Act shall accompany the application. Each licensee shall notify the director, in writing, within thirty (30) days of a change of address*~~Every milk plant, milk receiving station or other milk processing or manufacturing plant or person, or agent, firm, company, association or corporation buying milk or~~



~~cream from producers or their agents shall secure and hold a license to buy for each buying location where such milk and cream is received. Application for a license shall be made to the director, the application to be accompanied by the license fee provided for in KRS 260.815. Upon receipt of the application and fee, the director shall issue to the buyer a license to buy milk or cream provided the buyer is in compliance with the provisions of KRS 260.775 to 260.845 and the regulations relating to the sampling, weighing, testing or buying of milk or cream and the handling, storage, and transportation of producers' milk samples as may be issued by the director].~~

Section 7. KRS 260.800 is amended to read as follows:

***Each person who tests milk from permitted producers shall obtain a license to test. Application for a license shall be made to the director. The license fee provided for in Section 18 of this Act shall accompany the application. All applicants shall demonstrate their proficiency in testing by satisfactorily passing an examination prescribed by the director. Prior to taking an examination for a license, an applicant shall obtain a temporary license. Each licensee shall notify the director, in writing, within thirty (30) days of a change of address***~~[(1) — All persons who test milk or cream bought by buyers from producers shall secure and hold a license to test.~~

~~(2) — Any applicant who tests milk or cream bought by buyers from producers shall demonstrate his proficiency in testing by satisfactorily passing an examination prescribed by the director.~~

~~(3) — Prior to taking an examination for a license an applicant may apply for and secure a temporary license. Application for a temporary license to test shall be on a form prescribed by the director and accompanied by the license fee provided for in KRS 260.815].~~

Section 8. KRS 260.805 is amended to read as follows:

***Each person who samples and weighs milk from permitted producers shall obtain a license to sample and weigh. Application for a license shall be made to the director. The license fee provided for in Section 18 of this Act shall accompany the application. Applicants who sample and weigh milk from permitted producers shall attend formal training and satisfactorily pass an examination prescribed by the director. Prior to taking an examination for a license, an applicant shall obtain a temporary license. Each licensee shall notify the director, in writing, within thirty (30) days of a change of address***~~[(1) — All persons who weigh, measure and sample milk or cream bought by buyers from producers shall secure and hold a license to sample and weigh. Application for such license shall be made on a form prescribed by the director and accompanied by the license fee provided for in KRS 260.815. Upon receipt of the application and fee, the director may issue to the sampler weigher a temporary license to sample and weigh; then after the applicant has attended formal training and successfully passed a written examination, a license to sample and weigh milk and cream may be issued, provided that the sampler weigher is in compliance with the provisions of KRS 260.775 to 260.845 and such regulations relating to weighing, measuring, and sampling of milk and cream as may be issued by the director.~~

~~(2) — All persons who transfer milk from farm bulk milk tanks to bulk tank trucks for transporting to a buying location, such as a milk plant or receiving station or to a transfer station, shall secure and hold a license to sample and weigh].~~

SECTION 9. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

***It shall be unlawful for any owner or operator of any laboratory to;***

- (1) Operate a laboratory without having a laboratory license;***
- (2) Fail to comply with administrative regulations promulgated by the director for the proper transporting, handling, storage, and testing of permitted producers' milk samples;***
- (3) Manipulate, substitute, or falsify any producer's milk samples, test results, or records,***
- (4) Test milk samples from permitted producers that were not obtained by licensed sampler-weighers;***
- (5) Employ, engage, or obtain the services of a person to test permitted producers' milk samples who does not have a license to test; or***
- (6) Hinder or obstruct any authorized person in the performance of their duties under KRS 260.775 to KRS 260.845.***

Section 10. KRS 260.780 is amended to read as follows:

It shall be unlawful for ***a handler***~~[any buyer]~~ of milk~~[or cream]~~ in this state to:

- (1) Receive ~~or land~~ buy milk ~~or cream~~ from **permitted** producers or their agents without obtaining a license for each ~~buying~~ location where ~~such~~ milk ~~or cream~~ is received **or handled**;
- (2) Receive milk **that** ~~or cream which~~ is paid for on the basis of weight or volume without having it sampled and weighed or measured by a licensed sampler-weigher;
- (3) Manipulate weights, measurements, or tests **that are to be used as a basis to purchase milk**~~, that is, to pay for milk or cream on the basis of any weight or measurement or test that is not the true and legal weight or test~~;
- (4) ~~Manipulate or falsify records or to~~ Use **false or incorrect** records of weights or tests as **a** basis for payment ~~that are not correct and legal weights, measurements or tests~~;
- (5) Receive milk ~~or cream~~ purchased from **permitted** producers by a milk **handler**~~receiving station or milk plant~~ that does not have a license to **handle**~~buy~~;
- (6) Use weighing, mixing, sampling, or testing equipment which is inaccurate or nonstandard;
- (7) Fail to comply with **administrative**~~such~~ regulations for weighing, measuring, sampling, and testing milk ~~or cream as may be~~ issued by the director;
- (8) Fail to keep records of weights and tests as required by **administrative** regulation or **fail** to make such records available for inspection by the director ~~or his representative~~; ~~or~~
- (9) Receive milk which is paid for on the basis of tests without having it tested by a licensed tester;
- (10) **Fail to notify the director in writing of any knowledge of an inaccurately calibrated bulk milk tank; or**
- (11) **Hinder or obstruct any authorized person in the performance of their duties under KRS 260.775 to 260.845.**

Section 11. KRS 260.785 is amended to read as follows:

It shall be unlawful for any milk sampler-weigher ~~either for himself, or as officer, servant, agent, or employee of any person, firm, company, association, or corporation in this state~~ to:

- (1) Sample, weigh, or measure milk ~~or cream~~ from ~~farm~~ bulk **milk** tanks without obtaining a license to sample and weigh;
- (2) Inaccurately sample, weigh, or measure milk ~~or cream~~;
- (3) Fail to comply with **administrative**~~such~~ regulations **promulgated by the director** for the **proper** sampling, weighing, or measuring of milk ~~or cream~~ and handling, storage, and transportation of **permitted** producers' milk samples ~~as may be issued by the director~~;
- (4) Employ, engage, or obtain the services of a person who does not have a sampler-weigher license to ~~weigh and~~ sample **and weigh**~~farm bulk~~ milk;
- (5) Manipulate or falsify any producer weights, records, or samples for testing;
- (6) **Fail to notify the director in writing of any knowledge of inaccurately calibrated bulk milk tanks; or**
- (7) **Hinder or obstruct any authorized person in the performance of their duties under KRS 260.775 to 260.845.**

Section 12. KRS 260.790 is amended to read as follows:

It shall be unlawful for any milk tester ~~in this state~~ to:

- (1) Test milk ~~or cream~~ bought from **permitted** producers without obtaining a license to test;
- (2) Inaccurately test producers' milk ~~or cream~~ samples;
- (3) Use inaccurate, nonstandard, or improperly calibrated equipment in testing ~~of~~ milk ~~or cream~~;
- (4) Manipulate or falsify tests or records;
- (5) Fail to comply with **administrative**~~such~~ regulations **promulgated by the director** for **proper sampling, weighing, or testing of milk**; ~~or, weighing and sampling as may be issued by the director~~
- (6) **Hinder or obstruct any authorized person in the performance of their duties under KRS 260.775 to 260.845.**

Section 13. KRS 260.793 is amended to read as follows:

It shall be unlawful for any owner or operator of any transfer station to:

- (1) Operate a transfer station without having a transfer station ~~operator's~~ license;
- (2) Fail to comply with **administrative** regulations **promulgated** ~~issued~~ by the director for the proper storage, handling, and **transport** ~~transporting~~ of producers' milk samples while at the transfer station and en route to the testing laboratory;
- (3) Manipulate, substitute, or falsify any producer milk weights or milk samples;
- (4) Transfer milk, samples, or records at a transfer station without having a current sampler-weigher's license;
- (5) Transfer milk that has not been ~~weighed and~~ sampled **and weighed** at the farm by a licensed sampler-weigher;
- (6) ***Fail to notify the director in writing of any knowledge of an inaccurately calibrated bulk milk tank; or***
- (7) ***Hinder or obstruct any authorized person in the performance of his or her duties under KRS 260.775 to 260.845.***

SECTION 14. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

- (1) ***Every licensee shall keep complete records, as defined in Section 1 of this Act, for a period of two (2) years.***
- (2) ***Each licensed location shall keep records of all its transactions at the location.***
- (3) ***All records shall be accessible for inspection by the director during customary business hours.***

SECTION 15. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

- (1) ***Each milk handler and laboratory shall, as required by the director, make and file reports for all matters of which a record is required to be kept.***
- (2) ***No information furnished to the director under this section shall be disclosed in a way to divulge the operation of any person.***
- (3) ***It shall be unlawful for any person to use to his own advantage, or reveal to a person other than the director, officers of the Kentucky Agricultural Experiment Station, or the courts when relevant in any judicial proceedings, any information acquired under the authority of KRS 260.775 to 260.845, concerning any method, records, formulations, processes, or financial information which as a trade secret is entitled to protection.***
- (4) ***This prohibition shall not be deemed as prohibiting the director, or his duly authorized agent, from exchanging information of a regulatory nature with duly appointed officials of the United States Government, or of other states, who are similarly prohibited by law from revealing this information.***

SECTION 16. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

***Permitted producers' bulk milk tanks shall be accurately calibrated upon installation. Bulk milk tank calibrations shall be evaluated for accuracy after the effective date of this Act by the Kentucky Department of Agriculture or at the request of the director or the permitted producer.***

SECTION 17. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

- (1) ***For the financing of the producer's share of this program, all handlers who issue payments to Kentucky permitted producers shall deduct an inspection fee at the rate of one-half cent (\$0.005) per hundredweight from the producer's payment and shall transfer these funds to the director.***
  - (a) ***The deduction shall be identified as "Inspection Fee".***
  - (b) ***Each handler shall file on forms approved by the director, not later than the last day of January, April, July, and October of each year, a quarterly statement, setting forth the pounds of milk on which payment was issued to permitted producers during the preceding calendar quarter, and upon filing the statement shall transfer the inspection fee payment.***
  - (c) ***Each handler shall keep the records required by the director to accurately indicate the amount of milk for which payments were issued to permitted producers.***
- (2) ***For the financing of the processors' share of this program, handlers shall pay to the director an inspection fee at the rate of one-half cent (\$0.005) per hundredweight on all milk received by processor locations in Kentucky.***

- (a) *Each handler shall file on forms approved by the director, not later than the last day of January, April, July, and October of each year, a quarterly statement, setting forth the pounds of all milk received by processor locations in Kentucky during the preceding calendar quarter, and upon filing the statement shall make the inspection fee payment.*
- (b) *Each handler shall keep the records required by the director to accurately indicate the amount of milk delivered to or received by processor locations in Kentucky.*
- (c) *This fee shall not in any way be passed back to producers. If the fee is found to have been passed back to producers, violators may be penalized as set forth in Section 24 of this Act, along with other actions that may be taken by the director under KRS 260.775 to 260.845.*
- (3) *Inspection fees that are due and have not been remitted to the director within fifteen (15) days following the due date shall be assessed a penalty fee as set forth in KRS 260.992. Assessment of this penalty fee shall not prevent the director from taking other actions under KRS 260.775 to 260.845.*
- (4) *Fees collected shall be used to help pay for a portion of the costs of inspection, analysis, and other expenses necessary for the administration of KRS 260.775 to 260.845.*

Section 18. KRS 260.815 is amended to read as follows:

The license fees to be paid for respective licenses provided for in KRS 260.795, 260.800, and 260.805 shall be per year or any portion of a year with the license year commencing July 1 and ending June 30. No license may be transferred or assigned. The license fees shall be as follows:

- (1) *License to handle*~~[Buyers, milk plants and receiving stations]:~~ For each *location*~~[milk plant, milk receiving station, person, agent, firm, company, association, or corporation an amount determined according to the following schedule]:~~
  - (a) One hundred twenty-five dollars (\$125) per license for those *handling*~~[buying]~~ less than *ten*~~[one]~~ million *(10,000,000)*~~[(1,000,000)]~~ pounds of milk~~[(or milk equivalent)]~~ during the past year; *or*
  - (b) Three hundred fifty dollars (\$350) per license for those *handling*~~[buying]~~ more than *ten*~~[one]~~ million *(10,000,000)*~~[(1,000,000)]~~ pounds of milk~~[(or milk equivalent)]~~ during the past year.
- (2) ~~[Testers:]~~ License to test: *fifteen dollars (\$15) per person*~~[(seven dollars (\$7)) for a temporary license or an annual [and seven dollars (\$7) for yearly] license. [Temporary fee to be deducted from annual fee if in the same fiscal year.]~~
- (3) *Licensed to sample and weigh*~~[Sampler weigher]:~~ *fifteen dollars (\$15) per person*~~[(Seven dollars (\$7)) for a temporary license or an annual [and seven dollars (\$7) for yearly] license. [Temporary fee to be deducted from annual fee if in the same fiscal year.]~~
- (4) Transfer *station license*~~[stations]: [License to operate a transfer station for transferring producers' raw farm milk from one transport tank to another]~~ twenty-five dollars (\$25) *annually*~~[per year]~~.
- (5) *Laboratory license: twenty-five dollars (\$25) annually.*
- (6) *License fees for renewal of licenses that are due and have not been remitted to the director within thirty (30) days following the expiration date shall be assessed a penalty fee prescribed in Section 24 of this Act. Assessment of this penalty fee shall not prevent the director from taking other actions under KRS 260.775 to 260.845.*

Section 19. KRS 260.825 is amended to read as follows:

- (1) The director *shall enforce, administer, and implement the provisions of KRS 260.775 to 260.845 through the promulgation of administrative regulations in accordance with KRS Chapter 13A.*
- (2) *For the purpose of the enforcement of KRS 260.775 to 260.845, the director is authorized during normal business hours to enter any public or private premises, including any vehicle of transport, for the purpose of obtaining samples, gaining access to milk, milk samples, and records pertaining to milk handling, milk weights, milk test results, and milk payments. The director may:*
  - (a) *Collect samples obtained by sampler-weighers or testers for inspection purposes;*
  - (b) *Inspect equipment and other devices used in testing or sampling and weighing milk to determine the accuracy of this equipment and devices. Accuracy may be determined by requiring sampler-weighers*

*and testers to operate equipment and devices to determine the accuracy of equipment, devices and procedures;*

- (c) *Condemn inaccurate or improperly operating equipment; and*
- (d) *Examine and copy records and take testimony for the purpose of ascertaining facts necessary to administer KRS 260.775 to 260.845.*
- (3) *At the request of producers, processors, handlers, sampler-weighers, or testers, the director may test for milk components or other tests of milk quality.*
- (4) *The director shall employ qualified persons to assist in the enforcement of KRS 260.775 to 260.845.*
- (5) *The director shall establish and maintain milk-testing facilities to determine if milk has been sampled, weighed, and tested correctly. The testing facility established shall be officially named the "Division of Regulatory Services Dairy Laboratory." The director shall, with approval of the Board of Trustees of the University of Kentucky, fix the salaries of the analysts, inspectors, and supporting staff.*
- (6) *The director shall cooperate with other federal, state, and local enforcement agencies*~~is charged with the enforcement of KRS 260.775 to 260.845 and may, subject to recommendation of the board, employ all proper means to aid and assist in the enforcement of its provisions, including the revocation or suspension of a license as provided in KRS 260.830. The director may delegate the administration of his responsibility, and may employ such personnel as may be necessary to assist him in the enforcement of KRS 260.775 to 260.845. Personnel engaged in the enforcement of KRS 260.775 to 260.845 and duly authorized by the director may inspect testing equipment and scales, take samples, make tests and retests, and may examine records of weights, tests and payments of fees required in KRS 260.820, of milk and cream at all reasonable hours at licensed places or other locations where pertinent records are held. Subject to recommendations of the board, the director shall promulgate reasonable regulations necessary to supplement KRS 260.775 to 260.845 relating to the buying of milk and cream and test weights used in testing milk and cream to assure accuracy, the definition of standard testware and test weights and may make other regulations reasonably calculated to promote the purposes of KRS 260.775 to 260.845].~~

Section 20. KRS 260.840 is amended to read as follows:

- (1) The *Kentucky Milk Handlers Advisory Board* shall consist of:
  - (a) *The coordinator of the dairy section of the Animal Science Department at the University of Kentucky, College of Agriculture;*
  - (b) *The chair of the dairy committee of the Kentucky Farm Bureau Federation;*
  - (c) *The branch manager of the Milk Safety Branch of the Cabinet for Health Services;*
  - (d) *Three (3) permitted producers or permitted producer representatives;*
  - (e) *Two (2) processors or processor representatives;*
  - (f) *One (1) sampler-weigher or sampler-weigher representative; and*
  - (g) *One (1) tester or tester representative.*

*The coordinator of the dairy section of the Animal Science Department at the University of Kentucky, College of Agriculture shall act as chair of the board.*
- (2) *The director, or his designated representative, shall be an ex-officio member and secretary to the board.*
- (3)
  - (a) *Each permitted producer shall be appointed by the director from a list of two (2) persons nominated by the dairy committee of the Kentucky Farm Bureau Federation. If a permitted producer becomes chair of the dairy committee of the Kentucky Farm Bureau Federation during his or her term, the dairy committee shall appoint an alternate to serve the remainder of the term of the permitted producer.*
  - (b) *Each processor shall be appointed by the director from a list of two (2) persons nominated by the executive committee of the Dairy Products Association of Kentucky. If a processor becomes president of the Dairy Products Association of Kentucky during his or her term, the executive committee shall appoint an alternate to serve the remainder of the term of the processor.*
  - (c) *The sampler-weigher and tester shall be at-large appointees and shall be appointed by the director.*

- (4) *Appointments to the board shall be for a term of three (3) years, or until their successors are appointed, except that the terms of office of the members first appointed shall be as follows: two (2) members shall be appointed for one (1) year, two (2) members shall be appointed for two (2) years, and three (3) members shall be appointed for three (3) years. The respective terms of the first members shall be designated by the director at the time of their appointment. No appointed board member shall serve more than two (2) consecutive terms.*
- (5) *Board members not already employed by the state shall be compensated at the rate of one hundred dollars (\$100) per day for board service and be reimbursed for any actual expense incurred while*~~[responsibility for advising the director concerning enforcement of KRS 260.775 to 260.845, for reporting violations, for conducting investigations and hearings pursuant to recommending revocation or suspension of a license, and for recommending rules and regulations to be issued by the director, is vested in the Creamery License Board. The board shall be composed of the coordinator of the dairy section of the Animal Science Department, University of Kentucky, who shall be chairman, and three (3) members appointed by the director. Two (2) of the three (3) appointed members shall be appointed from a list of four (4) persons nominated by the dairy committee of the Kentucky Farm Bureau Federation and the third appointed member shall be appointed from a list of two (2) persons nominated by the executive committee of the Dairy Products Association of Kentucky. The appointed members shall serve for a term of three (3) years and until their successors are appointed and qualified; except that the first appointments made under KRS 260.775 to 260.845 shall be for terms of one (1), two (2), and three (3) years respectively as the director shall designate. The board shall meet at such a time and place as the chairman shall designate. Three (3) members present at any meeting shall constitute a quorum, and upon the written request of any two (2) members, the chairman shall call a meeting at the time and place requested. Board members not already employed by the state shall be compensated at the rate of thirty dollars (\$30) per day for board service and all members shall be reimbursed for any actual expense incurred in]~~ performing board duties.

SECTION 21. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall meet once annually, or when called into session by the chair, or upon the request of the director, or upon the request of any two (2) or more members of the board. Six (6) members present at a meeting shall constitute a quorum.*
- (2) *The board shall advise the director concerning policy and programs necessary to implement or improve implementation of KRS 260.775 to 260.845.*

Section 22. KRS 260.830 is amended to read as follows:

- (1) The director may *refuse*, revoke,~~[or]~~ suspend, *or probate* any license *or temporary license* issued under authority of KRS 260.775 to 260.845; provided, however, that any *refusal*, revocation,~~[or]~~ suspension, *or probation* shall occur only when the licensee has failed to comply with the provisions of KRS 260.775 to 260.845 or the administrative regulations issued thereunder, and provided that any *refusal*, revocation,~~[or]~~ suspension, *or probation* shall occur only after the licensee has had an opportunity, upon due notice, for an informal hearing before the director, to show cause why ~~the~~~~[his]~~ license *or temporary license* should not be *refused*, revoked,~~[or]~~ suspended, *or probated*.
- (2) *The director may refuse, revoke, suspend, or probate any license or temporary license of a person who has plead guilty to or been convicted of a felony.*
- (3) If a license is *refused*,~~[suspended or]~~ revoked, *suspended, or probated* as the result of an informal hearing, the decision may be appealed and upon appeal an administrative hearing shall be conducted before the board in accordance with KRS Chapter 13B.
- ~~(4)(3)~~ ~~[Upon the revocation of any license,]~~ The licensee may appeal the final order of the ~~director~~~~[board]~~ by filing a petition in the ~~Fayette~~~~[Franklin]~~ Circuit Court in accordance with KRS Chapter 13B.

Section 23. KRS 260.845 is amended to read as follows:

- (1) All ~~funds~~~~[moneys]~~ resulting from the payment of license fees, inspection *fees, fines, penalty fees*, or other charges provided for in KRS 260.775 to 260.845 shall be paid to the director and shall~~[constitute a special and separate fund which shall not lapse and which shall]~~ be expended by the director under authority of the board of trustees of the University of Kentucky~~[on proper and separate vouchers]~~.
- (2) This ~~money~~~~[fund]~~ shall be used primarily for discharging expenses incurred in enforcing KRS 260.775 to 260.845 and any portion of the ~~money~~~~[fund]~~ not necessary ~~for~~~~[to]~~ this purpose shall be used to support

research pertaining to methods and equipment for sampling and testing dairy products or such other dairy research work as the director may recommend.

Section 24. KRS 260.992 is amended to read as follows:

- (1) Any *person who violates any provision of Section 4 of this Act*, ~~[tester or sampler weigher or transfer station violating, or failing, or refusing to comply with]~~ KRS 260.785, 260.790, 260.800, or ~~[and]~~ 260.805, shall ~~[upon conviction,]~~ be fined one hundred dollars (\$100) for the first *violation* ~~[offense]~~ and not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each subsequent *violation* ~~[offense]~~.
- (2) Any ~~[milk plant, milk receiving station or]~~ person *who violates any provision of Sections 2, 3, 5, 9, and 13 of this Act, subparagraph (c) of subsection (2) of Section 17 of this Act*, ~~[or agent, firm, company, association or corporation violating, or failing, or refusing to comply with]~~ KRS 260.780, 260.795, *or* ~~[and]~~ 260.820 ~~[shall be guilty of a misdemeanor and upon conviction,]~~ shall be fined not more than five hundred dollars (\$500), *nor more than seven hundred fifty dollars (\$750) for each subsequent violation* ~~[or imprisoned for not more than one (1) year, or both]~~.
- (3) *Any person who violates any provision of Section 18 of this Act shall be assessed a penalty fee of a minimum of fifteen dollars (\$15) or ten percent (10%) of the amount due, whichever is greater, when payment is made.*
- (4) *Any person who violates any provision of subsection (3) of Section 17 of this Act shall be assessed a penalty fee of a minimum of twenty-five dollars (\$25) or ten percent (10%) of the amount due, whichever is greater, when payment is made.*

SECTION 25. A NEW SECTION OF KRS 260.775 TO 260.845 IS CREATED TO READ AS FOLLOWS:

***KRS 260.775 to 260.845 shall be known as the "Kentucky Farm Milk Handlers Law."***

Section 26. This Act takes effect January 1, 2001.

Section 27. The following KRS sections are repealed:

260.810 Inspection of test equipment and measuring or calibrating devices.

260.820 Assessment of milk or cream purchases during month of May.

**Approved March 29, 2000**

## CHAPTER 230

**(HB 443)**

AN ACT relating to motor vehicle titles.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 186A IS CREATED TO READ AS FOLLOWS:

- (1) *The provisions of KRS 186A.500 to 186A.550 notwithstanding, the owner of a motor vehicle that has been damaged solely by hail shall have the regular title of the vehicle branded as follows "Hail Damage" if:*
  - (a) *The vehicle is in a condition that it can be legally operated on the highway;*
  - (b) *The total estimated or actual cost of parts and labor to rebuild or reconstruct the vehicle to its pre-hail condition exceeds seventy-five percent (75%) of the retail value of the vehicle, as set forth in a current edition of the National Automobile Dealer's Association price guide; and*
  - (c) *The owner intends to retain ownership of the vehicle.*
- (2) *A person seeking to have the title of a vehicle branded for hail damage under subsection (1) of this section shall present the sheriff with a statement from the person's insurance company that the damage exceeds seventy-five percent (75%) of the retail value of the vehicle and is solely the result of hail damage, and shall have the vehicle inspected by the sheriff of the county in which the vehicle is registered. Upon completion of inspection of the vehicle, the sheriff shall indicate on the vehicle transaction record form if he or she has received a statement from the person's insurance company that the damage to the vehicle is the result of hail damage and if the total estimated or actual cost of parts and labor to rebuild or reconstruct the vehicle*

*to its pre-hail condition exceeds seventy-five percent (75%) of the retail value of the vehicle, as set forth in a current edition of the National Automobile Dealer's Association price guide. The sheriff shall be paid a fee of five dollars (\$5) to conduct an inspection under this subsection.*

- (3) *Upon completion of the inspection required under subsection (2) of this section, a person shall take the vehicle transaction record form and the title to the vehicle to the office of the county clerk in the county in which the vehicle is registered. If the sheriff has certified on the vehicle transaction record form that the damage to the vehicle is the result of hail damage and if the total estimated or actual cost of parts and labor to rebuild or reconstruct the vehicle to its pre-hail condition exceeds seventy-five percent (75%) of the retail value of the vehicle, as set forth in a current edition of the National Automobile Dealer's Association price guide, the title shall not be surrendered to the clerk, but the clerk shall stamp on the face of the title "Hail Damage". The clerk shall also enter into the Automated Motor Vehicle Registration System (AVIS) the information that the title has been branded in the clerk's office "Hail Damage". The county clerk shall be paid a fee of three dollars (\$3) to carry out the provisions of this subsection.*
- (4) *A title branded "Hail Damage" under the provisions of subsection (3) of this section shall retain the brand for as long as the person holds title to the vehicle, and upon the sale or transfer of the vehicle, the new title issued shall continue to carry the brand "Hail Damage".*
- (5) *An insurance company shall not render payment on a vehicle damaged solely by hail in excess of seventy-five percent (75%) of the retail value of the vehicle until the title has been branded "Hail Damage".*

Section 2. KRS 186A.520 is amended to read as follows:

- (1) *Except as provided in Section 1 of this Act*, a salvage title shall be obtained by the owner of a motor vehicle that meets the following definition of a salvage vehicle:
  - (a) A vehicle which has been wrecked, destroyed, or damaged, to the extent that the total estimated or actual cost of parts and labor to rebuild or reconstruct the vehicle to its preaccident condition and for legal operation on the roads or highways exceeds seventy-five percent (75%) of the retail value of the vehicle, as set forth in a current edition of the National Automobile Dealer's Association price guide.
  - (b) The value of repair parts for purposes of this definition shall be determined by using the current published retail cost of the parts equal in kind and quality to the parts to be replaced or the actual retail cost of the repair parts used in repair.
  - (c) The labor costs of repairs for purposes of this section shall be computed by using the hourly labor rate and time allocations which are reasonable and customary in the automobile repair industry in the community where the repairs are performed.
- (2) The owner or an authorized agent of a motor vehicle that meets the definition of a salvage vehicle as set forth in subsection (1) of this section shall, within fifteen (15) days from the loss or settlement of the loss, submit an application to the county clerk, on a form prescribed by the Department of Vehicle Regulation, for a salvage title, accompanied by a properly endorsed certificate of title and any lien satisfactions, if any appear, as may be required.
- (3) The county clerk shall retain a copy of each salvage title application received and shall forward the original and its supporting documents to the Department of Vehicle Regulation in a manner similar to that for handling of an application for a title.
- (4) The Department of Vehicle Regulation shall process the salvage title application in a manner similar to that used in processing a title application and the salvage title shall be delivered in a like manner of a title. Salvage titles shall be construed as proof of ownership of a vehicle in a state as to be unusable upon the highways of the Commonwealth. A vehicle shall not be issued a registration for highway use as long as a salvage title is in force.
- (5) The only time a vehicle with a salvage title may be operated upon the highways of the Commonwealth is when it is in route to or from an inspection by the certified inspector prior to obtaining a certificate of title after having been rebuilt as per KRS 186.115.

Section 3. KRS 186A.530 is amended to read as follows:

- (1) The owner of a motor vehicle that meets the definition of a salvage vehicle as set forth in KRS 186A.520(1) and has been issued a salvage certificate of title in Kentucky, or the equivalent thereof by another licensing jurisdiction, and has been rebuilt, may make application for a new certificate of title pursuant to KRS 186.115.



The Transportation Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A governing the form of application.

- (2) Upon receipt of a salvage certificate of title issued pursuant to KRS 186A.520 or subsection (5) of this section, or similar title issued by another state, and proof of passing the inspection required by KRS 186A.115, the cabinet shall issue a new certificate of title with the words "rebuilt vehicle" printed on the face of the title. The brand shall be carried forward and printed in the appropriate section on the face of all titles issued thereafter for that motor vehicle.
- (3) If ownership of a motor vehicle has been transferred to an insurance company through payment of damages, the insurance company making the payment of damages shall be deemed the owner of the vehicle.
- (4) The owner of a water damaged vehicle shall make application to the cabinet for a salvage certificate of title as provided for in KRS 186A.520. The owner of a vehicle with a brand from another jurisdiction identifying the vehicle as water damaged or other similar designation who is making application for a Kentucky title shall be issued a title with the words "water damaged" printed on the face of the title.
- (5) A Kentucky salvage certificate of title may be issued from an out-of-state junking certificate or other ownership document bearing a designation of "junk," "unrebuildable," or other similar classification with the following provisions:
  - (a) The out-of-state junking certificate of title or other ownership certificate shall be an original, secure document.
  - (b) The applicant shall submit a minimum of two (2) photographs of the motor vehicle showing the damage to the motor vehicle. The photographs shall be included in the application for a salvage certificate of title.
  - (c) The applicant shall submit a minimum of two (2) estimates of damage verifying that the condition of the vehicle which has been issued the junking certificate constitutes less than seventy-five percent (75%) of the retail value of the vehicle, as set forth in a current edition of the National Auto Dealers' Association N.A.D.A. price guide.
- (6)
  - (a) When an insurance company makes a claim settlement on a vehicle that has been stolen and recovered, if the vehicle meets the definition of a salvage vehicle as set forth in KRS 186A.520, the company shall apply for a salvage certificate of title as provided for in KRS 186A.520. Upon receipt of this information, the cabinet shall issue the company a certificate of title to replace a salvage certificate of title. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A regarding the forms and any additional information which insurance companies shall be required to obtain and submit when seeking a certificate of title to replace a salvage certificate of title.
  - (b) In claim settlements that do not involve transfer of the vehicle to the insurance company, an insurer shall not render payment on a damage claim for a vehicle whose damage meets or exceeds seventy-five percent (75%) of the value of the vehicle, until the insurer has received proof that the owner has surrendered the title or has applied for a salvage certificate of title as set forth in KRS 186A.520. The owner shall apply for a salvage certificate of title within three (3) working days of the agreed settlement. ***This subsection shall not apply to hail-damaged vehicles under Section 1 of this Act.***
  - (c) An insurance company shall not refuse coverage to, and shall not reclassify coverage of, a vehicle that has been issued a rebuilt title pursuant to the provisions of this section.
- (7) A motor vehicle owner or a motor vehicle dealer licensed in this state who offers for sale, trade, or transfer a motor vehicle which carries a title brand, as set forth in subsection (2) of this section, shall disclose the nature of the brand to any prospective buyer or transferee, prior to the sale, and according to the following:
  - (a) Dealer disclosure shall be located on the previous consumer-owner sticker provided for in KRS 190.080. The sticker notification shall appear in a color different from that of the previous consumer-owner sticker and shall be set apart from other information required by KRS 190.080. The sticker wording shall be printed in at least ten (10) point, bold face type, on a background of obviously different color, and shall include the following: "THIS IS A REBUILT VEHICLE." This disclosure information shall not appear on previous consumer-owner stickers for vehicles that do not have a branded title. Dealer disclosure shall also be located on a buyer's notification form to be approved by the Transportation Cabinet. The form shall inform the buyer that the vehicle is a rebuilt vehicle and may include any other information the cabinet deems necessary.

- (b) Nondealer disclosure shall be made in accordance with the procedures provided for in KRS 186A.060. The Department of Vehicle Regulation shall ensure that disclosure information appears near the beginning of the application for title and informs the buyer that the vehicle is a rebuilt vehicle.
- (8) Failure of a dealer to procure the buyer's acknowledgment signature on the buyer's notification form or failure of any person other than a dealer to procure the buyer's acknowledgment signature on the vehicle transaction record form shall render the sale voidable at the election of the buyer. The election to render the sale voidable shall be limited to forty-five (45) days after issuance of the title. This provision shall not bar any other remedies otherwise available to the purchaser.
- (9) The notification provisions of this section shall not apply to motor vehicles more than ten (10) model years old.
- (10) The Transportation Cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A, regarding the administration of the title branding procedure within ninety (90) days from July 15, 1994. The administrative regulations may include designation of additional brands which provide significant information to the owner.

**Approved March 29, 2000**

### CHAPTER 231

**(HB 471)**

AN ACT providing for the reclassification of cities.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of White Plains, in Hopkins County, is such as to justify its being classified as a city of the fifth class; and

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Albany, in Clinton County, is such as to justify its being classified as a city of the fourth class;

NOW, THEREFORE,

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

Section 1. The City of White Plains, in Hopkins County, is transferred from the sixth to the fifth class of cities.

Section 2. The City of Albany, in Clinton County, is transferred from the fifth to the fourth class of cities.

**Approved March 29, 2000**

### CHAPTER 232

**(HB 483)**

AN ACT relating to state traffic school.

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

Section 1. KRS 186.574 is amended to read as follows:

- (1) The Transportation Cabinet shall establish a state traffic school for new drivers and for traffic offenders. The school shall be composed of uniform education and training elements designed to create a lasting influence on new drivers and a corrective influence on traffic offenders. District Courts may in lieu of assessing penalties for traffic offenses, other than for KRS 189A.010, sentence offenders to state traffic school and no other. The Transportation Cabinet shall enroll a person in state traffic school who fails to complete a driver's education course pursuant to KRS 186.410(5).
- (2) If a District Court stipulates in its judgment of conviction that a person attend state traffic school, the court shall indicate this in the space provided on the abstract of conviction filed with the Transportation Cabinet. Upon receipt of an abstract, the Transportation Cabinet, or its representative, shall schedule the person to attend state traffic school. Failure of the person to attend and satisfactorily complete state traffic school in compliance with the court order, may be punished as contempt of the sentencing court.
- (3) The Transportation Cabinet shall supervise, operate, and administer state traffic school, and shall promulgate administrative regulations pursuant to KRS Chapter 13A governing facilities, equipment, courses of

instruction, instructors, and records of the program. In the event a person sentenced under subsection (1) of this section does not attend or satisfactorily complete state traffic school, the Transportation Cabinet may deny that person a license or suspend the license of that person until he reschedules attendance or completes state traffic school, at which time a denial or suspension shall be rescinded.

- (4) Persons participating in the state traffic school as provided in this section shall pay a fee of fifteen dollars (\$15) to defray the cost of operating the school, except that if enrollment in state traffic school is to satisfy the requirement of KRS 186.410(4)(c), a fee shall not be assessed. Any funds collected pursuant to KRS 186.535(1) that are dedicated to the road fund for use in the state driver education program may be used for the purposes of state traffic school.
- (5) The following procedures shall govern persons attending state traffic school pursuant to this section:
  - (a) A person convicted of any violation of traffic codes set forth in KRS Chapters 177, 186, or 189, and who is otherwise eligible, may in the sole discretion of the trial judge, be sentenced to attend state traffic school. Upon payment of the fee required by subsection (4) of this section, and upon successful completion of state traffic school, the sentence to state traffic school shall be the person's penalty in lieu of any other penalty, except for the payment of court costs;
  - (b) Except as provided in KRS 189.990(28), a person shall not be eligible to attend state traffic school who has been cited for a violation of KRS Chapters 177, 186, or 189 that has a penalty of mandatory revocation or suspension of an offender's driver's license;
  - (c) Except as provided in KRS 189.990(28), a person shall not be eligible to attend state traffic school for any violation if, at the time of the violation, the person did not have a valid driver's license or the person's driver's license was suspended or revoked by the cabinet;
  - (d) Except as provided in KRS 189.990(28), a person shall not be eligible to attend state traffic school more than once in any ~~one (1) to two (2)~~ year period, unless the person wants to attend state traffic school to comply with the driver education requirements of KRS 186.410; and
  - (e) The cabinet shall notify the sentencing court regarding any person who was sentenced to attend state traffic school who was ineligible to attend state traffic school. A court notified by the cabinet pursuant to this paragraph shall return the person's case to an active calendar for a hearing on the matter. The court shall issue a summons for the person to appear and the person shall demonstrate to the court why an alternative sentence should not be imposed.

**Approved March 29, 2000**

## CHAPTER 233

**(HB 501)**

AN ACT relating to anhydrous ammonia.

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

Section 1. KRS 250.482 is amended to read as follows:

As used in KRS 250.483 to 250.488:

- (1) "Department" means the Department of Insurance;
- (2) "Division" means the Division of Fire Prevention in the Department of Housing, Buildings and Construction.
- (3) "Anhydrous ammonia" refers to the compound formed by the combination of the two (2) gaseous elements, nitrogen and hydrogen, in the proportion of one (1) part nitrogen to three (3) parts of hydrogen by volume. Anhydrous ammonia is ammonia gas in compressed or liquefied form, and is not aqueous ammonia.
- (4) ***"Approved container" means a container for anhydrous ammonia which meets or exceeds the requirements of the Federal law or regulation for the storage and handling of anhydrous ammonia.***

Section 2. KRS 250.483 is amended to read as follows:

The Division of Fire Prevention in the Department of ***Housing, Buildings and Construction***~~Insurance~~ shall make, promulgate, and enforce ***administrative*** regulations setting forth minimum general standards covering the design,

construction, location, installation, and operation of equipment for storing, handling, transporting by tank truck, tank trailer, and utilizing anhydrous ammonia. ~~The administrative~~<sup>Said</sup> regulations shall be such as are reasonably necessary for the protection and safety of the public and persons using such materials, and shall be in substantial conformity with the generally-accepted standards of safety concerning the same subject matter. ~~[Such regulations shall be adopted by the division after a public hearing thereon.]~~ Administrative regulations in substantial conformity with the published standards of the ~~Fertilizer~~<sup>Agricultural Ammonia</sup> Institute and the Compressed Gas Association for the design, installation, and construction of containers and equipment for the storage and handling of anhydrous ammonia shall be deemed to be in substantial conformity with the generally-accepted standards of safety concerning the same subject matter.

Section 3. KRS 250.486 is amended to read as follows:

No person, firm or corporation other than the owner of the facility and those authorized by the owner so to do, shall sell, fill, refill, deliver or permit to be delivered, or use in any manner any anhydrous ammonia container or receptacle for any gas, compound, for any other purpose whatsoever. Any wholesaler, dealer, or handler of anhydrous ammonia or pressure liquid fertilizers that have a vapor pressure in excess of fifty (50) pounds at one hundred (100) degrees Fahrenheit shall ~~be registered~~<sup>register annually</sup> with the division~~, and shall pay an annual license fee based on the volume of the previous year's business. The license fee shall be at least thirty five dollars (\$35); operators who have handled more than two hundred and fifty (250) tons during the previous year shall pay an additional amount equal to fifteen cents (\$0.15) for each ton handled in excess of two hundred and fifty (250). The application for license shall be accompanied by an affidavit stating the applicant's volume of business. The division or its representative shall have the privilege of checking the validity of the information contained in the affidavit].~~

SECTION 4. A NEW SECTION OF KRS CHAPTER 250 IS CREATED TO READ AS FOLLOWS:

- (1) *It shall be unlawful for any person to knowingly possess anhydrous ammonia in any container other than an approved container.*
- (2) *The provisions of this section shall not apply to trained chemists working in properly equipped research laboratories in education, government, or corporate settings.*
- (3) *It shall be an affirmative defense to prosecution under this section that the anhydrous ammonia is possessed for the sole purpose of agricultural use.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 250 IS CREATED TO READ AS FOLLOWS:

- (1) *It shall be unlawful for any person to tamper with equipment, containers, or facilities used for the storage, handling, transporting, or application of anhydrous ammonia.*
- (2) *Tampering occurs when any person who, having no right to do so, or any reasonable ground to believe that he has the right for a legitimate or legal purpose, transfers or attempts to transfer anhydrous ammonia to another container, or intentionally or wantonly defaces, destroys, or damages the equipment, container, or facility containing anhydrous ammonia.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 250 IS CREATED TO READ AS FOLLOWS:

*Any person tampering with anhydrous ammonia equipment, containers or storage facilities in violation of Section 5 of this Act shall not have a cause of action against the owner of the equipment, container, or facility; any person responsible for the installation, maintenance, or operation of the equipment, container or facility; any person lawfully selling anhydrous ammonia; or any person lawfully purchasing anhydrous ammonia for agricultural purposes for damages arising out of the tampering.*

Section 7. KRS 250.991 is amended to read as follows:

- (1) *Except as provided in Section 4 or Section 5 of this Act, any person who violates any provision of KRS 250.482 to 250.488 shall be fined not more than five hundred dollars (\$500).*
- (2) *Any person who knowingly possesses anhydrous ammonia in a container other than an approved container in violation of Section 4 of this Act is guilty of a Class D felony unless it is proven that the person violated Section 4 of this Act with the intent to manufacture methamphetamine in violation of KRS 218A.1432, in which case it is a Class B felony for the first offense and a Class A felony for each subsequent offense.*
- (3) *A violation of Section 5 of this Act is a Class D felony unless it is proven that the person violated Section 5 of this Act with the intent to manufacture methamphetamine in violation of KRS 218A.1432, in which case it is a Class B felony for the first offense and a Class A felony for each subsequent offense.*

Section 8. KRS 514.030 is amended to read as follows:

- (1) Except as otherwise provided in KRS 217.181 or 218A.1418, a person is guilty of theft by unlawful taking or disposition when he unlawfully:
  - (a) Takes or exercises control over movable property of another with intent to deprive him thereof; or
  - (b) Obtains immovable property of another or any interest therein with intent to benefit himself or another not entitled thereto.
- (2) Theft by unlawful taking or disposition is a Class A misdemeanor unless the value of the property is three hundred dollars (\$300) or more, ~~or unless the property is a firearm (regardless of the value of the firearm),~~ in which case it is a Class D felony; **or unless:**
  - (a) ***The property is a firearm (regardless of the value of the firearm), in which case it is a Class D felony; or***
  - (b) ***The property is anhydrous ammonia (regardless of the value of the ammonia), in which case it is a Class D felony unless it is proven that the person violated this section with the intent to manufacture methamphetamine in violation of KRS 218A.1432, in which case it is a Class B felony for the first offense and a Class A felony for each subsequent offense.***

Section 9. KRS 514.110 is amended to read as follows:

- (1) A person is guilty of receiving stolen property when he receives, retains, or disposes of movable property of another knowing that it has been stolen, unless the property is received, retained, or disposed of with intent to restore it to the owner.
- (2) The possession by any person of any recently stolen movable property shall be prima facie evidence that such person knew such property was stolen.
- (3) Receiving stolen property is a Class A misdemeanor unless the value of the property is three hundred dollars (\$300) or more, ~~or unless the property is a firearm (regardless of the value of the firearm),~~ in which case it is a Class D felony; **or unless:**
  - (a) ***The property is a firearm (regardless of the value of the firearm), in which case it is a Class D felony; or***
  - (b) ***The property is anhydrous ammonia (regardless of the value of the ammonia), in which case it is a Class D felony unless it is proven that the person violated this section with the intent to manufacture methamphetamine in violation of KRS 218A.1432 in which case it is a Class B felony for the first offense and a Class A felony for each subsequent offense.***

Section 10. The following KRS sections are repealed:

250.487 Disposition of license fees.

250.488 Order to correct violation -- Injunctive remedies.

**Approved March 29, 2000**

## CHAPTER 234

**(HB 540)**

AN ACT relating to reorganization.

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

Section 1. KRS 15.280 is amended to read as follows:

- (1) A Criminal Justice Statistical Analysis Center is hereby created as part of the ***Kentucky Justice Cabinet***~~office of the Attorney General of Kentucky~~.
- (2) ~~[The Attorney General of Kentucky may, by memorandum of agreement, provide for the operation of a Criminal Justice Statistical Analysis Center by the Urban Studies Center of the College of Urban and Public Affairs, University of Louisville, under the authority of the Attorney General.]~~The Criminal Justice Statistical

Analysis Center shall provide its reports and recommendations to the Governor *and the General Assembly* through the *Kentucky Criminal Justice Council*~~[Office of the Attorney General]~~.

- (3) The Criminal Justice Statistical Analysis Center shall:
- (a) Improve the quality and usefulness of criminal justice statistics and research results that are disseminated to citizens, public agencies, and private agencies in Kentucky by:
    - 1. Conducting periodic needs assessments of criminal justice agencies;
    - 2. Analyzing offender-based tracking data;~~[and]~~
    - 3. Conducting specialized studies that use statistical data which are presently maintained by state and local agencies in Kentucky; *and*
    - 4. *Supporting the implementation of a statewide Unified Criminal Justice Information System through the Unified Criminal Justice Information System Committee of the Kentucky Criminal Justice Council.*
  - ~~(b)~~ ~~— Increase storage capacity and enhance accessibility of criminal justice statistical data by:~~
    - ~~1. — Assisting in establishing a statewide computerized database; and~~
    - ~~2. — Maintaining selective criminal justice data sets at the University of Louisville for ongoing analysis and dissemination;~~
  - ~~(c)~~ Increase the ability of statistical users to translate data and research results into practice by:
    - 1. Publishing research results and statistical data that are requested by criminal justice agencies; *and*
    - 2. Conducting conferences and workshops on the use of statistical information;~~[and]~~
    - ~~3. — Establishing a statewide statistical association;]~~
  - ~~(c)~~~~(d)~~ Improve the relationship between citizens and criminal justice agencies of Kentucky by conducting citizen surveys of the needs, attitudes, and behavior relating to crime and justice; and
  - ~~(d)~~~~(e)~~ Strengthen the relationship between the Kentucky criminal justice agencies and the National Bureau of Justice Statistics, United States Department of Justice, by:
    - 1. Providing justice statistics to the Bureau of Justice Statistics as required; and
    - 2. Serving as a clearinghouse for Bureau of Justice Statistics materials.
- (4) The *Kentucky Justice Cabinet*~~[Office of the Attorney General]~~ may expend any federal grants or federal funds provided for carrying out the functions and authority as assigned in this section. Further, the *Kentucky Justice Cabinet through the Kentucky Criminal Justice Council*~~[Office of the Attorney General]~~ may employ such employees as may be necessary to fulfill the duties, responsibilities, and functions assigned by this section.

**Approved March 29, 2000**

## **CHAPTER 235**

### **(HB 506)**

AN ACT relating to elementary and secondary schools.

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

Section 1. KRS 158.175 is amended to read as follows:

- (1) As a continuation of the policy of teaching our country's history and as an affirmation of the freedom of religion in this country, the board of education of a local school district may authorize the recitation of the traditional Lord's prayer and the pledge of allegiance to the flag in public elementary schools. Pupil participation in the recitation of the prayer and pledge of allegiance shall be voluntary. Pupils shall be reminded that this Lord's prayer is the prayer our pilgrim fathers recited when they came to this country in their search for freedom. Pupils shall be informed that these exercises are not meant to influence an individual's personal religious beliefs in any manner. The exercises shall be conducted so that pupils shall learn of our great freedoms, including the freedom of religion symbolized by the recitation of the Lord's prayer.

- (2) The board of education of each school district shall establish a policy and develop procedures whereby the pupils in each elementary and secondary school may participate in the pledge of allegiance to the flag of the United States at the commencement of each school day.
- (3) ***The Kentucky Board of Education shall develop a program of instruction relating to the flag of the United States of America, including instruction in etiquette, the correct use and display of the flag, and other patriotic exercises as may be related. This program of instruction shall be provided to each public school for use in its course of instruction. The program of instruction, at a minimum, shall include the provisions of 4 U.S.C. secs. 1 to 3, and 4 U.S.C. secs. 5 to 9.***
- ~~(4) The policy shall include a plan for incorporating instruction concerning the proper display of and respect for the flag of the United States and the flag of Kentucky into the social studies curriculum.~~
- ~~(3)~~ The board of education of each local school district may purchase or otherwise acquire and provide for display in each classroom copies of the Declaration of Independence, the Gettysburg Address, and other documents the local board deems significant to the history of Kentucky and the United States.
- ~~(5)~~~~(4)~~ At the commencement of the first class of each day in all public schools, the teacher in charge of the room may announce that a moment of silence or reflection not to exceed one (1) minute in duration shall be observed.

**Approved March 29, 2000**

## **CHAPTER 236**

**(HB 620)**

AN ACT relating to private employment agencies.

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

Section 1. The following KRS sections are repealed:

- 340.010 Definitions.
- 340.020 Permit to operate employment agency.
- 340.030 Application for permit -- Fees -- Refusal or cancellation.
- 340.040 Place of business to be stated in permit -- Records and reports -- Permit and law to be posted.
- 340.043 Surety bond required -- Action on bond.
- 340.050 Restrictions on operation -- Sample copy of contract forms to be filed.
- 340.053 Restriction on fees and deposits -- Prohibited operations -- Advertising restrictions.
- 340.070 Enforcement of law -- Inspections -- Access to records -- Administrative regulations -- Hearings.
- 340.170 Kentucky Employment Advisory Council -- Membership -- Meetings -- Powers and duties.
- 340.990 Penalties.

**Approved March 29, 2000**

## **CHAPTER 237**

**(HB 662)**

AN ACT relating to insurance.

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

SECTION 1. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

***Because the posting of the Ten Commandments in a public school building is a lawful posting of a historical document under KRS 158.195, no liability insurer shall refuse to pay under the terms of the policy an insured who***

*is sued for posting the Ten Commandments in compliance with KRS 158.195 in a public school building on the grounds that this act by the insured constitutes an illegal act for which the insurer is not liable to pay under the terms of the policy.*

**Approved March 29, 2000**

## **CHAPTER 238**

**(HB 733)**

AN ACT relating to professional engineers and land surveyors.

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

Section 1. KRS 322.290 is amended to read as follows:

The board shall:

- (1) Administer this chapter;
- (2) Adopt an official seal;
- (3) Provide suitable office quarters at its own expense;
- (4) Adopt and amend all bylaws and rules of procedure, and promulgate administrative regulations, consistent with the Constitution and laws of the state and reasonably necessary for the proper performance of its duties and the regulation and fair conduct of the proceedings before it;
- (5) Appoint an executive director and assistant executive directors and fix their compensation;
- (6) Employ any clerk or other assistants necessary for the proper performance of its work;
- (7) Appoint a general counsel and any assistant general counsel as it deems necessary and fix their compensation;
- (8) Appoint investigatory personnel, as it deems necessary, and fix their compensation;
- (9) Appoint committees of licensees, as it deems necessary, to review issues before the board and make recommendations to the board;
- (10) Make expenditures, as it deems necessary, for any purpose that it considers reasonably necessary for the proper performance of its duties, including paying the expenses of the board's delegates to national conventions of and membership dues to the National Council of Examiners for Engineering and Surveying or other affiliated national boards or societies;
- (11) Adopt and promulgate by administrative regulation a code of professional practice and conduct, which shall be based upon generally recognized principles of professional ethical conduct and binding upon persons licensed under this chapter. A code of professional practice and conduct shall be made known to all licensees and applicants and shall include, but not be limited to, the following objectives:
  - (a) The protection of the public health, safety, and welfare;
  - (b) The maintenance of standards of objectivity, truthfulness, and reliability in public statements;
  - (c) The avoidance of conflicts of interest;
  - (d) The prohibition of solicitation or acceptance of engineering or land surveying work on any basis other than qualifications for the work offered;
  - (e) The prohibition of association with any person engaging in illegal or dishonest activities; and
  - (f) The limitation of professional service to the area of competence of the licensee;
- (12) Adopt appropriate standards of practice;
- (13) ***Promulgate administrative regulations in accordance with KRS Chapter 13A to establish rules for the use of stamps, seals, and signatures in electronic transactions.***
- (14) Bring, in its name, injunctive proceedings in the Franklin Circuit Court to enjoin any person, business entity, or combination thereof in violation of KRS 322.020 or KRS 322.060; and



- ~~(15)~~~~(14)~~ Adopt a program for continuing education for its individual land surveyor licensees. No individual land surveyor licensee shall be permitted to renew his or her license unless the minimum annual continuing education requirements are met, in addition to any other requirement for renewal. The program for continuing education shall not exceed a total of eight (8) credit clock hours per year and shall not include testing or examination of the licensee in any manner.

Section 2. KRS 322.340 is amended to read as follows:

- (1) Each professional engineer or professional land surveyor shall, upon licensure, obtain a seal or stamp of the design authorized by the board, bearing his or her name, license number, and the words "Licensed Professional Engineer" or "Licensed Professional Land Surveyor."
- (2) *Use of the stamp, seal, or signature in an electronic transaction shall be conducted in accordance with administrative regulations promulgated by the board under subsection (13) of Section 1 of this Act.*
- (3) The seal or stamp, signature, and the date shall be used to provide certification for all reports, specifications, drawings, and plans, if presented to a client or any public or governmental agency. Reproduction of original signatures shall be adequate to meet the requirements of this subsection.
- ~~{(3) No report, specification, drawing, or plan furnished on electronic media shall include, or have affixed thereto, an electronic reproduction of the stamp, seal, or signature.~~
  - ~~(a) An original seal or stamp, signature, and the date shall be placed on a printed copy produced by electronic media for all reports, specifications, drawings, and plans.~~
  - ~~(b) The copy produced by electronic media shall have the following inserted in lieu of an original seal or stamp, signature, and date: "This shall not be considered a certified document. This document, originally issued, sealed, and signed by (name of sealer), Kentucky Professional (Engineer or Land Surveyor), No. (License Number), on (date of sealing or stamping), shall not be used in lieu of a certified document."~~
- (4) The seal or stamp and signature shall be used by licensees only if the work being stamped was under the licensee's complete direction and control.
- (5) Every survey plat and physical description prepared by a professional land surveyor and submitted to a client or any public or governmental agency shall display the certification by the professional land surveyor under whose supervision the plat or description was prepared.
- (6) It shall be unlawful for a licensee to affix, or permit to be affixed, his or her seal, stamp, or signature to any document described in subsections (2), (3), or (5) of this section:
  - (a) After the expiration of a license; or
  - (b) For the purpose of aiding or abetting any other person to evade or attempt to evade any provisions of this chapter.
- (7) A professional engineer shall check and have complete dominion and control of the design and engineering work of any engineer not licensed to practice in this state. Complete dominion and control shall include possession of the sealed and signed reproducible construction documents with all supporting design calculations, indicating all changes in the design.

**Approved March 29, 2000**

## **CHAPTER 239**

**(HB 696)**

AN ACT relating to marketing of agricultural products.

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

Section 1. KRS 260.015 is amended to read as follows:

- (1) The Commissioner shall establish, if an appropriation is made for the purpose, a logo or labeling statement for use in identifying agricultural products that have been grown, processed, or manufactured in this state. The Commissioner may develop labeling statements that apply to specific marketing or promotional needs. One (1)

version of the labeling statement may identify food products certified by the department as organically grown in this state. The agriculture logo or labeling statement may be used on processed or manufactured products produced in this state.

- (2) The logo or labeling statement shall not be used without a license from the Commissioner, except that wholesalers and retailers may use the logo or labeling statement for displaying and advertising products that qualify for use of the logo or labeling statement.
- (3) The logo or labeling statement shall not supersede or replace any federal or state label or grade statement that is required by law.
- (4) A person shall not use the agricultural logo or labeling statement without an annual license from the Commissioner. ~~[The Commissioner shall issue a license for a fee of five dollars (\$5), and the Commissioner may charge a late fee of ten dollars (\$10) for renewal of a license that has expired thirty (30) days after the date of renewal. The logo fund account is established within the department. All license fees, receipts, and penalties collected under the provisions of this section shall be credited to the fund for use in implementing and enforcing this section and to advertise and promote the agriculture logo.]~~
- ~~(5) With the concurrence of a majority of program licensees, a fee equivalent to one-tenth of one percent (.001%) of the wholesale or retail value of all products marketed with the benefit of the logo or labeling statement may be assessed all users of the logo or labeling statement, and the proceeds shall be used by the department exclusively for the purpose of advertising and promoting the logo or labeling statement. The assessed fee shall be payable on a quarterly basis and shall be delinquent if not paid within thirty (30) days following a particular quarter. Chronic delinquency or nonpayment shall be just cause for removal from the program.]~~
- ~~(5) (6)~~ In order to accomplish the purposes of this section, the Commissioner may participate jointly with private persons in appropriate logo programs and projects and may enter into contracts necessary to carry out those programs and projects.
- ~~(6) (7)~~ If the logo program is undertaken, the Department of Agriculture shall provide assistance to those persons or businesses that wish to use the Kentucky logo.
- ~~(7) (8)~~ The Commissioner may promulgate administrative regulations as may be necessary to authorize the use and licensing of the agriculture logo or labeling statement.
- ~~(8) (9)~~ It shall be the duty of the department, or upon the request of the Commissioner of Agriculture, of the Attorney General, to bring an action for the recovery of the penalties provided in this section, and to bring an action for an injunction against any person, corporation, enterprise, or business entity violating or threatening to violate any of the provisions of this section or the administrative regulations promulgated pursuant to this section.
- ~~(9) (10)~~ A person who is required to have a license to use the Kentucky agricultural pride logo or labeling statement and uses the logo or labeling statement without a license after being notified by the Commissioner that a license is required shall be liable to a civil penalty not to exceed the sum of one hundred dollars (\$100) for the violation, and an additional civil penalty not to exceed one hundred dollars (\$100) for each day during which the violation continues. The penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the department, or upon the department's request, by the Attorney General.

**Approved March 29, 2000**

## **CHAPTER 240**

### **(HB 758)**

AN ACT relating to the licensing of veterinarians.

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

Section 1. KRS 321.193 is amended to read as follows:

- (1) The board shall issue a license as a "veterinarian" to an applicant who meets the following requirements:
  - (a) Has paid the application fee and the appropriate examination fee ~~[to the board];~~
  - (b) Is a person of good moral character;

- (c) Has received a degree from a veterinary college approved by the board; **and**
  - (d) Has achieved a passing score, as set by the board, on ~~all portions of the~~ examinations required by **administrative regulation promulgated by the board**; ~~and~~
  - ~~(e) Has attended a board sponsored orientation program and oral interview.~~
- (2) The application fee for licensure and examination fee shall be promulgated by administrative regulation of the board.
- ~~(3) The examination shall consist of the following parts:~~
- ~~(a) The National Board Examination for Veterinary Medical Licensing;~~
  - ~~(b) The Clinical Competency Test in Veterinary Medicine; and~~
  - ~~(c) A state examination which covers applicable state and federal law and administrative regulations relative to the practice of veterinary medicine in the Commonwealth of Kentucky.~~
- ~~(4) All candidates for licensure shall pass all portions of the examination before being issued a license to practice. Candidates who fail to achieve a passing score in one (1) or more areas shall be required to retake and achieve a passing score on only those portions of the examination on which they have previously failed to achieve a passing score.~~

**Approved March 29, 2000**

## CHAPTER 241

**(HB 768)**

AN ACT relating to household goods certificates.

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

Section 1. KRS 281.624 is amended to read as follows:

- (1) The term "household goods certificate" means a certificate granting authority to operate as an irregular route common carrier transporting personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of the dwelling, and similar property if the transportation of the effects or property is:
- ~~(a)(1)~~ Arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with intent to use in his or her dwelling; or
  - ~~(b)(2)~~ Arranged and paid for by another party.
- (2) ***The department, in granting a motor carrier authority under KRS 281.630(1), shall have the right to designate the situs of the motor carrier's office and terminal facilities from which the carrier may operate. A designation shall not deny the motor carrier the use of its offices and terminal facilities in existence at the time of the grant of the authority. Any subsequent change of situs or additional situs shall only be granted after application by the motor carrier to the department in the same manner as other applications made under KRS 281.625.***

**Approved March 29, 2000**

## CHAPTER 242

**(HB 780)**

AN ACT relating to designation of Kentucky National Guard Day.

WHEREAS, the members of the Kentucky National Guard have unhesitatingly answered the call to serve in conflicts such as the War of 1812, the Mexican War, in both the Union and Confederate armies in the Civil War, the Spanish-American War, the Mexican border wars, World War I, World War II, the Korean War, Vietnam, the Persian Gulf, Somalia, Rwanda, and Bosnia-Herzegovina; and

WHEREAS, the Kentucky National Guard continues to train and maintain readiness for war, as well as answering the call of the people of the Commonwealth by responding to disasters as a result of tornadoes, snow storms, and floods; and

WHEREAS, the Kentucky National Guard keeps peace during times of civil conflict, assisting the state's law enforcement agencies engaged in the war on drugs; and

WHEREAS, on June 24, 1792, the Militia Act was signed into law by Governor Isaac Shelby, which recognized the formation of a Kentucky Militia;

NOW, THEREFORE,

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 2 IS CREATED TO READ AS FOLLOWS:

*The twenty-fourth day of June of each year is designated as Kentucky National Guard Day in the Commonwealth of Kentucky.*

**Approved March 29, 2000**

## **CHAPTER 243**

**(HB 957)**

AN ACT relating to floodplains and declaring an emergency.

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

Section 1. KRS 151.230 is amended to read as follows:

- (1) *The cabinet may establish minimum standards by administrative regulation for floodplain management. Except in local governments containing a city of the first class, local governments may establish their own standards by ordinance.*
- (2) *In counties containing a city of the first class that have adopted a floodplain ordinance, standards relating to substantial improvements to a structure damaged by flood waters shall not be more restrictive than that prescribed by the cabinet.*
- (3) *For purposes of county administrative regulations and ordinances relating to floodplain management, "substantial improvement" as used in subsection (2) of this section shall mean any combination of repairs, reconstruction, alteration, or improvements to a structure taking place during a one (1) year period in which the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure.*
- (4) *On the effective date of this Act, for purposes of floodplain management, all property shall be assessed by the property valuation administrator at one hundred percent (100%) of its fair market value with no loss of value to land or structures incurred as a result of any previous flood damage prior to the effective date of this Act. The fair market value of a structure shall be reestablished as that value calculated by the property valuation administrator on or before December 30 of each year. ~~Whenever the cabinet prescribes a standard by rule or regulation, such rule or regulation shall establish a minimum requirement concerning the matter covered thereby and shall be construed in relation to a local law, rule or regulation.~~*
- (5) *The provisions of subsections (3) and (4) of this section shall expire on December 31, 2002, unless reenacted by the local governing body. Nothing in this section, shall prohibit a county containing a city of the first class from amending its own floodplain ordinance at any time.*

Section 2. Whereas recent flood damage combined with restrictive floodplain management practices are making it nearly impossible for citizens of the Commonwealth to make necessary and affordable improvements to their homes, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved March 29, 2000**

**CHAPTER 244****(HCR 7)**

A CONCURRENT RESOLUTION confirming the appointment of Helen W. Mountjoy to the Kentucky Board of Education.

WHEREAS, pursuant to KRS 156.029, the Governor has reappointed Helen W. Mountjoy to represent the 2nd Supreme Court District on the Kentucky Board of Education for a term expiring April 14, 2002; and

WHEREAS, appointments to the Kentucky Board of Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of August 5, 1999, the Governor has delivered Helen W. Mountjoy's name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Helen W. Mountjoy meets the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. The House of Representatives and the Senate hereby confirm the appointment of Helen W. Mountjoy to the Kentucky Board of Education for a term ending April 14, 2002.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Helen W. Mountjoy, 449 Browns Valley Road, Utica, Kentucky 42376, in writing, of the General Assembly's action.

**Approved March 29, 2000**

**CHAPTER 245****(HCR 20)**

A CONCURRENT RESOLUTION confirming the reappointment of Laken Cosby, Jr., to the Kentucky Board of Education.

WHEREAS, in accordance with KRS 156.029, the Governor has reappointed Laken Cosby, Jr., as a member of the Kentucky Board of Education representing the Fourth Supreme Court District for a term expiring April 14, 2002; and

WHEREAS, appointments to the Kentucky Board of Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of August 5, 1999, the Governor has delivered Laken Cosby, Jr.'s name for confirmation as a member of the Kentucky Board of Education, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Laken Cosby, Jr., meets the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. The House of Representatives and the Senate hereby confirm the reappointment of Laken Cosby, Jr., to the Kentucky Board of Education for a term ending April 14, 2002.

Section 2. The Clerk of the House of Representatives, in accordance with KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Laken Cosby, Jr., 2629 Algonquin Parkway, Louisville, Kentucky 40210, in writing, of the General Assembly's action.

**Approved March 29, 2000**

**CHAPTER 246****(HCR 108)**

A CONCURRENT RESOLUTION urging the President of the United States and the Congress to support Kentucky Senator Jim Bunning in his effort to direct additional federal cleanup funding to Kentucky and obtain passage of the Clean the Land and Environment of Appalachia Now (CLEAN) Act.

WHEREAS, abandoned mines are a serious environmental hazard in Kentucky and many other states; and

WHEREAS, the United States Environmental Protection Agency (EPA) has identified drainage from abandoned coal mines as the number-one water quality problem in Appalachia; and

WHEREAS, an estimated ten percent (10%) of Kentucky residents do not have safe drinking water due to contamination from abandoned mine runoff; and

WHEREAS, the Surface Mining Control and Reclamation Act of 1977 authorized the Abandoned Mine Reclamation Fund to pay the reclamation costs of abandoned coal mines; and

WHEREAS, the Abandoned Mine Land (AML) Reclamation Fund has incurred a \$1,200,000,000 surplus; and

WHEREAS, it is estimated that if the AML fund is distributed directly to Kentucky and the other mining states, Kentucky will receive over \$90,000,000 for land and water reclamation, as compared to the \$17,000,000 that is currently received; and

WHEREAS, the AML fund has been used in the past to offset the federal budget deficit, and now we have a federal surplus; and

WHEREAS, United States Senator Jim Bunning of Kentucky introduced the Clean the Land and Environment of Appalachia Now (CLEAN) Act that would grant the full amount of the AML fund to the coal-producing states to assist with the costs associated with the cleanup of abandoned coal mines; and

WHEREAS, the CLEAN Act would address the environmental problems associated with abandoned coal mines, improve the quality of water in mining areas including Kentucky, and restore the natural beauty of the area;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. The President of the United States and the Congress are urged to support United States Senator Jim Bunning in his efforts to gain passage of the Clean the Land and Environment of Appalachia Now (CLEAN) Act.

Section 2. A copy of this Concurrent Resolution is hereby directed to be transmitted to the President of the United States and to each member of the Congressional delegation representing the people of the Commonwealth of Kentucky.

**Approved March 29, 2000**

**CHAPTER 247****(HJR 61)**

A JOINT RESOLUTION authorizing and directing the University of Kentucky, the Bluegrass Area Development District, and the Lake Cumberland Area Development District to conduct a study relating to the feasibility of establishing a state park and the cost of constructing state lodges at Lake Herrington and at General Burnside Island State Park.

WHEREAS, Lake Herrington, stretching across portions of Mercer, Garrard, and Boyle Counties, was created in the 1920's by damming up the Dix River. The lake is 3600 acres, 32 miles long and almost 400 feet deep; and

WHEREAS, General Burnside State Park is a 430-acre island surrounded by 50,250-acre Lake Cumberland, named for the sideburn-whiskered Civil War general Ambrose Burnside and has the unique distinction of being the only island park in the Kentucky State Park's system; and

WHEREAS, Lake Herrington and General Burnside Island are outstanding and untapped natural resources in the state of Kentucky; and

WHEREAS, the natural resources and beauty found in the Lake Herrington and General Burnside Island areas are unique treasures in the Commonwealth and should be shared and celebrated by all citizens of the state; and

WHEREAS, there is potential for tourism in the counties of Jessamine, Mercer, Garrard, and Boyle Counties in the Lake Herrington area because not only of the lake but also cultural, historical, recreational, and other events in Danville, Harrodsburg, and other nearby communities; and

WHEREAS, there is also potential for additional tourism in the General Burnside Island area of Lake Cumberland, Pulaski and Wayne Counties and the city of Burnside and surrounding communities; and

WHEREAS, the General Assembly needs information on the feasibility and cost of establishing Lake Herrington as a Kentucky State Park and constructing state park lodges at Lake Herrington and General Burnside Island State Park in order to objectively and responsibly determine whether to proceed;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. The University of Kentucky, jointly with the Bluegrass Area Development District and the Lake Cumberland Area Development District shall conduct a comprehensive study of:

- (1) The feasibility and cost of purchasing land and establishing a new state park at Lake Herrington;
- (2) The feasibility and cost of constructing a state park lodge at Lake Herrington;
- (3) The feasibility and cost of constructing a state park lodge at General Burnside Island State Park;
- (4) The feasibility and cost of constructing a state park lodge at Nolin State Park; and
- (5) The feasibility and cost of purchasing land and establishing a state park in the Barren River Area Development District.

Section 2. The study shall begin not later than August 1, 2000, and the report and recommendations shall be submitted to the Interim Joint Committee on Economic Development and Tourism not later than the interim committee's regularly scheduled meeting in September, 2001.

**Approved March 29, 2000**

## CHAPTER 248

(SB 101)

AN ACT relating to county budgets.

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

Section 1. KRS 68.260 is amended to read as follows:

- (1) The proposed county budget, tentatively approved by the fiscal court and approved by the state local finance officer as to form and classification shall be submitted to the fiscal court for adoption not later than July 1 of each year ~~or within ten (10) days after receipt of the certified assessment from the Revenue Cabinet, as provided in KRS 133.180, whichever shall be later~~. The budget as presented and amended shall be adopted as of July 1. The county judge/executive shall cause a copy of the proposed budget to be posted in a conspicuous place in the courthouse near the front door, and be published pursuant to KRS Chapter 424, at least seven (7) days before final adoption by the fiscal court.
- (2) Any taxpayer or group of taxpayers may petition the fiscal court in respect to the budget or any part thereof before final adoption.
- (3) If the fiscal court rejects any part of the proposed budget, it shall make the changes in the nature and amount of funds a majority of the court considers desirable; but it has no power to make any change in the form or classification of the budget units or subdivisions of units.

- (4) *The fiscal court may amend the budget on the basis of the assessment from the Revenue Cabinet. The fiscal court shall finalize the budget within thirty (30) days of the receipt of the certified assessment.*

**Approved March 30, 2000**

## **CHAPTER 249**

**(HB 308)**

AN ACT relating to public utilities.

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

Section 1. KRS 278.495 is amended to read as follows:

- (1) As used in this section, "master meter system" means a pipeline system for distributing gas within a definable area, such as, but not limited to, a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer, who either purchases the gas directly through a meter or by other means, such as through rents.
- (2) Notwithstanding any other provision of law, the commission shall have the authority to regulate the safety of natural gas facilities which are:
  - (a) Owned or operated by any public utility, county, or city, and used to distribute natural gas at retail; or
  - (b) Comprising a master meter system.

The commission may exercise this authority in conjunction with, and pursuant to, its authority to enforce *any minimum safety standard adopted by the United States Department of Transportation pursuant to 49 U.S.C. sec. 60101 et. seq., or any amendments thereto*~~[the Natural Gas Pipeline Safety Act of 1968]~~, and may promulgate administrative regulations consistent with *federal pipeline safety laws*~~[that Act]~~ in accordance with provisions of KRS Chapter 13A as are necessary to promote pipeline safety in the Commonwealth. In exercising this authority, however, the commission shall consider the impact of any action it takes on small businesses engaged in the installation and servicing of gas lines, master meter systems, or related equipment and shall act so as to assure that no unfair competitive advantage is given to utilities over such small businesses.

**Approved March 30, 2000**

## **CHAPTER 250**

**(HB 259)**

AN ACT relating to mechanics' liens.

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

Section 1. KRS 376.250 is amended to read as follows:

- (1) When an attested copy of the lien statement and proof of the delivery of an attested copy as provided in KRS 376.240 is delivered to any public authority which has contracted for the construction or improvement of any bridge, public highway, or other public property owned by the state, a subdivision or agency thereof, or by any city, county, urban-county, or charter county government, the public authority shall endorse on the attested copy the date of its receipt, file the copy and deduct and withhold the amount thereof, plus \$1.25 to cover the fee of the county clerk for filing the statement and attesting a copy, from any amount then due the contractor, and if a sufficient amount is not then due the contractor from the next payments which become due.
- (2) Unless the contractor, within thirty (30) days from the date of the delivery of the attested copy, files with the public authority a written protest putting in issue the correctness of the amount due the lien claimant or the liability of the fund for payment thereof, the amount withheld shall be paid by the public authority to the lien claimant and charged to the account of the contractor, which payment shall operate as a pro tanto release of the public authority from any claim of the contractor under the contract for the amount so paid. The filing in the



county clerk's office of the statement of lien provided for in subsection (2) of KRS 376.230 shall be constructive notice to the contractor of the filing of the claim.

- (3) If the contractor files a written protest as provided in subsection (2) of this section, the public authority with whom the protest is filed shall endorse thereon the date of its receipt. ***The public authority shall promptly send written notice of the protest to the lien claimant by certified mail, return receipt requested***~~[-]~~ and shall not pay over to the lien claimant any of the money withheld from the contractor until authorized to do so by the contractor or until directed to do so by an order or judgment of court.
- (4) If suit is not instituted by the lien claimant for the enforcement of the lien and summons in the suit is not served on the public authority or its chairman within thirty (30) days after the ***written notice of the protest is mailed to the claimant***~~[filing by the contractor of the protest]~~, then the lien shall automatically be released and the funds withheld pursuant to the filing of the lien statement shall be released and promptly paid to the contractor. If suit is filed and summons served within the time provided, the payment of the funds shall be withheld until ordered to be released or paid over by an order or judgment of the court, and then paid as directed by the order or judgment.
- (5) All suits for the enforcement of these liens on public funds shall be instituted in the Circuit Court of the county in which is located the property on which the improvement is made, except where the property is owned by a public university. Where the property is owned by a public university, the suit shall be instituted in the Circuit Court of the county in which is located the main campus of the public university. This court shall have exclusive jurisdiction for the enforcement of liens asserted against the public funds due the contractors, subject to the same rights of appeal as in other civil cases.

SECTION 2. A NEW SECTION OF KRS 376.195 TO 376.260 IS CREATED TO READ AS FOLLOWS:

- (1) ***Any person contracting with the public authority for the furnishing of any improvements or services for which a lien is created by KRS 376.210 may, at any time before a judgment is rendered enforcing the lien, execute before the county clerk in the county in which the lien was filed a bond for double the amount of the lien claimed.***
- (2) ***The bond executed under subsection (1) of this section shall be subject to the following conditions:***
  - (a) ***The bond shall be approved by the clerk only if the bond is secured by:***
    1. ***Cash;***
    2. ***A letter of credit from a bank; or***
    3. ***Surety insurance as defined by KRS 304.5-060 that is issued by a licensed insurer; and***
  - (b) ***The bond shall require that the obligor satisfy any judgment that may be rendered in favor of the person asserting the lien.***
- (3) ***The bond shall be preserved by the clerk, and upon its execution, the lien provided by KRS 376.210 shall be discharged.***
- (4) ***The person asserting the lien may make the obligors in the bond parties to any action to enforce his claim, and any judgment received may be against any of the obligors on the bond.***

Approved March 31, 2000

## CHAPTER 251

(HB 78)

AN ACT relating to reorganization.

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

Section 1. The General Assembly confirms Executive Order 98-1377, dated October 14, 1998, but this confirmation shall only extend until December 9, 2003, and thereafter the terms of that order shall expire and be without effect.

Approved March 31, 2000

**CHAPTER 252****(HB 290)**

AN ACT relating to certified professional counselors.

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

Section 1. KRS 335.515 is amended to read as follows:

- (1) The board shall administer and enforce the provisions of KRS 335.500 to 335.599 and shall evaluate the qualifications of applicants for certification.
- (2) The board may issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provisions of KRS 335.500 to 335.599.
- (3) The board shall promulgate administrative regulations pursuant to KRS Chapter 13A as necessary to carry out and enforce the provisions of KRS 335.500 to 335.599, including the establishment of fees.
- (4) The board may conduct hearings pursuant to KRS Chapter 13B and keep records and minutes necessary to carry out the function of KRS 335.500 to 335.599.
- (5) The board may issue certificates to qualified candidates.
- (6) The board may renew certificates and may require up to ten (10) continuing education hours as a condition for renewal each year.
- (7) The board may suspend or revoke certificates, impose supervisory or probationary conditions upon certificate holders, impose administrative disciplinary fines, issue written reprimands and admonishments, or perform any combination thereof.
- (8) The board may seek injunctive relief in Franklin Circuit Court to enjoin violation of KRS 335.505(1).
- (9) The board may grant retired status or inactive status to a certificate holder under conditions set out in administrative regulations promulgated by the board.
- (10) The board may employ persons as necessary to carry on its work and shall define those person's duties and fix their compensation.
- (11) The board shall promulgate by administrative regulation a code of ethics for and standards of practice of certified professional counselors.
- (12) The board may enter into reciprocal agreements with certified professional counseling boards ***or licensed professional counseling boards*** ~~[in other states with certification qualifications and requirements as high as Kentucky's].~~

SECTION 2. A NEW SECTION OF KRS 335.500 TO 335.599 IS CREATED TO READ AS FOLLOWS:

- (1) ***The board shall certify an applicant for endorsement who:***
  - (a) ***Has received a master's, specialist, or doctoral degree in counseling or a related field from a regionally accredited institution with graduate coursework in the following:***
    1. ***The helping relationship, including counseling theory and practice;***
    2. ***Human growth and development;***
    3. ***Lifestyle and career development;***
    4. ***Group dynamics, process, counseling, and consulting;***
    5. ***Assessment, appraisal, and testing of individuals;***
    6. ***Social and cultural foundations, including multicultural issues;***
    7. ***Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;***
    8. ***Research and evaluation; and***

**9. Professional orientation and ethics;**

- (b) Holds an active valid license or certificate from another state to practice as a professional counselor;**
- (c) Is in good standing with the certifying or licensing board of that state;**
- (d) Is of good moral character;**
- (e) Has paid the application fee to the board; and**
- (f) Has provided the board with evidence of a minimum of three (3) years experience as a certified or licensed professional counselor.**

**(2) The applicant shall be exempt from:**

- (a) The required hours of supervised experience in the practice of counseling set out in KRS 335.525(1)(e); and**
- (b) The examination requirement set out in KRS 335.525(1)(f).**

Section 3. KRS 335.525 is amended to read as follows:

**(1) The board shall issue a "professional counselor" certificate to an applicant who:**

- (a) Has paid the application fee and the appropriate examination fee to the board;**
  - (b) Is of good moral character;**
  - (c) Has received a master's, *specialist*, or doctoral degree in counseling *or a related field* from a regionally-accredited institution;**
  - (d) Has completed a minimum of sixty (60) graduate semester hours in the following:**
    - 1. The helping relationship, including counseling theory and practice;
    - 2. Human growth and development;
    - 3. Lifestyle and career development;
    - 4. Group dynamics, process, counseling, and consulting;
    - 5. Assessment, appraisal, and testing of individuals;
    - 6. Social and cultural foundations, including multicultural issues;
    - 7. Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;
    - 8. Research and evaluation; and
    - 9. Professional orientation and ethics;
  - (e) Has completed a minimum of three thousand (3,000) hours of experience in the practice of counseling, two thousand (2,000) hours of which must have been obtained since obtaining the master's degree and must be under approved supervision. The experience shall have been performed under the general supervision of an approved supervisor and shall include, but not be limited to, a minimum of one thousand two hundred (1,200) hours of direct counseling with individuals, couples, families, or groups and a minimum of one hundred (100) hours of individual, face-to-face weekly clinical supervision with an approved supervisor. Up to one thousand (1,000) hours of the supervised experience may be obtained from a supervised practicum or internship. After January 1, 1998, all previously uncertified applicants shall complete an organized practicum or internship consisting of at least four hundred (400) hours; and**
  - (f) Has achieved passing scores on all portions of the examinations required by the board.**
- (2) The application fee for certification and the examination fee shall be established pursuant to administrative regulation promulgated by the board.**

**Approved March 31, 2000**

## CHAPTER 253

## (HB 300)

AN ACT relating to insurance fraud.

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

SECTION 1. A NEW SECTION OF SUBTITLE 47 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Any person who has been convicted of any felony offense involving dishonesty or a breach of trust, or who has been convicted of a fraudulent insurance act under this subtitle, and who knowingly engages or participates in the business of insurance in this Commonwealth, shall be guilty of a Class D felony.*
- (2) *Any insurer that knowingly permits the participation in the business of insurance in this Commonwealth by a person who has been convicted of any felony offense involving dishonesty or a breach of trust, or who has been convicted of a fraudulent insurance act under this subtitle, shall be guilty of a criminal violation.*
- (3) *Any person who has been convicted of any felony offense involving dishonesty or a breach of trust, or who has been convicted of a fraudulent insurance act under this subtitle, may engage in the business of insurance in this Commonwealth if he or she has received written consent from the commissioner, and that consent specifically refers to this subsection.*

SECTION 2. A NEW SECTION OF SUBTITLE 47 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Documents, materials, or other information in the possession or control of the commissioner that is provided according to this subtitle shall be confidential by law and privileged, and shall not be subject to the Kentucky Open Records Act, KRS 61.872 to KRS 61.884. These documents, materials, or other information shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action, unless, after notice to the commissioner and a hearing, a court of competent jurisdiction determines the commissioner would not be unnecessarily hindered. However, the commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.*
- (2) *Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (1) of this section.*
- (3) *In order to assist in the performance of the commissioner's duties, the commissioner:*
  - (a) *May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsections (1) and (2) of this section, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with local, state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or other information;*
  - (b) *May receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or information from the National Association of Insurance Commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential and privileged any documents, materials, or information received with notice or the understanding that it is confidential and privileged under the laws of the jurisdiction that is the source of the documents, materials, or information;*
  - (c) *May enter into agreements governing the sharing and use of information including the furtherance of any regulatory or legal action brought as part of the recipient's official duties.*
- (4) *No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this subtitle or as a result of sharing as authorized in subsection (3) of this section.*

Section 3. KRS 304.47-010 is amended to read as follows:

As used in Subtitle 47 of this chapter, unless the context requires otherwise:

- (1) "Insurer" means any person, entity, organization, or reinsurer, including fraternal benefit societies as defined in Subtitle 29 of this chapter, nonprofit hospital, medical-surgical, dental, and health service corporation as defined in Subtitle 32 of this chapter, health maintenance organization as defined in Subtitle 38 of this chapter, prepaid dental plan organization as defined in Subtitle 43 of this chapter, or unauthorized insurer as defined in Subtitle 11 of this chapter, subject to regulation by or registration with the Department of Insurance under this chapter, and any "carrier," "self-insurer," or "insurance carrier" as defined by KRS Chapter 342.
- (2) "Insurance policy" or "policy" means any individual or group policy, including those defined by KRS Chapter 342, certificate, or contract of an insurer as defined in subsection (1) of this section including reinsurance affecting the rights of any Kentucky resident or bearing a reasonable relation to Kentucky regardless of whether delivered or issued for delivery in Kentucky.
- (3) "Insured" means any person who is a named insured or beneficiary under a policy as defined in subsection (2) of this section or a person who is not a named insured or beneficiary under a policy due to the fraudulent action of another, but who in good faith believes himself to be an insured or beneficiary.
- (4) "Law enforcement agency" means any federal, state, county, or consolidated police or law enforcement department and any prosecuting official of the federal, state, county, local, or consolidated government.
- (5) "Statement" includes, but is not limited to, any notice, statement, proof of loss, bill of lading, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or physician record or report, X-ray, test result, or other evidence of loss, injury, or expense. ***A statement may be in any form, including oral, written, and electronic transmissions.***
- (6) "Division" means the Division of Insurance Fraud Investigation of the Kentucky Department of Insurance, its employees, or authorized representatives.
- (7) "Criminal syndicate" means five (5) or more persons collaborating to promote or engage in any fraudulent insurance act, as set forth in KRS 304.47-020(1), on a continuing basis.

Section 4. KRS 304.47-020 is amended to read as follows:

- (1) For the purposes of this subtitle, a person or entity commits a "fraudulent insurance act" if he ***or she engages in any of the following, including, but not limited to, matters relating to workers' compensation:***
  - (a) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, Board of Claims, Special Fund, or any agent thereof, any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or from a "self-insurer" as defined by KRS Chapter 342, knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;
  - (b) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, Board of Claims, or any agent thereof, any ~~written or oral~~ statement as part of, or in support of, an application for an insurance policy, ***for renewal, reinstatement, or replacement of insurance, or in support of an application to a lender for money to pay a premium,*** knowing that ~~the~~***this*** statement contains any false, incomplete, or misleading information concerning any fact or thing material to the application;
  - (c) Knowingly and willfully transacts any contract, agreement, or instrument which violates this title;
  - (d) ***Knowingly and with intent to defraud or deceive,*** receives money for the purpose of purchasing insurance, and ~~fails to obtain insurance~~***converts the money to the person's own benefit***;
  - (e) ***Knowingly and with intent to defraud or deceive, fails to make payment or disposition of money, as required by agreement or legal obligation, that comes into his or her possession while acting as a licensee under this chapter;***
  - (f) Issues or knowingly presents fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, ~~or~~ insurance binders, ***or any other documents that purport to evidence insurance;***

- (g)~~(f)~~ Makes any false or fraudulent representation as to the death or disability of a policy or certificate holder in any written statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;
- (h)~~(g)~~ Engages in unauthorized insurance, as defined in KRS 304.11-030;
- ~~[(h) — Knowingly and with intent to defraud or deceive, receives temporary total disability benefits while being employed in work as defined in KRS 342.0011;]~~
- (i) Knowingly and with intent to defraud or deceive, presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or **to the commissioner**~~[any agent thereof]~~, any~~[written or oral]~~ statement, knowing that the statement contains any false, incomplete, or misleading information concerning any material fact or thing, as part of, or in support of one (1) or more of the following:
1. The rating of an insurance policy;
  2. The financial condition of an insurer;
  3. The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one (1) or more lines of insurance in all or part of this Commonwealth by an insurer; or
  4. A document filed with the commissioner;
- (j) Knowingly and with intent to defraud or deceive, engages in any of the following:
1. Solicitation or acceptance of new or renewal insurance risks on behalf of an insolvent insurer; or
  2. Removal, concealment, alteration, tampering, or destruction of **money, records, or any other property or assets**~~[the assets or records]~~ of an insurer; or
- (k) Assists, abets, solicits, or conspires with another to commit a fraudulent insurance act in violation of this subtitle.
- (2) (a) Except as provided in paragraphs (b) and (c) of this subsection, a person convicted of a violation of subsection (1) of this section shall be guilty of a misdemeanor where the aggregate of the claim, benefit, or money referred to in subsection (1) of this section is less than or equal to three hundred dollars (\$300), and shall be punished by:
1. Imprisonment for not more than one (1) year;
  2. A fine, per occurrence, of not more than one thousand dollars (\$1,000) per individual nor five thousand dollars (\$5,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or
  3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph;
- (b) Except as provided in paragraph (c) of this subsection, where the claim, benefit, or money referred to in subsection (1) of this section exceeds an aggregate of three hundred dollars (\$300), a person convicted of a violation of subsection (1) of this section shall be guilty of a felony and shall be punished by:
1. Imprisonment for not less than one (1) nor more than five (5) years;
  2. A fine, per occurrence, of not more than ten thousand dollars (\$10,000) per individual nor one hundred thousand dollars (\$100,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or
  3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph.
- (c) Any person, with the purpose to establish or maintain a criminal syndicate, or to facilitate any of its activities, as set forth in KRS 506.120(1), shall be guilty of engaging in organized crime, a Class B felony, and shall be punished by:
1. Imprisonment for not less than ten (10) years nor more than twenty (20) years;
  2. A fine, per occurrence, of not more than ten thousand dollars (\$10,000) per individual nor one hundred thousand dollars (\$100,000) per corporation, or twice the amount of gain received as a result of the violation; whichever is greater; or

3. Both imprisonment and a fine, as set forth in subparagraphs 1. and 2. of this paragraph.
- (d) In addition to imprisonment, the assessment of a fine, or both, a person convicted of a violation of paragraph (a), (b), or (c) of subsection (2) of this section may be ordered to make restitution to any victim who suffered a monetary loss *due to any actions by that person*~~[under the person's actions]~~ which resulted in the adjudication of guilt, *and to the division for the cost of any investigation*. The amount of restitution shall equal the monetary value of the actual loss or twice the amount of gain received as a result of the violation, whichever is greater.
- (3) Any ~~person~~~~[insurer]~~ damaged as a result of a violation of any provision of this section when there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorneys' fees, at the trial and appellate courts.
- (4) The provisions of this section shall also apply to any agent, unauthorized insurer or its agents or representatives, or surplus lines carrier who, with intent, injures, defrauds, or deceives any claimant with regard to any claim. The claimant shall have the right to recover the damages provided in subsection (3) of this section.

Section 5. KRS 304.47-040 is amended to read as follows:

- (1) There is created within the Department of Insurance a Division of Insurance Fraud Investigation, which shall include a Workers' Compensation Branch.
- (2)
  - (a) The commissioner shall appoint qualified persons to serve as special investigators for the Division of Insurance Fraud Investigation who shall have general police powers including the power to arrest, and they shall possess all of the common law and statutory powers, privileges, and immunities of sheriffs, and their jurisdiction shall be coextensive with the state.
  - (b) The commissioner shall appoint appropriate staff for the Workers' Compensation Branch which shall include, at a minimum, three (3) special investigators, one (1) attorney, and one (1) administrative assistant. The appointments authorized by this paragraph shall be in addition to the staff employed by the division as of December 12, 1996.
- (3) The special investigator may:
  - (a) Administer oaths and affirmations;
  - (b) Order the attendance of witnesses or proffering of information and documentation;
  - (c) Collect evidence; and
  - (d) Make arrests for criminal violations established as a result of its investigations. The general laws applicable to arrests by sheriffs of the Commonwealth shall also be applicable to special investigators, who may:
    1. Execute arrest warrants and search warrants for the criminal violations revealed as a result of their investigations;
    2. Serve subpoenas issued for the examination, investigation, and trial of all offenses determined by their investigations; and
    3. Arrest upon probable cause without warrant any person found in the act of violating any of the provisions of applicable laws.
- (4) The division may implement its powers if, based upon its own inquiries or as a result of information received, it has reason to believe that a person has engaged in, is engaging in, or is about to engage in a fraudulent insurance act.
- (5) If the information the division seeks to obtain is located outside the state, the person so requested may make it available to the division or its representative to examine at the place where it is located. The division may designate representatives, including officials of the state in which the matter is located, to inspect the information on the division's behalf, and it may respond to similar requests from officials of other states.
- (6) It shall be unlawful for any person to resist an arrest authorized by this subtitle or in any manner to interfere, either by abetting or assisting this resistance or otherwise interfering, with special investigators employed by the commissioner under this subtitle in the duties imposed upon them by law, and shall be punishable as provided in KRS 520.090.

(7) ***The commissioner may obtain any evidence for use in criminal investigations according to KRS 304.2-340.***

Section 6. KRS 304.47-050 is amended to read as follows:

- (1) Any person, other than ***those specified in subsection (2) of this section***~~[an insurer, agent, or other person licensed under this chapter, or an employee thereof]~~, having knowledge or believing that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under the subtitle is being or has been committed may send to the division~~[of Insurance Fraud Investigation]~~ a report of information pertinent to this knowledge or belief and any additional relevant information the commissioner may request.
- (2) The following individuals having knowledge or believing that a fraudulent insurance act or any other act or practice which may constitute a felony or misdemeanor under this subtitle is being or has been committed shall send to the division~~[of Insurance Fraud Investigation]~~ a report or information pertinent to the knowledge or belief and additional relevant information that the commissioner or his employees or agents may require:
  - (a) Any professional practitioner licensed or regulated by the Commonwealth, except as provided by law;
  - (b) Any utilization review of benefits committee as defined in KRS 211.462 to 211.466;
  - (c) Any private medical review committee;
  - (d) Any insurer, agent, or other person licensed under this chapter; and
  - (e) Any employee of the persons named in paragraphs (a) to (d) of this subsection.
- (3) The division~~[of Insurance Fraud Investigation]~~ or its employees or agents shall review this information or these reports and select the information or reports that, in the judgment of the division, may require further investigation. The division shall then cause an investigation of the facts surrounding the information or report to be made to determine the extent, if any, to which a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under this subtitle is being committed.
- (4) The Department of Workers' Claims shall provide the division access to all relevant information the commissioner may request.
- (5) The division~~[of Insurance Fraud Investigation]~~ shall report any alleged violations of law which the investigations disclose to the appropriate licensing agency and the Commonwealth's attorney, Attorney General, or other prosecuting agency having jurisdiction with respect to a violation. If prosecution by the Commonwealth's attorney, Attorney General, or other prosecuting agency is not begun within sixty (60) days of the report, the prosecuting attorney shall inform the division of the reasons for the lack of prosecution. In addition to filing a report with the appropriate prosecuting agency, the commissioner may, through the Attorney General, prosecute violations of this subtitle in the Circuit Court of the county in which the alleged wrongdoer resides or has his principal place of business, in the Circuit Court of the county in which the fraudulent insurance act has been committed, or, with consent of the parties, in the Franklin Circuit Court.
- (6) Notwithstanding the provisions of subsections (1) to (5) of this section, ***any person having knowledge or believing that a fraudulent insurance act or any other act that may be prohibited under this subtitle is being or has been committed,***~~[when an insurer or an insured knows or has reasonable grounds to believe that a person committed a fraudulent insurance act which the insurer reasonably believes not to have been reported to a law enforcement agency in this state, then, for the purpose of notification and investigation, the insurer or an agent authorized by an insurer to act on its behalf or the insured]~~ may notify ***any***~~[a]~~ law enforcement agency of their knowledge or~~[reasonable]~~ belief and provide information relevant to the~~[fraudulent insurance]~~ act, ***as may be requested by that agency,*** including, but not limited to, insurance policy information including the application for insurance, policy premium payment records, history of previous claims made by the insured, and other information relating to the investigation of the claim, including statements of any person, proofs of loss, and notice of loss. ***Reporting to any other agency does not relieve those listed in subsection (2) of this section of their mandatory duty to report to the division.***
- (7) If the information referred to in~~[subsection (6) of]~~ this section is specifically requested by ***the division, any other***~~[a]~~ law enforcement agency, or ***a*** prosecuting attorney, the insurer shall provide certified copies of the requested information within ten (10) business days of the request or as soon thereafter as reasonable.
- (8) In the absence of malice, fraud, or gross negligence, no insurer or agent authorized by an insurer to act on its behalf, law enforcement agency, the Department of Workers' Claims, their respective employees, or an insured



shall be subject to any civil liability for libel, slander, or related cause of action by virtue of filing reports or for releasing or receiving any information pursuant to this subsection.

Section 7. KRS 304.47-060 is amended to read as follows:

- (1) In the absence of malice, fraud, or gross negligence, a person shall not be subject to civil liability for libel, slander, or any other relevant tort by virtue of filing reports or furnishing other information required by this chapter or requested by the division~~[of Insurance Fraud Investigation]~~ or its authorized representative. No civil cause of action of any nature shall arise against the person:
  - (a) For any information relating to suspected fraudulent insurance acts furnished to or received from law enforcement officials, their agents, or employees;
  - (b) For any information relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of this subtitle, including those designated by KRS 304.47-080;
  - (c) For any information furnished to or received from the Department of Workers' Claims, its agents, or employees; or
  - (d) For any information furnished in reports to the commissioner or the National Association of Insurance Commissioners.
- (2) The commissioner or any employee or agent of the Department of Insurance shall not be subject to civil liability for libel, slander, or any other relevant tort. No civil cause of action shall exist against these persons by virtue of the execution of official activities or duties of the commissioner or the division or by virtue of the publication of any report or bulletin related to the official activities or duties of the commissioner.
- (3) This subtitle shall not abrogate or modify any common law or statutory privilege or immunity enjoyed by any person.

~~[(4) The papers, documents, reports, or evidence relative to the subject of an investigation under this subtitle, shall not be subject to public inspection for so long as the commissioner deems reasonably necessary to complete the investigation, to protect the person investigated from unwarranted injury, or to be in the public interest. Further, the papers, documents, reports, or evidence relative to the investigations shall not be subject to subpoena until opened for public inspection by the commissioner, unless the commissioner consents, or until, after notice to the commissioner and a hearing, a court of competent jurisdiction determines the commissioner would not be unnecessarily hindered by a subpoena. The commissioner or his employees or agents shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge pursuant to pending investigations of fraudulent insurance acts.]~~

Section 8. KRS 304.47-070 is amended to read as follows:

All costs of administration and operation of the *division*~~[Insurance Fraud Unit]~~ shall be borne by the Department of Insurance. Any money or other property that is awarded to the *division*~~[Insurance Fraud Unit]~~ as costs of investigation or as a fine shall be credited to the Department of Insurance, and the money shall be used to help finance the *division*~~[Insurance Fraud Unit]~~.

Section 9. KRS 304.47-080 is amended to read as follows:

- (1) Every insurer admitted to do business in the Commonwealth shall maintain ***effective procedures and resources to deter and investigate fraudulent insurance acts prohibited by this subtitle, including*** a unit ~~that will~~~~[to]~~ investigate ~~suspected~~~~[possible]~~ fraudulent ***insurance acts***~~[claims by insureds or by persons making claims for services or repairs against policies held by insureds]~~. For the purpose of this section, "insurer" does not include reinsurers or reinsurance as defined in KRS 304.5-130.
- (2) Insurers may maintain the unit required by subsection (1) of this section, using its employees or by contracting with others for that purpose.
- (3) Insurers shall establish the unit required by this section no later than July 15, 1995.
- (4) The unit may include the assignment of fraud investigation to employees whose principal responsibilities are the investigation and disposition of claims. If an insurer creates a distinct unit, hires additional employees, or contracts with another entity to fulfill the requirements of this article, the additional cost incurred shall be included as an administrative expense.

**CHAPTER 254****(SB 232)**

AN ACT relating to insurance.

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

SECTION 1. A NEW SECTION OF SUBTITLE 2 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*Notwithstanding any other provision of law, to the extent authorized by the commissioner by administrative regulation, a licensed agent, producer, broker, or insurer has the power to engage in any insurance activity that financial institutions chartered by or otherwise subject to the jurisdiction of the federal government are authorized to engage in according to federal law or regulation or by a court of competent jurisdiction.*

SECTION 2. A NEW SECTION OF SUBTITLE 2 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The commissioner may enter into interstate compacts for issuing certificates of authority to insurers if the commissioner determines that :*
  - (a) *Each state participating in the compact has requirements for issuing certificates of authority that provide protections substantially similar to or greater than the requirements of this subtitle; or*
  - (b) *The interstate compact contains requirements for issuing certificates of authority that provide protections substantially similar to or greater than the requirements of this subtitle.*
- (2) *In lieu of the documents required in KRS 304.3-150(1) to (14) to be filed with an application for certificate of authority, the commissioner may accept documentation in accordance with the terms of the interstate compact.*
- (3) *The commissioner may issue certificates of authority to insurers in accordance with the terms of the interstate compact.*

**Approved March 31, 2000**

**CHAPTER 255****(SB 331)**

AN ACT relating to health maintenance organizations.

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

Section 1. KRS 304.32-140 is amended to read as follows:

- (1) No corporation subject to provisions of this subtitle shall be permitted to do any business in this state unless, in addition to the other requirements of law, it shall have and maintain liquid reserves in an amount not less than five percent (5%) of the corporation's subscription income collected in the preceding year not exceeding two million dollars (\$2,000,000), plus two and one-half percent (2.5%) of income exceeding two million dollars (\$2,000,000) but not exceeding ten million dollars (\$10,000,000), plus one percent (1%) of income exceeding ten million dollars (\$10,000,000); but in no event shall reserves be less than five hundred thousand dollars (\$500,000). All corporations subject to the provisions of this subtitle shall place on deposit with the custodian of insurance securities a guarantee fund of cash or approved securities in an amount determined by this formula, but not less than five hundred thousand dollars (\$500,000) nor more than one million five hundred thousand dollars (\$1,500,000). Any amount of liquid reserves required by this subsection in excess of one million five hundred thousand dollars (\$1,500,000) shall be maintained by the corporation at all times, but shall not be required to be placed on deposit, provided that such a corporation shall be allowed a period of five (5) years after July 15, 1982, to establish the liquid reserves and deposit the guarantee fund with the commissioner. *A corporation subject to the provisions of this subtitle shall at all times comply with the risk-based capital requirements as established in administrative regulations promulgated by the commissioner.*

- (2) The cash or securities representing the guarantee fund required by this section shall be acceptable to the custodian of insurance securities and such securities shall be negotiable securities.
- (3) The investments of a corporation subject to the provisions of this subtitle shall be the same kind of investments which life insurance companies are authorized to have.

Section 2. KRS 304.38-070 is amended to read as follows:

- (1) This subsection applies to a corporation ***or limited liability corporation*** applying for and holding a certificate of authority as a health maintenance organization:
  - (a) Except as provided in paragraph (b) of this subsection, to qualify for authority to act as a health maintenance organization, a corporation ***or limited liability corporation*** shall possess and thereafter maintain unimpaired paid-in capital stock of one million dollars (\$1,000,000), and, when first so authorized, shall possess initial free surplus of not less than two million dollars (\$2,000,000);
  - (b) A corporation holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency required for such authority immediately prior to July 15, 1986. Notwithstanding the other provisions hereof, the exception provided in this paragraph shall cease to apply to any such health maintenance organization from and after the date it has accumulated capital and surplus equal to or in excess of the capital and surplus required by paragraph (a) of this subsection; and
  - (c) Each corporation authorized as a health maintenance organization shall at all times maintain bona fide additional surplus in the amount of two hundred fifty thousand dollars (\$250,000) ***and shall at all times comply with the risk-based capital requirements as established in administrative regulations promulgated by the commissioner.*** A corporation holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency as required for such authority immediately prior to July 15, 1986. The exception provided in this paragraph shall cease to apply to any such health maintenance organization from and after the date upon which it has accumulated additional surplus equal to or in excess of the additional surplus required by this subsection.
- (2) This subsection applies to a partnership applying for or holding a certificate of authority as a health maintenance organization:
  - (a) Except as provided in paragraph (b) of this subsection, to qualify for authority to act as a health maintenance organization, a partnership shall possess, when first so authorized, a total of at least three million dollars (\$3,000,000) in its capital accounts. Thereafter, a partnership authorized as a health maintenance organization shall possess and maintain a total of at least one million two hundred fifty thousand dollars (\$1,250,000) in its capital accounts ***and shall comply at all times with the risk-based capital requirement established in administrative regulations promulgated by the commissioner;***
  - (b) A partnership holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency required for such authority immediately prior to July 15, 1986. The exception provided for in this paragraph shall cease to apply to any such health maintenance organization from and after the date upon which the total of the funds which it has accumulated in its capital accounts equal or exceed the total of the funds in its capital accounts required by this subsection.

SECTION 3. A NEW SECTION OF SUBTITLE 38 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) ***Any health maintenance organization that contracts with a provider or provider organization for the transfer of risk to the provider shall take reasonable steps to ensure the transferee is able to accept and manage the risk to be transferred. The health maintenance organization shall submit a plan for evaluating a provider's or provider organization's ability to accept and manage risk to the department for approval at least forty-five (45) days prior to the proposed date of the transfer of any risk.***
- (2) ***If a health maintenance organization transfers risk to a provider:***

- (a) *Not in compliance with the standards listed in its approved plan; or*
- (b) *Prior to filing or receiving approval of its plan;*

*the commissioner may require the health maintenance organization to retain additional reserves to cover the risk transferred.*

Section 4. KRS 304.33-430 is amended to read as follows:

The order of distribution of claims from the insurer's estate shall be as stated in this section. The first fifty dollars (\$50) of the amount allowed on each claim in the classes under subsections ~~(3)(2)~~ to ~~(7)(6)~~, inclusive, of this section, shall be deducted from the claim and included in the class under subsection ~~(9)(8)~~ of this section. Claims may not be cumulated by assignment to avoid application of the fifty dollars (\$50) deductible provision. Subject to the fifty dollars (\$50) deductible provision, every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. No subclasses shall be established within any class. No claim by a shareholder, policyholder, or other creditor shall be permitted to circumvent the priority classes through the use of equitable remedies.

- (1) Administration costs. The costs and expenses of administration, including but not limited to the following: the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney's fees.
- (2) ***Health maintenance organization out-of-network claims. In a liquidation of a health maintenance organization, any claims for health plan benefits for out-of-network claims that would have otherwise been covered.***
- (3) Loss and unearned premium claims. Claims by policyholders, beneficiaries, and insureds arising from and within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company, and liability claims against insureds which claims are within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company, and claims of guaranty associations or foreign guaranty associations. Notwithstanding the foregoing, the following claims shall be excluded from Class 2 priority:
  - (a) Obligations of the insolvent insurer arising out of reinsurance contracts;
  - (b) Obligations incurred after the expiration date of the insurance policy or after the policy has been replaced by the insured or canceled at the insured's request or after the policy has been canceled as provided in this chapter. Notwithstanding this subsection, earned premium claims on policies, other than reinsurance agreements, shall not be excluded;
  - (c) Obligations to insurers, insurance pools, or underwriting associations and their claims for contribution, indemnity or subrogation, equitable or otherwise;
  - (d) Any claim which is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer;
  - (e) Any amount accrued as punitive or exemplary damages unless expressly covered under the terms of the policy; and
  - (f) Tort claims of any kind against the insurer, and claims against the insurer for bad faith or wrongful settlement practices.
- ~~(4)(3)~~ Claims of the federal government other than those claims included in Class 2.
- ~~(5)(4)~~ Wages.
  - (a) Debts due to employees for services performed, not to exceed one thousand dollars (\$1,000) to each employee which have been earned within one (1) year before the filing of the petition for liquidation. Officers shall not be entitled to the benefit of this priority.
  - (b) This priority shall be in lieu of any other similar priority authorized by law as to wages or compensation of employees.
- ~~(6)(5)~~ Residual classification. All other claims including claims of the federal or any state or local government, not falling within other classes under this section. Claims, including those of any governmental body, for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the

act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subsection ~~(9)(8)~~ of this section.

~~(7)(6)~~ Judgments. Claims based solely on judgments. If a claimant files a claim and bases it both on the judgment and on the underlying facts, the claim shall be considered by the liquidator who shall give the judgment such weight as he deems appropriate. The claim as allowed shall receive the priority it would receive in the absence of the judgment. If the judgment is larger than the allowance on the underlying claim, the remaining portion of the judgment shall be treated as if it were a claim based solely on a judgment.

~~(8)(7)~~ Interest on claims already paid. Interest at the legal rate compounded annually on all claims in the classes under subsections (1) to ~~(7)(6)~~ of this section, inclusive, from the date of the petition for liquidation or the date on which the claim becomes due, whichever is later, until the date on which the dividend is declared. The liquidator, with the approval of the court may make reasonable classifications of claims for purposes of computing interest, may make approximate computations and may ignore certain classifications and time periods as de minimis.

~~(9)(8)~~ Miscellaneous subordinated claims. The remaining claims or portions of claims not already paid, with interest as in subsection ~~(8)(7)~~ of this section:

- (a) The first fifty dollars (\$50) of each claim in the classes under subsections (2) to ~~(7)(6)~~, inclusive, of this section, subordinated under this section;
- (b) Claims under subsection (2) of KRS 304.33-380;
- (c) Claims subordinated by KRS 304.33-600;
- (d) Claims filed late;
- (e) Portions of claims subordinated under subsection ~~(6)(5)~~ of this section; and
- (f) Claims or portions of claims, payment of which is provided by other benefits or advantages recovered or recoverable by the claimant.

~~(10)(9)~~ Preferred ownership claims. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Interest at the legal rate shall be added to each claim, as in subsections ~~(8)(7)~~ and ~~(9)(8)~~ of this section.

~~(11)(10)~~ Proprietary claims. The claims of shareholders or other owners.

Section 5. KRS 304.33-360 is amended to read as follows:

- (1) Deadline for filing. Proof of all claims must be filed with the court in the form required by KRS 304.33-370 on or before the last day for filing specified in the notice required under KRS 304.33-250, except that proof of preferred ownership claims and proprietary claims under subsections ~~(9)(8)~~ and ~~(10)(9)~~ of KRS 304.33-430, need not be filed at all, and proof of claims for unearned premiums and claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator expressly so requires.
- (2) Excused late filings. For good cause shown, the liquidator shall recommend, and the court shall permit, a claimant making a late filing to share in dividends, whether past or future, as if he were not late, to the extent that any such payment will not prejudice the orderly administration of the liquidation. Good cause includes but is not limited to the following:
  - (a) That existence of a claim was not known to the claimant and that he filed within thirty (30) days after he learned of it;
  - (b) That a claim for unearned premiums or for cash surrender values or other investment values in life insurance or annuities which was not required to be filed was omitted from the liquidator's recommendations to the court under KRS 304.33-440, and that it was filed within thirty (30) days after the claimant learned of the omission;
  - (c) That a transfer to a creditor was avoided under KRS 304.33-290 to 304.33-330, inclusive, or was voluntarily surrendered under KRS 304.33-320 and that the filing satisfies the conditions of KRS 304.33-320;

- (d) That valuation under KRS 304.33-420 of security held by a secured creditor shows a deficiency, which is filed within thirty (30) days after the valuation; and
  - (e) That a claim was contingent and became absolute, and was filed within thirty (30) days after it became absolute.
- (3) Unexcused late filings. The liquidator may consider any claim filed late which is not covered by subsection (2) of this section, and permit it to receive dividends, other than the first dividend, which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive, at each distribution, the same percentage of the amount allowed on his claim as is then being paid to other claimants of the same priority plus the same percentage of the amount allowed on his claim as is then being paid to claimants of any lower priority. This shall continue until his claim has been paid in full.

Section 6. KRS 304.33-380 is amended to read as follows:

- (1) Claims contingent on judgments. The claim of a third party which is contingent only on his first obtaining a judgment against the insured shall be considered and allowed as if there were no such contingency.
- (2) Claims under terminated policies. Any claim that would have become absolute if there had been no termination of coverage under KRS 304.33-120, and which was not covered by insurance acquired to replace the terminated coverage, shall be allowed as if the coverage had remained in effect, unless at least ten (10) days before the insured event occurred either the claimant had actual notice of the termination or notice was mailed to him as prescribed by subsection (1) of KRS 304.33-250, or subsection (1) of KRS 304.33-260. If allowed, the claim shall share in distributions under subsection (9)~~(8)~~ of KRS 304.33-430.
- (3) Other contingent claims. A claim may be allowed even if contingent, if it is filed in accordance with subsection (2) of KRS 304.33-360. It may be allowed and may participate in all dividends declared after it is filed, to the extent that it does not prejudice the orderly administration of the liquidation.
- (4) Immature claims. Claims that are due except for the passage of time shall be treated as absolute claims are treated, except that where justice requires the court may order them discounted at the legal rate of interest.

Section 7. KRS 304.33-440 is amended to read as follows:

- (1) Immediate Access. Within one hundred twenty (120) days of a final determination of insolvency of a company by a court of competent jurisdiction of this state, the liquidator shall make application to the court for approval of a proposal to disburse assets out of such company's marshalled assets, from time to time as such assets become available, to guaranty associations or foreign guaranty associations having obligations because of the insolvency. Such proposal shall at least include provision for:
  - (a) Reserving amounts for the payment of the expenses of administration and claims falling within the priorities established in KRS 304.33-430(1) and (3)~~(2)~~;
  - (b) Disbursement of the assets marshalled to date and subsequent disbursements of assets as they become available;
  - (c) Equitable allocation of disbursements to each of the associations entitled thereto; and
  - (d) The securing by the liquidator from each of the associations entitled to disbursements pursuant to paragraph (e) of an agreement to return to the liquidator such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in KRS 304.33-430(1), (3)~~(2)~~ and (4)~~(3)~~ in accordance with such priorities. No bond shall be required of any such association.
  - (e) The liquidator's proposal shall also provide for disbursements to the associations in amounts at least equal to the payments made or to be made thereby for which associations could assert claims against the liquidator, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such payments made or to be made by the association then disbursements shall be in the amount of available assets.
  - (f) Notice of such application shall be given to the associations in and to the commissioners of insurance of each of the states in which the company did business. Any such notice shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, at least thirty (30) days prior to submission of such application to the court. Action on the application may be taken by the

court provided the above required notice has been given and provided further that the liquidator's proposal complies with this subsection.

- (2) Recommended claims. The liquidator shall review all claims duly filed in the liquidation and shall make such further investigation as he deems necessary. He may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the court. Unresolved disputes shall be determined under KRS 304.33-400. As often as practicable, he shall present to the court reports of claims against the insurer with his recommendations. The reports shall include the name and address of each claimant, the particulars of the claim and the amount of the claim finally recommended if any. As soon as reasonably possible after the last day for filing claims, he shall present a list of all claims not already reported. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment values and the amounts owed. If the insurer has issued policies on the advance premium plan, the liquidator shall report the persons to whom, according to the records of the insurer, unearned premiums are owed and the amounts owed.
- (3) Allowance of claims. The court may approve, disapprove, or modify any report on claims by the liquidator, except that the liquidator's agreements with other parties shall be final and binding on the court on claims settled for \$500 or less. No claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits.

Section 8. KRS 304.33-600 is amended to read as follows:

If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state any assets within his control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under subsection (8)~~((7))~~ of KRS 304.33-430.

**Approved March 31, 2000**

## CHAPTER 256

(HB 5)

AN ACT relating to special agricultural license plates.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

- (1) *The owner or lessee of a motor vehicle registered under KRS 186.050(1), (3)(a), or (4)(a) may apply for a special agricultural license plate. The owner or lessee shall apply for the special agricultural license plate in the office of the county clerk in the county where the person lives. When the owner or lessee applies for a special agricultural license plate, the county clerk shall inform the owner or lessee that the person's application and state fee shall be sent to Frankfort to the Transportation Cabinet where it will be held for a period not to exceed one (1) year while the cabinet is waiting to receive a total of one thousand eight hundred (1,800) applications under subsection (2) of this section.*
- (2) *The Transportation Cabinet shall print special agricultural license plates if the cabinet has received one thousand eight hundred (1,800) applications and the accompanying state fee of twenty-two dollars (\$22) within a one (1) year period. If the cabinet has not received one thousand eight hundred (1,800) applications within one (1) year from the date the cabinet receives the first application for a special agricultural license plate, the cabinet shall refund the twenty-two dollar (\$22) state fee to the appropriate applicants.*
- (3) *Subject to the provisions of subsection (2) of this section, the initial application fee for the first one thousand eight hundred (1,800) special agricultural license plates printed by the Transportation Cabinet shall be twenty-five dollars (\$25). The twenty-five dollar (\$25) fee shall be divided as follows:*
  - (a) *The Transportation Cabinet shall receive a fee of twenty-two dollars (\$22) which includes the state fee to reflectorize the license plate under KRS 186.240(2)(c); and*
  - (b) *The county clerk shall receive a fee of three dollars (\$3).*

- (4) *The initial application fee for every special agricultural license plate printed by the Transportation Cabinet in excess of one thousand eight hundred (1,800) shall be twenty-five dollars (\$25). The twenty-five dollar (\$25) fee shall be divided as follows:*
- (a) *The Transportation Cabinet shall receive a fee of twelve dollars (\$12);*
  - (b) *The county clerk shall receive a fee of three dollars (\$3); and*
  - (c) *The county clerk shall remit a fee of ten dollars (\$10) to the Division of Marketing within the Kentucky Department of Agriculture, or its successor, which shall use the fee exclusively to carry out the provisions of subsection (9) of this section.*
- (5) *A special agricultural license plate shall annually be issued a renewal registration decal during the owner's or lessee's birth month. The annual renewal fee shall be twenty dollars (\$20) and shall be divided as follows:*
- (a) *The Transportation Cabinet shall receive a fee of twelve dollars (\$12), which includes the state fee to reflectorize the license plate under KRS 186.240(2)(c);*
  - (b) *The county clerk shall receive a fee of three dollars (\$3); and*
  - (c) *The county clerk shall remit a fee of five dollars (\$5) to the Division of Marketing within the Kentucky Department of Agriculture, or its successor, which shall use the fee exclusively to carry out the provisions of subsection (9) of this section.*
- (6) *Except as provided in this subsection, the special agricultural license plate shall be replaced on the same schedule that regular license plates are replaced by the Transportation Cabinet under KRS 186.240. A special agricultural license plate shall be replaced free of charge if:*
- (a) *The metal plate:*
    - 1. *Is destroyed in an accident;*
    - 2. *Deteriorates to a point that the lettering, numbering, or images on the face of the plate are not legible; or*
    - 3. *Is stolen; and*
  - (b) *The owner or lessee has not transferred the vehicle issued the plate during the current licensing period.*
- (7) *A person seeking a special agricultural license plate for a vehicle provided as part of his or her occupation shall conform to the requirements of KRS 186.050(14).*
- (8) *Upon the sale, transfer, or termination of a lease of a vehicle licensed under this section, the owner or lessee shall remove the special agricultural license plate and return it and the certificate of registration to the county clerk of the county where the owner or lessee lives. The county clerk shall reissue the owner or lessee a regular license plate and certificate of registration upon payment of a twelve dollar (\$12) state fee, which includes the state fee to reflectorize the license plate under KRS 186.240(2)(c), and a three dollar (\$3) county clerk fee. If the owner or lessee requests, the county clerk shall reissue the special agricultural license plate free of charge for use on any other vehicle of the same classification and category owned by the person during the current licensing period. If the owner or lessee has the special agricultural license plate reissued to another vehicle, the regular license plate that is being replaced shall be returned to the county clerk, who shall forward the plate to Frankfort.*
- (9) *The Division of Marketing within the Kentucky Department of Agriculture, or its successor, shall deposit all funds received from the sale of special agricultural license plates issued under subsections (4) and (5) of this section into a special trust and agency account. The account shall be used exclusively for marketing development to promote Kentucky agricultural products in both domestic and international markets.*
- (10) *License plates shall be the color and design selected by the Kentucky Commissioner of Agriculture. The commissioner may select up to three (3) designs of three (3) colors each. The name "Kentucky" shall appear on the special agricultural license plate. The cabinet may use any combination of letters or numerals as needed in the design.*



**CHAPTER 257****(HB 25)**

AN ACT relating to teachers.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

**(1) *The General Assembly hereby finds that:***

- (a) *Student achievement is directly related to the competency levels of the teachers and the teachers' ability to nurture student learning;***
- (b) *All students are entitled to have teachers who know the subjects they teach and who demonstrate skill for managing and monitoring student learning;***
- (c) *Teachers who meet entry-level standards need support and opportunities to develop higher-level skills throughout their teaching careers;***
- (d) *Certification through the National Board for Professional Teaching Standards is based on high and rigorous standards and provides a process of development and assessment of teachers' knowledge, skills and abilities embedded in classroom practices in the certificate field; and***
- (e) *Teachers who successfully meet the certification requirements through the National Board for Professional Teaching Standards can help strengthen the teaching profession within their schools and school districts by advising, assisting, and mentoring new teachers; by serving as role models and master teachers to student teachers; and by assisting other experienced teachers who seek national board certification.***

**(2) *The General Assembly establishes, on behalf of the public school teachers and students in the Commonwealth, a goal that by the year 2020 there will be at least one (1) national board certified teacher in every public school in Kentucky.***

SECTION 2. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 6 of this Act, unless the context otherwise requires:*

- (1) *"Mentor" means a highly skilled, experienced teacher who provides systematic and on-going support and assistance to other teachers in a school or school district to help them improve their teaching skills and practices;***
- (2) *"National Board for Professional Teaching Standards" and "national board" means a nonpartisan, independent, and nonprofit board composed of teachers and others that has developed a set of high and rigorous standards for accomplished teachers and that operates a national voluntary system to assess and certify teachers who meet their standards; and***
- (3) *"National board certification" means a demonstration by an experienced teacher of his or her teaching practice as measured against high and rigorous standards through a comprehensive assessment process administered by the National Board for Professional Teaching Standards.***

SECTION 3. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

**(1) *There is hereby established a "Teachers' National Certification Incentive Trust Fund" in the State Treasury for the purposes of:***

- (a) *Funding stipends for teachers to prepare for certification by the National Board for Professional Teaching Standards;***
- (b) *Reimbursing a portion of the certification fee to each teacher who is awarded national board certification;***
- (c) *Reimbursing local boards of education for persons who serve as substitute teachers for national board certification candidates; and***
- (d) *Funding stipends for national board certified teachers who serve as mentors to other teachers within the school district.***

- (2) *Appropriations by the General Assembly in each biennial budget for the purpose of supporting national board certification shall be credited to the fund and invested until needed. All money credited to the fund, including interest earned on money in the fund, shall be retained in the fund for reinvestment and used for the purposes of this section. Funds appropriated to the fund shall not lapse at the end of a fiscal year or a biennium.*
- (3) *The Education Professional Standards Board shall promulgate administrative regulations that establish the procedures for the administration of the funds as described in this section and the requirements for participating teachers and local boards of education.*
- (4) *Money in the fund shall be distributed to local boards of education and teachers by the Kentucky Department of Education in compliance with the administrative regulations promulgated by the board.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

- (1)
  - (a) *A teacher pursuing national board certification shall receive from the fund established under Section 3 of this Act a stipend of two hundred dollars (\$200) per day for two (2) days beyond the school contract year to prepare for the certification assessments.*
  - (b) *A local board of education shall provide five (5) days' released time during the school year for a teacher pursuing national board certification. The local board of education shall request reimbursement from the fund established under Section 3 of this Act for substitute teacher pay based on the local board of education salary schedule for substitute teachers and for stipends paid to a teacher described in subsection (3) of this section. A local board of education may, at its own expense, provide additional released time for teachers pursuing national board certification.*
  - (c) *If a teacher does not successfully complete all assessments required for national board certification during a school year, the provisions in this subsection may be applied to a second school year.*
- (2) *As of the effective date of this Act, a teacher who attains national board certification shall be reimbursed seventy-five percent (75%) of the certification fee for the initial ten (10) year certificate. Fees for renewal of the national board certificate shall be at the teacher's expense.*
- (3) *A national board certified teacher may receive a stipend in addition to his or her annual compensation for serving as a mentor to teachers within his or her school or school district. The Education Professional Standards Board shall promulgate administrative regulations by January 1, 2001, under which a local board of education, in cooperation with the school-based decision making council, may establish a mentoring program within a school to utilize national board certified teachers. The administrative regulations shall specify the conditions for the mentoring program as well as the amount of the stipend that will be provided to a teacher serving as a mentor.*

SECTION 5. A NEW SECTION OF KRS 157.310 TO 157.440 IS CREATED TO READ AS FOLLOWS:

*Notwithstanding any other statute to the contrary, a local board of education shall provide a public school teacher who has attained certification from the National Board for Professional Teaching Standards at the effective date of this Act or thereafter with an annual national board certification salary supplement of two thousand dollars (\$2,000) for the life of the certificate. The supplement shall be added to the teacher's base salary on the local board's single salary schedule and shall be considered in the calculation for contributions to the Kentucky Teachers' Retirement System. If a nationally certified teacher becomes no longer employed as a classroom teacher or a teacher mentor in the field of his or her national certification, the supplement shall cease. A local board of education shall request reimbursement for these purposes from the fund to support education excellence described in KRS 157.330.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

*Notwithstanding any other statute to the contrary, an experienced, out-of-state teacher shall qualify for a regular provisional certificate if the applicant:*

- (1) *Completes the application process;*
- (2) *Holds a valid certificate issued by the state where the applicant most recently taught; and*
- (3) *Holds a valid certificate issued by the National Board of Professional Teaching Standards.*

Section 7. KRS 157.320 is amended to read as follows:

As used in KRS 157.310 to 157.440, unless the context otherwise requires:

- (1) "Average daily attendance" means the aggregate days attended by pupils in a public school, adjusted for weather-related low attendance days if applicable, divided by the actual number of days the school is in session, after the five (5) days with the lowest attendance have been deducted.
  - (a) Aggregate days shall include, in addition to the aggregate number of days attended by a pupil who was suspended during a school year, the number of days the pupil was suspended, not to exceed ten (10) days in total for the school year; and
  - (b) Aggregate days shall include, in addition to the aggregate number of days attended by a pupil who was expelled for behavioral problems, the number of days the pupil was expelled up to a total of one hundred seventy-five (175) days. This total may extend into the next school year and shall be counted in the average daily attendance for the next year;
- (2) "Base funding level" means a guaranteed amount of revenue per pupil to be provided for each school district, to be used for regular operating and capital expenditures;
- (3) "Board" means the board of education of any county or independent school district;
- (4) "District" means any school district as defined by law;
- (5) "Elementary school" means a school consisting of the primary school program through grade eight (8) as defined in KRS 158.030, or any appropriate combination of grades within this range, as determined by the plan of organization for schools authorized by the district board;
- (6) "Support Education Excellence in Kentucky" means the level of educational services and facilities which is to be provided in each district from the public school fund;
- (7) "Kindergarten full-time equivalent pupil in average daily attendance" means each kindergarten pupil counted no more than one-half (1/2) day in the aggregate days attended by kindergarten pupils in a public school divided by the actual number of days school is in session after the five (5) days with the lowest attendance have been deducted. Kindergarten is the entry level of the primary program and shall be provided no less than the equivalent of one-half (1/2) day, five (5) days a week for a full school year for each kindergarten pupil;
- (8) "Public school fund" means the fund created by KRS 157.330 for use in financing education in public elementary and secondary schools;
- (9) "Administrative regulations of the Kentucky Board of Education" means those regulations which the Kentucky Board of Education may adopt upon the recommendation and with the advice of the chief state school officer. The chief state school officer shall recommend administrative regulations necessary for carrying out the purposes of KRS 157.310 to 157.440;
- (10) "Experience" means employment as a teacher, other than as a substitute or nursery school teacher, for a minimum of one hundred and forty (140) days during a school year in a public or nonpublic elementary or secondary school or college or university that is approved by the public accrediting authority in the state in which the teaching duties were performed. A teacher who is employed by a board for at least one hundred forty (140) days of a school year and who performs teaching duties for the equivalent of at least seventy (70) full school days during that school year, regardless of the schedule on which those duties were performed, shall be credited with one (1) year of experience. A teacher who is employed by a board for at least one hundred forty (140) days during each of two (2) school years and who performs teaching duties for the equivalent of at least seventy (70) full school days during those years shall be credited with one (1) year of experience. No more than one (1) year of experience shall be credited for the performance of teaching duties during a single school year;
- (11) "Salary schedule summary" means the summary of all salaries paid teachers by the board from the single salary schedule. Teachers shall be grouped by training and experience and by source of funds;
- (12) "Secondary school" means a school consisting of grades seven (7) through twelve (12), or any appropriate combination of grades within this range as determined by the plan of organization for schools authorized by the district board. When grades seven (7) through nine (9) or ten (10) are organized separately as a junior high school, or grades ten (10) through twelve (12) are organized separately as a senior high school and are conducted in separate school plant facilities, each shall be considered a separate secondary school for the purposes of KRS 157.310 to 157.440;
- (13) "Single salary schedule" means a schedule adopted by a local board from which all teachers are paid for one hundred eighty-five (185) days and is based on training, experience, and such other factors as the Kentucky

Board of Education may approve and which does not discriminate between salaries paid elementary and secondary teachers. If the budget bill contains a minimum statewide salary schedule, no teacher shall be paid less than the amount specified in the biennial budget salary schedule for the individual teacher's educational qualifications and experience;

- (14) "Teacher" means any regular or special teacher, principal, supervisor, superintendent, assistant superintendent, librarian, director of pupil personnel, or other member of the teaching or professional staff engaged in the service of the public elementary and secondary school for whom certification is required as a condition of employment;
- (15) "Percentage of attendance" means the aggregate days attended by pupils in a public school for the school year divided by the aggregate days' membership of pupils in a public school for the school year;
- (16) "Middle school" means a school consisting of grades five (5) through eight (8) or any appropriate combination of grades as determined by the plan of organization for schools authorized by the district board;~~and~~
- (17) ***"National board certification salary supplement" means an annual supplement added for the life of the certificate to the base salary of a teacher who attains national board certification; and***
- (18) "Weather-related low attendance day" means a school day on which the district's attendance falls below the percentage of average daily attendance for the prior year due to inclement weather. The district shall submit a request to substitute the prior year's average daily attendance for its attendance on up to ten (10) designated days, along with documentation that the low attendance was due to inclement weather, for approval by the Kentucky Board of Education in accordance with its administrative regulations.

**Approved March 31, 2000**

## **CHAPTER 258**

**(HB 178)**

AN ACT relating to early mathematics placement testing.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 and 2 of this Act, unless the context otherwise requires:*

- (1) ***"Program" means the Kentucky Early Mathematics Testing Program; and***
- (2) ***"Participating colleges or universities" means all public postsecondary education institutions in Kentucky and any private college or university in Kentucky that chooses to participate in the Kentucky Early Mathematics Testing Program.***

SECTION 2. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) ***The Kentucky Early Mathematics Testing Program is created to lower the number of high school graduates in Kentucky who require remediation in mathematics upon enrollment in postsecondary education institutions by providing information to primarily high school sophomores and juniors statewide regarding their level of mathematics knowledge in relation to standards required for community and technical colleges and university level mathematics courses early enough for students to address deficiencies while still in high school.***
- (2) ***The testing program shall be a computer website-based program that incorporates a variety of diagnostic mathematics tests to identify knowledge and skills needed for postsecondary education courses.***
- (3) ***The testing program shall be developed and conducted by a public university. The Council on Postsecondary Education, with the advice of the Department of Education, shall develop a process to solicit, review, and select a proposal for the development and implementation of the computer website-based testing program. The council shall approve the location of the program at a public university no later than September 1, 2000. The university shall be the fiscal agent for the testing program and shall receive the funds appropriated by the General Assembly.***

- (4) *The program shall be available to all interested Kentucky public and private high school students in grades ten (10) and eleven (11). Student participation in the program shall be voluntary, and program test scores shall not be:*
- (a) *Placed on a student's high school transcript; or*
  - (b) *Used by postsecondary education institutions in the admissions process.*
- (5) *The computer website testing program shall be available to all Kentuckians for evaluation of an individual's mathematics knowledge and skills.*
- (6) *The program shall encourage the active participation of all public and private high schools in Kentucky.*
- (7) *The computer website testing program shall:*
- (a) *Develop or adopt appropriate tests to determine the level of mathematics knowledge of high school students in relation to the standards of placement tests given at the community and technical colleges and undergraduate public universities. In the development or adoption of the tests, consideration shall be given to the program of studies and the minimum requirements for high school graduation established in KRS 156.160 and the alignment of these standards with postsecondary course standards;*
  - (b) *Develop a structure to permit each participating student the opportunity to take the computer-based test at school in the presence of school personnel or at the student's home in the presence of his or her parents or guardian;*
  - (c) *Score the completed tests and provide the test scores and diagnostic information on a student's knowledge and skills electronically to the student and the high school upon completion of the test in the form of electronic mail or printable files or screens.*
  - (d) *Provide the following information for up to three (3) participating postsecondary education institutions specified by the student as a possible college choice:*
    - 1. *The student's test score;*
    - 2. *A list of mathematics courses required for the student's intended major at a postsecondary education institution;*
    - 3. *A list of any remedial courses the student might be required to take based on the student's current level of mathematics knowledge as demonstrated on the test;*
    - 4. *The estimated cost of the remedial courses the student might be required to take; and*
    - 5. *The high school courses and the specific mathematical concepts or functions a student should consider studying in order to address any deficiencies;*
  - (e) *Encourage the chair of the mathematics department or the academic dean at each of the participating postsecondary education institutions specified by the student as a possible college choice to send a personalized letter to the student that:*
    - 1. *Encourages the student to take additional high school mathematics courses to address deficiencies in mathematics knowledge; or*
    - 2. *Congratulates the student who does well on the test for his or her achievement and encourages continued study in mathematics; and*
  - (f) *Develop and implement a strategy to raise awareness and encourage participation in the program, targeting high school students, parents, high school faculty and administrators, mathematics departments or faculty at postsecondary education institutions, and the general public.*
- (8) *The Kentucky Department of Education shall provide assistance as necessary to the Kentucky Early Mathematics Testing Program to implement the provisions of Sections 1 and 2 of this Act.*
- (9) *The public university that conducts the testing program shall submit an annual report to the Kentucky Board of Education and the Council on Postsecondary Education regarding its activities, and the effects of the program on levels of remediation required by participating students.*

**CHAPTER 259****(HB 254)**

AN ACT relating to geography education.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

**(1) *The General Assembly hereby finds that:***

- (a) *The decline in geographic literacy has been widely recognized;***
  - (b) *Geographic knowledge is essential to social, political, and environmental leadership potential and civic involvement; and***
  - (c) *Support should be given to local efforts to restore geography education to the school curriculum, train teachers, prepare teaching materials, and raise public awareness of the importance of geography education.***
- (2) *The General Assembly establishes, on behalf of the citizens of the Commonwealth, a goal that the next generation of students in Kentucky will graduate with the geographic skills and knowledge that will guarantee their readiness to meet the economic, environmental, and civic challenges of the future.***

SECTION 2. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Geographic Education Board is established to provide leadership and planning for geography education for the population of Kentucky through the efforts of elementary, secondary, and postsecondary educators, government agencies, and public interests. The board shall be an independent agency and be attached to the Education, Arts, and Humanities Cabinet for administrative purposes.***
- (2) *The twelve (12) member board shall be appointed to two (2) year terms, initially appointed by the Governor, and composed of the following members:***
- (a) *Three (3) representatives from postsecondary institutions;***
  - (b) *One (1) representative from the Council for Social Sciences;***
  - (c) *Six (6) representatives from elementary and secondary schools;***
  - (d) *One (1) representative of the Department of Education; and***
  - (e) *One (1) representative of the Council on Postsecondary Education.***
- (3) *The board shall select from its membership a chair and establish bylaws, including bylaws governing board membership and length of terms. Upon expiration of the initial appointments and adoption of bylaws governing membership and length of terms by the board, the board shall be self-perpetuating, and the appointment and length of terms shall be made in accordance with the board's bylaws. Vacancies that occur before the expiration of the initial appointments shall be filled by the Governor for the remaining term of the vacancy.***
- (4) *The board members shall receive no compensation but shall be reimbursed for actual expenses incurred in accordance with state procedures and policies.***

SECTION 3. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

*The functions of the board shall be to:*

- (1) *Create an annual plan to improve assessment, curriculums, outreach, and professional development related to geography education in Kentucky;***
- (2) *Establish a competitive system for awarding grants for programs to encourage and support geography education;***
- (3) *Seek and receive private support to fund state programs to encourage and support geography education;***

- (4) *Prepare an annual report of its activities and annual plan, forward copies of the report to the Governor, the Legislative Research Commission, the Kentucky Board of Education, and the Council on Postsecondary Education, and make copies available to citizens of the Commonwealth; and*
- (5) *Make recommendations and seek changes through administrative regulations, legislation, and other means to promote geography education in Kentucky.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky geography education trust fund is established in the State Treasury to award grants for programs that encourage and support geography education in Kentucky. Funds appropriated by the General Assembly in each biennial budget for the purpose of supporting geography education shall be credited to the fund and invested until needed. The fund may also receive gifts, grants from private and public sources, and federal funds. All money credited to the fund, including interest earned on money in the fund, shall be retained in the fund for reinvestment and used for geography education purposes as defined by the Kentucky Geographic Education Board.*
- (2) *Money appropriated to the fund shall not lapse at the end of a fiscal year or a biennium.*

Approved March 31, 2000

## CHAPTER 260

(HB 282)

AN ACT relating to special YMCA license plates.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

- (1) *The owner or lessee of a motor vehicle registered under the provisions of KRS 186.050(1) or (3)(a) may apply for a special YMCA license plate in the office of the county clerk in the county where the person lives. At the time the owner or lessee applies for a special YMCA license plate, the person shall include with the application the initial state fee of fifty dollars (\$50). The county clerk shall inform the owner or lessee that the person's application and state fee shall be sent to Frankfort to the Transportation Cabinet where it may be held for a period not to exceed one (1) year while the cabinet is waiting to receive sufficient applications subject to the provisions of subsection (2) of this section.*
- (2) *The Transportation Cabinet shall be required to begin designing and printing special YMCA license plates after the cabinet has received nine hundred (900) applications accompanied by a fifty dollar (\$50) state fee within a one (1) year period. The purpose of the fifty dollar (\$50) state fee is to offset computer programming costs incurred by the cabinet. Unless the cabinet is requested in writing to the contrary, if the cabinet has not received nine hundred (900) applications within one (1) year from the date the cabinet receives the first application for a special YMCA license plate, the cabinet shall refund the fifty dollar (\$50) state fee to the appropriate applicants.*
- (3) *Subject to the provisions of subsection (2) of this section, the total initial application fee for the first nine hundred (900) special YMCA license plates printed by the Transportation Cabinet shall be sixty-three dollars (\$63). The sixty-three dollar (\$63) fee shall be divided as follows:*
  - (a) *The Transportation Cabinet shall receive a fee of fifty dollars (\$50) that includes the state fee to reflectorize the license plate under KRS 186.240(2)(c);*
  - (b) *The county clerk shall receive a fee of three dollars (\$3); and*
  - (c) *The remaining ten dollar (\$10) fee collected from the applicant shall be remitted to the Transportation Cabinet to be used for YMCAs across the Commonwealth subject to the provisions of subsection (9) of this section.*
- (4) *The initial application fee for each special YMCA license plate printed by the Transportation Cabinet in excess of nine hundred (900) shall be twenty-five dollars (\$25). The twenty-five dollar (\$25) fee shall be divided as follows:*
  - (a) *The Transportation Cabinet shall receive a fee of twelve dollars (\$12) that includes the state fee to reflectorize the license plate under KRS 186.240(2)(c);*

- (b) *The county clerk shall receive a fee of three dollars (\$3); and*
  - (c) *The remaining ten dollar (\$10) fee collected from the applicant shall be remitted to the Transportation Cabinet to be used for YMCAs across the Commonwealth subject to the provisions of subsection (9) of this section.*
- (5) *A special YMCA license plate shall annually be issued a renewal registration decal during the owner's or lessee's birthmonth. The annual renewal fee shall be twenty dollars (\$20) and shall be divided as follows:*
  - (a) *The Transportation Cabinet shall receive a fee of twelve dollars (\$12) that includes the state fee to reflectorize the license plate under KRS 186.240(2)(c);*
  - (b) *The county clerk shall receive a fee of three dollars (\$3); and*
  - (c) *The remaining five dollar (\$5) fee collected from an applicant renewing an annual registration shall be remitted to the Transportation Cabinet to be used for YMCAs across the Commonwealth subject to the provisions of subsection (9) of this section.*
- (6) *Except as provided in this subsection, the special YMCA license plate shall be replaced on the same schedule that regular license plates are replaced by the Transportation Cabinet under KRS 186.240. A special YMCA license plate shall be replaced free of charge if the metal plate is destroyed in an accident, deteriorates to a point that the lettering, numbering, or images on the face of the plate are not legible, or the plate is stolen, if the owner or lessee has not transferred the vehicle issued the plate during the current licensing period.*
- (7) *A person seeking a special YMCA license plate for a vehicle provided as part of the person's occupation shall conform to the requirements of KRS 186.050(14).*
- (8) *Upon the sale, transfer, or termination of a lease of a vehicle licensed under this section, the owner or lessee shall remove the special YMCA license plate and return it and the certificate of registration to the county clerk. The county clerk shall reissue the owner or lessee a regular license plate and certificate of registration upon payment of a twelve dollar (\$12) state fee that includes the state fee to reflectorize the license plate under KRS 186.240(2)(c) and a three dollar (\$3) county clerk fee. If the owner or lessee requests, the county clerk shall reissue the special YMCA license plate free of charge for use on any other vehicle of the same classification and category owned by the person during the current licensing period. If the owner or lessee has the special YMCA license plate reissued to another vehicle, the regular license plate that is being replaced shall be returned to the county clerk who shall forward the plate to Frankfort.*
- (9) *All funds received by the Transportation Cabinet under subsection (3)(c), (4)(c), and (5)(c) of this section shall be deposited into a YMCA program fund that is established in the state road fund. Money in the YMCA program fund shall be used as provided in this subsection. If at the end of a fiscal year money remains in the YMCA program fund, it shall be retained in the fund and used as provided in this subsection and shall not revert to the road fund. All interest and income earned on money in the YMCA program fund shall be retained by the Transportation Cabinet to help offset the costs associated with administering this subsection.*
  - (a) *At the end of each fiscal year the cabinet shall, after deducting interest and income earned during the year, disburse all funds remaining in the YMCA program fund to the YMCA in each county where a YMCA is located. If a county has more than one (1) YMCA branch, the cabinet shall disburse the funds to the YMCA association representing all branches in the county. The YMCA association shall be responsible for equally distributing funds under this subsection to all YMCA branch offices within the county.*
  - (b) *The amount of money each county YMCA shall receive under this subsection shall be proportionate to the amount of money contributed to the YMCA program fund from sales of the special YMCA license plates in the county.*
  - (c) *A person wishing to purchase a special YMCA license plate who lives in a county that does not have a YMCA shall be permitted on the application form to designate a county with a YMCA where the proceeds from the person's purchase shall be credited for purposes of distribution under this subsection. The plate issued under this paragraph shall designate the county where the person's motor vehicle is registered, not the county designated on the application form to receive the proceeds from the person's purchase of the YMCA plate.*
- (10) *Special YMCA license plates shall be printed in the following manner:*



- (a) *Each plate shall be designed with the word "Kentucky" printed in black and centered at the top of the plate;*
- (b) *The annual registration decal shall be placed in the upper right hand corner of the plate;*
- (c) *Centered in the middle of the plate below the word "Kentucky" shall be a series of four (4) numbers beginning with "0001" printed in black;*
- (d) *To the left of the four (4) numbers shall be the YMCA registered trademark logo printed in PMS 185 red and black;*
- (e) *Centered under the logo shall be the letters "YMCA" and centered under "YMCA" shall be the phrase "We build strong kids, strong families, strong communities."; and*
- (f) *Centered under the four (4) numbers shall be the county name.*

**Approved March 31, 2000**

## CHAPTER 261

(HB 347)

AN ACT relating to public school calendars.

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

Section 1. KRS 158.070 is amended to read as follows:

- (1) The minimum school term shall be one hundred eighty-five (185) days, including no less than the equivalent of one hundred seventy-five (175) six (6) hour instructional days. A board of education may extend its term beyond the minimum term.
- (2) Any local board of education operating its schools on a year-round school program basis shall conform with administrative regulations promulgated and adopted by the Kentucky Board of Education upon the recommendation of the chief state school officer, which regulations must be in conformity with the following criteria:
  - (a) The year-round school program shall be operated on a fiscal year beginning July 1 and ending June 30;
  - (b) A pupil's required attendance in school shall be for at least the minimum instructional term; and
  - (c) No teacher shall be required to teach more than the minimum term during the school year.
- (3)
  - (a) Each local board of education shall use four (4) days of the minimum school term for professional development and collegial planning activities for the professional staff without the presence of pupils pursuant to the requirements of KRS 156.095.
  - (b) A local board may approve a school's flexible professional development plan that permits teachers or other certified personnel within a school to participate in professional development activities outside the days scheduled in the school calendar or the regularly scheduled hours in the school work day and receive credit towards the four (4) day professional development requirement within the minimum one hundred and eighty-five (185) days that a teacher shall be employed. A flexible schedule option shall be reflected in the school's professional development component within the school improvement plan or consolidated plan and approved by the local board. Credit for approved professional development activities may be accumulated in periods of time other than full day segments.
  - (c) The local board of each school district may use up to a maximum of four (4) days of the minimum school term for holidays; provided, however, any holiday which occurs on Saturday may be observed on the preceding Friday.
  - (d) Each local board may use two (2) days for planning activities without the presence of pupils.
  - (e) Each local board may use the number of days deemed necessary for:
    - 1. National or state disaster or mourning when proclaimed by the President of the United States or the Governor of the Commonwealth of Kentucky;
    - 2. Local disaster which would endanger the health or safety of children; and

3. Mourning when so designated by the local board of education and approved by the Kentucky Board of Education upon recommendation of the chief state school officer.
- (4) The Kentucky Board of Education, upon recommendation of the chief state school officer, shall adopt administrative regulations governing the use of school days, including days missed from the regular school day as a result of local disaster, as defined in subsection (3)(e)2. of this section, and regulations setting forth the guidelines and procedures to be observed for the approval of the days utilized for the opening and closing of school and the days utilized for professional development and planning activities for the professional staff.
- (5) (a) In setting the school calendar, school shall be closed for two (2) consecutive days for the purpose of permitting professional school employees to attend statewide professional meetings. These two (2) days for statewide professional meetings shall be scheduled to begin with the first Thursday after Easter, or upon request of the statewide professional education association having the largest paid membership, the chief state school officer may designate alternate dates. The chief state school officer shall designate one (1) additional day during the school year when schools shall be closed to permit professional school employees to participate in regional or district professional meetings. These three (3) days so designated for attendance at professional meetings shall not be counted as a part of the minimum school term. School shall be closed on the day of a regular election, and that day may be used for professional development activities, professional meetings, or parent-teacher conferences.
- (b) *All schools shall be closed on the third Monday of January in observance of the birthday of Martin Luther King, Jr. Districts may:*
  1. *Designate the day as one (1) of the four (4) holidays permitted under subsection (3)(c) of this section; or*
  2. *Not include the day in the minimum school term specified in subsection (1) of this section.*
- (6) Students applying for excused absence for attendance at the Kentucky State Fair shall be granted one (1) day of excused absence.
- (7) Schools shall provide continuing education for those students who are determined to need additional time to achieve the outcomes defined in KRS 158.6451, and schools shall not be limited to the minimum school term in providing this education. Continuing education time may include extended days, extended weeks, or extended years. A local board of education may adopt a policy requiring its students to participate in continuing education. The local policy shall set out the conditions under which attendance will be required and any exceptions which are provided. The Kentucky Board of Education shall promulgate administrative regulations establishing criteria for the allotment of grants to local school districts. These grants shall be allotted to school districts to provide instructional programs for pupils who are identified as needing additional time to achieve the outcomes defined in KRS 158.6451. A school district that has a school operating a model early reading program under KRS 158.792 may use a portion of its grant money as part of the matching funds to provide individualized or small group reading instruction to qualified students outside of the regular classroom during the school day.
- (8) Notwithstanding any other statute, each school term shall include no less than the equivalent of the minimum number of instructional days required by this section.

Section 2. KRS 118.025 is amended to read as follows:

- (1) Except as otherwise provided by law, voting in all elections shall be by secret ballot on voting machines.
- (2) The general laws applying to regular, special, primary, and runoff primary elections shall apply to elections conducted with the use of voting machines, and all provisions of the general laws applying to the custody of ballot boxes shall apply, as far as applicable, to the custody of the voting machine.
- (3) Primary elections for the nomination of candidates or slates of candidates to be voted for at the next regular election shall be held on the first Tuesday after the fourth Monday in May of each year.
- (4) A runoff primary shall be held thirty-five (35) days after the date of the May primary, if it shall be necessary, pursuant to KRS 118.245, unless that date falls on a holiday; in that case, a runoff primary shall be held on the succeeding Tuesday. However, if either a primary election is contested or a recount of the votes cast in a primary is requested, a runoff primary shall be held on the first Tuesday following the thirty-fifth day following the conclusion of any contest proceeding or recount, if it shall be necessary, unless that date falls on a holiday;

in that case, a runoff primary shall be held on the succeeding Tuesday. The election of all officers of all governmental units shall be held on the first Tuesday after the first Monday in November.

- (5) If the law authorizes the calling of a special election on a day other than the day of the regular election in November, the election shall be held on a Tuesday.
- (6) If the law requires that a special election be held within a period of time during which the voting machines must be locked as required by KRS 117.295, the special election shall be held on the fourth Tuesday following the expiration of the period during which the voting machines are locked.
- ~~[(7) All public schools shall be closed on the day of any regular election.]~~

Section 3. KRS 158.060 is amended to read as follows:

- (1) Twenty (20) school days, or days in which teachers are actually employed in the schoolroom, shall constitute a school month in the common schools.~~[ School shall be closed on the day of a regular election. The legal holiday designated by the Kentucky Board of Education to be observed may include the first Tuesday after the first Monday in November of each year and shall be counted as a school day.]~~
- (2) Each full-time teacher shall be provided with a duty-free lunch period each day during the regularly scheduled student lunch period. The duty-free lunch period shall be not less than the length of the lunch period specified in the school calendar approved by the chief state school officer. A full-time teacher may be assigned to lunch room duty during the regularly scheduled student lunch period only for an amount of time equal to the noninstructional time in excess of fifty-five (55) minutes included in the teacher's daily schedule. The calculation of noninstructional time shall not include the teacher's duty-free lunch period, the time teachers are required to be at school prior to the start of the student's instructional day, or the time teachers are required to remain at school after the students are dismissed.
- (3) Except for children with disabilities and children attending the primary school program who may attend a program of less than six (6) hours per day under policy adopted by the local school district board of education and approved by the commissioner of education and children attending a school district where the local board has approved a schedule that provides at least the equivalent of six (6) hours of daily instruction during the school year, a minimum of six (6) hours of actual school work shall constitute a school day. Kindergarten programs may be operated for less than six (6) hours without state board approval. The Kentucky Board of Education, upon recommendation of the chief state school officer, shall develop and approve regulations governing make up by school districts of whole days missed due to emergencies, or partial days missed as a result of shortening regularly scheduled school days due to emergencies.
- (4) Teachers shall be provided additional time for nonteaching activities. The nonteaching time shall be used to provide teachers opportunities for professional development activities as provided in KRS 156.095, instructional planning, school-based decision making as provided in KRS 160.345, curriculum development, and outreach activities involving their students' families and the community.

**Approved March 31, 2000**

## CHAPTER 262

**(HB 390)**

AN ACT relating to health insurance.

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

SECTION 1. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 17 of this Act:*

- (1) (a) *"Adverse determination" means a determination by an insurer or its designee that the health care services furnished or proposed to be furnished to a covered person are:*
  1. *Not medically necessary, as determined by the insurer, or its designee or experimental or investigational, as determined by the insurer, or its designee; and*
  2. *Benefit coverage is therefore denied, reduced, or terminated.*

- (b) *"Adverse determination" does not mean a determination by an insurer or its designee that the health care services furnished or proposed to be furnished to a covered person are specifically limited or excluded in the covered person's health benefit plan;*
- (2) *"Authorized person" means a parent, guardian, or other person authorized to act on behalf of a covered person with respect to health care decisions;*
- (3) *"Concurrent review" means utilization review conducted during a covered person's course of treatment or hospital stay;*
- (4) *"Covered person" means a person covered under a health benefit plan;*
- (5) *"External review" means a review that is conducted by an independent review entity which meets specified criteria as established in Sections 12, 13, and 14 of this Act;*
- (6) *"Health benefit plan" means the document evidencing and setting forth the terms and conditions of coverage of any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; provider sponsored integrated health delivery network policy or certificate; a self-insured policy or certificate or a policy or certificate provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; health maintenance organization contract; or any health benefit plan that affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky, and does not include policies covering only accident, credit, dental, disability income, fixed indemnity medical expense reimbursement policy, long-term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance, student health insurance offered by a Kentucky-licensed insurer under written contract with a university or college whose students it proposes to insure, medical expense reimbursement policies specifically designed to fill gaps in primary coverage, coinsurance, or deductibles and provided under a separate policy, certificate, or contract, or coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code; and for purposes of Sections 1 to 17 of this Act includes short-term coverage policies.*
- (7) *"Independent review entity" means an individual or organization certified by the department to perform external reviews under Sections 12, 13, and 14 of this Act. An independent review entity which is accredited by the National Commission on Quality Assurance, the American Accreditation Health Care Commission, or another nationally recognized accreditation organization as identified by the department shall be deemed certified by the department;*
- (8) *"Insurer" means any of the following entities authorized to issue health benefit plans as defined in subsection (6) of this section: an insurance company, health maintenance origination; self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA; provider-sponsored integrated health delivery network; self-insured employer-organized association; nonprofit hospital, medical-surgical, or health service corporation; or any other entity authorized to transact health insurance business in Kentucky;*
- (9) *"Internal appeals process" means a formal process, as set forth in Section 9 of this Act, established and maintained by the insurer, its designee, or agent whereby the covered person, an authorized person, or a provider may contest an adverse determination rendered by the insurer, its designee, or private review agent;*
- (10) *"Private review agent" or "agent" means a person or entity performing utilization review that is either affiliated with, under contract with, or acting on behalf of any insurer or other person providing or administering health benefits to citizens of this Commonwealth. "Private review agent" or "agent" does not include an independent review entity which performs external review of adverse determinations;*
- (11) *"Prospective review" means utilization review that is conducted prior to a hospital admission or a course of treatment;*
- (12) *"Provider" shall have the same meaning as set forth in KRS 304.17A-005;*

- (13) *"Qualified personnel" means licensed physician, registered nurse, licensed practical nurse, medical records technician, or other licensed medical personnel who through training and experience shall render consistent decisions based on the review criteria.*
- (14) *"Registration" means an authorization issued by the department to an insurer or a private review agent to conduct utilization review.*
- (15) *"Retrospective review" means utilization review that is conducted after health care services have been provided to a covered person. "Retrospective review" does not include the review of a claim that is limited to an evaluation of reimbursement levels, or adjudication of payment;*
- (16) *"Utilization review" means a review of the medical necessity and appropriateness of hospital resources and medical services given or proposed to be given to a covered person for purposes of determining the availability of payment. Areas of review include concurrent, prospective, and retrospective review.*
- (17) *"Utilization review plan" means a description of the procedures governing utilization review activities performed by an insurer or a private review agent.*

SECTION 2. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*Sections 1 to 17 of this Act shall apply to any insurer that covers citizens of the Commonwealth under a health benefit plan. An insurer shall maintain written procedures for:*

- (1) *Determining whether a requested service, treatment, drug, or device is covered under the terms of a covered person's health benefit plan;*
- (2) *Making utilization review determinations; and*
- (3) *Notifying covered persons, authorized persons, and providers acting on behalf of covered persons of its determinations.*

SECTION 3. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Sections 1, 2, 3, 4, 5, 6, 7, and 8 of this Act set forth the requirements and procedures regarding utilization review and shall apply to:*
  - (a) *Any insurer or its private review agent that provides or performs utilization review in connection with a health benefit plan; and*
  - (b) *Any private review agent that performs utilization review functions on behalf of any person providing or administering health benefit plans.*
- (2) *Where an insurer or its agent provides or performs utilization review, and in all instances where internal appeals as set forth in Section 9 of this Act, are involved, the insurer or its agent shall be responsible for:*
  - (a) *Monitoring all utilization reviews and internal appeals carried out by or on behalf of the insurer;*
  - (b) *Ensuring that all requirements of Sections 1 to 17 of this Act are met;*
  - (c) *Ensuring that all administrative regulations promulgated in accordance with Sections 5, 7, and 15 of this Act are complied with; and*
  - (d) *Ensuring that appropriate personnel have operational responsibility for the performance of the insurer's utilization review plan.*
- (3) *A private review agent that operates solely under contract with the federal government for utilization review or patients eligible for hospital services under Title XVIII of the Social Security Act shall not be subject to the registration requirements set forth in Sections 4, 5, and 7 of this Act.*

SECTION 4. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *An insurer or private review agent shall not provide or perform utilization reviews without being registered with the department. A registered insurer or private review agent shall:*

- (a) *Have available the services of sufficient numbers of registered nurses, medical records technicians, or similarly qualified persons supported by licensed physicians with access to consultation with other appropriate physicians to carry out its utilization review activities;*
- (b) *Ensure that only licensed physicians shall:*
  - 1. *Make a utilization review decision to deny, reduce, limit, or terminate a health care benefit or to deny, or reduce payment for a health care service because that service is not medically necessary, experimental, or investigational except in the case of a health care service rendered by a chiropractor or optometrist where the denial shall be made respectively by a chiropractor or optometrist duly licensed in Kentucky; and*
  - 2. *Supervise qualified personnel conducting case reviews;*
- (c) *Have available the services of sufficient numbers of practicing physicians in appropriate specialty areas to assure the adequate review of medical and surgical specialty and subspecialty cases;*
- (d) *Not disclose or publish individual medical records or any other confidential medical information in the performance of utilization review activities except as provided in the Health Insurance Portability and Accountability Act Subtitle F sec. 261-264 and 45 C.F.R. sections 160 to 164 and other applicable laws and administrative regulations;*
- (e) *Provide a toll free telephone line for covered persons, authorized persons, and providers to contact the insurer or private review agent and be accessible to covered persons, authorized persons, and providers for forty (40) hours a week during normal business hours in this state;*
- (f) *Be available twenty-four (24) hours a day, seven (7) days a week to conduct:*
  - 1. *Preadmission review of an emergency admission, if preauthorization is required for emergency admissions or use of an emergency room;*
  - 2. *Preauthorization of weekend admissions to a hospital, or to review services delivered on the weekend or after normal business hours, if the covered person is subject to preauthorization on weekends or after normal business hours; and*
  - 3. *Review of a patient's continued hospitalization, if a prior authorization will expire on a weekend;*
- (g) *Provide decisions to covered persons, authorized persons, and all providers on appeals of adverse determinations and coverage denials of the insurer or private review agent, in accordance with this section and administrative regulations promulgated in accordance with Section 5 of this Act;*
- (h) *Provide a utilization review decision:*
  - 1. *Within twenty-four (24) hours of a request for:*
    - a. *Preadmission review of a hospital admission, unless additional information is needed;*
    - b. *Preauthorization of treatment when the covered person is already hospitalized; or*
    - c. *Retrospective review of an emergency hospital admission;*
  - 2. *Within two (2) business days of a receipt of a request for preauthorization for a treatment, procedure, drug, or device;*
  - 3. *Within twenty-four (24) hours of receipt of a request for review of a covered person's continued hospital stay and prior to the time when a previous authorization for hospital care will expire; and*
  - 4. *Within twenty (20) business days of the receipt of requested medical information when the insurer or private review agent has initiated a retrospective review;*
- (i) *Provide written notice of review decisions to the covered person, authorized person, and providers. An insurer or agent that denies coverage or reduces payment for a treatment, procedure, drug, or device shall include in the written notice:*
  - 1. *A statement of the specific medical and scientific reasons for denial or reduction of payment;*

2. *The name, state of licensure, medical license number, and the title of the reviewer making the decision;*
  3. *A description of other alternative treatments, services, or supplies covered by the health benefit plan; and*
  4. *Instructions for initiating or complying with the insurer's internal appeal procedure, as set forth in Section 9 of this Act, stating, at a minimum, whether the appeal shall be in writing, time limitations, or schedules for filing appeals, and the name and phone number of a contact person who can provide additional information;*
- (j) *Afford participating physicians an opportunity to review and comment on all medical and surgical and emergency room protocols, respectively, of the insurer and afford other participating providers an opportunity to review and comment on all of the insurer's protocols that are within the provider's legally authorized scope of practice; and*
  - (k) *Comply with its own policies and procedures on file with the department.*
- (2) *The insurer's failure to make a determination and provide written notice within the time frames set forth in this section shall be deemed to be an adverse determination by the insurer for the purpose of initiating an internal appeal as set forth in Section 9 of this Act. This provision shall not apply where the failure to make the determination or provide the notice results from circumstances which are documented to be beyond the insurer's control.*
  - (3) *An insurer or private review agent shall submit a copy of any changes to its utilization review policies or procedures to the department. No change to policies and procedures shall be effective until thirty (30) days after it has been filed with and approved by the commissioner.*
  - (4) *A private review agent shall provide to the department the names of the entities for which the private review agent is performing utilization review in this state. Notice shall be provided within thirty (30) days of any change.*

SECTION 5. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*The department shall promulgate emergency administrative regulations regarding utilization review and internal review, including the specification of information required of insurers and private review agents which shall, at a minimum, include:*

- (1) *A utilization review plan that includes information utilized for conducting preadmission, admission, readmission review, preauthorization, continued stay authorization, and retrospective review that, for each type of review, includes:*
  - (a) *Utilization review policies and procedures to evaluate proposed or delivered medical services;*
  - (b) *Time frames for review;*
  - (c) *A written summary describing the review process and required forms;*
  - (d) *Documentation of qualifications of personnel who developed the specific utilization review procedures relating to specialty and subspecialty areas;*
  - (e) *Descriptions and names of review criteria upon which utilization review decisions are based; and*
  - (f) *Additional standards, if any, for the consideration of special circumstances.*
- (2) *The type and qualifications of the personnel either employed or under contract to perform utilization review;*
- (3) *Assurance that a toll-free line will be provided that covered persons, authorized persons, and providers may use to contact the insurer or private review agent;*
- (4) *The policies and procedures to ensure that a representative of the insurer or private review agent shall be reasonably accessible to covered persons, authorized persons, and providers at least forty (40) hours per week during normal business hours;*
- (5) *The policies and procedures to ensure that all applicable state and federal laws to protect the confidentiality of individual medical records are followed;*

- (6) *A copy of the materials designed to inform covered persons, authorized persons, and providers of the toll-free number and the requirements of the utilization review plan;*
- (7) *A list of the entities for which the private review agent is performing utilization review in this state; and*
- (8) *Evidence of compliance or the ability to comply with the requirements and procedures established regarding utilization review and the administrative regulations promulgated thereunder.*

SECTION 6. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*A utilization review decision shall not retrospectively deny coverage for health care services provided to a covered person when prior approval has been obtained from the insurer or its designee for those services, unless the approval was based upon fraudulent, materially inaccurate, or misrepresented information submitted by the covered person, authorized person, or the provider.*

SECTION 7. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall, through the promulgation of emergency administrative regulations, develop a process:*
  - (a) *For the review of applications for registration of insurers or private review agents seeking to conduct utilization reviews;*
  - (b) *For the review of applications for insurers or private review agents seeking registration renewal to continue as a utilization review entity;*
  - (c) *Ensuring that no registration shall be approved unless the commissioner has documentation or findings that all applicants seeking registration or renewal to conduct utilization review are in compliance with the requirements and procedures established regarding utilization review, and as to renewals, have complied with Sections 1 to 17 of this Act and administrative regulations promulgated to enforce and to administer Sections 1 to 17 of this Act; and*
  - (d) *Establishing fees for applications and renewals in an amount sufficient to pay the administrative costs of the program and any other costs associated with carrying out the provisions of Sections 1, 2, 3, 4, 5, 6, 7, and 8 of this Act.*
- (2) *The registration issued in accordance with this section expires on the second anniversary of the effective date unless it is renewed.*
- (3) *The registration issued under this section is not transferable.*
- (4) *The commissioner may revoke or suspend the utilization review registration of any insurer or private review agent who does not comply with the requirements and procedures established regarding utilization review or any administrative regulations promulgated thereunder.*
- (5) *The department shall establish reporting requirements to:*
  - (a) *Evaluate the effectiveness of insurers and private review agents; and*
  - (b) *Determine if the utilization review plans are in compliance with the requirements and procedures established regarding utilization review and applicable administrative regulations.*
- (6) *Upon request of any provider, authorized person, or covered person whose care is subject to review, the department shall provide copies of policies or procedures of any insurer or private review agent that has been issued a registration by the department to conduct review in this state.*
- (7) *Notwithstanding any provision to the contrary, an insurer or private review agent registered and in good standing under the provisions of KRS 211.461 to 211.466, prior to the effective date of this Act, shall be deemed in compliance with requirements and procedures established in Sections 1 to 17 of this Act regarding utilization review and registered accordingly.*
- (8) *Upon receipt of written complaints from covered persons, authorized persons, or providers stating that an insurer or a private review agent has failed to perform a review in accordance with the utilization review plan or the requirements and procedures established regarding utilization review, or administrative regulations promulgated thereunder, the commissioner shall:*



- (a) *Send a copy of the complaint to the insurer or the private review agent within ten (10) days of receipt of the complaint, and require that any written reply be sent to the commissioner within ten (10) days; and*
  - (b) *Review the complaint and any written reply received from the insurer or private review agent within the time frames set forth in paragraph (a) of this subsection and make a recommendation to the insurer or private review agent and the covered person, authorized person, or provider.*
- (9) *The commissioner shall consider complaints before issuing or renewing any registration or renewal of a registration to an insurer or a private review agent.*

SECTION 8. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *No insurer or any other person providing or administering a health benefit plan shall deny or reduce payment for a service, procedure, treatment, drug or device covered under the covered person's health benefit plan if:*
- (a) *The covered person's provider, during normal business hours, contacts the insurer, the designee, or agent on the day the covered person is expected to be discharged, in order to request review of the covered person's continued hospitalization, and the insurer, designee, or agent fails to provide a timely utilization review decision as required by Section 4 of this Act; or*
  - (b) *The covered person's provider makes at least three (3) documented attempts during a four (4) consecutive hour period to contact the insurer, designee, or agent, during normal business hours in order to request review of a continued hospital stay, preauthorization of treatment for a covered person who is already hospitalized, or retrospective review of an emergency hospital admission where the covered person remains hospitalized at the time the review requested is made, and the insurer, designee, or private review agent fails to be accessible as required by Section 4 of this Act.*
- (2) *The insurer's liability to pay for the covered person's hospitalization under the circumstances set forth in subsection (1) of this section shall extend until the insurer, designee, or private review agent issues a utilization review decision applicable to requests for review relating to matters as set forth in subsection 1(b) of this section.*
- (3) *The insurer's liability to pay under this section shall be conditioned on :*
- (a) *The provider establishing verifiable documentation of the contact with, and subsequent failure of the insurer, designee, or agent to make the utilization review decision as set forth in subsection (1)(a) of this section; or*
  - (b) *The provider establishing verifiable documentation of the attempt to make contact with the insurer, designee, or agent as addressed in subsection (1)(b) of this section.*
- (4) *In either instance, the contact, or attempts to contact, as set forth in this section, shall be made by the means required by the insurer, designee, or agent for requesting utilization review.*
- (5) *This section applies only when the request for review concerns covered health benefits and it shall not supersede any limitations or exclusions in the covered person's health benefit plan. This section shall not apply if, in requesting a review, the provider does not furnish the information requested by the insurer or agent to make a utilization review decision, or if actions by the provider impede an insurer's or private review agent's ability to issue a utilization review decision.*

SECTION 9. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Every insurer shall have an internal appeal process to be utilized by the insurer or its designee, consistent with this section and Section 10 of this Act and which shall be disclosed to covered persons in accordance with subsection (1)(g) of Section 27 of this Act. An insurer shall disclose the availability of the internal review process to the covered person in the insured's timely notice of an adverse determination or notice of a coverage denial which meets the requirements set forth in subsection (1)(i) of Section 4 of this Act. For purposes of this section "coverage denial" means an insurer's determination that a service, treatment, drug, or device is specifically limited or excluded under the covered person's health benefit plan. Where a coverage denial is involved, in addition to stating the reason for the coverage denial, the required notice shall contain instructions for filing a request for review by the department.*

- (2) *The internal appeals process may be initiated by the covered person, an authorized person, or a provider acting on behalf of the covered person. The internal appeals process shall include adequate and reasonable procedures for review and resolution of appeals concerning adverse determinations made under utilization review and of coverage denials, including procedures for reviewing appeals from covered persons whose medical conditions require expedited review. At a minimum, these procedures shall include the following:*
- (a) *Insurers or their designees shall provide decisions to covered persons, authorized persons, and providers on internal appeals of adverse determinations or coverage denials within thirty (30) days of receipt of the request for internal appeal;*
  - (b) *Insurers or their designees shall render a decision not later than three (3) business days after the request for an expedited appeal of either an adverse determination or a coverage denial. An expedited appeal is deemed necessary when a covered person is hospitalized or, in the opinion of the treating provider, review under a standard time frame could, in the absence of immediate medical attention, result in any of the following:*
    - 1. *Placing the health of the covered person or, with respect to a pregnant woman, the health of the covered person or the unborn child in serious jeopardy;*
    - 2. *Serious impairment to bodily functions; or*
    - 3. *Serious dysfunction of a bodily organ or part;*
  - (c) *Internal appeal of an adverse determination shall only be conducted by a licensed physician who did not participate in the initial review and denial. However, in the case of a review involving a medical or surgical specialty or subspecialty, the insurer or agent shall, upon request by a covered person, authorized person, or provider, utilize a board eligible or certified physician in the appropriate specialty or subspecialty area to conduct the internal appeal;*
  - (d) *Those portions of the medical record that are relevant to the internal appeal, if authorized by the covered person and in accordance with state or federal law, shall be considered and providers given the opportunity to present additional information;*
  - (e) *To facilitate expeditious handling of an appeal of an adverse determination or a coverage denial, an insurer or agent that denies, limits, reduces, or terminates coverage for a treatment, procedure, drug, or device for a covered person shall provide the person undertaking an appeal with a denial letter that shall include:*
    - 1. *A statement of the specific medical and scientific reasons for denying coverage or identifying that provision of the schedule of benefits or exclusions that demonstrates that coverage is not available;*
    - 2. *The name, state of licensure, medical license number, and the title of the person making the decision;*
    - 3. *A description of other alternative treatments, services, or supplies covered by the health benefit plan, if any; and*
    - 4. *Instructions for initiating an internal appeal of the adverse determination, or filing a request for review with the department where a coverage denial is upheld by the insurer on internal appeal.*
- (3) *The department shall establish and maintain a system for receiving and reviewing requests for review of coverage denials from covered persons, authorized persons, and providers. For purposes of this subsection "coverage denials" shall not include an adverse determination as defined in Section 1 of this Act or subsequent denials arising from an adverse determination.*
- (a) *On receipt of a written request for review of a coverage denial from a covered person, authorized person, or provider, the department shall notify the insurer which issued the denial of the request for review and shall call for the insurer to respond to the department regarding the request for review within five (5) days receipt of notice to the insurer;*
  - (b) *Within five (5) days of receiving the notice of the request for review from the department, the insurer shall provide to the department the following information:*

1. *Confirmation as to whether the person who received or sought the health service for which coverage was denied was a covered person on the date of service under a health benefit plan issued by the insurer;*
  2. *Confirmation as to whether the covered person, authorized person, or provider has exhausted his or her rights under the insurer's appeal process under this section; and*
  3. *The reason for the coverage denial, including the specific limitation or exclusion of the health benefit plan demonstrating that coverage is not available;*
- (c) *In addition to the information described in paragraph (b) of this subsection, the insurer and the covered person, authorized person, or provider shall provide to the department any information requested by the department that is germane to its review;*
- (d) *On the receipt of the information described in paragraphs (b) and (c) of this subsection, unless the department is not able to do so because making a determination requires resolution of a medical issue, it shall determine whether the service, treatment, drug, or device is specifically limited or excluded under the terms of the covered person's health benefit plan. If the department determines that the treatment, service, drug, or device is not specifically limited or excluded, it shall so notify the insurer, and the insurer shall either cover the service, or afford the covered person an opportunity for external review under Section 11, 12, and 13 of this Act, where the conditions precedent to the review are present. If the department notifies the insurer that the treatment, service, drug, or device is specifically limited or excluded in the health benefit plan, the insurer is not required to cover the service or afford the covered person an external review.*

SECTION 10. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *If the covered person, authorized person, or provider has new clinical information regarding the covered person's internal appeal he or she shall provide that information to the insurer prior to the initiation of the external review process. The insurer shall have five (5) business days from the date of the receipt of the information to render a decision based on the new information. If new information is provided in accordance with this section, the sixty (60) day time frame for commencing an external review as set forth in subsection (4) of Section 12 of this Act, shall not begin to run, until the insurer or its designee renders a decision regarding the new information.*
- (2) *The insurer's failure to make a determination or provide a written notice within the time frames set forth in Section 9 of this Act shall be deemed to be an adverse determination by the insurer for the purpose of initiating an external review as set forth in Section 12 of this Act.*

SECTION 11. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*The Independent External Review Program is hereby established in the department. The program shall provide covered persons with a formal, independent review to address disagreements between the covered person and the covered person's insurer regarding an adverse determination made by the insurer, its designee, or a private review agent. This section and Sections 12 and 13 establish requirements and procedures governing external review and independent review entities.*

SECTION 12. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Every insurer shall have an external review process to be utilized by the insurer or its designee, consistent with this section and which shall be disclosed to covered persons in accordance with subsection (1)(g) of Section 27 of this Act. An insurer, its designee, or agent shall disclose the availability of the external review process to the covered person in the insured's timely notice of an adverse determination or notice of a coverage denial as set forth in subsection (1)(i) of Section 4 and subsections (1) and (2)(e) of Section 9 of this Act. For purposes of this section "coverage denial" means an insurer's determination that a service, treatment, drug, or device is specifically limited or excluded under the covered person's health benefit plan.*
- (2) *A covered person, an authorized person, or a provider acting on behalf of and with the consent of the covered person, may request an external review of an adverse determination rendered by an insurer, its designee, or agent.*

- (3) *The insurer shall provide for an external review of an adverse determination if the following criteria are met:*
- (a) *The insurer, its designee, or agent has rendered an adverse determination;*
  - (b) *The covered person has completed the insurer's internal appeal process, or the insurer has failed to make a timely determination or notification as set forth in subsection (2) of Section 10 of this Act. The insurer and the covered person may however, jointly agree to waive the internal appeal requirement;*
  - (c) *The covered person was enrolled in the health benefit plan on the date of service or, if a prospective denial, the covered person was enrolled and eligible to receive covered benefits under the health benefit plan on the date the proposed service was requested; and*
  - (d) *The entire course of treatment or service will cost the covered person at least one hundred dollars (\$100) if not covered by the insurer.*
- (4) *The covered person, an authorized person, or a provider with consent of the covered person shall submit a request for external review to the insurer within sixty (60) days, except as set forth in subsection (1) of Section 10 of this Act, of receiving notice that an adverse determination has been timely rendered under the insurer's internal appeal process. As part of the request, the covered person shall provide to the insurer or its designee written consent authorizing the independent review entity to obtain all necessary medical records from both the insurer and any provider utilized for review purposes regarding the decision to deny, limit, reduce or terminate coverage.*
- (5) *The covered person shall be assessed a one (1) time filing fee of twenty-five dollars (\$25) to be paid to the independent review entity and which may be waived if the independent review entity determines that the fee creates a financial hardship on the covered person. The fee shall be refunded if the independent review entity finds in favor of the covered person.*
- (6) *A covered person shall not be afforded an external review of an adverse determination if:*
- (a) *The subject of the covered person's adverse determination has previously gone through the external review process and the independent review entity found in favor of the insurer; and*
  - (b) *No relevant new clinical information has been submitted to the insurer since the independent review entity found in favor of the insurer.*
- (7) *The department shall establish a system for each insurer to be assigned an independent review entity for external reviews. The system established by the department shall be prospective and shall require insurers to utilize independent review entities on a rotating basis so that an insurer does not have the same independent review entity for two (2) consecutive external reviews. The department shall contract with no less than two (2) independent review entities.*
- (8) (a) *If a dispute arises between an insurer and a covered person regarding the covered person's right to an external review, the covered person may file a complaint with the department. Within five (5) days of receipt of the complaint, the department shall render a decision and may direct the insurer to submit the dispute to an independent review entity for an external review if it finds:*
- 1. *The dispute involves denial of coverage based on medical necessity or the service being experimental or investigational; and*
  - 2. *All of the requirements of subsection (3) of this section have been met.*
- (b) *The complaint process established in this section shall be separate and distinct from, and shall in no way limit other grievance or complaint processes available to consumers under other provisions of the KRS or duly promulgated administrative regulations. This complaint process shall not limit, alter, or supplant the mechanisms for appealing coverage denials established in Section 9 of this Act.*
- (9) *The external review process shall be confidential and shall not be subject to KRS 61.805 to 61.850 and KRS 61.870 to 61.884.*
- (10) *External reviews shall be conducted in an expedited manner by the independent review entity if the covered person is hospitalized, or if, in the opinion of the treating provider, review under the standard time frame could, in the absence of immediate medical attention, result in any of the following:*

- (a) *Placing the health of the covered person or, with respect to a pregnant woman, the health of the covered person or her unborn child in serious jeopardy;*
  - (b) *Serious impairment to bodily functions; or*
  - (c) *Serious dysfunction of a bodily organ or part.*
- (11) *Requests for expedited external review, shall be forwarded by the insurer to the independent review entity within twenty-four (24) hours of receipt by the insurer.*
- (12) *For expedited external review, a determination shall be made by the independent review entity within twenty-four (24) hours from the date of its receipt of notice of the adverse determination from the insurer. An extension of up to twenty-four (24) hours may be allowed if the covered person and the insurer or its designee agree. The insurer or its designee shall provide notice to the independent review entity and to the covered person, by same-day communication, that the adverse determination has been assigned to an independent review entity for expedited review.*
- (13) *External reviews which are not expedited shall be conducted by the independent review entity and a determination made within twenty-one (21) calendar days of receipt of the request for external review. An extension of up to fourteen (14) calendar days may be allowed if the covered person and the insurer are in agreement.*

SECTION 13. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *In making its decision, an independent review entity conducting the external review shall take into account all of the following:*
- (a) *Information submitted by the insurer, the covered person, the authorized person, and the covered person's provider, including the following:*
    - 1. *The covered person's medical records;*
    - 2. *The standards, criteria, and clinical rationale used by the insurer to make its decision; and*
    - 3. *The insurer's health benefit plan.*
  - (b) *Findings, studies, research, and other relevant documents of government agencies and nationally recognized organizations, including the National Institutes of Health, or any board recognized by the National Institutes of Health, the National Cancer Institute, the National Academy of Sciences, and the United States Food and Drug Administration, the Health Care Financing Administration of the United States Department of Health and Human Services, and the Agency for Health Care Research and Policy; and*
  - (c) *Relevant findings in peer-reviewed medical or scientific literature, published opinions of nationally recognized medical specialists, and clinical guidelines adopted by relevant national medical societies.*
- (2) *The independent review entity shall base its decision on the information submitted under subsection (1) of this section. In making its decision, the independent review entity shall consider safety, appropriateness, and cost effectiveness.*
- (3) *The insurer shall provide any coverage determined by the independent review entity to be medically necessary. The independent review entity shall not be permitted to allow coverage for services specifically limited or excluded by the insurer in its health benefit plan. The decision shall apply only to the individual covered person's external review.*
- (4) *Nothing in this section shall be construed as requiring an insurer to provide coverage for out of network services, procedures, or tests, except as set forth in KRS 304.17A-515(1)(c) and 304.17A-550 .*
- (5) *The insurer shall be responsible for the cost of the external review.*
- (6) *The independent review entity shall provide to the covered person, treating provider, insurer, and the department a decision which shall include:*
- (a) *The findings for either the insurer or covered person regarding each issue under review;*
  - (b) *The proposed service, treatment, drug, device, or supply for which the review was performed;*
  - (c) *The relevant provisions in the insurer's health benefit plan and how applied; and*

- (d) *The relevant provisions of any nationally recognized and peer-reviewed medical or scientific documents used in the external review.*
- (7) *The decision of the independent review entity shall not be made solely for the convenience of the insurer, the covered person, or the provider.*
- (8) *Consistent with the rules of evidence, a written decision prepared by an independent review entity shall be admissible in any civil action related to the adverse determination. The independent review entity's decision shall be presumed to be a scientifically valid and accurate description of the state of medical knowledge at the time it was written.*
- (9) *The decision of the independent review entity shall be binding on the insurer with respect to that covered person. Failure of the insurer to provide coverage as required by the independent review entity shall:*
  - (a) *Be a violation of the insurance code of a nature sufficient to warrant the commissioner revoking or suspending the insurer's license or certificate of authority; and*
  - (b) *Constitute an unfair claims settlement practice as set forth in Section 18 of this Act.*
- (10) *Failure to provide coverage as required by the independent review entity shall also subject the insurer to the provisions of KRS 304.99-010 and 304.99-020 and require the insurer to pay the claim that was the subject of the external review, without need for the covered person or authorized person to further establish a right as to the payment amount. Reasonable attorney fees associated with the actions of the insured necessary to collect amounts owed the covered person shall be assessed against and borne by the insurer.*
- (11) *An independent review entity and any medical specialist the entity utilizes in conducting an external review shall not be liable in damages in a civil action for injury, death, or loss to person or property and is not subject to professional disciplinary action for making, in good faith, any finding, conclusion, or determination required to complete the external review. This subsection does not grant immunity from civil liability or professional disciplinary action to an independent review entity or medical specialist for an action that is outside the scope of authority granted in Sections 11, 12, and 13 of this Act.*
- (12) *Nothing in Sections 1 to 17 of this Act shall be construed to create a cause of action against any of the following:*
  - (a) *An employer that provides health care benefits to employees through a health benefit plan;*
  - (b) *A medical expert, private review agent, or independent review entity that participates in the utilization review, internal appeal, or external review addressed in Sections 1 to 17 of this Act; or*
  - (c) *An insurer or provider acting in good faith and in accordance with any finding, conclusion, or determination of an Independent Review Entity acting within the scope of authority set forth in Sections 11, 12, and 13 of this Act.*
- (13) *The covered person, insurer, or provider in the external review may submit written complaints to the department regarding any independent review entity's actions believed to be an inappropriate application of the requirements set forth in Sections 11, 12, and 13 of this Act. The department shall promptly review the complaint, and if the department determines that the actions of the independent review entity were inappropriate, the department shall take corrective measures, including decertification or suspension of the independent review entity from further participation in external reviews. The department's actions shall be subject to the powers and administrative procedures set forth in subtitle 17A of KRS Chapter 304.*

SECTION 14. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *To be certified as an independent review entity under this chapter, an organization shall submit to the department an application on a form required by the department. The application shall include the following:*
  - (a) *The name of each stockholder or owner of more than five percent (5%) of any stock or options for an applicant;*
  - (b) *The name of any holder of bonds or notes of the applicant that exceeds one hundred thousand dollars (\$100,000);*
  - (c) *The name and type of business of each corporation or other organization that the applicant controls or with which it is affiliated and the nature and extent of the affiliation or control;*

- (d) *The name and a biographical sketch of each director, officer, and executive of the applicant and any entity listed under paragraph (c) of this subsection and a description of any relationship the named individual has with an insurer as defined in Section 1 of this Act or a provider of health care services;*
  - (e) *The percentage of the applicant's revenues that are anticipated to be derived from independent reviews;*
  - (f) *A description of the minimum qualifications employed by the independent review entity to select health care professionals to perform external review, their areas of expertise, and the medical credentials of the health care professionals currently available to perform external reviews; and*
  - (g) *The procedures to be used by the independent review entity in making review determinations; and*
- (2) *If at any time there is a material change in the information included in the application, provided for in subsection (1) of this section, the independent review entity shall submit updated information to the department.*
- (3) *The independent review entity shall annually submit to the department the information required by subsection (1) of this section in a form acceptable to the department.*
- (4) *An independent review entity shall not be a subsidiary of, or in any way affiliated with, or owned, or controlled by an insurer or a trade or professional association of payors.*
- (5) *An independent review entity shall not be a subsidiary of, or in any way affiliated with, or owned, or controlled by a trade or professional association of providers.*
- (6) *Health care professionals who are acting as reviewers for the independent review entity shall hold in good standing a nonrestricted license in a state of the United States.*
- (7) *Health care professionals who are acting as reviewers for the independent review entity shall hold a current certification by a recognized American medical specialty board or other recognized health care professional boards in the area appropriate to the subject of the review, be a specialist in the treatment of the covered person's medical condition under review, and have actual clinical experience in that medical condition.*
- (8) *The independent review entity shall have a quality assurance mechanism to ensure the timeliness and quality of the review, the qualifications and independence of the physician reviewer, and the confidentiality of medical records and review material.*
- (9) *Neither the independent review entity nor any reviewers of the entity, shall have any material, professional, familial, or financial conflict of interest with any of the following:*
  - (a) *The insurer involved in the review;*
  - (b) *Any officer, director, or management employee of the insurer;*
  - (c) *The provider proposing the service or treatment or any associated independent practice association;*
  - (d) *The institution at which the service or treatment would be provided;*
  - (e) *The development or manufacture of the principal drug, device, procedure, or other therapy proposed for the covered person whose treatment is under review; or*
  - (f) *The covered person.*
- (10) *As used in this section, "conflict of interest" shall not be interpreted to include:*
  - (a) *A contract under which an academic medical center or other similar medical center provides health care services to covered persons, except for academic medical centers that may provide the service under review;*
  - (b) *Provider affiliations which are limited to staff privileges; or*
  - (c) *A specialist reviewer's relationship with an insurer as a contracting health care provider, except for a specialist reviewer proposing to provide the service under review.*
- (11) *On an annual basis, the independent review entity shall report to the department the following information:*
  - (a) *The number of independent review decisions in favor of covered persons ;*

- (b) *The number of independent review decisions in favor of insurers;*
- (c) *The average turnaround time for an independent review decision;*
- (d) *The number of cases in which the independent review entity did not reach a decision in the time specified in statute or administrative regulation; and*
- (e) *The reasons for any delay.*

SECTION 15. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*The commissioner shall promulgate administrative regulations to implement the provisions of Sections 11, 12, 13, 14, 15, and 16 of this Act.*

SECTION 16. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*Insurers subject to the administrative regulations required under Section 15 of this Act shall have no less than ninety (90) days to comply with the provisions of the administrative regulations.*

SECTION 17. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*The commissioner shall report every six (6) months to the Interim Joint Committee on Banking and Insurance, and to the Governor on the state of the Independent External Review Program. The report shall include a summary of the number of reviews conducted, medical specialties affected, and a summary of the findings and recommendations made by the independent external review entity.*

Section 18. KRS 304.12-230 is amended to read as follows:

It is an unfair claims settlement practice for any person to commit or perform any of the following acts or omissions:

- (1) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
- (2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
- (3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
- (4) Refusing to pay claims without conducting a reasonable investigation based upon all available information;
- (5) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
- (6) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;
- (7) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;
- (8) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;
- (9) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;
- (10) Making claims payments to insureds or beneficiaries not accompanied by statement setting forth the coverage under which the payments are being made;
- (11) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;
- (12) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;



- (13) Failing to promptly settle claims, where liability has become reasonably clear, under one (1) portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;~~[-or]~~
- (14) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; *or*
- (15) *Failing to comply with the decision of an independent review entity to provide coverage for a covered person as a result of an external review in accordance with Sections 11, 12, and 13 of this Act.*

SECTION 19. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*For purposes of Sections 19, 20, 21, 22, and 23 of this Act "Emergency medical condition" means:*

- (1) *A medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson would reasonably have cause to believe constitutes a condition that the absence of immediate medical attention could reasonably be expected to result in:*
  - (a) *Placing the health of the individual or, with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy;*
  - (b) *Serious impairment to bodily functions; or*
  - (c) *Serious dysfunction of any bodily organ or part; or*
- (2) *With respect to a pregnant woman who is having contractions:*
  - (a) *A situation in which there is inadequate time to effect a safe transfer to another hospital before delivery; or*
  - (b) *A situation in which transfer may pose a threat to the health or safety of the woman or the unborn child.*

SECTION 20. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Where a covered person with an emergency medical condition has been stabilized, as required by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), 42 U.S.C. sec. 300bb, in the emergency department of a nonparticipating hospital, and an insurer under its health benefit plan requires prior authorization for poststabilization treatment, approval or denial under the preauthorization requirement shall be provided in a timely manner appropriate to conditions of the patient and delivery of the services, but in no case to exceed two (2) hours from the time the request is made and all relevant information is provided. The insurer's failure to make a determination within the two (2) hour time frame, shall constitute an authorization for the hospital to provide the medical service for which prior authorization was sought.*
- (2) *The nonparticipating hospital providing emergency room services, poststabilization treatment, or both, shall be paid at a rate negotiated between the nonparticipating hospital and the insurer. Nothing in this section is to be construed as requiring the payment of one hundred percent (100%) of the billed charges.*

SECTION 21. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *"Special circumstances" includes a circumstance in which a covered person has a disability, a congenital condition, a life-threatening illness, or is past the twenty-fourth week of pregnancy where disruption of the covered person's continuity of care could cause medical harm.*
- (2) *Any special circumstance shall be identified by the treating provider, who may request, with the concurrence of the covered person or authorized person, that the covered person be permitted to continue treatment under the provider's care even when the provider is no longer participating in the network, unless the provider has been terminated for a reason related to quality. The treating, non network provider shall agree to care for the covered person under the same guidelines and payment schedule as required by the plan, and shall report to the plan on the care being provided.*
- (3) *Procedures for resolving disputes regarding the necessity for continued treatment by a provider shall be established by the plan and shall provide for review through the plan's internal appeal process.*

- (4) *This section does not extend the obligation of the plan to pay a terminated or nonrenewed provider for ongoing treatment of a covered person with "special circumstances":*
- (a) *Beyond the ninetieth day after the effective date of the termination or nonrenewal;*
  - (b) *Beyond nine (9) months in the case of a covered person who at the time of the termination has been diagnosed with a terminal illness; or*
  - (c) *If the covered person is beyond the twenty-fourth week of pregnancy, the plan's obligation to pay for services extends through the delivery of the child, immediate postpartum care, and examination within the first six (6) weeks following delivery.*

SECTION 22. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*An insurer shall not, under its health benefit plan prohibit a primary care physician from authorizing a covered person's referral to a participating nonprimary care physician specialist. A primary care physician treating a covered person who has a chronic, disabling, congenital, or life-threatening condition may authorize a referral to a participating nonprimary care physician specialist, up to twelve (12) months or for the contract period, whichever is shorter. Under this referral arrangement the covered person shall have direct access to the nonprimary care physician specialist, without the need of further contact or referral by the primary care physician.*

SECTION 23. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *An insurer shall not, under its health benefit plan prohibit a primary care physician from authorizing a covered person's referral to a participating obstetrician or gynecologist. A primary care physician treating a covered person who is pregnant or has a chronic gynecological condition may authorize a referral to a participating obstetrician or gynecologist, up to twelve (12) months or for the contract period, whichever is shorter. Under this referral arrangement the covered person shall have direct access to the obstetrician or gynecologist, without the need of further contact or referral by the primary care physician.*
- (2) *A female covered person shall be covered for an annual pap smear performed by an obstetrician or gynecologist without a referral from a primary care provider.*

SECTION 24. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*The commissioner shall promulgate administrative regulations necessary to implement the provisions of Sections 19, 20, 21, 22, and 23 of this Act.*

Section 25. KRS 304.17A-520 is amended to read as follows:

- (1) An enrollee shall have adequate choice among participating primary care providers in a managed care plan who are accessible and qualified.
- (2) A managed care plan shall permit enrollees to choose their own primary care provider from a list of health care providers within the plan. This list shall be updated as health care providers are added or removed and shall include a sufficient number of primary care providers who are accepting new enrollees.
- (3) Women shall be able to choose a qualified health care provider offered by a plan for the provision of covered care necessary to provide routine and preventive women's health care services.
- (4) A managed care plan shall provide an enrollee with access to a consultation with a participating health care provider for a second opinion. *Obtaining the second opinion shall not cost a covered person more than the covered person's normal copay.*

Section 26. KRS 304.17-412 is amended to read as follows:

- (1) Every health insurer proposing to issue or deliver in this state a health insurance policy or contract or administer a health benefit program which provides for the coverage of hospital benefits and the utilization review of those benefits by *an insurer, its designee, or a private review agent* shall:
  - (a) Be ~~a~~ registered ~~private review agent~~ in accordance with *Section 4 of this Act and administrative regulations promulgated under the authority of Section 7 of this Act* ~~[KRS 211.462]~~; or

- (b) Contract with a private review agent that has been registered in accordance with *Section 4 of this Act and administrative regulations promulgated under the authority of Section 7 of this Act*~~[KRS 211.462]~~.
- (2) Notwithstanding any other provision of *Sections 2, 3, 4, 5, 6, 7, and 8 of this Act*~~[KRS 211.461 to 211.466]~~, an insurer *or its designee* shall not deny or reduce payment of health benefits to any person, licensed practitioner, or health facility for covered services which have been rendered to an insured unless:
  - (a) Notice of denial has been issued. The notice shall inform patients, *authorized persons*, and health-care providers of their right to appeal adverse determinations of *a utilization review by the insurer, its designee, or* private review agent to the *insurer for the internal review process established by the insurer in accordance with Sections 9 and 10 of this Act*~~[Cabinet for Health Services under the dispute resolution process established pursuant to KRS 211.464(1)(g)]~~. The notice shall also include instructions on filing an *internal* appeal~~[to the cabinet]~~; and
  - (b) The insurer is in compliance with subsection (1) of this section.

Section 27. KRS 304.17A-505 is amended to read as follows:

An insurer shall disclose in writing to *a covered person and* an enrollee, in a manner consistent with the provisions of KRS 304.14-420 to 304.14-450, the terms and conditions of its health *benefit plan*~~[insurance contract]~~ and shall promptly provide the *covered person and* enrollee with written notification of any change in the terms and conditions prior to the effective date of the change. The insurer shall provide the required information at the time of enrollment and upon request thereafter.

- (1) The information required to be disclosed under this section shall include a description of:
  - (a) Covered services and benefits to which the enrollee or other covered person is entitled;
  - (b) Restrictions or limitations on covered services and benefits;
  - (c) Financial responsibility of the covered person, including copayments and deductibles;
  - (d) Prior authorization and any other review requirements with respect to accessing covered services;
  - (e) Where and in what manner covered services may be obtained;
  - (f) Changes in covered services or benefits, including any addition, reduction, or elimination of specific services or benefits;
  - (g) The covered person's right to *the following*:
    - 1. *A utilization review*~~[appeal]~~ and the procedure for initiating *a utilization review, if an insurer elects to provide utilization review*;
    - 2. An *internal* appeal of a utilization *review*~~[management decision]~~ made by or on behalf of the insurer with respect to the denial, reduction, or termination of a health care benefit or the denial of payment for a health care service, *and the procedure to initiate an internal appeal; and*
    - 3. *An external review and the procedure to initiate the external review process.*
  - ~~(h) The procedure to initiate an appeal through the process under KRS 211.464(1)(g);~~
  - ~~(i) Measures in place to ensure the confidentiality of the relationship between an enrollee and a health care provider; and~~
  - ~~(j) Other information as the commissioner shall require by administrative regulation.~~
- (2) The insurer shall file the information required under this section with the department.

Section 28. KRS 304.18-045 is amended to read as follows:

- (1) Every health insurer proposing to issue or deliver in this state a group or blanket health insurance policy or contract or administer a health benefit program which provides for the coverage of hospital benefits and the utilization review of those benefits by *an insurer, its designee, or* a private review agent shall:
  - (a) Be~~[a]~~ registered~~[private review agent]~~ in accordance with *Section 4 of this Act and administrative regulations promulgated under the authority of Section 7 of this Act*~~[KRS 211.462]~~; or

- (b) Contract with a private review agent that has been registered in accordance with *Section 4 of this Act and administrative regulations promulgated under the authority of Section 7 of this Act*~~[KRS 211.462]~~.
- (2) Notwithstanding any other provision of *Sections 2, 3, 4, 5, 6, 7, and 8 of this Act*~~[KRS 211.461 to 211.466]~~, an insurer *or its designee* shall not deny or reduce payment of health benefits to any person, licensed practitioner, or health facility for covered services which have been rendered to an insured unless:
  - (a) Notice of denial has been issued. The notice shall inform patients, *authorized persons*, and health-care providers of their right to appeal adverse determinations of *a utilization review by the insurer, its designee, or* private review agent to the *insurer for the internal review process established by the insurer in accordance with Sections 9 and 10 of this Act*~~[Cabinet for Health Services under the dispute resolution process established pursuant to KRS 211.464(1)(g)]~~. The notice shall also include instructions on filing an *internal* appeal~~[to the cabinet]~~; and
  - (b) The insurer is in compliance with subsection (1) of this section.

Section 29. KRS 304.32-147 is amended to read as follows:

- (1) Every nonprofit hospital, medical-surgical, dental, and health service corporation proposing to issue or deliver in this state a health insurance policy or contract or administer a health benefit program which provides for the coverage of hospital benefits and the utilization review of those benefits by a private review agent shall:
  - (a) Be a registered private review agent in accordance with *Section 4 of this Act and administrative regulations promulgated under the authority of Section 7 of this Act*~~[KRS 211.462]~~; or
  - (b) Contract with a private review agent that has been registered in accordance with *Section 4 of this Act and administrative regulations promulgated under the authority of Section 7 of this Act*~~[KRS 211.462]~~.
- (2) Notwithstanding any other provision of *Sections 2, 3, 4, 5, 6, 7, and 8 of this Act*~~[KRS 211.461 to 211.466]~~, a nonprofit hospital, medical-surgical, dental, and health service corporation shall not deny or reduce payment of health benefits to any person, licensed practitioner, or health facility for covered services which have been rendered to an insured unless:
  - (a) Notice of denial has been issued. The notice shall inform patients, *authorized persons*, and health-care providers of their right to appeal adverse determinations of *a utilization review by the insurer, its designee, or* private review agent to the *insurer for the internal appeal process established by the insurer in accordance with Sections 9 and 10 of this Act*~~[Cabinet for Health Services under the dispute resolution process established pursuant to KRS 211.464(1)(g)]~~. The notice shall also include instructions on filing an appeal to the cabinet; and
  - (b) The nonprofit hospital, medical-surgical, dental, and health service corporation is in compliance with subsection (1) of this section.

Section 30. KRS 304.32-330 is amended to read as follows:

- (1) Every employer in this state which provides coverage of hospital benefits on a self-insured basis and requires the utilization review of such benefits by *an insurer, its designee, or* a private review agent shall:
  - (a) Be a registered private review agent in accordance with *Section 4 of this Act and administrative regulations promulgated under the authority of Section 7 of this Act*~~[KRS 211.462]~~; or
  - (b) Contract with a private review agent that has been registered in accordance with *Section 4 of this Act and administrative regulations promulgated under the authority of Section 7 of this Act*~~[KRS 211.462]~~.
- (2) Notwithstanding any other provision of *Sections 2, 3, 4, 5, 6, 7, and 8 of this Act*~~[KRS 211.461 to 211.466]~~, a self-insured employer shall not deny or reduce payment of health benefits to any person, licensed practitioner, or health facility for covered services which have been rendered to an insured unless:
  - (a) Notice of denial has been issued; and
  - (b) The self-insured employer is in compliance with subsection (1) of this section.

Section 31. KRS 304.38-225 is amended to read as follows:

- (1) Every health maintenance organization in this state which provides coverage of hospital benefits and requires the utilization review of such benefits or administers a health benefit program which provides for the coverage of hospital benefits and requires the utilization review of such benefits by a private review agent shall:
  - (a) Be a registered private review agent in accordance with *Section 4 of this Act and administrative regulations promulgated under the authority of Section 7 of this Act*~~[KRS 211.462]~~; or
  - (b) Contract with a private review agent that has been registered in accordance with *Section 4 of this Act and administrative regulations promulgated under the authority of Section 7 of this Act*~~[KRS 211.462]~~.
- (2) Notwithstanding any other provision of *Sections 2, 3, 4, 5, 6, 7, and 8 of this Act*~~[KRS 211.461 to 211.466]~~, a health maintenance organization shall not deny or reduce payment of health benefits to any person, licensed practitioner, or health facility for covered services which have been rendered to an insured unless:
  - (a) Notice of denial has been issued. The notice shall inform patients, *authorized persons*, and health-care providers of their right to appeal adverse determinations of *a utilization review by the insurer, its designee, or* private review agent to the *insurer for the internal review process established by the insurer in accordance with Sections 9 and 10 of this Act*~~[Cabinet for Health Services under the dispute resolution process established pursuant to KRS 211.464(1)(g)]~~. The notice shall also include instructions on filing an *internal* appeal~~[to the cabinet]~~; and
  - (b) The health maintenance organization is in compliance with subsection (1) of this section.

Section 32. KRS 304.47-050 is amended to read as follows:

- (1) Any person, other than an insurer, agent, or other person licensed under this chapter, or an employee thereof, having knowledge or believing that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under the subtitle is being or has been committed may send to the Division of Insurance Fraud Investigation a report of information pertinent to this knowledge of or belief and any additional relevant information the commissioner may request.
- (2) The following individuals having knowledge or believing that a fraudulent insurance act or any other act or practice which may constitute a felony or misdemeanor under this subtitle is being or has been committed shall send to the Division of Insurance Fraud Investigation a report or information pertinent to the knowledge or belief and additional relevant information that the commissioner or his employees or agents may require:
  - (a) Any professional practitioner licensed or regulated by the Commonwealth, except as provided by law;
  - (b)~~Any utilization review of benefits committee as defined in KRS 211.462 to 211.466;~~
  - ~~(c)}~~ Any private medical review committee;
  - ~~(c)(d)}~~ Any insurer, agent, or other person licensed under this chapter; and
  - ~~(d)(e)}~~ Any employee of the persons named in paragraphs (a) to ~~(c)(d)}~~ of this subsection.
- (3) The Division of Insurance Fraud Investigation or its employees or agents shall review this information or these reports and select the information or reports that, in the judgment of the division, may require further investigation. The division shall then cause an investigation of the facts surrounding the information or report to be made to determine the extent, if any, to which a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under this subtitle is being committed.
- (4) The Department of Workers' Claims shall provide the division access to all relevant information the commissioner may request.
- (5) The Division of Insurance Fraud Investigation shall report any alleged violations of law which the investigations disclose to the appropriate licensing agency and the Commonwealth's attorney, Attorney General, or other prosecuting agency having jurisdiction with respect to a violation. If prosecution by the Commonwealth's attorney, Attorney General, or other prosecuting agency is not begun within sixty (60) days of the report, the prosecuting attorney shall inform the division of the reasons for the lack of prosecution. In addition to filing a report with the appropriate prosecuting agency, the commissioner may, through the Attorney General, prosecute violations of this subtitle in the Circuit Court of the county in which the alleged wrongdoer resides or has his principal place of business, in the Circuit Court of the county in which the fraudulent insurance act has been committed, or, with consent of the parties, in the Franklin Circuit Court.

- (6) Notwithstanding the provisions of subsections (1) to (5) of this section, when an insurer or an insured knows or has reasonable grounds to believe that a person committed a fraudulent insurance act which the insurer reasonably believes not to have been reported to a law enforcement agency in this state, then, for the purpose of notification and investigation, the insurer or an agent authorized by an insurer to act on its behalf or the insured may notify a law enforcement agency of their knowledge or reasonable belief and provide information relevant to the fraudulent insurance act, including, but not limited to, insurance policy information including the application for insurance, policy premium payment records, history of previous claims made by the insured, and other information relating to the investigation of the claim, including statements of any person, proofs of loss, and notice of loss.
- (7) If the information referred to in subsection (6) of this section is specifically requested by a law enforcement agency or prosecuting attorney, the insurer shall provide certified copies of the requested information within ten (10) business days of the request or as soon thereafter as reasonable.
- (8) In the absence of malice, fraud, or gross negligence, no insurer or agent authorized by an insurer to act on its behalf, law enforcement agency, the Department of Workers' Claims, their respective employees, or an insured shall be subject to any civil liability for libel, slander, or related cause of action by virtue of filing reports or for releasing or receiving any information pursuant to this subsection.

Section 33. KRS 211.990 is amended to read as follows:

- (1) Any owner or occupant who fails to comply with an order made under the provisions of KRS 211.210 shall be guilty of a violation, and each day's continuance of the nuisance, source of filth, or cause of sickness, after the owner or occupant has been notified to remove it, shall be a separate offense.
- (2) Except as otherwise provided by law, anyone who fails to comply with the provisions of the rules and regulations adopted pursuant to this chapter or who fails to comply with an order of the cabinet issued pursuant thereto shall be guilty of a violation. Each day of such violation or noncompliance shall constitute a separate offense.
- (3) Any person who violates any provision of KRS 211.182 shall, upon first offense, be guilty of a Class A misdemeanor. Each subsequent violation of any provision of KRS 211.182 shall constitute a Class D felony.
- (4) Any person who violates any provision of KRS 211.842 to 211.852 or any regulation adopted hereunder or any order issued by the Cabinet for Health Services to comply with any provision of KRS 211.842 to 211.852 or the regulations adopted thereunder shall be guilty of a Class A misdemeanor. Each day of violation or noncompliance shall constitute a separate offense.
- (5) Any person who violates KRS 211.962 or any rule or regulation of the Cabinet for Health Services adopted pursuant to KRS 211.962 to 211.968 shall be guilty of a Class A misdemeanor.
- ~~(6) A private review agent which performs utilization review without proper registration pursuant to KRS 211.461 to 211.466 shall be guilty of a Class A misdemeanor.~~
- ~~(7) Any properly registered private review agent which willfully violates any provision of KRS 211.461 to 211.466 or of the regulations shall be guilty of a Class D felony.~~
- ~~(8)~~ A person who performs or offers to perform lead-hazard detection or lead-hazard abatement services in target housing or child-occupied facilities who is not certified as required by KRS 211.9063 or 211.9069 shall be guilty of a Class A misdemeanor.
- ~~(7)~~~~(9)~~ Any person who performs lead-hazard detection or lead-hazard abatement services in target housing or child-occupied facilities, who willfully violates the standards for performing lead-hazard detection or lead-hazard abatement procedures included in the administrative regulations promulgated pursuant to KRS 211.9075 shall be guilty of a Class D felony.
- ~~(8)~~~~(10)~~ The penalties provided in subsections (6), *and* (7)~~, (8), and (9)~~ of this section are cumulative and are in addition to any other penalties, claims, damages, or remedies available at law or in equity.
- ~~(9)~~~~(11)~~ Any person who violates any provisions of KRS 211.760 shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). Each day of violation or noncompliance shall constitute a separate offense.

Section 34. KRS 311.990 is amended to read as follows:

- (1) Any person who violates KRS 311.250 shall be guilty of a violation.

- (2) Any college or professor thereof violating the provisions of KRS 311.300 to 311.350 shall be civilly liable on his bond for a sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation, which may be recovered by an action in the name of the Commonwealth.
- (3) Any person who presents to the county clerk for the purpose of registration any license which has been fraudulently obtained, or obtains any license under KRS 311.380 to 311.510 by false or fraudulent statement or representation, or practices podiatry under a false or assumed name or falsely impersonates another practitioner or former practitioner of a like or different name, or aids and abets any person in the practice of podiatry within the state without conforming to the requirements of KRS 311.380 to 311.510, or otherwise violates or neglects to comply with any of the provisions of KRS 311.380 to 311.510, shall be guilty of a Class A misdemeanor. Each case of practicing podiatry in violation of the provisions of KRS 311.380 to 311.510 shall be considered a separate offense.
- (4) Each first violation of KRS 311.560 is a Class A misdemeanor. Each subsequent violation of KRS 311.560 shall constitute a Class D felony.
- (5) Each violation of KRS 311.590 shall constitute a Class D felony. Conviction under this subsection of a holder of a license or permit shall result automatically in permanent revocation of such license or permit.
- (6) Conviction of willfully resisting, preventing, impeding, obstructing, threatening, or interfering with the board or any of its members, or of any officer, agent, inspector, or investigator of the board or the Cabinet for Health Services, in the administration of any of the provisions of KRS 311.550 to 311.620 shall be a Class A misdemeanor.
- (7) Each violation of subsection (1) of KRS 311.375 shall, for the first offense, be a Class B misdemeanor, and, for each subsequent offense shall be a Class A misdemeanor.
- (8) Each violation of subsection (2) of KRS 311.375 shall, for the first offense, be a violation, and, for each subsequent offense, be a Class B misdemeanor.
- (9) Each day of violation of either subsection of KRS 311.375 shall constitute a separate offense.
- (10)
  - (a) Any person who intentionally or knowingly performs an abortion contrary to the requirements of KRS 311.723(1) shall be guilty of a Class D felony; and
  - (b) Any person who intentionally, knowingly, or recklessly violates the requirements of KRS 311.723(2) shall be guilty of a Class A misdemeanor.
- (11)
  - (a)
    - 1. Any physician who performs a partial-birth abortion in violation of KRS 311.765 shall be guilty of a Class D felony. However, a physician shall not be guilty of the criminal offense if the partial-birth abortion was necessary to save the life of the mother whose life was endangered by a physical disorder, illness, or injury.
    - 2. A physician may seek a hearing before the State Board of Medical Licensure on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, illness, or injury. The board's findings, decided by majority vote of a quorum, shall be admissible at the trial of the physician. The board shall promulgate administrative regulations to carry out the provisions of this subparagraph.
    - 3. Upon a motion of the physician, the court shall delay the beginning of the trial for not more than thirty (30) days to permit the hearing, referred to in subparagraph 2. of this paragraph, to occur.
  - (b) Any person other than a physician who performs a partial-birth abortion shall not be prosecuted under this subsection but shall be prosecuted under provisions of law which prohibit any person other than a physician from performing any abortion.
  - (c) No penalty shall be assessed against the woman upon whom the partial-birth abortion is performed or attempted to be performed.
- (12) Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement of KRS 311.732 is guilty of a Class A misdemeanor.
- (13) Any person who negligently releases information or documents which are confidential under KRS 311.732 is guilty of a Class B misdemeanor.

- (14) Any person who performs an abortion upon a married woman either with knowledge or in reckless disregard of whether KRS 311.735 applies to her and who intentionally, knowingly, or recklessly fails to conform to the requirements of KRS 311.735 shall be guilty of a Class D felony.
- (15) Any person convicted of violating KRS 311.750 shall be guilty of a Class B felony.
- (16) Any person who violates KRS 311.760(2) shall be guilty of a Class D felony.
- (17) Any person who violates KRS 311.770 or 311.780 shall be guilty of a Class D felony.
- (18) A person convicted of violating KRS 311.780 shall be guilty of a Class C felony.
- (19) Any person who violates KRS 311.810 shall be guilty of a Class A misdemeanor.
- (20) Any professional medical association or society, licensed physician, or hospital or hospital medical staff who shall have violated the provisions of KRS 311.606 shall be guilty of a Class B misdemeanor.
- (21) Any person who violates KRS 311.652 or any rule or regulation of the board of medical licensure adopted pursuant to KRS 311.654 shall be guilty of a Class A misdemeanor.
- (22) Any administrator, officer, or employee of a publicly-owned hospital or publicly-owned health care facility who performs or permits the performance of abortions in violation of KRS 311.800(1) shall be guilty of a Class A misdemeanor.
- (23) Any person who violates KRS 311.914 shall be guilty of a violation.
- (24) Any person who violates the provisions of KRS 311.820 shall be guilty of a Class A misdemeanor.
- (25) (a) Any person who fails to test organs, skin, or other human tissue which is to be transplanted, or violates the confidentiality provisions required by KRS 311.281, shall be guilty of a Class A misdemeanor;
- (b) Any person who has human immunodeficiency virus infection, who knows he is infected with human immunodeficiency virus, and who has been informed that he may communicate the infection by donating organs, skin, or other human tissue who donates organs, skin, or other human tissue shall be guilty of a Class D felony.
- ~~(26) A person who violates any provision of KRS 311.131 to 311.139 or any regulation adopted under KRS 311.131 to 311.139 shall be guilty of a Class A misdemeanor. Each day a violation is continued after the first conviction shall be a separate offense.~~
- ~~(27)~~ Any person who sells or makes a charge for any transplantable organ shall be guilty of a Class D felony.
- ~~(27)~~~~(28)~~ Any person who offers remuneration for any transplantable organ for use in transplantation into himself shall be fined not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).
- ~~(28)~~~~(29)~~ Any person brokering the sale or transfer of any transplantable organ shall be guilty of a Class C felony.
- ~~(29)~~~~(30)~~ Any person charging a fee associated with the transplantation of a transplantable organ in excess of the direct and indirect costs of procuring, distributing, or transplanting the transplantable organ shall be fined not less than fifty thousand dollars (\$50,000) nor more than five hundred thousand dollars (\$500,000).
- ~~(30)~~~~(31)~~ Any hospital performing transplantable organ transplants which knowingly fails to report the possible sale, purchase, or brokering of a transplantable organ shall be fined not less than ten thousand dollars (\$10,000) or more than fifty thousand dollars (\$50,000).

Section 35. The following KRS section is repealed:

- 211.461 Definitions.
- 211.462 Registration of private review agent required -- Exceptions.
- 211.463 Duties of private review agent regarding utilization review.
- 211.464 Regulations -- Reporting requirements -- Copies of policies or procedures -- List of registered agents.
- 211.465 Procedures for registration and renewal.
- 211.466 Enjoining operation of improperly registered agent.
- 311.131 Definitions.



- 311.132 Certificate required for private review agent -- Exceptions.
- 311.133 Administrative regulations.
- 311.134 Requirements for health benefit program covering hospital and medical benefits and utilization review thereof.
- 311.135 Application for a certificate.
- 311.136 Expiration and renewal of certificate.
- 311.137 Revocation or denial of certificate.
- 311.138 Hearing and appeal.
- 311.139 Confidentiality of individual medical records.

**Approved March 31, 2000**

## CHAPTER 263

**(HB 398)**

AN ACT relating to boats.

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

Section 1. KRS 235.410 is amended to read as follows:

As used in KRS 235.410 to 235.470, unless the context clearly indicates otherwise, the following words shall have the following meanings:

- (1) **"Houseboat"** means any recreational or pleasure-type vessel, including but not limited to, cruisers, yachts, or runabouts equipped with a marine sanitation device and which can be used as an overnight residence~~["Motorboat" means any vessel, except for a federally regulated commercial vessel, propelled by machinery, whether or not such machinery is the principal source of propulsion];~~
- (2) "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water;
- (3) "Person" or "persons" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity whatsoever;
- (4) "Sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments, vessels, or other places, together with such industrial wastes, underground, surface, storm or other water, as may be present;
- (5) "Industrial wastes" means liquid, or other wastes resulting from any process of industry, manufacture, trade or business, or from the development of any natural resource;
- (6) "Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, offal, tar, oil, chemicals, acid drainage and all other foreign substances not included within the above definitions of industrial wastes and sewage which may cause or contribute to the pollution of any waters of the Commonwealth.

Section 2. KRS 235.430 is amended to read as follows:

No person shall dispose of sewage accumulated in a holding tank, a marine sanitation device, or other similar container on a ~~houseboat~~~~vessel~~ in a manner that the sewage reaches or may reach the waters of the Commonwealth except for state waters into which discharges are allowed under federal law.

Section 3. KRS 235.440 is amended to read as follows:

No ~~houseboat~~~~motorboat~~ equipped with marine toilet facilities shall be on the waters of the Commonwealth unless the ~~houseboat~~~~motorboat~~ is equipped with a marine sanitation device.

**Approved March 31, 2000**

## CHAPTER 264

## (HB 452)

AN ACT relating to continuing care retirement communities.

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

Section 1. KRS 216B.015 is amended to read as follows:

Except as otherwise provided, for purposes of this chapter, the following definitions shall apply:

- (1) "Abortion facility" means any place in which an abortion is performed;
- (2) "Administrative regulation" means a regulation adopted and promulgated pursuant to the procedures in KRS Chapter 13A;
- (3) "Affected persons" means the applicant; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health facilities within that geographic area; health facilities located in the health service area in which the project is proposed to be located which provide services similar to the services of the facility under review; health facilities which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future; the cabinet and third-party payors who reimburse health facilities for services in the health service area in which the project is proposed to be located;
- (4) "Applicant" means any physician's office requesting a major medical equipment expenditure of one million five hundred thousand dollars (\$1,500,000) or more after July 15, 1996, adjusted annually, or any person, health facility, or health service requesting a certificate of need or license;
- (5) "Cabinet" means the Cabinet for Health Services;
- (6) "Capital expenditure" means an expenditure made by or on behalf of a health facility which:
  - (a) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance or is not for investment purposes only;
  - (b) Is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part thereof;
- (7) "Capital expenditure minimum" means one million five hundred thousand dollars (\$1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether an expenditure exceeds the expenditure minimum, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the improvement, expansion, or replacement of any plant or any equipment with respect to which the expenditure is made shall be included. Donations of equipment or facilities to a health facility which if acquired directly by the facility would be subject to review under this chapter shall be considered a capital expenditure, and a transfer of the equipment or facilities for less than fair market value shall be considered a capital expenditure if a transfer of the equipment or facilities at fair market value would be subject to review;
- (8) "Certificate of need" means an authorization by the cabinet to acquire, to establish, to offer, to substantially change the bed capacity, or to substantially change a health service as covered by this chapter;
- (9) ***"Continuing care retirement community" means a community that provides, on the same campus, a continuum of residential living options and support services to persons sixty (60) years of age or older under a written agreement. The residential living options shall include independent living units, nursing home beds, and either assisted living units or personal care beds;***
- (10) "Formal review process" means the ninety (90) day certificate-of-need review conducted by the cabinet;
- ~~(11)~~~~(10)~~ "Health facility" means any institution, place, building, agency, or portion thereof, public or private, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care and includes alcohol abuse, drug abuse, and mental health services. This shall include, but shall not be limited to, health facilities and health services commonly referred to as hospitals, psychiatric hospitals, physical rehabilitation hospitals, chemical dependency programs, tuberculosis hospitals, skilled nursing facilities, nursing facilities, nursing homes, personal care homes, intermediate care

facilities, family care homes, primary care centers, rural health clinics, outpatient clinics, ambulatory care facilities, ambulatory surgical centers, emergency care centers and services, ambulance providers, hospices, community mental health and mental retardation centers, home health agencies, kidney disease treatment centers and freestanding hemodialysis units, facilities and services owned and operated by health maintenance organizations directly providing health services subject to certificate of need, and others providing similarly organized services regardless of nomenclature;

- (12)~~((11))~~ "Health services" means clinically related services provided within the Commonwealth to two (2) or more persons, including, but not limited to, diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services;
- (13) ***"Independent living" means the provision of living units and supportive services including, but not limited to, laundry, housekeeping, maintenance, activity direction, security, dining options, and transportation.***
- (14)~~((12))~~ "Major medical equipment" means equipment which is used for the provision of medical and other health services and which costs in excess of the medical equipment expenditure minimum. For purposes of this subsection, "medical equipment expenditure minimum" means one million five hundred thousand dollars (\$1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether medical equipment has a value in excess of the medical equipment expenditure minimum, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of the equipment shall be included;
- (15)~~((13))~~ "Nonsubstantive review" means an expedited review conducted by the cabinet of an application for a certificate of need as authorized under KRS 216B.095;
- (16)~~((14))~~ "Nonclinically-related expenditures" means expenditures for:
- (a) Repairs, renovations, alterations, and improvements to the physical plant of a health facility which do not result in a substantial change in beds, a substantial change in a health service, or the addition of major medical equipment, and do not constitute the replacement or relocation of a health facility; or
  - (b) Projects which do not involve the provision of direct clinical patient care including, but not limited to, the following:
    1. Parking facilities;
    2. Telecommunications or telephone systems;
    3. Management information systems;
    4. Ventilation systems;
    5. Heating or air conditioning, or both;
    6. Energy conservation; or
    7. Administrative offices;
- (17)~~((15))~~ "Party to the proceedings" means the applicant for a certificate of need and any affected person who appears at a hearing on the matter under consideration and enters an appearance of record;
- (18)~~((16))~~ "Person" means an individual, a trust or estate, a partnership, a corporation, an association, a group, state, or political subdivision or instrumentality including a municipal corporation of a state;
- (19)~~((17))~~ "Record" means, as applicable in a particular proceeding:
- (a) The application and any information provided by the applicant at the request of the cabinet;
  - (b) Any information provided by a holder of a certificate of need or license in response to a notice of revocation of a certificate of need or license;
  - (c) Any memoranda or documents prepared by or for the cabinet regarding the matter under review which were introduced at any hearing;
  - (d) Any staff reports or recommendations prepared by or for the cabinet;
  - (e) Any recommendation or decision of the cabinet;
  - (f) Any testimony or documentary evidence adduced at a hearing;

- (g) The findings of fact and opinions of the cabinet or the findings of fact and recommendation of the hearing officer; and
- (h) Any other items required by administrative regulations promulgated by the cabinet;
- ~~(20)(18)~~ "Secretary" means the secretary of the Cabinet for Health Services;
- ~~(21)(19)~~ "State health plan" means the document prepared triennially, updated annually, and approved by the Governor;
- ~~(22)(20)~~ "Substantial change in a health service" means:
  - (a) The addition of a health service for which there are review criteria and standards in the state health plan;
  - (b) The addition of a health service subject to licensure under this chapter; or
  - (c) The reduction or termination of a health service which had previously been provided in the health facility;
- ~~(23)(21)~~ "Substantial change in bed capacity" means the addition, reduction, relocation, or redistribution of beds by licensure classification within a health facility;
- ~~(24)(22)~~ "Substantial change in a project" means a change made to a pending or approved project which results in:
  - (a) A substantial change in a health service, except a reduction or termination of a health service;
  - (b) A substantial change in bed capacity, except for reductions;
  - (c) A change of location; or
  - (d) An increase in costs greater than the allowable amount as prescribed by regulation;
- ~~(25)(23)~~ "To acquire" means to obtain from another by purchase, transfer, lease, or other comparable arrangement of the controlling interest of a capital asset or capital stock, or voting rights of a corporation. An acquisition shall be deemed to occur when more than fifty percent (50%) of an existing capital asset or capital stock or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one person from another person;
- ~~(26)(24)~~ "To batch" means to review in the same review cycle and, if applicable, give comparative consideration to all filed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area;
- ~~(27)(25)~~ "To establish" means to construct, develop, or initiate a health facility;
- ~~(28)(26)~~ "To obligate" means to enter any enforceable contract for the construction, acquisition, lease, or financing of a capital asset. A contract shall be considered enforceable when all contingencies and conditions in the contract have been met. An option to purchase or lease which is not binding shall not be considered an enforceable contract; and
- ~~(29)(27)~~ "To offer" means, when used in connection with health services, to hold a health facility out as capable of providing, or as having the means of providing, specified health services.

Section 2. KRS 216B.020 is amended to read as follows:

- (1) The provisions of this chapter that relate to the issuance of a certificate of need shall not apply to abortion facilities as defined in KRS 216B.015; any hospital which does not charge its patients for hospital services and does not seek or accept Medicare, Medicaid, or other financial support from the federal government or any state government; assisted living residences; family care homes; state veterans' nursing homes; services provided on a contractual basis in a rural primary-care hospital as provided under KRS 216.380; community mental health centers for services as defined in KRS Chapter 210; primary care centers; rural health clinics; private duty nursing services licensed as nursing pools; group homes; end stage renal disease dialysis facilities, freestanding or hospital based; swing beds; special clinics, including, but not limited to, wellness, weight loss, family planning, disability determination, speech and hearing, counseling, pulmonary care, and other clinics which only provide diagnostic services with equipment not exceeding the major medical equipment cost threshold and for which there are no review criteria in the state health plan; nonclinically-related expenditures; ***nursing home beds that shall be exclusively limited to on-campus residents of a certified continuing care retirement community***; the relocation of hospital administrative or outpatient services into medical office

buildings which are on or contiguous to the premises of the hospital or the following health services provided on site in an existing health facility when the cost is less than six hundred thousand dollars (\$600,000) and the services are in place by December 30, 1991: psychiatric care where chemical dependency services are provided, level one (1) and level two (2) of neonatal care, cardiac catheterization, and open heart surgery where cardiac catheterization services are in place as of July 15, 1990. The provisions of this section shall not apply to nursing homes, personal care homes, intermediate care facilities, and family care homes; or nonconforming ambulance services as defined by administrative regulation. These listed facilities or services shall be subject to licensure, when applicable.

- (2) Nothing in this chapter shall be construed to authorize the licensure, supervision, regulation, or control in any manner of:
  - (a) Private offices and clinics of physicians, dentists, and other practitioners of the healing arts, except any physician's office that meets the criteria set forth in KRS 216B.015(4);
  - (b) Office buildings built by or on behalf of a health facility for the exclusive use of physicians, dentists, and other practitioners of the healing arts; unless the physician's office meets the criteria set forth in KRS 216B.015(4), or unless the physician's office is also an abortion facility as defined in KRS 216B.015, except no capital expenditure or expenses relating to any such building shall be chargeable to or reimbursable as a cost for providing inpatient services offered by a health facility;
  - (c) Dispensaries and first-aid stations located within business or industrial establishments maintained solely for the use of employees, if the facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four (24) hours;
  - (d) Establishments, such as motels, hotels, and boarding houses, which provide domiciliary and auxiliary commercial services, but do not provide any health related services and boarding houses which are operated by persons contracting with the United States Veterans Administration for boarding services;
  - (e) The remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination and recognized by that church or denomination; and
  - (f) On-duty police and fire department personnel assisting in emergency situations by providing first aid or transportation when regular emergency units licensed to provide first aid or transportation are unable to arrive at the scene of an emergency situation within a reasonable time.
- (3) An existing facility licensed as skilled nursing, intermediate care, or nursing home shall notify the cabinet of its intent to change to a nursing facility as defined in Public Law 100-203. A certificate of need shall not be required for conversion of skilled nursing, intermediate care, or nursing home to the nursing facility licensure category.
- (4) Notwithstanding any other provision of law to the contrary, dual-license acute care beds licensed as of December 31, 1995, and those with a licensure application filed and in process prior to February 10, 1996, may be converted to nursing facility beds by December 31, 1996, without applying for a certificate of need. Any dual-license acute care beds not converted to nursing facility beds by December 31, 1996, shall, as of January 1, 1997, be converted to licensed acute care beds.
- (5) Notwithstanding any other provision of law to the contrary, no dual-license acute care beds or acute care nursing home beds that have been converted to nursing facility beds pursuant to the provisions of subsection (3) of this section may be certified as Medicaid eligible after December 31, 1995, without the written authorization of the secretary.
- (6) Notwithstanding any other provision of law to the contrary, total dual-license acute care beds shall be limited to those licensed as of December 31, 1995, and those with a licensure application filed and in process prior to February 10, 1996. No acute care hospital may obtain a new dual license for acute care beds unless the hospital had a licensure application filed and in process prior to February 10, 1996.
- (7) Ambulance services owned and operated by a city government, which propose to provide services in coterminous cities outside of the ambulance service's designated geographic service area, shall not be required to obtain a certificate of need if the governing body of the city in which the ambulance services are to be provided enters into an agreement with the ambulance service to provide services in the city.

- (8) ***Notwithstanding any other provision of law, a continuing care retirement community's nursing home beds shall not be certified as Medicaid eligible unless a certificate of need has been issued authorizing applications for Medicaid certification. The provisions of subsection (3) of this section notwithstanding, a continuing care retirement community shall not change the level of care licensure status of its beds without first obtaining a certificate of need.***

Section 3. KRS 216B.040 is amended to read as follows:

- (1) The cabinet shall have four (4) separate and distinct functions in administering this chapter:
- (a) To approve or deny certificates of need in accordance with the provisions of this chapter, except as to those applications which have been granted nonsubstantive review status by the cabinet;
  - (b) To issue and to revoke certificates of need;
  - (c) To provide a due process hearing and issue a final determination on all actions by the cabinet to deny, revoke, modify, or suspend licenses of health facilities and health services issued by the cabinet; and
  - (d) To enforce, through legal actions on its own motion, the provisions of this chapter and its orders and decisions issued pursuant to its functions.
- (2) The cabinet shall:
- (a) Promulgate administrative regulations pursuant to the provisions of KRS Chapter 13A:
    - 1. To establish the certificate of need review procedures, including but not limited to, application procedures, notice provisions, procedures for review of completeness of applications, and timetables for review cycles.
    - 2. To establish criteria for issuance and denial of certificates of need which shall be limited to the following considerations:
      - a. Consistency with plans. Each proposal approved by the cabinet shall be consistent with the state health plan, and shall be subject to biennial budget authorizations and limitations, and with consideration given to the proposal's impact on health care costs in the Commonwealth. The state health plan shall contain a need assessment for long-term care beds, which shall be based on a statistically valid analysis of the present and future needs of the state as a whole and counties individually. The need assessment shall be applied uniformly to all areas of the state. The methodology shall be reviewed and updated on an annual basis. The long-term care bed need criteria in the state health plan or as set forth by the appropriate certificate of need authority shall give preference to conversion of personal care beds and acute care beds to nursing facility beds, so long as the state health plan or the appropriate certificate of need authority establishes a need in the affected counties and the proposed conversions are more cost-effective than new construction. The fact that the state health plan shall not address the specific type of proposal being reviewed shall not constitute grounds for disapproval of the proposal. ***Notwithstanding any other provision of law, the long-term care bed need criteria in the state health plan or as set forth by the appropriate certificate of need authority shall not consider, factor in, or include any continuing care retirement community's nursing home beds established under Sections 1, 2, 5, and 6 of this Act;***
      - b. Need and accessibility. The proposal shall meet an identified need in a defined geographic area and be accessible to all residents of the area. A defined geographic area shall be defined as the area the proposal seeks to serve, including its demographics, and shall not be limited to geographical boundaries;
      - c. Interrelationships and linkages. The proposal shall serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state, accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system;
      - d. Costs, economic feasibility, and resources availability. The proposal, when measured against the cost of alternatives for meeting needs, shall be judged to be an effective and economical use of resources, not only of capital investment, but also ongoing requirements for health manpower and operational financing;

- e. Quality of services. The applicant shall be prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements assuring the provision of quality health care services, as established by the cabinet;
  - f. Hospital-based skilled nursing, intermediate care, and personal care beds shall be considered by the cabinet in determining the need for freestanding long-term care beds.
- (b) Conduct public hearings, as requested, in respect to certificate-of-need applications, revocations of certificates of need, and denials, suspensions, modifications, or revocations of licenses.
- (3) The cabinet may:
- (a) Issue other administrative regulations necessary for the proper administration of this chapter;
  - (b) Administer oaths, issue subpoenas, subpoenas duces tecum, and all necessary process in proceedings brought before or initiated by the cabinet, and the process shall extend to all parts of the Commonwealth. Service of process in all proceedings brought before or initiated by the cabinet may be made by certified mail, or in the same manner as other process in civil cases, as the cabinet directs;
  - (c) Establish by promulgation of administrative regulation under KRS Chapter 13A reasonable application fees for certificates of need;
  - (d) Appoint technical advisory committees as are deemed necessary to administer its functions under the provisions of this chapter;
  - (e) Establish a mechanism for issuing advisory opinions to prospective applicants for certificates of need regarding the requirements of a certificate of need; and
  - (f) Establish a mechanism for biennial review of projects for compliance with the terms of the certificate of need.

Section 4. KRS 216B.095 is amended to read as follows:

- (1) An applicant may waive the procedures for formal review of an application for a certificate of need and request a nonsubstantive review as provided below. The cabinet may grant or deny nonsubstantive review status within ten (10) days of the date the application is deemed completed and shall give notice to all affected persons of the decision to conduct a nonsubstantive review. Any affected person other than the applicant may request a hearing by filing a request with the cabinet within ten (10) days of the notice to conduct a nonsubstantive review. As applicable, hearings shall be conducted as provided in KRS 216B.085. Based solely upon the record established with regard to the matter, the cabinet shall approve or deny a certificate of need on all projects assigned nonsubstantive review status within thirty-five (35) days of the determination of nonsubstantive review status. If the application is denied nonsubstantive review status, it shall automatically be placed in the formal review process.
- (2) If a certificate of need is denied following a nonsubstantive review, the applicant may request that the application be placed in the next cycle of the formal review process. Nothing in this subsection shall require an applicant to pursue a formal review before obtaining judicial review pursuant to KRS 216B.115.
- (3) The cabinet may grant nonsubstantive review status to an application for a certificate of need which is required:
  - (a) To change the location of a proposed health facility;
  - (b) To replace or relocate a licensed health facility, if there is no substantial change in health services or substantial change in bed capacity;
  - (c) To replace or repair worn equipment if the worn equipment has been used by the applicant in a health facility for five (5) years or more;
  - (d) For cost escalations;
  - (e) To establish an industrial ambulance service; or
  - (f) In other circumstances the cabinet by administrative regulation may prescribe.
- (4) Notwithstanding any other provision to the contrary in this chapter, the cabinet may approve a certificate of need for a project required for the purposes set out in paragraphs (a) through (f) of subsection (3) of this

section, unless it finds the facility or service with respect to which the capital expenditure is proposed to be made is not required; or to the extent the facility or services contemplated by the proposed capital expenditure is addressed in the state health plan, the cabinet finds that the capital expenditure is not consistent with the state health plan.

- (5) The decision of the cabinet approving or denying a certificate of need pursuant to this section shall be final for purposes of judicial appeal, unless the applicant requests the application be placed in the formal review process. An approved certificate shall be issued thirty (30) days after notice of the cabinet's decision, unless a judicial appeal is taken and issuance is enjoined by the court.
- (6) *Notwithstanding any other provision of law, the cabinet shall not grant nonsubstantive review status to a certificate of need application that indicates an intent to apply for Medicaid certification of nursing home beds within a continuing care retirement community established under Sections 1, 2, 5, and 6 of this Act.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

*The cabinet shall promulgate administrative regulations according to KRS Chapter 13A that set forth the procedures and requirements for obtaining a certificate of compliance for a continuing care retirement community.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

- (1) *To be eligible for a certificate of compliance, a continuing care retirement community shall certify in writing to the cabinet and shall disclose in writing to each of its residents that:*
  - (a) *None of the health facilities or health services operated by the continuing care retirement community shall apply for or become certified for participation in the Medicaid program; and*
  - (b) *No claim for Medicaid reimbursement shall be submitted for any person for any health service provided by the continuing care retirement community.*
- (2) *A continuing care retirement community may establish one (1) bed at the nursing home level of care for every four (4) living units or personal care beds operated by the continuing care retirement community collectively. All residents in nursing home beds shall be assessed using the Health Care Financing Administration approved long-term care resident assessment instrument.*
- (3) *Admissions to continuing care retirement community nursing home beds shall be exclusively limited to on-campus residents. A resident shall not be admitted to a continuing care retirement community nursing home bed prior to ninety (90) days of residency in the continuing care retirement community unless the resident experiences a significant change in health status documented by a physician. No resident admitted to a nursing home bed shall be transferred or discharged without thirty (30) days prior written notice to the resident or his or her guardian.*
- (4) *A continuing care retirement community shall assist each resident upon a move-out notice to find appropriate living arrangements. Each continuing care retirement community shall share information on alternative living arrangements provided by the Office of Aging Services at the time a move-out notice is given to a resident. The written agreement executed by the resident and the continuing care retirement community shall contain provisions for assisting any resident who has received a move-out notice to find appropriate living arrangements, prior to the actual move-out date.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

*The establishment of continuing care retirement community nursing home beds under Sections 1, 2, 5, and 6 of this Act shall be limited to the time period commencing upon the effective date of this Act and ending upon the adjournment of the 2002 General Assembly. No further continuing care retirement community nursing home beds shall be established under Sections 1, 2, 5, and 6 of this Act without affirmative actions of the General Assembly.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall monitor the establishment of continuing care retirement communities' nursing home beds closely. The cabinet shall collect the following data regarding continuing care retirement communities' nursing home beds:*
  - (a) *The number of applications for a certificate of need to convert nursing home beds to nursing facility beds, the number of beds included in each application, and the number of beds approved;*



- (b) *The number of applications for Medicaid certification for continuing care retirement communities' nursing home beds, the number of beds included in each application, and the number of beds certified as Medicaid eligible;*
  - (c) *The payor sources for continuing care retirement communities' nursing home beds; and*
  - (d) *The number of each type of bed or living unit within each continuing care retirement community on the effective date of this Act and the number of each type of bed or living unit within each continuing care retirement community on October 31, 2001.*
- (2) *Prior to the beginning of the 2002 Regular Session of the General Assembly, the secretary shall issue a report to the President of the Senate and the Speaker of the House of Representatives, the chair of the Senate Standing Committee on Health and Welfare, and the chair of the House Standing Committee on Health and Welfare addressing the impact of Sections 1, 2, 5, and 6 of this Act upon the state's Medicaid budget, consumer access issues, and providers of long-term care.*

Approved March 31, 2000

## CHAPTER 265

(HB 543)

AN ACT relating to the Kentucky River Authority.

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

Section 1. KRS 42.016 is amended to read as follows:

The following corporate bodies and instrumentalities of the Commonwealth shall be attached to the Office of the Secretary for administrative purposes and staff services:

- (1) State Property and Buildings Commission;
- (2) Kentucky Pollution Abatement Authority;
- (3) Kentucky Savings Bond Authority;
- (4) County Officials Compensation Board;
- (5) Kentucky Turnpike Authority;
- (6) State Investment Commission;
- (7) Kentucky Housing Corporation; ~~and~~
- (8) Governmental Services Center; *and*
- (9) ***Kentucky River Authority.***

SECTION 2. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

***The Kentucky River Authority is created to perform the essential governmental functions and public purposes set out in KRS 151.700 to 151.730. The authority shall be a public corporation and independent governmental agency and instrumentality of the state. The responsibilities of the authority shall be managed and implemented by a board of directors as set out in Section 3 of this Act.***

Section 3. KRS 151.710 is amended to read as follows:

- (1) The Governor shall appoint members to the Kentucky River Authority, created to carry out the essential public purpose of protecting the health and welfare of the people of the Commonwealth as declared in KRS 151.700.
- (2) The Governor shall appoint the ~~secretaries~~~~secretary~~ of the ***Finance and Administration Cabinet and the Natural Resources and Environmental Protection Cabinet*** and ten (10) other persons as the members of the authority. The ~~secretaries~~~~secretary~~ may designate ~~alternates~~~~an alternate~~. Of the ten (10) persons, one (1) shall be a registered engineer, one (1) an expert in water quality, one (1) a mayor, and one (1) a county judge/executive. The mayor and the county judge/executive shall be officers from counties which obtain the major portion of their water supply from the Kentucky River. Five (5) members shall reside in a county adjacent to the main stem of the Kentucky River, one (1) of the five (5) members residing in counties adjacent

to locks and dams one (1) through four (4); and one (1) member shall reside in a county adjacent to either the North Fork, Middle Fork, or South Fork of the Kentucky River. ***Of the twelve (12) members only one (1) may be an employee of the Natural Resources and Environmental Protection Cabinet.***

- (3) Of the ten (10) members first appointed, two (2) shall continue in office for terms of one (1) year, two (2) for terms of two (2) years, three (3) for terms of three (3) years, and three (3) for terms of four (4) years, as the Governor designates. At the expiration of the original terms and for all succeeding terms, the Governor shall appoint a successor to the authority for a term of four (4) years in each case. Members may be reappointed. A vacancy in an unexpired term shall be filled for the unexpired portion of the term in the same manner as the original appointment to that term.
- (4) Each member shall receive as compensation one hundred dollars (\$100) per day for attending a meeting of the authority.
- (5) Any member who misses three (3) consecutive meetings of the authority shall be deemed to have vacated the office. The authority shall declare the office vacant and the office shall be filled as provided by subsections (2) and (3) of this section.
- (6) The authority annually shall elect one (1) of its members as chairman. A quorum for the transaction of business shall be six (6) members, and a majority of the members present at a meeting may take action on any matter legally before the authority.
- (7) Members shall be paid their necessary travel expenses incurred in attending meetings and in the performance of their official duties, in addition to the per diem compensation of one hundred dollars (\$100).
- (8) The authority shall meet at least quarterly, and may meet upon the call of the chairman.
- (9) The chairman shall be paid necessary travel expenses and a one hundred dollar (\$100) per diem compensation for conducting official business of the authority.
- (10) The authority shall be attached for administrative purposes to the ***Finance and Administration***~~Natural Resources and Environmental Protection~~ Cabinet, and the cabinet shall provide the necessary personnel to provide administrative services for the authority.
- (11) The necessary travel expenses and per diem compensation of the members of the authority in attending meetings and in the performance of their official duties shall be paid by the authority.
- (12) The authority shall promulgate administrative regulations necessary to carry out its duties, and shall report annually to the Governor and the Legislative Research Commission.

Section 4. KRS 151.720 is amended to read as follows:

The Kentucky River Authority is authorized and empowered to:

- (1) Construct, reconstruct, provide for the major maintenance, or repair the locks and dams on the Kentucky River and all real and personal property pertaining thereto, as well as maintain the channel;
- (2) Acquire by purchase, exercise of the rights of eminent domain, grant, gift, devise, or otherwise, the fee simple title to or any acceptable lesser interest in any real or personal property and by lease or other conveyance, contract for the right to use and occupy any real or personal property selected in the discretion of the authority as constituting necessary, desirable, or acceptable sites to fulfill its statutory authority and power;
- (3) Lease its real or personal property to other state agencies, political subdivisions of the Commonwealth, corporations, partnerships, associations, foundations, or persons as the authority deems necessary to carry out the purposes of this section;
- (4) Sell or otherwise dispose of its real or personal property in accordance with KRS 56.463 and 45A.045;
- (5) Collect water use fees from all facilities using water from the Kentucky River basin, except those facilities using water primarily for agricultural purposes. Facilities charged such a fee may pass on all or any part of the fee;
- (6) Issue revenue bonds in accordance with KRS 151.730;
- (7) Employ persons to carry out the authority's responsibilities with revenue from the water use fees, including an executive director who shall serve at the pleasure of the authority;

- (8) Contract for services with other state agencies, political subdivisions of the Commonwealth, corporations, partnerships, associations, foundations, or persons to perform its duties;
- (9) Promulgate administrative regulations providing for clean water, which shall not be less stringent than the state and federal regulations for clean water;
- (10) Exercise all other powers necessary to perform its public purpose to implement and enforce the plans developed by the authority pursuant to this section *and Sections 5 and 6 of this Act*, and to enforce administrative regulations promulgated by the authority. The long-range water resource plan and drought response plan shall be implemented for the basin upon the direction of the authority;
- (11) Develop comprehensive plans for the management of the Kentucky River within the basin, including a long-range water resource plan and a drought response plan. Each county within the basin shall develop a long-range water resource plan and submit it to the authority. The authority, *after consultation with the Natural Resources and Environmental Protection Cabinet*, shall develop a unified long-range water resource plan for the basin. *The unified long-range water resource plan shall be implemented over short-range and long-range time periods. The short-range plan shall be for a period of six (6) years and the long-range plan shall be for a period of twenty (20) years.* The authority shall conduct a public hearing on the plan *prior to its adoption and amend the plan as appropriate based on the comments received. The Natural Resources and Environmental Protection Cabinet shall review the draft unified plan and provide comment during the public comment period concerning the consistency of the plan with the state requirements pursuant to KRS Chapters 224 and 151*, and ~~submit its final unified plan for the basin to the Natural Resources and Environmental Protection Cabinet. The cabinet shall act upon the plan within six (6) months and shall approve the plan, unless it objects for good reason shown~~. A drought response plan for the basin shall be developed by the authority *and shall be coordinated with the Natural Resources and Environmental Protection Cabinet to assure consistency with KRS Chapters 224 and 151*, and this plan shall be implemented for the basin upon the direction of the authority;
- (12) Develop and promote a plan for the protection and use of groundwater within the basin. Administrative regulations may be promulgated implementing the plan, and these regulations shall not be less stringent than state and federal regulations protecting groundwater;
- (13) Develop recreational areas within the basin. These recreational areas may be operated and funded by the state Department of Parks, Kentucky State Nature Preserves Commission, or other governmental entity as specifically authorized or permitted within the biennial executive budget. There is hereby created the Kentucky River Park to be located as determined by the authority;
- (14) Utilize funds provided for recreational purposes within the biennial executive budget for major or minor maintenance if the authority certifies to the secretary of the Finance and Administration Cabinet that a significant need exists for the repairs and no other funds are available for the maintenance;
- (15) Coordinate the Kentucky River basin water resources activities among state agencies;
- (16) Report quarterly on all of its activities to the legislative Committee on Appropriations and Revenue;
- (17) Receive reports from state agencies on litigation concerning the Kentucky River, which agencies are hereby directed to report to the authority;
- (18) Credit to the authority any income derived from the interest earned on the investment of the water use fees collected, which shall be available for the authority's expenditure; and
- (19) Accomplish the watershed management mission of the authority, which is to fulfill the provisions of this section for the Kentucky River basin, the boundary of which shall be defined by a hydrologic map promulgated in an administrative regulation.

SECTION 5. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky River Authority shall undertake a continuing study of the water available within the Kentucky River and the water needs within the Kentucky River Basin. The study shall focus on necessary capital construction to maintain or increase water availability within the Kentucky River, including bringing existing facilities up to acceptable standards or replacing existing facilities where required.*
- (2) *The Kentucky River Authority shall on a biennial basis provide the General Assembly with an estimate of the cost of maintaining or increasing the water available within the Kentucky River in order to meet the water supply needs of the citizens within the Kentucky River Basin.*

## SECTION 6. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

- (1) *Beginning with the 2000-2002 biennium and each biennium thereafter, the authority shall submit to the General Assembly a six (6) year program of preconstruction and construction activities to maintain or increase water available within the Kentucky River. The program shall include a two (2) year construction component that shall be implemented as authorized by the General Assembly in the authority's biennial budget and a four (4) year preconstruction component that shall advise the General Assembly of the consistency of ongoing and long-term planning with the construction activities funded by the General Assembly.*
- (2) *The program shall be developed by considering, at a minimum, the following factors:*
  - (a) *The population to be served by the available water;*
  - (b) *The social, economic, and environmental impact of program elements;*
  - (c) *The condition of existing facilities critical to water availability;*
  - (d) *The cost of maintaining, improving, replacing, or removing facilities; and*
  - (e) *The dependence of communities within the river basin on specific Kentucky River dam pools or other sources of water.*
- (3) *The program shall include a four (4) year planning document setting out preconstruction activities that include planning and design and an environmental analysis of projects to maintain or increase water available within the Kentucky River and geotechnical and stability evaluations of the Kentucky River locks and dams.*
- (4) *The authority shall provide to the General Assembly a long-range planning document consisting of twenty (20) years for water supply projects being considered by the authority.*
- (5) *The authority shall be responsible for the execution of each six (6) year program as approved and authorized in the budget by the General Assembly and shall report any anticipated deviations from the authorized construction funding or preconstruction program to the Interim Joint Committee on Appropriations and Revenue.*

## SECTION 7. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

*By July 1 of each year preceding the convening of the General Assembly in regular session, the authority shall provide the projected six (6) year construction and preconstruction program to the Interim Joint Committee on Agriculture and Natural Resources, the Capital Planning Advisory Board, and the Interim Joint Committee on Appropriations and Revenue.*

## Section 8. KRS 151.723 is amended to read as follows:

- (1) The rate of the water use fees collected by the authority shall be set for each year of the biennium based upon a total amount of funds necessary to carry out only those functions, projects, and expenses authorized by the General Assembly in the authority's biennial budget.
- (2) At the time the authority submits its budget to the Governor's Office of Policy and Management, it shall certify to the General Assembly ~~and the secretary of the Revenue Cabinet~~ the total amount of water use reported for the preceding biennium by users subject to the water use fees. At least thirty (30) days prior to the effective date of the authority's budget, the ~~authority~~ ~~secretary of the Revenue Cabinet~~ shall establish a rate for each water use fee based upon an amount of water use projected for each year of the biennium from the amount reported, calculated to generate the amount of funds necessary to carry out the functions, projects, and expenses which have been authorized by the General Assembly *to be funded by the fees*. The rate shall be an amount for each one thousand (1,000) gallons of water use and shall be effective for at least one (1) year.
- (3) The authority shall define by administrative regulation those uses of the Kentucky River or the waters of the Kentucky River basin subject to a water use fee. Water use fees shall not apply to facilities using water for agricultural purposes. The authority shall collect the fees on a quarterly basis and pay the collected fees into the State Treasury to the credit of a restricted fund for use by the authority.

## SECTION 9. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

*At the time a water utility requests a state agency to take action required to allow the transfer between water utilities of drinking water within or into the watershed of the Kentucky River basin, the water utility shall notify*

*the authority of the request that has been made for state agency action. The authority shall review the request and comment on the requested transfer to the state agency within the time period for the review by the state agency.*

Section 10. No later than September 30, 2000, the authority shall report to the Interim Joint Committee on Agriculture and Natural Resources, the Capital Planning Advisory Board, and the Interim Joint Committee on Appropriations and Revenue on implementation of those plan elements authorized during the 2000 Regular Session of the General Assembly.

**Approved March 31, 2000**

## **CHAPTER 266**

**(HB 596)**

AN ACT relating to Kentucky Horse Council license plates.

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

Section 1. KRS 186.1868 is amended to read as follows:

- (1) Any person who complies with the provisions of KRS 186.186 may apply for a special Kentucky Horse Council license plate.
- (2) *Any person who registers a farm truck under KRS 186.050(4)(a) and who complies with the provisions of KRS 186.186 may apply for a special Kentucky Horse Council license plate. The registration receipt for a farm truck issued a Kentucky Horse Council license plate shall state the declared gross weight of the vehicle.*
- (3) In addition to the fees required by KRS 186.186, a person applying for a Kentucky Horse Council license plate shall pay a ten dollar (\$10) fee that shall be collected by the county clerk and forwarded by the clerk to the Transportation Cabinet under the provisions of KRS 186.230. When applying for an annual renewal registration decal, a person with a Kentucky Horse Council license plate shall pay a five dollar (\$5) fee, in addition to the renewal fee established in KRS 186.186(2). The five dollar (\$5) fee shall be collected by the county clerk and forwarded by the clerk to the Transportation Cabinet under the provisions of KRS 186.230.
- ~~(4)(3)~~ A special Kentucky Horse Council license plate shall be the color and design selected by the Kentucky Horse Council and approved by the Transportation Cabinet. The name Kentucky and the annual registration renewal decal shall appear on the plate. The Transportation Cabinet may use any combination of letters or numerals as needed in the numbering of the license plates.
- ~~(5)(4)~~ All revenues generated pursuant to this subsection shall be forwarded by the Transportation Cabinet to the Kentucky Horse Council.

Section 2. This Act takes effect January 1, 2001.

**Approved March 31, 2000**

## **CHAPTER 267**

**(HB 599)**

AN ACT relating to mining reclamation.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

- (1) *If a permittee or operator has been issued a notice or order directing abatement of a violation on the basis of an imminent danger to health and safety of the public or significant imminent environmental harm, and the notice or order requires access to property for which the permittee or operator does not have the legal right of entry necessary in order to abate that violation, and the owner or legal occupant of that property has refused access, an easement of necessity is recognized on behalf of the permittee or operator for the limited purpose of abating that violation.*

- (2) *If a violation other than one described in subsection (1) cannot be abated because the permittee or operator responsible for abatement of the violation has been denied access to the land necessary to allow abatement of the violation, the cabinet shall terminate the notice of noncompliance or cessation order issued for the violation, if the following conditions are met:*
- (a) *Prior to terminating a notice of noncompliance or cessation order under this subsection, and within thirty (30) days of a request by a permittee or operator to terminate a violation based on a lack of access, the cabinet shall verify the denial of access and advise the surface owners of record and the legal occupants of the affected land of the consequences of refusing to allow access to the property for the purpose of enabling abatement of the violation; and*
  - (b) *The cabinet shall explain the consequences by certified mail, return receipt requested, and shall make a good faith effort to notify all owners of interest and legal occupants verbally, that:*
    1. *Refusal to allow access to the property will result in termination of the violation as uncorrectable;*
    2. *If there is damage that occurs to public or private property due to the uncorrected violation condition on the property, that the property owner may also be responsible under law for any property damage to private or public property that may result from the unreclaimed condition; and*
    3. *While the landowner may seek damages or injunctive relief in an action against the permittee or operator, the refusal to grant access in order to allow abatement of the violation shall result in the state terminating the requirement that the permittee or operator undertake work necessary for abatement of the violation, and that while penalties may be assessed, the performance bond shall not be forfeited on the basis of the violation.*
- (3) *The cabinet shall not terminate any notice of noncompliance or cessation order under this section if the cabinet determines that the denial of access necessary to abate the violation has been procured through collusion between the permittee or operator and the landowner or legal occupant of the affected land who is refusing to allow the necessary access. "Collusion," for the purpose of this section, includes any agreement, understanding, or contract by which the landowner refuses access to the property in return for any consideration, whether involving money or otherwise. Any act of collusion shall subject the permittee or operator to penalties under this chapter for willful and knowing refusal to correct the violation.*
- (4) *No noncompliance or cessation order may be terminated under this section where there is any common ownership or control between the permittee or operator and the landowner or legal occupant. No noncompliance or cessation order may be terminated under this section where there is any other legal relationship between the permittee or operator and the landowner or legal occupant, except where a court of competent jurisdiction has determined that the legal relationship does not provide for a right of access.*
- (5) *Where a violation may impact public or private property other than land for which access has been denied, the cabinet shall direct abatement measures to be taken by the permittee or operator to prevent damage to those lands for which access has not been denied.*
- (6) *Termination of a notice of noncompliance or cessation order under this section shall not affect the assessment of a civil penalty for the violation. Nothing in this section shall affect any person's right for damages or injunctive relief.*

Approved March 31, 2000

## CHAPTER 268

(HB 616)

AN ACT relating to oil and gas.

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

Section 1. KRS 353.620 is amended to read as follows:

- (1) Notwithstanding KRS 353.610, if an application is submitted for a permit to drill, deepen, or reopen a well closer to a boundary or to another well than prescribed in KRS 353.610 and the application is accompanied by

the written consent of all owners of oil and gas interests in any premises which will be offset by the proposed well, the department shall issue a permit for the well.

- (2) Notwithstanding KRS 353.610, the department may issue a permit for a well to be drilled, deepened, or reopened closer to a boundary or another well than prescribed in KRS 353.610, if the director, after notice and hearing, finds that topographical or other conditions are such as to make compliance with the requirements of KRS 353.610 unduly burdensome or in conflict with reasonably prudent methods and practices for the production of oil or gas.
- (3) ***Notwithstanding KRS 353.610, the department shall issue a permit for a well to be drilled, deepened, or reopened closer to a boundary than prescribed in KRS 353.610 if a pooling order has been issued pursuant to Section 2 of this Act.***
- (4) If a permit is issued to drill, deepen, or reopen a well under ***subsection (1) or (2) of this section*** at a location closer to a well or boundary than prescribed in KRS 353.610, the department shall permit a like variance from the requirements of KRS 353.610 on all premises offset and adversely affected by the well.

Section 2. KRS 353.630 is amended to read as follows:

- (1) Whenever any separate tract of land is so situated because of size or other condition that it does not contain a location at which a well for oil or gas may be drilled, deepened or reopened by reason of the spacing provisions of KRS 353.610, the department shall order, after notice and a hearing, the pooling of all oil and gas interests in the separate tract or in a portion thereof with all like interests in a contiguous tract or tracts, or portions thereof, as are necessary to afford the pooled tracts one (1) location for the drilling, deepening, or reopening of a well for the production of oil or gas in compliance with the spacing requirements of KRS 353.500 to 353.720. The department shall require the development and operation of all pooled ~~acreage~~**tracts** as a single leasehold estate in accordance with regulations and rules promulgated under KRS 353.500 to 353.720.
- (2) ***Whenever an operator proposes to drill, deepen, or reopen a well at a location that would require the pooling of separate tracts or interests in order to comply with the spacing requirements of KRS 353.610, and the operator has secured the written consent or agreement from the owners of at least fifty-one percent (51%) of the interests in each tract, or portions thereof, included in the proposed pooled acreage, the department shall, where it finds that the requirements of this subsection have been met, order, after notice and a hearing, the pooling of all oil and gas interests in all tracts, or portions thereof, that are included within the proposed pooled acreage as established by the spacing requirements of KRS 353.610. The department shall issue a permit to drill, deepen, or reopen the well and require the development and operation of the pooled acreage as a single leasehold estate in accordance with administrative regulations promulgated under KRS 353.500 to 353.720.***
- (3) ***Whenever an operator proposes to drill, deepen, or reopen a well at a location that would require the pooling of interests or tracts in order to comply with the spacing requirements of KRS 353.610, and the operator owns or controls the right to develop the oil and gas underlying one hundred percent (100%) of the interests in each tract, or portions thereof, included in the proposed pooled acreage, the department shall, where it finds that the requirements of this subsection have been met, order, after notice and a hearing, the pooling of all oil and gas interests in all tracts, or portions thereof, that are included within the proposed pooled acreage established by the spacing requirements of KRS 353.610. The department shall issue a permit to drill, deepen, or reopen the well and require the development and operation of all pooled tracts as a single leasehold estate in accordance with administrative regulations promulgated under KRS 353.500 to 353.720.***
- (4) No pooling as permitted by this section shall be ordered except:
  - (a) ~~When~~**After** an application ***has been filed*** to drill, deepen or reopen a well ***within the distance limitations prescribed in KRS 353.610***~~for the production of oil upon the tract or within four hundred (400) feet of the tract, or after an application for a permit to drill, deepen or reopen a well for the production of gas upon the tract or within one thousand (1,000) feet of the tract has been submitted~~; and
  - (b) ~~When~~**After** a lessee or owner of an oil or gas interest in the tract shall request the pooling.
- (5)~~(3)~~ No pooling as permitted by this section shall be ordered with respect to any tract or portion thereof upon which a well is drilled, deepened or reopened:

- (a) Unless the pooling was requested prior to the commencement of the drilling, deepening, or reopening of the well by a lessee or owner of an oil and gas interest in a contiguous tract **pursuant to subsection (1), (2), or (3) of this section**~~[which does not contain a location at which a well for oil or gas may be drilled, deepened or reopened]~~; and
  - (b) Unless the request, if made by the owner of an operating interest who elects to participate in the risk and cost of the drilling, deepening, or reopening of the well, is accompanied by a bond or other security satisfactory to and in an amount set by the director for the payment of such owner's share of the cost of drilling, deepening, or reopening the well.
- (6)~~(4)~~ Production from any well which is ordered pooled pursuant to KRS 353.500 to 353.720 shall be deemed for all purposes to have been so produced from each tract or portion thereof included in the pool in proportion to the amounts established in the pooling order.

Section 3. KRS 353.640 is amended to read as follows:

- (1) ***The operator shall provide a list to the department of all persons reasonably known to own an oil or gas interest in any tract, or portion thereof, proposed to be pooled in an application to the department for a pooling order. A pooling order shall be made only after the department provides notice to all persons reasonably known to own an oil or gas interest in any tract, or a portion thereof, proposed to be pooled after a hearing has been held. In the event of the filing of an application for a pooling order under KRS 353.630(2) where unknown owners or nonlocatable owners exist, the operator shall cause to be published, at least twenty (20) days prior to the hearing on the application for the pooling order, one (1) notice in the newspaper of the largest circulation in each county in which any tract, or portion thereof, proposed to be pooled is located. The notice shall:***
  - (a) ***State that an application for a pooling order is being filed with the Division of Oil and Gas in the department;***
  - (b) ***Describe any tract, or portion thereof, proposed to be pooled;***
  - (c) ***In the case of an unknown owner, identify the name of the last known owner;***
  - (d) ***In the case of a nonlocatable owner, identify the owner and the owner's last known address; and***
  - (e) ***State that any party claiming an interest in any tract, or portion thereof, proposed to be pooled should contact the Director of the Division of Oil and Gas in the department within twenty (20) days of the date of publication***~~[A pooling order shall be made only after notice to all persons owning an oil or gas interest in any tract proposed to be pooled with another tract, and after a hearing].~~
- (2) A pooling order shall authorize the drilling, deepening, or reopening, and the operation of a well for the production of oil or gas on the tracts or portions thereof pooled; shall designate the operator to drill and operate the well; shall prescribe the time and manner in which all owners ***of operating interests*** in the pooled tracts or portions thereof may elect to participate therein; shall provide that all reasonable costs and expenses of drilling, deepening, or reopening, and the completing, operating, plugging, and abandoning the well shall be borne, and all production from the well shall be shared by all owners of operating interests in proportion to the net mineral acres in the pooled tracts owned or under lease to each owner; and shall make provision for the payment of the reasonable actual cost thereof, including a reasonable charge for supervision, by all those who elect to participate therein.
- (3) Upon request a pooling order shall provide one (1) or more just and equitable alternatives whereby, an owner of an operating interest, who does not elect to participate in the risk and cost of the drilling, deepening or reopening of a well:
  - (a) May elect to surrender his interest or a portion thereof to the participating owners on a reasonable basis and for a reasonable consideration which, if not agreed upon, shall be determined by the director; or
  - (b) May elect to participate in the drilling, deepening or reopening of the well on a limited or carried basis upon terms and conditions determined by the director to be just and reasonable.



- (4) A certified copy of any pooling order entered under KRS 353.500 to 353.720 shall be entitled to be recorded in the office of the county clerk of the county or counties in which all or any portion of the pooled tract is located, and the record of the order, from the time of lodging the order for record, shall be notice of the order to all persons.

**Approved March 31, 2000**

## **CHAPTER 269**

**(HB 623)**

AN ACT relating to certified school employees.

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

Section 1. KRS 161.120 is amended to read as follows:

- (1) Except as described in KRS 161.795, the Education Professional Standards Board may revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of those actions regarding any certificate issued under KRS 161.010 to 161.100, or any certificate or license issued under any previous law to superintendents, principals, teachers, substitute teachers, interns, supervisors, directors of pupil personnel, or other administrative, supervisory, or instructional employees for the following reasons:
- (a) Being convicted of, or entering an "Alford" plea or plea of nolo contendere to, notwithstanding an order granting probation or suspending imposition of any sentence imposed following the conviction or entry of the plea, one (1) of the following:
    1. A felony;
    2. A misdemeanor under KRS Chapter **218A**, 508, 509, 510, 522, 525, 529, 530, or 531; or
    3. A misdemeanor involving a student or minor.

A certified copy of the conviction or plea shall be conclusive evidence of the conviction or plea;
  - (b) Having sexual contact as defined in KRS 510.010(7) with a student or minor. Conviction in a criminal proceeding shall not be a requirement for disciplinary action;
  - (c) Committing any act that constitutes fraudulent, corrupt, dishonest, or immoral conduct. If the act constitutes a crime, conviction in a criminal proceeding shall not be a condition precedent to disciplinary action;
  - (d) Demonstrating willful or careless disregard for the health, welfare, or safety of others;
  - (e) Physical or mental incapacity that prevents the certificate holder from performing duties with reasonable skill, competence, or safety;
  - (f) Possessing, using, or being under the influence of alcohol, which impairs the performance of duties;
  - (g) Unlawfully possessing or unlawfully using a drug during the performance of duties;
  - (h) Incompetency or neglect of duty;
  - (i) Making, or causing to be made, any false or misleading statement or concealing a material fact in obtaining issuance or renewal of any certificate;
  - (j) Failing to report as required by subsection (2)~~[(3)]~~ of this section;
  - (k) Failing to comply with an order of the Education Professional Standards Board;
  - (l) Violating any state statute relating to schools or the teaching profession;
  - (m) Violating *the professional code of ethics for Kentucky school certified personnel established by the Education Professional Standards Board through the promulgation of administrative regulation*;
  - (n) *Violating* any administrative regulation promulgated by the Education Professional Standards Board or the Kentucky Board of Education; or

- (o)~~(a)~~ Receiving disciplinary action or having the issuance of a certificate denied or restricted by another jurisdiction on grounds that constitute a violation of this subsection
- (2)~~[(1)]~~ ~~If an alleged violation is not of a serious nature and the evidence presented to the Education Professional Standards Board, after an appropriate opportunity for the certificate holder to respond, provides clear indication that the alleged conduct did in fact occur, the board may issue a written admonishment to the certificate holder. The certificate holder shall have the right to file a written response within thirty (30) days of the date of the admonishment and to have the response attached to the admonishment. Alternatively, the certificate holder may file a request for a hearing within thirty (30) days of the date of the written admonishment. Upon receipt of a timely request, the board shall set aside the written admonishment and set the matter for a hearing.~~
- (3)~~[(2)]~~ (a) The superintendent of each local school district shall report in writing to the Education Professional Standards Board the name, address, phone number, Social Security number, and position name of any certified school employee in the employee's district whose contract is terminated or not renewed, for cause except failure to meet local standards for quality of teaching performance prior to the employee gaining tenure; who resigns from, or otherwise leaves, a position under threat of contract termination, or nonrenewal, for cause; who is convicted in a criminal prosecution; or who otherwise may have engaged in any actions or conduct while employed in the school district that might reasonably be expected to warrant consideration for action against the certificate under subsection (1) of this section. The duty to report shall exist without regard to any disciplinary action, or lack thereof, by the superintendent, and the required report shall be submitted within thirty (30) days of the event giving rise to the duty to report.
- (b) The district superintendent shall inform the Education Professional Standards Board in writing of the full facts and circumstances leading to the contract termination or nonrenewal, resignation, or other absence, conviction, or otherwise reported actions or conduct of the certified employee, that may warrant action against the certificate under subsection (1) of this section, and shall forward copies of all relevant documents and records in his possession.
- (c) The Education Professional Standards Board may consider reports and information received from other sources.
- (d) The certified school employee shall be given a copy of any report provided to the Education Professional Standards Board by the district superintendent or other sources. *The employee*~~and~~ shall have the right to file a written rebuttal *to the report* which shall be *placed in the official file with the report*~~attached to the district superintendent's report~~.
- (3)~~[(4)]~~ A finding or action by a school superintendent or tribunal does not create a presumption of a violation or lack of a violation of subsection (1) of this section.
- (4) *The board may issue a written admonishment to the certificate holder if the board determines, based on the evidence, that a violation has occurred that is not of a serious nature. A copy of the written admonishment shall be placed in the official file of the certificate holder. The certificate holder may respond in writing to the admonishment within thirty (30) days of receipt and have that response placed in his official certification file. Alternatively, the certificate holder may file a request for a hearing with the board within thirty (30) days of receipt of the admonishment. Upon receipt of a request for a hearing, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.*
- (5) (a) *The Education Professional Standards Board shall schedule and conduct a hearing in accordance with KRS Chapter 13B:*
1. Before revoking, suspending, refusing to renew, imposing probationary or supervisory conditions upon, issuing a written reprimand, or any combination of these actions regarding any certificate;~~the Education Professional Standards Board shall schedule and conduct a hearing in accordance with KRS Chapter 13B.~~
  - 2.~~[(6)]~~ After denying an application for a certificate,~~or issuing a written admonishment, the Education Professional Standards Board shall set the matter for a hearing~~ upon written request filed within thirty (30) days of *receipt of* the letter advising of the denial; ~~or~~~~refusal, or admonishment.~~

3. *After issuing a written admonishment, upon written request for a hearing filed within thirty (30) days of receipt of the written admonishment.*
- (b)(7) Upon request, a hearing may be public or private at the discretion of the certified employee or applicant.
- (c)(8) The hearing shall be conducted before the full board, a panel of three (3) members of the board, or a person appointed as hearing officer by the board pursuant to KRS 13B.030(1).
- (6)(9) The Education Professional Standards Board or its chair may take emergency action pursuant to KRS 13B.125. Emergency action shall not affect a certificate holder's contract or tenure rights in the school district.
- (7)(10) If the Education Professional Standards Board substantiates that sexual contact occurred between a certified employee and a student *or minor*, the employee's certificate may be revoked or suspended with mandatory treatment of the employee as prescribed by the Education Professional Standards Board. The Education Professional Standards Board may require the employee to pay a specified amount for mental health services for the student *or minor* which are needed as a result of the sexual contact.
- (8) *At any time during the investigative or hearing processes, the board may enter into an agreed order or accept an assurance of voluntary compliance with the certificate holder.*
- (9) *The board may reconsider, modify, or reverse its decision on any disciplinary action.*
- (10) *Suspension of a certificate shall be for a specified period of time, not to exceed two (2) years.*
  - (a) *At the conclusion of the specified period, upon demonstration of compliance with any educational requirements and the terms set forth in the agreed order, the certificate shall be reactivated.*
  - (b) *A suspended certificate is subject to expiration and termination.*
- (11) *Revocation of a certificate is a permanent forfeiture. The board shall establish the minimum period of time before an applicant can apply for a new certificate.*
  - (a) *At the conclusion of the specified period, and upon demonstration of compliance with any educational requirements and the terms set forth in the agreed order, the applicant shall bear the burden of proof to show that he or she is again fit for practice.*
  - (b) *The board shall have discretion to impose conditions that it deems reasonably appropriate to ensure the applicant's fitness and the protection of public safety. Any conditions imposed by the board shall address or apply to only that time period after the revocation of the certificate*~~[Any individual whose certificate is revoked may apply for reissuance of his certificate when he believes he can demonstrate himself suitable for reissuance, unless the Education Professional Standards Board's order of revocation sets forth a specific minimum period of revocation].~~
- (12) An appeal from any final order of the Education Professional Standards Board shall be filed in Franklin Circuit Court in accordance with KRS Chapter 13B.

Section 2. KRS 161.780 is amended to read as follows:

- (1) No teacher~~or superintendent~~ shall be permitted to terminate his *or her* contract within thirty (30) days prior to the beginning of ~~the~~*his* school term *or during the school term* without the consent of the ~~superintendent~~*board*. *No superintendent shall be permitted to terminate his or her contract within thirty (30) days prior to the beginning of the school term or during the school term without the consent of the employing board of education.* A teacher~~or superintendent~~ shall be permitted to terminate his *or her* contract at any other time when schools are not in session by giving two (2) weeks ~~written notice to the employing superintendent~~ *written notice to the employing board of education*. *A superintendent shall be permitted to terminate his or her contract at any other time when schools are not in session by giving two (2) weeks written notice to the employing board of education.* Upon complaint by the employing board *or superintendent* to the Education Professional Standards Board~~and after investigation by the board~~, the certificate of a teacher or superintendent terminating his contract in any manner other than provided in this section may be suspended for not more than one (1) year, *pursuant to the hearing procedures set forth in Section 1 of this Act.*
- (2) If a teacher voluntarily resigns his contract during the school term, the resignation shall be in writing and shall become binding on the date the resignation is accepted by the superintendent. No further action by the employing board is necessary. The resignation is effective on the date specified in the letter of resignation. A resignation, once accepted, may be withdrawn only with the approval of the employing board of education.

Nothing in this subsection shall release the teacher from liability to the local board of education for breach of contract.

**Approved March 31, 2000**

## **CHAPTER 270**

### **(HB 631)**

AN ACT relating to the Commission on Fire Protection Personnel Standards and Education.

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

Section 1. KRS 95A.020 is amended to read as follows:

- (1) There is hereby created the Commission on Fire Protection Personnel Standards and Education, hereinafter called "commission," which shall be attached to the ***Kentucky Community and Technical College System***~~[state fire marshal's office in the Department of Housing, Buildings and Construction]~~.
- (2) The commission shall be composed of seventeen (17) members, residents of the State of Kentucky, appointed by the Governor. These members should be persons well qualified by experience or education in the field of fire protection or related fields.
- (3) The membership of the commission shall include:
  - (a) Two (2) volunteer firefighters, neither of which is a fire chief or assistant fire chief;
  - (b) Three (3) paid firefighters, at least one (1) of whom shall be a full-time paid county firefighter and none of whom shall be a fire chief or assistant fire chief;
  - (c) One (1) trustee of a volunteer fire department or fire district who is not a volunteer firefighter;
  - (d) Two (2) fire chiefs of paid fire departments;
  - (e) One (1) licensed physician;
  - (f) Two (2) fire chiefs of volunteer fire departments;
  - (g) One (1) ***representative of the Kentucky Industrial Response Committee***~~[teacher or administrator representing the fire and rescue training service of the Kentucky Community and Technical College System]~~;
  - (h) One (1) representative of the Division of Disaster and Emergency Services of the Department of Military Affairs;
  - (i) One (1) mayor of a Kentucky city;
  - (j) One (1) county judge/executive;
  - (k) One (1) representative of Kentucky industry or business enterprise; and
  - (l) One (1) representative of the general public.

The chancellor for the Technical Institutions' Branch of the Kentucky Community and Technical College System and the state fire marshal, or their designees, shall serve as ex officio members of the commission. Their designees shall have full voting rights. Appointive members shall be appointed for a term of four (4) years. Any member chosen by the Governor to fill a vacancy created otherwise than by expiration of term shall be appointed for the unexpired term of the member he is chosen to succeed.

- (4) Members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their functions.
- (5) Members of the commission appointed pursuant to this section shall first be appointed on July 15, 1980. The terms of members appointed earlier shall terminate on July 15, 1980, but the Governor may reappoint those members who qualify under the provisions of this section.

Section 2. KRS 95A.040 is amended to read as follows:

- (1) The commission shall ~~[have authority to]~~ make full and complete studies, recommendations and reports to the Governor, *the Kentucky Community and Technical College System*, and the Legislature for the purpose of *establishing*:
  - (a) ~~[Suggesting]~~ Minimum standards and education of fire protection personnel appointed to positions in municipal fire departments, who are to be engaged in fire protection to include fire suppression, fire prevention, arson investigation and other allied fields;
  - (b) ~~[Suggesting]~~ Basic minimum courses of training for fire protection personnel;
  - (c) ~~[Suggesting]~~ Procedure for the certification of fire protection personnel and the certification of fire protection instructors.
- (2) The commission shall have the authority to:
  - (a) Certify fire protection training and education programs as having attained the minimum required standards suggested by such commission;
  - (b) Certify instructors as having qualified as fire protection instructors under such conditions as the commission may prescribe;
  - (c) Direct research in the field of fire protection and accept gifts and grants for such purposes;
  - (d) Recommend curricula for advanced courses and seminars in fire science training in colleges and institutions of higher education.
- (3) The commission shall have authority to receive and to the extent required by federal law to disburse all grants and funds from the federal government for the purpose of fire protection personnel training and education. Except as otherwise provided by law, the *commission* ~~[Department of Insurance]~~ shall administer all state programs and all state and federally funded grant programs related to fire protection personnel training and education.

Section 3. KRS 95A.050 is amended to read as follows:

In carrying out its duties and responsibilities, the commission shall have the following additional duties:

- (1) To meet at times and places in the State of Kentucky it deems proper. Meetings shall be called by the chairman upon his own motion, or upon the written request of a majority of the members;
- (2) To contract with other agencies, public or private, or persons, it deems necessary for the rendition and affording of the services, facilities, studies, and reports it may require to cooperate with city, county, state, and federal agencies in training programs; and
- (3) To *promulgate* ~~[recommend to the commissioner of housing, buildings and construction for promulgation]~~ reasonable *administrative* regulations relating to fire protection personnel.

Section 4. KRS 95A.240 is amended to read as follows:

- (1) The commission shall administer the fund pursuant to the provisions of KRS 95A.200 to 95A.300 and may issue such reasonable rules and regulations as, in its discretion, will facilitate the administration of the fund and further the purposes of KRS 95A.200 to 95A.300.
- (2) The commission shall determine which local governments are eligible to share in the fund and may withhold or terminate payments to any local government that does not comply with the requirements of KRS 95A.200 to 95A.300 or the rules and regulations issued by the commission thereunder.
- (3) The commission shall, from the moneys appropriated to and accruing to the fund from any source, reimburse the *Kentucky Community and Technical College System* ~~[Department of Housing, Buildings and Construction]~~ for salaries and other costs of administering the fund, including, but not limited to the costs of commission operations. The amount of reimbursement for any given year shall be determined by the commission and shall not exceed five percent (5%) of the total appropriation to the fund for that year.

Section 5. KRS 95A.262 is amended to read as follows:

- (1) The Commission on Fire Protection Personnel Standards and Education shall, in cooperation with the Cabinet for Health Services, develop and implement a continuing program to inoculate every paid and volunteer firefighter in Kentucky against hepatitis B. The program shall be funded from revenues allocated to the Firefighters Foundation Program fund pursuant to KRS 136.392 and 42.190. Any fire department which has

inoculated its personnel during the period of July 1, 1991 to July 14, 1992, shall be reimbursed from these revenues for its costs incurred up to the amount allowed by the Cabinet for Human Resources for hepatitis B inoculations.

- (2) Except as provided in subsection (3) of this section and KRS 61.316, the Commission on Fire Protection Personnel Standards and Education shall allot on an annual basis a share of the funds accruing to and appropriated for volunteer fire department aid to volunteer fire departments in cities of all classes, fire protection districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083, and volunteer fire departments created as nonprofit corporations pursuant to KRS Chapter 273. The commission shall allot six thousand five hundred dollars (\$6,500) annually to each qualifying department, and beginning on July 1 of 1999, the commission shall allot seven thousand five hundred dollars (\$7,500) annually to each qualifying department. Any qualifying department which fails to participate satisfactorily in the Kentucky fire incident reporting system as described in KRS 304.13-380 shall forfeit annually five hundred dollars (\$500) of its allotment. The commission shall recommend to the commissioner of the Department of Housing, Buildings and Construction the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A to define satisfactory participation in the Kentucky fire incident reporting system. Administrative regulations for determining qualifications shall be based on the number of both paid firefighters and volunteer firemen within a volunteer fire department, the amount of equipment, housing facilities available, and such other matters or standards as will best effect the purposes of the volunteer fire department aid law. A qualifying department shall include at least twelve (12) firefighters, a chief, and at least one (1) operational fire apparatus or one (1) on order. Fifty percent (50%) of the firefighters shall have completed at least one half (1/2) of one hundred fifty (150) training hours toward certification within the first six (6) months of the first year of the department's application for certification, and there shall be a plan to complete the one hundred fifty (150) training hours within the second year. These personnel, equipment, and training requirements shall not be made more stringent by the promulgation of administrative regulations. No allotment shall exceed the total value of the funds, equipment, lands, and buildings made available to the local fire units from any source whatever for the year in which the allotment is made. A portion of the funds provided for above may be used to purchase group or blanket health insurance and shall be used to purchase workers' compensation insurance, and the remaining funds shall be distributed as set forth in this section.
- (3) There shall be allotted two hundred thousand dollars (\$200,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund that shall be allocated each fiscal year of the biennium to the firefighters training center fund, which is hereby created and established, for the purposes of constructing new or upgrading existing training centers for firefighters. If any moneys in the training center fund remain uncommitted, unobligated, or unexpended at the close of the first fiscal year of the biennium, then such moneys shall be carried forward to the second fiscal year of the biennium, and shall be reallocated to and for the use of the training center fund, in addition to the second fiscal year's allocation of two hundred thousand dollars (\$200,000). Prior to funding any project pursuant to this subsection, a proposed project shall be approved by the Commission on Fire Protection Personnel Standards and Education as provided in subsection (4) of this section and shall comply with state laws applicable to capital construction projects.
- (4) Applications for funding low-interest loans and firefighters' training centers shall be submitted to the Commission on Fire Protection Personnel Standards and Education for their recommendation, approval, disapproval, or modification. The commission shall review applications periodically, and shall, subject to funds available, recommend which applications shall be funded and at what levels, together with any terms and conditions the commission deems necessary.
- (5) Any department or entity eligible for and receiving funding pursuant to this section shall have a minimum of fifty percent (50%) of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.
- (6) Upon the written request of any department, the Commission on Fire Protection Personnel Standards and Education shall make available a certified training program in a county of which such department is located.
- (7) The amount of reimbursement for any given year for costs incurred by the **Kentucky Community and Technical College System**~~[department]~~ for administering these funds, including, but not limited to the expenses and costs of commission operations, shall be determined by the commission and shall not exceed five percent (5%) of the total amount of moneys accruing to the Firefighters Foundation Program fund which are allotted for the purposes specified in this section during any fiscal year.

- (8) The commission shall withhold from the general distribution of funds under subsection (2) of this section an amount which it deems sufficient to reimburse volunteer fire departments for equipment lost or damaged beyond repair due to hazardous material incidents.
- (9) Moneys withheld pursuant to subsection (8) of this section shall be distributed only under the following terms and conditions:
  - (a) A volunteer fire department has lost or damaged beyond repair items of personal protective clothing or equipment due to that equipment having been lost or damaged as a result of an incident in which a hazardous material (as defined in any state or federal statute or regulation) was the causative agent of the loss;
  - (b) The volunteer fire department has made application in writing to the commission for reimbursement in a manner approved by the commission and the loss and the circumstances thereof have been verified by the commission;
  - (c) The loss of or damage to the equipment has not been reimbursed by the person responsible for the hazardous materials incident or by any other person;
  - (d) The commission has determined that the volunteer fire department does not have the fiscal resources to replace the equipment;
  - (e) The commission has determined that the equipment sought to be replaced is immediately necessary to protect the lives of the volunteer firefighters of the fire department;
  - (f) The fire department has agreed in writing to subrogate all claims for and rights to reimbursement for the lost or damaged equipment to the Commonwealth to the extent that the Commonwealth provides reimbursement to the department; and
  - (g) The department has shown to the satisfaction of the commission that it has made reasonable attempts to secure reimbursement for its losses from the person responsible for the hazardous materials incident and has been unsuccessful in the effort.
- (10) If a volunteer fire department has met all of the requirements of subsection (9) of this section, the commission may authorize a reimbursement of equipment losses not exceeding ten thousand dollars (\$10,000) or the actual amount of the loss, whichever is less.
- (11) Moneys which have been withheld during any fiscal year which remain unexpended at the end of the fiscal year shall be distributed in the normal manner required by subsection (2) of this section during the following fiscal year.
- (12) No volunteer fire department may receive funding for equipment losses more than once during any fiscal year.
- (13) The commission shall make reasonable efforts to secure reimbursement from the responsible party for any moneys awarded to a fire department pursuant to this section.
- (14) There shall be allotted each year of the 1992-93 biennium one million dollars (\$1,000,000), and each year of the 1994-95, 1996-97, 1998-99, and 2000-01 bienniums one million dollars (\$1,000,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund for the purpose of creating a revolving low-interest loan fund, which shall thereafter be self-sufficient and derive its operating revenues from principal and interest payments. The commission, in accordance with the procedures in subsection (4) of this section, may make low-interest loans, and the interest thereon shall not exceed three percent (3%) annually or the amount needed to sustain operating expenses of the loan fund, whichever is less, to volunteer fire departments for the purposes of major equipment purchases and facility construction. Loans shall be made to departments which achieve the training standards necessary to qualify for volunteer fire department aid allotted pursuant to subsection (2) of this section, and which do not have other sources of funds at rates which are favorable given their financial resources. The proceeds of loan payments shall be returned to the loan fund for the purpose of providing future loans. If a department does not make scheduled loan payments, the commission may withhold any grants payable to the department pursuant to subsection (2) of this section until the department is current on its payments. Money in the low-interest loan fund shall be used only for the purposes specified in this subsection. Any funds remaining in the fund at the end of a fiscal year shall be carried forward to the next fiscal year for the purposes of the fund.

Section 6. KRS 95A.270 is amended to read as follows:

The Finance and Administration Cabinet, on the certification of the commission, shall draw warrants as specified on the State Treasurer for the amount of the fund due each eligible local government or the **Kentucky Community and Technical College System**~~[Department of Housing, Buildings and Construction]~~. Checks shall be issued by the State Treasurer and transmitted to the commission for distribution to the proper officials of participating local governments which have complied with the provisions of KRS 95A.200 to 95A.300. Beginning January 1, 1981, and on the first day of each month thereafter, the share of each eligible local unit shall be distributed from the fund.

Section 7. KRS 95A.290 is amended to read as follows:

- (1) If funds appropriated by the General Assembly and otherwise made available to the fund are insufficient to provide the amount of money required by KRS 95A.250, the commission shall make a uniform percentage reduction in the allotment of funds available.
- (2) The provisions of subsection (1) of this section shall not apply to amounts due the **Kentucky Community and Technical College System**~~[Department of Housing, Buildings and Construction]~~ pursuant to KRS 95A.240.
- (3) Funds appropriated by the General Assembly and unexpended by the commission at the close of the fiscal year for which the funds were appropriated and otherwise made available to this fund pursuant to KRS 42.190, 95A.220 and 136.392 shall not lapse as provided by KRS 45.229, but shall be carried forward into the following fiscal year, and shall be used solely for the purposes specified in KRS 95A.200 to 95A.300.

SECTION 8. A NEW SECTION OF KRS CHAPTER 95A IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Community and Technical College System shall conduct or contract for the delivery of all certificate, diploma, or associate degree programs approved by the commission.*
- (2) *The Kentucky Community and Technical College System shall provide the fiscal and administrative support requested by the commission, through the Chancellor's Office of Technical Education and Workforce Development.*
- (3) *The commission shall ratify all personnel decisions necessary to perform the functions required by the commission, subject to budget appropriation limits, except that no position including the term "State Fire Marshal" in its title shall remain with or be transferred to the commission or the Kentucky Community and Technical College System, but shall be assigned to the Office of the State Fire Marshal in the Department of Housing, Buildings and Construction.*
- (4) *The commission shall establish the proposed budget for all administrative, fire rescue training functions, and other activities in which the commission is authorized to engage, including, but not limited to salaries, equipment, maintenance, utilities, insurance, and other matters. The commission shall submit the budget to the Kentucky Community and Technical College System, which shall submit the budget, through appropriate channels, for inclusion in the executive branch budget. The Kentucky Community and Technical College System shall not change the proposed budget which is submitted to it, but may comment thereon in writing, with copies sent to the commission, and to all agencies who receive the proposed budget during the budget process.*

Section 9. KRS 75.400 is amended to read as follows:

As used in KRS 75.400 to 75.460, unless the context requires otherwise:

- (1) "Commission" means the Commission on Fire Protection Personnel Standards and Education, attached to the **Kentucky Community and Technical College System**~~[state fire marshal's office in the Department of Housing, Buildings and Construction]~~.
- (2) "Fire department" includes all of the officers, firefighters, and clerical and maintenance employees, whether paid or volunteer.
- (3) "Full-time paid firefighter" means an individual who receives a minimum salary of eight thousand dollars (\$8,000) annually, and who works a minimum of two thousand and eighty (2,080) hours per year as an employee of a fire department recognized by the fire commission.
- (4) "Paid fire department" means a fire department recognized by the commission, of which at least fifty percent (50%) of its firefighters are full-time paid firefighters.
- (5) "Volunteer fire department" means a fire department with a minimum of twelve (12) members and a chief, at least one (1) operational fire apparatus or one (1) on order, with fewer than fifty percent (50%) of its firefighters being full-time paid firefighters.



Section 10. The following KRS section is repealed:

198B.035 Transfer of other agency functions to department.

Section 11. The existing personnel, equipment, funds, personal property, and records of the Commission on Fire Protection Personnel Standards and Education are transferred to the Kentucky Community and Technical College System. Employees who transfer shall be governed by the same rules pertaining to the transferred employees from the KRS Chapter 18A personnel system under KRS 164.5805. New employees shall be governed by the rules established by the board of regents of the Kentucky Community and Technical College System.

**Approved March 31, 2000**

## **CHAPTER 271**

**(HB 640)**

AN ACT relating to family resource and youth service centers and declaring an emergency.

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

Section 1. KRS 156.497 is amended to read as follows:

- (1) There is created an Interagency Task Force on Family Resource Centers and Youth Services Centers which shall consist of twenty-one (21) members appointed by the Governor. The twenty-one (21) members appointed shall include one (1) representative from each of the following agencies or groups, except the Department of Education which shall include three (3) representatives and parents which shall have three (3) representatives:
  - (a) Department of Education;
  - (b) Department for Employment Services of the Cabinet for Workforce Development;
  - (c) Department for Health Services of the Cabinet for Human Resources;
  - (d) Department for Mental Health and Mental Retardation Services of the Cabinet for Human Resources;
  - (e) Department for Social Services of the Cabinet for Human Resources;
  - (f) Department for Social Insurance of the Cabinet for Human Resources;
  - (g) Justice Cabinet;
  - (h) Governor's Office;
  - (i) Office of the Secretary, Cabinet for Workforce Development;
  - (j) Parents;
  - (k) Teachers;
  - (l) Local school administrators;
  - (m) Local school boards;
  - (n) Local community mental health-mental retardation programs;
  - (o) Local health departments;
  - (p) Local community action agencies; and
  - (q) A family resource and youth services coordinator.
- (2) The task force shall be appointed and begin to meet immediately upon July 13, 1990, to formulate a five (5) year implementation plan establishing family resource and youth services centers designed to meet the needs of children and their families. By July 1, 1995, the implementation plan shall be revised to include two (2) additional years, 1996 and 1997. The centers shall provide services which will enhance students' abilities to succeed in school. If resources are limited, students and families who are the most economically disadvantaged shall receive priority status for receiving services. The secretary of the Cabinet for Human Resources shall call the first meeting, at which time the task force by majority vote shall elect a task force chair to serve a one (1) year term. A new chair shall be elected annually thereafter, and the chair may succeed himself. The Cabinet for

Human Resources shall provide adequate staff to assist in the development and implementation of the task force's plan.

- (3) The plan developed by the task force shall include an effort to implement a network of family resource centers across the Commonwealth. The centers shall be located in or near each elementary school in the Commonwealth in which twenty percent (20%) or more of the student body are eligible for free *or reduced price* school meals. The plan developed for the centers by the task force shall promote identification and coordination of existing resources and shall include, but not be limited to, the following components for each site:
  - (a) Full-time preschool child care for children two (2) and three (3) years of age;
  - (b) After school child care for children ages four (4) through twelve (12), with the child care being full-time during the summer and on other days when school is not in session;
  - (c) Families in training, which shall consist of an integrated approach to home visits, group meetings, and monitoring child development for new and expectant parents;
  - (d) Parent and child education (PACE) as described in KRS 158.360 or similar program;
  - (e) Support and training for child day care providers; and
  - (f) Health services or referral to health services, or both.
- (4) The plan developed by the task force shall include a schedule to implement a network of youth services centers across the Commonwealth. The centers shall be located in or near each school, except elementary schools, serving youth over twelve (12) years of age and in which twenty percent (20%) or more of the student body are eligible for free *or reduced price* school meals. The plan developed for the centers by the task force shall promote identification and coordination of existing resources and include, but not be limited to, the following components for each site:
  - (a) Referrals to health and social services;
  - (b) Employment counseling, training, and placement;
  - (c) Summer and part-time job development;
  - (d) Drug and alcohol abuse counseling; and
  - (e) Family crisis and mental health counseling.
- (5) The task force shall complete its implementation plan for the program prior to January 1, 1991, and local school districts shall develop initial plans for their family resource centers and youth services centers by June 30, 1991. By June 30, 1992, family resource centers and youth services centers shall be established in or adjacent to at least one-fourth (1/4) of the eligible schools, with expansion by one-fourth (1/4) by June 30 of each year thereafter or until the centers have been established in or adjacent to all eligible schools.
- (6) A grant program is established to provide financial assistance to eligible school districts establishing family resource centers and youth services centers. The Cabinet for Human Resources shall award the grants pursuant to KRS 156.4977. A school district shall not operate a family resource center or a youth services center which provides abortion counseling or makes referrals to a health care facility for purposes of seeking an abortion.
- (7) ***Funding provided to the Cabinet for Families and Children for the grant program and agency administrative costs shall include an increase that is equal to or greater than the general fund growth factor provided in agency budget instructions.***
- (8) The task force shall continue to monitor the family resource centers and the youth services centers, review grant applications, and otherwise monitor the implementation of the plan until December 31, 1997, at which time the task force shall cease to exist. During its existence, the task force shall report at least annually to the secretary of the Cabinet for Human Resources, the State Board for Elementary and Secondary Education, the Governor, and the Legislative Research Commission.
- ~~(9)~~(8) Members of the task force may be reimbursed for actual expenses for attending meetings and for other actual and necessary expenses incurred in the performance of their duties authorized by the task force. The expenses shall be paid out of the appropriation for the task force.

Section 2. KRS 161.011 is amended to read as follows:

- (1) (a) "Classified employee" means an employee of a local district who is not required to have certification for his position as provided in KRS 161.020; and
- (b) "Seniority" means total continuous months of service in the local school district, including all approved paid and unpaid leave.
- (2) The commissioner of education shall establish by January, 1992, job classifications and minimum qualifications for local district classified employment positions which shall be effective July 1, 1992. After June 30, 1992, no person shall be eligible to be a classified employee or receive salary for services rendered in that position unless he holds the qualifications for the position as established by the commissioner of education.
- (3) No person who is initially hired after July 13, 1990, shall be eligible to hold the position of a classified employee or receive salary for services rendered in such position, unless he holds at least a high school diploma or GED certificate, or he shows progress toward obtaining a GED. To show progress toward obtaining a GED, a person shall be enrolled in a GED program and be progressing satisfactorily through the program, as defined by administrative regulations adopted by the State Board for Adult and Technical Education.
- (4) Local school districts shall encourage classified employees who were initially hired before July 13, 1990, and who do not have a high school diploma or a GED certificate to enroll in a program to obtain a GED.
- (5) Local districts shall enter into written contracts with classified employees. Contracts with classified employees shall be renewed annually except contracts with the following employees:
  - (a) An employee who has not completed four (4) years of continuous active service, upon written notice which is provided or mailed to the employee by the superintendent, no later than April 30, that the contract will not be renewed for the subsequent school year. Upon written request by the employee, within ten (10) days of the receipt of the notice of nonrenewal, the superintendent shall provide, in a timely manner, written reasons for the nonrenewal.
  - (b) An employee who has completed four (4) years of continuous active service, upon written notice which is provided or mailed to the employee by the superintendent, no later than April 30, that the contract is not being renewed due to one (1) or more of the reasons described in subsection (6) of this section. Upon written request within ten (10) days of the receipt of the notice of nonrenewal, the employee shall be provided with a specific and complete written statement of the grounds upon which the nonrenewal is based. The employee shall have ten (10) days to respond in writing to the grounds for nonrenewal.
- (6) ***Local districts shall provide in contracts with classified employees of family resource and youth services centers the same rate of salary adjustment as provided for other local board of education employees in the same classification.***
- (7) Nothing in this section shall prevent a superintendent from terminating a classified employee for incompetency, neglect of duty, insubordination, inefficiency, misconduct, immorality, or other reasonable grounds which are specifically contained in board policy.
- ~~(8)~~~~(7)~~ The superintendent shall have full authority to make a reduction in force due to reductions in funding, enrollment, or changes in the district or school boundaries, or other compelling reasons as determined by the superintendent.
  - (a) When a reduction of force is necessary, the superintendent shall, within each job classification affected, reduce classified employees on the basis of seniority and qualifications with those employees who have less than four (4) years of continuous active service being reduced first.
  - (b) If it becomes necessary to reduce employees who have more than four (4) years of continuous active service, the superintendent shall make reductions based upon seniority and qualifications within each job classification affected.
  - (c) Employees with more than four (4) years of continuous active service shall have the right of recall positions if positions become available for which they are qualified. Recall shall be done according to seniority with restoration of primary benefits, including all accumulated sick leave and appropriate rank and step on the current salary schedule based on the total number of years of service in the district.
- ~~(9)~~~~(8)~~ Local school boards shall develop and provide to all classified employees written policies which shall include, but not be limited to:

- (a) Terms and conditions of employment;
  - (b) Identification and documentation of fringe benefits, employee rights, and procedures for the reduction or laying off of employees; and
  - (c) Discipline guidelines and procedures that satisfy due process requirements.
- ~~(10)(9)~~ Local school boards shall maintain a registry of all vacant classified employee positions that is available for public inspection in a location determined by the superintendent and make copies available at cost to interested parties. If financially feasible, local school boards may provide training opportunities for classified employees focusing on topics to include, but not be limited to, suicide prevention, abuse recognition, and cardiopulmonary resuscitation (CPR).
- ~~(11)(10)~~ The evaluation of the local board policies required for classified personnel as set out in this section shall be subject to review by the Department of Education while it is conducting district management audits pursuant to KRS 158.785.

Section 3. Whereas the decrease in student populations eligible for free school meals will fall below the 20% threshold in some schools and the decrease will render ineligible for funding a number of family resource and youth services centers that have become vital to students and their families, the school, and the community, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved March 31, 2000**

## **CHAPTER 272**

**(HB 650)**

AN ACT changing the classification of the City of Independence, in Kenton County.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Independence, in Kenton County, is such as to justify its being classified as a city of the third class;

NOW, THEREFORE,

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

Section 1. The City of Independence, in Kenton County, is transferred from the fifth to the third class of cities.

**Approved March 31, 2000**

## **CHAPTER 273**

**(HB 737)**

AN ACT relating to retirement.

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

Section 1. KRS 61.535 is amended to read as follows:

- (1) The membership of any person in the system shall cease:
  - (a) Upon withdrawal of his accumulated contributions at or any time after termination of employment, regardless of length of service;
  - (b) Upon disability retirement;
  - (c) Upon service retirement;
  - (d) Upon death;~~and~~
  - (e) *For persons hired prior to August 1, 2000, upon termination of employment with prejudice; or*
  - (f) *For persons hired on or after August 1, 2000, upon conviction of a felony relating to the person's employment as provided in subsection (3) of this section.*

- (2) For purposes of KRS 61.510 to 61.705, 16.505 to 16.652 and 78.510 to 78.852, termination of employment with prejudice shall mean termination as the result of conviction of the member in a court of competent jurisdiction of embezzlement or larceny of public funds or property or malfeasance in office, or the forcing of a member to make restitution for any funds or property criminally taken by said member at the time of termination of employment.
- (3) ***Notwithstanding any provision of law to the contrary, an employee hired on or after August 1, 2000, who participates in one (1) of the retirement systems administered by the Kentucky Retirement Systems and who is convicted, in any state or federal court of competent jurisdiction, of a felony related to his employment shall forfeit rights and benefits earned under the retirement system, except for the return of his accumulated contributions and interest credited on those contributions. The payment of retirement benefits ordered forfeited shall be stayed pending any appeal of the conviction. If the conviction is reversed on final judgment, no retirement benefit shall be forfeited. The employer shall notify the retirement system when an employee is convicted under the provisions of this subsection.***

Section 2. KRS 161.470 is amended to read as follows:

- (1) The membership of the retirement system shall consist of all new members, all present teachers, and all persons participating under the retirement system as of June 30, 1986, except as provided in Acts 1938 (1st Ex. Sess.), Ch. 1, paragraph 29. The board of trustees of the Teachers' Retirement System shall be responsible for final determination of membership eligibility and may direct employers to take whatever action that may be necessary to correct any error relating to membership.
- (2) Service credit shall be forfeited upon withdrawal. If a member again enters service it shall be as a new member, except that any teacher who withdraws by claiming his deposits may repay the system the amount withdrawn plus interest and reestablish his service credit as provided in subsection (3) of this section.
- (3) Effective July 1, 1988, and thereafter, an active contributing member of the retirement system with contributing service equal to one (1) year may regain service credit by depositing in the teachers' savings fund the amount withdrawn with interest at the rate to be set by the board of trustees, and computed from the first of the month of withdrawal and including the month of redeposit.
- (4) Effective July 1, 1974, any active contributing member with at least two (2) years of contributing service credit who declined membership as provided in Acts 1938 (1st Ex. Sess.), Ch. 1, paragraph 29, may secure service credit for prior service, and for any subsequent service prior to date of membership, by depositing in the teachers' savings fund contributions for each year of subsequent service prior to date of membership, with interest at the rate of eight percent (8%) compounded annually to the date of deposit.
- (5) Membership in the retirement system shall be terminated:
- (a) By retirement for service;
  - (b) By death;
  - (c) By withdrawal of the member's accumulated contributions;~~or~~
  - (d) When a member, having less than five (5) years of Kentucky service is absent from service for more than three (3) consecutive years; ***or***
  - (e) ***For persons hired on or after August 1, 2000, when a member is convicted, in any state or federal court of competent jurisdiction, of a felony related to his employment as provided in subparagraph 1. and 2. of this paragraph.***
    - 1. ***Notwithstanding any provision of law to the contrary, a member hired on or after August 1, 2000, who is convicted, in any state or federal court of competent jurisdiction, of a felony related to his employment shall forfeit rights and benefits earned under the retirement system, except for the return of his accumulated contributions and interest credited on those contributions.***
    - 2. ***The payment of retirement benefits ordered forfeited shall be stayed pending any appeal of the conviction. If the conviction is reversed on final judgment, no retirement benefits shall be forfeited.***

***Except for paragraph (e) of this subsection,*** upon termination of member accounts under this subsection, funds in the account shall be transferred to the guarantee fund. Inactive members may apply for refunds of

these funds at any time. The terminated service shall be reinstated, if not withdrawn by the member, in the event that the member returns to active contributing service.

- (6) In case of withdrawal from service prior to eligibility for retirement, the board of trustees shall on request of the member return all of his accumulated contributions with regular interest, including any payments made by the member to the state accumulation fund, but the member shall have no claim on any contributions made by the state with a view to his retirement or to contributions made to the medical insurance fund. If the member is eligible for an immediate service retirement allowance as provided in KRS 161.600, no withdrawal and refund shall be permitted, unless the allowance would prohibit the member from qualifying for Social Security benefits or the member elects to withdraw part or all of his service for the purpose of obtaining credit in another retirement plan. Requests for refund of contributions by the member must be filed on forms prescribed by the Teachers' Retirement System and the employer shall be financially responsible for all information that is certified on the prescribed form.
- (7) Except as provided in KRS 161.520 and 161.525, in case of death prior to retirement, the board of trustees shall pay to the estate of the deceased member or to his assigns all of his accumulated contributions, with regular interest, including any payments made by the member to the state accumulation fund, but the estate or assigns shall have no claim on any contributions made by the state with a view to the retirement of the member or to contributions made to the medical insurance fund.
- (8) Any active contributing member of the Kentucky Employees Retirement System, the County Employees Retirement System, the State Police Retirement System, or the Judicial Retirement System may use service, under that retirement system for the purpose of meeting the service requirement of subsections (3) and (4) of this section.

**Approved March 31, 2000**

## CHAPTER 274

### (HB 749)

AN ACT relating to property taxes.

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

Section 1. KRS 132.190 is amended to read as follows:

- (1) The property subject to taxation, unless exempted by the Constitution *or personal property exempted by statute*, shall be as follows:
  - (a) All real and personal property within this state, including intangible personal property of nonresidents and corporations not organized under the laws of this state that has acquired a business situs within this state, except that twenty-five (25) domestic fowl to each family shall be exempt from taxation for any purpose.
  - (b) All intangible personal property of individuals residing in this state and of corporations organized under the laws of this state unless it has acquired a business situs without this state.
- (2) The property enumerated in paragraph (b) of subsection (1) of this section shall be considered and estimated in fixing the valuation of corporate franchises.
- (3) Property shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale, except the following: real property qualifying for an assessment moratorium shall not have its fair cash value assessment changed while under the assessment moratorium unless the assessment moratorium expires or is otherwise canceled or revoked.
- (4) The situs of intangible personal property for purposes of taxation shall be at the residence of the real or beneficial owner, and not at the residence of the fiduciary or agent having custody or possession. Any intangible property owned by a resident shall be taxable in this state, unless by the date of assessment he has changed his place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state. The fact that a person again abides within this state within six (6) months from so changing his actual place of abode shall be prima facie evidence that he did not intend permanently to have his actual place of abode without this state. A person so changing his actual place of abode and not intending permanently to continue it without this state and not having listed his property for taxation as a

resident of this state shall, for the purpose of having his property assessed for taxation within this state, be deemed to have resided, on the day when his property should have been so assessed, at his last actual or habitual place of abode within this state. The fact that a person does not claim or exercise the right to vote at public elections within this state shall not of itself constitute him a nonresident of this state.

- (5) An administrator, executor, trustee, guardian, conservator, curator, or agent residing in this state shall not be liable for taxes on intangible personal property held by him if the real or beneficial owner of the property resides outside of this state. This exemption shall not apply in the case of an executor or administrator in the exercise of his office as personal representative while the estate of a deceased person is in process of settlement and before the share of the nonresident legatee or beneficiary is set apart to him, or before the legatee or beneficiary is entitled to be paid his share.
- (6) Nothing contained in this section shall affect the liability for franchise taxes payable by corporations organized under the laws of this state; nor the method of taxation of financial institutions provided in KRS 136.505; nor the method of taxation of savings and loan associations provided in KRS 136.300; and nothing contained in this section shall alter or repeal KRS 136.030.

SECTION 2. A NEW SECTION OF KRS CHAPTER 132 IS CREATED TO READ AS FOLLOWS:

*There shall be exempt from ad valorem tax for state purposes, personal property placed in a warehouse or distribution center for the purpose of subsequent shipment to an out-of-state destination. Personal property shall be deemed to be held for shipment to an out-of-state destination if the owner can reasonably demonstrate that the personal property will be shipped out-of-state within the next six (6) months.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 132 IS CREATED TO READ AS FOLLOWS:

- (1) *The tax rate levied by cities, counties, charter counties, urban-counties, and school districts on personal property placed in a warehouse or distribution center for the purpose of subsequent shipment to an out-of-state destination shall be as follows:*
  - (a) *Eighty percent (80%) of the tax rate levied on other tangible personal property for tax assessments made on January 1, 2000; and*
  - (b) *Fifty percent (50%) of the tax rate levied on other tangible personal property for tax assessments made on January 1, 2001.*
- (2) *Personal property placed in a warehouse or distribution center for the purpose of subsequent shipment to an out-of-state destination shall be exempt from the ad valorem tax levied by cities, counties, charter counties, urban-counties, and school districts for tax assessments made on or after January 1, 2002.*
- (3) *Any fire district or other special taxing district may exempt from the ad valorem tax personal property placed in a warehouse or distribution center for the purpose of subsequent shipment to an out-of-state destination.*
- (4) *For the purpose of this section, personal property shall be deemed to be held for shipment to an out-of-state destination if the owner can reasonably demonstrate that the personal property will be shipped out-of-state within the next six (6) months.*

Section 4. The following KRS section is repealed:

132.095 Personal property in warehouse in transit, ad valorem tax.

Section 5. The provisions of Section 1 of this Act shall apply for tax assessments made on or after January 1, 2000.

**Approved March 31, 2000**

## CHAPTER 275

(HB 777)

AN ACT relating to candidates for office.

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

Section 1. KRS 118.125 is amended to read as follows:

- (1) Except as provided in KRS 118.155, any person who is qualified under the provisions of KRS 116.055 to vote in any primary election for the candidates for nomination by the party at whose hands he seeks the nomination, shall have his name printed on the official ballot of his party for an office to which he is eligible in that primary, upon filing, with the Secretary of State or county clerk, as appropriate, at the proper time, a notification and declaration.
- (2) The notification and declaration shall be in the form prescribed by the State Board of Elections. It shall be signed by the candidate and by not less than two (2) registered voters of the same party from the district or jurisdiction from which the candidate seeks nomination.
  - (a) The notification and declaration for a candidate for an office other than Governor or Lieutenant Governor shall include the following oath:

"For the purpose of having my name placed on the official primary election ballot as a candidate for nomination by the ----- Party, I, ----- (name in full as desired on the ballot as provided in KRS 118.129), do solemnly swear that my residence address is ----- (street, route, highway, city if applicable, county, state, and zip code), that my mailing address, if different, is ----- (post office address), and that I am a registered ----- (party) voter in ----- precinct; that I believe in the principles of the ----- Party, and intend to support its principles and policies; ***that I meet all the statutory and constitutional qualifications for the office which I am seeking***; that if nominated as a candidate of such party at the ensuing election I will accept the nomination and not withdraw for reasons other than those stated in KRS 118.105(3); that I will not knowingly violate any election law or any law relating to corrupt and fraudulent practice in campaigns or elections in this state, and if finally elected I will qualify for the office."

The declaration shall be subscribed and sworn to ***before an officer authorized to administer an oath by the candidate and by the two (2) voters making the declaration and signing the candidate's petition for office***~~[by the person making it before an officer authorized to administer an oath]~~.

- (b) The notification and declaration for a slate of candidates for Governor and Lieutenant Governor shall include the following oath:

"For the purpose of having our names placed on the official primary election ballot as a slate of candidates for Governor and Lieutenant Governor for nomination by the ----- Party, I, -----, (name of candidate for Governor in full as desired on the ballot as provided in KRS 118.129), do solemnly swear that my residence address is ----- (street, route, highway, city if applicable, county, state, and zip code), that my mailing address, if different, is ----- (post office address), and that I am a registered ----- (party) voter in ----- precinct; and I, -----, (name of candidate for Lieutenant Governor in full as desired on the ballot as provided in KRS 118.129), do solemnly swear that my residence address is ----- (street, route, highway, city if applicable, county, state, and zip code), that my mailing address, if different, is ----- (post office address), and that I am a registered ----- (party) voter in ----- precinct; that we believe in the principles of the ----- Party, and intend to support its principles and policies; ***that we meet all the statutory and constitutional qualifications for the offices which we are seeking***; that we will accept the nomination and not withdraw for reasons other than those stated in KRS 118.105(3); that we will not knowingly violate any election law or any law relating to corrupt or fraudulent practice in campaigns or elections in this state, and if finally elected we will qualify for our offices."

The declaration shall be subscribed and sworn to ***before an officer authorized to administer an oath by the candidate and by the two (2) voters making the declaration and signing the petition for office***~~[persons making it before an officer authorized to administer an oath]~~.

- (3) When the notice and declaration has been filed with the Secretary of State or county clerk, as appropriate, and certified according to KRS 118.165, the Secretary of State or county clerk, as appropriate, shall have the candidate's name printed on the ballot according to the provisions of this chapter, except as provided in KRS 118.185.
  - (4) Titles, ranks, or spurious phrases shall not be accepted on the filing papers and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be acceptable as the candidate's name.

Section 2. KRS 118.315 is amended to read as follows:



- (1) A candidate for any office to be voted for at any regular election may be nominated by a petition of electors qualified to vote for him, complying with the provisions of subsection (2) of this section. No person who is a registered member of a political party shall be eligible to election as an independent candidate, nor shall any person be eligible to election as an independent candidate who was a registered member of a political party on December 31 immediately preceding the regular election for which the person seeks to be a candidate. This restriction shall not apply to candidates to those offices specified in KRS 118.105(5), for supervisor of a soil and water conservation district, for candidates for mayor or legislative body in cities of the second to sixth class, or to candidates participating in nonpartisan elections.
- (2) The form of the petition shall be prescribed by the State Board of Elections. It shall be signed by the candidate and by registered voters from the district or jurisdiction from which the candidate seeks nomination. ***The petition shall include a declaration, sworn to by the candidate, that he or she possesses all the constitutional and statutory requirements of the office for which the candidate has filed.*** Signatures for a petition of nomination for a candidate seeking any office shall not be solicited prior to the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot. A petition of nomination for a state officer, or any officer for whom all the electors of the state are entitled to vote, shall contain five thousand (5,000) petitioners; for a representative in Congress from any congressional district, or for any officer from any other district except as herein provided, four hundred (400) petitioners; for a county officer, member of the General Assembly, or Commonwealth's attorney, one hundred (100) petitioners; for a soil and water conservation district supervisor, twenty-five (25) petitioners; for a city officer, two (2) petitioners; and for an officer of a division less than a county, except as herein provided, twenty (20) petitioners. It shall not be necessary that the signatures of the petition be appended to one (1) paper. Each petitioner shall include his residence, Social Security number or date of birth, and post-office address. Failure of a voter to include his Social Security number or date of birth and address shall result in his signature not being counted. If any person joins in nominating, by petition, more than one (1) nominee for any office to be filled, he shall be counted as a petitioner for the candidate whose petition is filed first, except a petitioner for the nomination of candidates for soil and water conservation district supervisors may be counted for every petition to which his signature is affixed.
- (3) Titles, ranks, or spurious phrases shall not be accepted on the filing papers and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be accepted as the candidate's name.
- (4) The Secretary of State and county clerks shall examine the petitions of all candidates who file with them to determine whether each petition is regular on its face. If there is an error, the Secretary of State or the county clerk shall notify the candidate by certified mail within twenty-four (24) hours of filing.

Section 3. KRS 118A.060 is amended to read as follows:

- (1) Except as provided in KRS 118A.100, no person's name shall appear on a ballot label or absentee ballot for an office of the Court of Justice without first having been nominated as provided in this section.
- (2) Each candidate for nomination shall file a petition for nomination with the Secretary of State not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than the last Tuesday in January preceding the day fixed by law for holding the primary election for the office. The petition shall be ***sworn to before an officer authorized to administer an oath***~~signed~~ by the candidate and by not less than two (2) registered voters from the district or circuit from which he seeks nomination. The petition shall be filed no later than 4 p.m. local time at the place of filing when filed on the last date on which the papers are permitted to be filed.
- (3) The petition for nomination shall be in the form prescribed by the State Board of Elections. ***The petition shall include a declaration sworn to by the candidate, that he or she possesses all the constitutional and statutory requirements of the office for which the candidate has filed.*** Titles, ranks, or spurious phrases shall not be accepted on the petition and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be acceptable as the candidate's name.
- (4) The Secretary of State shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the Secretary of State shall notify the candidate by certified mail within twenty-four (24) hours of filing. The order of names on the ballot for each district or circuit, and numbered division thereof if divisions exist, shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2 p.m., standard time, on the Thursday following the last Tuesday in January preceding the primary election.

- (5) Not later than the third Tuesday in February preceding the primary election, and after the order of names on the ballot has been determined as required in subsection (4) of this section, the Secretary of State shall:
- (a) Certify to the county clerks of the respective counties entitled to participate in the election of the various candidates, the name and place of residence of each candidate for each office, by district or circuit, and numbered division thereof if divisions exist, as specified in the petitions for nomination filed with him; and
  - (b) Designate for the county clerks the office of the Court of Justice with which the names of candidates shall be printed and the order in which they are to appear on the ballot.
- (6) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk.
- (7) The county clerks of each county shall cause to be printed on the ballot labels for the voting machines and on the special ballots for the primary the names of the candidates for offices in the Court of Justice.
- (8) The names of the candidates shall be placed on the voting machine in a separate column or columns or in a separate line or lines and identified by the words "Judicial Ballot." The words "Vote for one," or "Vote for one in each division," shall be printed on the ballot in an appropriate location. The office, numbered division thereof if divisions exist, and the candidates therefor shall be clearly labeled. No party designation or emblem of any kind, nor any sign indicating any candidate's political belief or party affiliation, shall be used on voting machines or special ballots.
- (9) The two (2) candidates receiving the highest number of votes for nomination for justice or judge of a district or circuit, or numbered division thereof if divisions exist, shall be nominated. Certificates of nomination shall be issued as provided in KRS 118A.190.
- (10) If it appears after expiration of the time for filing petitions for nomination that there are not more than two (2) candidates who have filed the necessary petitions for a place on the ballot in the regular election, no drawing for ballot position shall be held and the Secretary of State shall immediately issue and file in his office certificates of nomination, and send copies to the candidates.

**Approved March 31, 2000**

## **CHAPTER 276**

### **(HB 870)**

AN ACT relating to a special license plate to benefit the Kentucky Chapter of the National Wild Turkey Federation.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

- (1) *Any person who complies with the provisions of KRS 186.186 and who can provide proof of membership in the National Wild Turkey Federation may apply for a National Wild Turkey Federation license plate.*
- (2) *A National Wild Turkey Federation license plate shall be the color and design selected by the Kentucky Chapter of the National Wild Turkey Federation and approved by the Transportation Cabinet.*
- (3) *In addition to the fees required by KRS 186.186, a person initially applying for a National Wild Turkey Federation license plate shall pay a ten dollar (\$10) fee that shall be collected by the county clerk and forwarded by the clerk to the Transportation Cabinet under the provisions of KRS 186.230. A person applying for an annual renewal registration decal for a National Wild Turkey Federation license plate shall, in addition to the renewal fee established in KRS 186.186(2), pay a ten dollar (\$10) fee. The ten dollar (\$10) fee shall be collected by the county clerk and forwarded by the clerk to the Transportation Cabinet under the provisions of KRS 186.230.*

- (4) *The additional ten dollar (\$10) initial fee and the additional ten dollar (\$10) renewal fee collected under subsection (3) of this section shall be forwarded quarterly by the Transportation Cabinet to the Kentucky Chapter of the National Wild Turkey Federation for use in education programs in Kentucky dedicated to conserving wild turkeys and wild turkey habitat enhancement and preserving hunting traditions.*

**Approved March 31, 2000**

## CHAPTER 277

**(HB 884)**

AN ACT relating to education paperwork requirements.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 156 IS CREATED TO READ AS FOLLOWS:

- (1) *At the request of a local board of education or a school council, a local school district superintendent shall submit a request to the Kentucky Board of Education for a waiver from a reporting requirement established by a Kentucky Revised Statute that requires the paperwork to be submitted to the Kentucky Board of Education or the Department of Education.*
- (2) *Upon a finding of good cause for the waiver, the Kentucky Board of Education may grant the waiver.*
- (3) *The Kentucky Board of Education shall not waive statutory paperwork or reporting requirements necessary under federal law or relating to health, safety, or civil rights.*

**Approved March 31, 2000**

## CHAPTER 278

**(HJR 131)**

A JOINT RESOLUTION directing the Transportation Cabinet to rename a portion of Kentucky Route 260 in Hopkins County "Veterans Drive."

WHEREAS, it is the United States Armed Forces that defend our great nation from foreign powers that act against our national interests and seek to tarnish the principles of freedom and justice; and

WHEREAS, countless servicemen have sacrificed their lives in defense of the Constitution that makes our country the model for the free world; and

WHEREAS, all Americans owe a debt of gratitude that we can never repay to the selfless men and women who have served in the United States Armed Forces; and

WHEREAS, rows of plain white headstones, both here and around the world, represent the ultimate sacrifice made to protect our freedom and our way of life; and

WHEREAS, even though millions of friends and loved ones have shed silent tears and endured grief-filled hearts, there remains a constant overwhelming pride in the veterans who have gallantly served their country;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. Kentucky Route 260 in Hopkins County from the west boundary of the right-of-way of the Pennyrile Parkway extending easterly for 0.743 miles shall be renamed the "Veterans Drive."

Section 2. The Secretary of the Transportation Cabinet shall erect appropriate highway signs at all junctions on Kentucky Route 260 along the length of the "Veterans Drive" within thirty (30) days of the effective date of this Resolution.

**Approved March 31, 2000**

**CHAPTER 279****(SB 169)**

AN ACT relating to banks.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 287 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, a CAMEL rating means a system of rating used by examiners of financial institutions to rate the institutions in five (5) categories: capital adequacy, asset quality, management effectiveness, quantity and quality of earnings, and liquidity.*
- (2) *In addition to all other banking activities permitted by this chapter, a state bank receiving a CAMEL rating of 1 or 2 at its most recent state or federal bank regulatory examination may engage in any banking activity in which the bank could engage if:*
  - (a) *It was operating as a national bank in any state;*
  - (b) *It was operating as a state bank, state thrift, or state savings bank in any state; or*
  - (c) *It meets the qualified thrift lender test as determined by the Office of Thrift Supervision or its successor, or was operating as a federally chartered thrift or federal savings bank in any state.*
- (3) *Before a state bank may engage in any of the banking activities permitted by subsection (1) of this section, the state bank shall obtain a legal opinion specifying the statutory or regulatory provisions that permit the activity in which the state bank intends to engage. This legal opinion shall be maintained by the bank and provided to the department upon request.*

Section 2. KRS 287.011 is amended to read as follows:

- (1) There is created a Department of Financial Institutions, which constitutes a department of the state government within the meaning of KRS Chapter 12. The department shall be headed by a commissioner of financial institutions, who shall be the executive head of the department and shall be charged with the administration of the department.
- (2) The Department of Financial Institutions shall exercise all administrative functions of the state in relation to the regulation, supervision, chartering and licensing of banks, trust companies, savings and loan associations, consumer loan companies, investment and industrial loan companies, and credit unions, and in relation to the regulation of securities.
- (3) There is established within the Department of Financial Institutions the following divisions and offices:
  - (a) The Division of Financial Institutions, which shall be headed by a director appointed by the commissioner, subject to prior written approval of the Governor in accordance with KRS 12.050. The division shall consist of entities deemed appropriate by the commissioner;
  - (b) The Division of Securities, which shall be headed by a director appointed by the commissioner in accordance with KRS 12.050. The division shall consist of entities deemed appropriate by the commissioner;
  - (c) The Division of Administrative Services, which shall be headed by a director appointed by the commissioner in accordance with KRS 12.050. The division shall be composed of organizational entities deemed appropriate by the commissioner;
  - (d) The Office of the Commissioner, which shall be composed of organizational entities deemed appropriate by the commissioner; and
  - (e) The Office of General Counsel, which shall be headed by a general counsel appointed by the commissioner in accordance with KRS 12.050. The office shall be composed of organizational entities as deemed appropriate by the commissioner.
- (4) *The department may accept any application or other document required to be filed with the department in electronic format or in any other technology acceptable to the department.*

Section 3. KRS 287.100 is amended to read as follows:

A bank may:

- (1) Hold ~~such~~ personal property *that* ~~as~~ has been transferred to it as collateral for the payment of any debt;
- (2) Acquire and hold title to real estate, provided:
  - (a) The real estate is necessary or appropriate for the transaction of legitimate business ~~and the acquisition has been approved by the commissioner as required by KRS 287.103~~; and
  - (b) The cost of the real estate, including furniture and fixtures, shall not exceed forty percent (40%) of the total paid-in capital, unimpaired surplus and undivided profits (determined on accrual basis). The investment may exceed the bank's forty percent (40%) limit with prior written approval of the commissioner;
- (3) Acquire and hold for not longer than ten (10) years, any real estate conveyed to it in satisfaction of debts previously contracted in the course of its business, or that it may purchase under a judgment in its favor. A bank acquiring real estate in satisfaction of debts previously contracted in the course of business shall write down the acquisition at ten percent (10%) per year;
- (4) Invest in the bonds of any federal home loan bank;
- (5) Invest in obligations issued separately or collectively by or for federal land banks, federal intermediate credit banks and banks for cooperatives under the Act of Congress known as the Farm Credit Act of 1971, 85 Stat. 583, 12 U.S.C. sec. 2001 and amendments thereto;
- (6) Invest, subject to the approval of the commissioner, in the capital stock or bonds or both of any domestic realty corporation organized or existing for the sole purpose of acquiring and holding title to real property used by the bank, through lease or otherwise, for the transaction of the bank's legitimate business;
- (7) Purchase, hold, and convey the shares of any open end registered investment company registered under the Investment Company Act of 1940, or a series of ~~the~~ ~~such~~ company, whose shares are registered under the Securities Act of 1933 and whose investments are limited to:
  - (a) Bonds or other interest-bearing obligations of the United States, or those for the payment of the principal and interest on which the faith and credit of the United States is pledged;
  - (b) Stocks, bonds, or other interest-bearing or dividend-yielding obligations issued or guaranteed as to the payment of principal and interest or dividend by any instrumentality presently or hereafter incorporated by authority of an Act of Congress;
  - (c) General obligation bonds or revenue bonds issued and guaranteed as to payment of principal and interest by any state, county, or municipal governments legally authorized to issue ~~these~~ ~~such~~ instruments of indebtedness;
  - (d) Any other obligations in which national banking associations organized under the laws of the United States are permitted to invest in directly;
- (8) Purchase and hold shares of a bank service corporation as that term is used in the Bank Service Corporation Act (12 U.S.C. sec. 1861) and any amendments thereto;
- (9) Invest in:
  - (a) Bonds or other interest-bearing obligations of the United States, or those for the payment of the principal and interest on which the faith and credit of the United States is pledged;
  - (b) Stocks, bonds, or other interest-bearing or dividend-yielding obligations issued or guaranteed as to the payment of principal and interest or dividend by any instrumentality presently or hereafter incorporated by authority of an Act of Congress;
  - (c) General obligation bonds or revenue bonds issued and guaranteed as to payment of principal and interest by any state, county, or municipal governments legally authorized to issue such instruments of indebtedness;
- (10) (a) Invest in other real estate in the bank's generally accepted banking market. For purposes of this section, "the bank's generally accepted banking market" means the geographic banking market at the time the investment is made as defined by the Federal Reserve Bank in the Federal Reserve District in which the

bank is located. The investment shall not exceed ten percent (10%) of the bank's actual paid-in capital and surplus, calculated at the time the investment is made, for each real estate investment; and

- (b) Investment in other real estate not to exceed ten percent (10%) of the bank's actual paid-in capital and surplus, calculated at the time the investment is made, for each real estate investment, if the bank has acquired the real estate in satisfaction of a debt previously contracted and the investment is for the purpose of improving the real estate for sale. Any real estate acquired in satisfaction of a debt previously contracted and improved by the bank shall be disposed of within five (5) years of the date of acquisition, with the commissioner authorized to extend ~~the [such]~~ disposition upon written request of the bank for good cause shown on a year-to-year basis not exceeding an additional five (5) years;
- (11) Own or operate a discount brokerage service either through the bank or a bona fide subsidiary of the bank;
- (12) Own or operate a travel agency either through the bank or a bona fide subsidiary of the bank; ~~and~~
- (13) Invest, with the prior approval of the commissioner, in the capital stock or bonds of a trust company; *and*
- (14) *Own or operate a courier service, either through the bank or a bona fide subsidiary of the bank, in any county where the bank has its principal office or a branch.*

Investments *in accordance with* ~~[pursuant to]~~ subsections (7) and (9) of this section are subject to KRS 287.280 and 287.290. For purposes of computing the maximum investment of a bank in bonds, notes, and other investments, book value shall be used. For deep discount bonds or zero coupon bonds, accreted book value shall be used.

Section 4. KRS 287.180 is amended to read as follows:

- (1) Banks authorized under the laws of this state may, except as provided in subsections (2) or (3) of this section, exercise, only at their principal office, powers necessary to carry on the business of banking by discounting and negotiating notes, drafts, bills of exchange and other evidences of debt, and by purchasing bonds, receiving deposits and allowing interest on these items, buying and selling exchange, coin, and bullion, and lending money on personal or real security.
- (2) *A bank may establish a branch in a county in which its principal office or an existing branch is located and may exercise all of the powers conferred in subsection (1) of this section at the branch. A bank, except for a bank that the commissioner may designate by the promulgation of administrative regulations, shall apply to the commissioner for permission to establish a branch.* ~~Any corporation presently or after July 13, 1990, engaged in the business of banking, and meeting the requirements of this subsection, may apply to the commissioner for permission to establish, within any county in which its principal office or an existing branch is located, a branch at which all of the powers conferred in subsection (1) of this section may be exercised.~~ Before the commissioner shall approve or disapprove any application made under this subsection *the commissioner* ~~he~~ shall ascertain and determine that the public convenience and advantage will be served and promoted and that there is reasonable probability of the successful operation of the branch based upon the financial and managerial impact of the branch on the bank establishing the branch. The following conditions shall apply to applications for branches:
  - (a) The permission to open a branch shall lapse one (1) year after the commissioner has rendered a final order as defined in KRS 13B.010, unless it shall have been opened and business actually begun in good faith. If, for reasons beyond the control of the applicant, the branch is not opened within this time period, permission to open the branch may, with the approval of the commissioner, be extended for any period of time *the commissioner* ~~he~~ deems to be necessary; and
  - (b) An application to establish a branch office shall be approved or disapproved by the commissioner based upon the facts existing at the date of filing of the application, except for the financial condition of the bank proposing to establish a branch office, which condition shall be subject to review until an order ruling on the application is made.
- (3) Any corporation which on January 1, 1966, was engaged in operating an agency or branch bank may continue to retain and operate the agency or branch bank under the general banking laws, and the requirements set forth in this section in respect to capital shall not apply to any existing agency or branch bank but only as to those agencies or branch banks which may be established in the future *in accordance with* ~~[pursuant to]~~ the terms of this section.
- (4) The provisions of this section shall not be construed to prohibit the merger of banks in the same county and the operation by the merged corporation of the banks, nor to prohibit the sale of any bank to, and the purchase by,

any other bank in the same county and the operation of the bank by the purchasing bank as a branch, provided the commissioner shall determine that the public convenience and necessity will be served by the operation, and provided further that, at the time of the merger or purchase, each of the banks involved shall have been in operation for a period of five (5) years or more. The bank which does not survive the merger shall surrender its charter.

- (5) Any national banking association or any state bank member of the Federal Reserve system whose principal office is located in this state may do all things and perform all acts which state banks are permitted to do or perform under this section, subject to the conditions and restrictions provided for banks as to exercise of these powers.
- (6) When a branch or agency bank has once been established any operation of the branch or agency bank shall not be discontinued, and the branch or agency bank shall not be closed until after ninety (90) days' notice in writing to the commissioner. In the discretion of the commissioner the branch or agency bank proposing to discontinue operation may be required to give notice of the date when its operation will cease.

Section 5. KRS 287.185 is amended to read as follows:

***A bank may move its principal office or a branch from one location to another. A bank, except for a bank that the commissioner may designate through the promulgation of administrative regulations, shall apply to the commissioner for approval to relocate its principal office or a branch***~~[(1) — No branch or principal office of any bank shall be moved from one location to another without the approval of the commissioner].~~ Before the commissioner shall approve or disapprove any change of location he shall ascertain and determine that the public convenience and advantage will be served and promoted and that there is a reasonable probability of the successful operation of the branch or principal office at the new location.

~~[(2) — If a bank wishes to move its principal office from one location to another in the same county and retain its former principal office as a branch, the provisions of subsection (1) of this section shall be followed in regard to approval of the change of location. A final order by the commissioner approving or disapproving the change of location shall be deemed to constitute a similar approval or disapproval of the former principal office as a branch, and no further administrative proceedings shall be necessary.]~~

Section 6. KRS 287.900 is amended to read as follows:

- (1) For purposes of this section and KRS 287.905:
  - (a) "Bank" means any institution organized under this chapter, the banking laws of another state, or the National Bank Act, as amended, to do a banking business. However, it shall not include an "interim bank" chartered solely for the purpose of facilitating the acquisition of an existing bank unless the existing bank has been in existence for less than five (5) years;
  - (b) "Bank holding company," "company," and "control" have the meanings accorded them in the Federal Bank Holding Company Act of 1956, as amended (12 U.S.C. secs. 1841 et seq.). "Control" may be acquired by acquisition of voting securities, by purchase of assets, by merger or consolidation, by contract, or otherwise;
  - (c) "Individual" means a natural person, partnership, association, business trust, voting trust, or similar organization. Individual does not include a corporation; and
  - (d) "Deposit" has the meaning accorded it in the Federal Deposit Insurance Act, as amended, and regulations promulgated thereunder; excluded, however, from deposits are all interbank deposits and all deposits in foreign branches and international banking facilities, as shown in the reports made by all federally-insured depository institutions to their respective supervisory authorities.
- (2) Any individual, or any bank holding company having its principal place of business in this state, may acquire control of one (1) or more banks or bank holding companies wherever located, except that no individual, who on July 13, 1984, controls a bank or bank holding company wherever located, and no bank holding company wherever located, may acquire, directly or indirectly, control ***of greater than fifty percent (50%) of the voting securities*** of a bank having its principal place of business in this state if the bank was chartered after July 13, 1984, and if, at the time of the acquisition, the bank has been in existence less than five (5) years. The provisions of this subsection shall not prohibit the organization of a one (1) bank holding company for the purpose of acquiring control of a bank even if the bank was chartered after July 13, 1984, and has been in existence less than five (5) years at the time of the acquisition.

- (3) No individual or bank holding company wherever located may acquire control of any bank or bank holding company if, upon the acquisition, the individual or bank holding company would control banks in this state holding more than fifteen percent (15%) of the total deposits and member accounts in the offices of all federally-insured depository institutions in this state as reported in the most recent **June 30 quarterly report**~~year-end reports~~ made by the institutions to their respective supervisory authorities which are available at the time of the acquisition.
- (4) The limitations set forth in this section or any other provision of this chapter or any **administrative** regulation promulgated thereunder, as now in effect or amended after July 13, 1984, shall not apply to the acquisition of a bank if, in his **or her** discretion, the commissioner, if the bank is organized under the laws of this state, or the comptroller of the currency, if the bank is a national bank, determines that an emergency exists and the acquisition is appropriate in order to prevent the probable failure of the bank which is closed or is in danger of closing.
- (5) The provisions of this section shall not be construed to prohibit or restrict the merger or consolidation of banks or bank holding companies having their principal places of business in the same county and the operation by the merged or consolidated corporation of the banks, nor to prohibit the sale of any bank or bank holding company to, and the purchase thereof by, any other bank or bank holding company with its principal place of business in the same county and the operation of the bank as a branch so long as the provisions of KRS 287.180(4) have been satisfied.

Section 7. KRS 287.920 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
  - (a) "Interstate merger transaction" means the merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; and
  - (b) "Resulting bank" means a bank that has resulted from an interstate merger transaction under this section.
- (2) A Kentucky state bank may establish, maintain, and operate one (1) or more branches in a state other than Kentucky **in accordance with**~~pursuant to~~ an interstate merger transaction in which the Kentucky state bank is the resulting bank, or if the other state permits, by acquisition of a branch or branches in the other state. Not later than the date on which the required application for the interstate merger transaction or branch acquisition is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the commissioner and pay the fee prescribed by KRS 287.480. The applicant shall also comply with the applicable provisions of KRS 287.180(2) and the commissioner shall base his **or her** approval or disapproval in the same manner as prescribed in KRS 287.180(2).
- (3) An out-of-state state bank may establish, maintain, and operate one (1) or more branches in Kentucky **in accordance with**~~pursuant to~~ an interstate merger transaction in which the out-of-state state bank is the resulting bank. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the commissioner, pay the fee prescribed by KRS 287.480, and agree in writing to comply with the laws of this state applicable to its operation of branches in Kentucky. The applicant shall also comply with the applicable provisions of KRS 287.180(2) and the commissioner shall base his **or her** approval or disapproval in the same manner as prescribed in KRS 287.180(2).
- (4) The bank to be acquired in an interstate merger transaction under the provisions of subsection (3) of this section shall have been involved in operation for a period of five (5) years or more. No interstate merger transaction under subsections (2) or (3) of this section shall be approved if the transaction would result in a bank holding company having control of banks or branches in this state holding more than fifteen percent (15%) of the total deposits and member accounts in the offices of all federally-insured depository institutions in this state as reported in the most recent **June 30 quarterly report**~~year-end reports~~ made by the institutions to their respective supervisory authorities which are available at the time of the transaction.
- (5) An individual or bank holding company that controls two (2) or more banks may, from time to time, combine any or all of the commonly controlled banks in this Commonwealth into and with any one (1) of the banks, and thereafter the surviving bank shall continue to operate its principal office and may operate the other authorized offices of the banks so combined as branches of the surviving bank.



- (6) A branch of an out-of-state state bank may conduct any activities that are authorized under the laws of this state for state banks. Additionally, the branch of an out-of-state state bank is authorized to conduct any activities relating to the administration of trusts that are authorized under the laws of its home state, if the activities are conducted in conformity with the laws of its home state.
- (7) A branch of a Kentucky state bank located in a host state may conduct any activities that are:
  - (a) Authorized under the laws of the host state for banks chartered by the host state; or
  - (b) Authorized for branches of national banks located in the host state, but whose principal location is in a state other than the host state.

**Approved March 31, 2000**

## CHAPTER 280

**(HB 243)**

AN ACT relating to reorganization.

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

Section 1. KRS 36.310 is amended to read as follows:

- (1) There is created a board to be known as the Advisory Board for Veterans' Affairs, which shall be attached to the Department of Veterans' Affairs.
- (2) The board shall be composed of *the following*:
  - (a) *Seven (7)*~~five (5)~~ members appointed by the Governor;
  - (b) *The executive director of the Kentucky Commission on Military Affairs; and*
  - (c) *The adjutant general of the Commonwealth.*
- (3) ~~Two (2) of said members shall serve for a period of three (3) years, two (2) for a period of two (2) years and one (1) for a period of one (1) year and~~ All *board members appointed by the Governor* shall serve until their successors are appointed, and ~~with~~ all appointments ~~after the original appointments~~ *shall be*~~being~~ for three (3) years. It is further provided that ~~the said~~ appointments shall be veterans with service during time of war or hostilities wherein American troops were engaged in conflict with an armed enemy. ~~If insofar as~~ practicable, the Governor, in making appointments to the board, shall give due consideration to a fair representation on the board of nationally recognized veterans' organizations active in Kentucky, based on size of the membership of such organizations in this state. The state headquarters of each ~~said~~ major veterans' organization may, from time to time, submit a list of not more than three (3) names to the Governor from which list original appointments may be made and vacancies filled in his discretion
- ~~(4)(2)~~ Members of the board shall meet at least once every two (2) months at the Department of Veterans' Affairs, and at such other times as the chairman may designate, and the members shall decide as to the specific meeting date.
- ~~(5)(3)~~ Members of the board shall be paid for the actual expenses incurred upon attendance of meetings of the board subject to the Finance and Administration Cabinet regulations.
- ~~(6)(4)~~ At its first meeting the members of the board shall select a chairman, vice chairman, and secretary from among the members.
- ~~(7)(5)~~ The board shall advise ~~the Governor and~~ the commissioner of the Department of Veterans' Affairs on the administration of veterans' services programs.
- (8) *The commissioner shall advise the Governor on matters relating to veterans' affairs.*
- ~~(9)(6)~~ The *commissioner*~~board~~ shall advise the General Assembly on matters relating to veterans' affairs.

Section 2. The General Assembly confirms Executive Orders 97-1161, dated September 9, 1997, and 99-1588, dated December 3, 1999, to the extent they are not otherwise confirmed or superseded by this Act.

Section 3. Notwithstanding KRS 446.260, the change made in Section 1 of this Act shall be merged into the section of 2000 House Bill 139 affecting that statute, if House Bill 139 becomes law.

**Approved March 31, 2000**

## **CHAPTER 281**

### **(HB 719)**

AN ACT relating to collection of taxes.

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

Section 1. KRS 134.500 is amended to read as follows:

- (1) Uncollectible tax claims shall bear interest at twelve percent (12%) per annum from the date the certificate of delinquency is issued. All tax bills on omitted property that were not turned over to the sheriff in time to be collected or to make the sale provided for in KRS 134.430 and 134.440 shall also be submitted to the fiscal court but shall be carried over as a charge against the sheriff at the time he makes his next regular settlement.
- (2) The cabinet shall be responsible for the collection of certificates of delinquency and delinquent personal property tax bills; however, the cabinet shall first offer the collection duties to the county attorney, unless the cabinet determines that the county attorney has previously failed to perform collection duties in a reasonable and acceptable manner. Any county attorney desiring to perform the duties associated with the collection of delinquent tax claims shall enter into a contract with the cabinet on an annual basis. The terms of the contract shall specify the duties to be undertaken by the county attorney. These duties shall include but are not limited to the following actions:
  - (a) Within fifty (50) days after the issuance of a certificate of delinquency to the state, county, and taxing district, the county attorney or the Revenue Cabinet shall cause a notice of the purchase to be mailed by regular mail to the property owner at the address on the records of the property valuation administrator. The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent (12%) per annum, and if not paid will be subject to collection by the county attorney as provided by law.
  - (b) The county attorney shall file in the office of the county clerk a list of the names and addresses to which the notice was mailed along with a certificate that the notice was mailed in accordance with the requirements of this section.
  - (c) All notices returned as undeliverable shall be submitted to the property valuation administrator. The property valuation administrator shall attempt to correct inadequate or erroneous addresses and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the notices with the corrected information to the county attorney prior to the expiration of the one (1) year tolling period provided in KRS 134.470.
  - (d) Within ninety (90) days after the expiration of the one (1) year tolling period provided in KRS 134.470, the county attorney shall cause a notice of his intention to enforce the lien to be mailed to all owners whose tax bills remain delinquent. No second notice shall be required for addresses previously determined to be undeliverable and for which the property valuation administrator has not provided corrected information.
  - (e) Failure to mail the notices shall not affect the validity of the claim of the state, county, and taxing district. The postal cost of mailing the notices shall be added to the certificate of delinquency and, upon collection, the county attorney shall be reimbursed for the postage. The county attorney shall deliver at the same time a list of the owners whose tax bills remain delinquent to the property valuation administrator. The property valuation administrator shall review this list in accordance with the provisions of KRS 132.220 to establish that the properties on the list can be identified and physically located.
- (3) The county attorney who enters into a contract with the cabinet shall have a period of two (2) years after the expiration of the one (1) year tolling period provided in KRS 134.470 to collect delinquent tax bills or to initiate court action for their collection. At the expiration of the two (2) years the cabinet may assume responsibility for all uncollected bills except those with pending court action.

- (4) The county attorney who enters into a contract with the cabinet and performs his duties in respect to the certificate of delinquency and delinquent personal property tax bills shall be entitled to twenty percent (20%) of the amount due each taxing unit, whether the tax claim is voluntarily paid or is paid through sale or under court order, and the fee shall be paid to him by the county clerk when making distribution, as provided in KRS 134.480. This fee shall be added to the amount of the tax claims and paid by the persons paying the tax claims. They shall not be paid by the taxing districts or deducted from the taxes due the taxing districts. ***This fee shall be waived if the certificate of delinquency is paid by the taxpayer only within five (5) days of the sheriff's sale.*** If more than one (1) county attorney renders necessary services in an effort to collect a tax claim, the attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the fee. When the county attorney's office, in an effort to collect a certificate of delinquency, or delinquent personal property tax bills files a court action which is litigated by the taxpayer, an additional county's attorney fee equal to thirteen percent (13%) of the total tax plus ten percent (10%) penalty, may be added to the certificate or the bill and shall become part of the tax claim.
- (5) If a county attorney chooses not to contract for these collection duties or if a county attorney fails to perform the duties required by the contract, the cabinet shall assume responsibility for the collection process. In the performance of those duties, the cabinet shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of the amount due on the certificate of delinquency conferred generally upon the cabinet by Kentucky Revised Statutes including, but not limited to, KRS Chapters 131, 134, and 135. The twenty percent (20%) fee that would have otherwise been paid to the county attorney shall be paid to the cabinet for deposit in the delinquent tax fund provided for under KRS 134.400.
- (6) Any action on behalf of the state, county, and taxing districts authorized by this section or by KRS 134.470, 134.490, or 134.540 shall be filed on relation of the secretary, and the petition may be sent to the cabinet, which may require revision in instances where it deems revision or amendment necessary. The cabinet shall advise the county attorney in all actions, and may send him special assistance when the secretary deems assistance necessary. A copy of the judgment shall also be sent to the cabinet. If the cabinet sends assistance to a county attorney who contracts to prosecute the suits or proceedings, the county attorney shall be entitled to his full fee. On the same day that suit is filed, the county clerk shall be given notice of its filing. Costs incident to the suit shall become a part of the tax claim.
- (7) The cabinet may make its delinquent tax collection databases and other technical resources, including but not limited to income tax refund offsetting, available to the county attorney upon request from the county attorney. The county attorney seeking assistance shall enter into any agreements required by the cabinet to protect taxpayer confidentiality, to ensure database integrity, or to address other concerns of the cabinet.

**Approved March 31, 2000**

## CHAPTER 282

(SB 78)

AN ACT relating to a special license plate to benefit Ducks Unlimited.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

- (1) ***Any person who complies with the provisions of KRS 186.186 and who can provide proof of membership in Ducks Unlimited may apply for a Ducks Unlimited license plate.***
- (2) ***A Ducks Unlimited license plate shall be the color and design selected by Kentucky Ducks Unlimited and approved by the Transportation Cabinet. The name Kentucky and the annual renewal decal shall appear on the plate. The Transportation Cabinet, in consultation with Kentucky Ducks Unlimited, shall develop a system for numbering of the Ducks Unlimited license plate. Kentucky Ducks Unlimited may direct the Transportation Cabinet to assign specific plate numbers to particular members.***
- (3) ***In addition to the fees required by KRS 186.186, a person applying for a Ducks Unlimited license plate shall pay a ten dollar (\$10) fee that shall be collected by the county clerk and forwarded by the clerk to the Transportation Cabinet under the provisions of KRS 186.230. When applying for an annual renewal registration decal, a person with a Ducks Unlimited license plate shall pay a ten dollar (\$10) fee, in addition***

*to the renewal fee established in KRS 186.186(2). The ten dollar (\$10) fee shall be collected by the county clerk and forwarded by the clerk to the Transportation Cabinet under the provisions of KRS 186.230.*

- (4) *The ten dollar (\$10) initial fee and the ten dollar (\$10) renewal fee collected under subsection (3) of this section shall be forwarded quarterly by the Transportation Cabinet to Kentucky Ducks Unlimited for use in furthering their wetlands conservation programs in Kentucky.*

Section 2. This Act takes effect January 1, 2001.

**Approved April 3, 2000**

## **CHAPTER 283**

### **(SB 137)**

AN ACT relating to criminal records checks.

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

Section 1. KRS 216.793 is amended to read as follows:

- (1) Each application form provided by the employer, or each application form provided by a facility either contracted or operated by the Department for Mental Health and Mental Retardation Services of the Cabinet for Health Services, to the applicant for initial employment in a nursing facility or nursing pool providing staff to a nursing facility or in a position funded by the Department for Social Services or the Office of Aging Services of the Cabinet for Families and Children and which involves providing direct services to senior citizens shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."
- (2) Any request for criminal records of an applicant as provided under subsection (1) of this section shall be on a form or through a process approved by the Justice Cabinet *or the Administrative Office of the Courts*. The Justice Cabinet *or the Administrative Office of the Courts* may charge a fee to be paid by the applicant or state agency in an amount no greater than the actual cost of processing the request ~~and shall not exceed five dollars (\$5) per application~~.

SECTION 2. A NEW SECTION OF KRS CHAPTER 27A IS CREATED TO READ AS FOLLOWS:

- (1) *In any instance that the Justice Cabinet is required by statute to conduct a criminal records or background check, the Justice Cabinet may contract with the Administrative Office of the Courts to perform that service.*
- (2)
  - (a) *Except as provided in paragraph (b) of this subsection, the Administrative Office of the Courts shall set a reasonable fee for a criminal records check conducted by the office in an amount no greater than the actual cost of conducting that criminal records check.*
  - (b) *When another statute sets the dollar amount of the fee charged for a criminal records check conducted by the Administrative Office of the Courts, the office shall charge that fee.*
- (3) *The Administrative Office of the Courts shall be required to accept a criminal records check request only when the request is made:*
  - (a) *By letter, electronic mail, or facsimile transmission; or*
  - (b) *In person.*
- (4) *The Administrative Office of the Courts may establish an escrow account for a person who frequently requests that the office conduct criminal records checks.*

**Approved April 3, 2000**

**CHAPTER 284****(SB 147)**

AN ACT relating to wetland and stream mitigation.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon request of any state agency or any other entity, the department may contract with the agency or party to undertake any compensatory mitigation project, including but not limited to wetland or stream mitigation.***
- (2) *The department may establish and manage wetland or stream compensatory mitigation banks, the purpose of which shall be to restore, create, or enhance wetlands and streams as compensatory mitigation where a state agency or other party is required to provide compensatory mitigation, and where the use of banked mitigation is approved by the agency requiring mitigation. The department may create the bank in advance of requests for banked mitigation credits.***
- (3) *There is established and created in the State Treasury the "Kentucky Wetland and Stream Mitigation Fund" for the purpose of restoring, creating, enhancing, or preserving the Commonwealth's wetlands or streams that may be damaged or destroyed due to any project, recovering costs associated with performing these projects, and administering these programs. The fund shall be deemed a trust and agency fund account and made available solely for the purposes and benefits of the Kentucky wetland and stream mitigation projects. The fund may receive state appropriations, gifts, grants, federal funds, revolving funds, and any other funds both public and private. Money deposited in the fund shall be disbursed by the State Treasurer upon the request of the commissioner with the approval of the commission. Any unallocated or unencumbered balance in the fund shall be invested as provided in KRS 42.500(9), and any income earned from the investments, along with the unallocated or unencumbered balance in the fund, shall not lapse.***

**Approved April 3, 2000**

**CHAPTER 285****(SB 160)**

AN ACT relating to agreements involving the Department for Local Government.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any other provision of law to the contrary, the Department for Local Government may enter into multiyear contracts, memoranda of agreement, memoranda of understanding, grant agreements, or any other similar documents that exceed the biennium in that they are made for projects that are funded solely through federal grant money.***
- (2) *All documents entered into in accordance with subsection (1) of this section shall contain a provision stating that the contract funding may be discontinued by the General Assembly in a subsequent budget.***

**Approved April 3, 2000**

**CHAPTER 286****(SB 171)**

AN ACT relating to city revenue bonds.

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

Section 1. KRS 96.537 is amended to read as follows:

The legislative body of any city operating a municipal system for the acquisition and distribution of natural gas ~~under the authority of KRS 96.170~~ may, by ordinance, authorize the issuance of revenue bonds to pay all or any part of the costs of any project for the improvement or extension of ~~the said~~ system, or for obtaining new sources of supply. ~~The said~~ revenue bonds may be sold and issued in the manner provided for the sale and issuance of revenue bonds under the provisions of KRS 58.010 to 58.140, **58.150, 58.155, and 58.180, including by negotiated sale** ~~inclusive~~, or, upon a determination of ~~a said~~ legislative body, acting upon the advice of the city attorney or city solicitor, that the proposed bonds will be industrial development bonds within the meaning of federal statutes, ~~the said~~ revenue bonds, whether or not exempt from federal income taxation, may be sold in any manner provided for the sale of industrial building revenue bonds under the terms of KRS 103.200 to 103.285, inclusive; provided, however, that the contract with the private corporation which is deemed to give rise to the federal classification of industrial development bonds need not take the form of a lease agreement, and no request in writing from any contracting private corporation shall be required for any negotiated sale, and provided, further, that in the event of a negotiated sale, a report of negotiations shall be made to a consultant who shall be employed by the city to make a recommendation to the legislative body on the adequacy of such negotiations and of the terms of sale in the light of market conditions. The provisions of KRS 424.360 shall not apply to any negotiated sale under this section.

Approved April 3, 2000

## CHAPTER 287

(SB 192)

AN ACT relating to the Kentucky River Authority.

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

Section 1. KRS 42.016 is amended to read as follows:

The following corporate bodies and instrumentalities of the Commonwealth shall be attached to the Office of the Secretary for administrative purposes and staff services:

- (1) State Property and Buildings Commission;
- (2) Kentucky Pollution Abatement Authority;
- (3) Kentucky Savings Bond Authority;
- (4) County Officials Compensation Board;
- (5) Kentucky Turnpike Authority;
- (6) State Investment Commission;
- (7) Kentucky Housing Corporation; ~~and~~
- (8) Governmental Services Center; *and*
- (9) ***Kentucky River Authority.***

SECTION 2. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

***The Kentucky River Authority is created to perform the essential governmental functions and public purposes set out in KRS 151.700 to 151.730. The authority shall be a public corporation and independent governmental agency and instrumentality of the state. The responsibilities of the authority shall be managed and implemented by a board of directors as set out in Section 3 of this Act.***

Section 3. KRS 151.710 is amended to read as follows:

- (1) The Governor shall appoint members to the Kentucky River Authority, created to carry out the essential public purpose of protecting the health and welfare of the people of the Commonwealth as declared in KRS 151.700.
- (2) The Governor shall appoint the ~~secretaries~~ ~~secretary~~ of the ***Finance and Administration Cabinet and the*** Natural Resources and Environmental Protection Cabinet and ten (10) other persons as the members of the authority. The ~~secretaries~~ ~~secretary~~ may designate ***alternates*** ~~(an alternate)~~. Of the ten (10) persons, one (1) shall be a registered engineer, one (1) an expert in water quality, one (1) a mayor, and one (1) a county judge/executive. The mayor and the county judge/executive shall be officers from counties which obtain the major portion of their water supply from the Kentucky River. Five (5) members shall reside in a county

adjacent to the main stem of the Kentucky River, one (1) of the five (5) members residing in counties adjacent to locks and dams one (1) through four (4); and one (1) member shall reside in a county adjacent to either the North Fork, Middle Fork, or South Fork of the Kentucky River. ***Of the twelve (12) members only one (1) may be an employee of the Natural Resources and Environmental Protection Cabinet.***

- (3) Of the ten (10) members first appointed, two (2) shall continue in office for terms of one (1) year, two (2) for terms of two (2) years, three (3) for terms of three (3) years, and three (3) for terms of four (4) years, as the Governor designates. At the expiration of the original terms and for all succeeding terms, the Governor shall appoint a successor to the authority for a term of four (4) years in each case. Members may be reappointed. A vacancy in an unexpired term shall be filled for the unexpired portion of the term in the same manner as the original appointment to that term.
- (4) Each member shall receive as compensation one hundred dollars (\$100) per day for attending a meeting of the authority.
- (5) Any member who misses three (3) consecutive meetings of the authority shall be deemed to have vacated the office. The authority shall declare the office vacant and the office shall be filled as provided by subsections (2) and (3) of this section.
- (6) The authority annually shall elect one (1) of its members as chairman. A quorum for the transaction of business shall be six (6) members, and a majority of the members present at a meeting may take action on any matter legally before the authority.
- (7) Members shall be paid their necessary travel expenses incurred in attending meetings and in the performance of their official duties, in addition to the per diem compensation of one hundred dollars (\$100).
- (8) The authority shall meet at least quarterly, and may meet upon the call of the chairman.
- (9) The chairman shall be paid necessary travel expenses and a one hundred dollar (\$100) per diem compensation for conducting official business of the authority.
- (10) The authority shall be attached for administrative purposes to the ***Finance and Administration***~~Natural Resources and Environmental Protection~~ Cabinet, and the cabinet shall provide the necessary personnel to provide administrative services for the authority.
- (11) The necessary travel expenses and per diem compensation of the members of the authority in attending meetings and in the performance of their official duties shall be paid by the authority.
- (12) The authority shall promulgate administrative regulations necessary to carry out its duties, and shall report annually to the Governor and the Legislative Research Commission.

Section 4. KRS 151.720 is amended to read as follows:

The Kentucky River Authority is authorized and empowered to:

- (1) Construct, reconstruct, provide for the major maintenance, or repair the locks and dams on the Kentucky River and all real and personal property pertaining thereto, as well as maintain the channel;
- (2) Acquire by purchase, exercise of the rights of eminent domain, grant, gift, devise, or otherwise, the fee simple title to or any acceptable lesser interest in any real or personal property and by lease or other conveyance, contract for the right to use and occupy any real or personal property selected in the discretion of the authority as constituting necessary, desirable, or acceptable sites to fulfill its statutory authority and power;
- (3) Lease its real or personal property to other state agencies, political subdivisions of the Commonwealth, corporations, partnerships, associations, foundations, or persons as the authority deems necessary to carry out the purposes of this section;
- (4) Sell or otherwise dispose of its real or personal property in accordance with KRS 56.463 and 45A.045;
- (5) Collect water use fees from all facilities using water from the Kentucky River basin, except those facilities using water primarily for agricultural purposes. Facilities charged such a fee may pass on all or any part of the fee;
- (6) Issue revenue bonds in accordance with KRS 151.730;
- (7) Employ persons to carry out the authority's responsibilities with revenue from the water use fees, including an executive director who shall serve at the pleasure of the authority;

- (8) Contract for services with other state agencies, political subdivisions of the Commonwealth, corporations, partnerships, associations, foundations, or persons to perform its duties;
- (9) Promulgate administrative regulations providing for clean water, which shall not be less stringent than the state and federal regulations for clean water;
- (10) Exercise all other powers necessary to perform its public purpose to implement and enforce the plans developed by the authority pursuant to this section *and Sections 5 and 6 of this Act*, and to enforce administrative regulations promulgated by the authority. The long-range water resource plan and drought response plan shall be implemented for the basin upon the direction of the authority;
- (11) Develop comprehensive plans for the management of the Kentucky River within the basin, including a long-range water resource plan and a drought response plan. Each county within the basin shall develop a long-range water resource plan and submit it to the authority. The authority *after consultation with the Natural Resources and Environmental Protection Cabinet*, shall develop a unified long-range water resource plan for the basin. *The unified long-range water resource plan shall be implemented over short-range and long-range time periods. The short-range plan shall be for a period of six (6) years and the long-range plan shall be for a period of twenty (20) years.* The authority shall conduct a public hearing on the plan *prior to its adoption and amend the plan as appropriate based on the comments received. The Natural Resources and Environmental Protection Cabinet shall review the draft unified plan and provide comment during the public comment period concerning the consistency of the plan with the state requirements under KRS Chapters 224 and 151*, and ~~submit its final unified plan for the basin to the Natural Resources and Environmental Protection Cabinet. The cabinet shall act upon the plan within six (6) months and shall approve the plan, unless it objects for good reason shown~~. A drought response plan for the basin shall be developed by the authority *and shall be coordinated with the Natural Resources and Environmental Protection Cabinet to assure consistency with KRS Chapters 224 and 151*, and this plan shall be implemented for the basin upon the direction of the authority;
- (12) Develop and promote a plan for the protection and use of groundwater within the basin. Administrative regulations may be promulgated implementing the plan, and these regulations shall not be less stringent than state and federal regulations protecting groundwater;
- (13) Develop recreational areas within the basin. These recreational areas may be operated and funded by the state Department of Parks, Kentucky State Nature Preserves Commission, or other governmental entity as specifically authorized or permitted within the biennial executive budget. There is hereby created the Kentucky River Park to be located as determined by the authority;
- (14) Utilize funds provided for recreational purposes within the biennial executive budget for major or minor maintenance if the authority certifies to the secretary of the Finance and Administration Cabinet that a significant need exists for the repairs and no other funds are available for the maintenance;
- (15) Coordinate the Kentucky River basin water resources activities among state agencies;
- (16) Report quarterly on all of its activities to the legislative Committee on Appropriations and Revenue;
- (17) Receive reports from state agencies on litigation concerning the Kentucky River, which agencies are hereby directed to report to the authority;
- (18) Credit to the authority any income derived from the interest earned on the investment of the water use fees collected, which shall be available for the authority's expenditure; and
- (19) Accomplish the watershed management mission of the authority, which is to fulfill the provisions of this section for the Kentucky River basin, the boundary of which shall be defined by a hydrologic map promulgated in an administrative regulation.

SECTION 5. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky River Authority shall undertake a continuing study of the water available within the Kentucky River and the water needs within the Kentucky River Basin. The study shall focus on necessary capital construction to maintain or increase water availability within the Kentucky River, including bringing existing facilities up to acceptable standards or replacing existing facilities where required.*
- (2) *The Kentucky River Authority shall on a biennial basis provide the General Assembly with an estimate of the cost of maintaining or increasing the water available within the Kentucky River in order to meet the water supply needs of the citizens within the Kentucky River Basin.*



## SECTION 6. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

- (1) *Beginning with the 2000-2002 biennium and each biennium thereafter, the authority shall submit to the General Assembly a six (6) year program of preconstruction and construction activities to maintain or increase water available within the Kentucky River. The program shall include a two (2) year construction component that shall be implemented as authorized by the General Assembly in the authority's biennial budget and a four (4) year preconstruction component that shall advise the General Assembly of the consistency of ongoing and long-term planning with the construction activities funded by the General Assembly.*
- (2) *The program shall be developed by considering, at a minimum, the following factors:*
  - (a) *The population to be served by the available water;*
  - (b) *The social, economic, and environmental impact of program elements;*
  - (c) *The condition of existing facilities critical to water availability;*
  - (d) *The cost of maintaining, improving, replacing, or removing facilities; and*
  - (e) *The dependence of communities within the river basin on specific Kentucky River dam pools or other sources of water.*
- (3) *The program shall include a four (4) year planning document setting out preconstruction activities that include planning and design and an environmental analysis of projects to maintain or increase water available within the Kentucky River and geotechnical and stability evaluations of the Kentucky River locks and dams.*
- (4) *The authority shall provide to the General Assembly a long-range planning document consisting of twenty (20) years for water supply projects being considered by the authority.*
- (5) *The authority shall be responsible for the execution of each six (6) year program as approved and authorized in the budget by the General Assembly and shall report any anticipated deviations from the authorized construction funding or preconstruction program to the Interim Joint Committee on Appropriations and Revenue.*

## SECTION 7. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

*By July 1 of each year preceding the convening of the General Assembly in regular session, the authority shall provide the projected six (6) year construction and preconstruction program to the Interim Joint Committee on Agriculture and Natural Resources, the Capital Planning Advisory Board, and the Interim Joint Committee on Appropriations and Revenue.*

## Section 8. KRS 151.723 is amended to read as follows:

- (1) The rate of the water use fees collected by the authority shall be set for each year of the biennium based upon a total amount of funds necessary to carry out only those functions, projects, and expenses authorized by the General Assembly in the authority's biennial budget.
- (2) At the time the authority submits its budget to the Governor's Office of Policy and Management, it shall certify to the General Assembly ~~and the secretary of the Revenue Cabinet~~ the total amount of water use reported for the preceding biennium by users subject to the water use fees. At least thirty (30) days prior to the effective date of the authority's budget, the *authority*~~secretary of the Revenue Cabinet~~ shall establish a rate for each water use fee based upon an amount of water use projected for each year of the biennium from the amount reported, calculated to generate the amount of funds necessary to carry out the functions, projects, and expenses which have been authorized by the General Assembly *to be funded by the fees*. The rate shall be an amount for each one thousand (1,000) gallons of water use and shall be effective for at least one (1) year.
- (3) The authority shall define by administrative regulation those uses of the Kentucky River or the waters of the Kentucky River basin subject to a water use fee. Water use fees shall not apply to facilities using water for agricultural purposes. The authority shall collect the fees on a quarterly basis and pay the collected fees into the State Treasury to the credit of a restricted fund for use by the authority.

## SECTION 9. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

*At the time a water utility requests a state agency to take action required to allow the transfer between water utilities of drinking water within or into the watershed of the Kentucky River basin, the water utility shall notify*

*the authority of the request that has been made for state agency action. The authority shall review the request and comment on the requested transfer to the state agency within the time period for the review by the state agency.*

Section 10. No later than September 30, 2000, the authority shall report to the Interim Joint Committee on Agriculture and Natural Resources, the Capital Planning Advisory Board, and the Interim Joint Committee on Appropriations and Revenue on implementation of those plan elements authorized during the 2000 Regular Session of the General Assembly.

**Approved April 3, 2000**

## **CHAPTER 288**

### **(SB 206)**

AN ACT relating to administrative regulations.

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

Section 1. KRS 13A.015 is amended to read as follows:

- (1) Except as provided by subsection (7)~~((6))~~ of this section, prior to the promulgation of an administrative regulation, an administrative body shall, for each administrative regulation it intends to promulgate:
  - (a) File with the regulations compiler the original and five (5) copies, and, if available, an electronic version of a notice of its intent to promulgate an administrative regulation for publication in the administrative register; and
  - (b) Hold a public hearing and receive oral or written comments on the proposed administrative regulation as provided by this section.
- (2) Prior to filing a notice of intent to promulgate a new administrative regulation, an administrative body shall obtain from the regulations compiler a number for the new administrative regulation.
- (3) The notice of intent shall include:
  - (a) A statement that the administrative body intends to promulgate an administrative regulation;
  - (b) The number and the specific subject matter of the proposed administrative regulation;
  - (c) A statement that the administrative body will hold a public hearing if a public hearing is requested at least ten (10) calendar days prior to the date of the public hearing, in writing, by five (5) persons, or by an administrative body, or by an association having at least five (5) members, provided that a minimum of five (5) persons, or one (1) person representing an administrative body or association, agree to be present at the public hearing:
    1. No sooner than the twenty-first day nor later than the last workday of the month in which the notice of intent to promulgate is published in the Administrative Register;
    2. At which it will accept oral and written comments from any interested person;
  - (d) The name, address, telephone number, and facsimile number to whom the written request for a public hearing and written comments shall be sent;
  - (e) The date, time, and place of the public hearing;
  - (f) The following information relating to the proposed administrative regulation:
    1. The statutory authority for the administrative regulation;
    2. A summary of the administrative regulation, including how an existing administrative regulation will be amended by the proposed administrative regulation, if applicable;
    3. A statement setting forth the necessity for promulgating the administrative regulation, and a summary of the functions intended to be implemented by the administrative regulation, and, if applicable, the statement required by KRS 13A.245(2)(b);
    4. A statement of the benefits expected from the administrative regulation; and

5. How the administrative regulation will be implemented.
- (4) (a) An administrative body shall provide a form to be completed and filed by a person who wishes to be notified of the intent of the administrative body to promulgate an administrative regulation.
- (b) A copy of the notice of intent shall be mailed:
  1. To every person who has filed this form;
  2. On the date the notice is published in the Administrative Register.
- (5) ***If a notice of intent is filed to promulgate an administrative regulation in response to a statute enacted or amended by the General Assembly during the two (2) year time period immediately preceding the date the notice of intent is filed, the administrative body shall mail a copy of the notice of intent to the appropriate legislator as determined by this subsection.***
  - (a) ***If the primary sponsor of the legislation, who shall be the first person listed in the Legislative Record following the bill number, is a current member of the General Assembly at the time the notice of intent is filed, the administrative body shall mail a copy of the notice of intent to the primary sponsor.***
  - (b) ***If the primary sponsor of the legislation is not a current member of the General Assembly at the time the notice of intent is filed, the administrative body shall mail a copy of the notice of intent to the chair of the appropriate standing or interim joint committee of the General Assembly.***
- (6) (a) An administrative body shall file the original and five (5) copies of the notice of its intent to promulgate an administrative regulation with the regulations compiler.
- (b) The date a notice of intent to promulgate an administrative regulation is published in the Administrative Register shall be governed by the provisions of KRS 13A.050(3) and 13A.150.
- (c) A notice of intent shall be typewritten on white paper, size eight and one-half (8-1/2) by eleven (11) inches, and single-spaced. The first page shall have a two (2) inch top margin, and one (1) inch side and bottom margins. Subsequent pages shall have one (1) inch top, bottom, and side margins. The notice of intent shall be typed in a twelve (12) point font approved by the regulations compiler.
- ~~(7)(6)~~ (a) A notice of intent shall not be filed for an emergency administrative regulation that will not be replaced by an ordinary administrative regulation.
- (b) If an emergency administrative regulation will be replaced by an ordinary administrative regulation, the notice of intent for the ordinary administrative regulation shall be filed at the same time as the emergency administrative regulation that will be replaced.
- ~~(8)(7)~~ If a notice of intent to promulgate an administrative regulation has been filed, a subsequent notice of intent on the same administrative regulation shall not be filed unless the first notice of intent has been withdrawn.

Section 2. KRS 13A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Administrative body" means each state board, bureau, cabinet, commission, department, authority, officer, or other entity, except the General Assembly and the Court of Justice, authorized by law to promulgate administrative regulations;
- (2) "Administrative regulation" means each statement of general applicability promulgated by an administrative body that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any administrative body. The term includes an existing administrative regulation, a new administrative regulation, an emergency administrative regulation, an administrative regulation in contemplation of a statute, the amendment or repeal of an existing administrative regulation, but does not include:
  - (a) Statements concerning only the internal management of an administrative body and not affecting private rights or procedures available to the public; or
  - (b) Declaratory rulings; or
  - (c) Intradepartmental memoranda not in conflict with KRS 13A.130; or

- (d) Statements relating to acquisition of property for highway purposes and statements relating to the construction or maintenance of highways; or
  - (e) Rules, regulations, and policies of the governing boards of institutions that make up the postsecondary education system defined in KRS 164.001 pertaining to students attending or applicants to the institutions, to faculty and staff of the respective institutions, or to the control and maintenance of land and buildings occupied by the respective institutions;
- (3) "Adopted" means that an administrative regulation has become effective in accordance with the provisions of this chapter;
  - (4) "Authorizing signature" means the signature of the head of the administrative body authorized by statute to promulgate administrative regulations;
  - (5) "Commission" means the Legislative Research Commission;
  - (6) "Economic impact" means a financial impact on:
    - (a) Commercial enterprises;
    - (b) Retail businesses;
    - (c) Service businesses;
    - (d) Industry;
    - (e) Consumers of a product or service; or
    - (f) Taxpayers;
  - (7) "Effective" means that an administrative regulation has completed the legislative subcommittee review established by KRS 13A.290 and 13A.330;
  - (8) "Federal mandate" means any federal constitutional, legislative or executive law or order which requires or permits any administrative body to engage in regulatory activities which impose compliance standards, reporting requirements, recordkeeping, or similar responsibilities upon entities in the Commonwealth;
  - (9) "Federal mandate comparison" means a written statement containing the information required by KRS 13A.245;
  - (10) "Filed" means that an administrative regulation, or other document required to be filed by this chapter, has been submitted to the Commission in accordance with this chapter;
  - (11) "Promulgate" means that an administrative body has approved an administrative regulation for filing with the Commission in accordance with the provisions of KRS Chapter 13A;
  - (12) "Proposed administrative regulation" ~~["except as provided by KRS 13A.015(6)."]~~ means an administrative regulation that an administrative body proposes to promulgate;
  - (13) "Regulatory impact analysis" means a written statement containing the provisions required by KRS 13A.240;
  - (14) "Statement of consideration" means that an administrative body must either accept suggestions or recommendations regarding an administrative regulation or issue a concise statement setting forth the reasons for not accepting suggestions or recommendations regarding an administrative regulation;
  - (15) "Subcommittee" includes the Administrative Regulation Review Subcommittee, any other subcommittee of the Legislative Research Commission, a standing committee of the General Assembly, or a House and Senate standing committee meeting jointly; and
  - (16) "Tiering" means the tailoring of regulatory requirements to fit the particular circumstances surrounding regulated entities.

**Approved April 3, 2000**

**CHAPTER 289****(SB 215)**

AN ACT relating to sales of alcoholic beverages.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 244 IS CREATED TO READ AS FOLLOWS:

- (1) ***Manufacturers and importers of distilled spirits and wine may advertise and promote, by specific brand and bottle size, distilled spirits and wine for off-premises consumption by use of rebate coupons.***
- (2) ***Rebate coupons are redeemable by the consumer at the point of purchase, or by mail-in certificate by which the consumer receives a cash refund or nonalcoholic beverage merchandise from the manufacturer, importer, or clearinghouse acting for the manufacturer or importer, upon submission by the consumer of the required proof of purchase.***
- (3) ***Rebate coupons on malt beverages are prohibited.***

Section 2. KRS 243.120 is amended to read as follows:

A distiller's, rectifier's, or vintner's license shall authorize the licensee to engage in the business of distiller, rectifier, or vintner at the premises specifically designated in the license, to maintain aging warehouses, and to transport for himself or herself only any alcoholic beverage which he or she is authorized under the license to manufacture or sell. The licensee shall transport alcoholic beverages only by a vehicle ~~owned and~~ operated by himself or herself, which has affixed to its sides at all times a sign of form and size prescribed by the state board, containing among other things the name and license number of the licensee. No distilled spirits or wine shall be transported on the same truck or vehicle with malt beverages, except by a common carrier, unless the owner of the truck or vehicle holds a distributor's license.

Section 3. KRS 244.260 is amended to read as follows:

~~{(1)—}No wholesaler shall purchase, import, keep upon the licensed premises, or sell any distilled spirits or wine in any container except in the original sealed package containing quantities of not less than two hundred (200) milliliters each of distilled spirits or one hundred (100) milliliters of wine, and not exceeding 1.75 liters of distilled spirits or two hundred twenty (220) liters of wine, and fifty (50) milliliters of distilled spirits, as received from the distiller, rectifier, vintner, or wholesaler, as the case may be. The containers shall at all times have affixed to them all labels as may be required by the administrative regulations of the board, together with all necessary federal revenue and state excise tax stamps.~~

~~{(2)—No wholesaler shall sell any distilled spirits or wine except in cases of containers of uniform size, except that wine may be sold in barrels or kegs. "Case" as used in this section means a carton of containers aggregating not less than six (6) liters nor more than twenty four (24) liters of wine and distilled spirits, or case containing one hundred twenty (120) or two hundred forty (240) fifty (50) milliliter bottles of distilled spirits and wine.}~~

Section 4. KRS 244.280 is amended to read as follows:

~~{(1)—}No licensee under KRS 243.030 nor any of his agents, servants, or employees shall peddle any alcoholic beverages from house to house, by any means, where the sale is consummated and delivery made concurrently at the residence or place of business of the consumer.~~

~~{(2)—Deliveries shall not be made by holders of special agent's or solicitor's licenses.}~~

Section 5. KRS 243.220 is amended to read as follows:

- (1) No license for the sale of alcoholic beverages at retail shall be issued for any premises unless the applicant for the license is the owner of the premises or is in possession of the premises under a written lease ***or a permit*** for a term of not less than the license period.
- (2)
  - (a) No premises shall be licensed for the sale of alcoholic beverages at retail unless the licensed premises and the entrance to the premises are on the street level and located in a business center or on a main thoroughfare.
  - (b) Paragraph (a) of this subsection shall not apply to a hotel, club or restaurant, if the club or restaurant receives a minimum of fifty percent (50%) of its income from the sale of food and has a minimum

seating capacity of fifty (50) people at tables. In the cases described in this paragraph the administrator to whom the application is made may, in the exercise of his *or her* sound discretion, decide whether the premises are to be licensed.

**Approved April 3, 2000**

## **CHAPTER 290**

### **(SB 294)**

AN ACT relating to Medicaid reimbursement for chiropractic services.

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

Section 1. KRS 205.560 is amended to read as follows:

- (1) The scope of medical care for which the Cabinet for Health Services undertakes to pay shall be designated and limited by regulations promulgated by the cabinet, pursuant to the provisions in this section. Within the limitations of any appropriation therefor, the provision of complete upper and lower dentures to recipients of Medical Assistance Program benefits who have their teeth removed by a dentist resulting in the total absence of teeth shall be a mandatory class in the scope of medical care. Payment to a dentist of any Medical Assistance Program benefits for complete upper and lower dentures shall only be provided on the condition of a preauthorized agreement between an authorized representative of the Medical Assistance Program and the dentist prior to the removal of the teeth. The selection of another class or other classes of medical care shall be recommended by the council to the secretary for health services after taking into consideration, among other things, the amount of federal and state funds available, the most essential needs of recipients, and the meeting of such need on a basis insuring the greatest amount of medical care as defined in KRS 205.510 consonant with the funds available, including, but not limited to, the following categories, except where the aid is for the purpose of obtaining an abortion:
  - (a) Hospital care, including drugs, and medical supplies and services during any period of actual hospitalization;
  - (b) Nursing-home care, including medical supplies and services, and drugs during confinement therein on prescription of a physician, dentist, or podiatrist;
  - (c) Drugs, nursing care, medical supplies, and services during the time when a recipient is not in a hospital but is under treatment and on the prescription of a physician, dentist, or podiatrist;
  - (d) Physician, podiatric, and dental services;
  - (e) Optometric services for all age groups shall be limited to prescription services, services to frames and lenses, and diagnostic services provided by an optometrist, to the extent the optometrist is licensed to perform the services and to the extent the services are covered in the ophthalmologist portion of the physician's program. Eyeglasses shall be provided only to children under age twenty-one (21);
  - (f) Drugs on the prescription of a physician used to prevent the rejection of transplanted organs if the patient is indigent;
  - (g) Nonprofit neighborhood health organizations or clinics where some or all of the medical services are provided by licensed registered nurses or by advanced medical students presently enrolled in a medical school accredited by the Association of American Medical Colleges and where the students or licensed registered nurses are under the direct supervision of a licensed physician who rotates his services in this supervisory capacity between two (2) or more of the nonprofit neighborhood health organizations or clinics specified in this paragraph;
  - (h) Services provided by health-care delivery networks as defined in KRS 216.900; and
  - (i) Services provided by midlevel health-care practitioners as defined in KRS 216.900.
- (2) Payments for hospital care, nursing-home care, and drugs or other medical, ophthalmic, podiatric, and dental supplies shall be on bases which relate the amount of the payment to the cost of providing the services or supplies. It shall be one (1) of the functions of the council to make recommendations to the Cabinet for Health Services with respect to the bases for payment. In determining the rates of reimbursement for long-term-care facilities participating in the Medical Assistance Program, the Cabinet for Health Services shall, to the extent

permitted by federal law, not allow the following items to be considered as a cost to the facility for purposes of reimbursement:

- (a) Motor vehicles that are not owned by the facility, including motor vehicles that are registered or owned by the facility but used primarily by the owner or family members thereof;
  - (b) The cost of motor vehicles, including vans or trucks, used for facility business shall be allowed up to fifteen thousand dollars (\$15,000) per facility, adjusted annually for inflation according to the increase in the consumer price index-u for the most recent twelve (12) month period, as determined by the United States Department of Labor. Medically equipped motor vehicles, vans, or trucks shall be exempt from the fifteen thousand dollar (\$15,000) limitation. Costs exceeding this limit shall not be reimbursable and shall be borne by the facility. Costs for additional motor vehicles, not to exceed a total of three (3) per facility, may be approved by the Cabinet for Health Services if the facility demonstrates that each additional vehicle is necessary for the operation of the facility as required by regulations of the cabinet;
  - (c) Salaries paid to immediate family members of the owner or administrator, or both, of a facility, to the extent that services are not actually performed and are not a necessary function as required by regulation of the cabinet for the operation of the facility. The facility shall keep a record of all work actually performed by family members;
  - (d) The cost of contracts, loans, or other payments made by the facility to owners, administrators, or both, unless the payments are for services which would otherwise be necessary to the operation of the facility and the services are required by regulations of the Cabinet for Health Services. Any other payments shall be deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for Health Services. Interest paid to the facility for loans made to a third party may be used to offset allowable interest claimed by the facility;
  - (e) Private club memberships for owners or administrators, travel expenses for trips outside the state for owners or administrators, and other indirect payments made to the owner, unless the payments are deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for Health Services; and
  - (f) Payments made to related organizations supplying the facility with goods or services shall be limited to the actual cost of the goods or services to the related organization, unless it can be demonstrated that no relationship between the facility and the supplier exists. A relationship shall be considered to exist when an individual, including brothers, sisters, father, mother, aunts, uncles, and in-laws, possesses a total of five percent (5%) or more of ownership equity in the facility and the supplying business. An exception to the relationship shall exist if fifty-one percent (51%) or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.
- (3) No vendor payment shall be made unless the class and type of medical care rendered and the cost basis therefor has first been designated by regulation.
  - (4) The rules and regulations of the Cabinet for Health Services shall require that a written statement, including the required opinion of a physician, shall accompany any claim for reimbursement for induced premature births. This statement shall indicate the procedures used in providing the medical services.
  - (5) The range of medical care benefit standards provided and the quality and quantity standards and the methods for determining cost formulae for vendor payments within each category of public assistance and other recipients shall be uniform for the entire state, and shall be designated by regulation promulgated within the limitations established by the Social Security Act and federal regulations. It shall not be necessary that the amount of payments for units of services be uniform for the entire state but amounts may vary from county to county and from city to city, as well as among hospitals, based on the prevailing cost of medical care in each locale and other local economic and geographic conditions, except that insofar as allowed by applicable federal law and regulation, the maximum amounts reimbursable for similar services rendered by physicians within the same specialty of medical practice shall not vary according to the physician's place of residence or place of practice, as long as the place of practice is within the boundaries of the state.
  - (6) Nothing in this section shall be deemed to deprive a woman of all appropriate medical care necessary to prevent her physical death.

- (7) To the extent permitted by federal law, no medical assistance recipient shall be recertified as qualifying for a level of long-term care below the recipient's current level, unless the recertification includes a physical examination conducted by a physician licensed pursuant to KRS Chapter 311 or by an advanced registered nurse practitioner licensed pursuant to KRS Chapter 314 and acting under the physician's supervision.
- (8) If payments made to community mental health centers, established pursuant to KRS Chapter 210, for services provided to the mentally retarded exceed the actual cost of providing the service, the balance of the payments shall be used solely for the provision of other services to the mentally retarded through community mental health centers.
- (9) No long-term-care facility, as defined in KRS 216.510, providing inpatient care to recipients of medical assistance under Title XIX of the Social Security Act on July 15, 1986, shall deny admission of a person to a bed certified for reimbursement under the provisions of the Medical Assistance Program solely on the basis of the person's paying status as a Medicaid recipient. No person shall be removed or discharged from any facility solely because they became eligible for participation in the Medical Assistance Program, unless the facility can demonstrate the resident or the resident's responsible party was fully notified in writing that the resident was being admitted to a bed not certified for Medicaid reimbursement. No facility may decertify a bed occupied by a Medicaid recipient or may decertify a bed that is occupied by a resident who has made application for medical assistance.
- (10) Family-practice physicians practicing in geographic areas with no more than one (1) primary-care physician per five thousand (5,000) population, as reported by the United States Department of Health and Human Services, shall be reimbursed one hundred twenty-five percent (125%) of the standard reimbursement rate for physician services.
- (11) The Cabinet for Health Services ~~shall~~<sup>may</sup> make payments under the Medical Assistance program for services which are within the lawful scope of practice of a chiropractor licensed pursuant to KRS Chapter 312, to the extent the Medical Assistance Program pays for the same services provided by a physician.

**Approved April 3, 2000**

## CHAPTER 291

### (SB 324)

AN ACT relating to medical residency programs.

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

Section 1. KRS 311.560 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, no person shall engage or attempt to engage in the practice of medicine or osteopathy within this state, or open, maintain, or occupy an office or place of business within this state for engaging in practice, or in any manner announce or express a readiness to engage in practice within this state, unless the person holds a valid and effective license or permit issued by the board as hereinafter provided.
- (2) The provisions of subsection (1) of this section shall not apply to:
  - (a) Commissioned medical officers of the Armed Forces of the United States, or medical officers of the United States Public Health Service, the United States Veterans Administration, and other agencies of the government of the United States of America, while said persons are engaged in the performance, within this state, of their official duties under federal laws;
  - (b)
    1. Persons who, being nonresidents of Kentucky and lawfully licensed to practice medicine or osteopathy in their states of actual residence, infrequently engage in the practice of medicine or osteopathy within this state, when called to see or attend particular patients in consultation and association with a physician licensed pursuant to this chapter; *or*
    2. ***Persons who, being current participants in a medical residency program outside of Kentucky and lawfully licensed to practice medicine or osteopathy in the states of their medical residency programs, who participate in a temporary residency rotation of no more than sixty (60) days at a hospital in this Commonwealth. All persons who participate in a temporary residency rotation under this paragraph shall register with the board at no cost, on forms***



*provided by the board, and shall be subject to the jurisdiction of the board for so long as they participate in the residency rotation. Persons who wish to participate in a second or subsequent temporary residency rotation under this paragraph shall seek advance approval of the board; or*

- (c) Graduates of medical or osteopathic schools approved by the board, while engaged in performing supervised internship or first-year postgraduate training approved by the board at hospitals in this state. All first-year postgraduate trainees shall register with the board at no cost, on forms provided by the board. This shall not be construed to otherwise exempt interns or first-year postgraduate trainees, or to exempt in any manner resident or staff physicians of hospitals, from the licensure requirements of KRS ~~311.530 to 311.550~~ to 311.620. *A residency physician who participates in a temporary residency rotation under paragraph (b) of this subsection shall not be required to obtain a license under KRS 311.530 to 311.620.*
- (3) Physician assistants shall be considered to practice medicine or osteopathy with physician supervision. A physician assistant may perform those duties and responsibilities that are delegated by the supervising physician. A physician assistant shall be considered the agent of the supervising physician in the performance of all practice-related activities, including, but not limited to, the performance of or ordering of diagnostic, therapeutic, and other medical services. A physician assistant shall not render services in hospitals or other licensed health care facilities without the express written permission of the facility's governing body. The facility may restrict the physician assistant's scope of practice within the facility as the facility deems appropriate.
- (4) A physician assistant may prescribe and administer drugs and medical devices to the extent delegated by the supervising physician. Prescribing and administering of drugs may include all nonscheduled legend drugs. Any physician assistant who is delegated prescribing privileges may request, receive, and sign for professional sample drugs and distribute professional sample drugs to patients.

Approved April 3, 2000

## CHAPTER 292

(SB 330)

AN ACT relating to the licensing of hospital outpatient services.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any other provision of law to the contrary, if the Federal Health Care Financing Administration issues a final regulation establishing an outpatient Medicare prospective payment system for hospitals that requires that an outpatient health facility operated by the hospital be under the same license as the hospital to achieve provider-based status, the cabinet shall, at the hospital's request, issue a new license to a hospital that owns and operates an existing or newly established outpatient health facility that lists each location operated by the hospital.*
- (2) *Any outpatient health facility listed on the hospital's license under subsection (1) of this section shall:*
  - (a) *Comply with all applicable licensure regulations that pertain to the type of health services provided; and*
  - (b) *Prior to the establishment of a health facility, the operation of a health facility, or the provision of health services or the addition of a health service at a location other than the hospital's main campus, obtain a certificate of need if a certificate of need would otherwise be required in the absence of subsection (1) of this section. Licensure of the outpatient health facility or service under the same license as the hospital pursuant to subsection (1) of this section shall not eliminate the requirements for a certificate of need.*

Approved April 3, 2000

## CHAPTER 293

## (SB 341)

AN ACT relating to managed health care plans.

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

Section 1. KRS 304.17A-510 is amended to read as follows:

- (1) In addition to the disclosure requirements provided in KRS 304.17A-505, an insurer that offers a managed care plan shall ~~notify[disclose to]~~ an enrollee, in writing, ***of the availability of a printed document***, in a manner consistent with KRS 304.14-420 to 304.14-450, ***containing*** the following information at the time of enrollment and upon request:
  - (a) A current participating provider directory providing information on a covered person's access to primary care health care providers, including available participating health care providers, by provider category or specialty and by county. The directory shall include the professional office address of each participating health care provider. The directory shall also provide information about participating hospitals and other providers. The insurer shall promptly notify each covered person on the termination or withdrawal from the insurer's provider network of the covered person's designated primary care provider;
  - (b) General information about the type of financial incentives between participating providers under contract with the insurer and other participating health care providers and facilities to which the participating providers refer their managed care patients; and
  - (c) The insurer's managed care plan's standard for customary waiting times for appointments for urgent and routine care.

The insurer shall provide a prospective enrollee with information about the provider network, including hospital affiliations, and other information specified in this subsection, upon request. ***In addition to making the information available in a printed document, an insurer may also make the information available in an accessible electronic format.***

- (2) Upon request of a covered person, an insurer shall promptly inform the person:
  - (a) Whether a particular network provider is board certified; and
  - (b) Whether a particular network provider is currently accepting new patients.
- (3) Each insurer shall annually make available to its enrollees at its principal office and place of business:
  - (a) Its most recent annual statement of financial condition including a balance sheet and summary of receipts and disbursements; and
  - (b) A current description of its organizational structure and operation.

Section 2. KRS 304.17A-590 is amended to read as follows:

- (1) An insurer that offers a managed care plan ***or a risk-bearing managed care plan*** shall ~~notify[disclose to]~~ an enrollee, in writing, ***of the availability***, in a manner consistent with KRS 304.14-420 to 304.14-450, ~~and any risk-bearing managed care plan shall disclose to an enrollee,~~ in writing, at the time of enrollment and thereafter upon request, and as new providers are contracted with by the plans, or as the directory may change, ***of*** a current participating provider directory providing information on a covered person's access to primary care physicians and specialists, optometrists, chiropractors, and hospitals, including available participating physicians, optometrists, chiropractors, and hospitals, by provider category or specialty and by county. The directory shall include the following:
  - (a) Professional office addresses and telephone numbers for all participating:
    1. Primary care physicians;
    2. Optometrists;
    3. Chiropractors;

4. Hospitals; and
5. Other health care providers as defined under KRS 304.17A-010(11);
- (b) Information about drug formularies and their restrictions, limitations, and procedures for authorization outside the formularies;
- (c) The benefits for each provider type;
- (d) General information about the type of financial incentives between participating providers under contract with the insurer and other participating health care providers and facilities to which the participating providers refer their managed care patients; and
- (e) Grievance procedures available under the plans for complaint resolutions.

***In addition to making the information available in a printed document, an insurer may also make the information available in an accessible electronic format.***

- (2) The insurer shall promptly notify each covered person on the termination or withdrawal from the insurer's provider network of the covered person's designated primary care provider.
- (3) The provisions of this section shall be implemented prior to any open enrollment period for which the effective date of coverage will be January 1, 1999, or for which the effective date shall commence after an open enrollment period, and shall continue for each open enrollment period thereafter.

**Approved April 3, 2000**

## **CHAPTER 294**

### **(SJR 69)**

A JOINT RESOLUTION directing the Transportation Cabinet to name the new bypass connecting Kentucky Route 52 and Kentucky Route 89 in Estill County in honor of Joseph Proctor.

We pause to honor a hero and patriot of the Commonwealth, a man in whom "the public's confidence in his purity and integrity was absolute", the Reverend Joseph Proctor.

WHEREAS, Joseph Proctor was born in Rowan County, North Carolina, in 1754; and

WHEREAS, a valiant young man, Joseph Proctor rallied to protect early settlers in North Carolina against uprisings of the Cherokee Nation; and

WHEREAS, Joseph Proctor's early experience fighting Indians proved essential to the citizens of the Commonwealth when he moved to Boonesborough in April, 1778; and

WHEREAS, Joseph Proctor assisted in defending the fort at Boonesborough in August, 1778, during a nine day siege in an attack by 500 Indians led by Canadian officers; and

WHEREAS, being a fearless warrior was only one facet of Joseph Proctor's personality, for, in 1809, he was ordained a Methodist Episcopal minister; and

WHEREAS, Joseph Proctor, along with Thomas Todd, was one of the first families to build a home in what is now Estill County; and

WHEREAS, Joseph Proctor's first home was a cabin on Sweet Lick Creek, now known as Estill Springs; and

WHEREAS, Reverend Joseph Proctor founded two of the earliest churches in Estill County, the first being the Methodist Episcopal Church at the rural community of Kimbrell in 1809, and the second being Proctor's Chapel which was located on White Oak Creek; and

WHEREAS, Reverend Joseph Proctor's ministry was most notable for the weekly prayer meetings he held each Thursday night in Estill County -- after the first courthouse was built and until his death in 1844, Joseph Proctor could be found in the County Clerk's office sharing the gospel; and

WHEREAS, even though Reverend Joseph Proctor was not a native Kentuckian, his contributions to the Commonwealth's early struggles were critical to the state's success for he was instrumental in protecting both the physical and religious lives of those first pioneer families;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. The Transportation Cabinet is directed to name the new by-pass connecting Kentucky Route 52 and Kentucky Route 89 in Estill County the "Joseph Proctor Memorial By-Pass".

Section 2. The Transportation Cabinet is directed to erect signs at each junction of the new by-pass with Kentucky Route 52 and Kentucky Route 89 that read "The Joseph Proctor Memorial By-Pass" within thirty (30) days of the effective date of this Resolution.

**Approved April 3, 2000**

## **CHAPTER 295**

**(SB 351)**

AN ACT relating to respiratory care practitioners.

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

Section 1. KRS 314A.010 is amended to read as follows:

As used in this chapter:

- (1) "Respiratory care" includes "respiratory therapy," "inhalation therapy," or other "cardiopulmonary" terms.
- (2) "Practice of respiratory care" means the procedures employed in the therapy, management, rehabilitation, gathering of assessment information, or other procedures administered to patients with deficiencies or abnormalities which affect their cardiopulmonary system and associated aspects of cardiopulmonary and other system functions. This includes, but is not limited to:
  - (a) Provision of respiratory care procedures to ensure the safety, comfort, personal hygiene, protection of patients, and the performance of disease prevention and restorative measures;
  - (b) The administration of pharmacologic and therapeutic agents related to the cardiopulmonary care necessary for treatment, disease prevention, or rehabilitation regimes prescribed by a physician; and
  - (c) Observation of signs and symptoms of cardiopulmonary illness, reactions to treatment, general physical condition; determination of whether such signs, symptoms, reactions, behavior, or general appearance exhibit abnormal characteristics; and performance of standard procedures according to observed abnormalities, or reporting them to the physician in charge or other caretakers; initiating standard or emergency procedures.
- (3) "Respiratory care practitioner" means a person who holds a mandatory certificate approved by the board. The term "respiratory care practitioner" includes the following:
  - (a) A "**registered** respiratory therapist" means an individual who has successfully completed a training program accredited by the American Medical Association's **Commission**~~Committee~~ on **Accreditation of Allied Health Education or its equivalent**~~and Accreditation~~ in collaboration with the **Committee on Accreditation**~~Joint Review Committee~~ for Respiratory **Care or its equivalent**~~Therapy Education~~, and who has successfully completed the registry examination for **advanced** respiratory therapists administered by the National Board of Respiratory Care, Incorporated **or its equivalent**;
  - (b) An "**entry level therapist**"~~A "respiratory care technician"~~ means an individual who has successfully completed a training program accredited by the American Medical Association's **Commission**~~Committee~~ on **Accreditation of Allied Health Education or its equivalent**~~and Accreditation~~ in collaboration with the **Committee on Accreditation**~~Joint Review Committee~~ for Respiratory **Care or its equivalent**~~Therapy Education~~, and who has successfully completed the entry level certification examination for respiratory care technicians administered by the National Board for Respiratory Care, Incorporated **or its equivalent**;
  - (c) A "graduate respiratory care practitioner" means an individual who has graduated from an approved educational program and **eligible**~~is waiting~~ to sit for the ~~next available~~ entry level certification examination that will be administered by the National Board for Respiratory Care, Incorporated **or its equivalent**;

(d) A "student respiratory care practitioner" means:

1. An individual enrolled in an education and training program, accredited by the American Medical Association's *Commission*~~[Committee]~~ on *Accreditation of Allied Health Education or its equivalent*~~[and Accreditation]~~ and the *Committee on Accreditation for Respiratory Care or its equivalent*~~[Joint Review Committee for Respiratory Therapy Education]~~, for respiratory care practitioners and whose sponsoring educational institution assumes responsibility for the supervision of and the services rendered by the student respiratory care practitioner while *the student*~~[he]~~ is functioning in a clinical training capacity; or
2. An individual enrolled in an education and training program, accredited by the American Medical Association's *Commission*~~[Committee]~~ on *Accreditation of Allied Health Education or its equivalent*~~[and Accreditation]~~ and the *Committee on Accreditation for Respiratory Care or its equivalent*~~[Joint Review Committee for Respiratory Therapy Education]~~, and who is also employed for compensation to provide respiratory care services as outlined in *Section 4 of this Act*~~[KRS 314A.110(1)(d)]~~.

(4) "Board" means the Kentucky Board of Respiratory Care.

(5) "Accredited program" means a training program accredited by the American Medical Association's *Commission*~~[Committee]~~ on *Accreditation of Allied Health or its equivalent*~~[Education]~~ in collaboration with the *Committee on Accreditation for Respiratory Care or its equivalent*~~[Joint Review Committee for Respiratory Therapy Education]~~ which qualifies the graduate to sit for the registry examination ~~[for respiratory therapists]~~ or the entry level~~[certification]~~ examination~~[for respiratory care technicians]~~ administered by the National Board for Respiratory Care *or its equivalent*.

(6) "Mandatory certification" means the board's official authorization to practice respiratory care for the time specified by the mandatory certification.~~[, and]~~

(7) "Continuing education" means educational activities primarily designed to keep respiratory care practitioners informed of developments in the respiratory care field or any special areas of practice engaged in by such persons.

(8) *"Documented competency" means adherence to guidelines established by health facilities, medical staff, or accreditation agencies. These guidelines shall be in accordance with national standards of practice deemed appropriate by the National Board for Respiratory Care or its equivalent.*

(9) "Medical director" means a licensed physician who is knowledgeable in the diagnosis, treatment, and assessment of respiratory problems and whose responsibilities are established by statutes and regulations governing the operation of facilities licensed under KRS Chapter 216B, as well as statutes and regulations dealing with hospice, home health, and other settings where respiratory care services may be delivered.

(10) *"Direct supervision" means supervision by a holder of a mandatory certificate who shall be on the premises where respiratory care services are provided and who shall be available for immediate consultation.*

(11) *"Indirect supervision" means supervision by a holder of a mandatory certificate who shall be available by telephone and who shall have a response time, if needed, of thirty (30) minutes or less.*

Section 2. KRS 314A.100 is amended to read as follows:

- (1) A respiratory care practitioner may perform respiratory care procedures under medical direction *with documented competency*, in accordance with agency or facility guidelines and only in accordance with the prescription of a physician. The procedures shall include, but not be limited to, the assessment and therapeutic use of the following: medical gases, exclusive of general anesthesia; aerosols, humidification, environmental control systems; pharmacologic agents related to *cardiopulmonary procedures, unless prohibited by the medical staff of the licensed health-care facility*~~[respiratory care procedures, excluding intravenous or intramuscular medications]~~; mechanical or physiological ventilatory support; bronchopulmonary hygiene, maintenance of the natural airways; insertion without cutting tissues and maintenance of artificial airways; specific assessment and testing procedures such as drawing and analyzing of arterial blood gases employed in the medical measurement and monitoring of cardiac function as it relates to pulmonary pathophysiology.
- (2) The practice of respiratory care may be performed in hospitals or in other settings where respiratory care is to be provided in accordance with a prescription of a physician. In addition, respiratory care may be provided

during the transportation of a patient, or under any circumstances where an emergency necessitates respiratory care.

- (3) The respiratory care practitioner may transcribe and implement a physician's written or verbal orders pertaining to the practice of respiratory care procedures as defined in this section.
- (4) *The respiratory care practitioner's scope of practice shall include practice standards and guidelines as developed by the American Association for Respiratory Care, or its equivalent, and as incorporated by the board through promulgation of administrative regulations in accordance with KRS Chapter 13A.*

Section 3. KRS 314A.110 is amended to read as follows:

- (1) To be eligible for mandatory certification as a respiratory care practitioner the applicant shall ***hold a currently valid registered respiratory therapist (RRT) or certified respiratory therapist (CRT) credential issued by the National Board for Respiratory Care or its equivalent***:
  - (a) ~~Initially submit a completed application within twelve (12) months after July 13, 1990, with the required fee, and meet the requirements of paragraphs (b), (c), or (d) of this subsection; thereafter, only persons qualified under paragraph (b) or (d) of this subsection or under subsection (2) of this section may apply for a mandatory certificate;~~
  - (b) ~~Hold a currently valid certificate of registry or certification issued by the National Board for Respiratory Care or its successor}.~~
- (2) A temporary mandatory certificate may be issued to the graduate respiratory care practitioner ***for a period not to exceed six (6) months from graduation***~~{which shall be effective until receipt of a passing score from the first available National Board for Respiratory Care entry level certification examination for which the graduate respiratory care practitioner is eligible}~~. The holder of a ***temporary*** mandatory certificate who does not successfully pass the~~{ first available}~~ National Board for Respiratory Care ***or its equivalent*** entry-level certification examination ***within a six (6) month period***~~{for which he is eligible}~~ shall cease and desist performing any services as a respiratory care practitioner. Failure to comply in this instance shall subject ***the individual***~~{him}~~ to prosecution for practicing as a respiratory care practitioner without a mandatory certificate.~~{ However, a failing score on the entry level certification examination shall not prevent an applicant from applying for and taking subsequent entry level certification examinations according to National Board for Respiratory Care guidelines;~~
- (c) ~~Individuals that do not hold a valid certificate of registry or certification, but who have practiced respiratory care in the Commonwealth of Kentucky for a minimum of twenty four (24) months under medical supervision, and who provide satisfactory documentation of such experience, may apply to the board for a mandatory certificate, provided such documentation is presented within twelve (12) months of July 13, 1990;}~~
- (3)~~{(4)}~~ In order for student respiratory care practitioners to be employed for compensation to provide respiratory care services, they must apply to the board for a limited mandatory certificate which will permit them to perform respiratory care procedures (for which they have received training) under the ***direct*** supervision of a respiratory therapist ***who holds a mandatory certificate***~~{or a respiratory care technician}~~. This limited mandatory certificate excludes the performance of continuous mechanical or physiological ventilatory support, arterial puncture, and blood gas analysis. The limited mandatory certificate may be granted only to individuals actively enrolled in an accredited program and for a period not to exceed three (3) years. This limited mandatory certificate is in no manner required for individuals actively enrolled in an accredited program while performing uncompensated clinical activities required by the program.
- (4)~~{(2)}~~ Respiratory care practitioners duly authorized to practice in other states and in good standing ***and who hold the CRT credential or its equivalent*** may be conferred a mandatory certificate by the board if the requirements for licensure or certification in that state are substantially equal to the requirements of this section.
- (5)~~{(3)}~~ Respiratory ***therapists***~~{care technicians}~~ applying for mandatory certification shall retain their National Board for Respiratory Care (NBRC) ***designations***~~{designation}~~ as certified respiratory ***therapists (CRT) or registered respiratory therapists (RRT)***~~{therapy technicians in addition to that of respiratory care practitioner, and respiratory therapists shall retain their NBRC designation as registered respiratory therapists in addition to respiratory care practitioner subject to the requirements of mandatory certification herein described}~~. Persons

***holding a*** ~~applying for~~ mandatory certification through the limited mechanism of grandfather status shall solely be designated as respiratory care practitioner.

- (6)~~(4)~~ Mandatory certification of respiratory care practitioners shall be on a biennial basis according to established criteria under KRS 314A.115. Mandatory certificates issued by the board shall expire and shall not be renewed unless the certificate holder submits proof to the board of compliance with KRS 314A.115. On and after the date on which a person's mandatory certificate has expired, ***the practitioner***~~he~~ may apply for reinstatement within five (5) years of the expiration of the mandatory certificate. The applicant shall show compliance with the current continuing education requirement in force at the time of mandatory certificate renewal application. After expiration of a five (5) year period, current standards for mandatory certification shall be met. The board may require individualized conditions for reinstatement.

SECTION 4. A NEW SECTION OF KRS CHAPTER 314A IS CREATED TO READ AS FOLLOWS:

***To be eligible for limited mandatory certification as a respiratory care practitioner, the applicant shall meet the criteria established under this chapter and any administrative regulation promulgated to carry out the provisions of this chapter.***

Section 5. KRS 314A.200 is amended to read as follows:

- (1) There is hereby created a Board of Respiratory Care which shall consist of seven (7) ***voting*** members appointed by the Governor.
  - (a) Four (4) members shall be respiratory care practitioners ***holding a valid mandatory certificate and practicing in Kentucky;***~~chosen from a list of seven (7) submitted by the Kentucky Society for Respiratory Care;~~
  - (b) Two (2) ***members*** shall be pulmonologists ***who are licensed and practicing physicians in Kentucky;***~~;~~ and
  - (c) One (1) ***member*** shall be a citizen at large who is not associated with or financially interested in respiratory care.
- (2) ***Members shall be appointed to the board for terms of three (3) years, expiring on October 30 of the third year.***~~The executive director of the Division of Occupations and Professions shall serve on the board in an ex officio capacity. The respiratory care practitioner members shall hold valid mandatory certificates in Kentucky and shall also practice in the Commonwealth. The pulmonologists shall be licensed physicians practicing in Kentucky. The members of the board shall serve until the expiration of the term for which they have been appointed. All appointments made shall be for a term of three (3) years, except for appointments to fill vacancies caused by a reason other than the expiration of a member's term which shall be filled for the remaining portion of the member's term.~~ No person shall be appointed to serve more than two (2) consecutive terms.
- (3) ***By May 30 of years in which respiratory care practitioner terms expire, the Kentucky Society for Respiratory Care shall submit to the Governor a list of names of candidates qualified for the appointment of respiratory care practitioner, in numbers not less than twice the numbers of appointments to be made, from which the Governor shall make each appointment or appointments by October 31 of that year. The Governor shall also appoint the pulmonologist and citizen at-large members by October 31 of any year in which a term expires.***
- (4) ***A vacancy on the board shall be filled by the Governor as provided under subsection (1) of this section. The appointment shall be for the remaining portion of the member's term.***
- (5) ***The Governor or board may remove a member from the board for cause or as provided under administrative regulations promulgated by the board in accordance with KRS Chapter 13A.***
- (6) The board shall reorganize annually and select a chairperson. Four (4) ***voting*** members of the board shall constitute a quorum to do business. The board shall hold at least one (1) regular meeting each year. Additional meetings may be held upon the call of the chairperson or at the written request of any two (2) members of the board. All meetings of the board shall be open and public ***to the extent permitted by law.***

Section 6. KRS 314A.220 is amended to read as follows:

- (1) The board shall issue a mandatory certificate to all applicants who meet the requirements of this chapter and who pay to the board the initial mandatory certificate fee.

- (2) The amount of fees prescribed in connection with a mandatory certificate as a respiratory care practitioner shall be *prescribed by administrative regulation promulgated by the board in accordance with KRS Chapter 13A*~~as follows:~~
- (a) ~~The initial mandatory certificate fee shall not exceed fifty dollars (\$50);~~
  - (b) ~~The delinquency fee shall not exceed twenty dollars (\$20);~~
  - (c) ~~The application fee shall not exceed fifty dollars (\$50);~~
  - (d) ~~The inactive mandatory certificate fee shall not exceed ten dollars (\$10) every two (2) years; and~~
  - (e) ~~The temporary mandatory certificate fee shall not exceed ten dollars (\$10).~~
- (3) Each respiratory care mandatory certificate shall expire on January 30 every two (2) years. A thirty (30) day grace period shall be allowed after January 30, during which time mandatory certificates may be renewed on payment of a renewal fee of not more than seventy dollars (\$70) plus a grace period fee, when applicable, which combined will not exceed ninety dollars (\$90). No person who applies for renewal, whose mandatory certificate has expired, shall be required to submit to any examination as a condition to renewal, provided such renewal application is made within five (5) years from the date of such expiration. No person shall practice respiratory care in this state unless *the individual*~~he~~ holds a valid certificate. All mandatory certificates not renewed by March 2 following the date of issuance shall be deemed expired.
- (4) A suspended mandatory certificate is subject to expiration and shall be renewed as provided in this chapter, but such renewal shall not entitle the respiratory care practitioner, while the mandatory certificate remains suspended, and until it is reinstated, to engage in mandatory certification activities, or in any other activity or conduct in violation of the order of judgment by which the mandatory certificate was suspended. A mandatory certificate revoked on disciplinary grounds is subject to expiration as provided in this chapter, but it may not be renewed. If it is reinstated after its expiration, the mandatory certificate holder, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.
- (5) A person who fails to renew his or her mandatory certificate within the five (5) years after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter, but such persons may apply for and obtain a new mandatory certificate if he meets the requirements of this chapter.

Section 7. KRS 314A.225 is amended to read as follows:

- (1) The board may refuse to issue a mandatory certificate, or may suspend or revoke the mandatory certificate of any certificate holder if he has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Unprofessional conduct may include:
- (a) Obtaining a mandatory certificate by means of fraud, misrepresentation, or concealment of material facts;
  - (b) Having been guilty of unprofessional conduct as defined by the administrative regulations promulgated by the board, or having violated the code of ethics promulgated by the board;
  - (c) Having violated any lawful order or administrative regulation rendered or promulgated by the board; or
  - (d) Having violated any provisions of this chapter.
- (2) The board shall deny an application for, or suspend or revoke, or impose probationary conditions upon, a mandatory certificate as ordered by the board in any decision made after a hearing conducted in accordance with KRS Chapter 13B. One (1) year from the date of revocation of a mandatory certificate under this chapter, application may be made to the board for reinstatement. The board shall have discretion to accept or reject an application for reinstatement.
- (3) A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of felony or of any offense involving moral turpitude is deemed to be a conviction within the meaning of this chapter. At the direction of the board and after a hearing conducted in accordance with KRS Chapter 13B, the mandatory certificate shall be suspended or revoked, or issuance of a mandatory certificate shall be declined when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence irrespective of a subsequent order under the



provisions of the penal code allowing a person to withdraw his plea of guilty, and to enter a plea of not guilty or setting aside the verdict of guilty, or dismissing the acquisition, information, or indictment.

- (4) (a) *The chair of the board or the chair's designee may determine that immediate temporary suspension of a certificate, against which disciplinary action or an investigation is pending, is necessary to protect the public. If it appears that this action may be necessary, the chair or the designee shall issue an emergency order suspending the certificate. Upon appeal of an emergency order, an emergency hearing shall be conducted under KRS Chapter 13B.*
- (b) *No board member shall be disqualified from serving on a disciplinary action hearing panel for the reason that the member has previously served on a hearing panel considering temporary suspension of the same certificate.*
- (c) *The board shall expedite the disciplinary process in any action that involves a certificate that has been temporarily suspended.*
- (d) *The order of immediate temporary suspension shall remain in effect until either retracted or superseded by final disciplinary action by the board. If disciplinary action is imposed, the board may order that the temporary suspension continue until the later of the expiration of the time permitted for appeal or the termination of the appellate process.*

Section 8. The terms of the members of the Board of Respiratory Care who hold membership as of the effective date of this Act shall expire on October 31, 2000. By August 15, 2000, the Kentucky Society for Respiratory Care shall submit to the Governor a list of eight (8) names of candidates who are qualified for appointment as respiratory care practitioners. The Governor shall make the appointments of the respiratory care practitioners from this list by October 31, 2000, and the Governor shall also make the appointments of qualified pulmonologists and the citizen at-large member by October 31, 2000. The terms of the initial appointments shall be staggered to assure continuity of experience, as follows: two (2) respiratory care practitioners and one (1) pulmonologist shall serve for one (1) year; two (2) respiratory care practitioners and one (1) pulmonologist shall serve for two (2) years; and the citizen at-large-member shall serve for three (3) years. Subsequent appointments shall be for three (3) years and as provided under Section 5 of this Act.

**Approved April 3, 2000**

## CHAPTER 296

**(SJR 73)**

A JOINT RESOLUTION directing the Transportation Cabinet to name portions of United States Route 60 and Kentucky Route 180 in Boyd County the "Purple Heart Highway" and to erect appropriate highway signs.

WHEREAS, it is the Armed Forces of the United States that defend our great nation from foreign powers that act against our national interests and seek to tarnish the principles of freedom and justice; and

WHEREAS, countless soldiers, sailors, airmen, and marines have risked their lives in defense of the Constitution that makes our country the model for the free world; and

WHEREAS, rows of plain white headstones, both here at home and around the world, stand as a testimony to the ultimate sacrifice made to protect our freedom and our way of life; and

WHEREAS, every citizen of the Commonwealth owes a great debt of gratitude to the patriotic men and women killed and wounded in service to their country in times of great need ; and

WHEREAS, these recipients of the Purple Heart deserve our thanks, recognition, and respect for their devotion and service to our Commonwealth and our nation;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. The Transportation Cabinet is directed to name United States Route 60 from milepoint 0.800 to milepoint 2.518 and Kentucky Route 180 from milepoint 4.023 to milepoint 8.617 in Boyd County the "Purple Heart Highway".

Section 2. The Transportation Cabinet shall immediately begin preparing the appropriate highway signs naming the "Purple Heart Highway" to facilitate their erection upon the effective date of this Resolution.

Section 3. The Clerk of the Senate shall transmit copies of this Resolution to the Secretary of the Transportation Cabinet and to the District Highway Engineer in Flemingsburg, Kentucky.

**Approved April 3, 2000**

## **CHAPTER 297**

**(SJR 104)**

A JOINT RESOLUTION naming a bridge in Pike County in honor of Charles Douglas "C.D." Roberts.

WHEREAS, Charles Douglas "C.D." Roberts is a native son of Pikeville, Kentucky; and

WHEREAS, Charles Douglas "C.D." Roberts bravely served his country during World War II as a daring navy pilot; and

WHEREAS, upon his return from World War II, Charles Douglas "C.D." Roberts attended the University of Kentucky where he earned a degree in engineering; and

WHEREAS, Charles Douglas "C.D." Roberts is a self-employed businessman who worked in the coal industry, as well as the coal and gas industry in east Kentucky; and

WHEREAS, as a trusted citizen of Pike County Charles Douglas "C.D." Roberts was elected county surveyor and served in that capacity for sixteen years; and

WHEREAS, Charles Douglas "C.D." Roberts has been active in many community and civic organizations throughout his lifetime;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. The Transportation Cabinet is directed to name the bridge located under the exit ramp of United States Route 23 South and Hambley Boulevard in Pike County in honor of "C.D." Roberts. The project number for this bridge is 12-MP-098-0023B00183P.

Section 2. The Transportation Cabinet shall erect signs within thirty (30) days of the effective date of this Resolution at each bridge approach to the bridge located under the exit ramp of United States Route 23 South and Hambley Boulevard in Pike County that read "The C.D. Roberts Bridge."

**Approved April 3, 2000**

## **CHAPTER 298**

**(HB 88)**

AN ACT related to reorganization.

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

Section 1. KRS 439.320 is amended to read as follows:

- (1) The Governor shall appoint a Parole Board consisting of seven (7) ***full-time*** members ***and two (2) part-time members, as described in subsection (7) of this section,*** to be confirmed by the Senate in accordance with KRS 11.160. ***Each of the two (2) part-time members shall be from a different political party. The Governor***~~He~~ shall make each appointment ***for full-time and part-time members*** from a list of three (3) names given to him by the Commission on Correction and Community Service. Each member appointed to the board shall have had at least five (5) years of actual experience in the field of penology, correction work, law enforcement, sociology, law, education, social work, medicine, or a combination thereof, or have served at least five (5) years previously on the Parole Board. No more than ***five (5)***~~four (4)~~ board members shall be of the same political party. The board shall be attached to the Justice Cabinet for administrative purposes only; the Department of Corrections shall provide any clerical, stenographic, administrative, and expert staff assistance the board deems necessary to carry out its duties.

- (2) The Governor shall name one (1) **full-time** member as chairman of the board. The chairman shall be the chief administrative officer of the board and shall be responsible for all administrative, organizational, and personnel matters of the board.
- (3) The **full-time** members of the board shall give full time to the duties of their office and shall receive necessary traveling expenses and a salary to be determined pursuant to KRS 64.640(2), except the chairman of the board shall receive additional compensation of one thousand dollars (\$1,000) per year for his services. Their terms of office shall be four (4) years and until their successors are appointed and have qualified. Their successors shall be appointed thereafter as provided in this section for terms of four (4) years, and a vacancy occurring before expiration of the term of office shall be similarly filled for the unexpired term. The chairman of the board shall serve as such until the expiration of his term at which time the Governor shall name his successor and designate the chairman of the board. If a vacancy occurs in the chairmanship of the board before the expiration of the term, the Governor may name a successor to serve for the remainder of the unexpired term.
- (4) The organization of the board shall be determined by the chairman and a quorum of the board shall be as follows:
  - (a) For parole hearings at which the inmate appears before the board, three (3) members; and
  - (b) For all other business, four (4) members. A decision by any three (3) member panel in a parole hearing shall be final only if it is unanimous; otherwise the case must be reviewed and voted on by not less than four (4) members of the board. Parole decisions for inmates who do not appear before the board shall be reviewed and voted on by not less than four (4) members of the board.
- (5) The Governor may not remove any member of the board except for disability, inefficiency, neglect of duty, or malfeasance in office. Before removal, he shall give the member a written copy of the charges against him and shall fix the time when he can be heard in his defense, which shall not be less than ten (10) days thereafter. Upon removal, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against the member and the findings thereupon with a record of the proceedings.
- (6) Upon the expiration of the terms of office of the two (2) **full-time** board members whose terms expire May 23, 1994, the Governor shall appoint two (2) **full-time** members to serve terms which will expire June 30, 1995. Thereafter, appointments to these two (2) **full-time** terms shall be for four (4) years and shall be filled as provided for in subsection (3) of this section. The Governor may reappoint present members if they meet the qualifications set forth in subsection (1) of this section.
- (7) ~~The Governor shall appoint up to two (2) part-time Parole Board members, to be confirmed by the Senate in accordance with KRS 11.160. The appointment process for these members shall be the same as set forth in subsection (1) of this section, and these members shall possess the same qualifications of a full-time Parole Board member with the additional requirement that they shall have previously served as a full-time Parole Board member. These~~ **The part-time** members may participate in considering the grant or revocation of parole at the request of the chairman. No more than one (1) part-time Parole Board member shall serve on any panel of the board as set forth in subsection (4) of this section. The part-time Parole Board member called upon to serve shall be paid at a per diem rate equal to the per diem rate for the salary of a newly appointed full-time member and shall receive necessary travel expenses. The part-time Parole Board member shall serve for a period of four (4) years from the date of appointment and may be reappointed.

Section 2. The General Assembly confirms Executive Order 98-1593, dated December 3, 1998, relating to the reorganization of the Parole Board to the extent it is not otherwise confirmed by this Act.

**Approved April 3, 2000**

## **CHAPTER 299**

**(HB 258)**

AN ACT relating to retirement.

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

Section 1. KRS 78.615 is amended to read as follows:

- (1) Employee contributions shall be deducted each payroll period from the creditable compensation of each employee of an agency participating in the system while he is classified as regular full-time as defined in KRS

78.510 unless the person did not elect to become a member as provided by KRS 61.545(3) or by KRS 78.540(2). After August 1, 1982, employee contributions shall be picked up by the employer pursuant to KRS 78.610(4).

- (a) For employees who are not employed by a school board, service credit shall be allowed for each month contributions are deducted or picked up during a fiscal or calendar year, if the employee receives creditable compensation for an average of one hundred (100) hours or more of work per month based on the actual hours worked in a calendar or fiscal year. If the average number of hours of work is less than one hundred (100) hours per month, the employee shall be allowed credit only for those months he receives creditable compensation for one hundred (100) hours of work.
- (b) For noncertified employees of school boards, *for service prior to July 1, 2000*, service credit shall be allowed for each month contributions are deducted or picked up under the employee's employment contract during a school year determined by dividing the actual number of contracted days worked by twenty (20) and rounded to the nearest whole month if the employee receives creditable compensation for an average of eighty (80) or more hours of work per month based on the employee's employment contract. The school board shall certify the number of days worked, the rate of pay, and the hours in a work day for each employee monthly or annually. The employer shall file at the retirement office the final monthly report or the annual report for a fiscal year no later than twenty (20) days following the completion of the fiscal year. The retirement system shall impose a penalty on the employer of one thousand dollars (\$1,000) if the information is not submitted by the date required with an additional two hundred and fifty dollars (\$250) for each additional thirty (30) day period the information is reported late.
  1. If the employee works fewer than the number of contracted days, the employee shall receive service credit determined by dividing the actual number of contracted days worked by twenty (20) and rounded to the nearest whole month, provided that the number of hours worked during the period averages eighty (80) or more hours.
  2. If the employee works fewer than the number of contracted days and the average number of hours worked is less than eighty (80) per month, then the employee shall receive service credit for each calendar month in which he worked eighty (80) or more hours.
  3. The retirement system shall refund contributions and service credit for any period for which the employee is not given credit under this subsection.
- (c) *For noncertified employees of school boards, for service on and after July 1, 2000, at the close of each fiscal year, the retirement system shall add service credit to the account of each member who made contributions to his or her account during the year. Members shall be entitled to a full year of service credit if their total paid days were not less than one hundred eighty (180) days of a one hundred eighty-five (185) day contract for a regular school or fiscal year. In the event a member is paid for less than one hundred eighty (180) days, the member may purchase credit according to administrative regulations promulgated by the system. In no case shall more than one (1) year of service be credited for all service performed in one (1) fiscal year. Members who complete their employment contract prior to the close of a fiscal year and elect to retire prior to the close of a fiscal year shall have their service credit reduced by eight percent (8%) for each calendar month that the retirement becomes effective prior to July 1. Members who are employed and paid for less than the number of days required in their normal employment year shall be entitled to pro rata service credit for the fractional service. This credit shall be based upon the number of days employed and the number of days in the member's annual employment agreement or normal employment year. Service credit may not exceed the ratio between the school or fiscal year and the number of months or fraction of a month the member is employed during that year.*
- (2) Employee contributions shall not be deducted from the creditable compensation of any employee or picked up by the employer while he is seasonal, emergency, temporary, or part-time. No service credit shall be earned.
- (3) Contributions shall not be made or picked up by the employer and no service credit shall be earned by a member while on leave except:
  - (a) A member on military leave shall be entitled to service credit in accordance with KRS 61.555; and
  - (b) A member on educational leave who meets the criteria established by the state Personnel Cabinet for approved educational leave, who is receiving seventy-five percent (75%) or more of full salary, shall

receive service credit and shall pay member contributions in accordance with KRS 78.610, and his employer shall pay employer contributions or the contributions shall be picked up in accordance with KRS 61.565. If a tuition agreement is broken by the member, the member and employer contributions paid or picked up during the period of educational leave shall be refunded.

- (4) The retirement office, upon detection, shall refund any erroneous employer and employee contributions made to the retirement system and any interest credited in accordance with KRS 78.640.

**Approved April 3, 2000**

## **CHAPTER 300**

### **(HB 381)**

AN ACT relating to economic development.

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

Section 1. KRS 42.4588 is amended to read as follows:

- (1) There is established within the Kentucky Economic Development Finance Authority a Local Government Economic Development Program to consist of a system of grants to counties to attract new industry.
- (2) Grants obtained under this program shall be used for:
  - (a) Industrial development projects if an industrial firm has agreed with the local government, to the satisfaction of the Kentucky Economic Development Finance Authority, to develop, in conjunction with the industrial development project, manufacturing, processing, assembling, or other facilities approved by the secretary of the Cabinet for Economic Development;
  - (b) Industrial development projects if the secretary of the Cabinet for Economic Development finds that the project is necessary for the creation of an environment for new industry in order to obtain an agreement from an industrial firm to develop manufacturing, processing, assembling, or other facilities approved by the secretary of the Cabinet for Economic Development; and
  - (c) Debt service for industrial development projects, as defined in subsection (2)(a) and (b) of this section, or for facilities approved by the secretary of the Cabinet for Economic Development under the provisions of subsection (3) of this section.
- (3) The secretary of the Cabinet for Economic Development may approve facilities, other than manufacturing, processing, or assembling facilities, for industrial development projects when the secretary finds that the facility will add value to a product. Value-added facilities shall include data processing, telecommunication, and distribution facilities, but shall not include retail facilities or coal mining, coal processing, or coal transportation facilities. The secretary may also approve privately-owned facilities for transient lodging and recreation where the secretary finds that the cost of the recreation component of the facility is equal to, or greater than, the cost of the lodging component of the facility. The criteria for approval of applications for grants provided for in paragraphs (a), (b), and (c) of subsection (9) of this section shall be paramount in the case of lodging and recreational facilities.
- (4) Applications for grants from funds provided for in KRS 42.4592(1)(a) and (b) shall be made by the legislative bodies of one (1) or more counties with accounts in the local government economic development fund. Applications for grants from funds provided for in KRS 42.4592(1)(c) shall be made by the legislative bodies of two (2) or more counties with accounts in the local government economic development fund. No grant shall be awarded without application for a grant.
- (5) A grant may be awarded for an industrial development project located in a county that does not have an account in the local government economic development fund, if the secretary of the Cabinet for Economic Development finds that the industrial development project may be reasonably expected to create jobs for residents of the local unit or units of government applying for the grant. Application for the grant shall be made by the legislative bodies of one (1) or more counties with accounts in the local government economic development fund.
- (6) *An industrial development project may include legal, accounting, engineering, and marketing expenses for a regional industrial park, in addition to the activities set forth in subsection (11)(a) of this section.*

- (7) Grants awarded from funds provided for in KRS 42.4592(1)(a) and (b) shall not exceed the total balance of the accounts of the applicant counties at the time of the award of the grant.
- ~~(8)(7)~~ Grants awarded under the provisions of subsection (2)(c) of this section may be for a period not to exceed the current biennium of the Commonwealth, and shall be limited to an amount not to exceed the amount estimated to be allocated to the applicant county or counties for the current biennium under the provisions of KRS 42.4592(1)(a) and (b).
- ~~(9)(8)~~ Approval of grant applications shall be by the secretary of the Cabinet for Economic Development. Award of grants shall be by the Kentucky Economic Development Finance Authority.
- ~~(10)(9)~~ Criteria for approval of applications and the award of grants to be considered, if applicable, shall include:
- (a) The number of jobs to be created or preserved, directly or indirectly, by the industrial development project;
  - (b) Payrolls, and the taxes generated, both at the state and local levels, by the industrial development project and taxes generated by the employment created or preserved by the industrial development project;
  - (c) The size, nature, and cost of the industrial development project, including the prospect of the industrial development project providing long-term jobs in enterprises consistent with the changing economies of the affected local units of government;
  - (d) The needs, and degree of needs, of the local units of government which will be affected by the industrial development project;
  - (e) The needs of any industrial firm benefiting from the industrial development project;
  - (f) The amount and kind of assistance, if any, available to an industrial firm from other government agencies through tax exemption or abatement, financing assistance through industrial development bonds, and otherwise, with respect to the industrial development project;
  - (g) The amount of capital made available to the facility by lenders and by the industrial firm; and
  - (h) The economic feasibility of the facility.
- ~~(11)(10)~~ For purposes of this section:
- (a) "Industrial development project" includes the acquisition of any real estate and the construction, acquisition, and installation thereon and with respect thereto of improvements and facilities necessary and useful for the improvement of the real estate for conveyance to or lease to industrial firms to be used for manufacturing, processing, or assembling purposes, including surveys; site tests and inspections; subsurface site work; excavation, removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and provision of drainage; storm water retention; installation of utilities, such as water, sewer, sewage treatment, gas, electricity, communication, and other similar facilities; off-site construction of utility extensions to the boundaries of the real estate; construction and installation on the real estate of the industrial firm of buildings, including buildings to be used for worker training and education; rail facilities; roads; sidewalks; curbs; ~~and~~ other improvements to the real estate necessary to its manufacturing, processing, assembling, or other approved use by industrial entities; workforce training; **and** job development incentive grants;
  - (b) "Industrial firm" means any corporation, limited liability company, limited liability partnership, partnership, person, or other legal entity, whether domestic or foreign, which will itself or through its subsidiaries and affiliates construct and develop a manufacturing, processing, assembling, or other approved facility on the site of an industrial development project financed pursuant to this section; ~~and~~
  - (c) "Job development incentive grant" means an award to a county of funds from its account administered by the Kentucky Economic Development Finance Authority pursuant to KRS 42.4592(1)(a) and (b) for the use by the county to encourage job development for those industrial development projects located in that county which create at least twenty-five (25) new full-time jobs held by Kentucky residents who receive a minimum wage of at least one hundred thirty percent (130%) of the federal minimum wage. Each job development incentive grant is limited to five thousand dollars (\$5,000) for each job created which fulfills the requirements of this subsection. The industrial firm receiving the job development

incentive grant shall pay its employees at the project site an average wage equal to or greater than one hundred fifty percent (150%) of the federal minimum wage and shall invest at least ten thousand dollars (\$10,000) per new job created. After a fiscal court has received authorization for the job development grant by the Kentucky Economic Development Finance Authority, the county, the industrial firm, and the ***Kentucky Economic Development Finance Authority***~~Cabinet for Economic Development~~ shall enter into an agreement committing the grant funds to be disbursed at such time as the industrial firm certifies the authenticity of the following information to be delivered to the county:

1. The industrial firm has made at least the minimum investment required;
2. At least twenty-five (25) new full-time Kentucky jobs have been created at the project site by the industrial firm;
3. No employee at the project site is paid a salary by the industrial firm which is less than one hundred thirty percent (130%) of the federal minimum wage;
4. The employees at the project site are paid an average wage by the industrial firm at least equal to one hundred fifty percent (150%) of the federal minimum wage;
5. Each employee hired for the project by the industrial firm shall have worked on a full-time basis at the minimum wages described in this section at least twelve (12) full consecutive months at the site prior to any grant funds disbursement; and
6. No job created by the industrial firm after twenty-four (24) months from the date of the first eligible hire at the project site shall be considered for the grant.

If the county is satisfied the information provided is accurate and qualifies the industrial firm for the job development incentive grant as described in the agreement, it shall forward the certified information to the Cabinet for Economic Development which shall make the job development grant disbursement upon sufficient evidence that all terms of the agreement have been met; ***and***

- (d) ***"Regional industrial park" means an industrial development project authorized for a grant award by the Kentucky Economic Development Finance Authority for a minimum of three (3) counties eligible for grant funds provided for in KRS 42.4592(1)(c), which coalition may include a county as approved under subsection (5) of this section.***

~~(12)(11)~~ Findings by the secretary of the Cabinet for Economic Development, provided for in subsections (2)(b), (3), and (5) of this section, shall be made in writing to the affected counties, the Governor, and the Legislative Research Commission.

~~(13)(12)~~ By October 1 of each odd-numbered year, the secretary of the Cabinet for Economic Development shall provide, in writing, to the Governor and the Legislative Research Commission a listing of all applications for grants received pursuant to this section subsequent to the last report, indicating which applications were approved or disapproved, with the reason for disapproval when the decision was to disapprove, and a listing of all grants awarded, with the amount of the award, the recipient county, and the related industrial development project.

Section 2. KRS 141.310 is amended to read as follows:

- (1) Every employer making payment of wages on or after January 1, 1971, shall deduct and withhold upon the wages a tax determined under KRS 141.315 or by the tables authorized by KRS 141.370.
- (2) If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days, including Sundays and holidays, equal to the number of days in the period with respect to which the wages are paid.
- (3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days, including Sundays and holidays, which have elapsed since the date of the last payment of wages by the employer during the calendar year, or the date of commencement of employment with the employer during the year, or January 1 of the year, whichever is the later.

- (4) In determining the amount to be deducted and withheld under this section, the wages may, at the election of the employer, be computed to the nearest dollar.
- (5) The tables mentioned in subsection (1) of this section take into consideration the deductible federal income tax. If Congress changes substantially the federal income tax, the cabinet shall make the change in these tables necessary to compensate for any increase or decrease in the deductible federal income tax.
- (6) The cabinet may permit the use of accounting machines to calculate the proper amount to be deducted from wages when the calculation so permitted produces substantially the same result set forth in the tables authorized by KRS 141.370. Prior approval of the calculation shall be secured from the cabinet at least thirty days before the first payroll period for which it is to be used.
- (7) The cabinet may, by regulations, authorize employers:
  - (a) To estimate the wages which will be paid to any employee in any quarter of the calendar year;
  - (b) To determine the amount to be deducted and withheld upon each payment of wages to the employee during the quarter as if the appropriate average of the wages estimated constituted the actual wages paid; and
  - (c) To deduct and withhold upon any payment of wages to the employee during the quarter the amount necessary to adjust the amount actually deducted and withheld upon the wages of the employee during the quarter to the amount that would be required to be deducted and withheld during the quarter if the payroll period of the employee was quarterly.
- (8) The cabinet may provide by regulation, under the conditions and to the extent it deems proper, for withholding in addition to that otherwise required under this section and KRS 141.315 in cases in which the employer and the employee agree to the additional withholding. The additional withholding shall for all purposes be considered tax required to be deducted and withheld under this chapter.
- (9) Effective January 1, 1992, any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job assessment fee provided in KRS 154.24-110 may offset a portion of the fee against the Kentucky income tax required to be withheld from the employee under this section. The amount of the offset shall be four-fifths (4/5) of the amount of the assessment fee withheld from the employee **or the Commonwealth's contribution if subsection (3) of Section 20 of this Act applies.** ~~If the Kentucky income tax to be withheld from the employee under this section is greater than four-fifths (4/5) of the job assessment fee set forth above, the excess shall be withheld.~~ If the **provisions in** ~~agreement under~~ KRS 154.24-150(3) **or (4) apply** ~~is consummated~~, the offset shall be one hundred percent (100%) of the assessment.
- (10) Any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job development assessment fee provided in KRS 154.22-070 **or KRS 154.28-110** may offset ~~a portion of~~ the fee against the Kentucky income tax required to be withheld from the employee under this section. ~~The amount of the offset shall be equal to the amount of the assessment fee withheld from the employee.~~
- (11) Effective January 1, 1992, any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job assessment fee provided in KRS 154.26-100 may offset a portion of the fee against the Kentucky income tax required to be withheld from the employee under this section. The amount of the offset shall be two-thirds (2/3) of the amount of the assessment fee withheld from the employee ~~If the Kentucky income tax to be withheld from the employee under this section is greater than two-thirds (2/3) of the job assessment fee set forth above,~~ or four-fifths (4/5) if the agreement under KRS 154.26-090(1)(d)2.b. is consummated ~~, the excess shall be withheld.~~
- (12) ~~Any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job development assessment fee provided in KRS 154.22-070 may offset a portion of the fee against the Kentucky income tax required to be withheld from the employee under this section. The amount of the offset shall be equal to the amount of the assessment fee withheld from the employee.~~
- (13) Any employer required by this section to withhold Kentucky income tax may be required to post a bond with the cabinet. The bond shall be a corporate surety bond or cash. The amount of the bond shall be determined by the cabinet, but shall not exceed fifty thousand dollars (\$50,000).



~~(13)~~~~(14)~~ The Commonwealth may bring an action for a restraining order or a temporary or permanent injunction to restrain or enjoin the operation of an employer's business until the bond is posted or the tax required to be withheld is paid or both. The action may be brought in the Franklin Circuit Court or in the Circuit Court having jurisdiction of the defendant.

Section 3. KRS 141.350 is amended to read as follows:

The amount deducted and withheld as tax under KRS 141.310 and KRS 141.315 during any calendar year upon the wages of any individual and the amount of credit described in KRS 154.22-070(2), 154.24-110, *subsections (3) and (4) of Section 21 of this Act*; 154.26-100(2), or KRS ~~154.28-110~~~~[154.28-090]~~ shall be allowed as a credit to the recipient of the income against the tax imposed by KRS 141.020, for taxable years beginning in the calendar year. If more than one (1) taxable year begins in the calendar year, the amount shall be allowed as a credit against the tax for the last taxable year so beginning.

Section 4. KRS 141.405 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

- (a) "Approved company" has the same meaning as set forth in KRS 154.12-2084; and
- (b) "Skills training investment credit" has the same meaning as set forth in KRS 154.12-2084.

(2) An approved company shall determine the income tax credit as provided in this section.

(3) (a) An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation subject to tax under KRS 141.040(1) shall compute the income tax due at the applicable tax rates as provided by KRS 141.020 or 141.040, on net income as defined by KRS 141.010(11), or taxable net income as defined by KRS 141.010(14);

(b) The amount of the skills training investment credit that the Bluegrass State Skills Corporation has given final approval for under KRS 154.12-2088(6) shall be applied against the amount of the tax computed under paragraph (a) of this subsection; and

(c) The skills training investment credit payment shall not exceed the amount of the final approval awarded by the Bluegrass State Skills Corporation under KRS 154.12-2088(6).

(4) (a) *In the case of an approved company which is an S-corporation or partnership the amount of the tax credit awarded by the Bluegrass State Skills Corporation in subsection (6) of Section 8 of this Act shall be apportioned among the shareholders or partners thereof at the same ratio as the shareholders' or partners' distributive shares of income are determined for the tax year during which the final authorization resolution is adopted by the Bluegrass State Skills Corporation in subsection (6) of Section 8 of this Act*~~[Notwithstanding any other provisions of this chapter, an approved company which is an S corporation, partnership, limited liability partnership, or trust shall be subject to income tax on the net income attributable to the approved company's operations at the rates provided in KRS 141.020(2)];~~

(b) *The amount of the tax credit apportioned to each shareholder or partner that may be claimed in any tax year of the shareholder or partner shall be determined in accordance with the provisions of Section 7 of this Act*~~[skills training investment credit shall be the same as the amount of the tax computed in this section or, upon the annual election of the approved company, in lieu of the skills training investment credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this subsection shall be in satisfaction of the tax liability of the shareholders, partners, or beneficiaries of the S corporation, partnership, limited liability partnership, or trust, and shall be paid on behalf of the shareholders, partners, or beneficiaries];~~

~~(c) The skills training investment credit or estimated payment shall not exceed the amount of the final approval awarded by the Bluegrass State Skills Corporation under KRS 154.12-2088(6);~~

~~(d) If the tax computed in this section exceeds the credit, the excess shall be paid by the S corporation, partnership, limited liability partnership, or trust at the times provided by KRS 141.160 for filing the returns; and~~

- ~~(e) Any estimated tax payment made by the S corporation, partnership, limited liability partnership, or trust in satisfaction of the tax liability of shareholders, partners, or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the shareholder, partner, or beneficiary].~~
- (5) (a) *In the case of an approved company that is a trust, the amount of the tax credit awarded by the Bluegrass State Skills Corporation in subsection (6) of Section 8 of this Act shall be apportioned to the trust and the beneficiaries on the basis of the income of the trust allocable to each for the tax year during which the final authorizing resolution is adopted by the Bluegrass State Skills Corporation in subsection (6) of Section 8 of this Act.*
- (b) *The amount of tax credit apportioned to each trust or beneficiary that may be claimed in any tax year of the trust or beneficiary shall be determined in accordance with the provisions of Section 7 of this Act.* ~~[Notwithstanding any other provisions of this chapter, the net income subject to tax, the skills training investment credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each shareholder's, partner's, or beneficiary's distributive share of net income or credit of an S corporation, partnership, limited liability partnership, or trust.~~
- ~~(6) Any limited liability company that is treated as a corporation for federal tax purposes shall determine the skills training investment credit as provided in subsection (3) of this section.~~
- ~~(7) Any limited liability company which is treated as a partnership for federal tax purposes shall determine the skills training investment credit as provided in subsection (4) of this section.~~
- ~~(8) }The Revenue Cabinet may promulgate administrative regulations in accordance with KRS Chapter 13A adopting forms and procedures for the reporting of the credit allowed in{and require the filing of forms designed by the Revenue Cabinet to reflect the intent of KRS 154.12-2084 to 154.12-2089 and the allowable skills training investment credits that an approved company may retain under} KRS 154.12-2084 to 154.12-2089.~~

Section 5. KRS 154.12-204 is amended to read as follows:

As used in KRS 154.12-205 to 154.12-208, unless the context requires otherwise:

- (1) "Applicant" means an educational institution, ~~[and]~~ business, or industry that has made ~~[joint]~~ application for a grant-in-aid as authorized by KRS 154.12-205 to 154.12-208;
- (2) "Board" means the board of directors of the Bluegrass State Skills Corporation;
- (3) "Business and industry" means a private corporation, limited liability company, registered limited liability partnership, institution, firm, person, group, or other entity or association of the same, concerned with commerce, trade, manufacturing, or the provision of services within the Commonwealth, or a public or nonprofit hospital licensed by the Commonwealth;
- (4) "Corporation" means the Bluegrass State Skills Corporation, or BSSC;
- (5) "Educational institution" means a public or nonpublic secondary or post-secondary institution or an independent institution within the Commonwealth authorized by law to provide a program of skills training or education beyond the secondary school level;
- (6) "Grant-in-aid" means funding that is provided to an educational institution and business and industry by the BSSC for the development or expansion of a program as provided in this chapter;
- (7) "Program" or "program of skills training or education consistent with employment needs" means a coordinated course of instruction which is designed to prepare individuals for employment in a specific trade, occupation, or profession. Such instruction may include:
  - (a) Classroom instruction;
  - (b) Classroom-related field, shop, factory, office, or laboratory work; and
  - (c) Entry level training, job upgrading, retraining, and advance training.
- (8) "Technical assistance" means professional and any other assistance provided by business and industry to an educational institution, which is reasonably calculated to support directly the development and expansion of a particular program as defined herein.

Section 6. KRS 154.12-207 is amended to read as follows:

- (1) The corporation may, subject to appropriation from the General Assembly or from funds made available to the corporation from any other public or private source, provide grants-in-aid to educational institutions, and business and industry, not in excess of two hundred thousand dollars (\$200,000) per grant-in-aid. Such grants-in-aid shall be used exclusively for programs which are consistent with the provisions of this chapter.
- (2) To qualify for a grant-in-aid *in which an educational institution will provide training*, an educational institution and a business or industry shall submit a joint application to the corporation that contains a proposal for a program of skills training and education; a description of the program; the type of skills training or education to be provided; a statement of the total cost of the program and breakdown of the costs associated with equipment, personnel, facilities, and materials; and with respect to educational institutions only, a statement of the technical assistance and financial support for the program received or pledged from business and industry. *To qualify for a grant-in-aid in which a provider other than an educational institution will provide training, the business or industry may independently submit a proposal to the corporation containing the same information as set forth in this subsection.*
- (3) Approval of the grant-in-aid application by the board, shall be based upon the following criteria:
  - (a) The program must be within the scope of KRS 154.12-204 to 154.12-208;
  - (b) Participants in the program must be limited to citizens of the Commonwealth;
  - (c) The program must involve an area of skills training and education which is needed by business and industry and for which a shortage of qualified individuals exists within the Commonwealth;
  - (d) The grant-in-aid must be essential to the success of the program as the resources of the educational institution are inadequate to attract the technical assistance and financial support necessary from business and industry;
  - (e) The educational institution must have obtained a firm commitment from business and industry for the information, technical assistance and financial support which, together, with the grant-in-aid, the resources of the applicant, and support from any other source, is sufficient to ensure the success of the program. In addition, the commitment of financial support from business and industry shall be equal to or greater than the amount of the requested grant-in-aid; and
  - (f) The educational institution must have established adequate auditing procedures and reporting methods for the submission of information and data as required by the corporation.

Section 7. KRS 154.12-2086 is amended to read as follows:

- (1) The Bluegrass State Skills Corporation may, in accordance with KRS 154.12-2084 to 154.12-2089, award a credit against the Kentucky income tax imposed by KRS 141.020 or 141.040 to an approved company. The amount of the skills training investment credit awarded by the Bluegrass State Skills Corporation shall be an amount equal to fifty percent (50%) of the amount of approved costs incurred by the approved company in connection with its program of occupational upgrade training or skills upgrade training, the credit amount not to exceed five hundred dollars (\$500) per employee and, in the aggregate, not to exceed one hundred thousand dollars (\$100,000) for each approved company per biennium. The Bluegrass State Skills Corporation shall only approve one (1) application per biennium for each qualified company.
- (2) The skills training investment credit shall be credited *on the income tax return of the approved company filed* for the fiscal year ~~during for~~ which the *final authorizing resolution is adopted by the Bluegrass State Skills Corporation in accordance with subsection (6) of Section 8 of this Act* ~~(tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed in KRS 141.042).~~ The skill training investment credits allowed under KRS 154.12-2084 to 154.12-2089 shall only be used by the approved company that has been awarded the credits in accordance with KRS 154.12-2084 to 154.12-2089. The skills training investment credits provided for in this section shall be in addition to all other tax credits granted under the laws of the Commonwealth.
- (3) The skills training investment credits may be carried forward for three (3) successive fiscal years of the approved company if the amount allowable as credits exceeds the income tax liability of the approved company in ~~the that~~ tax year *during which the final authorizing resolution is adopted by the Bluegrass State Skills Corporation*; however, thereafter, if the amount allowable as credits exceeds the income tax liability of the approved company, the excess credits shall not be refundable or carried forward to any other fiscal year of the approved company for which a tax return of the approved company is to be filed.

- (4) A qualified company shall not be entitled to receive the skills training investment credits if the qualified company requires that the employee reimburse the employer or otherwise pay for any costs or expenses incurred in connection with the occupational upgrade training or skills upgrade training.
- (5) To the extent that any expenditures of a qualified company constitute approved costs and are the basis for the skills training investment credits under KRS 154.12-2084 to 154.12-2089, these expenditures shall not be eligible as the basis for grants-in-aid under Bluegrass State Skills Corporation provisions in KRS 154.12-204 to 154.12-208 or the Local Government Economic Development Program under the provisions of KRS 42.4588 to 42.4595.
- (6) Priority consideration for preliminary approval under KRS 154.12-2088 shall be given to qualified companies that the Bluegrass State Skills Corporation determines to be high performance companies. A minimum of thirty percent (30%) of the total skills training investment credits authorized by the Bluegrass State Skills Corporation during any fiscal year shall be awarded to qualified companies that have been designated as high performance companies by the Bluegrass State Skills Corporation. The Bluegrass State Skills Corporation shall establish guidelines and standards for the designation of high performance companies.
- (7) ***By October 1 of each year*** ~~Ninety (90) days after the filing of the tax return of the approved company~~, the Revenue Cabinet shall certify to the Bluegrass State Skills Corporation the ~~Kentucky income tax liability for the preceding fiscal year of the approved company for which the return was filed, and the~~ amount of any skills training investment credits taken pursuant to KRS 154.12-2084 to 154.12-2089 ***on tax returns filed during the fiscal year ending June 30 of that year.***

Section 8. KRS 154.12-2088 is amended to read as follows:

- (1) The Bluegrass State Skills Corporation shall establish guidelines and standards for approving skills training investment credits for occupational upgrade training and skills upgrade training. The guidelines and standards may include, but are not limited to: required hours of classroom instruction; required courses; certification of teachers or instructors, whether independent contractors or employees of a qualified company; certification of providers; progressive levels of instruction; and standardized measures of employee evaluation to determine successful completion of a course of study.
- (2) To apply for skills training investment credits under KRS 154.12-2084 to 154.12-2089, a qualified company shall submit an application to the Bluegrass State Skills Corporation before commencing its program of occupational upgrade training or skills upgrade training. The application submitted by the qualified company shall contain information the Bluegrass State Skills Corporation requires including, but not limited to:
  - (a) A proposal for a program of occupational upgrade training or skills upgrade training;
  - (b) A description of each component of the proposed training program and the number of employee training hours requested;
  - (c) ~~A~~ ~~An itemized~~ statement of all anticipated costs and expenses of the training program, including ~~a breakdown of~~ the costs and expenses associated with employee wages, equipment, personnel, facilities, and materials; and
  - (d) Auditing procedures and reporting methods for the submission of information and data to the Bluegrass State Skills Corporation.
- (3) After a review of applications for skills training investment credits, the Bluegrass State Skills Corporation may designate the qualified company as a preliminarily approved company and preliminarily approve the amount of skills training investment credits that the qualified company shall be eligible to receive. The maximum amount of skills training investment credits preliminarily approved for all qualified companies by the Bluegrass State Skills Corporation for fiscal year 1998-1999 and fiscal year 1999-2000 shall not exceed one million dollars (\$1,000,000) and shall not exceed two million five hundred thousand dollars (\$2,500,000) for each fiscal year thereafter. Skills training investment credits shall be allocated to qualified companies in the same order preliminary approval is granted by the Bluegrass State Skills Corporation. Skills training investment credits that remain unallocated by the Bluegrass State Skills Corporation at the end of its fiscal year shall lapse and shall not be carried forward to a new fiscal year.
- (4) The preliminarily approved company shall complete all programs of occupational upgrade training or skills upgrade training within one (1) year from the date of the preliminary approval of the skills training investment credits by the Bluegrass State Skills Corporation and shall certify the completion of these programs to the Bluegrass State Skills Corporation.

- (5) The preliminarily approved company shall maintain in its employment the employees receiving occupational upgrade or skills upgrade training for a minimum of ninety (90) days following the completion of the program of occupational upgrade training or skills upgrade training and shall certify to the Bluegrass State Skills Corporation the number of employees who remained in the employment of the preliminarily approved company for the full ninety (90) day period.
- (6) If a qualified company concludes its training program within the prescribed one (1) year and receives the required certifications described in subsections (4) and (5) of this section, then the Bluegrass State Skills Corporation shall adopt a final authorizing resolution approving the amount of skills training investment credits awarded to the preliminarily approved company in accordance with KRS 154.12-2084 to 154.12-2089. The adoption of a final authorizing resolution shall be contingent upon the Bluegrass State Skills Corporation's approval of documentation submitted by the preliminarily approved company supporting all incurred approved costs. If one (1) or more of the employees of the preliminarily approved company failed to continue in the employment of the company for ninety (90) days following the completion of the prescribed one (1) year, then the amount of the skills training investment credits preliminarily approved for a qualified company shall be reduced on a pro rata basis for each employee who failed to continue employment with the preliminarily approved company through the ninety (90) day period. The final amount of the skills training investment credits awarded to the approved company shall not exceed the amount of skills training investment credits that the approved company was preliminarily approved for by the Bluegrass State Skills Corporation prior to commencement of the training program.

Section 9. KRS 154.20-253 is amended to read as follows:

As used in KRS 154.20-250 to 154.20-284, unless the context clearly requires otherwise:

- (1) "Administrative expenses and fees" means expenses and fees incurred by the investment fund in connection with the management and administration of qualified investments;
- (2) "Agreement" means an investment fund agreement entered into pursuant to KRS 154.20-257(2) by the authority and an investment fund manager on behalf of the investment fund, the investment fund manager, and any investor in the investment fund;
- (3) "Applicant" means any person or entity who has not received **approval**~~certification~~ from the authority as an investment fund manager, but who has or will submit an application to the authority for **approval**~~certification~~ as an investment fund manager;
- (4) "Authority" means the Kentucky Economic Development Finance Authority;
- (5) "Cash contribution" means an investment of money by an investor in an investment fund under the terms of KRS 154.20-250 to 154.20-284;
- (6) "Commonwealth" means the Commonwealth of Kentucky;
- (7) "Credit" means a credit against state income or license tax liability awarded by the authority pursuant to KRS 154.20-263 for cash contributions to investment funds;
- (8) "Entity" means any corporation, limited liability company, business development corporation, partnership, limited partnership, registered limited liability partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;
- (9) "Financial institution" means any banking corporation or association, trust company, savings and loan association, savings bank, credit union, or other entity principally engaged in the business of lending money or receiving or soliciting money on deposit;
- (10) "Investment fund" means any entity that is organized by an investment fund manager in compliance with applicable state and federal securities laws and regulations, and is **approved**~~certified~~ by the authority to be capitalized with cash contributions pursuant to KRS 154.20-250 to 154.20-284;
- (11) "Investment fund manager" means any person or entity that is authorized to act in such capacity by any applicable securities regulator and that has been **approved**~~certified~~ by the authority to manage one (1) or more investment funds authorized under the provisions of KRS 154.20-250 to 154.20-284;

- (12) "Investor" means any person or entity, other than a financial institution or an insurance company that is subject to state tax liability and that makes a cash contribution to an investment fund in accordance with the provisions of KRS 154.20-250 to 154.20-284;
- (13) "Qualified activity" means any industrial, manufacturing, mining, mining reclamation for economic development, commercial, health care, agricultural enterprise, or agribusiness activity. A "qualified activity" does not include any activity principally engaged in by financial institutions, commercial development companies, credit companies, financial or investment advisors, brokerage or financial firms, other investment funds or investment fund managers, charitable and religious institutions, oil and gas exploration companies, insurance companies, residential housing developers, retail establishments, or any other activity that the authority determines in its discretion to be against the public interest, against the purposes of KRS 154.20-250 to 154.20-284, or in violation of any law;
- (14) "Qualified investment" means a contribution of money to a small business by an investment fund, in compliance with applicable state and federal securities laws and regulations, seeking a financial return based upon that contribution and in consideration for which the investment fund acquires or receives any of the following:
- (a) 1. An equity interest in the small business, such as a general or limited partnership interest, common or preferred stock with or without voting rights and without regard to seniority position, forms of subordinate or convertible unsecured debt, or both, with warrants, rights, or other means of equity conversion attached; or
  - 2. An unsecured debt instrument the maturity date of which is longer than one (1) year and which is made or issued by the small business; or
  - (b) Any other debt instrument issued or made by the small business.

Excluding any investment of money that has not been ~~approved~~~~certified~~ by the authority as a cash contribution under KRS 154.20-250 to 154.20-284, fifty percent (50%) or more of any investment fund shall be held in interests or debt instruments as specified in paragraph (a) of this subsection;

- (15) "Small business" means any entity which at the time a qualified investment is made by an investment fund:
- (a) Has net worth of three million dollars (\$3,000,000) or less and net income after federal income taxes for each of the two (2) preceding fiscal years of two million dollars (\$2,000,000) or less;
  - (b) Is actively and principally engaged in a qualified activity within the Commonwealth, or will be actively and principally engaged in a qualified activity within the Commonwealth after the making of a qualified investment by an investment fund;
  - (c) Has no more than one hundred (100) employees; and
  - (d) Has more than fifty percent (50%) of its assets, operations, and employees located in Kentucky.

The criteria set forth in paragraphs (a) and (c) of this subsection do not apply to any second or subsequent qualified investments.

Section 10. KRS 154.20-257 is amended to read as follows:

- (1) The authority may commence ~~approval~~~~certification~~ of investment funds, cash contributions, and investment fund managers on or after July 1, 1999. No tax credit authorized by KRS 154.20-263 shall become effective until the investment fund to which the cash contribution is made and from which the credit accrues, has been implemented in compliance with applicable state and federal securities laws and regulations. Any investor whose cash contribution to an investment fund has been ~~approved~~~~certified~~ by the authority shall be entitled to a credit equal to forty percent (40%) of that cash contribution as provided in KRS 154.20-263. Except as otherwise provided in KRS 154.20-261(6), any investment of money made to an investment fund shall not be considered a part of the investment fund for purposes of KRS 154.20-250 to 154.20-284 and accordingly shall not be subject to the requirements of KRS 154.20-250 to 154.20-284 unless the investment of money has been ~~approved~~~~certified~~ by the authority as a cash contribution under KRS 154.20-250 to 154.20-284. A person or entity seeking to be ~~approved~~~~certified~~ as an investment fund manager for the operation of one (1) or more investment funds shall make written application to the authority pursuant to KRS 154.20-259, in addition to complying with applicable state and federal securities laws and regulations.

- (2) (a) ***Subsequent to approval***~~[Concurrent with certification]~~ of the investment fund and the investment fund manager, the authority and the investment fund manager, on behalf of itself and any investors in the investment fund, shall enter into an agreement with respect to the investment fund. The terms and provisions of each agreement shall be determined by negotiations between the authority and the investment fund manager. If an investment fund manager or any investor in an investment fund fails to comply with their respective obligations under the agreement, the authority may, at its option do any one (1) or more of the following:
1. Suspend the availability of the credits;
  2. Pursue any remedy provided under the agreement, including termination of the agreement; or
  3. Pursue any other remedy at law to which it may be entitled.
- (b) All remedies provided in this subsection are cumulative.
- (3) At least one million dollars (\$1,000,000) in cash contributions approved for tax credits shall be transferred into the investment fund within ninety (90) days from the effective date of the agreement between the authority and the investment fund manager. The effective date of the agreement shall be the date of ***approval***~~[certification]~~ of the investment fund and the investment fund manager by the authority. All cash contributions in excess of one million dollars (\$1,000,000) that have been approved for tax credits as provided in KRS 154.20-250 to 154.20-284 in connection with the initial ***approval***~~[certification]~~ of the investment fund shall be transferred into the investment fund within one (1) year of the effective date of the agreement.
- (4) An investment fund shall invest cash contributions in qualified investments according to the following schedule:
- (a) On average during the second year after the effective date of the agreement, at least twenty-five percent (25%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall be invested in small businesses;
  - (b) On average during the third year after the effective date of the agreement, at least fifty percent (50%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall be invested in small businesses;
  - (c) On average during the fourth year after the effective date of the agreement, at least seventy-five percent (75%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall be invested in small businesses;
  - (d) On average during the fifth year after the effective date of the agreement, at least ninety percent (90%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall be invested in small businesses;
  - (e) On average during the sixth year after the effective date of the agreement, at least seventy-five percent (75%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall remain invested in small businesses;
  - (f) On average during the seventh year after the effective date of the agreement, at least fifty percent (50%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall remain invested in small businesses; and
  - (g) On average during the eighth year after the effective date of the agreement, at least twenty-five percent (25%) of the investment fund, exclusive of any amounts otherwise applied toward administrative expenses and fees, shall remain invested in small businesses.

For purposes of determining the percentage invested in small businesses on average during any particular year pursuant to this section, the amount invested in small businesses shall be the average amount so invested at the end of each calendar month during the year, and the amount of the investment fund required to be invested shall be the aggregate amount of cash contributions ***approved***~~[certified]~~ by the authority.

- (5) No tax credits shall be awarded by the authority for cash contributions to investment funds after December 31, 2004. No investment funds or investment fund managers shall be ***approved***~~[certified]~~ by the authority after December 31, 2003.

Section 11. KRS 154.20-259 is amended to read as follows:

- (1) The ~~approval~~~~[certification]~~ of investment funds and investment fund managers shall be made pursuant to an application to the authority, upon compliance with any applicable state and federal securities laws and regulations or a statement by the investment fund and the investment fund manager that such compliance will be obtained either simultaneously with or prior to submission of such application to the authority. In the application, the applicant shall disclose to the authority the following information, all of which shall be considered by the authority in ~~approving~~~~[certifying]~~ investment funds and investment fund managers:
  - (a) The applicant's business plan, including the maximum amount of cash contributions to be solicited for the investment fund, and strategy for operation of the proposed investment fund;
  - (b) The total amount of commitments for cash contributions the applicant has received from potential investors, including receipt of not less than one million dollars (\$1,000,000) in cash contributions deposited in an escrow account established in accordance with KRS 154.20-261(6);
  - (c) The name, address, and tax identification or Social Security number of each potential investor and the amount of cash contributions each potential investor has committed to the proposed investment fund;
  - (d) The relevant experience of the applicant or the applicant's management, and their demonstrated ability to manage the proposed investment fund;
  - (e) A process for disclosing to investors the tax credits available to investors pursuant to KRS 154.20-250 to 154.20-284, which shall include, but not be limited to, the disclosures described in KRS 154.20-261(7);
  - (f) The location and account number of an escrow account that has been established for investors for the period of time between receipt of cash contributions by the applicant and the ~~approval~~~~[certification]~~ of the investment fund and the investment fund manager by the authority;
  - (g) The disclosure documents to be used in connection with the offering and investment in the investment fund;
  - (h) The exemption or registration provision that is being relied upon or intended to be relied upon by both the investment fund and the investment fund manager to permit this offering of securities and the activity of the investment fund manager in relation to such offering, in compliance with applicable state and federal securities laws and regulations; and
  - (i) Any additional information the authority deems necessary or appropriate. An investment fund manager seeking to have ~~approved~~~~[certified]~~ additional cash contributions to ~~an approved~~~~[a certified]~~ investment fund shall submit to the authority a written amendment to the application in a form acceptable to the authority.
- (2) The contents of applications submitted to the authority by applicants shall be treated as confidential by the Commonwealth and shall not be considered a public record under the Kentucky Open Records Act, KRS 61.870 to 61.884.
- (3) The authority shall have, in addition to its other powers provided in this chapter and as otherwise provided by law, all powers and authority, not explicitly prohibited by statute, that are necessary or convenient to carry out and effectuate the purposes, objectives, and provisions of KRS 154.20-250 to 154.20-284, including, but not limited to, power to:
  - (a) Require consultation, advisory, and legal fees and other expenses the authority deems necessary or incident to the preparation, adoption, implementation, modification, or enforcement of the terms of any agreement or other document, or otherwise necessary or incident to any transaction;
  - (b) Require the investment fund manager to pay these fees and expenses directly to the person providing such consultation, advisory, legal, or other services on behalf of the authority; and
  - (c) Impose and collect fees and charges in connection with any transaction and provide for reasonable penalties for delinquent payment of fees or charges.

Any payments made by an investment fund manager pursuant to this subsection may be passed on to such investment fund manager's investment fund.

- (4) An investment fund's stated purpose shall be to encourage and assist in the creation, development, or expansion of small businesses located in Kentucky.



- (5) The criteria considered by the authority for the ~~approval~~~~[certification]~~ of investment fund managers shall include, but not be limited to, compliance by those persons with applicable state and federal securities laws and regulations, a review of the applicant and its business plan, the investment strategy for the investment fund, the relevant experience of the applicant or the applicant's management, and the applicant's demonstrated ability to manage the investment fund, and the receipt by the applicant of aggregate cash contributions from investors to the investment fund of not less than one million dollars (\$1,000,000).
- (6) Following ~~approval~~~~[certification]~~ of an investment fund and an investment fund manager and execution of the agreement by the authority and the investment fund manager, the authority shall provide each investor whose cash contribution has been ~~approved~~~~[certified]~~ by the authority with a certificate setting forth the amount of the tax credits the investor shall be entitled to receive under KRS 154.20-263. Following ~~approval~~~~[certification]~~ of any additional cash contributions to an investment fund after the initial ~~approval~~~~[certification]~~ of the investment fund, the authority shall provide each investor making an additional cash contribution with a certificate setting forth the amount of additional credits the investor shall be entitled to receive under KRS 154.20-263. Each investor shall file a copy of the certificate with the investor's state tax return ~~[in accordance with KRS 154.20-269]~~.
- (7) The authority may establish additional procedures and standards as it deems necessary for the ~~approval~~~~[certification]~~ of investment funds and investment fund managers by the promulgation of administrative regulations in accordance with KRS Chapter 13A.

Section 12. KRS 154.20-261 is amended to read as follows:

- (1) An investment fund manager shall have a business office located within the Commonwealth. That office shall have a listed telephone number and shall be open to the public during normal business hours.
- (2) The initial capitalization of an investment fund with cash contributions from investors shall not be less than one million dollars (\$1,000,000). Any investment of moneys received by the investment fund in excess of the maximum amount of cash contributions proposed to be solicited in the application shall not be eligible for tax credits. In no event shall any investment of money received by the investment fund in excess of ten million dollars (\$10,000,000) be eligible for credits. Cash contributions for all investment funds shall be raised after July 15, 1998.
- (3) Total qualified investments made by an investment fund, including initial and subsequent investments made by an investment fund, in any single small business using ~~approved~~~~[certified]~~ cash contributions shall not exceed twenty-five percent (25%) of the cash contributions in the investment fund; provided that this restriction shall not apply to investments of money that have not been ~~approved~~~~[certified]~~ as cash contributions under KRS 154.20-250 to 154.20-284.
- (4) An investment fund manager may operate separate investment funds pursuant to separate applications submitted to and approved by the authority, and assuming this activity is in compliance with any applicable state and federal securities laws and regulations as evidenced by a written statement to the authority by an investment fund manager to that effect.
- (5) Following the initial ~~approval~~~~[certification]~~ of an investment fund, any additional cash contributions to that investment fund shall be ~~approved~~~~[certified]~~ by the authority.
- (6) An investment fund manager seeking to establish an investment fund, or to increase the amount of cash contributions to an existing investment fund, shall establish an escrow account with a financial institution located within the Commonwealth into which cash contributions shall be deposited and held for the period of time between their receipt by the investment fund manager and either ~~approval~~~~[certification]~~ by the authority of the investment fund, or the ~~approval~~~~[certification]~~ by the authority of the increased cash contributions, whichever is later. No qualified investments shall be made using cash contributions until the new or expanded investment fund is ~~approved~~~~[certified]~~ by the authority. If the authority denies ~~approval~~~~[certification]~~ of the new or expanded investment fund, all cash contributions received by the applicant relating to the new or expanded investment fund shall be returned to investors within ten (10) calendar days.
- (7) An applicant soliciting cash contributions for the initial capitalization of an investment fund, or an investment fund manager soliciting additional cash contributions for an expanded investment fund, shall disclose in advance in writing to each investor, in addition to any other items required by law, that:
  - (a) No tax credit will be available under the provisions of KRS 154.20-250 to 154.20-284 until the investment fund and the investment fund manager have complied with applicable state and federal

securities laws and regulations, have been **approved**~~certified~~ by the authority, and an agreement between the authority and the investment fund manager on its behalf and on behalf of the investors has been executed, and the terms of that agreement have been disclosed in writing to each investor;

- (b) No tax credit will be available under the provisions of KRS 154.20-250 to 154.20-284 until the investor's cash contribution to the investment fund has been **approved**~~certified~~ by the authority; and
- (c) The Commonwealth shall be immune from liability for any losses or damages investors may incur in connection with any cash contributions made to an investment fund or any qualified investments made by an investment fund in small businesses.

Section 13. KRS 154.20-263 is amended to read as follows:

- (1) An investor shall be entitled to a nonrefundable credit against the income tax imposed by KRS 141.020 or 141.040, or the corporation license tax imposed by 136.070 in any tax year after December 31, 1998, during which a cash contribution to **an approved**~~a certified~~ investment fund is made. The aggregate tax credit amount available to any investor shall not exceed forty percent (40%) of the cash contribution made by the investor to an investment fund. The aggregate tax credit amount available to each investor shall be **approved**~~certified~~ by the authority as provided in KRS 154.20-259(6).
- (2) The tax credit amount that may be claimed by an investor in any tax year shall not exceed twenty-five percent (25%) of the initial aggregate credit amount **approved**~~certified~~ by the authority as available to the investor.
- (3) If the credit amount that may be claimed in any tax year, as determined under subsections (1) and (2) of this section exceeds the investor's combined income tax and corporate license tax liabilities for that year, the investor may carry the excess tax credit forward until the tax credit is used, provided that the carry forward of any excess tax credit shall not increase the twenty-five percent (25%) limitation established by subsection (2) of this section, and provided further that any tax credits not used within fifteen (15) years of the initial **approval**~~certification~~ by the authority of the aggregate tax credit amount available to the investor shall be lost.
- (4) The tax credits allowed by this section shall not apply to any liability an investor may have for interest, penalties, or any other additions to the investor's tax liability.
- (5) ***Except as set forth in this subsection, the tax credits allowed by this section are not transferable. If an individual investor dies, the estate or beneficiaries may withdraw the initial investment from the investment fund with no penalty from the investment fund and no requirement to repay the Revenue Cabinet any credits which the investor may have taken, provided the investor has complied with the provisions of KRS 154.20-250 to 154.20-284. If the investor is other than an individual and is a party to a merger, acquisition, consolidation, dissolution, liquidation, or similar corporate reorganization, the tax credits shall pass through to the investor's successor.***

Section 14. KRS 154.20-267 is amended to read as follows:

- (1) The total amount of credits **approved**~~certified~~ by the authority for any single investment fund shall not exceed, in the aggregate, four million dollars (\$4,000,000) for all investors and all taxable years. If aggregate cash contributions to a single investment fund exceed ten million dollars (\$10,000,000) for all investors for all taxable years, the authority shall allocate credits to investors in the order that cash contributions are made by investors to the investment fund.
- (2) The total credits **approved**~~certified~~ by the authority for all investors in all investment funds shall not exceed:
  - (a) Five million dollars (\$5,000,000), in the aggregate, during the period from July 1, 1999, through June 30, 2000;
  - (b) Ten million dollars (\$10,000,000), in the aggregate, during the period from July 1, 2000, through June 30, 2001, including credits authorized by the authority in the prior year;
  - (c) Fifteen million dollars (\$15,000,000), in the aggregate, during the period from July 1, 2001, through June 30, 2002, including credits authorized by the authority in prior years; and
  - (d) Twenty million dollars (\$20,000,000), in the aggregate, from July 1, 2002, and thereafter, including credits authorized by the authority in prior years.

The authority shall approve the credits to investors in the order that investment funds and investment fund managers are **approved**~~certified~~ by the authority.

Section 15. KRS 154.20-269 is amended to read as follows:

- (1) To receive the credit provided by KRS 154.20-263, an investor **shall** ~~must:~~
  - (a) ~~claim the credit on the investor's annual state tax returns in the manner prescribed by the Revenue Cabinet;~~
  - (b) ~~File with the Revenue Cabinet and with the investor's annual state tax returns a copy of the disclosure form submitted by the investment fund manager under subsection (2) of this section; and~~
  - (c) ~~File with the Revenue Cabinet and with the investor's annual state tax returns a copy of the certification of the investor's credit, issued by the authority under KRS 154.20-259(6) at the time of certification of the investment fund and of the investment fund manager and at the time of certification of additional cash contributions, as applicable].~~
- (2) ~~Each investment fund manager shall complete disclosure forms promulgated by the Revenue Cabinet as administrative regulations under KRS Chapter 13A, detailing the following information with respect to each cash contribution:~~
  - (a) ~~The name, address, and Social Security number or employer identification number, as applicable, of the investment fund manager and the investment fund;~~
  - (b) ~~The name, address, and Social Security number or employer identification number, as applicable, of each investor; and~~
  - (c) ~~The total amount of all cash contributions made by each investor.~~
- (3) ~~The disclosure forms required under subsection (2) of this section shall be filed by the investment fund manager with the Revenue Cabinet and the authority within thirty (30) days after receipt of certification from the authority. Copies of these forms shall be mailed to each investor by the investment fund manager on or before that same date.~~
- (4) ~~The contents of an investor's filings under subsection (1) of this section and the disclosure form required under subsection (2) of this section~~ shall be treated by the authority and by the Revenue Cabinet as confidential and shall not be considered public records under the Kentucky Open Records Act, KRS 61.870 to 61.884.

Section 16. KRS 154.20-271 is amended to read as follows:

- (1) Subject to KRS 154.20-257(4), if a cash contribution which is the basis for a credit under the provisions of KRS 154.20-250 to 154.20-284 is redeemed by the investment fund, or if the investment fund allows the cash contribution to be withdrawn by the investor within five (5) years after the date of **approval**~~certification~~ of the cash contributions by the authority, the credit provided by KRS 154.20-263 for that cash contribution shall be disallowed, and the investor shall pay to the State Treasurer an amount equal to the amount of credits previously claimed with respect to those cash contributions, plus interest at the rate of two percent (2%) per month, compounded monthly from the date credits were taken by the investor. This payment shall be included with the investor's state tax return or returns for the period in which the redemption or withdrawal occurred. When payments are made to the State Treasurer under this section, the amount remitted shall be handled in the same manner as if no credit had been allowed.
- (2) An investment fund that fails to make or maintain investments in small businesses pursuant to KRS 154.20-250 to 154.20-284, or that otherwise violates the provisions of KRS 154.20-250 to 154.20-284, shall pay to the State Treasurer a penalty in an amount equal to the amount of all credits claimed by the investors making cash contributions to the investment fund, plus interest at the rate of two percent (2%) per month, compounded monthly, from the date the cash contributions were **approved**~~certified~~ by the authority. If the investment fund fails to pay the penalty and interest in full as required by the Revenue Cabinet, each investor shall be personally liable to the Revenue Cabinet for that investor's pro rata share of the unpaid penalty and the investment fund manager shall be liable to the Revenue Cabinet for all such interest. Any payment of unpaid penalty by an investor shall be included with the investor's state tax return for the period in which the failure or violation occurred. An investor's pro rata share shall be determined by dividing the total amount of cash contributions made by the investor in the investment fund, by the total amount of cash contributions made by all investors in the investment fund. The secretary of the Revenue Cabinet shall give notice in writing to the authority, the investment fund manager, and the investors of any penalties imposed. The secretary of the Revenue Cabinet may abate any imposed penalty upon written request, if the investment fund manager

establishes reasonable cause for the failure to make qualified investments in small businesses under the provisions of KRS 154.20-250 to 154.20-284, or to otherwise comply with the provisions of KRS 154.20-250 to 154.20-284. The State Treasurer shall deposit any amounts received pursuant to this section in the Commonwealth's general fund.

- (3) The administration of this section shall be the responsibility of the Revenue Cabinet.

Section 17. KRS 154.20-273 is amended to read as follows:

- (1) Each investment fund manager shall file semiannual reports with the secretary of the Revenue Cabinet and with the authority, on or before the sixtieth day, and the two-hundred-fortieth day, of each fiscal year of the investment fund. These reports shall include information that the authority prescribes from time to time, including, but not limited to, the following:
- (a) For each small business in which qualified investments are made by the investment fund during the reporting period, the name and address of the small business, the amount of qualified investments made by the investment fund in the small business during the reporting period, and the job creation anticipated and achieved by the small business during the reporting period;
  - (b) An affidavit from each small business in which a qualified investment was made during the reporting period, prepared by any authorized officer, partner, trustee, member, or manager of the small business, which sets forth:
    - 1. That the small business qualifies as a small business under KRS 154.20-250 to 154.20-284; and
    - 2. A brief description of the activities of the small business;
  - (c) An affidavit prepared by the investment fund manager or, if the investment fund is an entity, by an authorized officer, partner, trustee, member, or manager of the investment fund manager pertaining to:
    - 1. Each small business in which a qualified investment has been made, including, without limitation, qualified investments made prior to the reporting period, that sets forth:
      - a. That each small business is or continues to be, as applicable, actively and principally engaged in a qualified activity; and
      - b. That each small business qualifies as a small business under the provisions of KRS 154.20-250 to 154.20-284;
    - 2. The amount of each distribution to an investor and redemption of cash contributions made by the investment fund during the reporting period and in the aggregate since the date of ~~approval~~~~[certification]~~ of the investment fund;
    - 3. The name and address of each investor, and the amount and date of the cash contribution to the investment fund of each investor who is entitled to the credit; and
    - 4. The continued compliance by the investment fund and the investment fund manager with all applicable state and federal securities laws and regulations; and
  - (d) A statement from the investment fund manager as to the securities exemption or registration provision relied upon by the small business with respect to the qualified investment by the investment fund in the small business.
- (2) The authority shall provide quarterly written status reports to the standing Appropriations and Revenue Committee of each house or to the Interim Joint Committee on Appropriations and Revenue, as appropriate, concerning the activities of the Kentucky Investment Fund for each three (3) month period beginning July 1, 1999. On or before November 1 of each year, the authority shall make an annual report for the fiscal year ending the preceding June 30 to the Governor and the Legislative Research Commission. The quarterly status report and the annual report shall include, but not be limited to, the following information:
- (a) The total number of investors and the aggregate amount of cash contributions to all investment funds, categorized by the types of entities through which investors conduct business, amounts of cash contributions, and geographical distribution of investors, including area development districts; and
  - (b) The total number and amounts of qualified investments made by each investment fund, categorized by type of businesses, amount of investment, job creation anticipated and achieved, geographical distribution, including area development districts, and new products and technologies developed.

- (3) The contents of the semiannual reports from investment fund managers to the authority described in subsection (1) of this section shall be treated by the authority as confidential, and shall not be considered a public record under the Kentucky Open Records Act, KRS 61.870 to 61.884.
- (4) The authority may charge a fee in connection with the administration and processing of semiannual reports made by investment fund managers.

Section 18. KRS 154.22-050 is amended to read as follows:

The authority may enter into, with any approved company, a financing agreement with respect to its economic development project, ***upon adoption of a resolution authorizing the financing agreement***. Subject to the inclusion of the mandatory provisions set forth below, the terms and provisions of each financing agreement shall be determined by negotiations between the authority and the approved company.

- (1) If an eligible company, at the time of submission of its application to the authority to become an approved company, requests the authority in writing to issue bonds on its behalf, then each financing agreement used in connection with the issuance of bonds by the authority shall include the following provisions:
  - (a) The term of a financing agreement shall not be less than the last maturity of the bonds issued with respect to the economic development project, except that the financing agreement may terminate upon the earlier redemption of all of the bonds issued with respect to the economic development project and, if the authority owns the economic development project, the authority may grant to the approved company or its affiliate an option to purchase, for the consideration the authority may approve, the economic development project from the authority upon the termination of the financing agreement. Nothing in this subsection shall limit the extension of the term of a financing agreement if there is a refunding of the correlative bonds or otherwise.
  - (b) All proceeds of any bonds incurred in connection with the economic development project shall be expended by the approved company within three (3) years from the date of the financing agreement. In the event that all proceeds of bonds incurred in connection with the economic development project are not fully expended within the three (3) year period, the amount of the authorized inducements shall automatically be reduced to and shall not be greater than the amount of proceeds actually expended by the approved company within the three (3) year period.
  - (c) The financing agreement shall specify that the annual obligations of the approved company pursuant to KRS 154.22-010 to 154.22-080 shall equal in each year the annual debt service for that year on the bonds issued with respect to the economic development project; and the approved company shall pay such obligation of the financing agreement to the trustee for bonds issued for the benefit of the approved company, at such time and in such amounts sufficient to amortize such bonds.
  - (d)
    - 1. In consideration for financing agreement payment, the approved company may be permitted the following during the period of time not to exceed fifteen (15) years from the activation date in which the financing agreement is in effect, which period of time shall commence for purposes of the following upon the date of the financing agreement.
      - a. A one hundred percent (100%) credit against the Kentucky income tax that otherwise would be owed in the year, as determined under KRS 141.347, to the Commonwealth by the approved company on the income of the approved company generated by or arising out of the economic development project, the credit not to exceed the total debt service paid under the respective financing agreement; plus
      - b. The aggregate assessment withheld by the approved company in each year.
    - 2. The income tax credited to the approved company referred to herein shall be credited for the fiscal year for which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed in KRS 141.042.
  - (e)
    - 1. The financing agreement shall provide that the assessments, when added to the credit for the Kentucky income tax herein granted, shall not exceed the total financing agreement annual payment by the approved company in any year; however, to the extent that financing agreement annual payments exceed credits received and assessments collected in any year, the excess payment may be recouped from excess credits or assessment collections in succeeding years.

2. If in any fiscal year of the approved company during which the financing agreement is in effect the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the employees equals the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, and the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year.
  3. If in any fiscal year of the approved company during which the financing agreement is in effect, the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the employees exceeds the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the approved company shall pay the excess to the Commonwealth as income tax.
  4. If in any fiscal year of the approved company during which the financing agreement is in effect the assessment collected from the wages of the employees exceeds the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees' wages next succeeding the first date when the approved company collected excess assessments.
- (f) The financing agreement shall provide in substance that:
1. It may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to such effect; and
  2. Upon default by the approved company in any obligations under the financing agreement or other documents evidencing, securing, or related to the approved company's obligations, the authority, or any of its assignees, shall have the right, at its option, to declare the financing agreement or other such documents in default; and
    - a. Accelerate and declare the total of all such payments due by the approved company and sell the economic development project at public, private, or judicial sale;
    - b. Pursue any remedy provided under the financing agreement or other such documents;
    - c. Pursue all other remedies available to it under the Kentucky Uniform Commercial Code;
    - d. Be entitled to the appointment of a receiver by the Circuit Court wherein any part of the economic development project is located; and
    - e. Pursue any other remedy at law to which it appears entitled.
  3. All remedies provided in subsection (1)(f)2. of this section shall be deemed cumulative.
- (2) If an eligible company, at the time of submission of its application to the authority to become an approved company, does not request the authority in writing to issue bonds on its behalf, then each financing agreement used in connection with loans or other financing (other than bonds issued by the authority for which subsection (1) of this section shall be used) shall include the following provisions:
- (a) The term of a financing agreement, which shall commence on the date of the financing agreement, shall not be longer than:
    1. The maturity of any loan or other financing incurred in connection with the economic development project, except that the financing agreement may terminate upon the earlier prepayment of all loans or other financing incurred in connection with the economic development project; or
    2. Fifteen (15) years from the activation date.

3. Nothing in this subsection shall limit the extension of the term of a financing agreement if there is a refinancing of the loans or other financing. The authority shall not own an economic development project that is the subject of this form of financing agreement.
- (b) All proceeds of any loan or other financing incurred in connection with the economic development project shall be expended by the approved company within three (3) years from the date of the financing agreement. In the event that all proceeds of any loan or other financing incurred in connection with the economic development project are not fully expended within the three (3) year period, the authorized inducements shall automatically be reduced to and shall not be greater than the amount of proceeds actually expended by the approved company within the three (3) year period.
- (c)
  1. The approved company may be permitted the following during the term of the financing agreement:
    - a. A one-hundred percent (100%) credit against the Kentucky income tax that otherwise would be owed in the year, as determined under KRS 141.347, to the Commonwealth by the approved company on the income of the approved company generated by or arising out of the economic development project, such credit not to exceed the total debt service paid with respect to the loans or other financing incurred in connection with the economic development project; plus
    - b. The aggregate assessment withheld by the approved company in each year.
  2. The income tax credited to the approved company shall be credited for the fiscal year for which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed in KRS 141.042.
- (d)
  1. The financing agreement shall provide that the assessments, when added to the credit for the Kentucky income tax as provided in KRS 154.22-060, shall not exceed the total annual debt service payments of the approved company with respect to the loans or other financing incurred in connection with the economic development project in any year; however, to the extent that such annual debt service payments exceed credits received and assessments collected in any year, the excess payment may be recouped from excess credits or assessment collections in succeeding years.
  2. If, in any fiscal year of the approved company during which the financing agreement is in effect, the total of the income tax credit granted to the approved company, plus the assessment collected from the wages of the employees, equals the annual debt service payments with respect to the loans or other financing incurred in connection with the economic development project, and if all excess payments with respect to the loans or other financing incurred in connection with the economic development project accumulated in prior years have been recouped, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company and the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year.
  3. If in any fiscal year of the approved company during which the financing agreement is in effect the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the employees exceeds the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the approved company shall pay the excess to the Commonwealth as income tax.
  4. If in any fiscal year of the approved company during which the financing agreement is in effect the assessment collected from the wages of the employees exceeds the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective

shares of the excess assessment collected on the withholding filing date for employees wages next succeeding the first date when the approved company collected excess assessments.

- (e) The financing agreement shall provide in substance that it may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.
- (f) The financing agreement shall provide that an approved company shall require of any lender to the approved company funding the loans or other financing incurred in connection with the economic development project written evidence to be provided to the authority of payments of all annual debt service to such lender. Such evidence shall be provided to the authority within forty-five (45) days after the end of each fiscal year of the financing agreement.
- (g) The financing agreement shall provide that if an approved company fails to comply with its respective obligations under the financing agreement, or that the lender to an approved company fails to comply with its requirements set forth in subsection (2)(f) of this section, or is declared in default under the loans or other financing incurred in connection with the economic development project, then the authority, or any of its assignees, shall have the right, at its option, to:
  - 1. Suspend the availability of the income tax credits and job development assessment fees to the approved company;
  - 2. Pursue any remedy provided under the financing agreement, including termination thereof; and
  - 3. Pursue any other remedy at law to which it appears entitled.
- (3) All remedies provided in subsection (2)(g) of this section shall be deemed cumulative.
- (4) Pursuant to this section, the activation date shall be established by the approved company in the financing agreement at any time in a two (2) year period after the date of final approval of the financing agreement by the authority. To implement the activation date, the approved company shall notify the authority, the Revenue Cabinet, and the approved company's employees of the activation date when the implementation of the inducements authorized in the financing agreement shall occur. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.22-040(3) by the activation date, the approved company shall not be entitled to receive inducements pursuant to this subchapter until the approved company satisfies the requirements; however, the fifteen (15) year period for the term of the financing agreement shall begin from the activation date. Notwithstanding the previous sentence, if the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.22-040(3) within two (2) years from the date of final approval of the financing agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.

Section 19. KRS 154.22-060 is amended to read as follows:

- (1) The approved company shall be entitled to a credit against the Kentucky income tax liability mandated by KRS Chapter 141, on any income that may result from the operation of the approved economic development project; the credit shall be equal to the total amount of the tax liability, and together with the aggregate assessments not to exceed the total debt service paid:
  - (a) Under the financing agreement in connection with the economic development project financed by bonds as described in KRS 154.22-050(1); or
  - (b) On loans or other financing, as described in KRS 154.22-050(2), incurred in connection with the economic development project, as described in KRS 154.22-050(2).
- (2) ***By October 1 of each year***~~[Ninety (90) days after the filing of the tax return of the approved company]~~, the Revenue Cabinet of the Commonwealth shall certify to the authority ***in the form of an annual report, aggregate income tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year, and assessments taken by approved companies with respect to their economic development projects during the prior calendar year under this subchapter, and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state income tax return, when an approved company has taken income tax credits equal to its total inducements***~~[the Kentucky income tax liability for the preceding fiscal year of the approved company for which the return was filed with respect to an economic development project financed through the issuance of bonds, loans or other financing incurred in connection with the~~



~~economic development project and the amounts of any tax credits and job development assessment fees taken pursuant to KRS 154.22-010 to 154.22-080}.~~

Section 20. KRS 154.24-110 is amended to read as follows:

- (1) The approved company shall be entitled to an income tax credit equal to one hundred percent (100%) of the income tax that would otherwise be due to the Commonwealth by the approved company attributable to the economic development project, as limited by the provisions of this section and KRS 154.24-130. The amount of the approved company's income that is attributable to the economic development project shall be determined under KRS 141.407.
  - (a) The income tax credit allowed to the approved company shall be subtracted from the approved cost balance in the fiscal year of the approved company for which the tax return of the approved company is filed; and
  - (b) ***By October 1 of each year***~~[Ninety (90) days after the filing of the income tax return of the approved company]~~, the Revenue Cabinet ***of the Commonwealth*** shall certify to the authority, ***in the form of an annual report, aggregate income tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year, and assessments taken by approved companies with respect to their economic development projects during the prior calendar year under this subchapter, and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state income tax return, when an approved company has taken income tax credits and assessments equal to its total inducements***~~[the Kentucky income tax liability of the approved company with respect to an economic development project for the preceding fiscal year of the approved company for which the return was filed, and the amounts of any tax credit allowed pursuant to KRS 141.407 and service and technology job development assessment fees taken pursuant to KRS 154.24-010, 154.24-090, 154.24-100, 154.24-120, 154.24-140, and 154.24-150, and this section].~~
- (2) The approved company may require each employee, subject to state tax imposed by KRS 141.020, as a condition of employment, to agree to pay a service and technology job creation assessment fee up to five percent (5%) of the gross wages exclusive of any noncash benefits provided to an employee for each employee whose job has been deemed by the authority to be created as a result of the economic development project, provided that the service and technology job creation assessment fee shall not exceed the amount determined in accordance with KRS 154.24-150(5) if the circumstances in that subsection apply. Where a person is already employed by the approved company at a site other than the site of the economic development project and where that employee is subject to state tax imposed by KRS 141.020, the employee's job shall be deemed to have been created when the employee is transferred to the site of the economic development project, provided that the employee's existing job is filled with a new employee.
  - (a) Each employee paying the assessment shall be entitled to a credit against his Kentucky income tax required to be withheld under KRS 141.310 equal to four-fifths (4/5) of the assessment;
  - (b) If the assessment has been approved by the local jurisdiction as provided in KRS 154.24-150, each employee paying the assessment also shall be entitled, in the local jurisdiction in which the economic development project is located, to a credit against his local occupational license fee in the form of a simultaneous adjustment of his local occupational license fee withholding equal to one-fifth (1/5) of the assessment. If more than one (1) local tax is incurred, the one-fifth (1/5) assessment shall be prorated proportionately among the taxes unless one (1) local jurisdiction agrees to forego the receipt of these taxes in an amount equal to the one-fifth (1/5) assessment, in which case no proration need be made;
  - (c) If an approved company elects to impose the assessment as a condition of employment, it shall be authorized to deduct the assessment from each payment of wages to the employee;
  - (d) No credit, or portion thereof, shall be allowed against any occupational license fee imposed by or dedicated solely to the board of education in a local jurisdiction;
  - (e) The approved company collecting an assessment shall make its payroll, books, and records available to the authority when the authority shall request, and shall file with the authority documentation pertaining to the assessment as the authority may require; and
  - (f) Any assessment of the wages of employees of an approved company in connection with their employment at an economic development project shall permanently cease at the expiration of the agreement.

- (3) *Notwithstanding subsection (2) of this section, if a local government in which the project is located has a local occupational license fee that is less than one percent (1%) and agrees to forego all of its local occupational license fee, then the assessment shall be four percent (4%), all of which shall be contributed by the Commonwealth, plus the percentage of the local occupational license fee that the local government has agreed to forego. Each employee paying the assessment under this subsection shall be entitled to a credit against Kentucky income tax, under KRS 141.350, equal to four percent (4%) and a credit against the local occupational license fee equal to the local occupational license fee that the local jurisdiction has agreed to forego.*

Section 21. KRS 154.24-150 is amended to read as follows:

- (1) Before any agreement as prescribed in KRS 154.24-120 shall become effective, the legislative body of any local jurisdiction which may lose revenue as a result of the inducements offered pursuant to KRS 154.24-010 to 154.24-150 and which assesses a local occupational license fee shall approve by official action the granting of inducements to the approved company. If a local jurisdiction which satisfies the requirements of the previous sentence of this subsection does not approve the granting of the inducements or does not elect to provide in lieu of credits as described in subsection (2) of this section, then an approved company shall not be permitted to impose assessments against the wages of its employees.
- (2) Subject to the prior written approval of the authority of any proposed in lieu of credits, the local government may elect, by vote of its legislative body, to provide for in lieu of credits for the approved company and its economic development project.
- (3) If the local government elects to provide in lieu of credits as described in subsection (2) of this section, the assessment authorized by KRS 154.24-110 shall be four percent (4%), one hundred percent (100%) of which shall be permitted as a credit against Kentucky income tax withheld pursuant to KRS 141.350.
- (4) If a local jurisdiction in which the economic development project is to be located does not assess a local occupational license fee and does not elect to provide in lieu of credits as described in subsection (2) of this section, the assessment authorized by KRS 154.24-110 shall be four percent (4%), one hundred percent (100%) of which shall be permitted as a credit against Kentucky income tax withheld pursuant to KRS to KRS 141.350.
- (5) If a local jurisdiction in which the economic development project is to be located, approves the inducements in accordance with subsection (1) of this section, assesses less than a one percent (1%) local occupational license fee, and does not elect to provide in lieu of credits as described in subsection (2) of this section, then the approved company may require that each employee subject to state tax imposed by KRS 141.020, as a condition of employment, agree to pay a service and technology job creation assessment fee~~[in an amount determined by the percentage local occupational license fee, which shall be one-fifth (1/5) of the total service and technology assessment fee, but in no event to exceed five percent (5%) of the gross wages]~~ as prescribed in KRS 154.24-110(2) **or (3), as applicable**, provided that each employee paying the assessment shall only be entitled to credits against his Kentucky income tax as prescribed in subsection (2)(a) **or (3) of Section 20 of this Act, as applicable**~~[of KRS 154.24-110]~~ and to credits against his local occupational license fee to the extent of the local occupational license fee collected by the local jurisdiction.
- (6) If a local jurisdiction in which the economic development project is to be located does not assess a local occupational license fee and elects to provide in lieu of credits as described in subsection (2) of this section, then the assessment shall be in accordance with subsection (3) of this section.
- (7) Subsection (4) of this section shall apply only to those approved companies which enter into service and technology agreements with the authority after July 15, 1996.

Section 22. KRS 154.26-100 is amended to read as follows:

- (1) The approved company may require that each employee subject to the income tax imposed by KRS 141.020, whose job was preserved or created as a result of the project, as a condition of employment or the retention of employment, agree to pay an assessment, not to exceed, during any fiscal year of the approved company, six percent (6%) of the gross wages of each employee subject to the income tax imposed by KRS 141.020 whose job was retained or created as a result of the project. However, if the appropriation agreement is consummated, the assessment shall be five percent (5%) of each employee's gross wages subject to the income tax imposed by KRS 141.020.

- (2) Each assessed employee shall be entitled to a credit against his Kentucky income tax required to be withheld under KRS 141.310 equal to two-thirds (2/3) of the assessment; or if the appropriation agreement is consummated, the credit shall be equal to four-fifths (4/5) of the assessment.
- (3) Each assessed employee also shall be entitled to a credit against his local occupational license fee in the form of a simultaneous adjustment of his local occupational license fee withholding equal to one-sixth (1/6) of the assessment, unless the appropriation agreement is consummated.
- (4) If an approved company shall elect to impose the assessment as a condition of employment or the retention of employment, it shall deduct the assessment from each paycheck of each employee subject to subsections (2) and (3) of this section.
- (5) Any approved company collecting an assessment as provided in subsection (1) of this section shall make its payroll books and records available to the authority at such reasonable times as the authority shall request, and shall file with the authority the documentation respecting the assessment the authority may require.
- (6) Any assessment of the wages of the employees of an approved company pursuant to subsection (1) of this section shall permanently lapse upon expiration or termination of the agreement.
- (7) ***By October 1 of each year***~~[Ninety (90) days after the filing of the tax return of the approved company]~~, the Revenue Cabinet ***of the Commonwealth*** shall certify to the authority, ***in the form of an annual report, aggregate income tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year and job revitalization assessment fees taken during the prior calendar year by approved companies with respect to their economic revitalization projects under this subchapter, and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state income tax return, when an approved company has taken income tax credits equal to its total inducements***~~[the Kentucky income tax liability for the preceding fiscal year of the approved company for which the return was filed of each approved company with respect to an economic development project financed through the issuance of bonds, loans, or other financing incurred in connection with the economic development project and the amounts of any tax credits and job revitalization assessment fees taken pursuant to KRS 154.26-010, 154.26-080, 154.26-090, and this section]~~.

Section 23. KRS 154.28-090 is amended to read as follows:

- (1) The authority, upon adoption of an authorizing resolution, may enter into, with any approved company, a financing agreement with respect to its economic development project. The terms and provisions of each agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:
  - (a) The term of an agreement, which shall commence on the date of the agreement, shall not be longer than the earlier of the following:
    1. The maturity of loans or other financing incurred in connection with the economic development project, except that the agreement may be terminated upon the earlier prepayment of loans or other financing incurred in connection with the economic development project; or
    2. Ten (10) years from the activation date of the original agreement.
  - (b) All proceeds of any loan or other financing incurred in connection with the economic development project shall be expended by the approved company within three (3) years from the date of the financing agreement. In the event that all proceeds of any loan or other financing incurred in connection with the economic development project are not fully expended within the three (3) year period, the authorized inducements shall automatically be reduced to and shall not be greater than the amount of proceeds actually expended by the approved company within the three (3) year period.
  - (c) In consideration for the execution and during the term of the agreement, the approved company shall be permitted either of the following during the term of the agreement:
    1. A credit against Kentucky income tax imposed by KRS 141.020 or 141.040 on the income of the approved company generated by or arising out of the economic development project as determined by KRS 141.400; or
    2. The aggregate assessment withheld by the approved company in each year.
- (2) The agreement shall provide that:

- (a)
    1. The assessments, if applicable, shall not exceed the annual payments of the total financing agreement by the approved company in any year; however, to the extent that the financing agreement annual payments exceed assessments collected in any year, the excess payment may be recouped from assessment collections in succeeding years.
    2. If in any fiscal year of the approved company during which the financing agreement is in effect the total assessments collected from the wages of the employees equals the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessments collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, and the approved company shall resume normal personal income tax withholdings from employees' wages for the remainder of that fiscal year.
  - (b) The Kentucky income tax credit, in any fiscal year of the approved company, shall not exceed the total debt service paid during the same fiscal year with respect to the loans or other financing incurred in connection with the economic development project; however, to the extent that annual debt service payments exceed the annual income tax credits in any year, the excess debt service payments may be recouped from excess tax credits in succeeding years.
  - (c) The income tax credited to the approved company shall be credited for the fiscal year for which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed under KRS 141.042.
  - (d) The agreement may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.
  - (e) An approved company shall require of any lender to an approved company funding the loans or other financing incurred in connection with the economic development project, written evidence of all annual debt service to the lender, which evidence shall be provided in writing to the authority within forty-five (45) days following the close of each fiscal year of the financing agreement.
  - (f) If an approved company fails to comply with its respective obligations under the financing agreement, the lender to an approved company fails to comply with the provisions of subsection (2)(e) of this section, or an approved company is declared in default under the loans or other financing incurred in connection with the economic development project, the authority, or any of its assignees, may, at its option:
    1. Suspend the availability of the income tax credits or job development assessment fees, as applicable;
    2. Pursue any remedy provided under the financing agreement, including termination of the agreement; and
    3. Pursue any other remedy at law to which it may appear entitled.
- (3) All remedies provided in subsection (2)(f) of this section shall be deemed cumulative.
- (4) Pursuant to this section, the activation date shall be established by the approved company in the financing agreement which shall be at any time in a two (2) year period after the date of final approval of the financing agreement by the authority. To implement the activation date, the approved company shall notify the authority, the Kentucky Revenue Cabinet, and the approved company's employees of the activation date on which implementation of the inducements authorized in the financing agreement shall occur. The activation date shall be the time when the maximum dollar value of equipment that constitutes a portion of an economic development project under KRS 154.28-010(9) shall be determined. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.28-080(3) by the activation date, the approved company will not be entitled to receive inducements pursuant to this subchapter until the approved company satisfies these requirements; however, the ten (10) year period for the term of the financing agreement shall begin from the activation date. Notwithstanding the previous sentence, if the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.28-080(3) within two (2) years from the date of final approval of the financing agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.

- (5) ***By October 1 of each year***~~[Ninety (90) days after the filing of the tax return of the approved company], the Revenue Cabinet shall certify to the authority, *in the form of an annual report, aggregate income tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year and assessments taken during the prior calendar year by approved companies with respect to their economic revitalization projects under this subchapter, and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state income tax return, when an approved company has taken income tax credits and assessments equal to its total inducements*~~~~[the income tax liability, for the preceding fiscal year of the approved company for which the return was filed, of the approved company with respect to an economic development project receiving inducements under the provisions of KRS 154.28-010 to 154.28-090 and KRS 141.400, and the amount of any income tax credits taken pursuant to KRS 154.28-010 to 154.28-090 and KRS 141.400].~~

Section 24. KRS 154.29-050 is amended to read as follows:

- (1) The authority, upon adoption of its final approval, may enter into with any approved company an agreement with respect to its tourism attraction project. The terms and provisions of each agreement shall include, but not be limited to:
- (a) The amount of approved costs, which shall be determined by negotiations between the authority and the approved company;
  - (b) A date certain by which the approved company shall have completed the tourism attraction project. Within three (3) months of the completion date, the approved company shall document the actual cost of the project through a certification of the costs to be provided by an independent certified public accountant acceptable to the authority; and
  - (c) The following provisions:
    - 1. The term shall be ten (10) years from the later of:
      - a. The date of the final approval of the project; or
      - b. The completion date specified in the agreement, if this completion date is within two (2) years of the date of the final approval of the project;
    - 2. Within forty-five (45) days after the end~~[of each half]~~ of each fiscal year of the approved company, ***during the term of the agreement***, the approved company shall supply the authority with such reports and certifications as the authority may request demonstrating to the satisfaction of the authority that the approved company is in compliance with the provisions of KRS 139.536 and KRS 154.29-010 to 154.29-060. Based upon a review of these materials and other documents that may be made available, the authority shall then certify to the Revenue Cabinet that the approved company is in compliance with this section; and
    - 3. The approved company shall not receive a sales tax refund as prescribed by KRS 139.536 with respect to any fiscal year if:
      - a. In any year following the fourth year of the agreement, the tourism attraction project fails to attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth; or
      - b. In any year following the first year of the agreement, the tourism attraction project is not operating and open to the public for at least one hundred (100) days.
- (2) The agreement shall not be transferable or assignable by the approved company without the written consent of the authority.
- (3) In consideration of the execution of the agreement as defined in KRS 154.29-010 and notwithstanding any provision of KRS 139.770 to the contrary, the approved company as defined in KRS 154.29-010, excluding its lessees, may be granted a sales tax refund under KRS 139.536 from the Kentucky sales tax imposed by KRS 139.200 on the sales generated by or arising at the tourism attraction project as defined in KRS 154.29-010.

Section 25. The following KRS section is repealed:

154.22-055 Financing agreement -- Adoption -- Publication.

Section 26. Subsections (4) and (5) of Section 4 and subsections (2) and (3) of Section 7 of this Act shall apply to taxable years beginning after December 31, 1999.

**Approved April 3, 2000**

## **CHAPTER 301**

### **(HB 571)**

AN ACT adopting the Uniform Electronic Transactions Act, and making changes incidental thereto.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

*Sections 1 to 20 of this Act may be cited as the Uniform Electronic Transactions Act.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 20 of this Act, unless the context requires otherwise:*

- (1) *"Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction;*
- (2) *"Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts of records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction;*
- (3) *"Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result;*
- (4) *"Contract" means the total legal obligation resulting from the parties' agreement as affected by Sections 1 to 20 of this Act and other applicable law;*
- (5) *"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;*
- (6) *"Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual;*
- (7) *"Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means;*
- (8) *"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record;*
- (9) *"Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state;*
- (10) *"Information" means data, text, images, sounds, codes, computer programs, software, databases, or the like;*
- (11) *"Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information;*
- (12) *"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity;*
- (13) *"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;*
- (14) *"Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the*

*information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures;*

- (15) *"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state; and*
- (16) *"Transaction" means an action or set of actions occurring between two (2) or more persons relating to the conduct of business, commercial, or governmental affairs.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (2) of this section, Sections 1 to 20 of this Act applies to electronic records and electronic signatures relating to a transaction.*
- (2) *Sections 1 to 20 of this Act does not apply to a transaction to the extent it is governed by:*
  - (a) *A law governing the creation and execution of wills, codicils, or testamentary trusts;*
  - (b) *KRS Chapter 355 other than KRS 355.1-107 and 355.1-206, and Articles 2 and 2A of KRS Chapter 355;*
  - (c) *A law governing the conveyance of any interest in real property; and*
  - (d) *A law governing the creation or transfer of any negotiable instrument or any instrument establishing title or an interest in title.*
- (3) *Sections 1 to 20 of this Act applies to an electronic record or electronic signature otherwise excluded from the application of Sections 1 to 20 of this Act under subsection (2) of this section to the extent it is governed by a law other than those specified in subsection (2) of this section.*
- (4) *A transaction subject to Sections 1 to 20 of this Act is also subject to other applicable substantive law.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

*Sections 1 to 20 of this Act applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after the effective date of this Act.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

- (1) *Sections 1 to 20 of this Act does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.*
- (2) *Sections 1 to 20 of this Act applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.*
- (3) *A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.*
- (4) *Except as otherwise provided in Sections 1 to 20 of this Act, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of Sections 1 to 20 of this Act of the words "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.*
- (5) *Whether an electronic record or electronic signature has legal consequences is determined by Sections 1 to 20 of this Act and other applicable law.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

*Sections 1 to 20 of this Act must be construed and applied:*

- (1) *To facilitate electronic transactions consistent with other applicable law;*
- (2) *To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and*
- (3) *To effectuate its general purpose to make uniform the law with respect to the subject of Sections 1 to 20 of this Act among states enacting it.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

- (1) *A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.*
- (2) *A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.*
- (3) *If a law requires a record to be in writing, an electronic record satisfies the law.*
- (4) *If a law requires a signature, an electronic signature satisfies the law.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

- (1) *If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.*
- (2) *If a law other than Sections 1 to 20 of this Act requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, the following rules apply:*
  - (a) *The record must be posted or displayed in the manner specified in the other law.*
  - (b) *Except as otherwise provided in subsection (4)(b) of this section, the record must be sent, communicated, or transmitted by the method specified in the other law.*
  - (c) *The record must contain the information formatted in the manner specified in the other law.*
- (3) *If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.*
- (4) *The requirements of this section may not be varied by agreement, but:*
  - (a) *To the extent a law other than Sections 1 to 20 of this Act requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (1) of this section that the information be in the form of an electronic record capable of retention may also be varied by agreement; and*
  - (b) *A requirement under a law other than Sections 1 to 20 of this Act to send, communicate, or transmit a record by United States mail may be varied by agreement to the extent permitted by the other law.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

- (1) *An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.*
- (2) *The effect of an electronic record or electronic signature attributed to a person under subsection (1) of this section is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

*If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:*

- (1) *If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.*
- (2) *In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:*



- (a) *Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;*
  - (b) *Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and*
  - (c) *Has not used or received any benefit or value from the consideration, if any, received from the other person.*
- (3) *If neither subsection (1) of this section nor subsection (2) of this section applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.*
- (4) *Subsections (2) and (3) of this section may not be varied by agreement.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

*If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

- (1) *If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:*
- (a) *Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and*
  - (b) *Remains accessible for later reference.*
- (2) *A requirement to retain a record in accordance with subsection (1) of this section does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.*
- (3) *A person may satisfy subsection (1) of this section by using the services of another person if the requirements of that subsection are satisfied.*
- (4) *If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (1) of this subsection.*
- (5) *If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (1) of this subsection.*
- (6) *A record retained as an electronic record in accordance with subsection (1) of this section satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date of Sections 1 to 20 of this Act specifically prohibits the use of an electronic record for the specified purpose.*
- (7) *This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.*

SECTION 13. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

*In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.*

SECTION 14. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

*In an automated transaction, the following rules apply:*

- (1) *A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.*
- (2) *A contract may be formed by the interaction of an electronic agency and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.*
- (3) *The terms of the contract are determined by the substantive law applicable to it.*

## SECTION 15. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

- (1) *Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:*
  - (a) *Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;*
  - (b) *Is in a form capable of being processed by that system; and*
  - (c) *Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.*
- (2) *Unless otherwise agreed between a sender and the recipient, an electronic record is received when:*
  - (a) *It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and*
  - (b) *It is in a form capable of being processed by that system.*
- (3) *Subsection (2) of this section applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection (4) of this section.*
- (4) *Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:*
  - (a) *If the sender or recipient has more than one (1) place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.*
  - (b) *If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.*
- (5) *An electronic record is received under subsection (2) of this section even if no individual is aware of its receipt.*
- (6) *Receipt of an electronic acknowledgment from an information processing system described in subsection (2) of this section establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.*
- (7) *If a person is aware that an electronic record purportedly sent under subsection (1) of this section, or purportedly received under subsection (2) of this section, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.*

## SECTION 16. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

- (1) *In this section, "transferable record" means an electronic record that:*
  - (a) *Would be a note under Article 3 of KRS Chapter 355 or a document under Article 7 of KRS Chapter 355 if the electronic record were in writing; and*
  - (b) *The issuer of the electronic record expressly has agreed is a transferable record.*
- (2) *A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.*
- (3) *A system satisfies subsection (2) of this section, and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:*
  - (a) *A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs (d), (e), and (f) of this subsection, unalterable;*
  - (b) *The authoritative copy identifies the person asserting control as:*
    1. *The person to which the transferable record was issued; or*

2. *If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;*
- (c) *The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;*
- (d) *Copies of revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;*
- (e) *Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and*
- (f) *Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.*
- (4) *Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in KRS 355.1-201(20), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under KRS Chapter 355, including, if the applicable statutory requirements under KRS 355.3-302(1), 355.7-501, or 355.9-308 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subsection.*
- (5) *Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writing under KRS Chapter 355.*
- (6) *If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.*

SECTION 17. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

*Each governmental agency of this Commonwealth shall determine whether, and the extent to which it will create electronic records. The Kentucky Department of Libraries and Archives shall determine whether, and the extent to which, the Commonwealth will retain electronic records and convert written records to electronic records.*

SECTION 18. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (6) of section 12 of this Act, each governmental agency of this state, in compliance with standards established by the Governor's Office for Technology, shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.*
- (2) *To the extent that a governmental agency uses electronic records and electronic signatures under subsection (1) of this section:*
  - (a) *The Governor's Office for Technology, giving due consideration to security, may specify the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;*
  - (b) *If electronic records must be signed by electronic means, each governmental agency, giving due consideration to security, may specify the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;*
  - (c) *The Governor's Office for Technology and the Department for Libraries and Archives, giving due consideration to security, may specify control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and*
  - (d) *Each governmental agency, giving due consideration to security, may specify any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.*

- (3) *Except as otherwise provided in subsection (6) of Section 12 of this Act, Sections 1 to 20 of this Act does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.*

SECTION 19. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

*The Governor's Office for Technology which adopts standards pursuant to subsection (2)(a) of Section 18 of this Act may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing the most appropriate standard for a particular application.*

SECTION 20. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO READ AS FOLLOWS:

*If any provision of Sections 1 to 20 of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of Sections 1 to 20 of this Act which can be given effect without the invalid provision or application, and to this end the provisions of Sections 1 to 20 of this Act are severable.*

Section 21. The following KRS sections are repealed:

369.010 Legislative intent of KRS 369.010 to 369.030.

369.020 Definitions for KRS 369.010 to 369.030.

369.030 Use of electronic record or electronic signature -- Construction and scope of KRS 369.010 to 369.030.

Section 22. Sections 1 to 20 of this Act applies to contracts created or renegotiated on and after the effective date of this Act. To the extent that Sections 1 to 20 of this Act may be inconsistent, and notwithstanding the repeal of KRS 369.010 to 369.030 contained in Section 21 of this Act, contracts based on those statutes shall continue in force under their terms until they expire or are renegotiated, and the application of those statutes to such contracts shall continue as if the specified statutes had not been repealed.

Section 23. If the General Assembly enacts the revised version of Article 9 of the Uniform Commercial Code during this 2000 Regular Session and that legislation becomes law, the reference to KRS 355.9-308 in subsection (4) of Section 16 of this Act shall be changed to 355.9-330, as of the effective date of revised Article 9, to reflect the location of the relevant text in the revised Article 9.

Section 24. In the event that the Governor's Executive Order 99-1359, dated October 6, 1999, creating the Governor's Office for Technology, is not confirmed by the 2000 General Assembly, references in Sections 18 and 19 of this Act to the Governor's Office for Technology shall be deleted, and in codification the Chief Information Officer shall be inserted in lieu thereof.

Section 25. This Act shall take effect August 1, 2000.

**Approved April 3, 2000**

## **CHAPTER 302**

### **(HCR 36)**

A CONCURRENT RESOLUTION confirming the appointment of Hilda Gay Legg to the Council on Postsecondary Education.

WHEREAS, KRS 164.011 requires the Governor to appoint the thirteen citizen members of the Council on Postsecondary Education, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, pursuant to KRS 164.011, the Governor has appointed Ms. Hilda Gay Legg as a citizen member of the Council on Postsecondary Education for a term expiring December 31, 2005; and

WHEREAS, the Senate and the House of Representatives find that Ms. Legg meets the requirements of KRS 164.011, being a resident and qualified voter of Kentucky, not holding an official relationship to any institution of higher education in Kentucky, and not engaging in any occupation or business inconsistent with her duties as a member of the Council on Postsecondary Education;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. That the House of Representatives and Senate, pursuant to KRS 164.011, do confirm the appointment of Ms. Hilda Gay Legg to the Council on Postsecondary Education for a term expiring December 31, 2005.

Section 2. That the Clerk of the House shall forward a copy of this Resolution, and written notification of its adoption, to Ms. Hilda Gay Legg, 330 Pumphouse Road, No. 6, Somerset, Kentucky 42503, and to Governor Paul Patton, Room 100, State Capitol, Frankfort Kentucky 40601.

**Approved April 3, 2000**

## CHAPTER 303

### (HCR 82)

A CONCURRENT RESOLUTION directing the Interim Joint Committee on Education to study the issue of the instruction of the principles of economics and the need for promoting economic education in public schools.

WHEREAS, the General Assembly of the Commonwealth of Kentucky has expressed its intent to create a system of public education which shall allow and assist all students to acquire knowledge to make economic, social, and political choices; and

WHEREAS, the principles of economics are in evidence throughout many aspects of human personal and social activity; and

WHEREAS, a survey by the National Council for Economic Education revealed that most Americans have no formal education in basic economics or personal finance, even as they are confronted with making economic decisions in their roles as consumers, investors, members of the workforce, and participants in the global economy; and

WHEREAS, sixty-six percent of high school students and forty-nine percent of adults failed a test of their knowledge of basic economic principles conducted by the National Council on Economic Education during 1998 and 1999; and

WHEREAS, these results are evidence that the level and quality of economic education in public schools is woefully inadequate to prepare students to address the challenges and opportunities they will face upon graduation; and

WHEREAS, a firm understanding of economics and the economy are important to assist students in making good decisions regarding their personal future, and in fulfilling their obligations as responsible citizens, workers, community members, and family members;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. The Interim Joint Committee on Education is directed to study the issue of the instruction of the principles of economics and the need for promoting economic education in public schools during the 2000-2002 legislative interim.

Section 2. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and designate a study completion date.

**Approved April 3, 2000**

## CHAPTER 304

### (HB 692)

AN ACT relating to the Board of Claims.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 44 IS CREATED TO READ AS FOLLOWS:

***No claim shall be brought before the board unless the value of the total amount of damages claimed therein is one hundred dollars (\$100) or greater.***

Section 2. KRS 44.086 is amended to read as follows:

- (1) The board may require affected state agencies to investigate claims and the incidents on which they are based and to furnish to the board and the claimant in writing the facts learned by investigation. Such response shall be sufficiently specific to support a decision by the board to pay or deny the claim. If the agency believes the state should refute a claim, the agency shall cite the facts about the incident that support its belief.
- (2) If the claim is under one thousand dollars (\$1,000) it will be investigated by the board in-house and if the board believes it needs additional facts before deciding the claim, the parties may provide the needed information by letter or as directed by the board.
- (3) The board shall hold hearings on contested claims whose value is ***one thousand***~~five hundred~~ dollars ***(\$1,000)***~~(\$500)~~ or greater but may decide claims under ***one thousand***~~five hundred~~ dollars ***(\$1,000)***~~(\$500)~~ without a hearing.
- (4) At its hearings, the board, or any of its members, or any of its hearing officers shall hear the parties at issue and their representatives and witnesses.
- (5) The award or order shall be made by the board or by a member assigned by the chairman within thirty (30) days after final submission, except in cases involving large or complicated records or unusual questions of law, and shall be made within ninety (90) days after final submission in any event. The order or award, together with a statement of the findings of fact, rulings of law and other matters pertinent to the question at issue shall be filed with the record of the claim and a copy of the order or award shall immediately be sent to the parties in dispute.
- (6) If an application for review is made to the board within fourteen (14) days from the date of the order or award, the full board, if the first decision was not made by the full board, shall, as soon as practicable, review the evidence, or, if deemed advisable, hear the parties at issue, their representatives and witnesses, and shall make an order or award and file it as specified in subsection (5) above.

Section 3. KRS 44.140 is amended to read as follows:

- (1) Appeals may be taken by a state agency from all awards of the board where the amount in controversy, exclusive of interest and costs, is more than ***one thousand***~~five hundred~~ dollars ***(\$1,000)***~~(\$500)~~. Appeals shall be taken to the Circuit Court of the county wherein the hearing was conducted, provided, however, that an appeal involving a nonresident claimant may be taken by a state agency to the Franklin Circuit Court with the approval of the board. No state agency can appeal any decision of the board without securing the prior approval of the Attorney General. Appeals shall be taken within forty-five (45) days from the rendition of the award, and the method of appeals shall follow as nearly as may be the rules of civil procedure, except the Commonwealth shall not be required to execute bond.
- (2) Any claimant whose claim is ***one thousand***~~five hundred~~ dollars ***(\$1,000)***~~(\$500)~~ or greater may within forty-five (45) days after receipt of the copy of the report containing the final decision of the board, file a proceeding in the Circuit Court of the county wherein the hearing was conducted to review the decision of the board. A copy of the filing and complaint shall be served on the Attorney General in the manner provided by the rules of civil procedure.
- (3) The board, the state agency and the claimant shall be necessary parties to such appeals. It shall not be necessary for the board to file responsive pleadings unless it so desires.
- (4) The executive director of the board shall within thirty (30) days after service of the summons file the entire original record properly bound, with the clerk of the Circuit Court, after certifying that such record is the

board's entire original record and such record shall be considered by the Circuit Court in its review. If either party requests a transcript of the evidence in writing, the requesting party shall bear the cost of the original copy of the transcript and it shall be furnished within ninety (90) days from the date of the written request.

- (5) On appeal no new evidence may be introduced, except as to fraud or misconduct of some person engaged in the hearing before the board. The court sitting without a jury shall hear the cause upon the record before it, and dispose of the appeal in a summary manner, being limited to determining: Whether or not the board acted without or in excess of its powers; the award was procured by fraud; the award is not in conformity to the provisions of KRS 44.070 to 44.160; and whether the findings of fact support the award. The court shall enter its findings on the order book as a judgment of the court, and such judgment shall have the same effect and be enforceable as any other judgment of the court in civil causes.

Section 4. KRS 44.070 is amended to read as follows:

- (1) A Board of Claims, composed of the members of the Crime Victims Compensation Board as hereinafter provided, is created and vested with full power and authority to investigate, hear proof, and to compensate persons for damages sustained to either person or property as a proximate result of negligence on the part of the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies; provided, however, regardless of any provision of law to the contrary, the Commonwealth, its cabinets, departments, bureaus, and agencies, and its officers, agents, and employees, while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies, shall not be liable for collateral or dependent claims which are dependent on loss to another and not the claimant, damages for mental distress or pain or suffering, and compensation shall not be allowed, awarded, or paid for said claims for damages. Furthermore, any damage claim awarded shall be reduced by the amount of payments received or right to receive payment from workers' compensation insurance, social security programs, unemployment insurance programs, medical, disability or life insurance programs, or other federal or state or private program designed to supplement income or pay claimant's expenses or damages incurred. Any claim against the Commonwealth, its departments, agencies, officers, agents, or employees, or a school district board of education, its members, officers, agents, or employees for damages sustained as the result of exposure to asbestos before, during or after its removal from a facility owned, leased, occupied, or operated by the Commonwealth or a school district board of education shall be brought before the Board of Claims. Except as herein provided, the board shall be independent of all agencies, cabinets, and departments of the Commonwealth except as provided in KRS 44.070 to 44.160.
- (2) The board shall be composed of the members of the Crime Victims Compensation Board. The members shall not be entitled to additional compensation for their services on the Board of Claims.
- (3) The Governor shall designate a member of the board to serve as chairman for a term of four (4) years. Any vacancy in the chairmanship shall be filled by the Governor. No member shall, at the same time, serve as chairman of the Crime Victims Compensation Board and as chairman of the Board of Claims.
- (4) The employees of the Crime Victims Compensation Board, without additional compensation, shall be ex officio employees of the Board of Claims.
- (5) Regardless of any provision of law to the contrary, the jurisdiction of the board is exclusive, and a single claim for the recovery of money or a single award of money shall not exceed ~~two~~~~one~~ hundred thousand dollars ~~(\$200,000)~~~~(\$100,000)~~, exclusive of interest and costs. However, if a single act of negligence results in multiple claims, the total award may not exceed ~~three~~~~two~~ hundred fifty thousand dollars ~~(\$350,000)~~~~(\$250,000)~~, to be equitably divided among the claimants, but in no case may any claimant individually receive more than ~~two~~~~one~~ hundred thousand dollars ~~(\$200,000)~~~~(\$100,000)~~.
- (6) The Governor shall appoint the necessary number of hearing officers, each of whom shall be an attorney admitted to practice law in Kentucky and shall have practiced law for at least three (3) years. These officers, upon the direction of the chairman or the board, shall conduct hearings, and otherwise supervise the presentation of evidence and perform any other duties assigned to them by the chairman or the board, except that such hearing officers shall not render final decisions, orders, or awards. However, such hearing officers may, in receiving evidence on behalf of the board, make such rulings affecting the competency, relevancy, and materiality of the evidence about to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case.

- (7) The board may at any time recommend the removal of any hearing officer upon filing with the Governor a full written statement of its reasons for such removal.
- (8) Upon recommendation to the board by the attorney for the Commonwealth, its cabinet, department, bureau, agency, or employee thereof, that a settlement has been reached between the parties to the claim, and upon approval by the board that the settlement is reasonable for all parties concerned, the agreed judgment or dismissal may be entered accordingly, even without a party's admission to liability.

**Approved April 3, 2000**

## **CHAPTER 305**

**(HB 439)**

AN ACT relating to retirement.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 21 IS CREATED TO READ AS FOLLOWS:

- (1) *As a pilot project to determine the effectiveness of using senior retired judges to combat backlog and delay in Kentucky courts, there is hereby created a "Senior Status Program for Special Judges." The program shall be implemented as follows:*
  - (a) *KRS 21.400(1) and any other provision in KRS Chapter 21 to the contrary notwithstanding, a member who retires at a time when combining his total years of judicial service credit and his age equals or exceeds the number seventy-five (75), may elect, within ninety (90) days following retirement, to participate in the "Senior Status Program for Special Judges," if he complies with the provisions of this subsection. In that event, the member shall be entitled to a service retirement allowance, commencing at the member's normal retirement age, payable monthly during his lifetime in an amount equal to five percent (5%) of his final compensation multiplied by the number of years of his judicial service, not to exceed twenty (20) years of judicial service at the five percent (5%) factor, not to exceed one hundred percent (100%) of final compensation. "Final compensation" is as defined in KRS 21.400. Any nonjudicial time shall be counted as is otherwise provided in KRS Chapter 21; but in no event shall service retirement allowance exceed one hundred percent (100%) of final compensation.*
    - 1. *In the event the retiring judge elects to retire as a "Senior Status Special Judge" under this subsection, he shall commit to serve, upon appointment by the Chief Justice of the Commonwealth, as special judge for one hundred twenty (120) work days per year for a term of five (5) years without compensation other than the retirement benefits under this subsection. The Senior Status Special Judge may agree to work more than one hundred twenty (120) days in any year within the five (5) years of service; however, the Senior Status Special Judge shall be compensated as otherwise provided by law, in addition to his retirement benefits, for any days served in excess of one hundred twenty (120) in that year. If the Senior Status Special Judge has not served a total of six hundred (600) days within the five (5) year period outlined in this subsection, the Chief Justice shall require the Senior Status Special Judge to serve at no additional compensation to the Senior Status Special Judge, until the six hundred (600) day period is served by the Senior Status Special Judge. The Senior Status Special Judge and the Chief Justice may agree in writing to serve less than the one hundred twenty (120) days in any one or more of the five (5) years; however, any of the days not served in a given year shall be served at the end of the five (5) year period set forth in this subsection.*
    - 2. *Should any member electing to retire under the Senior Status Program for Special Judges fail, when ordered by the Chief Justice to serve the requisite number of days not to exceed one hundred twenty (120) days a year for the five (5) year period outlined in this subsection, unless otherwise agreed in writing, he shall no longer be eligible for benefits computed under this subsection and shall return to the benefits otherwise provided under this chapter.*
    - 3. *Subject to the Section 110(5)(b) of the Kentucky Constitution, the Chief Justice shall give due regard, when practical, to the desirability of appointing Senior Status Special Judges to serve within their judicial region as defined by the regional administration charter.*



- (b) *The inviolable contract provisions of Kentucky law, KRS 21.480, shall apply during the period of time that Section 1 of this Act is effective; however, no other provisions of this Act shall be considered subject to an inviolable contract of the Commonwealth.*
- (c) *Nothing contained in this section shall be construed to invalidate provisions in the current law which require a penalty for retiring before the normal retirement age.*
- (2) *The Senior Status Program for Special Judges created by this section shall be open to any member who is a judge in office on the effective date of this Act and who subsequently retires as a Senior Status Special Judge on or before June 30, 2007.*

Section 2. KRS 21.400 is amended to read as follows:

- (1) A member who retires on or after his normal retirement date shall receive a service retirement allowance, payable monthly during his lifetime, in an amount per month equal to two and seventy-five hundredths percent (2.75%) of his final compensation multiplied by the number of years of his service, but in no event to exceed one hundred percent (100%) of final compensation, except that for any service performed while a member prior to July 1, 1978, any service prior to July 1, 1962, creditable under KRS 21.345, and any service performed in continued membership (or allowable under KRS 21.410 or 21.420) after June 30, 1978, by a person who was a member on that date, the monthly percentage figure shall be five percent (5%) of his final compensation multiplied by the number of years of his service, and except that for any service performed by a member who elected membership at an annual accrual rate of four and fifteen one hundredths percent (4.15%) and for any service performed in continued membership thereafter (or allowable under KRS 21.410 to 21.420), the benefit, payable monthly during his lifetime shall be an amount equal to four and fifteen one-hundredths percent (4.15%) of his final compensation multiplied by the number of years of his service, and except that allowances heretofore granted, and rights related thereto, shall not be affected by the 1978 or 1980 amendments to this section. For this purpose, "final compensation" means the average monthly compensation of the member for the sixty (60) months of service immediately preceding his retirement, including, in the case of a Circuit Judge, compensation received as special commissioner of the former Court of Appeals. If, at the time of retirement or death of a member his total period of service in one or more positions covered by the system has not amounted to sixty (60) months, his "final compensation" shall be computed as if he had served in the first position he occupied under the system for such period of time as to bring his total service (in all positions) to sixty (60) months. If that category of position was not in existence for that period, it shall be treated as though it had been in existence for that period and as if the compensation paid for the presumed period of existence was at the rate provided for the category when it in fact first was created.
- (2) A member who retires before his normal retirement date shall be vested with the right to receive, when he reaches his normal retirement age, a service retirement allowance computed *on the basis of the number of years of his actual service*, and payable in accordance with:
  - (a) The provisions of subsection (1) of this section; *or*
  - (b) *Section 1 of this Act if the member retires as a Senior Status Special Judge while the pilot program created in Section 1 of this Act is in effect*, ~~on the basis of the number of years of his actual service~~.
- (3) In lieu of the right provided for in subsection (2) of this section, a member who retires before his normal retirement age may elect, at any time before reaching his normal retirement age, to be paid commencing as of the time of the election a monthly service retirement allowance equal in amount to the monthly allowance that would have become payable under subsection (2) of this section when he reached his normal retirement age, reduced at the rate of five percent (5%) for each year by which his actual age at the time the election is made is lower than the normal retirement age.
- (4) A member who retires before his normal retirement date when his benefit is based on twenty-seven (27) years or more of service in the Judicial Retirement Plan, or if his judicial service credit, when combined with service he has in, or for which he is receiving benefits from, the Legislators' Retirement Plan, the Kentucky Employees Retirement System, County Employees Retirement System, State Police Retirement System, or the Teachers' Retirement System, is equal to twenty-seven (27) years, shall be vested with the right to receive a service retirement allowance computed *on the basis of the number of years of his actual service*, and payable in accordance with:
  - (a) The provisions of subsection (1) of this section; *or*

**(b) Section 1 of this Act if the member retires as a Senior Status Special Judge while the pilot program created in Section 1 of this Act is in effect**~~[on the basis of the number of years of his actual service]~~.

- (5) In lieu of the right provided for in subsection (2) of this section, a member who retires before his normal retirement age may elect, at any time before reaching his normal retirement age, to be paid commencing as of the time of the election, a monthly service retirement allowance equal in amount to the monthly allowance that would have become payable under subsection (2) of this section when he reached normal retirement age, reduced at the rate of five percent (5%) for each year by which his years of service or combined service pursuant to subsection (4) of this section are lower than twenty-seven (27).

Section 3. On the effective date of this Act, and annually thereafter the Judicial Retirement System shall provide a written report to the Legislative Research Commission and to the Chief Justice of the Kentucky Supreme Court containing: (1) Number of judges who have retired as Senior Status Special Judges since the effective date of the Act, (2) Compensation and other benefits paid to those Senior Status Special Judges; (3) Number of days each Senior Status Special Judge has served as a special judge; (4) The fiscal impact on the judicial retirement system and the General Fund as a result of the retirement of the Senior Status Special Judges; and (5) Any other relevant information that may be requested.

Section 4. Section 1 of this Act is repealed effective July 1, 2007.

**Approved April 4, 2000**

## **CHAPTER 306**

**(HB 165)**

AN ACT relating to kinship care for children.

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

Section 1. KRS 605.120 is amended to read as follows:

- (1) The cabinet is authorized to expend available funds to provide for the board, lodging, and care of children **who would otherwise be placed in foster care or who are** placed by the cabinet in a foster home or boarding home, or may arrange for payments or contributions by any local governmental unit, or public or private agency or organization, willing to make payments or contributions for such purpose. The cabinet may accept any gift, devise, or bequest made to it for its purposes.
- (2) The cabinet shall establish a reimbursement system, within existing appropriation amounts, for foster parents that comes as close as possible to meeting the actual cost of caring for foster children. The cabinet shall consider providing additional reimbursement for foster parents who obtain additional training, and foster parents who have served for an extended period of time. In establishing a reimbursement system, the cabinet shall, to the extent possible within existing appropriation amounts, address the additional cost associated with providing care to children with exceptional needs.
- (3) The cabinet shall review reimbursement rates paid to foster parents on a biennial basis and shall issue a report in October of each odd-numbered year to the Legislative Research Commission comparing the rates paid by Kentucky to the figures presented in the Expenditures on Children by Families Annual Report prepared by the United States Department of Agriculture and the rates paid to foster parents by other states. To the extent that funding is available, reimbursement rates paid to foster parents shall be increased on an annual basis to reflect cost of living increases.
- (4) The cabinet is encouraged to develop pilot projects both within the state system and in collaboration with private child caring agencies to test alternative delivery systems and nontraditional funding mechanisms.~~[Pilot projects may include but not be limited to kinship care]~~
- (5) **To the extent funds are available, the cabinet may establish a program for kinship care that provides a more permanent placement with a qualified relative for a child that would otherwise be placed in foster care due to abuse, neglect, or death of both parents.**
- (6) **The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the provision of subsection (5) of this section. The administrative regulations shall include uniform conditions and requirements regarding:**

- (a) *Eligibility requirements for the kinship caregiver and the child;*
- (b) *Financial assistance and payment rates; and*
- (c) *Support services and case management services that may be provided to the kinship caregiver or the child.*

Section 2. KRS 610.010 is amended to read as follows:

- (1) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the District Court of each county shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his eighteenth birthday or of any person who at the time of committing a public offense was under the age of eighteen (18) years, who allegedly:
  - (a) Has committed a public offense prior to his eighteenth birthday, except a motor vehicle offense involving a child sixteen (16) years of age or older. A child sixteen (16) years of age or older taken into custody upon the allegation that he has committed a motor vehicle offense shall be treated as an adult and shall have the same conditions of release applied to him as an adult. A child taken into custody upon the allegation that he has committed a motor vehicle offense who is not released under conditions of release applicable to adults shall be held, pending his appearance before the District Court, in a secure juvenile detention facility or a juvenile holding facility or, if neither is available, in an intermittent holding facility. Children sixteen (16) years of age or older who are convicted of, or plead guilty to, a motor vehicle offense shall, if sentenced to a term of confinement, be placed in a secure juvenile detention facility or a juvenile holding facility. The term "motor vehicle offense" shall not be deemed to include the offense of stealing or converting a motor vehicle nor operating the same without the owner's consent nor any offense which constitutes a felony;
  - (b) Has not subjected himself to the reasonable control of his parent or guardian, school personnel, or other person exercising custodial control or supervision of the child;
  - (c) Is an habitual truant from school;
  - (d) Is an habitual runaway from his parent or other person exercising custodial control or supervision of the child;
  - (e) Is dependent, neglected, or abused; or
  - (f) Is mentally ill.
- (2) Actions brought under subsection (1)(a) of this section shall be considered to be public offense actions.
- (3) Actions brought under subsection (1)(b), (c), and (d) of this section shall be considered to be status offense actions.
- (4) Actions brought under subsection (1)(e) of this section shall be considered to be dependency actions.
- (5) Actions brought under subsection (1)(f) of this section shall be considered to be mental health actions.
- (6) Nothing in this chapter shall deprive other courts of the jurisdiction to determine the custody or guardianship of children upon writs of habeas corpus or to determine the custody or guardianship of children when such custody or guardianship is incidental to the determination of other causes pending in such other courts; nor shall anything in this chapter affect the jurisdiction of Circuit Courts over adoptions and proceedings for termination of parental rights. The court shall have no jurisdiction to make permanent awards of custody of a child, but if the court finds an emergency to exist affecting the welfare of a child, ***or if the child is eligible for kinship care as established in Section 1 of this Act***, it may make temporary orders for his custody; however, if the case involves allegations of dependency, neglect, or abuse, no emergency removal or temporary custody orders shall be effective unless the provisions of KRS Chapter 620 are followed. Such orders shall be entirely without prejudice to the proceedings for permanent custody of the child and shall remain in effect until modified or set aside by the court. Upon the entry of a temporary or final judgment in the Circuit Court awarding custody of such child, all prior orders of the juvenile session of the District Court in conflict therewith shall be deemed canceled. This section shall not work to deprive the Circuit Court of jurisdiction over cases filed in Circuit Court.
- (7) The court of each county wherein a public offense, as defined in paragraph (a) of subsection (1) of this section, is committed by a child who is a resident of another county of this state shall have concurrent jurisdiction over such child with the court of the county wherein the child resides or the court of the county where the child is

found. Whichever court first acquires jurisdiction of such child may proceed to final disposition of his case, or in its discretion may make an order transferring the case to the court of the county of his residence or the county wherein the offense was committed, as the case may be.

- (8) Nothing in this chapter shall prevent the District Court from holding a child in contempt of court to enforce valid court orders previously issued by the court.
- (9) Except as provided in KRS 635.060(3), nothing in this chapter shall confer upon the District Court jurisdiction over the actions of the Department of Juvenile Justice or the cabinet in the placement, care, or treatment of a child committed to the Department of Juvenile Justice or the cabinet; or to require the department or the cabinet to perform, or to refrain from performing, any specific act in the placement, care, or treatment of any child committed to the department or the cabinet.
- (10) Unless precluded by KRS Chapter 635 or 640, in addition to informal adjustment, the court shall have the discretion to amend the petition to reflect jurisdiction pursuant to the proper chapter of the Kentucky Unified Juvenile Code.
- (11) The court shall have continuing jurisdiction over a child pursuant to subsection (1) of this section, to review dispositional orders, and to conduct dispositional hearings under 42 U.S.C. sec. 675(5)(c) until the child is placed for adoption, returned home to his parents with all the court imposed conditions terminated, or reaches the age of eighteen (18) years.

Approved April 4, 2000

## CHAPTER 307

(SB 186)

AN ACT relating to child-caring facilities.

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

Section 1. KRS 199.641 is amended to read as follows:

- (1) As used in this section, unless the context otherwise requires:
  - (a) "Allowable costs **report**" means **a report from each child-caring facility that contracts with the department for services and includes** all allowable costs as defined by the Federal Office of Management and Budget circular A-122, "cost principles for nonprofit organizations," **and other information the department may require**, utilizing cost data from ~~each~~~~the~~ child-caring facility's most recent yearly audited financial statement;
  - (b) "Child-caring facility" means any institution or group home other than a state facility, or one certified by an appropriate agency as operated primarily for educational or medical purposes providing residential care on a twenty-four (24) hour basis to children, not related by blood, adoption, or marriage to the person maintaining the facility;~~and~~
  - (c) "Department" means the Department for Social Services of the Cabinet for Families and Children;
  - (d) **"Model program cost analysis" means a report based on a time study, the allowable costs report, and other information required by the department from each child-caring facility that contracts with the department for services that determines a statewide median cost for each licensed program category of service provided by child-caring facilities; and**
  - (e) **"Time study" means the process of reporting the work performed by employees of child-caring facilities in specified time periods.**
- (2) **Subject to the limitations set forth in subsection (4) of this section,** when the department~~for Social Services~~ chooses to **contract with**~~place a child in~~ a nonprofit child-caring facility **for services to a child committed to the department,** the department shall **make payments to**~~reimburse~~ that facility **based on the rate setting methodology developed from the model program cost analysis. The department shall also assure that the methodology:**~~the allowable cost of the child's care, subject to the limitation set forth in subsection (3) of this section~~

- (a) *Provides payment incentives for moving children as quickly as possible to a permanent, continuous, stable environment;*
- (b) *Provides children who require out-of-home care or alternative treatment with placements that are as close as possible to their home geographic area; and*
- (c) *Provides appropriate placement and treatment services that effectively and efficiently meet the needs of the child and the child's family as close as possible to the child's home geographic area.*
- (3) *The department shall use the model program cost analysis as a basis for cost estimates for the development of the department's biennial budget request.*~~[When the Department for Social Services chooses to place a child in a nonprofit child-caring facility, the rate of reimbursement for the child's care shall not exceed seventy-five percent (75%) of the average cost in the most comparable residential facility operated by the department. The rate shall be based on actual total facility occupancy for the most recent audited year or ninety percent (90%) of the facility capacity for the audited year, whichever is greater].~~
- (4) The secretary shall, to the extent funds are appropriated, *establish and* implement the *rate setting*~~[reimbursement]~~ methodology *and rate of payment by promulgation of*~~[set forth in this section, or may promulgate]~~ administrative regulations in accordance with KRS Chapter 13A *that*~~[to establish the rate of reimbursement for child-caring facilities which]~~ are consistent with the level *and quality* of service provided *by child-caring facilities. The administrative regulations shall also include the forms and formats for the model program cost analysis.*~~[If funds are insufficient in any given fiscal year to fully fund this provision, rates shall be adjusted by determining the reimbursement schedule and adjusting by the ratio of available funds to estimated full cost.]~~

Approved April 4, 2000

## CHAPTER 308

(HB 706)

AN ACT relating to early childhood development.

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

### PART I

#### EARLY CHILDHOOD DEVELOPMENT AUTHORITY

SECTION 1. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

- (1) *The Early Childhood Development Authority is established as a public agency and political subdivision of the Commonwealth with all powers, duties, and responsibilities conferred upon it by statute and essential to perform its functions including, but not limited to, employing other persons, consultants, attorneys, and agents. The authority shall be attached to the Office of the Governor, Office of Early Childhood Development, for administrative purposes and shall establish necessary advisory councils. The authority shall have the ability to make expenditures from the early childhood development fund and shall ensure that expenditures made from the early childhood development fund are in conformance with its duties as established by the General Assembly.*
- (2) *The authority shall consist of the following seventeen (17) members:*
  - (a) *The executive director of the Governor's Office of Early Childhood Development, who shall serve as chair;*
  - (b) *The secretary of the Education, Arts, and Humanities Cabinet;*
  - (c) *The secretary of the Cabinet for Health Services;*
  - (d) *The secretary of the Cabinet for Families and Children;*
  - (e) *One (1) nonvoting ex officio member from the House of Representatives who shall be appointed by and serve at the pleasure of the Speaker of the House;*
  - (f) *One (1) nonvoting ex officio member from the Senate who shall be appointed by and serve at the pleasure of the President of the Senate;*

- (g) *Seven (7) private sector members knowledgeable about the health, education, and development of preschool children who shall be appointed by the Governor. At least one (1) private sector member shall be appointed from each congressional district;*
  - (h) *Three (3) citizens at large of the Commonwealth who shall be appointed by the Governor; and*
  - (i) *One (1) early childhood development advocate.*
- (3) *No later than thirty (30) days after the effective date of this Act, the governing bodies of each of the following organizations shall recommend three (3) persons, at least one (1) of whom shall be male and at least one (1) of whom shall be female, as candidates for initial appointment by the Governor as private sector members to the authority:*
  - (a) *The Kentucky AFL-CIO;*
  - (b) *The Kentucky Chamber of Commerce;*
  - (c) *The Kentucky League of Cities;*
  - (d) *The Kentucky Medical Association;*
  - (e) *The Louisville Urban League and Lexington Urban League;*
  - (f) *The Kentucky County Judge/Executives Association; and*
  - (g) *The Kentucky Council on Postsecondary Education.*
- (4) *The Governor shall select the private sector members of the authority by selecting one (1) nominee from each list of the three (3) nominees submitted to the Governor by each organization listed under subsection (3) of this section. The Governor shall fill a vacancy occurring before the expiration of the appointed term from the appropriate list of nominees. If there are no nominees remaining on the appropriate list, the Governor shall request a list of additional nominees from the appropriate organization.*
- (5)
  - (a) *The initial terms of the private sector and citizen at-large members of the authority shall be for:*
    - 1. *One (1) year for two (2) of the initial terms;*
    - 2. *Two (2) years for three (3) of the initial terms;*
    - 3. *Three (3) years for two (2) of the initial terms; and*
    - 4. *Four (4) years for four (4) of the initial appointments.*
  - (b) *All succeeding appointments shall be for four (4) years from the expiration date of the preceding appointment.*
  - (c) *Members shall serve until a successor has been appointed.*
- (6) *Private sector and citizen at-large members shall serve without compensation but shall be reimbursed for reasonable and necessary expenses.*
- (7) *In making appointments to the authority, the Governor shall assure broad geographical, ethnic, and gender diversity representation from the major sectors of Kentucky's early childhood development community. In filling vacancies, the Governor shall attempt to assure the continuing representation on the authority of broad constituencies of Kentucky's early childhood development community.*
- (8) *Upon the expiration of the term of any member, the governing body of the organization that made the original recommendation shall recommend three (3) persons, at least one (1) of whom shall be male and at least one (1) of whom shall be female, between sixty (60) and thirty (30) days before the expiration of the term of any authority member who is appointed as a result of a previous recommendation. The Governor shall, during March of the year that any organization is to recommend three (3) persons, request the organization to recommend three (3) persons for possible appointment to the authority. If there is no response, the Governor shall make the appointment from the population of the Commonwealth.*
- (9) *The authority shall meet at least quarterly and at other times upon call of the chair or a majority of the authority.*
- (10) *Members of the authority shall serve on a voluntary basis, receive a fixed per diem set by the authority, and be reimbursed for their expenses in accordance with state travel expense and reimbursement administrative regulations.*

## SECTION 2. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

- (1) *The authority shall establish priorities for programs and the expenditure of funds that include, but are not limited to, the following:*
  - (a) *Implementation of public health initiatives identified by the General Assembly;*
  - (b) *Provision of preconceptional and prenatal vitamins, with priority for folic acid for the prevention of neural tube defects;*
  - (c) *Voluntary immunization for children not covered by public or private health insurance;*
  - (d) *Availability of high-quality, affordable early child-care and education options; and*
  - (e) *Increased public awareness of the importance of the early childhood years for the well-being of all Kentucky's citizens.*
- (2) *The authority shall develop a state plan on a biennial basis that identifies early childhood development funding priorities. Every two (2) years the authority shall review its priorities and make necessary adjustments to its state plan. The state plan shall incorporate priorities included in "KIDS NOW: Kentucky Invests in Developing Success, a Report from the Governor's Early Childhood Task Force, November 1999," and recommendations identified by the community early childhood councils. The authority shall file a report on the state plan with the Governor and the Legislative Research Commission by July 15 of odd-numbered years.*
- (3) *Programs funded by the authority shall be implemented by the appropriate agencies within the Cabinet for Health Services, the Cabinet for Families and Children, the Education, Arts, and Humanities Cabinet, the Finance and Administration Cabinet, or other appropriate administrative agency.*
- (4) *The authority shall assure that a public hearing is held on the expenditure of funds. Advertisement of the public hearing shall be published at least once but may be published two (2) more times, if one (1) publication occurs not less than seven (7) days nor more than twenty-one (21) days before the scheduled date of the public hearing.*
- (5) *The authority shall promulgate administrative regulations in accordance with KRS Chapter 13A to:*
  - (a) *Coordinate and improve early childhood development services, outcomes, and policies;*
  - (b) *Establish procedures that relate to its governance;*
  - (c) *Designate service areas of the Commonwealth where the community early childhood councils may be established to identify and address the early childhood development needs of young children and their families for the communities that they serve;*
  - (d) *Establish procedures that relate to the monitoring of grants, services, and activities of the community early childhood councils and their governance;*
  - (e) *Establish procedures for accountability and measurement of the success of programs that receive funds from the authority; and*
  - (f) *Establish standards for the payment of funds to a designated service provider and grantee of a community early childhood council. These standards shall include requirements relating to:*
    1. *The financial management of funds paid to grantees;*
    2. *The maintenance of records; and*
    3. *An independent audit of the use of grant funds.*
- (6) *The authority may disband or suspend a council, and may remove one (1) or more members for nonperformance or malfeasance. The authority may also recover funds that have been determined by the authority to have been misappropriated or misspent in relation to a grant award.*
- (7) *An appeal to the authority may be made by a council as to a decision made by the authority on the disbanding or suspension of a council, service provider, or grantee on a determination that funds have been misappropriated or misspent and are subject to recovery. The appeal shall be conducted in accordance with KRS Chapter 13B.*

- (8) *The authority, councils established by the authority, and initiatives funded by the authority with expenditures from the early childhood development fund shall expire when:*
- (a) *Funds are no longer designated to the Commonwealth from the master settlement agreement signed on November 22, 1998, between the participating tobacco manufacturers and the forty (40) settling states or related federal legislation; or*
  - (b) *Funds are no longer designated to the early childhood development fund from gifts, grants, or federal funds to fund the authority, the councils established by the authority or any programs that had been funded by the authority with expenditures from the early childhood development fund.*
- (9) (a) *The authority shall establish a Healthy Babies Work Group, consisting of representatives from the Cabinet for Families and Children, the Cabinet for Health Services, public schools, local libraries, the Kentucky March of Dimes, family resource centers, agencies that provide benefits under the Special Supplementation Food Program for Women, Infants, and Children, the Folic Acid Awareness Campaign, physicians, secondary health education and consumer sciences teachers, the Spina Bifida Association of Kentucky, and other persons as appropriate. Representatives shall reflect the geographic, racial, and gender diversity of the Commonwealth.*
- (b) *The Healthy Babies Work Group shall collaborate on development and implementation of a public awareness campaign to inform the citizens of the Commonwealth about the benefits of good nutrition, folic acid, smoking cessation, and healthy lifestyle choices that lead to healthy babies, the effects of alcohol and substance abuse on fetal and early childhood development, and the need for a vision examination of children at age three (3). The work group shall work with local health departments for the vision examination outreach program.*
- (10) *The authority shall work with local entities, including but not limited to health departments and service providers, to establish to the extent of available funding a vision examination program for children who are not eligible for the Kentucky Children's Health Insurance Program or Medicaid, and who do not have insurance coverage for a vision examination.*
- (11) *The authority shall develop a request for proposal process by which local early childhood councils may request any funding appropriated to the authority for use by the councils.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

*The Office of Early Childhood Development in the Office of the Governor shall provide staffing and administrative support to:*

- (1) *The Early Childhood Development Authority;*
- (2) *The Early Childhood Business Council;*
- (3) *The Early Childhood Professional Development Council; and*
- (4) *The Kentucky Early Intervention System Interagency Coordinating Council.*

## PART 2

### ADVISORY COUNCILS

#### 2A. COMMUNITY EARLY CHILDHOOD COUNCILS

SECTION 4. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

- (1) *The family resource center and the child-care resource and referral agency in the service area shall form a community early childhood council and appoint members to the council for each service area designated under Section 2 of this Act. A council shall be composed of no fewer than seven (7) and no more than twenty-seven (27) members. Members may be appointed who represent local agencies and organizations, including but not limited to the organizations or agencies listed below, with no more than one (1) member from each:*
- (a) *Early childhood advocate;*
  - (b) *Faith community;*
  - (c) *School district;*
  - (d) *Family resource center;*



- (e) *Military establishment;*
  - (f) *Head Start or Early Head Start;*
  - (g) *Child-care (profit, nonprofit, or family child-care);*
  - (h) *Child-care resource and referral agency or child-care subsidy agent;*
  - (i) *Child-care consumer or parent;*
  - (j) *County cooperative extension service;*
  - (k) *Department for public health;*
  - (l) *University, college, or technical school;*
  - (m) *United Way;*
  - (n) *Kentucky Early Intervention System;*
  - (o) *Agency administering services to children with disabilities;*
  - (p) *Home visitation agency;*
  - (q) *Family literacy agency;*
  - (r) *Civic organization;*
  - (s) *Public library;*
  - (t) *Regional training center;*
  - (u) *Community action agency;*
  - (v) *Government;*
  - (w) *Business community;*
  - (x) *Home schooling association;*
  - (y) *Health care professional;*
  - (z) *Foster care parent; or*
  - (aa) *Adoptive parent.*
- (2) *Members shall serve on a community early childhood council on a voluntary basis and receive no compensation or expense reimbursement for their service.*
- (3) (a) *Members shall serve for a term of two (2) years and until their successors are appointed, except that for those members initially appointed, the terms shall be as follows:*
- 1. *One-third (1/3) of the members shall be appointed for three (3) years;*
  - 2. *One-third (1/3) shall be appointed for two (2) years; and*
  - 3. *One-third (1/3) shall be appointed for one (1) year.*
- (b) *Vacancies shall be appointed for unexpired terms in the same manner as original appointments.*
- (4) *A community early childhood council shall collaborate with the District Early Intervention Committee, the Preschool Interagency Planning Council, and other existing interagency groups in the service area.*
- (5) *A community early childhood council may apply for a competitive grant from the authority, consistent with a state plan for grant participation as established by the authority. Grant proposals shall:*
- (a) *Include a needs assessment and budget proposal for the respective service area served by a council;*
  - (b) *Not include administrative costs that exceed five percent (5%); and*
  - (c) *Contain a signed statement from each member of the council certifying that no program, agency, or individual that may receive part of an award would constitute a conflict of interest under KRS Chapter 11A for the council member. Issues concerning conflicts of interest shall be submitted to the Executive Branch Ethics Commission for resolution.*

- (6) *A community early childhood council shall submit a quarterly report to the authority that details the activities and services of the council, including the progress that the council has made toward addressing the early childhood development goals for its designated service area and recommendations that may be included in the state plan.*
- (7) *Any records that are in the custody of a community early childhood council, a designated service provider, or a grantee that contain personal and identifying information relating to a family or children receiving services through the council shall be confidential and not subject to public disclosure, except as otherwise authorized by law.*

## 2B. THE EARLY CHILDHOOD BUSINESS COUNCIL

SECTION 5. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

- (1) *The Early Childhood Business Council is created and attached to the Office of Early Childhood Development, Office of the Governor, for administrative purposes. The function of the council shall be to:*
  - (a) *Involve the corporate community, county judge/executives, and mayors in supporting issues of importance to working families with young children in the Commonwealth; and*
  - (b) *Collect and disseminate information about the various ways business and local government can become involved in supporting early childhood.*
- (2) (a) *The Early Childhood Business Council shall consist of fifteen (15) members appointed by the Governor, who shall also appoint the chair. Members shall serve for a term of two (2) years and until their successors are appointed and qualify, except that for those members initially appointed, the terms are as follows:*
  - 1. *Five (5) members shall be appointed for three (3) years;*
  - 2. *Five (5) members shall be appointed for two (2) years; and*
  - 3. *Five (5) members shall be appointed for one (1) year.*
- (b) *Vacancies shall be appointed for unexpired terms in the same manner as original appointments. Members may not serve more than a total of three (3) terms.*
- (c) *Members who are eligible to be appointed shall have demonstrated an investment or interest in early childhood development.*
- (3) *Members of the Early Childhood Business Council shall serve on a voluntary basis, receive a fixed per diem set by the authority, and be reimbursed for their expenses in accordance with state travel expense and reimbursement administrative regulations.*
- (4) *The Early Childhood Business Council shall meet at least once every three (3) months and shall make reports in accordance with requirements established by the authority that include recommendations for the state plan.*

## 2C. EARLY CHILDHOOD

### PROFESSIONAL DEVELOPMENT COUNCIL

SECTION 6. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

- (1) *The Early Childhood Professional Development Council is created and attached to the Office of Early Childhood Development, Office of the Governor, for administrative purposes. The Early Childhood Professional Development Council shall be composed of fifteen (15) members appointed by the Governor, who shall also appoint the chair. Members shall be appointed for a term of four (4) years and the council shall cease to exist four (4) years after the effective date of this Act, unless reauthorized by the General Assembly. Members of the council shall have experience in early child care and education.*
- (2) *The Early Childhood Professional Development Council, in collaboration with the Council on Postsecondary Education, shall:*
  - (a) *Work with existing entities to develop an early child care and education credential system to facilitate the attraction and retention of persons who provide early child-care and education services;*

- (b) *Work to develop a seamless system of professional development beginning with entry level employment in early child care and education and proceeding through a master's degree-level program.*
- (3) *The Early Childhood Professional Development Council shall make reports in accordance with requirements established by the authority that include recommendations for the state plan.*
- (4) *Members of the Early Childhood Professional Development Council shall serve on a voluntary basis, receive a fixed per diem set by the authority, and be reimbursed for their expenses in accordance with state travel expense and reimbursement administrative regulations.*

## 2D. KENTUCKY EARLY INTERVENTION SYSTEM

### INTERAGENCY COORDINATING COUNCIL

Section 7. KRS 200.658 is amended to read as follows:

- (1) There is hereby created the Kentucky Early Intervention System Interagency Coordinating Council to be comprised of twenty-five (25) members to be appointed by the Governor to serve a term of three (3) years. The members of the council shall be geographically and culturally representative of the population of the Commonwealth and conform to the requirements of federal law and regulations. For administrative purposes, the council shall be attached to the **Early Childhood Development Authority**~~[Cabinet for Health Services]~~. Pursuant to federal law and regulations, the membership shall be as follows:
  - (a) At least five (5) members shall be the parents, including minority parents, of a child with a disability who is twelve (12) years of age or less, with at least one (1) being the parent of a child six (6) years of age or less. Each parent shall have knowledge of or experience with programs for infants and toddlers with disabilities;
  - (b) At least five (5) members shall be public or private providers of early intervention services to infants and toddlers with disabilities;
  - (c) At least one (1) member shall be a member of the Kentucky General Assembly;
  - (d) At least one (1) member shall be representative of an entity responsible for personnel preparation and may include personnel from an institution of higher education or preservice training organization;
  - (e) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Public Health;
  - (f) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Medicaid Services;
  - (g) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Mental Health and Mental Retardation Services;
  - (h) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Social Services;
  - (i) At least one (1) member shall be the commissioner or designee of the Department of Education;
  - (j) At least one (1) member shall be the commissioner or designee of the Department of Insurance; and
  - (k) At least one (1) member shall be a representative of the Commission for ~~Handicapped~~ **Children with Special Health Care Needs**.
- (2) In matters concerning the Kentucky Early Intervention System, the council shall advise and assist the cabinet in areas including, but not limited to, the following:
  - (a) Development and implementation of the statewide system and the administrative regulations promulgated pursuant to KRS 200.650 to 200.676;
  - (b) Achieving the full participation, coordination, and cooperation of all appropriate entities in the state, including, but not limited to, individuals, departments, and agencies, through the promotion of interagency agreements;
  - (c) Establishing a process to seek information from service providers, service coordinators, parents, and others concerning the identification of service delivery problems and the resolution of those problems;

- (d) Resolution of disputes, to the extent deemed appropriate by the cabinet;
  - (e) Provision of appropriate services for children from birth to *three (3)*~~five (5)~~ years of age;
  - (f) Identify sources of fiscal and other support services for early intervention programs;
  - (g) Preparing applications to Part ~~C~~~~H~~ of the Federal Individuals with Disabilities Education Act (IDEA) and any amendments to the applications; and
  - (h) Transitioning of infants and toddlers with disabilities and their families from the early intervention system to appropriate services provided under Part B of the Federal Individuals with Disabilities Education Act (IDEA) operated by the state Department of Education.
- (3) The council shall prepare no later than December 30 of each year an annual report on the progress toward and any barriers to full implementation of the Kentucky Early Intervention System for infants and toddlers with disabilities and their families. The report shall include recommendations concerning the Kentucky Early Intervention System and shall be submitted to the Governor, Legislative Research Commission, and the Secretary of the United States Department of Education.
  - (4) No member of the council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of the existence of a conflict of interest.

### PART 3

#### EARLY CHILDHOOD HEALTH INITIATIVE

Section 8. KRS 156.160 is amended to read as follows:

- (1) With the advice of the Local Superintendents Advisory Council, the Kentucky Board of Education shall promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. These regulations shall comply with the expected outcomes for students and schools set forth in KRS 158.6451. Administrative regulations shall be promulgated for the following:
  - (a) Courses of study for the different grades and kinds of common schools identifying the common curriculum content directly tied to the goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and KRS 158.6453 and distributed to local school districts and schools. They shall include the following: The courses of study for students shall include American sign language which shall be accepted as meeting the foreign language requirements in common schools notwithstanding other provisions of law;
  - (b) The acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology;
  - (c) The minimum requirements for high school graduation in light of the expected outcomes for students and schools set forth in KRS 158.6451. Student scores from any assessment administered under KRS 158.6453 that are determined by the National Technical Advisory Panel to be valid and reliable at the individual level shall be included on the student transcript. The National Technical Advisory Panel shall submit its determination to the commissioner of education and the Legislative Research Commission;
  - (d) Taking and keeping a school census, and the forms, blanks, and software to be used in taking and keeping the census and in compiling the required reports. The board shall create a statewide student identification numbering system based on students' Social Security numbers. The system shall provide a student identification number similar to, but distinct from, the Social Security number, for each student who does not have a Social Security number or whose parents or guardians choose not to disclose the Social Security number for the student;
  - (e) Sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, school buildings, and classrooms. With respect to physical standards of sanitary and protective construction for school buildings, the Kentucky Board of Education shall adopt the Uniform State Building Code;
  - (f) Medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. The administrative regulations shall set requirements for student health standards to be met by all students in grades four (4), eight (8), and twelve (12) pursuant to the outcomes described in KRS 158.6451. The

administrative regulations shall permit a student who received a physical examination no more than six (6) months prior to his initial admission to Head Start to substitute that physical examination for the physical examination required by the Kentucky Board of Education of all students upon initial admission to the public schools, if the physical examination given in the Head Start program meets all the requirements of the physical examinations prescribed by the Kentucky Board of Education;

- (g) *A vision examination by an optometrist or ophthalmologist that shall be required by the Kentucky Board of Education. The administrative regulations shall require evidence that a vision examination that meets the criteria prescribed by the Kentucky Board of Education has been performed. This evidence shall be submitted to the school no later than January 1 of the first year that the child is enrolled in public school, public preschool, or Head Start program;*
  - (h) The transportation of children to and from school;
  - (i)~~(h)~~ The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine;
  - (j)~~(i)~~ The preparation of budgets and salary schedules for the several school districts under the management and control of the Kentucky Board of Education;
  - (k)~~(j)~~ A uniform series of forms and blanks, educational and financial, including forms of contracts, for use in the several school districts; and
  - (l)~~(k)~~ The disposal of real and personal property owned by local boards of education.
- (2) (a) At the request of a local board of education or a school council, a local school district superintendent shall request that the Kentucky Board of Education waive any administrative regulation promulgated by that board. Beginning in the 1996-97 school year, a request for waiver of any administrative regulation shall be submitted to the Kentucky Board of Education in writing with appropriate justification for the waiver. The Kentucky Board of Education may approve the request when the school district or school has demonstrated circumstances that may include, but are not limited to, the following:
- 1. An alternative approach will achieve the same result required by the administrative regulation;
  - 2. Implementation of the administrative regulation will cause a hardship on the school district or school or jeopardize the continuation or development of programs; or
  - 3. There is a finding of good cause for the waiver.
- (b) The following shall not be subject to waiver:
- 1. Administrative regulations relating to health and safety;
  - 2. Administrative regulations relating to civil rights;
  - 3. Administrative regulations required by federal law; and
  - 4. Administrative regulations promulgated in accordance with KRS 158.6451, 158.6453, 158.6455, 158.685, and this section, relating to measurement of performance outcomes and determination of successful districts or schools, except upon issues relating to the grade configuration of schools.
- (c) Any waiver granted under this subsection shall be subject to revocation upon a determination by the Kentucky Board of Education that the school district or school holding the waiver has subsequently failed to meet the intent of the waiver.
- (3) Any private, parochial, or church school may voluntarily comply with curriculum, certification, and textbook standards established by the Kentucky Board of Education and be certified upon application to the board by such schools.

Section 9. KRS 211.645 is amended to read as follows:

As used in KRS 211.647 and **Section 11 of this Act**~~[213.046]~~, unless the context requires otherwise:

- (1) "Cabinet" means the Cabinet for Health Services;
- (2)~~["Certificate" means the certificate of birth required by KRS 213.046;~~

- ~~(3)}~~ "Commission" means the Commission for Children with Special Health Care Needs;
- (3)~~(4)}~~ "Hard of hearing infant" means a child at birth with a significant hearing loss which prevents the acquisition of speech and language through normal channels;
- (4)~~(5)}~~ **"Auditory screening report" means a written evaluation of an auditory screening as required under Section 11 of this Act.**~~"Hearing risk certificate" means the certificate that includes questions which identify newborn babies with a higher risk than normal for hearing loss;~~
- (5)~~(6)}~~ **"Infant at high risk of hearing loss"**~~"High risk infant"~~ means a child at birth who is at a higher risk than normal of being hard of hearing due to one (1) or more of the following factors present at birth:
- (a) Family history of a congenital hearing loss;
  - (b) Rubella or virus during pregnancy;
  - (c) Congenital ear, nose, or throat anomalies;
  - (d) Below-normal birth weight;
  - (e) Abnormal level of jaundice;
  - (f) Anoxia or apnea;~~and~~
  - (g) A low APGAR score derived from the evaluation of the infant's color, muscle tone, reflexes, pulse rate, and respiration; **or**
  - (h) An auditory screening indicating a hearing loss.**

Section 10. KRS 211.647 is amended to read as follows:

- (1) The commission, on receipt of ***an auditory screening report of an infant from a hospital or alternative birthing center in accordance with Section 11 of this Act shall review each auditory screening report that indicates a potential hearing loss. The commission shall contact the parents to schedule follow-up evaluations or make a referral for evaluations within three (3) business days***~~the hearing risk certificates from the cabinet, shall conduct activities necessary to identify high risk infants. It shall establish a program to provide medical and educational information to the families, assist the families in securing screening, diagnostic, and medical services at a minimal cost at a center or at a location as close to the child's residence as possible and refer the parents to agencies or organizations which provide educational programs for the child and the family.~~
- (2) ~~[The commission's process for identifying high risk infants shall include a timely review of all hearing risk certificates to identify the presence of factors determined to occur frequently with hearing loss in newborn infants.]~~The commission shall secure information missing from ***birth certificates or hospital referral reports*** which is relevant to identifying~~[ high risk]~~ infants ***with a hearing loss.***
- (3) ***If the hearing evaluation performed by the commission contains evidence of a hearing loss, within forty-eight (48) hours the commission shall:***
  - (a) Contact the attending physician and parents; and***
  - (b) Make a referral to the Kentucky Early Intervention System point of entry in the service area of the child's residence for services under KRS 200.664.***
- (4) ***The commission shall forward a report of a hearing evaluation that indicates a hearing loss, with no information that personally identifies the child, to:***
  - (a) The Kentucky Commission on the Deaf and Hard of Hearing for census purposes; and***
  - (b) The Kentucky Birth Surveillance Registry for information purposes.***
- (5) ~~[The commission shall involve agencies and organizations which provide services to deaf and hard of hearing children, including, but not limited to, the Department of Education, the Cabinet for Health Services, and the Commission on the Deaf and Hard of Hearing, in planning for and implementation of this section.]~~Cumulative demographic data of identified~~[ high risk]~~ infants ***with a hearing loss*** shall be made available to agencies and organizations ***including, but not limited to, the Cabinet for Health Services and the Early Childhood Development Authority,*** requesting the information for planning purposes.

SECTION 11. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

- (1) *As a condition of licensure or relicensure, all hospitals offering obstetric services and alternative birthing centers with at least forty (40) births per year shall provide an auditory screening for all infants using one (1) of the methods approved by the Early Childhood Development Authority by administrative regulation promulgated in accordance with KRS Chapter 13A.*
- (2) *An auditory screening report that indicates a finding of potential hearing loss shall be forwarded by the hospital or alternative birthing center within twenty-four (24) hours of receipt to the:*
  - (a) *Attending physician;*
  - (b) *Parents; and*
  - (c) *Commission for Children with Special Health Care Needs for evaluation or referral for further evaluation in accordance with Section 10 of this Act.*
- (3) *An auditory screening report that does not indicate a potential hearing loss shall be forwarded within one (1) week to the Commission for Children with Special Health Care Needs with no information that personally identifies the child.*

## PART 4

## EARLY CHILDHOOD PARENTING SUPPORT

SECTION 12. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *There is established within the Cabinet for Health Services the Health Access Nurturing Development Services (HANDS) program as a voluntary statewide home visitation program, for the purpose of providing assistance to at-risk parents during the prenatal period and until the child's third birthday. The HANDS program recognizes that parents are the primary decision-makers for their children. The goals of the HANDS program are to:*
  - (a) *Facilitate safe and healthy delivery of babies;*
  - (b) *Provide information about optimal child growth and human development;*
  - (c) *Facilitate the safety and health of homes; and*
  - (d) *Encourage greater self-sufficiency of families.*
- (2) *The cabinet shall administer the HANDS program in cooperation with the Cabinet for Families and Children and the local public health departments. The voluntary home visitation program may supplement, but shall not duplicate, any existing program that provides assistance to parents of young children.*
- (3) *Participants in the HANDS program shall express informed consent to participate by written agreement on a form promulgated by the Cabinet for Health Services.*

## PART 5.

## ACCESS TO QUALITY CHILD CARE

SECTION 13. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *It is the intent of the General Assembly to create a seamless system to upgrade the professional development of persons who are employed or provide training in a child-care or early childhood setting through scholarships, merit awards, and monetary incentives, to assist these persons in obtaining a child development associate credential, post-secondary certificate, diploma, degree, or specialty credential in an area of study determined by the authority as recommended by the professional development council.*
- (2) *Eligibility for scholarship funds shall be for individuals who do not have access to professional development funds from other education programs that receive state or federal funds, and who are:*
  - (a) *Employed at least twenty (20) hours per week providing services in a child-care or early childhood setting; or*
  - (b) *Involved in providing professional development training for teachers in an early childhood setting.*
- (3) *The Kentucky Higher Education Assistance Authority, after consultation with the Early Childhood Development Authority and the Cabinet for Families and Children, shall promulgate administrative*

*regulations, including a system of monetary incentives for scholarship program participants for completing classes, in accordance with KRS Chapter 13A as necessary to implement this section.*

SECTION 14. A NEW SECTION OF KRS 199.892 TO 199.896 IS CREATED TO READ AS FOLLOWS:

- (1) *The Early Childhood Development Authority shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish a program of monetary incentives including but not limited to an increased child-care subsidy and a one-time merit achievement award for child-care centers and certified family child-care homes that are tied to a quality rating system for child care as established under Section 15 of this Act.*
- (2) *The monetary incentive program shall be reviewed annually by the authority for the purpose of determining future opportunities to provide incentives.*
- (3) *Participation in the program of monetary incentives and in the quality rating system by child-care centers and certified family child-care homes is voluntary.*
- (4) *The Cabinet for Families and Children shall encourage the professional development of persons who are employed or provide training in a child-care or early childhood setting by facilitating their participation in the scholarship program for obtaining a child development associate credential, postsecondary certificate, diploma, degree, or specialty credential as established under Section 13 of this Act.*

SECTION 15. A NEW SECTION OF KRS 199.892 TO 199.896 IS CREATED TO READ AS FOLLOWS:

- (1) *The Early Childhood Development Authority shall, in consultation with child-care providers, the Cabinet for Families and Children, the Cabinet for Health Services, and others, including but not limited to child-care resource and referral agencies and family resource centers, develop a voluntary quality-based graduated child-care rating system for licensed child-care and certified family child-care homes based on, but not limited to:*
  - (a) *Child to caregiver ratios;*
  - (b) *Child-care staff training;*
  - (c) *Program curriculum; and*
  - (d) *Program regulatory compliance.*
- (2) *The Cabinet for Families and Children shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement:*
  - (a) *The voluntary quality-based graduated child-care rating system for child-care and certified family child-care homes developed under subsection (1) of this section;*
  - (b) *Agency time frames of reviews for rating;*
  - (c) *An appellate process under KRS Chapter 13B; and*
  - (d) *The ability of providers to request reevaluation for rating.*

SECTION 16. A NEW SECTION OF KRS 199.892 TO 199.896 IS CREATED TO READ AS FOLLOWS:

- (1) *The secretaries of the Cabinet for Families and Children and Cabinet for Health Services, or their designees, shall collaborate on the expansion of the Healthy Start in Child Care Program. The goals of the Healthy Start in Child Care program are:*
  - (a) *To train and educate child-care providers in health and safety;*
  - (b) *Provide nutrition consultation to parents;*
  - (c) *Increase awareness of methods for the prevention of communicable diseases in child-care settings; and*
  - (d) *Provide information to parents of children who attend child care.*
- (2) *The Cabinet for Families and Children shall establish technical assistance positions dedicated to child care within the Kentucky child-care resource and referral agencies in order to offer technical assistance to child-care providers to upgrade quality in early child-care and education facilities.*

Section 17. KRS 199.894 is amended to read as follows:



As used in KRS 199.892 to 199.896, unless the context otherwise requires:

- (1) "Cabinet" means the Cabinet for Families and Children;
- (2) "Secretary" means secretary for families and children;
- (3) "~~Child~~~~Day~~-care center" means any child-care ~~center~~~~facility~~ which provides full or part-time care, day or night, to at least seven (7) children who are not the children, grandchildren, nieces, nephews, or children in legal custody of the operator. "~~Child~~~~Day~~-care center" shall not include any child-care facility operated by a religious organization while religious services are being conducted, or a youth development agency. For the purposes of this section, "youth development agency" means a program with tax-exempt status under 26 U.S.C. sec. 501(c)(3), which operates continuously throughout the year as an outside-school-hours center for youth who are six (6) years of age or older, and for which there are no fee or scheduled-care arrangements with the parent or guardian of the youth served;
- (4) ***"Department" means the Department for Community Based Services; and***
- (5) ***"Family child-care home" means a private home that provides full or part-time care day or night for six (6) or fewer children who are not the children, siblings, stepchildren, grandchildren, nieces, nephews, or children in legal custody of the provider.***

Section 18. KRS 199.896 is amended to read as follows:

- (1) No person, association, or organization shall conduct, operate, maintain, or advertise any ~~child~~~~day~~-care center ~~or home~~ without obtaining a license as provided in KRS 199.892 to 199.896.
- (2) The secretary may promulgate administrative regulations pursuant to KRS Chapter 13A relating to license fees and may establish standards of care and service for ~~a child~~~~the day~~-care center, ***criteria for the denial of a license if criminal records indicate convictions that may impact the safety and security of children in care,*** and procedures for enforcement of penalties~~; provided, however, any administrative regulations promulgated pursuant to KRS Chapter 13A shall prohibit the employment of persons convicted of any sexual offense~~.
- ~~(3) If the day care center does not meet the standards prescribed for licensing by the secretary, a provisional license may be issued and remain in effect for a period of six (6) months.~~
- ~~(4)~~ Each initial application for a license shall be made to the cabinet and shall be accompanied by a fee of not more than fifty dollars (\$50) and shall~~, excepting provisional licenses,~~ be renewable annually upon expiration and reapplication when accompanied by a fee of twenty-five dollars (\$25). Regular licenses and renewals thereof shall expire one (1) year from their effective date.
- ~~(4)(5)~~ No ~~child~~~~day~~-care center shall be refused a license or have its license revoked for failure to meet standards set by the secretary until after the expiration of a period not to exceed six (6) months from the date of the first official notice that the standards have not been met. If, however, the cabinet has probable cause to believe that an immediate threat to the public health, safety, or welfare exists, the cabinet may take emergency action pursuant to KRS 13B.125. All administrative hearings conducted under authority of KRS 199.892 to 199.896 shall be conducted in accordance with KRS Chapter 13B.
- (5) ***If, upon inspection or investigation, the inspector general finds that a child-care center licensed under this section has violated the administrative regulations, standards, or requirements of the cabinet, the inspector general shall issue a statement of deficiency to the center containing:***
  - (a) *A statement of fact;*
  - (b) *A statement of how an administrative regulation, standard, or requirement of the cabinet was violated; and*
  - (c) *The time frame, negotiated with the child-care center, within which a violation is to be corrected, except that a violation that poses an immediate threat to the health, safety, or welfare of children in the center shall be corrected in no event later than five (5) working days from the date of the statement of deficiency.*
- (6) ***The Cabinet for Families and Children, in consultation with the Cabinet for Health Services, Office of the Inspector General, shall establish by administrative regulations promulgated in accordance with KRS Chapter 13A an informal dispute resolution process containing at least two (2) separate levels of review through which a child-care provider may dispute licensure deficiencies that have an adverse effect on the child-care provider's license.***

- (7) *A child-care center shall have the right to appeal to the Cabinet for Health Services under KRS Chapter 13B any action adverse to its license or the assessment of a civil penalty issued by the inspector general as the result of a violation contained in a statement of deficiency within twenty (20) days of the issuance of the action or assessment of the civil penalty. An appeal shall not act to stay the correction of a violation.*
- (8) *In assessing the civil penalty to be levied against a child-care center for a violation contained in a statement of deficiency issued under this section, the inspector general or the inspector general's designee shall take into consideration the following factors:*
- (a) *The gravity of the threat to the health, safety, or welfare of children posed by the violation;*
  - (b) *The number and type of previous violations of the child-care center;*
  - (c) *The reasonable diligence exercised by the child-care center and efforts to correct the violation; and*
  - (d) *The amount of assessment necessary to assure immediate and continued compliance.*
- (9) *Upon a child-care center's failure to take action to correct a violation of the administrative regulations, standards, or requirements of the cabinet contained in a statement of deficiency, or at any time when the operation of a child-care center poses an immediate threat to the health, safety, or welfare of children in the center, and the child-care center continues to operate after the cabinet has taken emergency action to deny, suspend, or revoke its license, the cabinet or the cabinet's designee shall take at least one (1) of the following actions against the center:*
- (a) *Institute proceedings to obtain an order compelling compliance with the administrative regulations, standards, and requirements of the cabinet;*
  - (b) *Institute injunctive proceedings in Circuit Court to terminate the operation of the center;*
  - (c) *Institute action to discontinue payment of child-care subsidies; or*
  - (d) *Suspend or revoke the license or impose other penalties provided by law.*
- ~~(10)(6)~~ Upon request of any person, the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of ~~child-day~~-care center license of the operator. Identifying information regarding children and their families shall remain confidential.
- ~~(11)(7)~~ The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the ~~child-day~~-care center within the past year. All information distributed by the cabinet under this subsection shall include a statement indicating that the reports as provided under this subsection from the past five (5) years are available from the ~~child-day~~-care center upon the parent's, custodian's, guardian's, or other interested person's request.
- ~~(12)(8)~~ All fees collected under the provisions of KRS 199.892 to 199.896 ***for license and certification applications*** shall be paid into the State Treasury and credited to a special fund for the purpose of administering KRS 199.892 to 199.896 including the payment of expenses of and to the participants in child-care workshops. The funds collected are hereby appropriated for the use of the cabinet. The balance of the special fund shall lapse to the general fund at the end of each biennium.
- ~~(13)(9)~~ Any advertisement for child-care services shall include the address of where the service is being provided.
- ~~(14)(10)~~ All inspections of licensed and unlicensed ~~child-day~~-care centers by the Cabinet for Families and Children and the Cabinet for Health Services shall be unannounced.
- ~~(15)(11)~~ All employees and owners of a ~~child-day~~-care center who provide care to children shall demonstrate within the first three (3) months of employment completion of at least a total of six (6) hours of orientation in the following areas:
- (a) Basic health, safety, and sanitation;
  - (b) Recognizing and reporting child abuse; and
  - (c) Developmentally appropriate child-care practice.
- ~~(16)(12)~~ All employees and owners of a ~~child-day~~-care center who provide care to children shall annually demonstrate to the department completion of at least six (6) hours of training in child development.

- ~~(17)(13)~~ The Cabinet for Families and Children shall make available either through the development or approval of a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection ~~(15)(11)~~ of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection ~~(15)(11)~~ of this section.
- ~~(18)(14)~~ Child~~-day~~ care centers licensed pursuant to this section and family child-care homes certified pursuant to KRS 199.8982 shall not use corporal physical discipline, including the use of spanking, shaking, or paddling, as a means of punishment, discipline, behavior modification, or for any other reason. For the purposes of this section, "corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact which is intended to protect a child from immediate danger.
- ~~(19)(15)~~ Directors *and employees* of child~~-day~~ care centers *in a position that involves supervisory or disciplinary power over a minor, or direct contact with a minor, shall submit to a criminal record check in accordance with Section 25 of this Act. The application shall be denied if the applicant has been found by the Cabinet for Families and Children or a court to have abused or neglected a child or has been convicted of a violent crime or sex crime as defined in Section 25 of this Act* ~~shall not have been found by the cabinet or a court to have abused or neglected a child~~.
- (20) *A director or employee of a child-care center may be employed on a probationary status pending receipt of the criminal background check. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.*

Section 19. KRS 199.8982 is amended to read as follows:

~~(1)~~ As used in this section, unless the context requires otherwise:

- ~~(a)~~ "Cabinet" means the Cabinet for Families and Children;
- ~~(b)~~ "Department" means the Department for Social Services; and
- ~~(c)~~ "Family child care home" means a private home which provides full or part time care day or night for six (6) or fewer children who are not the children, *siblings, stepchildren, grandchildren, nieces, nephews, or children in legal custody of the provider.*

- ~~(1)(2)~~ (a) The cabinet shall establish a family child-care home certification program which shall be administered by the department. A family child-care provider shall apply for certification of the provider's home if the provider is caring for four (4) to six (6) children unrelated to the provider. A family child-care provider caring for three (3) or fewer children may apply for certification of the provider's home at the discretion of the provider. Applicants for certification shall not have been found by the cabinet or a court to have abused or neglected a child, and shall meet the following minimum requirements:
1. Submit two (2) written character references;
  2. Provide a written statement from a physician that the applicant is in good health;
  3. Submit to a criminal record check *in accordance with Section 25 of this Act. The application shall be denied if the applicant has been convicted of a violent crime or sex crime as defined in Section 25 of this Act*~~as provided by KRS 17.165~~;
  4. Provide smoke detectors, a telephone, an adequate water supply, sufficient lighting and space, and a safe environment in the residence in which care is provided;
  5. Provide a copy of the results of a tuberculosis skin test for the applicant administered within thirty (30) days of the date of application for certification; and
  6. Demonstrate completion of a total of at least six (6) hours of training in the following areas within three (3) months of application for certification:
    - a. Basic health, safety, and sanitation;
    - b. Recognizing and reporting child abuse; and
    - c. Developmentally appropriate child-care practice.
- (b) Initial applications for certification shall be made to the department and shall be accompanied by a ten dollar (\$10) certification fee. The department shall issue a certificate of operation upon inspecting the

family child-care home and determining the provider's compliance with the provisions of this section. The inspection shall be unannounced. A certificate of operation issued pursuant to this section shall not be transferable and shall be renewed every two (2) years for a fee of ten dollars (\$10).

- (c) A certified family child-care provider shall display the certificate of operation in a prominent place within the residence in which care is provided. The cabinet shall provide the certified family child-care provider with written information explaining the requirements for a family day-care provider and instructions on the method of reporting violations of the requirements which the provider shall distribute to parents.
  - (d) Upon request of any person, the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of day-care license of the family child-care provider. Identifying information regarding children and their families shall remain confidential.
  - (e) The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the family child-care home within the past year. All information distributed by the cabinet under this paragraph shall include a statement indicating that the reports as provided under this paragraph from the past five (5) years are available from the family child-care home upon the parent's, custodian's, guardian's, or other interested person's request.
  - (f) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A which establish standards for the issuance, monitoring, release of information under this section and KRS 199.896 and 199.898, renewal, denial, revocation, and suspension of a certificate of operation for a family child-care home ***and establish criteria for the denial of certification if criminal records indicate convictions that may impact the safety and security of children in care***; ~~provided, however, any administrative regulations promulgated in accordance with KRS Chapter 13A shall prohibit the employment of persons convicted of any sexual offense~~. A denial, suspension, or revocation of a certificate may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B. If the cabinet has probable cause to believe that there is an immediate threat to the public health, safety, or welfare, the cabinet may take emergency action to suspend a certificate pursuant to KRS 13B.125. The cabinet shall promulgate administrative regulations to impose minimum staff-to-child ratios. The cabinet may promulgate administrative regulations relating to other requirements necessary to ensure minimum safety in family child-care homes. The cabinet shall develop and provide an "easy-to-read" guide containing the following information to a family child-care provider seeking certification of his home:
    - 1. Certification requirements and procedures;
    - 2. Information about available child-care training; and
    - 3. Child-care food sponsoring organizations.
- ~~(2)(3)~~ Family child-care providers shall annually demonstrate to the department completion of at least six (6) hours of training in child development.
- ~~(3)(4)~~ The cabinet shall, either through the development of or approval of, make available a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection (2)(a)6. of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection (2)(a)6. of this section.
- Section 20. KRS 199.899 is amended to read as follows:
- (1) The Cabinet for Families and Children shall conduct a market-rate survey at least biennially to ***set the minimum***~~determine the~~ rates paid by the cabinet for child-care services receiving public funds in the Commonwealth. The market-rate survey shall:
    - (a) Survey all child-care programs in the Commonwealth licensed pursuant to KRS 199.896 or certified pursuant to KRS 199.8982;
    - (b) Determine market rates; and
    - (c) Make public its findings.

(2) ~~By October 1, 1993, the cabinet shall report to the General Assembly on the feasibility of paying a higher rate for child-care programs which attain accreditation from a national organization that the cabinet determines has accreditation standards that contribute to high quality child care.~~

~~(3)~~ In counties containing no more than two (2) child-care programs of the same type regulated by the cabinet, the cabinet shall pay the rate charged by the program up to the maximum allowable market rate, set in accordance with federal regulations, paid to a program of the same type in that area development district.

(3) ***The Cabinet for Families and Children shall evaluate, at least annually, the adequacy of the child-care subsidy to enable low income families in need of child-care services to obtain child care.***

Section 21. KRS 199.8992 is amended to read as follows:

(1) To the extent possible with available funds, the Cabinet for Families and Children shall develop through a system of contracts, a statewide network of community-based child-care resource and referral services. The network shall include one (1) resource and referral agency per area development district as designated by the cabinet. To avoid duplication of services, priority for receiving designation by the cabinet shall be given to existing child-care resource and referral organizations which are public or private, nonprofit, community-based agencies. Each resource and referral agency shall:

- (a) Maintain a uniform database in a format developed by the cabinet of all child-~~day~~-care providers licensed pursuant to KRS 199.896 or certified pursuant to KRS 199.8982 in the service area, including information on the availability of care;
- (b) Provide consumer education to families seeking child-~~day~~-care services;
- (c) Provide timely referrals of available child-~~day~~-care providers to families seeking child-~~day~~-care services;
- (d) Recruit child-~~day~~-care providers in areas where there is an identified need as identified pursuant to paragraph (f) of this subsection;
- (e) Coordinate, with the cabinet, training for child-~~day~~-care providers and provide technical assistance to employers, current and potential child-~~day~~-care providers, and the community at large;
- (f) Collect and analyze data on the supply of, and demand for, child-~~day~~-care in the community;
- (g) Stimulate employer involvement in improving the affordability, availability, safety, and quality of child care for their employees and for the community;
- (h) Provide written educational materials to parents and child-~~day~~-care providers;~~and~~
- (i) Not operate a child-~~day~~-care center on behalf of an employer or on their own unless no existing provider is willing or able to provide the service at the current market rate. This paragraph shall not apply to child care provided by a resource and referral agency to an employer prior to July 14, 1992;  
***and***
- (j) ***Form community early childhood councils in cooperation with family resource centers and other local organizations or agencies.***

(2) To the extent possible with available funds, the cabinet shall award contracts in accordance with KRS Chapter 45A to:

- (a) Coordinate existing resource and referral services;
- (b) Expand resource and referral services to unserved areas; and
- (c) Improve services provided by the designated resources and referral agency.

(3) When awarding the contracts provided for in subsection (2) of this section, priority shall be given to agencies which demonstrate the ability to provide local matching funds in an amount equal to twenty-five percent (25%) of the total amount of the contract. Contracts shall be awarded for a minimum period of up to one (1) year. Start-up contracts may be awarded in up to four (4) area development districts per year until each area development district has one (1) designated child-care resource and referral agency. The awarding of a contract pursuant to this section shall not create a continuing obligation for the cabinet to fund a resource and referral agency. The cabinet shall require applicants to submit a plan for providing the services required by subsection (1) of this section.

Section 22. KRS 199.8994 is amended to read as follows:

- (1) All child-day-care funds administered by the cabinet, including Title XX of the Social Security Act, shall be administered by the Cabinet for Families and Children to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. To the extent permitted by federal law or regulations, requirements relating to application, eligibility, provider agreements, and payment for child-care services shall be the same regardless of the source of public funding.
- (2) The cabinet shall, to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served, develop a system which provides a single intake point in each county through which parents seeking public subsidies for child-care services can make application.
- (3) The cabinet shall, subject to the extent funds are available, cooperate with the Cabinet for Health Services to fund **and** establish dedicated child-care licensing surveyor positions within the Division of Licensing and Regulation to conduct all the cabinet's child-care licensing activities. ***The cabinet shall have the authority to request the transfer of funds to establish these positions.*** Where possible, dedicated child-care surveyors shall have expertise or experience in child-care or early childhood education.
- (4) ***The targeted ratio of dedicated child-care licensing surveyor positions shall be one (1) surveyor for each fifty (50) child-care facilities in order to allow for the provision of an expedient, constructive, and thorough licensing visit.***
- (5) ***The cabinet shall, in cooperation with the Division of Licensing and Regulation, Cabinet for Health Services, provide appropriate specialized training for child-care surveyors.***
- (6)
  - (a) ***The cabinet shall evaluate ways to improve the monitoring of unregulated child-care providers that receive a public subsidy for child care, and promulgate administrative regulations in accordance with KRS Chapter 13A that establish minimum health and safety standards, limitations on the maximum number of children in care, training requirements for a child-care provider that receives a child-care subsidy administered by the cabinet, and criteria for the denial of subsidies if criminal records indicate convictions that impact the safety and security of children in care.***
  - (b) ***If the cabinet has probable cause to believe that there is an immediate threat to the public health, safety, or welfare, it may take emergency action to deny a public subsidy for child-care services under KRS 13B.125.***

Section 23. KRS 199.8996 is amended to read as follows:

The Cabinet for Families and Children shall prepare the following reports to the General Assembly on child-care programs, and shall make them available to the public:

- (1) A quarterly report detailing the number of children and amounts of child-care subsidies provided in each area development district;
- (2) A quarterly report on administrative expenses incurred in the operation of child-care subsidy programs;
- (3) A quarterly report on disbursements of federal child-care block grant funds for training, resource and referral, and similar activities; and
- (4) Beginning July 15, 1993, an annual report summarizing the average child-care subsidy activities per month in all Kentucky counties.
- (5) ***The cabinet shall file an annual report on its evaluation of the adequacy of the child-care subsidy to enable low income families in need of child-care services to obtain child care with the Early Childhood Development Authority and the Legislative Research Commission.***
- (6) ***The cabinet shall file an annual report on the number of dedicated child-care licensing surveyor positions and the ratio of surveyors to child-care facilities with the Early Childhood Development Authority and the Legislative Research Commission.***

Section 24. KRS 199.990 is amended to read as follows:

- (1) Any person violating any of the provisions of KRS 199.380 to 199.400 shall be guilty of an offense, and upon conviction thereof, shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than twelve (12) months, or be both fined and imprisoned, in the discretion of the court.

- (2) Any person who violates any of the provisions of KRS 199.430, 199.470, 199.473, 199.570 and 199.590 except subsection (2), or 199.640 to 199.670, or any rule or regulation under such sections the violation of which is made unlawful shall be fined not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000) or imprisoned for not more than six (6) months, or both. Each day such violation continues shall constitute a separate offense.
- (3) Any person who willfully violates any other of the provisions of KRS 199.420 to 199.670 or any rule or regulation thereunder, the violation of which is made unlawful under the terms of those sections, and for which no other penalty is prescribed in those sections or in subsection (1) of this section, or in any other applicable statute, shall be fined not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) or imprisoned for not more than thirty (30) days, or both.
- (4) Any ***violation of the regulations, standards, or requirements of the cabinet under*** ~~person who violates any of~~ the provisions of KRS 199.896 ***that poses an immediate threat to the health, safety, or welfare of any child served by the child-care center shall be subject to a civil penalty of no more than one thousand dollars (\$1,000) for each occurrence. Treble penalties shall be assessed for two (2) or more violations within twelve (12) months. All money collected as a result of civil penalties assessed under the provisions of KRS 199.896 shall be paid into the State Treasury and credited to a special fund for the purpose of the Early Childhood Scholarship Program created in accordance with Section 13 of this Act. The balance of the fund shall not lapse to the general fund at the end of each biennium.***
- (5) ***A person who commits a violation of the regulations, standards, or requirements of the cabinet under the provisions of Section 18 of this Act*** shall be fined not less than one thousand dollars (\$1,000) or imprisoned for not more than twelve (12) months, or be fined and imprisoned, at the discretion of the court.
- ~~(6)(5)~~ Any person who violates any of the provisions of KRS 199.590(2) shall be guilty of a Class D felony.

Section 25. KRS 17.165 is amended to read as follows:

- (1) As used in this section, "sex crime" means a conviction or a plea of guilty for a violation or attempted violation of KRS 510.040 to 510.140, 529.020 to 529.050, 530.020, 530.065, 531.310, 531.320, and 531.340 to 531.370. Conviction for a violation or attempted violation of an offense committed outside the Commonwealth of Kentucky is a sex crime if such offense would have been a crime in Kentucky under one (1) of the above sections if committed in Kentucky.
- (2) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim, or rape in the first degree or sodomy in the first degree of the victim or serious physical injury to a victim.
- (3) As used in this section, "violent crime" shall mean a conviction of or a plea of guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim, or rape in the first degree or sodomy in the first degree of the victim or serious physical injury to a victim.
- (4) No child-care center as defined in KRS 199.894 shall employ, in a position which involves supervisory or disciplinary power over a minor, ***or direct contact with a minor***, any person who is a violent offender or has been convicted of a sex crime ~~[classified as a felony. Operators of child-care centers may employ persons convicted of sex crimes classified as a misdemeanor at their discretion]~~. Each child-care center shall request all conviction information for any applicant for employment from the Justice Cabinet ***or the Administrative Office of the Courts*** prior to employing the applicant.
- (5) ***No child-care provider that is required to be certified under Section 19 of this Act or that receives a public child-care subsidy administered by the cabinet or an adult who resides on the premises of the child-care provider and has direct contact with a minor shall have been convicted of a violent crime, or a sex crime, or have been found by the Cabinet for Families and Children or a court to have abused or neglected a child.***
- (6) Each application form, provided by the employer to the applicant, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."
- ~~(7)(6)~~ Any request for records under subsection (4) of this section shall be on a form approved by the Justice Cabinet ***or the Administrative Office of the Courts***, and the cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.

- (8)(7) The provisions of this section shall apply to all applicants for initial employment in a position which involves supervisory or disciplinary power over a minor after July 15, 1988.

Section 26. KRS 17.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 17.320 to 17.340 shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500).
- (2) Any public official or employee who knowingly or intentionally makes, or causes to be made, a false return of information to the department shall be punished by confinement in jail for not more than ninety (90) days, by a fine not exceeding five hundred dollars (\$500), or both.
- (3)
  - (a) Any child-care center which violates subsection (4) of KRS 17.165 *or child-care provider that violates subsection (5) of KRS 17.165* may be liable for license *or certification* revocation and the imposition of a civil penalty of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000) to be imposed and collected by the Cabinet for Families and Children; and
  - (b) In addition to penalties listed in this subsection, any child-care center which violates subsection (4) of KRS 17.165 *or child-care provider that violates subsection (5) of KRS 17.165* shall be fined not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000).

Section 27. KRS 213.046 is amended to read as follows:

- (1) A certificate of birth for each live birth which occurs in the Commonwealth shall be filed with the local registrar within ten (10) days after such birth and shall be registered if it has been completed and filed in accordance with this section. ~~A hearing risk certificate provided by the Commission for Children with Special Health Care Needs, with questions pertaining to hearing loss in newborn infants, shall accompany the certificate of birth for use pursuant to KRS 211.645 and 211.647.~~ All certificates shall be typewritten. No certificate shall be held to be complete and correct that does not supply all items of information called for in this section and in KRS 213.051, or satisfactorily account for their omission except as provided in KRS 199.570(3). If a certificate of birth ~~or the hearing risk certificate~~ is incomplete, the local registrar shall immediately notify the responsible person and require that person to supply the missing items, if that information can be obtained.
- (2) When a birth occurs in an institution or en route thereto, the person in charge of the institution or that person's designated representative, shall obtain the personal data, prepare the certificate, secure the signatures required, and file the certificate as directed in subsection (1) of this section or as otherwise directed by the state registrar within the required ten (10) days. The physician or other person in attendance shall provide the medical information required for the certificate and certify to the fact of birth within ten (10) days after the birth. If the physician or other person in attendance does not certify to the fact of birth within the ten (10) day period, the person in charge of the institution shall complete and sign the certificate.
- (3) When a birth occurs in a hospital or en route thereto to a woman who is unmarried, the person in charge of the hospital or that person's designated representative shall immediately before or after the birth of a child, except when the mother or the alleged father is a minor:
  - (a) Meet with the mother prior to the release from the hospital;
  - (b) Attempt to ascertain whether the father of the child is available in the hospital, and, if so, to meet with him, if possible;
  - (c) Provide written materials and oral, audio, or video materials about paternity;
  - (d) Provide forms necessary to voluntarily establish paternity;
  - (e) Provide a written and an oral, audio, or video description of the rights and responsibilities, the alternatives to, and the legal consequences of acknowledging paternity;
  - (f) Provide written materials and information concerning genetic paternity testing;
  - (g) Provide an opportunity to speak by telephone or in person with staff who are trained to clarify information and answer questions about paternity establishment;
  - (h) If the parents wish to acknowledge paternity, require the voluntary acknowledgment of paternity obtained through the hospital-based program be signed by both parents and be authenticated by a notary public;



- (i) Provide the unmarried mother, and, if possible, the father, with the affidavit of paternity form;
- (j) Upon both the mother's and father's request, help the mother and father in completing the affidavit of paternity form;
- (k) Upon both the mother's and father's request, transmit the affidavit of paternity to the local registrar in the county in which the birth occurred; and
- (l) In the event that the mother or the alleged father is a minor, information set forth in this section shall be provided in accordance with Civil Rule 17.03 of the Kentucky Rules of Civil Procedure.

If the mother or the alleged father is a minor, the paternity determination shall be conducted pursuant to KRS Chapter 406.

- (4) The voluntary acknowledgment-of-paternity forms designated by the Office of Vital Statistics shall be the only documents having the same weight and authority as a judgment of paternity.
- (5) The Cabinet for Health Services shall:
  - (a) Provide to all public and private birthing hospitals in the state written materials and audio or video materials concerning paternity establishment forms necessary to voluntarily acknowledge paternity;
  - (b) Provide copies of a written description and an audio or video description of the rights and responsibilities of acknowledging paternity; and
  - (c) Provide staff training, guidance, and written instructions regarding voluntary acknowledgment of paternity as necessary to operate the hospital-based program.
- (6) When a birth occurs outside an institution, the certificate shall be prepared and filed by one (1) of the following in the indicated order of priority:
  - (a) The physician in attendance at or immediately after the birth; or, in the absence of such a person,
  - (b) Any other person in attendance at or immediately after the birth; or, in the absence of such a person,
  - (c) The father, the mother, or in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred or of the institution to which the child was admitted following the birth.
- (7) No physician, midwife, or other attendant shall refuse to sign or delay the filing of a birth certificate.
- (8) If a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in the Commonwealth, the birth shall be registered in the Commonwealth, and the place where the child is first removed shall be considered the place of birth. If a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in the Commonwealth, the birth shall be registered in the Commonwealth, but the certificate shall show the actual place of birth insofar as can be determined.
- (9) The following provisions shall apply if the mother was married at the time of either conception or birth or anytime between conception and birth:
  - (a) If there is no dispute as to paternity, the name of the husband shall be entered on the certificate as the father of the child. The surname of the child shall be any name chosen by the parents; however, if the parents are separated or divorced at the time of the child's birth, the choice of surname rests with the parent who has legal custody following birth.
  - (b) If the mother claims that the father of the child is not her husband and the husband agrees to such a claim and the putative father agrees to the statement, a three (3) way affidavit of paternity may be signed by the respective parties and duly notarized. The state registrar of vital statistics shall enter the name of a nonhusband on the birth certificate as the father and the surname of the child shall be any name chosen by the mother.
  - (c) If a question of paternity determination arises which is not resolved under paragraph (b) of this subsection, it shall be settled by the District Court.
- (10) The following provisions shall apply if the mother was not married at the time of either conception or birth or between conception and birth or the marital relationship between the mother and her husband has been interrupted for more than ten (10) months prior to the birth of the child:

- (a) The name of the father shall not be entered on the certificate of birth. The state registrar shall upon acknowledgment of paternity by the father and with consent of the mother pursuant to KRS 213.121, enter the father's name on the certificate. The surname of the child shall be any name chosen by the mother and father. If there is no agreement, the child's surname shall be determined by the parent with legal custody of the child.
  - (b) If an affidavit of paternity has been properly completed and the certificate of birth has been filed accordingly, any further modification of the birth certificate regarding the paternity of the child shall require an order from the District Court.
  - (c) In any case in which paternity of a child is determined by a court order, the name of the father and surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court.
  - (d) In all other cases, the surname of the child shall be any name chosen by the mother.
- (11) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate. In all cases, the maiden name of the gestational mother shall be entered on the certificate.
  - (12) Any child whose surname was restricted prior to July 13, 1990, shall be entitled to apply to the state registrar for an amendment of a birth certificate showing as the surname of the child, any surname chosen by the mother or parents as provided under this section.
  - (13) The birth certificate of a child born as a result of artificial insemination shall be completed in accordance with the provisions of this section.
  - (14) Each birth certificate filed under this section shall include all Social Security numbers that have been issued to the parents of the child.
  - (15) Either of the parents of the child, or other informant, shall attest to the accuracy of the personal data entered on the certificate in time to permit the filing of the certificate within ten (10) days prescribed in subsection (1) of this section.
  - (16) ***When a birth certificate is filed for any birth that occurred outside an institution, the Cabinet for Health Services shall forward information regarding the need for an auditory screening for an infant and a list of options available for obtaining an auditory screening for an infant. The list shall include the Commission for Children with Special Health Care Needs, local health departments as established in KRS Chapter 212, hospitals offering obstetric services, alternative birthing centers required to provide an auditory screening under Section 11 of this Act, and licensed audiologists, and shall specify the hearing methods approved by the Early Child Development Authority in accordance with Section 11 of this Act.***

Section 28. The following KRS sections are repealed:

199.8984 Child-Care Policy Council.

157.317 Development of statewide Early Childhood Education Program -- Kentucky Early Childhood Advisory Council.

Section 29. As used in subsection (1) of Section 1 of this Act, "early childhood development fund" means the fund with that name created in House Bill 583 of this 2000 Regular Session from a distribution of moneys in the tobacco settlement agreement fund established by KRS 248.654, or created in other legislation of this 2000 Regular Session.

Section 30. This Act may be cited as the Early Childhood Development Act.

**Approved April 4, 2000**

## **CHAPTER 309**

**(SB 257)**

AN ACT relating to limitation of actions.

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

Section 1. KRS 413.140 is amended to read as follows:

- (1) The following actions shall be commenced within one (1) year after the cause of action accrued:
  - (a) An action for an injury to the person of the plaintiff, or of her husband, his wife, child, ward, apprentice or servant.
  - (b) An action for injuries to persons, cattle or other livestock by railroads or other corporations, with the exception of hospitals licensed pursuant to KRS Chapter 216.
  - (c) An action for malicious prosecution, conspiracy, arrest, seduction, criminal conversation or breach of promise of marriage.
  - (d) An action for libel or slander.
  - (e) An action against a physician, surgeon, dentist or hospital licensed pursuant to KRS Chapter 216, for negligence or malpractice.
  - (f) ***A civil action, arising out of any act or omission in rendering, or failing to render, professional services for others, whether brought in tort or contract, against a real estate appraiser holding a certificate or license issued under KRS Chapter 324A.***
  - (g) An action for the escape of a prisoner, arrested or imprisoned on civil process.
  - ~~(h)(g)~~ An action for the recovery of usury paid for the loan or forbearance of money or other thing, against the loaner or forbearer or assignee of either.
  - ~~(i)(h)~~ An action for the recovery of stolen property, by the owner thereof against any person having the same in his possession.
  - ~~(j)(i)~~ An action for the recovery of damages or the value of stolen property, against the thief or any accessory.
- (2) In respect to the action referred to in paragraph (e) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time the injury is first discovered or in the exercise of reasonable care should have been discovered; provided that such action shall be commenced within five (5) years from the date on which the alleged negligent act or omission is said to have occurred.
- (3) ***In respect to the action referred to in paragraph (f) of subsection (1) of this section, the cause of action shall be deemed to accrue within one (1) year from the date of the occurrence or from the date when the cause of action was, or reasonably should have been, discovered by the party injured.***
- (4) In respect to the action referred to in paragraph ~~(h)(g)~~ of subsection (1) of this section, the cause of action shall be deemed to accrue at the time of payment. This limitation shall apply to all payments made on all demands, whether evidenced by writing or existing only in parol.
- ~~(5)(4)~~ In respect to the action referred to in paragraph ~~(i)(h)~~ of subsection (1) of this section, the cause of action shall be deemed to accrue at the time the property is found by its owner.
- ~~(6)(5)~~ In respect to the action referred to in paragraph ~~(j)(i)~~ of subsection (1) of this section, the cause of action shall be deemed to accrue at the time of discovery of the liability.

**Approved April 4, 2000**

## CHAPTER 310

(SB 339)

AN ACT relating to hospitals and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

*As used in this section and Sections 2 and 3 of this Act, unless the context otherwise requires:*

- (1) ***"Acute care hospital" means an acute care hospital, critical access hospital, or comprehensive physical rehabilitation hospital licensed under KRS Chapter 216B;***
- (2) ***"Private psychiatric hospital" means a psychiatric hospital licensed under KRS Chapter 216B that is not a state mental hospital;***

- (3) *"State mental hospital" means a psychiatric hospital licensed under KRS Chapter 216B that is owned and operated by the Commonwealth; and*
- (4) *"University hospital" means a state university teaching hospital, owned and operated by either the University of Kentucky School of Medicine or the University of Louisville School of Medicine.*

Section 2. KRS 205.640 is amended to read as follows:

- ~~(1) For purposes of this section, "hospital" includes all hospitals licensed in this state to provide acute care, psychiatric care, and rehabilitative services.~~

- ~~(2)~~ The commissioner of Medicaid services shall adopt a disproportionate share program consistent with the requirements of Title XIX of the Social Security Act which shall include to the extent possible, but not limited to, the provisions of this section.

- ~~(2)~~~~(3)~~ The "Medical Assistance Revolving Trust Fund" (MART) shall be established in the State Treasury and all provider tax revenues collected pursuant to KRS 142.301 to 142.359 shall be deposited in the State Treasury **and transferred on a quarterly basis to the Department for Medicaid Services for use as specified in this section**~~to the credit of the fund~~. All investment earnings of the fund shall be credited to the fund. Provider tax revenues collected in accordance with KRS 142.301 to 142.359 shall be used to fund the provisions of KRS 216.2920 to 216.2929 and to supplement the medical assistance-related general fund appropriations for fiscal year 1994 and subsequent fiscal years. Notwithstanding the provisions of KRS 48.500 and 48.600, the MART fund shall be exempt from any state budget reduction acts.

- (3) (a) ***Beginning in state fiscal year 2000-2001 and continuing annually thereafter,***~~(4) The "Medical Assistance Indigent Trust Fund" (MAIT) shall be established in the State Treasury for the purpose of receiving any funds transferred from the MART fund or from federal funds for the operation of the disproportionate share program established by the commissioner of Medicaid services in accordance with the provisions of subsection (2) of this section. All investment earnings of the fund shall be credited to the fund. Notwithstanding the provisions of KRS 48.500 and 48.600, the MAIT fund shall be exempt from any state budget reduction acts.~~

- ~~(5) An amount, necessary to result in a total fund of ninety-three million dollars (\$93,000,000) for fiscal year 1998-99, and ninety-four million dollars (\$94,000,000) for fiscal year 1999-2000 including provider tax revenues and state and federal matching funds, to the extent possible without exceeding Kentucky's federal disproportionate share hospital cap, shall be used to fund~~~~transferred from the MART fund or from federal funds to the MAIT fund for the purpose of funding~~***the disproportionate share program established by the commissioner of Medicaid services. Disproportionate share funds shall be divided into three (3) pools for distribution as follows:***

- 1. Forty-three and ninety-two hundredths percent (43.92%) of the total disproportionate share funds shall be allocated to acute care hospitals;***
- 2. Thirty-seven percent (37%) of the total disproportionate share funds shall be allocated to university hospitals; and***
- 3. Nineteen and eight hundredths percent (19.08%) of the total disproportionate share funds shall be allocated to private psychiatric hospitals and state mental hospitals, with the allocation to each respective group of hospitals established by the biennial budget.***

***If, in any year, one (1) or both university hospitals fail to provide state matching funds necessary to secure federal financial participation for the funds allocated to university hospitals under this subsection, the portion of the funding allocation applicable to the hospital or hospitals that fail to provide state matching funds shall be made available to acute care hospitals.***

- ~~(b)~~~~(a)~~ The ~~MART~~~~MAIT~~ fund shall be used to compensate ***acute care hospitals, private psychiatric hospitals, and university*** hospitals qualifying for the disproportionate share program for ***uncompensated*** service provided by the hospitals to ~~Medicaid recipients beyond the covered days and~~ individuals and families with total annual incomes and resources up to one hundred~~(fifty)~~ percent ***(100%)***~~(150%)~~ of the federal poverty level, as determined by the hospital pursuant to administrative regulations promulgated by the Cabinet for Health Services in accordance with this section.

- ~~(c)~~~~(b)~~ An individual hospital shall receive distributions~~from the MAIT fund~~ for indigent care provided by that hospital ***that***~~if the care~~ meets the guidelines established in ***paragraph***~~paragraphs~~

(a) ~~and (b)~~ of this subsection ~~and is documented to the Department for Medicaid Services, as reimbursed at the hospital's Medicaid rate; provided, however, that the Medicaid rate shall not exceed the Medicare upper limit.~~

(d) ~~(e)~~ Distributions *to acute care and private psychiatric hospitals shall be made as follows:*

1. *The department shall calculate an indigent care factor for each hospital annually. The indigent care factor shall be determined by calculating the percentage of each hospital's annual indigent care costs toward the sum of the total annual indigent care costs for all hospitals within each respective pool. For purposes of this paragraph, "indigent care costs" means the hospital's inpatient and outpatient care as reported to the department multiplied by the hospital's Medicaid rate, or at a rate determined by the department in administrative regulation that, when multiplied by the hospital's reported indigent care, is equivalent to the amount that would be payable by the department under the fee-for-service Medicaid program for the hospital's total reported indigent care.*
2. *Each hospital's annual distribution shall be calculated by multiplying the hospital's indigent care factor by the total fund allocated to all hospitals within the respective pool under paragraph (a) of this subsection.* ~~[to hospitals from the MAIT fund shall be made on a quarterly basis. One fourth (1/4) of each share established pursuant to paragraphs (a) and (b) of this subsection shall be the maximum amount available for distribution at the close of each quarter. The amount of distributions to each hospital shall be determined as follows:]~~
  - a. ~~[1.] Hospitals shall report *uncompensated* care provided to *qualified* Medicaid recipients beyond the covered days and to individuals and families with total annual incomes and resources up to one hundred ~~[fifty]~~ percent (100%) ~~[(150%)]~~ of the federal poverty level, including care rendered to indigent persons age twenty-two (22) to sixty-four (64) in a psychiatric hospital to the Cabinet for Health Services on a quarterly basis. *However, all data for care provided during the state fiscal year shall be submitted no later than August 15 of each year.* ~~[The first report shall be due on or before October 20, 1994, and shall document care provided for the quarter beginning July 1, and ending September 30. Subsequent reports shall be due on or before January 20, April 20, July 20, and October 20, of each year thereafter.]~~~~
  - b. *The department shall use indigent care data for services delivered from October 1, 1998, through September 30, 1999, as reported by hospitals to calculate each hospital's indigent care factor for state fiscal year 2000-2001. For state fiscal year 2001-2002 and each year thereafter, the department shall use data reported by the hospitals for indigent care services rendered for the twelve (12) month period ending June 30 of each year as reported by the hospital to the department by August 15 in calculating each hospital's indigent care factor. The hospital shall, upon request by the Cabinet for Health Services, submit any supporting documentation to verify the indigent care data submitted for the calculation of an indigent care factor and annual payment* ~~[2. Within sixty (60) days of the due date of the reports established in subparagraph 1. of this paragraph, the Cabinet for Health Services, Department for Medicaid Services shall review all reports filed and shall determine the maximum compensation authorized for each hospital filing reports, with payment for documented qualifying services provided at the hospital's Medicaid rate as established annually by the Department of Medicaid Services].~~
  - c. *By September 1 of each year, the department shall calculate a preliminary indigent care factor and preliminary annual payment amount for each hospital, and shall notify each hospital of their calculation. The notice shall contain a listing of each hospital's indigent care costs, their indigent care factor, and the estimated annual payment amount. Hospitals shall notify the department by September 15 of any adjustments in the department's preliminary calculations. The department shall make adjustments identified by hospitals and shall make a final determination of each hospital's indigent care factor and annual payment amount by October 1* ~~[3. Within ninety (90) days of the due date of the reports established in subparagraph 1. of this paragraph, the Cabinet for Health Services, Department for Medicaid Services shall remit to each hospital the amount determined to be due pursuant to the provisions of subparagraph 2. of this paragraph. If~~

~~the total amount due all hospitals entitled to compensation in any quarter exceeds the funds available in any quarter, the distribution received by each hospital shall be proportionately reduced. If the total amount due all hospitals entitled to compensation in any quarter is less than the funds available for distribution in that quarter, the excess funds may be carried forward to satisfy future claims}.~~

- (e) *For fiscal year 2000-2001 and continuing annually thereafter, the department shall issue to each hospital one (1) lump sum payment on October 15, or later as soon as federal financial participation becomes available, for the disproportionate share funds available during the corresponding federal fiscal year*~~{(d) — For purposes of this section, the Medicaid rate for hospitals with less than two hundred (200) licensed acute care beds means the cost of providing indigent care services as calculated by the department by applying each hospital's cost to charge ratio to allowable indigent charges. By July 1 of each year, the Department for Medicaid Services shall calculate the cost to charge ratio for each hospital by dividing the hospital's total allowable operating expenses by the hospital's total gross patient charges}.~~
- (4) *Notwithstanding any other provision to contrary, total annual disproportionate share payments made to state mental hospitals, university hospitals, acute care hospitals, and private psychiatric hospitals in each state fiscal year shall be equal to the maximum amount of disproportionate share payments established under the Federal Balanced Budget Act of 1997 and any amendments thereto. Disproportionate share payments shall be subject to the availability of adequate state matching funds and shall not exceed total uncompensated costs.*
- (5)~~{(6)}~~ *Hospitals receiving reimbursement*~~{from the MAIT fund}~~ *shall not bill patients for services submitted for reimbursement under this section and Section 3 of this Act. Services provided to individuals who are eligible for medical assistance or the Kentucky Children's Health Insurance Program do not qualify for reimbursement under this section and Section 3 of this Act. Hospitals shall make a reasonable determination that an individual does not qualify for these programs and shall request the individual to apply, if appropriate, for medical assistance or Kentucky Children's Health Insurance on forms supplied by and in accordance with procedures established by the Department for Medicaid Services. The hospital shall document any refusal to apply and shall inform the patient that the refusal may result in the patient being billed for any services performed. The hospital shall not be eligible for reimbursement if the patient was eligible for medical assistance or Kentucky Children's Health Insurance and did not apply. Hospitals receiving reimbursement under this section and Section 3 of this Act shall not bill patients for services provided to patients not eligible for medical assistance with family incomes up to one hundred~~{fifty}~~ *percent (100%)*~~{(150%)}~~ *of the federal poverty level.**
- (6)~~{(7)}~~ *The secretary of the Cabinet for Health Services shall promulgate administrative regulations necessary, pursuant to KRS Chapter 13A, for the administration and implementation of this section.*
- (7)~~{(8)}~~ *All hospitals receiving reimbursement under this section and Section 3 of this Act*~~{from the MAIT fund}~~ *shall:*
- (a) *Display prominently a sign which reads as follows: "This hospital will accept patients regardless of race, creed, ethnic background, or ability to pay."; and*
  - (b) *Accept benefits of state health insurance coverage described in KRS 18A.229 and KRS 42.800 to 42.825*~~{;}~~
  - ~~(c) — Provide to Medicaid recipients any additional days of coverage per hospital stay, based on medical necessity determined in the usual manner, without responsibility for payment for such days of care accruing to the patient or the Medicaid program; and~~
  - ~~(d) — Collect and report to the department data on the number of indigent patient days provided pursuant to this section, including additional days of coverage for Medicaid recipients. The cabinet shall annually, no later than July 1, compile a report for the Governor and the Legislative Research Commission on the implementation of this section}.~~

SECTION 3. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

- (1) *Disproportionate share funds paid to acute care hospitals and private psychiatric hospitals for state fiscal year 1999-2000 shall not exceed one hundred thirty-one million fourteen thousand nine hundred fifty dollars and thirty-one cents (\$131,014,950.31). Within forty-five (45) days following the effective date of*

*this Act, acute care hospitals shall be paid the remaining balance of disproportionate share funds available under the federal fiscal year 2000 disproportionate share cap. Payments shall be calculated as follows:*

- (a) *Forty-six percent (46%) of the available disproportionate share funds shall be allocated to acute care hospitals having one hundred (100) or more inpatient days attributable to Medicaid patients who were hospitalized over fourteen (14) days during the period October 1, 1998, through September 30, 1999, as reported to the department. Each hospital shall receive a lump sum payment to be distributed as follows:*
  1. *The department shall calculate the percentage that each acute care hospital's indigent care costs constitutes of the sum of total indigent care costs for all acute care hospitals in this category. For purposes of this subsection, "indigent care costs" means the hospital's inpatient and outpatient care delivered from October 1, 1998, through September 30, 1999, to persons not eligible for medical assistance with family incomes up to one hundred fifty percent (150%) of the federal poverty level, as reported to the department, multiplied by the hospital's inpatient Medicaid rate.*
  2. *Each acute care hospital's distribution shall be calculated by multiplying the acute care hospital's indigent care percentage by the total disproportionate share funds allocated to all hospitals within this group less the minimum payment adjustment required under paragraph (c) of this subsection.*
- (b) *Fifty-four percent (54%) of the available disproportionate share funds shall be allocated to acute care hospitals having less than one hundred (100) inpatient days attributable to Medicaid patients who were hospitalized over fourteen (14) days during the period October 1, 1998, through September 30, 1999, as reported to the department.*
  1. *The department shall calculate the percentage that each acute care hospital's indigent care costs constitutes of the sum of total indigent care costs for all acute care hospitals in this category. For purposes of this subsection, "indigent care costs" means a hospital's inpatient and outpatient care delivered from October 1, 1998, through September 30, 1999, to persons not eligible for medical assistance with family incomes up to one hundred fifty percent (150%) of the federal poverty level, as reported to the department, multiplied by the hospital's inpatient Medicaid rate.*
  2. *Each hospital's distribution shall be calculated by multiplying the hospital's indigent care percentage by the total disproportionate share funds allocated to all hospitals within this group less the minimum payment adjustment required under paragraph (c) of this subsection.*
- (c) *The payment made to each hospital under paragraphs (a) and (b) of this subsection shall be at least equal to one hundred fifty thousand dollars (\$150,000) but no greater than the hospital's actual indigent care costs reported to the department for services rendered to persons who met the program requirements for eligibility from July, 1999, through March, 2000, that were not reimbursed under the disproportionate share program.*
- (2) *If federal law governing disproportionate share hospital payments changes, the Department for Medicaid Services shall have authority to promulgate administrative regulations in accordance with KRS Chapter 13A to comply with the changes.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any other provision of law to the contrary, if the Federal Health Care Financing Administration issues a final regulation establishing an outpatient Medicare prospective payment system for hospitals that requires that an outpatient health facility operated by the hospital be under the same license as the hospital to achieve provider-based status, the cabinet shall, at the hospital's request, issue a new license to a hospital that owns and operates an existing or newly established outpatient health facility that lists each location operated by the hospital.*
- (2) *Any outpatient health facility listed on the hospital's license under subsection (1) of this section shall:*
  - (a) *Comply with the applicable licensure regulations that pertain to the type of health services provided; and*
  - (b) *Prior to the establishment of a health facility, the operation of a health facility, or the provision of health services or the addition of a health service at a location other than the hospital's main*

*campus, obtain a certificate of need if a certificate of need would otherwise be required in the absence of subsection (1) of this section. Licensure of the outpatient health facility or service under the same license as the hospital pursuant to subsection (1) of this section shall not eliminate the requirement for a certificate of need.*

Section 5. Whereas the burden of uncompensated and undercompensated care is increasing on a daily basis upon hospitals in the Commonwealth and the financial viability of hospitals is at stake, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved April 4, 2000**

## **CHAPTER 311**

**(HB 44)**

AN ACT relating to postsecondary education.

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

Section 1. KRS 164.740 is amended to read as follows:

As used in KRS 164.740 to 164.785, the terms listed below shall have the following meanings:

- (1) "Authority" means the Kentucky Higher Education Assistance Authority.
- (2) "Board" means the board of directors of the Kentucky Higher Education Assistance Authority.
- (3) "Business school" means any business school which is accredited by the Association of Independent Colleges and Schools, the commission for business schools, or any successor, and which provides a program of study leading to the granting of a postsecondary degree or diploma.
- (4) "College" means any postsecondary educational institution of higher learning which is accredited by the Southern Association of Colleges and Schools, the commission on colleges, or any successor, **or other equivalent regional accrediting association**, and which provides a program of study leading to the granting of a postsecondary degree or diploma.
- (5) "Eligible institution" means any educational institution or class of institutions designated pursuant to the federal act or this chapter as eligible to participate in authority-administered programs, provided that no right of participation shall be deemed vested pursuant to this subsection in any institution, including, but not by way of limitation, any college, school of nursing, vocational school, or business school.
- (6) "Eligible lender" means any entity described as eligible pursuant to the federal act to make or originate insured student loans, provided that no right of participation shall be deemed vested hereby in any lender.
- (7) "Eligible student" means any student enrolled or accepted for enrollment at a participating institution, meeting the criteria established by the federal act and this chapter for the various authority administered programs.
- (8) "Endorser" means a person who signs a student loan promissory note as an accommodation party, in the manner of KRS 355.3-419, and is secondarily liable for payment on such note.
- (9) "Federal Act" means the Higher Education Act of 1965, Public Law 89-329, as amended.
- (10) "Grant" means a gift of money, tuition discount, waiver of tuition and fees, or other monetary award that requires neither employment nor repayment, except under conditions prescribed by the board, and is based on demonstrated financial need and such other terms and conditions as the board may prescribe.
- (11) "Honorary scholarship" means a certificate of merit or achievement or other appropriate document which may be issued by the board to students in recognition of superior academic ability or achievement or a special talent.
- (12) "Insured student loan" means a loan to an eligible borrower, who is qualified under the federal act, on which the payment of principal and interest is insured as evidenced by a loan guarantee issued by the authority and reinsured by the secretary under the federal act.
- (13) "Loan" means an advance of money, to be used exclusively for payment of educational expenses, evidenced by a promissory note or similar instrument requiring repayment under specified conditions.



- (14) "Loan guarantee" means the certificate, document, or endorsement issued by the authority as evidence of insurance of a loan as to both principal and interest and of reinsurance by the secretary under the federal act.
- (15) "Participating institution" means any eligible institution, to the extent that it offers an eligible program of study, having a contract in force with the authority, if required by the authority, on such terms as the authority may deem necessary or appropriate to the administration of its programs.
- (16) "Participating lender" means any eligible lender, including the authority and the Kentucky Higher Education Loan Corporation, which has in force a contract with the authority providing for loan guarantee to be issued by the authority under the federal act and this chapter.
- (17) "Penal institution" means any penitentiary, detention facility, adult correctional facility, jail, or other similar institution operated by the state, local, or federal government or by private business.
- (18) "Recognition award" means an advance of money to or on behalf of a student in recognition of superior academic ability, achievement or special talent.
- (19) "Scholarship" means a gift of money to provide an incentive for fulfillment of a particular public purpose which may be based on financial need and superior academic ability or achievement or a special talent and such other terms and conditions as the board may prescribe.
- (20) "School of nursing" means any training program in the field of nursing, including one regarding nurse aides, which is accredited by the Kentucky Board of Nursing Education and Nurse Registration, or any successor, and which provides a program of study leading to the granting of a postsecondary degree or diploma.
- (21) "Secretary" means the United States Secretary of Education.
- (22) "Vocational school" means any public vocational school, technical institution, or technology center which is managed and controlled by the board of regents for the Kentucky Community and Technical System and which provides a course of study leading to the granting of a postsecondary certificate or diploma, or a vocational technical school accredited by the national association of trade and technical schools, or any successor, which provides a program of study leading to the granting of a postsecondary degree, diploma, or certificate.
- (23) "Work study" means an award of money disbursed by the board at specified intervals to students, or as reimbursement to employers of students, who provide needed services for a specified number of hours in a capacity approved by the board.

**Approved April 4, 2000**

## CHAPTER 312

**(HB 474)**

AN ACT relating to professional counselors.

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

Section 1. KRS 335.500 is amended to read as follows:

As used in KRS 335.500 to 335.599, unless the context requires otherwise:

- (1) "Board" means the Kentucky Board of Certification for Professional Counselors;
- (2) "Certified professional counselor" means a person who has completed a master's or doctoral degree in counseling from an accredited educational institution, and is certified by the board;
- (3) ***"Certified professional counselor associate" means an individual who has a minimum of four hundred (400) hours of experience under the supervision of an approved supervisor and has met the requirements for certification under subsection (1)(a) to (d) of Section 2 of this Act;***
- (4) "Certificate holder" means a professional counselor who is certified under the provisions of KRS 335.500 to 335.599;
- ~~(5)~~~~(4)~~ "Approved supervisor" means a person who has been approved by the board to supervise and is qualified under Kentucky law as a licensed psychiatrist, licensed or certified psychologist, licensed clinical social worker, certified professional counselor, nurse with a master's degree and psychiatric certification, certified marriage and family therapist, or certified professional art therapist. The board may approve as

supervisor a person from another state with a substantially equivalent certificate or license who is in good standing with the certifying or licensing state and meets, at a minimum, the requirements set out in KRS 335.525; and

- (6)(5) "Relative" means a person's father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, daughter-in-law, grandparent, grandchild, stepparent, or stepchild.

Section 2. KRS 335.525 is amended to read as follows:

- (1) The board shall issue a "professional counselor" certificate to an applicant who:
  - (a) Has paid the application fee and the appropriate examination fee to the board;
  - (b) Is of good moral character;
  - (c) Has received a master's or doctoral degree in counseling from a regionally-accredited institution;
  - (d) Has completed a minimum of sixty (60) graduate semester hours in the following:
    1. The helping relationship, including counseling theory and practice;
    2. Human growth and development;
    3. Lifestyle and career development;
    4. Group dynamics, process, counseling, and consulting;
    5. Assessment, appraisal, and testing of individuals;
    6. Social and cultural foundations, including multicultural issues;
    7. Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;
    8. Research and evaluation; and
    9. Professional orientation and ethics;
  - (e) Has completed a minimum of three thousand (3,000) hours of experience in the practice of counseling, two thousand (2,000) hours of which must have been obtained since obtaining the master's degree and must be under approved supervision. ~~The experience shall have been performed under the general supervision of an approved supervisor~~ and shall include, but not be limited to, a minimum of one thousand two hundred (1,200) hours of direct counseling with individuals, couples, families, or groups and a minimum of one hundred (100) hours of individual, face-to-face weekly clinical supervision with an approved supervisor. Up to one thousand (1,000) hours of the supervised experience may be obtained from a supervised practicum or internship. **After January 1, 2001, the board shall issue certificates only to applicants who have obtained all three thousand (3000) hours of experience since obtaining the master's degree. All** ~~After January 1, 1998, all previously uncertified~~ applicants shall complete an organized practicum or internship consisting of at least four hundred (400) hours; and
  - (f) Has achieved passing scores on all portions of the examinations required by the board.
- (2) ***The board may issue a professional counselor associate certificate to an applicant as provided under Section 1 of this Act. An associate may apply for professional counselor certification upon completion of the hours of experience required under paragraph (e) of subsection (1) of this section.***
- (3) The application fee for certification and the examination fee shall be established pursuant to administrative regulation promulgated by the board.

**Approved April 4, 2000**

## **CHAPTER 313**

**(HB 618)**

AN ACT relating to physical therapy practitioners.

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

## SECTION 1. A NEW SECTION OF KRS CHAPTER 327 IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall establish an impaired physical therapy practitioners committee to promote the early identification, intervention, treatment, and rehabilitation of physical therapists and physical therapists' assistants who may be impaired by reason of illness or of alcohol or drug abuse, or as a result of any physical or mental condition.*
- (2) *The board may enter into a contractual agreement with a nonprofit corporation, physical therapy professional organization, or similar organization for the purpose of creating, supporting, and maintaining an impaired physical therapy practitioners committee.*
- (3) *The board may promulgate administrative regulations in accordance with KRS Chapter 13A to effectuate and implement a committee formed by the provisions of this section.*
- (4) *Beginning January 1, 2001, the board shall collect an assessment fee not to exceed twenty dollars (\$20) per licensee or certificate holder, payable to the board, to be added to each licensure and certification renewal application fee. Proceeds from the assessment shall be expended on the operation of an impaired physical therapy practitioner committee formed by the provisions of this section. The fee shall be set by the promulgation of administrative regulations.*
- (5) *Members of an impaired physical therapy practitioners committee, any administrator, staff member, consultant, agent, volunteer, or employee of the committee acting within the scope of their duties and without actual malice, and all other persons who furnish information to the committee in good faith and without actual malice shall not be liable of any claim or damages as a result of any statement, decision, opinion, investigation, or action taken by the committee or by an individual member of the committee.*
- (6) *All information, interviews, reports, statements, memoranda, or other documents furnished to or produced by the impaired physical therapy practitioners committee, all communication to or from the committee, and all proceedings, findings, and conclusions of the committee including those relating to intervention, treatment, or rehabilitation, which in any way pertain or refer to a physical therapist or physical therapist's assistant who is or may be impaired, shall be privileged and confidential.*
- (7) *All records and proceedings of the committee that pertain or refer to a licensee or a certificate holder who may be, or actually is, impaired shall be privileged and confidential and shall be used by the committee and its members only in the exercise of the proper function of the committee and shall not be considered public records and shall not be subject to court subpoena and subject to discovery or introduction as evidence in any civil, criminal, or administrative proceedings except as described in subsection (8) of this section.*
- (8) *The committee may disclose information relative to an impaired physical therapist or physical therapist's assistant only when:*
  - (a) *It is essential to disclose the information to persons or organizations needing the information in order to address the intervention, treatment, or rehabilitation needs of the impaired practitioner;*
  - (b) *Its release is authorized in writing by the impaired physical therapist or physical therapist's assistant; or*
  - (c) *The information is subject to court order.*
- (9) *The impaired physical therapy practitioners committee shall make an annual report to the board.*

## SECTION 2. A NEW SECTION OF KRS CHAPTER 327 IS CREATED TO READ AS FOLLOWS:

*Any physical therapist, physical therapist's assistant, or employer of physical therapy practitioners having knowledge of facts by actual or direct knowledge shall report to the board of physical therapy a physical therapist or physical therapist's assistant who:*

- (1) *Has been convicted of a felony that involved acts that bear directly on the qualifications or ability of the applicant, licensee, or certificate holder to practice physical therapy;*
- (2) *Is suspected of fraud or deceit in procuring or attempting to procure a license to practice physical therapy or of negligently performing actions that justify action against a physical therapist or physical therapist's assistant's license as identified in subsection (2) of Section 7 of this Act;*
- (3) *Has had a license to practice as a physical therapist or a certificate as a physical therapist's assistant denied, limited, suspended, probated, or revoked in another jurisdiction on grounds sufficient to cause a license or certificate to be denied, limited, suspended, probated, or revoked in this Commonwealth; or*

- (4) *Is practicing physical therapy without a current active license, certificate, or valid temporary permit issued by the board.*

Section 3. KRS 327.030 is amended to read as follows:

There is hereby established a State Board of Physical Therapy which shall consist of *seven (7)*~~five (5)~~ members who shall be appointed by the Governor.

- (1) *One (1) member shall be a citizen at large who is not affiliated with and does not have more than five percent (5%) financial interest in any one (1) health care profession or business.*
- (2) *All other*~~[At least three (3) of the]~~ members shall be appointed *and vacancies shall be filled* from a list of five (5) persons *per position* submitted by the Kentucky *Physical Therapy Association*.~~[chapter of the American Physical Therapy Association.] All [of whom]~~ shall be residents of Kentucky and shall have engaged in the *unrestricted* practice of physical therapy within this state for at least two (2) years *without disciplinary action*~~[One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated].~~
- (3) *All appointments to the board after the effective date of this Act shall be for a term of four (4)*~~[Members shall be appointed for a term of three (3)]~~ years and until their successors are appointed and qualify. *No member shall serve for more than two (2) successive terms, or for more than ten (10) consecutive years. The Governor may remove any member of the board for misconduct, incompetence, or neglect of duty*~~[Vacancies of physical therapist members shall be filled by the Governor in like manner from a list of five (5) submitted by the Kentucky chapter of the American Physical Therapy Association].~~
- (4) The board shall annually elect a chairman,~~[and]~~ a secretary, *and a chairman-elect*~~[A member may be removed from the board only for cause. Failure to attend at least half of the board meetings in a fiscal year shall constitute cause].~~
- (5) *There shall be no liability on the part of, and no action for damages against, any current or former board member, representative, agent, or employee of the board, when the person is functioning within the scope of board duties, acting without malice and with the reasonable belief that the actions taken by him or her are warranted by law.*
- (6) *Each board member shall receive, in addition to travel, lodging, and other actual and necessary expenses, a per diem not to exceed one hundred twenty dollars (\$120) for each day the member is actually engaged in the discharge of official duties approved by the board. The board shall, by promulgation of administrative regulations, set the amount of the per diem.*

Section 4. KRS 327.040 is amended to read as follows:

- (1) It shall be the duty of the State Board of Physical Therapy to receive applications from persons desiring to become physical therapists and to determine whether said applicants meet the qualifications and standards required by this chapter of all physical therapists. The board shall also be charged with enforcement of the provisions of this chapter.
- (2) The board is an agency of state government with the power to institute criminal proceedings in the name of the Commonwealth against violators of this chapter, and to institute civil proceedings to enjoin any violation of this chapter. The board shall investigate every alleged violation of this chapter coming to its notice and shall take action as it may deem appropriate. It shall be the duty of the Attorney General, the Commonwealth's attorneys, and the county attorneys to assist the board in prosecuting all violations of this chapter.
- (3) The board shall meet at least once each quarter at such place in this state as may be selected by the board. *Four (4)*~~[Three (3)]~~ members of the board shall constitute a quorum for the transaction of business. All meetings shall be held at the call of the chairman or at a call of a quorum of members upon not less than ten (10) days' written notice, unless notice shall be waived. The presence of any member at any meeting of the board shall constitute a waiver of notice thereof by the member.
- (4) The board may conduct investigations and schedule and conduct administrative hearings in accordance with KRS Chapter 13B, to enforce the provisions of this chapter or administrative regulations promulgated pursuant to this chapter. *The board shall have the authority to administer oaths, receive evidence, interview persons, issue subpoenas, and require the production of books, papers, documents, or other evidence*~~[Upon majority vote by the board, the board or any member thereof may issue subpoenas to compel the attendance of witnesses and the production of documents in connection with any investigations conducted by the board].~~ In case of

disobedience to a subpoena, the board may invoke the aid of the Franklin Circuit Court. ***Any order or subpoena of the court requiring the attendance or testimony of witnesses or the production of documentary evidence may be enforced and shall be valid anywhere in the Commonwealth.***

- (5) The board shall keep a minute book containing a record of all meetings of the board.
- (6) The board shall maintain a register of all persons licensed or certified under this chapter. This register shall show the name of every licensee or certificate holder in this state, his current business and residence address and telephone numbers, and the date and number of his license or certificate. ***A licensee or certificate holder shall notify*** the board~~[shall be notified by a licensee or certificate holder]~~ of a change of name, address, or telephone number, within thirty (30) days of the change.
- (7) The board's records shall be updated annually.
- (8) The board shall publish annually and make available, a current directory of all ***licensed physical therapists and certified physical therapists' assistants***~~[licensees and certificate holders]~~.
- (9) The board shall adopt a seal which shall be affixed to every license and certificate granted by it.
- (10) The board may promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of this chapter pursuant to the provisions of KRS Chapter 13A.
- (11) The board shall promulgate by administrative regulation a code of ethical standards and standards of practice.
- (12) The board shall have the right to regulate physical therapists' assistants and may promulgate reasonable administrative regulations regarding certification, limitations of activities, supervision, and educational qualifications for physical therapists' assistants. The board may establish reasonable fees for the certification, renewal, and endorsement of physical therapists' assistants. The fees shall not exceed corresponding fees for physical therapists.
- (13) ***The board shall promulgate administrative regulations governing the physical and mental examination of physical therapists, physical therapists' assistants, or applicants, who may be impaired by reason of a mental, physical, or other condition that impedes their ability to practice competently. For purposes of enforcing this section, the board shall have the power to order an immediate temporary suspension in accordance with KRS 13B.125 if there is a reasonable cause to believe that a physical therapist, physical therapist's assistant, or applicant may be impaired by reason of a mental, physical, or other condition that impedes his or her ability to practice competently.***

Section 5. KRS 327.050 is amended to read as follows:

- (1) Before applying for licensure by the board as a physical therapist, a person shall have successfully completed an accredited program in physical therapy~~[and be a graduate of an accredited school of physical therapy]~~ approved by the board and shall have fulfilled the requirements of KRS 214.615(1). No school shall be approved by the board unless it has been approved for the educational preparation of physical therapists by the recognized national accrediting agency for physical therapy educational programs.
- (2) Any person who possesses the qualifications required by this chapter and who desires to apply for licensure as a physical therapist in Kentucky shall make written application to the board, on forms to be provided by the board. The application shall be accompanied by a nonrefundable application fee in an amount to be determined by the board, but not to exceed two hundred fifty dollars (\$250).~~[Upon acceptance by the board of the application, the applicant shall pay an examination fee in an amount sufficient to cover the actual cost of the examination and shall successfully complete the board approved examination.]~~
- (3) If it appears from the application that the applicant possesses the qualifications required by this chapter and has not yet successfully completed the board-approved examination, the applicant shall be ***allowed to sit for*** ~~the[admitted to the next scheduled]~~ examination and tested in the subjects the board may determine to be necessary.
- (4) Examinations shall be held within the state at least once a year at the time and place as the board shall determine.
- (5) An applicant who is admitted to the examination or an applicant who has submitted satisfactory evidence that he has been accepted as a candidate for licensure by examination in a state which offers an examination approved by the board may be granted a temporary permit which shall be valid until his examination is graded and he is notified by the board of his score. ***The board may summarily withdraw a temporary permit upon***

*determination that the person has made any false statement to the board on the application, or the person fails to pass an examination approved by the board.*

- (6) An applicant who receives a passing score as determined by the board and who meets the other qualifications required by this chapter shall be licensed as a physical therapist.
- (7) An applicant who fails to receive a passing score on his examination shall not be licensed; but the board may, by administrative regulation, permit applicants to take the examination more than once.
- (8) All licenses **and certificates** shall be renewed biennially, upon payment on or before March 31 of each uneven numbered year of a renewal fee **in an amount** to be ~~promulgated~~~~[fixed]~~ by the board **by administrative regulations**~~[in an amount not to exceed one hundred dollars (\$100)]~~. Any licensed **or certified** person seeking renewal shall **retain for three (3) years**~~[include]~~ proof of the completion of the course described in KRS 214.610(1) on the form provided by the cabinet.
- (9) Licenses **and certificates** which are not renewed by March 31 of each uneven numbered year shall lapse.
- (10) This chapter shall not be construed to affect or prevent:
  - (a) A student of physical therapy from engaging in clinical practice under the supervision of a licensed physical therapist, as part of the student's educational program;
  - (b) A physical therapist who is licensed to practice in another state or country from conducting or participating in a clinical residency under the supervision of a physical therapist licensed in Kentucky and for a period of not more than ninety (90) days;
  - (c) A physical therapist who is licensed to practice in another state or country from conducting or participating in the teaching of physical therapy in connection with an educational program and for a period of not more than ninety (90) days;~~[-or-]~~
  - (d) **A physical therapist licensed in another state or country from performing therapy on members of the out-of-state sports or entertainment group they accompany to Kentucky; or**
  - (e) The practice of chiropractic as defined in KRS 312.015(3).

Section 6. KRS 327.060 is amended to read as follows:

The board shall issue a license to:

- (1) An individual who holds a valid license from another state, who meets requirements specified in KRS 327.050 and who has no imposed or pending disciplinary actions.
- (2) An individual who has been **educated as a physical therapist outside the United States and who has**~~[trained in a foreign country, subject to the following requirements:]~~:
  - (a) **Completed the application process;**~~[Graduation from a physical therapy program.]~~
  - (b) **Provided satisfactory evidence to the board that his or her education is substantially equivalent to the requirements for physical therapists educated in United States accredited educational programs;**~~[Evaluation of the individual's educational credentials by a credentials evaluation service acceptable to the board.]~~
  - (c) **Provided written proof that the school of physical therapy education outside the United States is recognized by its own ministry of education;**~~[Approval by the board of the individual's educational credentials.]~~
  - (d) **Successfully completed**~~[Successful completion of]~~ the **examinations**~~[examination]~~ provided for in KRS 327.050;~~[-]~~
  - (e) **Passed the board approved English language proficiency examinations if English is not his or her native language;**~~[Demonstration of proficiency in the English language.]~~
  - (f) **Successfully completed, prior to licensure, a board-approved, supervised practice period of not less than three (3) months nor more than six (6) months, under the direct supervision of a physical therapist who holds an unrestricted Kentucky license**~~[Successful completion of one (1) year of board approved supervised practice under a physical therapist licensed under this chapter]~~. This requirement may be satisfied by **at least three (3) months**~~[one (1) year]~~ of supervised practice as a~~[-licensed]~~

physical therapist in a state with license requirements comparable to or more stringent than those of Kentucky.

- (g) *Fulfilled the requirements of KRS 214.615(1);*
- (h) *Provided proof of legal authorization to reside and seek employment in the United States or its territories;*
- (i) *Provided proof of authorization to practice as a physical therapist without limitations in the country where the professional education occurred;*
- (j) *Submitted to a prescreening process by an agency approved by the board; and*
- (k) *Submitted educational credentials to the board for evaluation by an agency approved by the board.*
- (3) *The board may approve an agency to prescreen applicants for initial licensure under this section.*
- (4) *The board may approve one or more services to provide an evaluation of the applicant's educational credentials for board approval for licensing under this section.*
- (5) *The board may waive the requirements of paragraphs (c), (j), and (k) of subsection (2) of this section if the applicant is a graduate of a professional physical therapy education program pre-approved by the board.*

Section 7. KRS 327.070 is amended to read as follows:

- (1) The board, after due notice and an opportunity for an administrative hearing conducted in accordance with KRS Chapter 13B may *take any one (1) or a combination of the following actions against any licensee, certificate holder, or applicant:*
  - (a) Refuse to license or certify any applicant;
  - (b) ~~[-and may -]~~ Refuse to renew the license or certificate of any person;
  - (c) ~~[-and may -]~~ Suspend or revoke or place on probation the license or certificate of any person;
  - (d) *Impose restrictions on the scope of practice of any person;*
  - (e) ~~[-and may -]~~ Issue an administrative reprimand to any *person*; ~~[-licensee or certificate holder -]~~
  - (f) *Issue a private admonishment to any person; and*
  - (g) *Impose fines for violations of this chapter not to exceed two thousand five hundred dollars (\$2,500).*
- (2) *The following acts by a licensee, certificate holder, or applicant may be considered cause for disciplinary action:*
  - (a) ~~[(1)]~~ *Indulgence* ~~[-Who indulges -]~~ in excessive use of alcoholic beverages or *abusive use of controlled substances* ~~[-who is addicted to the use of narcotic drugs -]~~;
  - (b) ~~[(2)]~~ *Engaging* ~~[-Who has engaged -]~~ in, *permitting, or attempting to engage in or permit* ~~[-or permitted -]~~ the performance of substandard patient care by himself or by persons working under his supervision due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the patient is established;
  - (c) ~~[(3)]~~ *Having* ~~[-Who has, in the judgment of the board, -]~~ engaged in *or attempted to engage in* a course of lewd or immoral conduct *with any person*; ~~[-in connection with the delivery of health care services to patients -]~~
    - 1. *While that person is a patient of a health care facility defined by KRS 216B.015(10) where the physical therapist or physical therapist's assistant provides physical therapy services; or*
    - 2. *While that person is a patient or client of the physical therapist or physical therapist's assistant;*
  - (d) *Having sexual contact, as defined by KRS 510.010(7), without the consent of both parties, with an employee or coworker of the licensee or certificate holder;*
  - (e) *Sexually harassing an employee or coworker of the licensee or certificate holder;*
  - (f) ~~[(4)]~~ *Conviction* ~~[-Who has been convicted -]~~ of a felony or misdemeanor in the courts of this state or any other state, territory, or country which affects his ability to continue to practice competently and safely

on the public. "Conviction," as used in this subsection, shall include a finding or verdict of guilt, an admission of guilt, or a plea of nolo contendere;

- (g)~~[(5)]~~ **Obtaining**~~[Who has obtained]~~ or **attempting**~~[attempted]~~ to obtain a license or certificate by fraud or material misrepresentation or **making**~~[who has made]~~ any other false statement to the board;
- (h)~~[(6)]~~ **Engaging**~~[Who engaged]~~ in fraud or material deception in the delivery of professional services, including reimbursement, or **advertising**~~[has advertised]~~ services in a false or misleading manner;
- (i)~~[(7)]~~ **Evidence**~~[Who is guilty, in the judgment of the board,]~~ of gross negligence or gross **incompetence**~~[incompetency]~~ in his practice of physical therapy;
- (j)~~[(8)]~~ **Documentation of being**~~[Who has been]~~ declared mentally disabled by a court of competent jurisdiction and~~[has]~~ not thereafter **having** had his rights restored;
- (k)~~[(9)]~~ **Failing**~~[Who has failed]~~ or **refusing**~~[refused]~~ to obey any lawful order or administrative regulation of the board;
- (l)~~[(10)]~~ **Promoting**~~[Who has promoted]~~ for personal gain an unnecessary device, treatment, procedure, or service, or **directing**~~[who has directed]~~ or **requiring**~~[required]~~ a patient to purchase a device, treatment, procedure, or service from a facility or business in which he has a financial interest; and
- (m)~~[(11)]~~ **Being impaired by reason of a mental, physical, or other condition that impedes his or her ability to practice competently**~~[Who has been adjudged unfit to practice due to a physical or mental disability. When physical or mental capacity is at issue in a board proceeding, the board may order the practitioner to submit to a reasonable physical or mental examination. Failure to comply shall be grounds for the summary denial of an application or the summary revocation of the practitioner's license or certificate to be executed in accordance with KRS 13B.125].~~

- (3) *A private admonishment shall not be subject to disclosure to the public under KRS 61.878(1)(l). A private admonishment shall not constitute disciplinary action but may be used by the board for statistical purposes or in subsequent disciplinary action against the same licensee, certificate holder, or applicant.*

Section 8. KRS 327.075 is amended to read as follows:

- (1) The board may reinstate within three (3) years a license or certificate which has lapsed, upon payment of the prescribed renewal fee and, in addition, the payment of a reinstatement fee **to be promulgated by the board by administrative regulations**~~[not to exceed twenty five dollars (\$25)]~~.
- (2) The board may reinstate a license or certificate which has been lapsed for more than three (3) years, upon showing that the applicant is able to practice with reasonable competency. In determining competency, the board may require the applicant to successfully complete all or any part of the required examination.
- (3) The board may reinstate a license which has been suspended or revoked under provisions of this chapter, if after a hearing conducted in accordance with KRS Chapter 13B, the board determines the applicant is able to practice the profession with reasonable competency and is able to maintain the ethical code and standards of practice promulgated by administrative regulation. As a condition of reinstatement, the board may impose reasonable restrictions under which the licensee or certificate holder shall practice.
- (4) Any person aggrieved by a final order of the board denying, suspending, or revoking his license or certificate may appeal to the Franklin Circuit Court in accordance with KRS Chapter 13B.

Section 9. KRS 327.080 is amended to read as follows:

- (1) All fees **received**~~[collected]~~ by the board **and collected under this chapter or the administrative regulations adopted in accordance with this chapter** shall be **deposited with**~~[paid into]~~ the State **Treasurer**~~[Treasury]~~ and credited to **the revolving fund of the board, a trust and agency fund, to be used by the board in defraying the costs and expenses of the board in the administration of the provisions of this chapter. No part of this fund shall revert to the general fund of the Commonwealth**~~[an account for the payment of all lawful expenses of the board]~~.
- (2)~~Each member of the board shall be entitled to a per diem to be established by the board but not to exceed sixty dollars (\$60) and his reasonable expenses for attending each meeting of the board or for representing the board in an official, board approved capacity.~~



- ~~(3)~~ The board may employ ***an executive director and other*** ~~[such]~~ personnel and ***may*** purchase such materials and supplies as it may deem necessary for the proper discharge of its duties ~~[, all of which shall be paid for out of its account on vouchers certified by the chairman or, when authorized in writing by the chairman, on vouchers certified by the executive secretary].~~

Approved April 4, 2000

## CHAPTER 314

(HB 765)

AN ACT relating to insurance.

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

SECTION 1. A NEW SECTION OF SUBTITLE 13 OF KRS 304 IS CREATED TO READ AS FOLLOWS:

- (1) ***Any policy fee as related to underwriting expenses for a property or casualty insurance contract, issued or renewed on or after the effective date of this Act, by an agent licensed under KRS 304.9-085, shall be deemed fully earned. The fee shall only be collected if coverage is provided.***
- (2) ***All fees referred to in subsection (1) of this section shall be submitted to the commissioner for prior approval.***

Approved April 4, 2000

## CHAPTER 315

(HB 811)

AN ACT relating to tourism development.

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

Section 1. KRS 154.29-050 is amended to read as follows:

- (1) The authority, upon adoption of its final approval, may enter into with any approved company an agreement with respect to its tourism attraction project. The terms and provisions of each agreement shall include, but not be limited to:
  - (a) The amount of approved costs, which shall be determined by negotiations between the authority and the approved company;
  - (b) A date certain by which the approved company shall have completed the tourism attraction project. ***Upon request from any approved company that has received final approval prior to or after July 15, 2000, the authority shall grant an extension or change, which in no event shall exceed three (3) years from the date of final approval, to the completion date as specified in the agreement of an approved company.*** Within three (3) months of the completion date, the approved company shall document the actual cost of the project through a certification of the costs to be provided by an independent certified public accountant acceptable to the authority; and
  - (c) The following provisions:
    1. The term shall be ten (10) years from the later of:
      - a. The date of the final approval of the project; or
      - b. The completion date specified in the agreement, if this completion date is within ***three*** ~~(3) [two (2)]~~ years of the date of the final approval of the project;
    2. Within forty-five (45) days after the end of each half of each fiscal year of the approved company, the approved company shall supply the authority with such reports and certifications as the authority may request demonstrating to the satisfaction of the authority that the approved company is in compliance with the provisions of KRS 139.536 and KRS 154.29-010 to 154.29-060. Based upon a review of these materials and other documents that may be made available, the

authority shall then certify to the Revenue Cabinet that the approved company is in compliance with this section; and

3. The approved company shall not receive a sales tax refund as prescribed by KRS 139.536 with respect to any fiscal year if:
  - a. In any year following the fourth year of the agreement, the tourism attraction project fails to attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth; or
  - b. In any year following the first year of the agreement, the tourism attraction project is not operating and open to the public for at least one hundred (100) days.
- (2) The agreement shall not be transferable or assignable by the approved company without the written consent of the authority.
- (3) In consideration of the execution of the agreement as defined in KRS 154.29-010 and notwithstanding any provision of KRS 139.770 to the contrary, the approved company as defined in KRS 154.29-010, excluding its lessees, may be granted a sales tax refund under KRS 139.536 from the Kentucky sales tax imposed by KRS 139.200 on the sales generated by or arising at the tourism attraction project as defined in KRS 154.29-010.

Section 2. KRS 139.536 is amended to read as follows:

- (1) In consideration of the execution of the agreement as defined in KRS 154.29-010 and notwithstanding any provision of KRS 139.770 to the contrary, the approved company as defined in KRS 154.29-010, excluding its lessees, may be granted a sales tax refund from the Kentucky sales tax imposed by KRS 139.200 on the sales generated by or arising at the tourism attraction project as defined in KRS 154.29-010. The approved company shall have no obligation to refund or otherwise return any amount of this sales tax refund to the persons from whom the sales tax was collected. The term of the agreement granting the sales tax refund shall be ten (10) years, and this time period shall commence on the later of:
  - (a) The final approval for purposes of the inducements; or
  - (b) The completion date specified in the agreement.
- (2) ***Any sales tax collected by an approved company as defined in KRS 154.29-010 on sales transacted after final approval but prior to the commencement of the term of the agreement, including any approved company that has received final approval prior to July 15, 2000, shall be refundable as if collected after the commencement of the term and applied to the approved company's first fiscal year's refund after activation of the term and without changing the term.***
- (3) The total sales tax refund allowed to the approved company over the term of the agreement in subsection (1) of this section shall be equal to the lesser of the total amount of the sales tax liability of the approved company and its lessees or twenty-five percent (25%) of the approved costs. The sales tax refund shall accrue over the term of the agreement in an annual amount equal to two and one-half percent (2.5%) of the approved cost. Notwithstanding the foregoing two and one-half percent (2.5%) limitation, any unused inducements as set forth in KRS 154.29-010(9) from a previous year may be carried forward to any succeeding year during the term of the agreement until the entire twenty-five percent (25%) of the approved costs have been received through sales tax refunds. By October 1 of each year the Revenue Cabinet shall certify to the authority and the secretary of the Tourism Development Cabinet for the preceding fiscal year for all approved companies for which sales tax returns were filed with respect to a tourism attraction project, the sales tax liability of the approved companies receiving inducements under this section and KRS 154.29-010 to 154.29-060, and their lessees, and the amount of the sales tax refunds issued pursuant to subsection (1) of this section.
- ~~(4)~~~~(3)~~ Interest shall not be allowed or paid on any refund made under the provisions of this section.
- ~~(5)~~~~(4)~~ The Revenue Cabinet may promulgate administrative regulations and require the filing of forms designed by the Revenue Cabinet to reflect the intent of this section and KRS 154.29-010 to 154.29-060.

**Approved April 4, 2000**

**CHAPTER 316****(HJR 128)**

A JOINT RESOLUTION naming the "Robert L. Draper Way" in Muhlenberg County.

WHEREAS, Robert L. Draper was born on June 28, 1919, in Drakesboro, Kentucky; and

WHEREAS, the son of Clyde and Julia Draper, Robert L. Draper was the oldest of three children who lived his earliest years in several coal camps in west Kentucky; and

WHEREAS, active in civic affairs as a young man, Robert L. Draper joined a youth program at the age of fifteen under the New Deal, serving during the depression in Idaho and generously sending \$25 of his \$30 monthly salary home to his parents in Kentucky; and

WHEREAS, Robert L. Draper followed in his father's footsteps as a coal miner at the age of sixteen to help make ends meet during the depression; and

WHEREAS, on February 14, 1940, Robert L. Draper married his beloved Pauline Hocker before relocating to Chicago seeking employment to support his wife and new son, Larry; and

WHEREAS, a gallant veteran of the battle of Iwo Jima, Robert L. Draper participated in some of the most fierce fighting of World War II as a member of the United States Marine Corps, tenaciously holding ground for American troops during the entire thirty-three day campaign for the island; and

WHEREAS, upon returning to civilian life following World War II, Robert L. Draper moved his family back to the Commonwealth where he worked for fifteen years in the west Kentucky coal mines; and

WHEREAS, Robert L. Draper left the coal fields to work at Green River Steel in Owensboro before starting an auto salvage yard that he helped operate for over a decade; and

WHEREAS, Robert L. Draper was elected to one term as sheriff in 1969, before the citizens of Muhlenberg County selected him in 1973 to champion their causes as County Judge/Executive; and

WHEREAS, Robert L. Draper retired as County Judge/Executive in 1989 but was called out of retirement in 1992 to fill a vacancy in the office; and

WHEREAS, Robert L. Draper was the people's choice to continue to serve out the term as County Judge/Executive; and

WHEREAS, while serving as County Judge/Executive Robert L. Draper dedicated his tenure to providing access to the county water system for as many citizens of Muhlenberg County as possible; and

WHEREAS, Robert L. Draper also diligently worked as County Judge/Executive to provide good roads to all areas of Muhlenberg County; and

WHEREAS, Robert L. Draper will forever be remembered and beloved as Muhlenberg County Judge/Executive for his honesty, integrity, sincerity, and prudent stewardship of the peoples' tax dollars;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. The Transportation Cabinet is directed to name Kentucky Route 189 in Muhlenberg County from United States Route 62 west to north of the City of Greenville ending at the intersection of Airport Road and Spartan Way the "Robert L. Draper Way."

Section 2. The Transportation Cabinet shall, within thirty days of the effective date of this Resolution, erect signs at the junction of Kentucky Route 189 and United States Route 62, and at the junction of Kentucky Route 189 with the intersection of Airport Road and Spartan Way that read the "Robert L. Draper Way."

**Approved April 4, 2000**

## CHAPTER 317

## (HB 427)

AN ACT relating to domestic violence and sexual assault.

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

Section 1. KRS 194A.540 is amended to read as follows:

- (1) The secretary for health services shall, in consultation with the applicable licensure board, develop domestic violence-related training courses that are appropriate for the following professions:
  - (a) Mental health professionals licensed or certified under KRS Chapters 309, 319, and 335;
  - (b) ***Alcohol and drug counselors certified under KRS Chapter 309;***
  - (c) Physicians who practice primary care, as defined in KRS 164.925, ***or who meet the definition of a psychiatrist under KRS 202A.011,*** and who are licensed under KRS Chapter 311;~~and~~
  - (d)~~(e)~~ Nurses licensed under KRS Chapter 314;
  - (e) ***Paramedics certified under KRS Chapter 311;***
  - (f) ***Emergency medical technicians certified under KRS Chapter 211; and***
  - (g) ***Coroners as defined in KRS 72.405 and medical examiners as defined in KRS 72.240.***
- (2) The courses shall include the dynamics of domestic violence, effects of domestic violence on adult and child victims, legal remedies for protection, lethality and risk issues, model protocols for addressing domestic violence, available community resources and victim services, and reporting requirements. The training shall be developed in consultation with legal, victim services, victim advocacy, and mental health professionals with an expertise in domestic violence.
- (3) ~~Any~~~~[No later than June 30, 1999, every]~~ health-care or mental health professional ***identified in subsection (1) of this section***~~[licensed or certified under KRS Chapter 309, 311, 314, 319, or 335, on or after July 15, 1996,]~~ shall successfully complete a three (3) hour training course that meets the requirements of subsection (2) of this section. ***Health care or mental health professionals identified in subsection (1) of this section***~~[Persons]~~ who are granted licensure or certification after July 15, 1996, shall successfully complete the training within three (3) years of the date of initial licensure or certification.

SECTION 2. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) ***The Governor's Council on Domestic Violence and Sexual Assault is created and established for the purpose of planning and direction of legal, protection, and support services related to domestic violence and sexual assault, and to increase the awareness of all Kentuckians regarding the prevalence and impact of these crimes.***
- (2) ***Members of the council shall include:***
  - (a) ***The Attorney General or a designee;***
  - (b) ***The secretary of the Cabinet for Families and Children or a designee;***
  - (c) ***The secretary of the Cabinet for Health Services or a designee;***
  - (d) ***The secretary of the Justice Cabinet or a designee;***
  - (e) ***The public advocate or a designee;***
  - (f) ***The executive director of the Governor's Office of Child Abuse and Domestic Violence Services;***
  - (g) ***The executive director of the Kentucky Criminal Justice Council;***
  - (h) ***The executive director of the Commission on Women;***
  - (i) ***At the direction of the Chief Justice of the Supreme Court, the director of the Administrative Office of the Courts;***

- (j) *One (1) Circuit Court Judge, one (1) family court judge, and one (1) District Court Judge, who shall be appointed by the Chief Justice of the Supreme Court;*
- (k) *The executive director of the Kentucky Domestic Violence Association;*
- (l) *The president of the Kentucky Domestic Violence Association or a designee;*
- (m) *The executive director of the Kentucky Association of Sexual Assault Programs;*
- (n) *The president of the Kentucky Association of Sexual Assault Programs or a designee;*
- (o) *Two (2) members of the Senate who shall be appointed by the President of the Senate;*
- (p) *Three (3) members of the House of Representatives who shall be appointed by the Speaker of the House; and*
- (q) *The following members, who shall be appointed by the Governor. To be eligible for appointment under this paragraph, a person shall have an understanding of, and demonstrated commitment to, addressing crimes involved in domestic or sexual violence:*
  - 1. *One (1) county attorney;*
  - 2. *One (1) Commonwealth's attorney;*
  - 3. *One (1) Circuit Court Clerk;*
  - 4. *One (1) sheriff;*
  - 5. *One (1) peace officer;*
  - 6. *Two (2) representatives of local domestic violence coordinating councils or sexual assault response teams;*
  - 7. *One (1) advocate for adult victims of domestic or sexual violence;*
  - 8. *One (1) advocate for child witnesses of domestic or sexual violence;*
  - 9. *One (1) physician;*
  - 10. *One (1) sexual assault nurse examiner;*
  - 11. *One (1) mental health professional with demonstrated expertise in treating offenders;*
  - 12. *One (1) employee of the Department for Community Based Services who provides direct services to victims of domestic violence;*
  - 13. *One (1) person employed as a probation or parole officer; and*
  - 14. *Two (2) citizen at-large members.*
- (3) *The Governor shall appoint two (2) co-chairs and two (2) vice chairs of the council. One (1) of the vice chairs shall be a council member who is a criminal justice professional. The co-chairs and vice chairs shall serve for a term of one (1) year after which they may be reappointed by the Governor.*
- (4) *Council members shall serve at the pleasure of the appointing authority but shall not serve longer than four (4) years without reappointment. Members shall not serve longer than two (2) consecutive four (4) year terms.*
- (5) *The council shall establish an executive committee, the membership of which shall be named by the co-chairs of the council.*
- (6) *The duties and responsibilities of the council shall include, but not be limited to, the following:*
  - (a) *Promoting coordination among agencies and officials responsible for addressing domestic violence and sexual assault;*
  - (b) *Determining the availability of services for victims, children who witness domestic violence or sexual assault, and offenders;*
  - (c) *Facilitating the development of local domestic violence councils and sexual assault response teams that shall include publication of model protocols, training, and technical assistance;*

- (d) *Promoting community awareness and the prevention of domestic and sexual violence;*
  - (e) *Providing assistance to the Attorney General, the Administrative Office of the Courts, the Justice Cabinet, the Cabinet for Families and Children, and the Cabinet for Health Services in the development of training curricula, treatment programs, and model policies related to domestic violence and sexual assault;*
  - (f) *Reviewing and analyzing data and information relating to domestic violence and sexual assault from existing sources including, but not limited to, the Kentucky State Police, the Cabinet for Families and Children, the Cabinet for Health Services, the Department of Corrections, and the Administrative Office of the Courts;*
  - (g) *Recommending to the appropriate entity changes in state programs, legislation, administrative regulations, policies, budgets, and treatment and service standards relating to domestic violence and sexual assault; and*
  - (h) *Preparing a biennial report to be submitted no later than July 1 of every odd-numbered year to the Governor, the Legislative Research Commission, and the Chief Justice of the Supreme Court.*
- (7) *The council shall establish any committees necessary to carry out its duties.*
  - (8) *The council shall be attached to the Governor's Office of Child Abuse and Domestic Violence Services for administrative purposes. Members of the council shall be eligible to receive actual and reasonable travel expenses.*
  - (9) *The secretary of the Justice Cabinet, the secretary of the Cabinet for Health Services, and the secretary of the Cabinet for Families and Children shall provide the necessary staff to assist the council in carrying out its duties and responsibilities.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *One (1) or more local domestic violence coordinating councils may be established in any jurisdiction or group of counties.*
- (2) *Membership on local domestic violence coordinating councils may include, but not be limited to, judges, Commonwealth's and county attorneys, law enforcement officers, probation or parole officers, spouse abuse center staff, other victim advocates defined under Section 7 of this Act, family service workers employed by the Cabinet for Families and Children, mental health professionals, health care professionals, educators, public advocates, and other persons as deemed appropriate.*
- (3) *The purpose of local domestic violence coordinating councils shall include, but not be limited to, the promotion of public awareness about domestic violence, the facilitation of interagency coordination, and the assessment of service delivery related to domestic violence.*
- (4) *Local domestic violence coordinating councils shall develop a local protocol consistent with the model protocol issued by the Governor's Council on Domestic Violence and Sexual Assault.*
- (5) *Local domestic violence coordinating councils may, if authorized by the local coroner or a medical examiner, create a domestic violence fatality review team, the purpose of which shall be to prevent future deaths and injuries related to domestic violence.*
- (6) *Domestic violence fatality review teams of local domestic violence coordinating councils may:*
  - (a) *Analyze information regarding local domestic violence fatalities to identify trends, patterns, and risk factors;*
  - (b) *Evaluate the effectiveness of local prevention and intervention strategies; and*
  - (c) *Recommend, to the Governor's Council on Domestic Violence and Sexual Assault, changes in the Kentucky Revised Statutes, administrative regulations, policies, budgets, and treatment and service standards that may facilitate the prevention of domestic violence fatalities. The fatality review team may establish a protocol for the investigation of domestic violence fatalities and may establish operating rules and procedures as it deems necessary to carry out the purposes of this section.*
- (7) *The review of a case by a domestic violence fatality review team may include information from reports generated or received by agencies, organizations, or individuals responsible for investigation, prosecution, or treatment in the case.*

- (8) *The proceedings, records, opinions, and deliberations of the domestic violence fatality review team shall be privileged and shall not be subject to discovery, subpoena, or introduction into evidence in any civil action in any manner that would directly or indirectly identify specific persons or cases reviewed by the local team. Nothing in this subsection shall be construed to restrict or limit the right to discover or use in any civil action any evidence that is discoverable independent of the proceedings of the domestic violence fatality review team.*

Section 4. KRS 403.7505 is amended to read as follows:

- (1) The Cabinet for Health Services shall, by administrative regulations promulgated pursuant to KRS Chapter 13A, establish certification standards for mental health professionals providing court-mandated treatment services for domestic violence offenders.
- (2) The standards created by the cabinet shall be based on the following principles:
  - (a) Domestic violence is a pattern of coercive control which includes physical, sexual, psychological, and environmental abuse, and is considered to be criminal conduct;
  - (b) The primary goal of treatment programs for domestic violence offenders shall be the cessation of violence which will provide for the safety of victims and their children; and
  - (c) Domestic violence offenders are responsible and shall be held accountable for the violence which they choose to perpetrate.
- (3) The standards created by the cabinet shall address the following:
  - (a) Qualifications of providers of court-mandated domestic violence offender treatment services which shall include appropriate requirements for degree, experience, training, and continuing education;
  - (b) Procedures for application by providers to receive certification which shall include methods of appeal if certification is denied, and sanctions for noncompliance with the standards which may include revocation of certification;
  - (c) Admittance and discharge criteria for domestic violence offenders to enter court-mandated treatment services provided pursuant to this section;
  - (d) Written protocols for referral by a court to certified providers and for progress reports to be made to the court by providers;
  - (e) Contracts for domestic violence offenders to sign prior to entering court-ordered treatment services provided pursuant to this section. The contract shall specify that certified providers may contact the victims of the offender if the victim chooses to be contacted. The contract shall authorize the provider to release information regarding the offender's progress in treatment to the court, victims, probation and parole officers, and other individuals authorized by the court to receive the information;
  - (f) Written procedures in compliance with KRS 202A.400, 209.030, and 620.030;
  - (g) Payment protocols which require the offender to pay the actual cost for any court-mandated evaluation or treatment pursuant to this section, subject to the offender's ability to pay; and
  - (h) Other provisions which shall further the availability and quality of court-mandated domestic violence offender services.
- (4) The cabinet shall:
  - (a) Maintain a list of providers certified pursuant to this section and regularly submit the list to the Administrative Office of the Courts; and
  - (b) Collect data from certified providers, which shall include the number of domestic violence offenders served by the certified providers, to be compiled annually and submitted to the Governor, the Chief Justice of the Kentucky Supreme Court, and the Legislative Research Commission.
- (5) *No person, association, or organization shall conduct, operate, maintain, advise, or advertise any program that provides court-ordered treatment services for domestic violence offenders without first obtaining or maintaining valid certification under this chapter. If the cabinet has cause to believe that court-ordered treatment services for domestic violence offenders are being provided by a person or entity that does not possess valid certification under this chapter, the cabinet may institute proceedings, in the Circuit Court of*

*the county in which the person or entity is located or in Franklin Circuit Court, for injunctive relief to terminate the provision of those services.*

Section 5. KRS 403.784 is amended to read as follows:

- (1) The Justice Cabinet shall develop initial training courses and continuing education courses, designed to be provided at least once every two (2) years, for law enforcement officers, ***police dispatchers, and probation or parole officers*** concerning the dynamics of domestic violence, ***child physical and sexual abuse, rape***, effects of ~~crime~~~~[domestic violence]~~ on adult and child victims, legal remedies for protection, lethality and risk issues, ***profiles of offenders***, model protocols for addressing domestic violence, ***child abuse, rape***, available community resources and victims services, and reporting requirements. The training shall be developed in consultation with legal, victims services, victim advocacy, and mental health professionals with an expertise in domestic violence, ***child abuse, and rape***.
- (2) All law enforcement agencies shall provide initial training and, at least once every two (2) years, continuing education courses, developed by the Justice Cabinet pursuant to subsection (1), to all officers employed by them.
- (3) ***The Justice Cabinet shall provide initial training and, at least once every two (2) years, continuing education courses under subsection (1) of this section for police dispatchers and probation or parole officers.***

Section 6. KRS 15.718 is amended to read as follows:

- (1) The Attorney General shall provide initial training courses and, at least once every two (2) years, continuing education courses for Commonwealth's attorneys and county attorneys and their staffs concerning the dynamics of domestic violence, ***child physical and sexual abuse, rape***, effects of ~~crime~~~~[domestic violence]~~ on adult and child victims, legal remedies for protection, lethality and risk issues, ***profiles of offenders***, model protocols for addressing domestic violence, ***child abuse, rape***, available community resources and victims services, and reporting requirements. The training shall be developed in consultation with ~~prosecutors~~~~[legal]~~, victims services, victim advocacy, and mental health professionals with an expertise in domestic violence, ***child abuse, and rape***.
- (2) Each Commonwealth's Attorney, assistant Commonwealth's Attorney, county attorney, and assistant county attorney shall successfully complete the training.

Section 7. KRS 421.570 is amended to read as follows:

- (1) For the purposes of this section and KRS 421.575, "victim advocate" means an individual at least eighteen (18) years of age and of good moral character, who is employed by, or serves as a volunteer for, a public or private agency, organization, or official to counsel and assist crime victims as defined in KRS 421.500, and includes a victim advocate employed by a Commonwealth's attorney pursuant to KRS 15.760 and a victim advocate employed by a county attorney pursuant to KRS 69.350.
- (2) Each victim advocate shall complete training which shall include information concerning the difference between advocacy and the practice of law, and the appropriate intervention with crime victims, including victims of domestic violence, ***child physical and sexual abuse, and rape***.
- (3) A victim advocate shall not engage in the practice of law as defined in KRS 524.130.

Section 8. The following KRS section is repealed:

15.944 In-service training for prosecutors on child sexual abuse.

**Approved April 4, 2000**

## **CHAPTER 318**

**(HB 449)**

AN ACT relating to facilities serving persons with mental illness and mental retardation, and declaring an emergency.

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

Section 1. KRS 210.045 is amended to read as follows:



## (1) The Cabinet for Health Services shall:

- (a)~~[(1)]~~ Maintain, operate, and assume program responsibility for all state institutions and facilities for mental retardation;
- (b)~~[(2)]~~ Provide rehabilitation services for mentally retarded persons through educational and training programs;
- (c)~~[(3)]~~ Provide medical and allied services to mentally retarded persons and their families;
- (d)~~[(4)]~~ Encourage and assist communities to develop programs and facilities in the field of mental retardation;
- (e)~~[(5)]~~ Sponsor or carry out research, or both, in the field of mental retardation;~~and~~
- (f)~~[(6)]~~ Assist other governmental and private agencies in the development of programs and services for mentally retarded persons and their families and for the prevention of mental retardation, and coordinate programs and services so developed;
- (g) *Provide written notice to the Legislative Research Commission of its intent to propose legislation to permit immediate or gradual closure of any state-owned or operated facility that provides residential services to persons with mental retardation or other developmental disabilities at least sixty (60) days prior to the next legislative session; and*
- (h)
  1. *Provide written notice by registered mail to each resident, his or her immediate family, if known, and his or her guardian of its intent to propose legislation to permit immediate or gradual closure of any state-operated facility that provides residential services to persons with mental retardation or other developmental disabilities at least sixty (60) days prior to the next legislative session; and*
  2. *Include in the written notice provided under this paragraph that the resident, the resident's immediate family, his or her guardian, or any other interested party with standing to act on behalf of the resident has the right to pursue legal action relating to the notice provisions of this paragraph and relating to the closure of the facility.*
- (2) *Any state-owned or operated facility or group home that provides residential services to persons with mental retardation or other developmental disabilities and that has been funded by the General Assembly in a specific biennium, shall not be closed, nor shall the Cabinet for Health Services announce the pending closure of the facility, during the same biennium except through the provisions specified by subsection (1) of this section.*
- (3) *The Cabinet for Health Services may close any state-owned or operated facility that provides residential services to persons with mental retardation or other developmental disabilities upon the effective date of an adopted act of legislation.*
- (4) *When a demonstrated health or safety emergency exists for a facility or a federal action that requires or necessitates a gradual or immediate closure exists for the facility, the cabinet may seek relief from the requirements of this section in the Circuit Court of the county where the facility is located. In these situations:*
  - (a) *The cabinet shall provide written notice by registered mail to each resident, the resident's immediate family, if known, and his or her guardian, at least ten (10) days prior to filing an emergency petition in the Circuit Court; and*
  - (b) *All interested parties, including the cabinet, the resident, his or her immediate family, his or her guardian, or other interested parties with standing to act on behalf of the resident shall have standing in the proceedings under this subsection.*
- (5) *Any resident, family member or guardian, or other interested parties, as defined by KRS 387.510(12) with standing to act on behalf of the resident who wishes to challenge the decision or actions of the Cabinet for Health Services regarding the notice requirements of subsection (1) of this section shall have a cause of action in the Circuit Court of the county in which the facility is located, or in Franklin Circuit Court. In addition to other relief allowable by law, the resident, family member or guardian, or other interested party with standing to act on behalf of the resident may seek compensatory damages and attorney fees. Punitive damages shall not be allowable under this section.*

- (6) *Any resident, family member or guardian, or other interested parties, as defined by KRS 387.510(12) with standing to act on behalf of the resident may challenge the decision of the state to close a facility in a de novo hearing in the Circuit Court of the county in which the facility is located, or in Franklin Circuit Court. In addition to other relief allowable by law, the resident, family member or guardian, or other interested party with standing to act on behalf of the resident may seek compensatory damages and attorney fees. Punitive damages shall not be allowable under this section..*

SECTION 2. A NEW SECTION OF KRS CHAPTER 210 IS CREATED TO READ AS FOLLOWS:

*A court hearing as provided under subsection (6) of Section 1 of this Act shall consider each of the following items relevant to the closure of the facility:*

- (1) *Estimated timelines for the implementation of the closure of the facility;*
- (2) *The types and array of available and accessible community-based services for individuals with mental retardation and other developmental disabilities and their families;*
- (3) *The rights of individuals with mental retardation and other developmental disabilities;*
- (4) *The process used to develop a community living plan;*
- (5) *Individual and community monitoring and safeguards to protect health and safety;*
- (6) *The responsibilities of state and local governments;*
- (7) *The process used to transfer ownership or the state's plan to reuse the property; and*
- (8) *Other issues identified by the cabinet, the resident, family member or guardian, or other interested party with standing to act on behalf of the resident that may affect the residents, their families, employees, and the community.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 210 IS CREATED TO READ AS FOLLOWS:

*For any facility that the cabinet has announced plans for closure prior to the effective date of this Act, the cabinet shall be subject to the notice provisions of Section 1 of this Act within ten (10) days of the effective date of this Act. The cabinet shall delay proceedings toward closure until the proceedings for all hearings permitted under Section 1 of this Act have been completed.*

Section 4. KRS 216B.455 is amended to read as follows:

- (1) A certificate of need shall be required for all psychiatric residential treatment facilities. The application for a certificate of need shall include formal written agreements of cooperation that identify the nature and extent of the proposed working relationship between the proposed psychiatric residential treatment facility and each of the following agencies, organizations, or facilities located in the service area of the proposed facility:
  - (a) Regional interagency council for children with emotional disability or severe emotional disability as defined in KRS 200.509;
  - (b) Department for Social Services;
  - (c) Local school districts;
  - (d) Psychiatric hospitals; and
  - (e) Any other agency, organization, or facility deemed appropriate by the cabinet.
- (2) All psychiatric residential treatment facilities shall comply with the licensure requirements as set forth in KRS 216B.105.
- (3) All psychiatric residential treatment facilities shall be certified by the Joint Commission on Accreditation of Healthcare Organizations, *or the Council on Accreditation, or any other accrediting body with comparable standards that is recognized by the state.*
- (4) A psychiatric residential treatment facility shall not be located in or on the grounds of a psychiatric hospital.
- (5) The total number of psychiatric residential treatment facility beds shall not exceed sixteen (16) beds in any area development district with less than 275,000 population; thirty-two (32) beds in any area development district with 275,000 to 550,000 population; and forty-eight (48) beds in any area development district with over 550,000 population.

Section 5. Whereas the closure of state residential facilities for individuals with mental retardation or other developmental disabilities has an immediate and significant impact on residents and their families, an emergency is declared to exist, and Sections 1 to 3 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Became law April 5, 2000, without Governor's signature**

## CHAPTER 319

(HB 619)

AN ACT relating to motor vehicle insurance.

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

Section 1. KRS 186A.040 is amended to read as follows:

- (1) The Department of Vehicle Regulation shall provide and receive information on the insurance status of vehicles registered in the Commonwealth of Kentucky. The department shall provide appropriate insurance information to the Department of Information Systems for inclusion in the AVIS database.
- (2) Upon notification to the Department of Vehicle Regulation from an insurance company of cancellation or nonrenewal of a policy pursuant to KRS 304.39-085, the department shall immediately **make a determination as to the notification of**~~notify~~ the insured. Notification to the insured shall state that the insured's policy is no longer valid and that the insured shall have thirty (30) days to show proof of insurance to the ~~department or the~~ county clerk. The department shall further inform the insured that if evidence of insurance is not received within thirty (30) days the department shall revoke the registration of the motor vehicle until:
  - (a) The person presents proof of insurance to the ~~department or~~ county clerk and pays the reinstatement fee required by KRS 186.180;
  - (b) The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that the failure to maintain motor vehicle insurance on the vehicle specified in the department's notification is the result of the inoperable condition of the motor vehicle;
  - (c) The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that the failure to maintain motor vehicle insurance on the vehicle specified in the department's notification is the result of the seasonal nature of the vehicle. The affidavit shall explain that when the vehicle is out of dormancy and when the seasonal use of the vehicle is resumed, the proper security will be obtained; or
  - (d) The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that he or she requires a registered motor vehicle in order to carry out his or her employment and that the motor vehicle that he or she drives during the course of his or her employment meets the security requirement of subtitle 39 of KRS Chapter 304. The person shall also declare in the affidavit that he or she will operate a motor vehicle only in the course of his or her employment. If a person has his or her motor vehicle registration revoked in accordance with this subsection three (3) times within any twelve (12) month period, the revocations shall constitute a violation of KRS 304.39-080. The department shall notify the county attorney to begin prosecution for violation of subtitle 39 of KRS Chapter 304.
- (3) The Department of Vehicle Regulation shall be responsible for notification to the appropriate county attorney that a motor vehicle is not properly insured, if the insured does not respond to notification set out by subsection (2) of this section. The notice that the department gives to the county attorney in accordance with subsection (2) of this section shall include a certified copy of the person's driving record which shall include:
  - (a) The notice that the department received from an insurance company that a person's motor vehicle insurance policy has been canceled or has not been renewed; and
  - (b) A dated notice that the department sent to the person requiring the person to present proof of insurance to the ~~department or the~~ county clerk.

Upon notification by the department, a county attorney shall immediately begin prosecution of the person who had his or her motor vehicle registration revoked three (3) times within any twelve (12) month period in accordance with subsection (2) of this section.

- (4) The certified copies sent by the department described in subsection (3) of this section, shall be prima facie evidence of a violation of KRS 304.39-080.
- (5) If the insured provides proof of insurance to the ~~department or the~~ clerk within the thirty (30) day notification period, the department shall ensure action is taken to denote a valid insurance policy is in force.

Section 2. KRS 189.285 is amended to read as follows:

- (1) A person shall not operate a motorcycle on a highway:
  - (a) Except when that person is in possession of a valid motorcycle operator's license; and
  - (b) Unless that person uses an approved eye-protective device, in the manner prescribed by the secretary of the Transportation Cabinet, at all times such vehicle is in motion; and
  - (c) Unless the motorcycle is equipped with a rear-view mirror.
- (2) A person shall not operate or ride as a passenger on a motorcycle:
  - (a) Except on a seat permanently attached to that vehicle and specifically designed to carry the operator or passenger in a safe manner; and
  - (b) Except when using a footrest permanently attached to that vehicle and specifically designed to carry that person in a safe manner.
- (3) The following persons shall be required to wear protective headgear, in the manner prescribed by the secretary of the Transportation Cabinet, at all times the motorcycles they are riding are in motion on a public highway:
  - (a) A person under the age of twenty-one (21) years who is operating a motorcycle or who is a passenger on a motorcycle or in a sidecar attachment;
  - (b) A person who possesses a motorcycle instruction permit and who is operating a motorcycle; **and**
  - (c) A person who has held a valid motorcycle operator's license, or combination motor vehicle-motorcycle operator's license, for less than one (1) year and who is operating a motorcycle ~~and~~
  - ~~(d) Any person who does not provide proof of health insurance to the county clerk when registering a motorcycle in accordance with KRS 186.865].~~
- (4) A motorcycle operator authorized to drive a motorcycle on an instruction permit shall not be authorized to carry passengers.
- (5) The secretary of the Transportation Cabinet shall by regulation fix minimum standards for approved protective headgear and for approved eye-protective devices, and prescribe the manner in which they shall be used. The secretary shall maintain and cause to be published a list of approved protective headgear and of approved eye-protective devices. The secretary may prescribe by regulation minimum standards for other protective devices and require the use of those devices.
- (6) As used in this chapter and KRS Chapter 186, "motorcycle" means any motor driven vehicle having a seat or saddle for the use of the operator and designed to travel on not more than three (3) wheels in contact with the ground, but excluding tractors and vehicles on which the operator and passengers ride in an enclosed cab and excluding a moped as defined in this section.
- (7) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step-through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour.

Section 3. KRS 189.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110,

189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, *Section 2 of this Act*, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456, and 189.960 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars (\$20) nor more than two thousand dollars (\$2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars (\$11) nor more than thirty dollars (\$30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

- (2)
    - (a) Any person who violates the weight provisions of KRS 189.212, 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents (\$0.02) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents (\$0.03) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (\$0.05) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (\$0.07) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (\$0.09) per pound when the excess exceeds five thousand (5,000) pounds, but in no case shall the fine be less than sixty dollars (\$60).
    - (b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, 189.490, or the dimension provisions of KRS 189.212, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
    - (c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.
  - (3)
    - (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars (\$15).
    - (b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars (\$35) nor more than two hundred dollars (\$200).
  - (4)
    - (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
    - (b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
    - (c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.
  - (5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) or imprisoned not less than thirty (30) days nor more than sixty (60) days, or both. For each subsequent offense occurring within three (3) years, the person shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.
  - (6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars (\$15) in excess of the cost of the repair of the road.
  - (7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars (\$20) nor more than fifty dollars (\$50).
  - (8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100).
  - (9) Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.

- (10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.
- (11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars (\$30) nor more than one hundred dollars (\$100) for each offense.
- (12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and, in the case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.
- (13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars (\$20) nor more than twenty-five dollars (\$25).
- (15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars (\$100) and, upon subsequent convictions, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for thirty (30) days, or both.
- (17)
  - (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.
  - (b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name the vehicle used in the transportation of inflammable liquids or explosives is licensed, the person shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each violation shall constitute a separate offense.
- (18) Any person who abandons a vehicle upon the right-of-way of a state highway for three (3) consecutive days shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.
- (19) Every person violating KRS 189.393 shall be guilty of a Class B misdemeanor, unless the offense is being committed by a defendant fleeing the commission of a felony offense which the defendant was also charged with violating and was subsequently convicted of that felony, in which case it is a Class A misdemeanor.
- (20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.
- (21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of a regulation shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.
- (22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
- (23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).
- (24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars (\$50).
- (25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars (\$25).
- (26) Any person who violates any of the provisions of KRS 189.125(3), KRS 189.290, KRS 189.300, KRS 189.340, KRS 189.345, KRS 189.370, KRS 189.393, or KRS 189.505, shall, in addition to any other fine imposed by this chapter, pay an additional fee of ten dollars (\$10). Funds collected pursuant to this subsection shall be deposited in the traumatic brain injury trust fund, created pursuant to KRS 211.476, within fourteen (14) days after the end of each quarter, to be used for the purposes set forth in KRS 211.470 to 211.478.
- (27) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.

- (28) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:
- (a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and
  - (b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.
- ~~[(29) Any person who violates the provisions of KRS 189.285 shall have his or her operator's license suspended for a period of ninety (90) days and be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).]~~

Section 4. The following KRS section is repealed:

186.865 Motorcycle registration requirements -- Health insurance requirements.

**Approved April 5, 2000**

## **CHAPTER 320**

**(HB 805)**

AN ACT relating to the development and use of natural resources.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

- (1) *There shall be allowed a nonrefundable credit against taxes imposed by the Commonwealth on any taxpayer that:*
- (a) *1. Is an electric power company as defined in KRS Chapter 136; or*
  - 2. Is an entity that owns or operates a coal-fired electric generation plant;*
  - (b) *Remits tax to the Commonwealth under KRS 136.070, KRS 136.120, KRS 141.020, or KRS 141.040; and*
  - (c) *Purchases coal subject to the tax imposed under KRS 143.020 that is used by the taxpayer, or by a parent company if the taxpayer is a wholly owned subsidiary, for the purpose of generating electricity.*
- (2) *The amount of the allowable credit shall be two dollars (\$2) per each incentive ton of coal purchased that is subject to tax under KRS 143.020 and that is used to generate electric power.*
- (3) *Incentive tons are calculated as the tons of coal purchased in the current year for which coal severance tax was paid minus the tons of coal purchased and used during the base year.*
- (4) *The base year amount shall be equal to:*
- (a) *For entities existing on the effective date of this Act that meet the eligibility requirements imposed under subsection (1) of this section, the tons of coal purchased and used to generate electricity during the twelve (12) calendar months ending in December 31, 1999, that were subject to the tax imposed by KRS 143.020; or*
  - (b) *For entities that come into existence after the effective date of this Act that meet the eligibility requirements imposed under subsection (1) of this section, the base year amount shall be equal to zero (0). However, no company qualifying for the credit as of the effective date of this Act with a base year calculation as provided under subsection (4)(a) of this section may create an affiliate, subsidiary, or corporation that would qualify for a base year of zero (0).*
- (5) *On or before March 15 of each year, a company eligible for the credit provided under subsection (2) of this section shall file a coal incentive credit claim on forms prescribed by the Revenue Cabinet. At the time of filing for the credit, the taxpayer shall submit verification of the tons of coal purchased in the base year and*

*the tons of coal purchased in the year for which the credit is being claimed. The Revenue Cabinet shall determine the amount of the eligible credit and issue a credit certificate to the taxpayer.*

- (6) *The taxpayer shall be eligible to apply, subject to the conditions imposed under subsection (7) of this section, the amount identified on the credit certificate issued by the Revenue Cabinet under subsection (5) of this section, against the taxpayer's liability for the taxes, in consecutive order as follows:*
  - (a) *KRS 141.040;*
  - (b) *KRS 141.020;*
  - (c) *KRS 136.070; and*
  - (d) *KRS 136.120.*
- (7) *The credit shall meet the entirety of the taxpayer's liability under the first tax listed in consecutive order under subsection (6) of this section before applying the remaining credit to the next tax listed in consecutive order. The taxpayer's total liability under each preceding tax must be fully met before the remaining credit can be applied to the subsequent tax listed in consecutive order.*
- (8) *The taxpayer shall maintain records required in subsection (5) of this section for a period of five (5) years.*
- (9) *Acceptable verification of coal purchased during the base year shall include invoices that indicate the tons of coal purchased from a Kentucky supplier of coal and proof of remittance for that purchase.*
- (10) *The Revenue Cabinet shall develop the forms required under subsection (5) of this section, specifying the procedure for claiming the credit, and applying the credit against the taxpayer's liability in the order provided under subsection (6) and subsection (7) of this section.*

Section 2. KRS 141.0205 is amended to read as follows:

If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax imposed by KRS 141.020 or 141.040, the priority of application and use of the credits shall be determined as follows:

- (1) The nonrefundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:
  - (a) The individual credits permitted by KRS 141.020(3);
  - (b) The economic development credits computed under KRS 141.347, 141.400, 141.403, 141.407, and 154.12-2088;
  - (c) The health insurance credit permitted by KRS 141.062;
  - (d) The tax paid to other states credit permitted by KRS 141.070;
  - (e) The credit for hiring the unemployed permitted by KRS 141.065;
  - (f) The recycling or composting equipment credit permitted by KRS 141.390;
  - (g) The tax credit for cash contributions in investment funds permitted by KRS 154.20-263;
  - (h) The low income credit permitted by KRS 141.066;~~and~~
  - (i) The household and dependent care credit permitted by KRS 141.067; *and*
  - (j) *The coal incentive credit permitted under Section 1 of this Act.*
- (2) After the application of the nonrefundable credits in subsection (1) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:
  - (a) The individual withholding tax credit permitted by KRS 141.350; and
  - (b) The individual estimated tax payment credit permitted by KRS 141.305.
- (3) The nonrefundable credits against the tax imposed by KRS 141.040 shall be taken in the following order:
  - (a) The economic development credits computed under KRS 141.347, 141.400, 141.403, 141.407, and 154.12-2088;
  - (b) The health insurance credit permitted by KRS 141.062;
  - (c) The unemployment credit permitted by KRS 141.065;



- (d) The recycling or composting equipment credit permitted by KRS 141.390;
  - (e) The coal conversion credit permitted by KRS 141.041;
  - (f) The enterprise zone credit permitted by KRS 154.45-090;~~[and]~~
  - (g) The tax credit for cash contributions to investment funds permitted by KRS 154.20-263; **and**
  - (h) ***The coal incentive credit permitted under Section 1 of this Act.***
- (4) After the application of the nonrefundable credits in subsection (3) of this section, the refundable corporation estimated tax payment credit permitted by KRS 141.044 shall be allowed as a credit against the tax imposed by KRS 141.040.

SECTION 3. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

***The Coal Incentive Credit authorized under Section 1 of this Act shall be allowed for ten (10) consecutive years beginning on July 15, 2001. Continuation of the credit authorized under this section shall require reauthorization by the General Assembly.***

**Approved April 5, 2000**

## CHAPTER 321

### (HB 806)

AN ACT relating to the development and use of natural resources.

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

Section 1. KRS 154.22-010 is amended to read as follows:

The following words and terms as used in KRS 154.22-010 to 154.22-080, unless the context clearly indicates a different meaning, shall have the following meanings:

- (1) "Affiliate" means the following:
  - (a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;
  - (b) An individual, and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;
  - (c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or profits are owned or controlled, directly or indirectly, by or for that individual;
  - (d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:
    - 1. One (1) or more claims of corporations connected through stock ownership with a common parent corporation if:
      - a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and
      - b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or
    - 2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;

- (e) A grantor and a fiduciary of any trust;
  - (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
  - (g) A fiduciary of a trust and a beneficiary of that trust;
  - (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;
  - (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
  - (j) A fiduciary of a trust and a limited liability company more than fifty percent (50%) of the capital interest, or the interest in profits, of which is owned directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
  - (k) A corporation and a partnership, including a registered limited liability partnership, if the same persons own:
    - 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
    - 2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership, including a registered limited liability partnership;
  - (l) A corporation and a limited liability company if the same persons own:
    - 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
    - 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
  - (m) A partnership, including a registered limited liability partnership, and a limited liability company if the same persons own:
    - 1. More than fifty percent (50%) of the capital interest or profits in the partnership, including a registered limited liability partnership; and
    - 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
  - (n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or
  - (o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended.
- (2) "Agribusiness" means any activity involving the processing of raw agricultural products, including timber, or the providing of value-added functions with regard to raw agricultural products.
- (3) ***"Electric generation" means the generation of electricity for resale by means of combusting at least fifty percent (50%) of the total fuel used to generate electricity from coal or from gas derived from coal.***
- ~~(4)~~~~(3)~~ "Approved company" means any eligible company seeking to locate an economic development project in a qualified county, which eligible company is approved by the authority pursuant to KRS 154.22-010 to 154.22-080.
- ~~(5)~~~~(4)~~ "Approved costs" means:
- (a) Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;
  - (b) The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;
  - (c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of an economic development project which is not paid by the contractor or contractors or otherwise provided for;

- (d) All costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;
- (e) All costs which shall be required to be paid under the terms of any contract or contracts for the acquisition, construction, installation, equipping, and rehabilitation of an economic development project; and
- (f) All other costs of a nature comparable to those described above.
- ~~(6)(5)}~~ "Assessment" means the job development assessment fee authorized by KRS 154.22-010 to 154.22-080.
- ~~(7)(6)}~~ "Authority" means the Kentucky Economic Development Finance Authority as created in KRS 154.20-010.
- ~~(8)(7)}~~ "Bonds" means the revenue bonds, notes, or other debt obligations of the authority authorized to be issued by the authority, eligible companies, or other state agency.
- ~~(9)(8)}~~ "Commonwealth" means the Commonwealth of Kentucky.
- ~~(10)(9)}~~ (a) "Economic development project" means and includes:
  - 1. The acquisition of ownership in any real estate in a qualified county by the authority, the approved *manufacturing or agribusiness* company, or its affiliate;
  - 2. The present ownership of real estate in a qualified county by the approved *manufacturing or agribusiness* company or its affiliate;
  - 3. The acquisition or present ownership of improvements or facilities, as described in paragraph ~~(b)(6)}~~ of this subsection, on land which is possessed or is to be possessed by the approved *manufacturing or agribusiness* company pursuant to a ground lease having a term of sixty (60) years or more; *and*
  - 4. *The new construction of an electric generation facility.*
- (b) For purposes of subparagraphs 1. and 2. of paragraph (a) of this subsection, ownership of real estate shall only include fee ownership of real estate and possession of real estate pursuant to a capital lease as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976. With respect to subparagraphs 1., 2., and 3. of paragraph (a) or paragraph (b) of this subsection, the construction, installation, equipping, and rehabilitation of improvements, including fixtures and equipment, and facilities necessary or desirable for improvement of the real estate, including surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and provision of drainage, storm water retention, installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; and the acquisition, installation, equipping, and rehabilitation of manufacturing facilities on the real estate, for use and occupancy by the approved company or its affiliates for manufacturing purposes, *electric generation*, or for agribusiness purposes. Pursuant to subparagraph 3. of paragraph (a) of this subsection, an economic development project shall not include lease payments made pursuant to a ground lease for purposes of the tax credits provided under the provisions of KRS 154.22-010 to 154.22-080.
- ~~(11)(10)}~~ "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity engaged in manufacturing, *electric generation*, or in agribusiness.
- ~~(12)(11)}~~ "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under this subchapter.
- ~~(13)(12)}~~ "Financing agreement" means any agreement entered into, pursuant to KRS 154.22-010 to 154.22-080, on behalf of the authority or other lenders, or both, and an approved company with respect to an economic development project.
- ~~(14)(13)}~~ "Inducements" means the assessment and the income tax credits allowed by KRS 154.22-060.

- ~~(15)~~~~(14)~~ "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property and any activity related to it, together with the storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals.
- ~~(16)~~~~(15)~~ "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements under this subchapter.
- ~~(17)~~~~(16)~~ "Qualified county" means any county certified as such by the authority pursuant to KRS 154.22-010 to 154.22-080.
- ~~(18)~~~~(17)~~ "Revenues" shall not be considered state funds.
- ~~(19)~~~~(18)~~ "State agency" shall have the meaning assigned to the term in KRS 56.440(8).

Section 2. KRS 154.22-020 is amended to read as follows:

- (1) The General Assembly hereby finds and declares that the general welfare and material well-being of citizens of the Commonwealth, and particularly those residing in qualified counties, depends in large measure upon the development and growth of industry in the Commonwealth.
- (2) The General Assembly hereby finds and declares further that it is in the best interest of the Commonwealth to induce the location of manufacturing facilities, ***electric generation***, and agribusiness operations within the qualified counties of the Commonwealth in order to advance the public purposes of relieving unemployment by creating new jobs within the qualified counties that but for the inducements to be offered by the authority to approved companies as herein provided would not exist and of creating new sources of tax revenues for the support of the public services provided by the Commonwealth and qualified counties.
- (3) The General Assembly hereby finds and declares further that the authority granted by KRS 154.22-010 to 154.22-070 and the purposes to be accomplished hereby are proper governmental and public purposes for which public moneys may be expended, and that the inducement of the location of manufacturing facilities, ***electric generation***, and agribusiness operations within qualified counties is of paramount importance, mandating that the provisions of KRS 154.22-010 to 154.22-070 be liberally construed and applied in order to advance the public purposes.

Section 3. KRS 154.22-040 is amended to read as follows:

- (1) Each year the authority shall under its Rural Economic Development Assistance Program, on the basis of the final unemployment figures calculated by the Department for Employment Services within the Cabinet for Workforce Development, determine which counties have had a countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth in the most recent five (5) consecutive calendar years, or which have had an average countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth by two hundred percent (200%) in the most recent twelve (12) consecutive months for which unemployment figures are available, and shall certify those counties as qualified counties. If the authority determines that a county which has previously been certified as a qualified county no longer has an unemployment rate that meets the criteria of this subsection, the authority shall decertify that county. The authority shall not finance any facilities in that county and an approved company shall not be eligible for the incentives offered by KRS 154.22-010 to 154.22-070 unless the financing agreements required herein are entered into by all parties prior to July 1 of the year following the calendar year in which the authority decertified that county. ***For economic development projects involving the new construction of electric generation facilities, the authority shall certify every coal producing county as a qualified county. A coal producing county shall mean a county in the Commonwealth of Kentucky that has produced coal upon which the tax imposed under KRS 143.020 was paid at any time.***
- (2) The authority shall establish the procedures and standards for the determination and approval of eligible companies and their economic development projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A. The criteria for approval of eligible companies and economic development projects shall include but not be limited to the creditworthiness of eligible companies; the number of new jobs to be provided by an economic development project to residents of the Commonwealth; and the likelihood of the economic success of the economic development project.
- (3) The economic development project shall involve a minimum investment of one hundred thousand dollars (\$100,000) by the eligible company and shall result in the creation by the eligible company, within two (2) years from the date of the final approval authorizing the economic development project, of a minimum of

fifteen (15) new full-time jobs at the site of the economic development project for Kentucky residents to be employed by the eligible company and to be held by persons subject to the personal income tax of the Commonwealth. The authority may extend this two (2) year period upon the written application of an eligible company requesting an extension. No economic development project which will result in the replacement of manufacturing *or electric generation* facilities existing in the state shall be approved by the authority; however, the authority may approve an economic development project that:

- (a) Rehabilitates a manufacturing *or electric generation* facility:
    - 1. Which has not been in operation for a period of ninety (90) or more consecutive days; or
    - 2. The title to which is vested in other than the eligible company or an affiliate of the eligible company and that is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction;
  - (b) Replaces a manufacturing *or electric generation* facility existing in the Commonwealth:
    - 1. The title to which shall have been taken under the exercise of the power of eminent domain, or the title to which shall be the subject of a nonappealable judgment granting the authority to exercise the power of eminent domain, in either event to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or
    - 2. Which has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or
  - (c) Replaces an existing manufacturing *or electric generation* facility located in the same qualified county, and the existing manufacturing *or electric generation* facility to be replaced cannot be expanded due to the unavailability of real estate at or adjacent to the manufacturing facility to be replaced. Any economic development project satisfying the requirements of this subsection shall only be eligible for inducements to the extent of the expansion, and no inducements shall be available for the equivalent of the manufacturing *or electric generation* facility to be replaced. No economic development project otherwise satisfying the requirements of this subsection shall be approved by the authority which results in a lease abandonment or lease termination by the approved company without the consent of the lessor.
- (4) With respect to each eligible company making an application to the authority for inducements, and with respect to the economic development project described in the application, the authority shall request materials and make inquiries of the applicant as necessary or appropriate. Upon review of the application and completion of initial inquiries, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and authorizing the undertaking of the economic development project. After preliminary approval and completion by the eligible company of its bond, loan, or other financing and review thereof by the authority, the authority may by final approval designate an eligible company to be an approved company.

Section 4. KRS 154.22-090 is amended to read as follows:

- (1) If the authority gives its preliminary approval designating an eligible company and authorizing the undertaking of an economic development project prior to July 15, 1996, and the authority by final approval approves the eligible company as an approved company and the project of the eligible company as an economic development project, and the authority and the eligible company enter into a financing agreement no later than June 30, 1997, then the approved company shall not be subject to KRS 154.22-010~~(10)(9)~~(a)3., and 154.22-050(1)(d), (2)(a)2., and (4), and shall be subject to KRS 154.22-010~~(10)(9)~~ and 154.22-050(1)(d) and (2)(a)2. as in effect prior to July 15, 1996.
- (2) KRS 154.22-070 only applies to those approved companies which enter into financing agreements with the authority after July 15, 1996.

Section 5. KRS 154.28-010 is amended to read as follows:

As used in KRS 154.28-010 to 154.28-100, unless the context clearly indicates otherwise:

- (1) "Affiliate" means the following:
  - (a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;

- (b) An individual and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;
- (c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or the profits interest of which is owned, directly or indirectly, by or for that individual;
- (d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:
  - 1. One (1) or more claims of corporations connected through stock ownership with a common parent corporation if:
    - a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and
    - b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing such voting power or value, stock owned directly by the other corporations; or
  - 2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;
- (e) A grantor and a fiduciary of any trust;
- (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
- (g) A fiduciary of a trust and a beneficiary of that trust;
- (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;
- (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
- (j) A fiduciary of a trust and a limited liability company of which more than fifty percent (50%) of the capital interest or the profits interest of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
- (k) A corporation and a partnership, including a registered limited liability partnership, if the same persons own:
  - 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
  - 2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership, including a registered limited liability partnership;
- (l) A corporation and a limited liability company if the same persons own:
  - 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
  - 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
- (m) A partnership, including a registered limited liability partnership, and a limited liability company if the same persons own:
  - 1. More than fifty percent (50%) of the capital interest or profits in the partnership, including a registered limited liability partnership; and
  - 2. More than fifty percent (50%) of the capital interest or profits in the limited liability company;

- (n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or
- (o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation: S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended.
- (2) "Agreement" means an agreement entered into, pursuant to KRS 154.28-090, on behalf of the authority and an approved company with respect to an economic development project;
- (3) "Agribusiness" means any activity involving the processing of raw agricultural products, including timber, or the providing of value-added functions with regard to raw agricultural products;
- (4) **"Electric generation" means the generation of electricity for resale by means of combusting at least fifty percent (50%) of the total fuel used to generate electricity from coal or from gas derived from coal;**
- (5) "Approved company" means any eligible company, approved by the authority pursuant to KRS 154.28-080, requiring an economic development project;
- ~~(6)(5)}~~ "Approved costs" means:
  - (a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, rehabilitation, and installation of an economic development project;
  - (b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, rehabilitation, and installation of an economic project which is not paid by the vendor, supplier, deliverymen, contractors, or otherwise else provided;
  - (c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation, and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, rehabilitation, and installation of an economic development project;
  - (d) All costs which shall be required to be paid under the terms of any contract for the acquisition, construction, rehabilitation, and installation of an economic development project;
  - (e) All costs which shall be required for the installation of utilities such as water, sewer, sewer treatment, gas, electricity, communications, railroads, and similar facilities, and including offsite construction of the facilities paid for by the approved company; and
  - (f) All other costs comparable to those described above;
- ~~(7)(6)}~~ "Assessment" means the job development assessment fee authorized by this section to KRS 154.28-100;
- ~~(8)(7)}~~ "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;
- ~~(9)(8)}~~ "Commonwealth" means the Commonwealth of Kentucky;
- ~~(10)(9)}~~ (a) "Economic development project" or "project" means and includes:
  1. The acquisition of ownership in any real estate by the approved **manufacturing, electric generation, or agribusiness** company or its affiliate;
  2. The present ownership of real estate by the approved **manufacturing, electric generation, or agribusiness** company or its affiliate;~~{or}~~
  3. The acquisition or present ownership of improvements or facilities, as described in paragraph (b) of this subsection, on land which is possessed or is to be possessed by the approved company pursuant to a ground lease having a term of sixty (60) years or more; **or**
  4. **The new construction of an electric generation facility in a coal producing county. A coal producing county shall mean a county in the Commonwealth of Kentucky that has produced coal upon which the tax imposed under KRS 143.020 was paid at any time.**

- (b) For purposes of subparagraphs 1. and 2. of paragraph (a) of this subsection, ownership of real estate shall only include fee ownership of real estate and possession of real estate pursuant to a capital lease as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976. With respect to subparagraphs 1., 2., and 3. of paragraph (a) of this subsection, the construction, installation, equipping, and rehabilitating of improvements, including fixtures and equipment directly involved in the manufacturing process, and facilities necessary or desirable for improvement of the real estate shall include: surveys, site tests, and inspections; subsurface site work and excavation; removal of structures, roadways, cemeteries, and other site obstructions; filling, grading, provision of drainage, and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; offsite construction of utility extensions to the boundaries of the real estate; and the acquisition, installation, equipping, and rehabilitation of manufacturing facilities or agribusiness operations on the real estate for the use of the approved company or its affiliates for manufacturing or agribusiness operational purposes. Pursuant to paragraphs (a)3. and (b) of this subsection, an economic development project shall not include lease payments made pursuant to a ground lease for purposes of the tax credits provided under the provisions of KRS 154.28-010 to 154.28-100. An economic development project shall include the equipping of a facility with equipment but, for purposes of the tax credits provided under the provisions of KRS 154.28-010 to 154.28-090, only to the extent of ten thousand dollars (\$10,000) per job created by and maintained at the economic development project;
- ~~(11)~~~~(10)~~ "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, trust, or any other entity engaged in manufacturing, **electric generation**, or agribusiness operations;
- ~~(12)~~~~(11)~~ "Inducement" means the assessment and the Kentucky income tax credit as set forth in KRS 154.28-090;
- ~~(13)~~~~(12)~~ "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property, and any activity functionally related to it, together with storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals; and
- ~~(14)~~~~(13)~~ "State agency" shall have the meaning assigned to the term in KRS 56.440(8).

Section 6. KRS 154.28-015 is amended to read as follows:

The General Assembly hereby finds and declares that the general welfare and material well-being of the citizens of the Commonwealth depends in large measure upon the development and growth of industry in the Commonwealth, and that it is in the best interest of the Commonwealth to induce the location of agribusiness, **electric generation**, or manufacturing facilities within the Commonwealth in order to advance the public purposes of relieving unemployment by creating new jobs that would not exist if not for the inducements to be offered by the authority to approved companies, and by creating sources of tax revenues for the support of the public services provided by the Commonwealth, and that the authority prescribed by KRS 154.28-015 to 154.28-100, and the purposes to be accomplished under the provisions of KRS 154.28-015 to 154.28-100, are proper governmental and public purposes for which public moneys may be expended, and that the inducement of the location of agribusiness, **electric generation**, or manufacturing facilities is of paramount importance, mandating that the provisions of KRS 154.28-015 to 154.28-100 be liberally construed and applied in order to advance the public purposes.

Section 7. KRS 154.28-080 is amended to read as follows:

- (1) The authority shall promulgate standards for the determination and approval of eligible companies and their economic development projects in accordance with KRS Chapter 13A.
- (2) The standards for approval of eligible companies and economic development projects shall include, but not be limited to: the creditworthiness of eligible companies; the number of new jobs to be provided by an economic development project to the residents of the Commonwealth; and the likelihood of the economic success of the economic development project.
- (3) The economic development project shall involve a minimum investment of one hundred thousand dollars (\$100,000) by the eligible company and shall result in the creation by the eligible company, within two (2) years from the date of the final resolution authorizing the economic development project, of a minimum of fifteen (15) new full-time jobs at the site of the economic development projects for Kentucky residents to be



employed by the eligible company and to be held by persons subject to the personal income tax of the Commonwealth. The authority may extend this two (2) year period upon the written application of an eligible company requesting an extension.

- (4) No economic development project which will result in the replacement of a manufacturing, *electric generation*, or agribusiness facility existing within the Commonwealth shall be approved by the authority; however, the authority may approve an economic development project that:
- (a) Rehabilitates a manufacturing, *electric generation*, or agribusiness facility:
    - 1. Which has not been in operation for a period of ninety (90) or more consecutive days; or
    - 2. The title to which is vested in other than the eligible company or an affiliate of the eligible company and that is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction;
  - (b) Replaces a manufacturing *or electric generation* facility existing in the Commonwealth:
    - 1. The title to which shall have been taken under the exercise of the power of eminent domain, or the title to which shall be the subject of a nonappealable judgment granting the authority to exercise the power of eminent domain, in either event to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or
    - 2. Which has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or
  - (c) Replaces an existing manufacturing *or electric generation* facility located in the same qualified county that cannot be expanded due to the unavailability of real estate at or adjacent to the manufacturing *or electric generation* facility to be replaced. Any economic development project satisfying the requirements of this subsection shall be eligible only for inducements to the extent of the expansion, and no inducements shall be available for the equivalent of the manufacturing *or electric generation* facility to be replaced. No economic development project otherwise satisfying the requirements of this subsection shall be approved by the authority that results in a lease abandonment or lease termination by the eligible company without the consent of the lessor.
- (5) With respect to each eligible company making an application to the authority for inducements, and with respect to these economic development projects described in the application which do not involve an expansion, the authority shall make inquiries and request materials of the applicant, including, but not limited to, written evidence that except for the receipt of inducements authorized by KRS 154.28-015 to 154.28-090 and KRS 141.400, the eligible company will not locate its economic development project within the Commonwealth. Upon the review of the application and completion of initial inquiries, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and authorizing the undertaking of the economic development project.
- (6) After a diligent review of the relevant materials and completion of its inquiries, the authority, by resolution of its board of directors, may designate an eligible company to be an approved company.
- (7) All meetings of the board of directors of the authority shall be held in accordance with KRS 61.805 to 61.850. The board of directors of the authority may, pursuant to KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from the open meetings law and pertaining to an eligible company.

Section 8. KRS 154.28-090 is amended to read as follows:

- (1) The authority, upon adoption of an authorizing resolution, may enter into, with any approved company, a financing agreement with respect to its economic development project. The terms and provisions of each agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:
- (a) The term of an agreement, which shall commence on the date of the agreement, shall not be longer than the earlier of the following:
    - 1. The maturity of loans or other financing incurred in connection with the economic development project, except that the agreement may be terminated upon the earlier prepayment of loans or other financing incurred in connection with the economic development project; or
    - 2. Ten (10) years from the activation date of the original agreement.

- (b) All proceeds of any loan or other financing incurred in connection with the economic development project shall be expended by the approved company within three (3) years from the date of the financing agreement. In the event that all proceeds of any loan or other financing incurred in connection with the economic development project are not fully expended within the three (3) year period, the authorized inducements shall automatically be reduced to and shall not be greater than the amount of proceeds actually expended by the approved company within the three (3) year period.
- (c) In consideration for the execution and during the term of the agreement, the approved company shall be permitted either of the following during the term of the agreement:
  - 1. A credit against Kentucky income tax imposed by KRS 141.020 or 141.040 on the income of the approved company generated by or arising out of the economic development project as determined by KRS 141.400; or
  - 2. The aggregate assessment withheld by the approved company in each year.
- (2) The agreement shall provide that:
  - (a)
    - 1. The assessments, if applicable, shall not exceed the annual payments of the total financing agreement by the approved company in any year; however, to the extent that the financing agreement annual payments exceed assessments collected in any year, the excess payment may be recouped from assessment collections in succeeding years.
    - 2. If in any fiscal year of the approved company during which the financing agreement is in effect the total assessments collected from the wages of the employees equals the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessments collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, and the approved company shall resume normal personal income tax withholdings from employees' wages for the remainder of that fiscal year.
  - (b) The Kentucky income tax credit, in any fiscal year of the approved company, shall not exceed the total debt service paid during the same fiscal year with respect to the loans or other financing incurred in connection with the economic development project; however, to the extent that annual debt service payments exceed the annual income tax credits in any year, the excess debt service payments may be recouped from excess tax credits in succeeding years.
  - (c) The income tax credited to the approved company shall be credited for the fiscal year for which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed under KRS 141.042.
  - (d) The agreement may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.
  - (e) An approved company shall require of any lender to an approved company funding the loans or other financing incurred in connection with the economic development project, written evidence of all annual debt service to the lender, which evidence shall be provided in writing to the authority within forty-five (45) days following the close of each fiscal year of the financing agreement.
  - (f) If an approved company fails to comply with its respective obligations under the financing agreement, the lender to an approved company fails to comply with the provisions of subsection (2)(e) of this section, or an approved company is declared in default under the loans or other financing incurred in connection with the economic development project, the authority, or any of its assignees, may, at its option:
    - 1. Suspend the availability of the income tax credits or job development assessment fees, as applicable;
    - 2. Pursue any remedy provided under the financing agreement, including termination of the agreement; and
    - 3. Pursue any other remedy at law to which it may appear entitled.
- (3) All remedies provided in subsection (2)(f) of this section shall be deemed cumulative.

- (4) Pursuant to this section, the activation date shall be established by the approved company in the financing agreement which shall be at any time in a two (2) year period after the date of final approval of the financing agreement by the authority. To implement the activation date, the approved company shall notify the authority, the Kentucky Revenue Cabinet, and the approved company's employees of the activation date on which implementation of the inducements authorized in the financing agreement shall occur. The activation date shall be the time when the maximum dollar value of equipment that constitutes a portion of an economic development project under KRS 154.28-010(10)~~(9)~~ shall be determined. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.28-080(3) by the activation date, the approved company will not be entitled to receive inducements pursuant to this subchapter until the approved company satisfies these requirements; however, the ten (10) year period for the term of the financing agreement shall begin from the activation date. Notwithstanding the previous sentence, if the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.28-080(3) within two (2) years from the date of final approval of the financing agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.
- (5) Ninety (90) days after the filing of the tax return of the approved company, the Revenue Cabinet shall certify to the authority the income tax liability, for the preceding fiscal year of the approved company for which the return was filed, of the approved company with respect to an economic development project receiving inducements under the provisions of KRS 154.28-010 to 154.28-090 and KRS 141.400, and the amount of any income tax credits taken pursuant to KRS 154.28-010 to 154.28-090 and KRS 141.400.

Section 9. KRS 154.28-120 is amended to read as follows:

- (1) If the authority gives its preliminary approval designating an eligible company and authorizing the undertaking of an economic development project prior to July 15, 1996, and the authority by final approval approves the eligible company as an approved company and the project of the eligible company as an economic development project, and the authority and the eligible company enter into a financing agreement not later than June 30, 1997, then the approved company shall not be subject to KRS 154.28-010(7)~~(6)~~, 154.28-010(10)~~(9)~~ except to the extent of any reference to a capital lease, 154.28-010(12)~~(11)~~, 154.28-080(3), 154.28-090, and 154.28-110, and shall be subject to KRS 154.28-010(10)~~(9)~~, 154.28-080, and 154.28-090, as in effect prior to July 15, 1996.
- (2) Subject to those approved companies described in subsection (1) of this section, KRS 154.28-110 shall only apply to those approved companies which enter into financing agreements with the authority after July 15, 1996.

SECTION 10. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

***The secretary of the Natural Resources and Environmental Protection Cabinet shall facilitate the permitting of coal-fired electric generation plants in the Commonwealth by developing procedures for one (1) stop shopping for environmental permits.***

**Approved April 5, 2000**

## **CHAPTER 322**

**(HB 244)**

AN ACT relating to a building inspectors training program.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

- (1) ***The Board of Housing, Buildings and Construction may establish a building inspectors training program through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. The program shall provide training to encourage local governments to establish and improve building code enforcement programs and to encourage all building inspectors to upgrade their skills.***
- (2) ***If the board chooses to establish the program authorized in subsection (1) of this section, there shall be created in the Department of Housing, Buildings and Construction, under the Board of Housing, Buildings and Construction, a trust and agency fund to be known as the "Building Inspectors' Financial Incentive***

*Training Program Fund". The fund shall be funded annually with a maximum of one hundred fifty thousand dollars (\$150,000) by increasing the department's plan review fees collected for each occupancy classification under KRS 198B.060 by one-half cent (\$.005) per calculated square foot. Any funds collected annually in excess of one hundred fifty thousand dollars (\$150,000) shall be used solely for the administration of the department's building inspection program. Any unused fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year, and moneys in the fund shall be available only for the purposes specified in this section.*

**Approved April 6, 2000**

## **CHAPTER 323**

**(SJR 110)**

A JOINT RESOLUTION naming the Hugh E. Spear Memorial Bridge in Cumberland County.

WHEREAS, Hugh E. Spear was born on December 12, 1903, the son of Bal and Mary Branham Spear; and

WHEREAS, Hugh E. Spear was the proud father of two sons: Mayford and Alton Spear, and three daughters: Sylvia Traylor, Juanita Cook, and Mildred Brammer; and

WHEREAS, Hugh E. Spear was an active force in the political and civic history of Cumberland County for the greater part of the twentieth century; and

WHEREAS, Hugh E. Spear served the citizens of Cumberland County as County Judge; and

WHEREAS, Hugh E. Spear served the citizens of the Commonwealth under the administration of Governor A.B. "Happy" Chandler; and

WHEREAS, Hugh E. Spear left this earth on February 4, 1987, with his place in the history of Cumberland County secure; and

WHEREAS, It is fitting and proper that Hugh E. Spear be remembered and honored by the citizens of Cumberland County and of this Commonwealth;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. The Transportation Cabinet is directed to name the bridge on Kentucky Route 61 over the Cumberland River in Cumberland County in memory of Hugh E. Spear.

Section 2. The Transportation Cabinet shall erect signs within thirty (30) days of the effective date of this Resolution at each approach to the bridge on Kentucky Route 61 over the Cumberland River in Cumberland County that read "The Hugh E. Spear Memorial Bridge."

**Approved April 6, 2000**

## **CHAPTER 324**

**(SCR 88)**

A CONCURRENT RESOLUTION directing the Interim Joint Committee on Education to study teacher compensation and benefits.

WHEREAS, the Commonwealth of Kentucky has a commitment to improve the education of its citizens to allow each of them to be competitive in a global economy; and

WHEREAS, in spite of all of the intense effort to change and improve the public education system since 1990, Kentucky's teachers are paid approximately \$3,000 less than the average teacher earns in the seven surrounding states and approximately \$5,000 less than the national average; and

WHEREAS, the Task Force on Teacher Quality found that though significant progress has been made in raising Kentucky's teachers' salaries since 1990, continued efforts to improve base teachers' salaries are needed to be competitive with surrounding states and to move up in the national rankings; and

WHEREAS, the Task Force on Teacher Quality also found that compensation and benefits beyond the maintenance of a base salary are needed to recognize and reward teachers who stay in the classroom and perform at high levels, or those who assume additional duties or hard-to-fill assignments; and

WHEREAS, there is a problem with providing adequate, affordable health insurance for teachers and other public employees, there is a need to study methods of providing adequate and affordable health insurance for teachers, public employees, and retirees including self-insuring teachers, public employees, and retirees; and

WHEREAS, additional study and funding are needed to implement these and other recommendations that will ensure that Kentucky's teachers are rewarded adequately;

NOW, THEREFORE,

*Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky, the House of Representatives concurring therein:*

Section 1. The Interim Joint Committee on Education through one of its subcommittees is directed to study the issues related to teacher compensation and benefits and to develop recommendations so that by 2004 Kentucky's teachers' salaries and benefits shall mirror the national average.

Section 2. The Interim Joint Committee on Education shall be authorized to contract for consultant services. The Interim Joint Committee on Education and its subcommittee shall report the findings and recommendations, with enabling legislation, to the Legislative Research Commission no later than September 1, 2001.

Section 3. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the identified issues to an interim joint committee or subcommittee thereof, and to designate a study completion date.

**Approved April 6, 2000**

## CHAPTER 325

(SB 379)

AN ACT relating to senatorial districts and declaring an emergency.

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

Section 1. KRS 5.107 is amended to read as follows:

The Seventh Senatorial District shall consist of the following territory:

---CENSUS---

COUNTY	PREC	SECT	NAME	TRACT	BLCK	SECT
BULLITT						
JEFFERSON	B112		PRECINCT 112 29 DISTRICT			
JEFFERSON	B113		PRECINCT 113 29 DISTRICT			
JEFFERSON	B114		PRECINCT 114 29 DISTRICT			
JEFFERSON	B115		PRECINCT 115 29 DISTRICT			
JEFFERSON	B116		PRECINCT 116 29 DISTRICT			
JEFFERSON	B117		PRECINCT 117 29 DISTRICT			
JEFFERSON	B119		PRECINCT 119 29 DISTRICT			
JEFFERSON	B120		PRECINCT 120 29 DISTRICT			
JEFFERSON	B121		PRECINCT 121 29 DISTRICT			
JEFFERSON	B123		PRECINCT 123 29 DISTRICT			
JEFFERSON	I126		PRECINCT 126 37 DISTRICT			
<b>JEFFERSON</b>	<b>J123</b>		<b>PRECINCT 123 38 DISTRICT</b>	<b>2003</b>	<b>101</b>	

<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>102</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>103</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>104</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>105</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>106</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>107</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>108</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>109</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>110</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>111</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>112</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>113</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>114</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>201</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>202</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>203</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>204</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>205</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>206</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>207</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>208</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>209</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>210</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>211</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>212</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>216</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>217</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>218</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>219</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>220</i>
<i>JEFFERSON</i>	<i>J123</i>	<i>PRECINCT 123 38 DISTRICT</i>	<i>2003</i>	<i>303</i>
<del><i>JEFFERSON</i></del>	<del><i>J123</i></del>	<del><i>PRECINCT 123 38 DISTRICT</i></del>		
<i>JEFFERSON</i>	<i>J124</i>	<i>PRECINCT 124 38 DISTRICT</i>		
<i>JEFFERSON</i>	<i>P106</i>	<i>PRECINCT 106 45 DISTRICT</i>		
<i>JEFFERSON</i>	<i>P110</i>	<i>PRECINCT 110 45 DISTRICT</i>		
<i>JEFFERSON</i>	<i>P111</i>	<i>PRECINCT 111 45 DISTRICT</i>		
<i>JEFFERSON</i>	<i>P112</i>	<i>PRECINCT 112 45 DISTRICT</i>		
<i>JEFFERSON</i>	<i>P113</i>	<i>PRECINCT 113 45 DISTRICT</i>		
<i>JEFFERSON</i>	<i>P114</i>	<i>PRECINCT 114 45 DISTRICT</i>		

JEFFERSON	P115	PRECINCT 115 45 DISTRICT
JEFFERSON	P116	PRECINCT 116 45 DISTRICT
JEFFERSON	Q105	PRECINCT 105 46 DISTRICT
JEFFERSON	Q113	PRECINCT 113 46 DISTRICT
JEFFERSON	Q114	PRECINCT 114 46 DISTRICT
JEFFERSON	Q117	PRECINCT 117 46 DISTRICT
JEFFERSON	Q118	PRECINCT 118 46 DISTRICT
JEFFERSON	Q119	PRECINCT 119 46 DISTRICT
JEFFERSON	Q120	PRECINCT 120 46 DISTRICT
JEFFERSON	Q121	PRECINCT 121 46 DISTRICT

Section 2. KRS 5.137 is amended to read as follows:

The Thirty-seventh Senatorial District shall consist of the following territory:

---CENSUS---

COUNTY	PREC	SECT	NAME	TRACT	BLCK	SECT
JEFFERSON	A101		PRECINCT 101 28 DISTRICT			
JEFFERSON	A103		PRECINCT 103 28 DISTRICT			
JEFFERSON	A104		PRECINCT 104 28 DISTRICT			
JEFFERSON	A105		PRECINCT 105 28 DISTRICT			
JEFFERSON	A107		PRECINCT 107 28 DISTRICT			
JEFFERSON	A108		PRECINCT 108 28 DISTRICT			
JEFFERSON	A111		PRECINCT 111 28 DISTRICT			
JEFFERSON	A113		PRECINCT 113 28 DISTRICT			
JEFFERSON	A114		PRECINCT 114 28 DISTRICT			
JEFFERSON	A115		PRECINCT 115 28 DISTRICT			
JEFFERSON	A117		PRECINCT 117 28 DISTRICT			
JEFFERSON	A118		PRECINCT 118 28 DISTRICT			
JEFFERSON	A119		PRECINCT 119 28 DISTRICT			
JEFFERSON	B101		PRECINCT 101 29 DISTRICT			
JEFFERSON	B102		PRECINCT 102 29 DISTRICT			
JEFFERSON	B103		PRECINCT 103 29 DISTRICT			
JEFFERSON	B105		PRECINCT 105 29 DISTRICT			
JEFFERSON	B106		PRECINCT 106 29 DISTRICT			
JEFFERSON	B107		PRECINCT 107 29 DISTRICT			
JEFFERSON	B108		PRECINCT 108 29 DISTRICT			
JEFFERSON	B109		PRECINCT 109 29 DISTRICT			
JEFFERSON	B110		PRECINCT 110 29 DISTRICT			
JEFFERSON	B111		PRECINCT 111 29 DISTRICT			
JEFFERSON	I122		PRECINCT 122 37 DISTRICT			

JEFFERSON	I123	PRECINCT 123 37 DISTRICT			
JEFFERSON	I124	PRECINCT 124 37 DISTRICT			
JEFFERSON	I125	PRECINCT 125 37 DISTRICT			
JEFFERSON	J110	PRECINCT 110 38 DISTRICT			
JEFFERSON	J117	PRECINCT 117 38 DISTRICT			
JEFFERSON	J120	PRECINCT 120 38 DISTRICT			
JEFFERSON	J122	PRECINCT 122 38 DISTRICT			
<b>JEFFERSON</b>	<b>J123</b>	<b>PRECINCT 123 38 DISTRICT</b>	<b>2003</b>	<b>301</b>	
<b>JEFFERSON</b>	<b>J123</b>	<b>PRECINCT 123 38 DISTRICT</b>	<b>2003</b>	<b>302</b>	<b>0201</b>
JEFFERSON	J126	PRECINCT 126 38 DISTRICT			
JEFFERSON	K118	PRECINCT 118 40 DISTRICT			
JEFFERSON	K119	PRECINCT 119 40 DISTRICT			
JEFFERSON	K120	PRECINCT 120 40 DISTRICT			
JEFFERSON	K123	PRECINCT 123 40 DISTRICT			
JEFFERSON	O105	PRECINCT 105 44 DISTRICT			
JEFFERSON	O107	PRECINCT 107 44 DISTRICT			
JEFFERSON	O109	PRECINCT 109 44 DISTRICT			
JEFFERSON	O111	PRECINCT 111 44 DISTRICT			
JEFFERSON	O112	PRECINCT 112 44 DISTRICT			
JEFFERSON	O113	PRECINCT 113 44 DISTRICT			
JEFFERSON	O114	PRECINCT 114 44 DISTRICT			
JEFFERSON	O115	PRECINCT 115 44 DISTRICT			
JEFFERSON	O117	PRECINCT 117 44 DISTRICT			
JEFFERSON	O119	PRECINCT 119 44 DISTRICT			
JEFFERSON	O120	PRECINCT 120 44 DISTRICT			
JEFFERSON	O121	PRECINCT 121 44 DISTRICT			
JEFFERSON	O122	PRECINCT 122 44 DISTRICT			
JEFFERSON	O123	PRECINCT 123 44 DISTRICT			
JEFFERSON	O124	PRECINCT 124 44 DISTRICT			
JEFFERSON	O126	PRECINCT 126 44 DISTRICT			
JEFFERSON	P104	PRECINCT 104 45 DISTRICT			
JEFFERSON	P105	PRECINCT 105 45 DISTRICT			

Section 3. Whereas, under KRS 117.056, county boards of election may not change election precinct boundaries from July 15, 2000 until completion of state legislative and congressional redistricting, an emergency is declared to exist, and this Act shall take effect on June 15, 2000.

**Approved April 6, 2000**



**CHAPTER 326****(SB 372)**

AN ACT relating to a pilot program for tax increment financing in counties containing a city of the first class.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 6 of this Act, unless the context otherwise requires:*

- (1) *"Agency" means an urban renewal and community development agency of a taxing district located within a county containing a city of the first class, established under KRS Chapter 99; a development authority located within a county, containing a city of the first class established under KRS Chapter 99; a nonprofit corporation located within a county containing a city of the first class established under KRS Chapter 58; or a designated department, division, or office of a city of the first class or a county containing a city of the first class;*
- (2) *"Development area" means an area no less than one (1) square mile, nor more than six (6) square miles, designated in need of public improvements by a local or state government in a county containing a city of the first class, a project area as defined in KRS 99.615, or a public project as defined in KRS 58.010 in a county containing a city of the first class. "Development area" includes an existing economic development asset;*
- (3) *"Increment" means that amount of money received by any taxing district or the state that is determined by subtracting the amount of old revenues from the amount of new revenues in any year for which a taxing district or the state and an agency have agreed upon under the terms of a contract of release or a grant contract;*
- (4) *"Local government" means a county containing a city of the first class;*
- (5) *"New revenues" means the revenues received by any taxing district or the state from a development area in any year after the establishment of the development area;*
- (6) *"Old revenues" means the amount of revenues received by any taxing district or the state from a development area in the last year prior to the establishment of the development area;*
- (7) *"Project" means any urban renewal, redevelopment, or public project undertaken in accordance with the provisions of Sections 1 to 5 of this Act, any project undertaken in accordance with KRS 99.610 to 99.680, or any project undertaken in accordance with the provisions of KRS Chapter 58;*
- (8) *"Release" or "contract of release" or "grant contract" means that agreement by which a taxing district or the state permits the payment to an agency of a portion of increments or an amount equal to a portion of increments received by it in return for the benefits accrued to the taxing district or the state by reason of a project undertaken by an agency in a development area; and*
- (9) *"Taxing district" means a county containing a city of the first class or a city of the first class that encompasses all or part of a development area, or the state but does not mean a school district.*
- (10) *"Pilot program" means a tax increment financing program or a grant program created by an agency within a county containing a city of the first class which shall exist for a period of twenty (20) years after which time it shall continue only after reauthorization by the General Assembly.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *It is found and declared that public improvements, and publicly promoted private improvements, in any development area that result in the increase in the value of property located in the development area or result in increased employment within the development area serve a public purpose for each taxing district possessing the authority, directly or indirectly, to impose ad valorem taxes, sales taxes, income taxes, or occupational license fees in the development area, and for the state with regards to its revenues from ad valorem taxes, sales taxes, and income taxes. The increment in revenues derived by each taxing district and the state from the development area is found and declared to be one of the benefits derived by each taxing district and the state from any local development project or public project undertaken by the agency; and*

- (2) *It is found that the use of tax increment financing or a grant program based upon the use of increment financing as tax revenues has proved to be successful and of great benefit to areas in need of revitalization and development in other parts of the country; therefore, the development of a pilot program within the Commonwealth to test the usefulness of increment financing to assist local governments in restoring and revitalizing their communities is declared to be a most worthy public purpose.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *A county containing a city of the first class or a city of the first class may establish a development area for the purpose of creating a pilot program to utilize tax increment financing or a grant program based upon the increment in state tax revenues for the redevelopment and revitalization of these development areas within their communities.*
- (2) *A development area in a county containing a city of the first class shall be located within ten (10) miles of the central business district of the largest city within the county and shall be within one (1) mile of one (1) or more economic development assets having employers, with at least one thousand (1,000) employees, who will leverage and promote investment in the zone.*
- (3) *A development area in a county containing a city of the first class shall have adequate roads, sewers, water, rail service, and an interstate highway interchange directly available.*
- (4) *At least fifty percent (50%) of a development area in a county containing a city of the first class, excluding roads, utility easements, and other infrastructure-related improvements, shall be composed of land that is a brownfield site or other land compatible for industrial or commercial uses to permit and facilitate redevelopment and reuse of land in the development area compatible with the adjacent economic development assets.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *In connection with the establishment of any development area, an agency may enter into contracts with one (1) or more taxing districts for the release to the agency of increments expected to be derived by a taxing district within a development area with an existing development asset as leveraged in part by the undertaking of a project.*
- (2) *No contract shall require the release of less than fifty percent (50%) of the increments, or more than ninety-five percent (95%) of the increments where the revenue is derived solely from ad valorem taxation or solely from occupational license fees, or more than eighty percent (80%) of the increments where the revenue is derived from ad valorem taxes and occupational license fees.*
- (3) *An agency may enter into a contract with the state, acting by and through the Governor, for an annual grant to the agency in an amount equal to not less than fifty percent (50%) nor more than eighty percent (80%) of the increment in ad valorem, sales, and income taxes derived by the state within the development area with an existing economic development asset as leveraged in part by the undertaking of a project.*
- (4) *Any amount derived by the agency under the terms of a release shall be used solely for the purposes of the project and in the development area.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *Each taxing district is authorized to execute a contract of release with any agency in acknowledgment of benefits to be derived by it within the development area with an existing economic development asset as leveraged in part by the undertaking of a project, and in order to promote the public purposes of the taxing district.*
- (2) *Any contract signed for the release of increments shall be made on the basis of automatic year-to-year renewals, with the option to discontinue upon sixty (60) days' notice before the end of any annual termination date of the contract.*
- (3) *The state, acting by and through the Governor, is authorized to execute a grant contract with any agency in acknowledgment of benefits to be derived by it with the development area with an existing economic development asset as leveraged in part by the undertaking of a project, and in order to promote the public purpose of the state.*
- (4) *Any grant contract signed for an amount equal to the increment derived from the development area shall be made on the basis of automatic year-to-year renewals, with the option to discontinue upon sixty (60) days' notice before the end of any annual termination date of the contract.*

## SECTION 6. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

*Any agency, other than a county, city, urban-county, or charter county government, that enters into a contract with any taxing district for the release of any increments that may arise during the period of a contract of release shall forthwith notify the official charged with the collecting of taxes for the property in the development area of the execution of a contract of release, and the official charged with the collection of taxes shall in each year a contract of release is in effect determine the amount of the increment that is the subject of the contract of release for division between the taxing district and the agency; and, upon the basis of the agreement made between the taxing district and the agency, the official shall divide and distribute the funds derived from the area between the taxing district and the agency. Any local government that has designated an agency as having oversight of a designated development area shall annually issue a release to the agency of those increments created from the taxes collected on properties within the development area. All increments released to an agency of a local government shall be used solely for the purposes of projects in the development area.*

Section 7. The following KRS sections are repealed:

99.751 Definitions for KRS 99.756 to 99.771.

99.756 Purpose.

99.761 Contracts for release of increments to agency by taxing districts.

99.766 Automatic renewals of contracts of release.

99.771 Notification to tax collector -- Distribution of funds.

**Approved April 6, 2000**

## CHAPTER 327

**(SB 336)**

AN ACT relating to intangible property taxes.

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

Section 1. KRS 132.020 is amended to read as follows:

- (1) An annual ad valorem tax for state purposes of thirty-one and one-half cents (\$0.315) upon each one hundred dollars (\$100) of value of all real property directed to be assessed for taxation, and one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all privately-owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 directed to be assessed for taxation, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing, and one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all tobacco directed to be assessed for taxation, and twenty-five cents (\$0.25) upon each one hundred dollars (\$100) of value of all money in hand, ~~shares of stock,~~ notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, except as otherwise provided in subsection (2) of this section, and one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of unmanufactured agricultural products, one-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operations, one-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all livestock and domestic fowl, one-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all tangible personal property located in a foreign trade zone as designated under 19 U.S.C. sec. 81, fifteen cents (\$0.15) upon machinery actually engaged in manufacturing, fifteen cents (\$0.15) upon commercial radio, television and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna, fifteen cents (\$0.15) upon property which has been certified as a pollution control facility as defined in KRS 224.01-300, one-tenth of one cent (\$0.001) upon property which has been certified as an alcohol production facility as defined in KRS 247.910, or as a fluidized bed energy production facility as defined in KRS 211.390, twenty-five cents (\$0.25) upon each one hundred dollars (\$100) of value of motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043, and forty-five cents (\$0.45) upon each one hundred dollars (\$100) of value of all other property directed to be assessed for taxation shall be paid by the owner or person assessed, except as provided in

subsection (2) of this section and KRS 132.030, 132.050, 132.200, 136.300, 136.320, and other sections providing a different tax rate for particular property.

- (2) (a) An annual ad valorem tax for state purposes of one and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value shall be paid upon the following classes of intangible personal properties, when the intangible personal properties have not acquired a taxable situs without this state:
  1. Accounts receivable, notes, bonds, credits, and any other intangible property rights arising out of or created in the course of regular and continuing business transactions substantially performed outside this state;
  2. Patents, trademarks, copyrights, and licensing or royalty agreements relating to these;
  3. ~~{Shares of capital stock of any affiliated company as defined in subsection (3) of this section and }~~Notes, bonds, accounts receivable, and all other intercompany intangible personal property due from *any affiliated*~~{the}~~ company; and
  4. Tobacco base allotments.
- (b) An annual ad valorem tax for state purposes of one-thousandth of one percent (0.001%) shall be paid upon money in hand,~~{shares of stock,}~~ notes, bonds, accounts, credits, and other intangible assets, whether by mortgage, pledge, or otherwise, or unsecured, of financial institutions, as defined in KRS 136.500.
- (3) "Affiliated company" shall mean a parent corporation or subsidiary corporation, and any corporation principally engaged in business outside the United States in which the owner or the person assessed directly or indirectly owns or controls not less than ten percent (10%) of the outstanding voting stock.
- (4) With respect to the intangible properties taxed pursuant to subsection (2) of this section, no other ad valorem tax shall be levied by the state or any county, city, school, or other taxing district on the intangible properties, or directly or indirectly against the owner.
- (5) Thirty cents (\$0.30) of the thirty-one and one-half cents (\$0.315) state tax rate on real property and thirty cents (\$0.30) of the forty-five cents (\$0.45) state tax on tangible personalty subject to local taxation shall be considered as local school district tax levies for purposes of computing any direct payments of state or federal funds to said districts as replacement for ad valorem taxes lost on property acquired by a governmental agency. Should the equivalency ever be less than thirty cents (\$0.30), as certified by the Department of Education, the direct payments shall be reduced proportionately.
- (6) The provisions of subsection (1) of this section notwithstanding, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that the increase exceeds the preceding year's assessment by more than four percent (4%). In any year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.
- (7) By July 1 each year, the cabinet shall compute the state tax rate applicable to real property for the current year in accordance with the provisions of subsection (5) of this section and certify the rate to the county clerks for their use in preparing the tax bills. If the assessments for all counties have not been certified by July 1, the cabinet shall, when either real property assessments of at least seventy-five percent (75%) of the total number of counties of the Commonwealth have been determined to be acceptable by the cabinet, or when the number of counties having at least seventy-five percent (75%) of the total real property assessment for the previous year have been determined to be acceptable by the cabinet, make an estimate of the real property assessments of the uncertified counties and compute the state tax rate.
- (8) If the tax rate set by the cabinet as provided in subsection (6) of this section produces more than a four percent (4%) increase in real property tax revenues, the rate shall be adjusted in the succeeding year so that the cumulative total of each year's property tax revenue increase shall not exceed four percent (4%) per year.
- (9) The provisions of subsection (6) of this section notwithstanding, the assessed value of unmined coal certified by the cabinet after July 1, 1994, shall not be included with the assessed value of other real property in determining the state real property tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also be excluded from the provisions of subsection (6) of this section. The calculated rate shall, however, be applied to unmined coal property, and the state revenue shall be devoted to the program described in KRS

146.550 through 146.570, except that four hundred thousand dollars (\$400,000) of the state revenue shall be paid annually to the State Treasury and credited to the Coal Marketing and Export Council for the purpose of public education of coal-related issues.

- (10) Effective on or after January 1, 1990, an ad valorem tax for state purposes of five cents (\$0.05) upon each one hundred dollars (\$100) of value shall be paid upon goods held for sale in the regular course of business, which, on or after January 1, 1999, includes machinery and equipment held in a retailer's inventory for sale or lease originating under a floor plan financing arrangement; and raw materials, which includes distilled spirits and distilled spirits inventory, and in-process materials, which includes distilled spirits and distilled spirits inventory, held for incorporation in finished goods held for sale in the regular course of business.
- (11) An ad valorem tax for state purposes of ten cents (\$0.10) per one hundred dollars (\$100) of assessed value shall be paid on the operating property of railroads or railway companies that operate solely within the Commonwealth.
- (12) An ad valorem tax for state purposes of one and one-half cents (\$0.015) per one hundred dollars (\$100) of assessed value shall be paid on aircraft not used in the business of transporting persons or property for compensation or hire.
- (13) An ad valorem tax for state purposes of one and one-half cents (\$0.015) per one hundred dollars (\$100) of assessed value shall be paid on federally documented vessels not used in the business of transporting persons or property for compensation or hire, or for other commercial purposes.

Section 2. KRS 132.060 is amended to read as follows:

- (1) Every broker maintaining an office or place of business in this state for the conduct of the business of buying or selling ~~stocks,~~ bonds or other securities, ***excluding stocks and mutual funds***, for customers in margin transactions shall report to the Revenue Cabinet as of January 1 of each year, the aggregate amount, with an accurate description and the market value, of all such securities then held or carried by such broker for each office or place of business in the state for resident customers, which report shall be filed with the cabinet on or before March 1 of each year.
- (2) If the broker has doubt as to whether or not a customer is a resident of this state, he may, on or before making the required report, call upon the customer to submit an affidavit upon a form to be prescribed by the cabinet, stating the facts relied upon to establish his nonresidence. The broker may then report to the cabinet the name and post office address of such customer and the information as to securities held or carried for him, and file therewith the customer's affidavit. The broker shall then be relieved from making any further report and from collecting or paying any taxes for the customer.
- (3) If the customer fails or refuses to furnish the affidavit required by the broker, the broker shall report and pay the tax for the customer, who shall then have no claim against the broker because of the payment of the tax charged to the customer's account.

Section 3. KRS 132.200 is amended to read as follows:

All property subject to taxation for state purposes shall also be subject to taxation in the county, city, school, or other taxing district in which it has a taxable situs, except the classes of property described in KRS 132.030 and 132.050, and the following classes of property, which shall be subject to taxation for state purposes only:

- (1) Farm implements and farm machinery owned by a person actually engaged in farming and used in his farm operation;
- (2) Livestock, ratite birds, and domestic fowl;
- (3) Capital stock of savings and loan associations;
- (4) Machinery actually engaged in manufacturing, products in the course of manufacture, and raw material actually on hand at the plant for the purpose of manufacture. The printing, publication, and distribution of a newspaper or operating a job printing plant shall be deemed to be manufacturing;
- (5) Commercial radio, television, and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna; however, radio or television towers not essential to the production of the wave or signal broadcast shall not be included;
- (6) Unmanufactured agricultural products. They shall be exempt from taxation for state purposes to the extent of the value, or amount, of any unpaid nonrecourse loans thereon granted by the United States government or any

agency thereof, and except that cities and counties may each impose an ad valorem tax of not exceeding one and one-half cents (\$.015) on each one hundred dollars (\$100) of the fair cash value of all unmanufactured tobacco and not exceeding four and one-half cents (\$.045) on each one hundred dollars (\$100) of the fair cash value of all other unmanufactured agricultural products, subject to taxation within their limits that are not actually on hand at the plants of manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or any agent of the producer to whom the products have been conveyed or assigned for the purpose of sale;

- (7) Money in hand, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, ~~and shares of stock~~. Nothing in this section shall forbid local taxation of franchises of corporations or of financial institutions, as provided for in KRS 136.575, or domestic life insurance companies;
- (8) All privately-owned leasehold interest in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;
- (9) Property which has been certified as a pollution control facility as defined in KRS 224.01-300;
- (10) Property which has been certified as an alcohol production facility as defined in KRS 247.910;
- (11) On and after January 1, 1977, the assessed value of unmined coal shall be included in the formula contained in KRS 132.590(9) in determining the amount of county appropriation to the office of the property valuation administrator;
- (12) Tangible personal property located in a foreign trade zone as designated under 19 U.S.C. sec. 81;
- (13) Motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043. However, nothing herein shall be construed to exempt historical motor vehicles from the usage tax imposed by KRS 138.460;
- (14) Property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
- (15) All motor vehicles held for sale in the inventory of a licensed motor vehicle dealer, which are not currently titled and registered in Kentucky and are held on an assignment pursuant to the provisions of KRS 186A.230, and all motor vehicles with a salvage title held by an insurance company;
- (16) Machinery or equipment owned by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes as defined in KRS 139.095;
- (17) New farm machinery and other equipment held in the retailer's inventory for sale under a floor plan financing arrangement by a retailer, as defined under KRS 365.800;
- (18) New boats and new marine equipment held for retail sale under a floor plan financing arrangement by a dealer registered under KRS 235.220;
- (19) Aircraft not used in the business of transporting persons or property for compensation or hire if an exemption is approved by the county, city, school, or other taxing district in which the aircraft has its taxable situs; and
- (20) Federally documented vessels not used in the business of transporting persons or property for compensation or hire or for other commercial purposes, if an exemption is approved by the county, city, school, or other taxing district in which the federally documented vessel has its taxable situs.

Section 4. KRS 132.220 is amended to read as follows:

- (1) Deposits belonging to a resident of Kentucky in any financial institution, as defined in KRS 136.500, and unmanufactured tobacco insofar as it is subject to taxation by KRS 132.190 and 132.200, shall be listed, assessed, and valued as of January 1 of each year. Money in hand shall be listed, assessed, and valued as of January 1 of each year. ~~Shares of stock.~~ Notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, and all interest in the property, unless otherwise provided by law, shall be listed, assessed, and valued as of the beginning of business on January 1 of each year. All other taxable property and all interest in other taxable property, unless otherwise specifically provided by law, shall be listed, assessed, and valued as of January 1 of each year. It shall be the duty of all persons owning or having any interest in any real property taxable in this state to list or have listed the property with the property valuation administrator of the county where it is located between January 1 and March 1 in each year, except as

otherwise provided by law. It shall be the duty of all persons owning or having any interest in any intangible personal property or tangible personal property taxable in this state to list or have listed the property with the property valuation administrator of the county of taxable situs or with the cabinet between January 1 and May 15 in each year, except as otherwise prescribed by law. The filing date for an individual's intangible property tax return may be extended to the extended federal income filing date approved by the Internal Revenue Service for that individual. If an individual extends the filing date for the intangible return, no discount shall be allowed upon the payment of the intangible tax. All persons in whose name property is properly assessed shall remain bound for the tax, notwithstanding they may have sold or parted with it.

- (2) Any taxpayer may list his property in person before the property valuation administrator or his deputy, or may file a property tax return by first class mail. Any real property correctly and completely described in the assessment record for the previous year, or purchased during the preceding year and for which a value was stated in the deed according to the provisions of KRS 382.135, may be considered by the owner to be listed for the current year if no changes that could potentially affect the assessed value have been made to the property. However, if requested in writing by the property valuation administrator or by the cabinet, any real property owner shall submit a property tax return to verify existing information or to provide additional information for assessment purposes. Any real property which has been underassessed as a result of the owner intentionally failing to provide information, or intentionally providing erroneous information, shall be subject to revaluation, and the difference in value shall be assessed as omitted property under the provisions of KRS 132.290.
- (3) If the owner fails to list the property, the property valuation administrator shall nevertheless assess it. The property valuation administrator may swear witnesses in order to ascertain the person in whose name to make the list. The property valuation administrator, his employee, or employees of the cabinet may physically inspect and revalue land and buildings in the absence of the property owner or resident. The exterior dimensions of buildings may be measured and building photographs may be taken; however, with the exception of buildings under construction or not yet occupied, an interior inspection of residential and farm buildings, and of the nonpublic portions of commercial buildings shall not be conducted in the absence or without the permission of the owner or resident.
- (4) Real property shall be assessed in the name of the owner, if ascertainable by the property valuation administrator, otherwise in the name of the occupant, if ascertainable, and otherwise to "unknown owner." The undivided real estate of any deceased person may be assessed to the heirs or devisees of the person without designating them by name.
- (5) Real property tax roll entries for which tax bills have not been collected at the expiration of the one (1) year tolling period provided for in KRS 134.470, and for which the property valuation administrator cannot physically locate and identify the real property, shall be deleted from the tax roll and the assessment shall be exonerated. The property valuation administrator shall keep a record of these exonerations, which shall be open under the provisions of KRS 61.870 to 61.884. If, at any time, one of these entries is determined to represent a valid parcel of property it shall be assessed as omitted property under the provisions of KRS 132.290. Notwithstanding other provisions of the Kentucky Revised Statutes to the contrary, any loss of ad valorem tax revenue suffered by a taxing district due to the exoneration of these uncollectable tax bills may be recovered through an adjustment in the tax rate for the following year.
- (6) All real property exempt from taxation by Section 170 of the Constitution shall be listed with the property valuation administrator in the same manner and at the same time as taxable real property. The property valuation administrator shall maintain an inventory record of the tax-exempt property, but the property shall not be placed on the tax rolls. A copy of this tax-exempt inventory shall be filed annually with the cabinet within thirty (30) days of the close of the listing period. This inventory shall be in the form prescribed by the cabinet. The cabinet shall make an annual report itemizing all exempt properties to the Governor and the Legislative Research Commission within sixty (60) days of the close of the listing period.
- (7) Each property valuation administrator, under the direction of the cabinet, shall review annually all real property listed with him under subsection (6) of this section and claimed to be exempt from taxation by Section 170 of the Constitution. The property valuation administrator shall place on the tax rolls all property that is not exempt. Any property valuation administrator who fails to comply with this subsection shall be subject to the penalties prescribed in KRS 132.990(2).

Section 5. KRS 132.240 is amended to read as follows:

Individuals or corporations listing property for taxation with the property valuation administrator or the county board of supervisors shall reveal the face value of all intangibles listed, except ~~[-stocks,-]~~ cash or bank deposits, on the form

prescribed by the Revenue Cabinet for listing intangible property. A reduction of fifty cents (\$0.50) shall be made from the property valuation administrator's compensation for each list he accepts upon which there is an omission to reveal the face value of any intangible property listed, except ~~[stocks,]~~ cash or bank deposits.

Section 6. KRS 132.360 is amended to read as follows:

- (1) Any assessment of accounts receivable, notes, ~~[stocks]~~ or bonds or other intangible or tangible personal property that were listed with the property valuation administrator or with the Revenue Cabinet as provided by KRS 132.220 may be reopened by the Revenue Cabinet within five (5) years after the date as of which they were assessed, unless the assessed value thereof is the face value in the case of accounts receivable and notes or the quoted value in the case of ~~[stocks and]~~ bonds, or has been established by a court of competent jurisdiction. If upon reopening the assessment the cabinet finds that the assessment was less than the fair cash value and should be increased, it shall give notice thereof to the taxpayer, who may within thirty (30) days thereafter protest to the cabinet and offer evidence to show that no increase should be made. After the cabinet has disposed of the protest, the taxpayer may appeal from any such additional assessment as provided by KRS 131.110 and 131.340.
- (2) Upon such assessment becoming final the cabinet shall certify the amount due to the taxpayer. The tax bill shall be handled and collected as an omitted tax bill, and the additional tax shall be subject to the same penalties and interest as the tax on omitted property voluntarily listed.

Section 7. KRS 132.520 is amended to read as follows:

- (1) Every bank, trust company, combined bank and trust company, and real estate title insurance company doing business in this state shall, by February 1 of each year, unless the time is extended by the Revenue Cabinet, file with the cabinet a report sworn to by its president, vice president, treasurer, or cashier, showing as of January 1 of each year:
  - (a) A list of the notes, bonds, or other evidences of indebtedness secured by mortgage or other recorded instrument standing in its name of record that it has assigned or transferred during the preceding year without making a transfer of record, the amount of each, and the name and address of the person to whom each was assigned. Where the name and address of the transferee holding the securities on January 1 of any year is given, any previous transfers of the securities during that year need not be furnished.
  - (b) A list of the mortgages standing in its name on January 1 that were assigned of record to it during the preceding year with its knowledge and consent, where it has not become the absolute owner of the debt secured thereby, showing the amount of each such mortgage and the name and address of each assignor. Any mortgage assigned to it during any year and paid and released of record prior to January 1 need not be included in the report.
  - (c) A list of all debenture bonds, collateral trust bonds, notes, certificates, and other evidences of indebtedness issued, assigned, or transferred by it during the preceding year that are secured by and represent the beneficial interest in ~~[stocks,]~~ lien notes, bonds, or mortgages standing in its name of record, the amount of each such evidence of indebtedness, and the name and address of the person to whom each was assigned or transferred. Where the name and address of the transferee holding the securities on January 1 of any year is given, any previous transfer or assignment of the securities need not be furnished.
  - (d) A list of all ~~[stocks,]~~ lien notes, bonds, mortgages, certificates, and other evidences of indebtedness that it has assigned or transferred to any person as security for the issuing of any debenture or collateral trust bonds, the amount of each, and the name and address of the person to whom each was assigned.
- (2) The reports required under paragraphs (a) and (b) of subsection (1) of this section need not include sales or pledges from one (1) bank, trust company, or combined bank and trust company to another bank or company, or notes or obligations secured by any recorded instrument executed to a bank, trust company, or a combined bank and trust company in which the obligations secured by the instrument are divided among estates or accounts in charge of the bank or company and regularly and properly entered on its records. The provisions of this section do not apply to mortgages made by corporations to trustees to secure bond issues made by them in the regular course of business, except as provided in paragraph (c) of subsection (1) of this section.
- (3) The information thus obtained shall be communicated by the cabinet to the property valuation administrator and the board of assessment appeals of the respective counties in which the true owners of the debts reside.



Section 8. KRS 136.030 is amended to read as follows:

- (1) ~~[(a) The individual stockholders of a corporation shall not be required to list their shares for ad valorem taxation so long as the corporation pays taxes to the State of Kentucky on at least seventy five percent (75%) of its total property, wherever located. Bonds and obligations of the United States of America and its possessions and bonds and obligations of the State of Kentucky, its instrumentalities, and its political subdivisions and their instrumentalities shall not be considered in the computation of the total property of the corporation, wherever located, nor in the computation of the amount of property upon which the corporation pays ad valorem taxes to the State of Kentucky. In order to obtain this exemption, the stockholder shall furnish satisfactory proof to the Revenue Cabinet that at least seventy five percent (75%) of the total property of the corporation as hereinabove specified is taxed in the State of Kentucky.~~
- ~~(b) A corporation which has its "principal office", as defined in KRS 271B.1 400, in this state during the taxable period may elect, in order to satisfy the provisions of paragraph (a) of this subsection, to include in the computation of the total property of the corporation, wherever located, and in the computation of the amount of property upon which the corporation pays ad valorem taxes to the State of Kentucky, out of state business property formerly owned by a subsidiary corporation, the shares of which had been treated as stock of an "affiliated company," as defined in KRS 132.020, held by the electing corporation, when the electing corporation pays an ad valorem tax for state purposes for the taxable period on the value of the out of state business property at the rate provided for in KRS 132.020(2).~~
- ~~(2) Every corporation organized under the laws of this state, or doing business in this state, whose stock is liable to assessment and taxation under subsection (1) of this section,~~ and domestic life insurance companies, shall by February 15, of each year make a true and correct report to the Revenue Cabinet signed by its president, secretary, treasurer, or other chief officer, giving the names and addresses of residents of this state who hold its ~~shares of stock and~~ outstanding bonds as of January 1 previous thereto, and also the transfer of any of its ~~stocks or~~ bonds by residents of this state to nonresidents within thirty (30) days previous to January 1.
- ~~(2)(3)~~ Every broker-dealer or his agent doing business in this state pursuant to KRS Chapter 292, shall on or before March 1, each year, as of the preceding January 1, furnish the Revenue Cabinet the following information:
  - (a) Name and address of all Kentucky residents whose stocks, bonds, or other securities, ***excluding stocks and mutual funds***, are held in a name other than that of the actual owner and which are in the possession of or subject to the control of such broker-dealer or his agent, for the benefit of such actual owner. This shall be construed to include all accounts fully paid ~~for if the stock certificates have not been sent to the Kentucky residents~~;
  - (b) Name of company by whom ~~stocks,~~ bonds, ~~options, index futures,~~ or other securities were issued;
  - (c) ~~Number of shares and type of each stock,~~ Interest rate, maturity date, par value, and number of bonds held, and sufficient information to measure the quantity of other securities; and
  - (d) Market value as of the previous January 1.
- ~~[(4) For purposes of determining the tax status, under subsection (1) of this section, of the shareholders of a holding company with subsidiaries subject to the provisions of KRS 136.120(1), the property of the subsidiaries subject to the provisions of KRS 136.120(1) shall be considered to be property of the holding company, and ad valorem taxes paid to the State of Kentucky by the subsidiaries subject to the provisions of KRS 136.120(1) shall be considered to be paid by the holding company.]~~

SECTION 9. A NEW SECTION OF KRS CHAPTER 132 IS CREATED TO READ AS FOLLOWS:

*Shares of stock shall be exempt from state and local ad valorem tax.*

Approved April 6, 2000

## CHAPTER 328

(SB 326)

AN ACT relating to court fees and costs.

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

Section 1. KRS 23A.205 is amended to read as follows:

- (1) Court costs for a criminal case in the Circuit Court shall be ~~eighty-two~~~~seventy-five~~ dollars ~~(\$82)~~~~(\$75)~~, which shall include the fee mandated in KRS 346.185.
- (2) Except as provided in KRS 346.185, taxation of costs against a defendant, upon conviction, may be probated or suspended at the discretion of the court.
- (3) Additional fees shall be charged in Circuit Court criminal matters as follows:
  - (a) Preparing a certification ..... \$1.00
  - (b) Preparing a copy of a document (per page) ..... \$0.15
- (4) The additional fees required by subsection (3) of this section shall be paid to the clerk at the time the service is requested.
- (5) The circuit clerk shall monthly pay ~~twelve~~~~five~~ dollars ~~(\$12)~~~~(\$5)~~ from each court cost collected pursuant to subsection (1) of this section to the sheriff for ~~the payment of bailiffs for court security~~~~use by the sheriff for providing security services and related activities to the court~~ as provided for in KRS 64.092. The clerk shall include among his reports to the Administrative Office of the Courts the amounts paid to the sheriff.

Section 2. KRS 24A.175 is amended to read as follows:

- (1) Court costs for a criminal case in the District Court shall be:
  - (a) For an offense for which prepayment is permitted  
under KRS 189.394, 431.451, or 431.452 and for which  
prepayment has been made prior to trial as required by law ..... ~~\$49.00~~~~(\$42.00)~~
  - (b) For an offense for which prepayment is not permitted or  
has not been made ..... ~~\$74.00~~~~(\$67.00)~~
  - (c) Court costs designated in paragraph (b) of this subsection shall include the fee mandated by KRS 346.185.
- (2) There shall be no court costs for a parking citation when:
  - (a) The fine is paid to the clerk before the trial date in the same manner as provided for speeding citations under KRS 189.394(3); and
  - (b) The citation does not involve parking in a fire lane or blocking the traveled portion of the highway.
- (3) Additional costs shall be assessed in District Court criminal matters as follows:
  - (a) Preparing an attestation ..... \$0.50
  - (b) Preparing a certification ..... \$1.00
  - (c) Preparing a copy of a document (per page) ..... \$0.25
- (4) Taxation of costs against a defendant, upon conviction, including persons sentenced to state traffic school as provided under KRS 186.574, shall be mandatory and shall not be probated or suspended.
- (5) The circuit clerk shall, at the time fines and costs are paid over to the state, pay five dollars (\$5) from each court cost collected pursuant to subsection (1) of this section to the county treasurer for use by the fiscal court for the sole purpose of defraying the costs of operation of the county jail and the transportation of prisoners and shall include among his reports to the Administrative Office of the Courts the amounts paid to the county.
- (6) The circuit clerk shall, at the time fines and costs are paid over to the state, pay ten dollars (\$10) from each court cost collected pursuant to subsection (1) of this section to the State Treasury for the benefit and use of the Kentucky Local Correctional Facilities Construction Authority pursuant to KRS 441.625 to 441.695.
- (7) The circuit clerk shall monthly pay ~~twelve~~~~five~~ dollars ~~(\$12)~~~~(\$5)~~ from each court cost collected pursuant to subsection (1) of this section to the sheriff for use by the sheriff for providing security services and related activities to the court as provided for in KRS 64.092. The clerk shall include among his reports to the Administrative Office of the Courts the amounts paid to the sheriff.

Section 3. KRS 64.092 is amended to read as follows:

Compensation of sheriffs and other law enforcement officers or agencies for attending court shall be as follows:

- (1) Compensation shall be provided only for the actual time for which the sheriff or other officer is ordered to be physically present in the courtroom or is ordered to be physically present to discharge a duty ordered by the Chief Circuit Judge, Chief District Judge, or Judge of the Court of Appeals, as appropriate.
- (2) Compensation shall not be provided for more than one (1) sheriff or other officer per courtroom unless the need for additional personnel is certified in writing by the Chief Circuit Judge, Chief District Judge, or Judge of the Court of Appeals, as appropriate, and the utilization of additional personnel is approved by the Chief Justice, or his designee. In the event of an emergency of such nature precluding contacting the Chief Justice or his designee, the Chief Circuit Judge, Chief District Judge, or Judge of the Court of Appeals may authorize such assignment of additional personnel for a period not to exceed twenty-four (24) hours.
- (3) Where a single sheriff or other law enforcement officer serves more than one (1) court or courtroom during a single day, he shall be paid as if he had served only one (1) courtroom during that day. Dual compensation for service during a single day shall not be permitted.
- (4) Time, for compensation purposes, shall be computed as the actual time spent in the courtroom pursuant to court direction or order and the actual time spent in other service to the court as directed or ordered by the appropriate judge.
- (5) Time spent in court service by a sheriff or other law enforcement officer shall be certified by the judge of the court which the officer attended and by the Chief Judge of the Circuit Court, if the service was to the Circuit Court, or by the Chief Judge of the District Court, if the service was to the District Court.
- (6) The sheriff or other law enforcement officer serving a Circuit or District Court shall be compensated at the rate of eight dollars (\$8) per hour of service. If service is for a part of an hour, then compensation for such service shall be prorated for the actual number of minutes' service within a given hour.
- (7) The sheriff shall receive ~~twelve~~~~five~~ dollars ~~(\$12)~~~~[(5)]~~ from each court cost collected pursuant to KRS 23A.205, 23A.215, 24A.175, and 24A.180 to help defray the cost of providing security services and related activities to the court. The moneys received by the sheriff under this subsection are authorized official expenses to be considered operating expenses of the sheriff's office and shall not be considered as part of his compensation.

**Approved April 6, 2000**

## **CHAPTER 329**

**(SB 216)**

AN ACT relating to the natural history of Kentucky.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

*The General Assembly finds that the natural heritage of the Commonwealth is unique and plays a pivotal role in the economy of the state. As the state competes in an expanding global marketplace, this unique heritage must be recognized for its economic importance. In addition, the General Assembly finds that Kentuckians have a deep, personal commitment to a responsible stewardship of the land and water in order that future Kentuckians may benefit from the state's natural heritage. Upon these findings, the General Assembly declares that the purposes of Sections 1 to 9 of this Act are to:*

- (1) *Establish a natural history museum to showcase the natural heritage of the state;*
- (2) *Provide a focal point for gathering resources to educate Kentuckians about the value and uniqueness of the state's natural heritage and to illustrate the historical human interactions with nature;*
- (3) *Establish a database of information on the state's natural heritage;*
- (4) *Create a repository of historical and contemporary specimens of the state's flora, fauna, fossils, minerals, archeological remains, and other natural features;*

- (5) *Prevent the loss of specimens of Kentucky's natural heritage to other states; and*
- (6) *Complement without duplicating the inventory duties of existing state agencies.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

- (1) *To achieve the purposes of Sections 1 to 9 of this Act, the Kentucky Natural History Museum is created. The museum shall serve Kentuckians as a focal point of educational resources to:*
  - (a) *Support teaching the natural sciences and anthropology in Kentucky and to educate the public about the unique and diverse natural history of the Commonwealth;*
  - (b) *Encourage the conservation of the state's natural resources;*
  - (c) *Create a stable repository for scientifically valuable and irreplaceable biological, geological, and archeological specimens; and*
  - (d) *Encourage the repatriation and preservation of Kentucky specimens that have been or may be sent outside the state because those specimens cannot be financially supported by their owners.*
- (2) *The museum shall be developed and administered by a board of directors comprised of the following:*
  - (a) *The director of the Kentucky Geological Survey;*
  - (b) *The director of the Kentucky State Nature Preserves Commission;*
  - (c) *The executive director of the Kentucky Heritage Council;*
  - (d) *The director of the Kentucky Historical Society;*
  - (e) *The commissioner of the Kentucky Department of Fish and Wildlife Resources; and*
  - (f) *Two (2) members representing the Kentucky Academy of Science, one (1) each from the disciplines of biology and anthropology, who shall be appointed by the Governor from a list of four (4) nominees, two (2) from each discipline, submitted by the Kentucky Academy of Science.*
- (3) *The director of the Kentucky Natural History Museum shall serve as an ex officio member of the board of directors, be counted for purposes of establishing a quorum for conducting business, and be entitled to participate in deliberations of the board, but shall not be entitled to vote when official actions are taken by the board.*
- (4) *The first chair of the Kentucky Natural History Museum Board of Directors shall be the director of the Kentucky Historical Society, who shall call the first meeting of the board. At the first meeting, the board shall elect a chair. Each chair elected by the board shall serve a single term of three (3) years.*
- (5) *The Kentucky Academy of Science's appointees shall serve three (3) year terms, and they may be reappointed for a second term.*
- (6) *Nominees for appointment to the board shall have resided in Kentucky for at least one (1) year immediately prior to their consideration for appointment.*
- (7) *The board may request the Governor to replace an appointed member who fails to attend three (3) consecutive board meetings.*
- (8) *The appointed members of the board shall serve without pay but shall be paid for expenses directly related to attending board meetings and to performing board authorized activities.*
- (9) *The board shall meet at least four (4) times a year.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

- (1) *The board of directors of the Kentucky Natural History Museum shall establish the Kentucky Natural History Museum. The board shall implement Sections 1 to 9 of this Act to the extent practical prior to operation of the museum. Working to achieve the public purposes that are the goals of implementation of Sections 1 to 9 of this Act shall not be dependent on the existence and operation of the museum in a physical place.*
- (2) *The board shall be administratively linked to the Education, Arts, and Humanities Cabinet.*
- (3) *To accomplish the purposes of Sections 1 to 9 of this Act, the board is authorized to:*

- (a) *Acquire and hold property by deed, gift, devise, bequest, lease, exchange, purchase, or transfer;*
  - (b) *Plan for, develop, construct, and maintain buildings;*
  - (c) *Enter into agreements with state, federal, or local agencies;*
  - (d) *Employ and contract with individuals, corporations, or other business entities to accomplish the purposes of Sections 1 to 9 of this Act;*
  - (e) *Accept and administer appropriations, gifts, grants, devises, and bequests of money, securities, or other items of value; and*
  - (f) *Carry out any other functions necessary to accomplish the purposes of Sections 1 to 9 of this Act.*
- (4) *To accomplish the purposes of Sections 1 to 9 of this Act, the board may provide and administer grants to public and private entities.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

*The board shall hire a director to administer the Kentucky Natural History Museum and to assist the board in implementing Sections 1 to 9 of this Act. The board shall select as director a candidate who has a strong background in the natural sciences, demonstrated management skills, and knowledge of Kentucky's natural history. The director shall have at a minimum a master's degree in the natural sciences or anthropology and five (5) years of experience in the educational, research, or exhibit design work of a natural history museum or five (5) years of experience as a curator of significant archeological, biological, or geological collections. The director shall serve at the pleasure of the board. The board may hire the director prior to the development of the museum.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

*The director of the Kentucky Natural History Museum shall:*

- (1) *Implement the policy directives of the museum's board of directors;*
- (2) *Assist the board in developing and implementing programs to solicit financial and other support for the museum and its mission;*
- (3) *Be the principal representative of the museum. However, the board or the museum director may designate a different representative when necessary;*
- (4) *With the board of directors' approval, hire clerical and administrative support staff and obtain office space and equipment;*
- (5) *With the board of directors' approval, hire the associate directors to manage the mission units established in Sections 7, 8, and 9 of this Act; and*
- (6) *By September 1 of each year, report to the Governor, the board, and the Legislative Research Commission on activities, accomplishments, finances, and the next year's goals.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

*The purposes of Sections 1 to 9 of this Act shall be carried out through the operation of mission units. When the Kentucky Natural History Museum is established, the mission units shall become administrative units of the museum. Each unit shall be managed by an associate director.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

- (1) *There shall be a curation and science unit within the Kentucky Natural History Museum. The curation and science unit shall:*
  - (a) *Collect specimens of Kentucky's extant and fossilized flora and fauna;*
  - (b) *Identify and inventory significant archeological sites;*
  - (c) *Collaborate with scientists in the state agencies, colleges and universities, and other members of the scientific community on sharing relevant data and creating common databases of biological, archeological, geological, and paleontological information;*
  - (d) *Catalog and maintain specimens and artifacts obtained by the museum;*
  - (e) *Assure the quality of specimens kept in storage, available through a loan, or displayed;*

- (f) *Accept existing scientifically significant and well-preserved biological, archeological, geological, and paleontological collections that may be offered from private or public entities; and*
- (g) *Conduct research and publish scientific papers related to the purposes of Sections 1 to 9 of this Act.*
- (2) *The associate director of the curation and science unit shall have an earned doctorate in the biological, earth sciences, or anthropology with demonstrated experience in curation of biological or geological collections.*
- (3) *Information that would endanger natural heritage resources by revealing their location shall be exempt from KRS 61.870 to 61.884 unless:*
  - (a) *The information is to be used for scientific research or in efforts to protect and preserve the resource;*
  - (b) *The person requesting the information agrees in writing to keep confidential the location of the resource; and*
  - (c) *The director determines that release of the information will not endanger the resource.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

- (1) *There shall be an education and events unit within the Kentucky Natural History Museum. The education and events unit shall:*
  - (a) *Develop programs for the general public and public schools to showcase the natural resources of the state, to explain the values of and need for maintaining biological diversity, to illustrate how people have historically interacted with and affected biodiversity and the environment, and to serve as a resource to public schools to promote understanding and appreciation of Kentucky's natural heritage;*
  - (b) *Publicize museum activities and goals;*
  - (c) *Develop a program to make useful and accessible to government agencies and citizens the information obtained by the collaborative efforts of the museum;*
  - (d) *Solicit assistance from public and private resources;*
  - (e) *Conduct an annual symposium focusing on broadening the scientific and popular understanding of Kentucky's natural heritage; and*
  - (f) *Perform other functions appropriate to public education, consistent with the mission of the museum.*
- (2) *The associate director of the education and events unit shall have demonstrated experience in science education and an ability to develop educational exhibits and science education programs.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

- (1) *There shall be an exhibits and maintenance unit of the Kentucky Natural History Museum. The exhibits and maintenance unit shall:*
  - (a) *Plan, design, construct, and maintain exhibits in cooperation with the education and events unit;*
  - (b) *Plan, design, construct, and provide traveling exhibits and other appropriate resources for public education in cooperation with the education and events unit;*
  - (c) *Provide storage of exhibit materials; and*
  - (d) *Acquire exhibit materials from other institutions, collections, and agencies that are relevant to the natural history of Kentucky.*
- (2) *The associate director of the exhibits and maintenance unit shall have demonstrated experience in the planning, design, production, and maintenance of natural history exhibits.*

Approved April 6, 2000

**CHAPTER 330****(SB 212)**

AN ACT relating to senior citizens and child-care centers.

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

Section 1. KRS 194.245 is amended to read as follows:

- (1) No later than August 1, 1990, the Cabinet for Human Resources shall begin contracting to construct and operate, or lease and operate the following:
  - (a)~~[(1)]~~ A one hundred (100) bed inpatient mental health facility in eastern Kentucky;
  - (b)~~[(2)]~~ Twelve (12) child care centers with a minimum of one (1) center in each of the seven (7) Kentucky congressional districts;
  - (c)~~[(3)]~~ Four (4) eight (8) bed group homes for persons with mental retardation;
  - (d)~~[(4)]~~ Two (2) one hundred (100) bed personal care homes; and
  - (e)~~[(5)]~~ Twelve (12) senior citizens centers with a minimum of one (1) center in each of the seven (7) Kentucky congressional districts.
- (2) *Effective August 1, 2000, the Cabinet for Families and Children, as the successor agency to the Cabinet for Human Resources with the responsibility for the operation of child-care centers as identified in subsection (1)(b) of this section, may transfer the ownership of all real property relating to any child-care center, with the approval of the Finance and Administration Cabinet, and all operational and administrative responsibility over any child-care center, and any contract, agreement, or lease that the Cabinet for Families and Children has assumed or executed for the operation of any child-care center to the city, county, or urban-county government in which the center is located. Any transfer made under this section shall provide for the continued operation of a center in accordance with the public purpose set forth in subsection (1) of this section.*
- (3) *Effective August 1, 2000, the Cabinet for Families and Children, as the successor agency to the Cabinet for Human Resources with the responsibility for the operation of senior citizens centers as identified in subsection (1)(e) of this section, may transfer the ownership of all real property relating to any senior citizens center, with the approval of the Finance and Administration Cabinet, and all operational and administrative responsibility over any senior citizens center, and any contract, agreement, or lease that the Cabinet for Families and Children has assumed or executed for the operation of any senior citizens center, to the city, county, or urban-county government in which the center is located. Any transfer made under this section shall provide for the continued operation of a center in accordance with the public purpose set forth in subsection (1) of this section.*

Section 2. KRS 154.20-020 is amended to read as follows:

- (1) The secretary shall be authorized to commit the cabinet to any project or proposal, subject to approval of the committee as necessary except that any state incentive agreement requiring the participation of other agencies of state government shall require the concurrence of the board.
- (2) No project shall be funded in whole or part by the authority unless first approved by its committee pursuant to administrative regulations promulgated by the board in accordance with KRS Chapter 13A.
- (3) Lending decisions made by the authority shall be based, if possible, feasible, and not otherwise precluded by federal or state law, on utilizing state funds to leverage private sector investment.
- (4) The authority shall cooperate with the Cabinet for Health Services in facilitation of KRS 194.245(1)(a).

Section 3. If the General Assembly confirms the reorganization addressed by Executive Order 99-80, whereby the Office of Aging Services and the responsibility for the operation of the senior citizens centers addressed by subsection (3) of Section 1 of this Act are transferred to the Cabinet for Health Services, the Reviser of Statutes shall replace the references to the Cabinet for Families and Children with the Cabinet for Health Services in subsection (3) of Section 1 of this Act.

**CHAPTER 331****(SB 197)**

AN ACT relating to the Local Match Participation Program.

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

Section 1. KRS 147A.029 is amended to read as follows:

- (1) The commissioner of the Department for Local Government shall administer and determine the disbursement of funds for the Local Match Participation Program~~[for statewide flood control projects]~~.
- (2) Funds appropriated for the Local Match Participation Program~~[for statewide flood control projects]~~ may be used as matching funds by local governments for flood-related projects **and straight sewage pipe removal projects** with:
  - (a) The United States Army Corps of Engineers;
  - (b) The Federal Emergency Management Agency (FEMA); and
  - (c) Other~~[flood-related]~~ federal government grant and loan programs requiring local matching funds.
- (3) Any general fund appropriations made for the Local Match Participation Program~~[for statewide flood control projects]~~ may~~[also]~~ be used for flood control planning and mitigation activities **and straight sewage pipe removal and mitigation activities**.

**Approved April 6, 2000**

**CHAPTER 332****(SB 75)**

AN ACT relating to local government officials' bonds.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) ***All officers, officials, and employees of cities, counties, urban-county governments, charter county governments, and special districts who handle public funds in the execution of their duties shall give a good and sufficient bond to the local governing body for the faithful and honest performance of his or her duties and as security for all money coming into that person's hands or under that person's control. The bond amount shall be based upon the maximum amount of public funds the officer, official, or employee handles at any given time during a fiscal year cycle. The local governing body shall pay the cost of the bond.***
- (2) ***Elected officials who post bond as required by statute, and employees of their offices covered by a blanket or umbrella bond, shall be deemed to have complied with subsection (1) of this section.***

**Approved April 6, 2000**

**CHAPTER 333****(SB 134)**

AN ACT relating to retirement boards in urban-counties.

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

Section 1. KRS 67A.530 is amended to read as follows:

- (1) The responsibility for the proper operation of the fund and the direction of its policies shall be vested in a board of trustees of **twelve (12)**~~eleven (11)~~ members, consisting of the mayor, the commissioner of public safety, the commissioner of finance, the director of personnel, **two (2)**~~one (1)~~ retired **members**~~member~~ of the fund, the chiefs of the police and fire department, and two (2) active members of each department, who shall be elected by ballot by the active members of the respective departments and shall serve for alternating



terms of two (2) years under rules adopted by the board. One of the active members representing each department shall be elected on even-numbered years; and the other active member representing ~~the~~<sup>such</sup> department shall be elected on odd-numbered years. In the event of a vacancy of an elected member, the pension board shall fill the vacancy by appointment until the next regular election.

- (2) The retired fund ~~members~~<sup>member</sup> shall be selected by retired fund members by ballot to serve ~~a~~<sup>two (2)</sup> year ~~terms~~<sup>term</sup>. ***One (1) retired fund member shall be a retired fire department member, and the other shall be a retired police department member.*** Retired fund members *of a department* shall submit the names of at least three (3) nominees *from their department* to the pension board not less than three (3) months before the term of office is due to expire. ***The retired members of both departments shall have the right to vote for nominees from either department.*** For the term beginning October 15, 2000~~[1990]~~, names of nominees *from each department* shall be submitted to the pension board by no later than ***August 15, 2000***~~[July 15, 1990]~~. The pension board shall cause to be prepared an official ballot which shall be distributed to all retired fund members by mail to their last known address. The ballot shall contain the name, address, and former ~~department~~<sup>position</sup> of each of the ~~three (3)~~ candidates. ***The candidates shall be grouped together by departments for voting purposes and retired fund members shall be instructed to vote for one (1) member from each department. Any ballot marked with more than one (1) vote per department shall be disqualified and not counted. The retiree from either department receiving the most votes shall serve a two (2) year term. The retiree from the other department receiving the most votes shall serve an initial term of one (1) year. Subsequently, retirees elected in alternate years from each department shall serve two (2) years. In the event of vacancy of an elected retired fund member of the board, the retiree receiving the next largest number of votes from the department for which the vacancy exists shall fill the vacancy until the next election for a representative of that retiree's department.*** Retired fund members shall vote for one (1) candidate *from each department* by marking a square opposite the name of the candidate of his choice and returning the marked ballot to the secretary of the pension board. Votes shall be tabulated by a committee of three (3) pension board members appointed by the chairman for that purpose. The tabulating committee shall report in writing to the pension board the results of the election and the name of the retired fund member who shall serve on the board. ~~In the event of a vacancy of an elected retired fund member of the board, the pension board shall fill the vacancy by appointment until the next regular election.~~
- ~~(3) It is the intention of KRS 67A.360 to 67A.690 that the one elected member from each department on the pension boards of funds serving immediately prior to the adoption of the urban county form of government shall retain his office for one (1) year, and that the other elected member from each department shall be elected for a two (2) year term.~~

Approved April 6, 2000

## CHAPTER 334

(SB 194)

AN ACT relating to deputy sheriffs.

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

Section 1. KRS 70.260 is amended to read as follows:

- (1) The primary legislative body of each county may enact an ordinance creating a deputy sheriff merit board, which shall be charged with the duty of holding hearings, public and executive, in disciplinary matters concerning deputy sheriffs. For the purpose of KRS 70.260 to 70.273, the primary legislative body of each county that does not have an urban-county or charter county government shall be the fiscal court.
- (2) The reasonable and necessary expenses of the board, including the funds necessary to retain an attorney to advise the board on legal matters, shall be paid out of the fees and commissions collected by the sheriff. If the fees and commissions are not sufficient to pay the expenses of the board and the other expenses authorized by statute to be paid from these fees and commissions, the sheriff may negotiate with the primary legislative body to determine a method of paying all or part of the expenses of the board.
- (3) The board shall consist of five (5) members, two (2) members appointed by the county judge/executive or the chief executive officer of an urban-county government with approval by the primary legislative body, two (2) members appointed by the county sheriff, and one (1) member elected by the deputy sheriffs of the county. Each board appointee shall be at least thirty (30) years of age and a resident of the county. No person shall

serve on the board who is a deputy sheriff or who holds any elected public office. No person shall be appointed to the board who is a member of the immediate family of the sheriff of the county served by the board. The members of the board shall not receive a salary but shall receive reimbursement for necessary expenses.

- (4) All appointments shall be for two (2) years, and any vacancies shall be filled by the sheriff or county judge/executive, or the chief executive officer of an urban-county government responsible for the appointment of the departing board member.
- (5) The board shall elect a chairman from its membership and keep an accurate record of its proceedings.
- (6) The board shall meet when a disciplinary matter concerning a deputy sheriff is brought to its attention or at other times at the discretion of the board, upon notification of its members.
- (7) Three (3) members shall constitute a quorum in all matters which may come before the board.
- (8) For the purpose of this section, "member of the immediate family" means a person's father, mother, brother, sister, spouse, son, daughter, aunt, uncle, son-in-law, or daughter-in-law.
- (9) An ordinance, adopted under subsection (1) of this section by a county ~~containing a city of the first class~~, may exclude deputy sheriffs who serve in policy-making or confidential positions from coverage by the merit system. If the ordinance makes this exclusion, a deputy sheriff who is covered by the merit system and who accepts an appointment in a policy-making or confidential position shall be deemed to have received a leave of absence from the merit system during the incumbency of that position. If he ceases to serve in a policy-making or confidential position but continues to serve as a deputy, he shall be restored to coverage at the same classification and rank that he held prior to his policy-making position under the merit system. A deputy who is not covered by the merit system at the time he is appointed to a policy-making or confidential position shall be deemed not to be part of the merit system and shall not be included in the merit system when he ceases to serve in that position.

Section 2. KRS 70.267 is amended to read as follows:

- (1) No deputy sheriff covered by the provisions of KRS 70.260 to 70.273 shall directly or indirectly solicit, receive, or be in any manner concerned in receiving, soliciting, or publicizing any assessment, gift, subscription or contribution to or for any political party or candidate for public office.
- (2) No deputy sheriff covered by the provisions of KRS 70.260 to 70.273 shall be suspended, laid off, demoted, promoted, disciplined, threatened or in any way changed in duty or compensation for withholding or neglecting to pay or make contributions of any sort, either in money, goods, services, or anything of value for any political purpose. Nothing in this subsection shall limit the power of a sheriff to revoke the appointment of a deputy during the probationary period described in subsection (5) of this section.
- (3) No deputy sheriff covered by the provisions of KRS 70.260 to 70.273 shall be a candidate for any public office. Any person who violates this subsection shall forfeit his position as deputy sheriff.
- (4) Nothing contained in this section shall be construed to abridge the rights of any deputy sheriff with respect to his personal opinions, beliefs, or right to vote.
- (5) A deputy sheriff's employment shall be probationary during the first year of service ***following an initial appointment or a promotional appointment***. A sheriff may, at his pleasure, revoke the appointment of a deputy who works for him at any time within one (1) year following the appointment.

**Approved April 6, 2000**

## **CHAPTER 335**

### **(HB 118)**

AN ACT relating to special license plates for colleges and universities.

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

SECTION 1. A NEW SECTION OF KRS 186.186 TO 186.1867 IS CREATED TO READ AS FOLLOWS:

- (1) ***Any person who complies with the provisions of KRS 186.186 may apply for an independent collegiate license plate for any independent college or university licensed by the Council on Postsecondary Education.***

- (2) *An independent collegiate license plate shall be the color and design selected by the Association of Independent Kentucky Colleges and Universities and approved by the Transportation Cabinet. The name "Kentucky" and the annual renewal decal shall appear on the plate, along with the logo of the Kentucky Association of Independent Colleges and Universities and a decal bearing the name of the college or university selected by the person purchasing the plate. The Transportation Cabinet may use any combination of numerals or letters as needed in the numbering of the license plate.*
- (3) *In addition to the fees required by KRS 186.186, a person applying for an independent college license plate shall pay a ten dollar (\$10) fee that shall be collected by the county clerk and forwarded by the clerk to the Transportation Cabinet under the provisions of KRS 186.230. When applying for an annual renewal registration decal, a person with an independent college license plate shall pay a ten dollar (\$10) fee, in addition to the renewal fee established in KRS 186.186(2). The additional fees under this subsection shall be collected by the county clerk and forwarded by the clerk to the Transportation Cabinet under the provisions of KRS 186.230.*
- (4) *The ten dollar (\$10) initial fee and the ten dollar (\$10) renewal fee collected under subsection (3) of this section shall be forwarded annually by the Transportation Cabinet to the Kentucky Association of Independent Colleges and Universities for distribution to the general scholarship funds of the Association's members.*

Section 2. KRS 186.185 is amended to read as follows:

- (1) Any owner of a motor vehicle required to be registered under the provisions of KRS 186.050(1) or (3)(a), except taxicabs, airport limousines, and U-Drive-Its, may in addition to registration under KRS 186.050(1) or (3)(a) obtain a five (5) year collegiate license plate. Application for a collegiate license plate shall be taken by the county clerk and transmitted to the Transportation Cabinet on or before September 1 preceding the year in which the plate or renewal thereof is to be issued. The application shall include the payment of a twenty-five dollar (\$25) registration fee. ~~[In addition, for the use of the university name or logo, a five dollar (\$5) fee shall be collected and paid to the general scholarship fund of the university whose name will be borne on the plate.]~~ The application ~~[and appropriate]~~ fee shall be immediately forwarded to the cabinet. Collegiate license plates issued under this section shall expire December 31 each year.
- (2) Collegiate license plates shall be developed for each university in the state university system, except that a minimum of eighteen hundred (1,800) requests for any university shall be received before the cabinet shall be required to print a collegiate license plate for that university. License plates shall be the color and design approved by the cabinet as appropriate for each university in the state system. In addition to letters identifying the university, the name "Kentucky" and the expiration date of the plate, the cabinet may use any other combination of letters or numerals needed in the design of the plate, or the application for a collegiate license plate may be combined with a request that the plate be a personalized plate.
- (3) The cabinet shall send the collegiate plate to the county clerk in the county in which the applicant would be required to register his motor vehicle. The county clerk shall issue the collegiate plate and receive ***twenty-five dollars (\$25)*** ~~[fourteen dollars and fifty cents (\$14.50)]~~, of which three dollars (\$3) shall constitute the clerk's fee, ***twelve dollars (\$12) shall constitute the cabinet's fee, and ten dollars (\$10) shall be collected and paid to the general scholarship fund of the university whose name will be borne on the plate*** ~~[and eleven dollars and fifty cents (\$11.50) shall constitute the cabinet's fee]~~. Annually thereafter, upon application as provided, and upon payment of ***twenty-five dollars (\$25)*** ~~[fourteen dollars fifty cents (\$14.50)]~~, three dollars (\$3) of which shall constitute the clerk's fee, ***twelve dollars (\$12) shall constitute the cabinet's fee, and ten dollars (\$10) shall be collected and paid to the general scholarship fund of the university whose name will be borne on the plate***, the clerk shall issue a decal to renew the vehicles registration.
- (4)
  - (a) Upon the sale or transfer of the motor vehicle bearing the collegiate license plate, the owner shall remove it and return it and the certificate of title and registration to the county clerk. The clerk shall issue a regular license plate and certificate of title and registration. This vehicle may then be transferred as provided by KRS Chapters 186 and 186A.
  - (b) When the collegiate plate has been presented to the clerk, he shall reissue it upon payment of a two dollar (\$2) clerk's fee, for use on any other vehicle of the same classification and category owned by the same person purchasing the collegiate plate for the current license period. The license plate and decal on this other vehicle shall be turned in to the county clerk, who shall forward the license to Frankfort.

- (5) If a collegiate plate deteriorates, if he has not transferred the vehicle during the current license period, the owner may obtain a regular license plate free of charge.
- (6) The secretary of transportation may promulgate administrative regulations necessary to further the purposes of this section.

Approved April 6, 2000

## CHAPTER 336

### (HB 136)

AN ACT relating to public school volunteers.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "volunteers" means adults who assist teachers, administrators, or other staff in public school classrooms, schools, or school district programs, and who do not receive compensation for their work.*
- (2) *Local school districts may utilize adult volunteers in supplementary instructional and noninstructional activities with pupils under the direction and supervision of the professional administrative and teaching staff.*
- (3) *Each board of education shall develop policies and procedures that encourage volunteers to assist in school or district programs.*
- (4) *Each local board of education shall develop and adopt a policy requiring a state criminal records check on all volunteers who have contact with students on a regularly scheduled or continuing basis, or who have supervisory responsibility for children at a school site or on school-sponsored trips. The request for records may be from the Justice Cabinet or the Administrative Office of the Courts, or both, and shall include records of all available convictions as described in KRS 17.160(1). Any request for a criminal records check of a volunteer under this subsection shall be on a form or through a process approved by the Justice Cabinet or the Administrative Office of the Courts. If the cabinet or the Administrative Office of the Courts charges fees, the local board of education shall arrange to pay the cost which may be from local funds or donations from any source including volunteers.*
- (5) *The local board of education shall provide orientation material to all volunteers who have contact with students on a regularly scheduled or continuing basis, including school policies, safety and emergency procedures, and other information deemed appropriate by the local board of education.*

Section 2. KRS 161.044 is amended to read as follows:

- (1) The Kentucky Board of Education shall ~~promulgate~~~~[establish]~~ administrative regulations governing the qualifications of teachers' aides ~~and adult volunteer personnel~~ in the common schools. All teachers' aides working in kindergarten or with entry level students in primary classes and all instructional teachers' aides initially employed after July 1, 1986, except those with current teacher certification, shall have a high school diploma or a general equivalency diploma.
- (2) "Noninstructional teacher's aide" means an adult who works under the direct supervision of the teaching staff in performing noninstructional functions such as clerical duties, lunch room duties, leading pupils in recreational activities, aiding the school librarian, preparing and organizing instructional material and equipment and monitoring children during a noninstructional period. Noninstructional teachers' aides employed on a full-time basis shall possess skills necessary to perform their duties and shall meet the requirements established in KRS 161.011 *and KRS 160.380(5)*.
- (3) Within the administrative regulations established by the Kentucky Board of Education, a local district may employ teachers' aides in supplementary instructional and noninstructional activities with pupils. While engaged in an assignment as authorized under the administrative regulations, and as directed by the professional administrative and teaching staff, these personnel shall have the same legal status and protection as a certified teacher in the performance of the same or similar duties.

- (4) Local districts shall give preference to applicants for the position of teacher's aide who have regular or emergency teacher certification.
- (5) ~~Within the provisions established by the Kentucky Board of Education, local districts may utilize adult volunteer personnel in supplementary instructional and noninstructional activities with pupils under the direction and supervision of the professional administrative and teaching staff.~~
- (6) Local districts shall provide training of the instructional teacher's aide with the certified employee to whom he is assigned.

**Approved April 6, 2000**

## CHAPTER 337

### (HB 176)

AN ACT relating to revenue and taxation.

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

Section 1. KRS 141.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Secretary" means the secretary of revenue;
- (2) "Cabinet" means the Revenue Cabinet;
- (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, ~~1999~~~~[1997]~~, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, ~~1999~~~~[1997]~~, that would otherwise terminate, and as modified by KRS 141.0101;
- (4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;
- (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;
- (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;
- (7) "Individual" means a natural person;
- (8) For taxable years beginning on or after January 1, 1974, "federal income tax" means the amount of federal income tax actually paid or accrued for the taxable year on taxable income as defined in Section 63 of the Internal Revenue Code, and taxed under the provisions of this chapter, minus any federal tax credits actually utilized by the taxpayer;
- (9) "Gross income" in the case of taxpayers other than corporations means "gross income" as defined in Section 61 of the Internal Revenue Code;
- (10) "Adjusted gross income" in the case of taxpayers other than corporations means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
  - (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;
  - (b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;
  - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
  - (d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;
  - (e) Exclude Social Security and railroad retirement benefits subject to federal income tax;

- (f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;
- (g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;
- (h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the armed forces of the United States or any dependent of such person who served in Vietnam;
- (i)
  - 1. Exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.
  - 2. The "applicable amount" shall be:
    - a. Twenty-five percent (25%), but not more than six thousand two hundred fifty dollars (\$6,250), for taxable years beginning after December 31, 1994, and before January 1, 1996;
    - b. Fifty percent (50%), but not more than twelve thousand five hundred dollars (\$12,500), for taxable years beginning after December 31, 1995, and before January 1, 1997;
    - c. Seventy-five percent (75%), but not more than eighteen thousand seven hundred fifty dollars (\$18,750), for taxable years beginning after December 31, 1996, and before January 1, 1998; and
    - d. One hundred percent (100%), but not more than thirty-five thousand dollars (\$35,000), for taxable years beginning after December 31, 1997.
  - 3. As used in this paragraph:
    - a. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;
    - b. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code; and
    - c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code;
- (j)
  - 1.
    - a. Exclude the distributive share of a shareholder's net income from an S corporation subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300; and
    - b. Exclude the portion of the distributive share of a shareholder's net income from an S corporation related to a qualified subchapter S subsidiary subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300.
  - 2. The shareholder's basis of stock held in a S corporation where the S corporation or its qualified subchapter S subsidiary is subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300 shall be the same as the basis for federal income tax purposes;
- (k) Exclude for taxable years beginning after December 31, 1998, to the extent not already excluded from gross income, any amounts paid for health insurance which constitutes medical care coverage for the taxpayer, the taxpayer's spouse, and dependents during the taxable year. Any amounts paid by the taxpayer for health insurance that are excluded pursuant to this paragraph shall not be allowed as a deduction in computing the taxpayer's net income under subsection (11) of this section;

- (l) Exclude income received for services performed as a precinct worker for election training or for working at election booths in state, county, and local primary, regular, or special elections;
  - (m) Exclude any amount paid during the taxable year for insurance for long-term care as defined in KRS 304.14-600;
  - (n) Exclude any capital gains income attributable to property taken by eminent domain; and
  - (o) Exclude any amount received by a producer of tobacco or a tobacco quota owner from a national settlement agreement between the tobacco industry and the states' Attorneys General or from any federal legislation related to the agreement;
- (11) "Net income" in the case of taxpayers other than corporations means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction allowed by KRS 141.0202 and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
- (a) Any deduction allowed by the Internal Revenue Code for state taxes measured by gross or net income, except that such taxes paid to foreign countries may be deducted;
  - (b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);
  - (c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and
  - (d) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
- (12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:
- (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;
  - (b) Exclude all dividend income received after December 31, 1969;
  - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
  - (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;
  - (e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;
  - (f) Include the amount calculated under KRS 141.205;
  - (g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income; and
  - (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);
- (13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202 and minus all the deductions from gross income allowed

corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:

- (a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;
  - (b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;
  - (c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;
  - (d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;
  - (e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code); and
  - (f) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
- (14) (a) "Taxable net income," in the case of corporations having property or payroll only in this state, means "net income" as defined in subsection (13) of this section;
- (b) "Taxable net income," in the case of corporations having property or payroll both within and without this state means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120;
- (c) "Property" means either real property or tangible personal property which is either owned or leased. "Payroll" means compensation paid to one (1) or more individuals, as described in KRS 141.120(8)(b). Property and payroll are deemed to be entirely within this state if all other states are prohibited by Public Law 86-272, as it existed on December 31, 1975, from enforcing income tax jurisdiction;
- (d) "Taxable net income" in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year; and
- (e) "Taxable net income" in the case of a corporation that meets the requirements established under Section 856 of the Internal Revenue Code to be a real estate investment trust, means "real estate investment trust taxable income" as defined in Section 857(b)(2) of the Internal Revenue Code;
- (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;
- (16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the secretary, "taxable year" means the period for which such return is made;
- (17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;
- (18) "Nonresident" means any individual not a resident of this state;
- (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;
- (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;



- (21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;
- (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
- (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;
- (24) "Corporations" means "corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;
- (25) "S corporations" means "S corporations" as defined in Section 1361(a) of the Internal Revenue Code. Stockholders of a corporation qualifying as an "S corporation" under this chapter may elect to treat such qualification as an initial qualification under Subchapter S of the Internal Revenue Code Sections.

Section 2. KRS 141.180 is amended to read as follows:

- (1) Every individual, except as otherwise provided in this section, having for the taxable year an adjusted gross income which exceeds five thousand dollars (\$5,000), if single, or if married and not living with husband or wife and every married individual living with husband or wife whose adjusted gross income combined with the adjusted gross income of his or her spouse exceeds five thousand dollars (\$5,000) shall make to the cabinet a return stating specifically the items which he claims as deductions and tax credits allowed by this chapter.
- (2) Any individual who is blind or who has attained the age of sixty-five (65) before the close of his taxable year shall be required to make a return only if he has for the taxable year an adjusted gross income which exceeds five thousand dollars (\$5,000). Every married individual living with husband or wife shall, if both spouses have attained the age of sixty-five (65), be required to make a return if the combined adjusted gross income of both spouses exceeds five thousand four hundred dollars (\$5,400). If the individual is unable to make his own return, the return shall be made by a duly authorized agent.
- (3) Any individual, who is both sixty-five (65) or over and blind before the close of the taxable year, shall make a return if he has for the taxable year an adjusted gross income which exceeds five thousand dollars (\$5,000).
- (4) Notwithstanding any other provision of this section, an individual, having for the taxable year gross income from self-employment of five thousand dollars (\$5,000) or more, shall make a return.
- (5) Any nonresident individual with gross income from Kentucky sources and a total gross income of five thousand dollars (\$5,000) or over shall make a return.
- (6) A husband and wife not living together shall make separate returns. A husband and wife living together may make a joint return, or may make separate returns. However, in the event separate returns are made, neither spouse shall report income nor claim deductions properly attributable to the other.
- (7) Notwithstanding any other provisions of KRS Chapters 131 and 141, a husband or a wife who is jointly and severally liable for taxes levied under KRS 141.020, applicable penalties, and interest shall be relieved of liability for tax, interest, penalties, and other amounts if:
  - (a) The spouse has been relieved of liability for federal income tax, interest, penalties, and other amounts for the same taxable year by the Internal Revenue Service under Section ~~6015[6013(e)]~~ of the Internal Revenue Code; or
  - (b) It is shown that the spouse would have qualified for relief under the provisions of Section ~~6015[6013(e)]~~ of the Internal Revenue Code for the same taxable year if there had been a federal income tax liability.
- (8) Any relief granted pursuant to paragraphs (a) and (b) of subsection (7) of this section shall not result in a tax overpayment to the spouse requesting relief.
- (9) Each individual return shall be verified by a written declaration that it is made under the penalties of perjury.

SECTION 3. A NEW SECTION OF KRS CHAPTER 143A IS CREATED TO READ AS FOLLOWS:

***Notwithstanding any other statutory provisions, the tax imposed by KRS 143A.020 applicable to limestone actually used in the manufacture of cement by an integrated miner and manufacturer of cement shall be limited to fourteen cents (\$0.14) per ton of limestone mined in Kentucky and actually used in the manufacture of cement.***

Section 4. Sections 1 and 2 of this Act shall apply to taxable years beginning after December 31, 1999.

Section 5. Section 3 of this Act takes effect August 1, 2000.

**Approved April 6, 2000**

## **CHAPTER 338**

**(HB 221)**

AN ACT relating to a Rails to Trails Program.

WHEREAS, the 1998 Kentucky General Assembly directed the Legislative Research Commission to establish a special interim Rails to Trails Task Force to study the feasibility, benefits, and implementation of a strategy for a Rails to Trails Program throughout the Commonwealth; and

WHEREAS, the task force appointed by the Commission has reported its findings to the Commission and the General Assembly; and

WHEREAS, the task force has recommended that a Rails to Trails Program be pursued by the Commonwealth as promoting the health, safety, and welfare of the citizenry;

NOW, THEREFORE,

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 147A IS CREATED TO READ AS FOLLOWS:

*A Railtrail Development Office is hereby created within the Department for Local Government. The department shall insure that the office has the necessary expertise to carry out the requirements imposed upon it by this section. Among other railtrail functions and duties which may be assigned to it, the office shall carry on at least the following responsibilities:*

- (1) The office shall monitor the proceedings of the United States Department of Transportation's Surface Transportation Board and shall disseminate to interested entities in Kentucky information regarding those proceedings of interest to railtrail conversion or policy in the Commonwealth. If a railroad applies to the Surface Transportation Board for authority to discontinue service over or abandon a railroad corridor in the Commonwealth, the office shall immediately notify those political subdivisions through which the corridor passes and any interested state agency of the proceedings and the potential for trail development of the corridor. Notice shall also be sent to the county judge/executive of each county through which the proposed abandonment passes, who shall distribute copies of the notice to each member of the chief legislative body of the county government at the next regularly scheduled meeting of that legislative body. The office shall also send a copy of the notice to each soil and water conservation district through which the abandonment passes. If time is of the essence and it appears that the corridor is a suitable candidate for conversion to a railtrail and that no other railtrail interested entity will be participating in the federal proceeding, the office shall take those steps necessary to cause a railbanking or public use condition to be imposed in the federal proceeding;*
- (2) The office shall assist any requesting political subdivision or agency of state government with assistance on any application to the Surface Transportation Board regarding an abandoned or about to be abandoned railroad corridor, including any requests for railbanking or imposition of public use conditions;*
- (3) The office shall coordinate and promote railtrail development efforts among the various agencies of state government, including the Department of Parks and the Transportation Cabinet. While this subsection does not confer upon the office any powers beyond those that it may ordinarily possess, every entity of state government shall cooperate with the office to the extent practicable under the circumstances;*
- (4) The office shall furnish to requesting political subdivisions assistance in applying to available federal, state, or local funding sources for funds to be used for the process of converting railroad corridors into public use trails; and*
- (5) The office may apply for federal, state, or private grants or other forms of financial assistance to carry on its mission.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 277 IS CREATED TO READ AS FOLLOWS:

- (1) *Any organization recognized as exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, agency of state government, or political subdivision or city of this state holding or acquiring a railroad corridor may preserve the corridor for future railroad use while utilizing the right-of-way in the interim for nonmotorized public recreational use by filing with the Secretary of State a "Declaration of State Railbanking", concurrently serving a copy of the declaration on the Transportation Cabinet. The declaration shall contain the name and address of the filing entity, a textual description and map of the railroad corridor being railbanked, a statement that the entity accepts full responsibility for managing the corridor, for any legal liability arising out of the use of the corridor or, if the entity is immune from suit, that the entity agrees to indemnify the railroad for any liability arising out of the use of the corridor, and for the payment of all taxes which may validly be assessed against the corridor, and a declaration that the property is being railbanked in accordance with the provisions of Kentucky law in that the corridor is held open for future restoration of rail service and that this section only grants authority for the corridor to be utilized for nonmotorized public recreational use during the interim.*
- (2) *Any property that is the subject of a declaration of state railbanking, including property held by easement, shall, during the period a declaration of state railbanking remains in force, be deemed to be held for a railroad use and shall not revert to any other form of ownership. Until rail service is restored over the corridor, the declaration of state railbanking shall only authorize the use of the corridor for public, nonmotorized recreational use, with associated infrastructure. However, a declaration of state railbanking shall not preclude any public utility usage of the corridor if that usage is otherwise permitted under other applicable law. For the specific purpose of allowing railbanking under this section, an easement for railroad use shall not be deemed abandoned until the person holding the easement conveys the easement to another person for a nonrailroad use, title to the easement and the underlying estate comes into the hands of the same owner by conveyance, the easement owner files a disclaimer in the office of the county clerk of the county where the property is situated disclaiming all interest in the corridor, or the easement is declared abandoned by judicial decree.*
- (3) *After property is railbanked under this section, the property shall be held available for purchase by any bona fide purchaser for the restoration of rail service over the property. The following requirements shall apply to any transfer of property in contemplation of the restoration of railroad service:*
  - (a) *The entity that acquired the right to use the railroad corridor for a railtrail under this section or to whom that right had been subsequently transferred shall be compensated for the fair market value of the corridor together with any improvements erected thereon. Funds received by the entity under this paragraph shall be held in trust for the benefit of the public;*
  - (b) *All required federal and state permits and authority to reactivate and operate a railroad over the corridor shall be obtained prior to the transfer of the property for the contemplated railroad service restoration;*
  - (c) *Adequate bond with good surety shall be posted ensuring that the railroad will be constructed, with the bond being used to cover the cost of restoring the corridor to its physical condition prior to transfer of the railbanked corridor for the contemplated railroad service restoration; and*
  - (d) *The physical infrastructure necessary to operate the railroad, including tracks, ties, frogs, signaling equipment, grade crossings, and the like, shall be in place one (1) year from the date of the transfer. Train service shall be in place and operating two (2) years, from the date of the transfer. If these timelines are not met, the corridor and all associate physical improvements thereon shall automatically forfeit to the ownership of the entity responsible for railbanking the corridor under this section.*
- (4) *Any person aggrieved by the act of railbanking a railroad corridor under the provisions of this section shall bring their claims within one (1) year after the declaration of state railbanking has been filed with the Kentucky Secretary of State. Any entity against whom a claim is asserted may utilize as an offset or setoff to the amount of any recovery those amounts in state or local taxes, together with interest and penalties, that have not been paid on the value of the property through which the claimant asserts title.*
- (5) *Any entity which caused a declaration of state railbanking to be filed shall cause the declaration to be vacated on the files of the Secretary of State upon the cessation of use of the corridor as a nonmotorized public use trail or the reactivation of railroad service over the corridor.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 277 IS CREATED TO READ AS FOLLOWS:

- (1) *It is the public policy of this state to preserve railroad corridors for future railroad use. Toward this end, the Commonwealth recognizes that the salvage of tracks, ties, signaling equipment, ballast, and other items may indicate an intent to maximize return on present investment and not an intent to abandon any underlying easement for railroad or other use and that the obtaining of federal authority to discontinue service over or abandon a corridor does not necessarily indicate an intent to relinquish any property interests under state law. In any civil action to determine the status of a railroad use easement, ambiguity as to intent shall be resolved in favor of continued preservation of the corridor.*
- (2) *Any holder of a railroad corridor held by easement or otherwise may preserve that corridor by filing with the Secretary of State a "Preliminary Declaration of State Railbanking," concurrently serving a copy of the declaration on the Transportation Cabinet. The declaration shall state the name of the entity holding the corridor, a textual description and map of the land area encompassed by the corridor, and a statement that the entity does not intend to abandon the corridor described in the declaration. The entity filing the declaration may at any later time cause that declaration to be withdrawn from the Secretary of State's files. While a preliminary declaration of state railbanking is on file with the Secretary of State, the corridor set out in the declaration shall not, regardless of the status or conclusion of any federal regulatory proceeding or the salvage of track and other material from the corridor, be deemed abandoned and shall continue to exist under Kentucky law and the property encompassed by the corridor shall not revert to any other form of ownership.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 277 IS CREATED TO READ AS FOLLOWS:

*In addition to any other legal right, any person having a legal interest in land adjoining a railtrail or in the land traversed by the railtrail itself may grant to the entity holding the right to maintain a railtrail over the property a conservation easement over all or a portion of the property in accordance with KRS 382.800 to 382.860. The entity holding the right to maintain a railtrail over the corridor may, if it finds the easement's terms acceptable, yearly designate for the tax purposes of the party conveying the easement that the entity is holding the corridor pursuant to the authority granted to that entity in the easement as opposed to authority granted in Section 2 of this Act or any similar law allowing railbanking under federal law. This designation shall not, however, affect in any way the legal right of that entity to hold the corridor pursuant to a federal or state railbanking law or the operation of those laws, and the right to maintain the railtrail on the land shall not lapse as the result of the extinguishment or modification of the easement. The easement, by its terms, may be limited in duration from year to year or for a set period of years, may extinguish itself upon the happening a defined contingent future event, or may last in perpetuity.*

Section 5. KRS 148.690 is amended to read as follows:

- (1) The department shall review all formal declarations of railroad right-of-way abandonments by the Surface Transportation Board or other agency with jurisdiction and may review former railroad corridors for possible inclusion in the state trails system. The commissioner shall, within three (3) years after the route of a trail or trail segment included in the system has been located, determine the boundaries of the right-of-way to be associated with that trail. Such boundaries shall be established in such a manner that they protect the scenic value of the trail.
- (2) The commissioner is authorized to develop effective procedures to assure that, wherever practicable, utility rights-of-way, abandoned railroad corridors, or similar properties having value for trail purposes may be made available for such use; however, the commissioner shall take into consideration the rights of adjacent property owners in the development of any such procedures. Other departments of state government having jurisdiction, control over, or information concerning the use, abandonment, or disposition of rights-of-way, railroad corridors, and similar properties that may be suitable for trail purposes shall cooperate with the commissioner in the transfer of these rights for trail use. *These procedures shall include, at a minimum, that, for every railroad corridor that is the subject of a request for federal authority to discontinue service or for federal regulatory abandonment, the commissioner shall evaluate the potential of converting that corridor into a railtrail. The commissioner shall cause a preliminary review to be completed within thirty (30) days of the publication of the request for federal authority in the Federal Register. The commissioner shall cause a final review to be completed ninety (90) days after the publication of the request for federal authority in the Federal Register. The commissioner shall timely transmit copies of these reviews to the Legislative Research Commission and to the Commonwealth's Railtrail Development Office in the Department for Local Government as they are completed. If either review indicates the possibility of converting the corridor into a railtrail, the commissioner may participate in the federal proceeding to request that the corridor be railbanked in accordance with federal law or to request the imposition of a public use condition.*

## SECTION 6. A NEW SECTION OF KRS CHAPTER 174 IS CREATED TO READ AS FOLLOWS:

- (1) *The Transportation Cabinet, including any agency or other unit of government attached to the cabinet, shall immediately transmit to the Department of Parks and to the Commonwealth's Railtrail Development Office in the Department for Local Government any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.*
- (2) *The Transportation Cabinet shall keep a record of railroad lines in the Commonwealth of Kentucky, including both lines that have been abandoned through the federal government's regulatory abandonment process and those where any railroad property interest in the railroad corridor itself has been abandoned under Kentucky law. The cabinet shall annually publish an updated map showing the location and as much information as to the status of these lines as practicable. The record shall include, in as much as possible;*
  - (a) *A description of the line and its location;*
  - (b) *The current or last railroad owner of the line;*
  - (c) *The operator of the line;*
  - (d) *The addresses and phone numbers for the owners and operators of the lines;*
  - (e) *Whether the owner of the line has received authority from the Federal Government to discontinue service over the line;*
  - (f) *Whether the owner of the line has received authority from the Federal Government to abandon the line;*
  - (g) *Whether the owner of the line has consummated any authority granted by the Federal Government to discontinue service over the line or to abandon the line;*
  - (h) *Whether the line has been railbanked under either federal or state law; and*
  - (i) *Any other information the cabinet deems pertinent and useful to the public.*

## SECTION 7. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

*The Natural Resources and Environmental Protection Cabinet, including any agency or other unit of government attached to the cabinet, shall immediately transmit to the Department of Parks and to the Commonwealth's Railtrail Development Office in the Department for Local Government any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.*

## Section 8. KRS 171.381 is amended to read as follows:

- (1) The heritage council shall be dedicated to the preservation and protection of all meaningful vestiges of Kentucky's heritage for succeeding generations, and in pursuit of this dedication it shall engage in and concern itself with worthy projects and other matters related to the conservation and continuing recognition of buildings, structures, sites, and other landmarks associated with the archaeological, cultural, economic, military, natural, political, or social aspects of Kentucky's history.
- (2) The duties and functions of the council shall be to:
  - (a) Review and recommend appropriate projects and programs to insure the proper recognition, preservation, and protection of matters related to Kentucky's heritage, particularly those in the nature of or associated with real property;
  - (b) Advise, consult, and cooperate generally with state, local, and national officials and agencies to accomplish the purposes to which the council is dedicated, and specifically with the Kentucky Department of Parks and Historical Society in matters of common concern;
  - (c) Encourage, promote, and coordinate historic preservation programs being conducted in Kentucky by other agencies or groups, public and private; and
  - (d) Prepare and maintain an inventory or survey of Kentucky's resource of historic buildings, sites, structures, and other landmarks, and list in an official roll those such landmarks which possess statewide or national significance.

- (3) The council may:
- (a) Accept grants or other funds or property from any available source, public or private;
  - (b) Employ, with the approval of the Governor, such staff as may be necessary. Any member of such staff shall be entitled to compensation under KRS Chapter 18A, and may be reimbursed for necessary and actual expenses in accordance with the provisions of KRS Chapters 44 and 45;
  - (c) Enter into such contractual relationships as may be necessary;
  - (d) Acquire real property, by gift or devise or by purchase pursuant to the provisions of KRS 45A.045, and hold the same in the name of the Commonwealth for the use and benefit of the council;
  - (e) Initiate its own projects of an appropriate nature, and undertake or otherwise engage in joint projects with other agencies or groups, public or private; and
  - (f) Adopt such rules and regulations as may be necessary and incidental to the performance of the council's duties and functions.
- (4) The receipt, control, and expenditure of funds shall be subject to the general provisions of the Kentucky Revised Statutes governing financial administration of all state agencies.
- (5) No provision of this section shall be construed as repealing any of the laws of the Commonwealth relating to the preservation, protection, and recognition of historical matters, but shall be held and construed as ancillary and supplemental thereto.
- (6) The council shall receive applications, interview and recommend to the Governor three (3) persons as nominees for appointment as the director of the Heritage Division, Education, Arts, and Humanities Cabinet. The director of the Heritage Division shall be the state historic preservation officer.
- (7) The responsibilities of the state historic preservation officer shall include:
- (a) Development for the State Historic Preservation Program;
  - (b) Direction of a comprehensive statewide survey of historic properties;
  - (c) Nomination of historic properties to the National Register of Historic Places;
  - (d) Cooperation in the development of effective working relationships with federal, state, and local agencies that participate in the management of historic properties and in project planning that may affect historic properties;
  - (e) Cooperation in the integration of historic preservation planning with all levels of planning;
  - (f) Cooperation in the development and maintenance of a review procedure for publicly funded, assisted, and licensed undertakings that may affect historic properties within the state;
  - (g) Participation in the review of federal, federally assisted, and federally licensed undertakings that may affect historic properties included in or eligible for inclusion in the National Register under Section 106 of the National Historic Preservation Act and Executive Order 11593;
  - (h) Assisting federal agencies in fulfilling their historic preservation responsibilities under federal law and regulations;
  - (i) Liaison with organizations of professional archaeologists, historians, architects, architectural historians, planners, and others concerned with historic preservation;
  - (j) Development and operation of a program of public information and education concerning the preservation program;
  - (k) Administration of the grants program within the state;~~and~~
  - (l) Preparation and maintenance of a comprehensive statewide historic preservation plan; **and**
  - (m) *The immediate transmittal to the Department of Parks and to the Commonwealth's Railtrail Development Office in the Department for Local Government of any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.*

## SECTION 9. A NEW SECTION OF KRS CHAPTER 276 IS CREATED TO READ AS FOLLOWS:

*The Railroad Commission shall immediately transmit to the Department of Parks and to the Commonwealth's Railtrail Development Office in the Department for Local Government any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.*

## SECTION 10. A NEW SECTION OF KRS CHAPTER 277 IS CREATED TO READ AS FOLLOWS:

*Each railroad proposing to discontinue service over or to obtain federal authority for regulatory abandonment of a railroad corridor in the Commonwealth of Kentucky shall, in addition to those notification requirements set out in federal law, notify the Commonwealth's Railtrail Development Office in the Department for Local Government and the trails coordinator in the Department of Parks that the railroad is attempting to obtain federal authority to do so.*

## SECTION 11. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

*The Public Service Commission shall immediately transmit to the Department of Parks and to the Commonwealth's Railtrail Development Office in the Department for Local Government any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.*

## Section 12. KRS 411.190 is amended to read as follows:

- (1) As used in this section:
  - (a) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.
  - (b) "Owner" means the possessor of a fee, **reversionary, or easement** interest, a tenant, lessee, occupant, or person in control of the premises.
  - (c) "Recreational purpose" includes, but is not limited to, any of the following, or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, **bicycling, horseback riding**, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.
  - (d) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land but does not include fees for general use permits issued by a government agency for access to public lands if the permits are valid for a period of not less than thirty (30) days.
- (2) The purpose of this section is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes.
- (3) Except as specifically recognized by or provided in subsection (6) of this section, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on the premises to persons entering for such purposes.
- (4) Except as specifically recognized by or provided in subsection (6) of this section, an owner of land who either directly or indirectly invites or permits without charge any person to use the property for recreation purposes does not thereby:
  - (a) Extend any assurance that the premises are safe for any purpose.
  - (b) Confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed.
  - (c) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of those persons.
- (5) Unless otherwise agreed in writing, the provisions of subsections (3) and (4) of this section shall be deemed applicable to the duties and liability of an owner of land leased to the state or any subdivision thereof for recreational purposes.
- (6) Nothing in this section limits in any way any liability which otherwise exists:
  - (a) For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

- (b) For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that in the case of land leased to the state or a subdivision thereof, any consideration received by the owner for the lease shall not be deemed a charge within the meaning of this section.
- (7) Nothing in this section shall be construed to:
  - (a) Create a duty of care or ground of liability for injury to persons or property.
  - (b) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this section to exercise care in his use of the land and in his activities thereon, or from the legal consequences of failure to employ such care.

Section 13. KRS 511.090 is amended to read as follows:

- (1) A person "enters or remains unlawfully" in or upon premises when he is not privileged or licensed to do so.
- (2) A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license or privilege unless he defies a lawful order not to enter or remain personally communicated to him by the owner of such premises or other authorized person.
- (3) A license or privilege to enter or remain in or upon premises which are only partly open to the public is not a license or privilege to enter or remain in or upon a part of the premises which is not open to the public.
- (4) A person who enters or remains upon unimproved and apparently unused land which is neither fenced nor otherwise enclosed does not commit criminal trespass unless notice against trespass is personally communicated to him by the owner of the land or some other authorized person or unless notice is given by posting in a conspicuous manner.
- (5) ***Private land adjoining a railtrail that is neither fenced nor otherwise enclosed shall be presumed to be land where notice against trespassing has been given by the owner of the land, and a person utilizing the railtrail shall be presumed to lack privilege or license to enter upon that land unless the person has permission from an adjoining landowner to do so.***

Section 14. The Department for Local Government shall inventory the Commonwealth's active and abandoned rail corridors and, for the abandoned corridors, analyze the suitability of each of those corridors for railtrail conversion. Corridors inventoried shall include both common carrier and private railroads, as well as railroads which may not have been attached to the interstate transportation system. Additionally, corridors over which service has been discontinued as well as corridors potentially subject to abandonment shall be analyzed as abandoned corridors. In conducting the inventory, the department shall, for each corridor, attempt to ascertain the legal ownership status of the corridor and the date rail service over the rail corridor ceased together with the dates of formal abandonment, and make an examination of the physical integrity of the corridor, including the presence or lack of tunnels, bridges, and culverts. The department shall make its report to the Legislative Research Commission no later than July 1, 2003. The department may divide the state into regions, and complete assessments for individual regions prior to July 1, 2003. The report shall be provided in both printed and electronic format. The department may, through a request for proposals process, contract with a Kentucky public university for the performance of any of the responsibilities imposed upon the department by this section. The department may seek and utilize available state and federal grant money to fund the assessment.

Section 15. The Legislative Research Commission shall establish a Rails to Trails Program Task Force. The task force shall be composed of fifteen members, nine of whom shall be members of the Kentucky General Assembly with Senate and House co-chairs appointed by the Legislative Research Commission. The task force shall include among the nine legislative members the Chair of the Senate Economic Development and Labor Committee, and the Chairs of both the House Economic Development Committee and the House Tourism Development and Energy Committee. The remaining six members of the task force shall be:

- 1. The Governor of the Commonwealth of Kentucky, or his designee;
- 2. The Commissioner of the Department of Parks, or his designee;
- 3. The Secretary of the Tourism Cabinet, or his designee;
- 4. The commissiainer of the Department for Local Government, or his designee;
- 5. A representative of the Kentucky Rails to Trails Council, to be designated by that organization; and



6. A representative of the Kentucky Farm Bureau, to be designated by that organization.

The task force shall continue to study railtrail issues, with particular emphasis on establishing actual trails within the Commonwealth. The Department for Local Government or the university to whom the assessment contract is awarded under Section 14 of this Act shall, upon request of the task force, update the task force on the progress of the work and allow task force members and staff access to records and meetings connected with the assessment. The task force shall report its findings and recommendations to the Legislative Research Commission by September 15, 2001.

**Approved April 6, 2000**

## **CHAPTER 339**

**(HB 324)**

AN ACT relating to library media centers.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) ***The board of education for each local school district shall establish and maintain a library media center in every elementary and secondary school to promote information literacy and technology in the curriculum, and to facilitate teaching, student achievement, and lifelong learning.***
- (2) (a) ***Schools shall employ a school media librarian to organize, equip, and manage the operations of the school media library. The school media librarian shall hold the appropriate certificate of legal qualifications in accordance with KRS 161.020 and 161.030. A certified school media librarian may be employed to serve two (2) or more schools in a school district with the consent of the school councils.***
  - (b) ***If a vacancy occurs, the school council may fill the vacancy on a temporary basis by employing:***
    1. ***A person who is pursuing certification as a school media librarian in accordance with administrative regulations promulgated by the Education Professional Standards Board; or***
    2. ***A temporary employee for a period not to exceed sixty (60) days.***

Section 2. KRS 160.345 is amended to read as follows:

- (1) For the purpose of this section:
  - (a) "Minority" means American Indian; Alaskan native; African-American; Hispanic, including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin; Pacific islander; or other ethnic group underrepresented in the school.
  - (b) "School" means an elementary or secondary educational institution that is under the administrative control of a principal or head teacher and is not a program or part of another school. The term "school" does not include district-operated schools that are:
    1. Exclusively vocational-technical, special education, or preschool programs;
    2. Instructional programs operated in institutions or schools outside of the district; or
    3. Alternative schools designed to provide services to at-risk populations with unique needs.
  - (c) "Teacher" means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers.
  - (d) "Parent" means:
    1. A parent, stepparent, or foster parent of a student; or
    2. A person who has legal custody of a student pursuant to a court order and with whom the student resides.
- (2) By January 1, 1991, each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies,

including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy may include a requirement that each school council make an annual report at a public meeting of the board describing the school's progress in meeting the educational goals set forth in KRS 158.6451 and district goals established by the board. The policy shall also address and comply with the following:

- (a) Except as provided in paragraph (b)2. of this subsection, each participating school shall form a school council composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. The teacher representatives shall be Kentucky residents. The parent representatives on the council shall not be employees of the district or employees' relatives, nor shall they be a local board member or his spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees.
- (b)
  - 1. The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. The parent representatives shall be elected for one (1) year terms. The parent members shall be elected by the parents of students preregistered to attend the school during the term of office in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. A school council, once elected, may adopt a policy setting different terms of office for parent and teacher members subsequently elected, but the terms shall not exceed two (2) years nor be consecutive. The principal or head teacher shall be the chair of the school council.
  - 2. School councils in schools having eight percent (8%) or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member. If the council formed under paragraph (a) of this subsection does not have a minority member, the principal, in a timely manner, shall be responsible for carrying out the following:
    - a. Organizing a special election to elect an additional member. The principal shall call for nominations and shall notify the parents of the students of the date, time, and location of the election to elect a minority parent to the council by ballot; and
    - b. Allowing the teachers in the building to select one (1) minority teacher to serve as a teacher member on the council. If there are no minority teachers who are members of the faculty, an additional teacher member shall be elected by a majority of all teachers. Term limitations shall not apply for a minority teacher member who is the only minority on faculty.
- (c)
  - 1. The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.
  - 2. If a school council establishes committees, it shall adopt a policy to facilitate the participation of interested persons, including, but not limited to, classified employees and parents. The policy shall include the number of committees, their jurisdiction, composition, and the process for membership selection.
- (d) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy.
- (e) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply.
- (f) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals.

- (g) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council. ***The school council shall consult with the school media librarian on the maintenance of the school library media center, including the purchase of instructional materials, information technology, and equipment.***
- (h) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. The superintendent shall provide additional applicants upon request when qualified applicants are available.
- (i) The school council shall adopt a policy to be implemented by the principal in the following additional areas:
  - 1. Determination of curriculum, including needs assessment and curriculum development;
  - 2. Assignment of all instructional and noninstructional staff time;
  - 3. Assignment of students to classes and programs within the school;
  - 4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;
  - 5. Determination of use of school space during the school day;
  - 6. Planning and resolution of issues regarding instructional practices;
  - 7. Selection and implementation of discipline and classroom management techniques as a part of a comprehensive school safety plan, including responsibilities of the student, parent, teacher, counselor, and principal;
  - 8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision; and
  - 9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal.
- (3) The policy adopted by the local board to implement school-based decision making shall also address the following:
  - (a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;
  - (b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;
  - (c) School improvement plans, including the form and function of strategic planning and its relationship to district planning, as well as the school safety plan and requests for funding from the Center for School Safety under KRS 158.446;
  - (d) Professional development plans developed pursuant to KRS 156.095;
  - (e) Parent, citizen, and community participation including the relationship of the council with other groups;
  - (f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;
  - (g) Requirements for waiver of district policies;
  - (h) Requirements for record keeping by the school council; and

- (i) A process for appealing a decision made by a school council.
- (4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.
- (5) After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision making shall do so. By June 30, 1991, each local board shall submit to the chief state school officer the name of at least one (1) school which shall implement school-based decision making the following school year. The board shall select a school in which two-thirds (2/3) of the faculty vote to implement school-based decision making. If no school in the district votes to implement school-based decision making, the local board shall designate one (1) school of its choice. All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon favorable vote of a majority of the faculty at the school and a majority of at least twenty-five (25) voting parents of students enrolled in the school, a school performing above its threshold level requirement as determined by the Department of Education pursuant to KRS 158.6455 may apply to the Kentucky Board of Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. The voting by the parents on the matter of exemption from implementing school-based decision making shall be in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.
- (6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making. School council members elected for the first time shall complete a minimum of six (6) clock hours of training in the process of school-based decision making, and school council members who have served on a school council at least one (1) year shall complete a minimum of three (3) clock hours of training in the process of school-based decision making. School council training required under this subsection shall be conducted by trainers endorsed by the Department of Education, and school council members shall complete the required training no later than thirty (30) days after the beginning of the service year for which they are elected to serve. School council members elected to fill a vacancy shall complete the applicable training within thirty (30) days of their election.
- (7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making including, but not limited to, a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the chief state school officer and the Kentucky Board of Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.
- (8) The Kentucky Board of Education, upon recommendation of the chief state school officer, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council. Included in the school council formula shall be an allocation for professional development that is at least sixty-five percent (65%) of the district's per pupil state allocation for professional development for each student in average daily attendance in the school. The school council shall plan professional development with the district's coordinator and other school councils. Small schools shall be encouraged to work with other school councils to maximize professional development opportunities.
- (9)
  - (a) No board member, superintendent of schools, district employee, or member of a school council shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (i) of subsection (2) of this section.
  - (b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the Kentucky Board of Education.

- (c) The Kentucky Board of Education shall conduct a hearing in accordance with KRS Chapter 13B for complaints referred by the Office of Education Accountability.
- (d) If the state board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent, a member of a school council, or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.

Approved April 6, 2000

## CHAPTER 340

(HB 328)

AN ACT relating to deputy sheriff merit boards.

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

SECTION 1. A NEW SECTION OF KRS 70.260 TO 70.273 IS CREATED TO READ AS FOLLOWS:

- (1) *In any county containing a city of the first class that has adopted a merit system under KRS 70.260 to 70.273, deputies subject to the merit system may organize, form, join, or participate in organizations in order to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection, and to bargain collectively through a representative of their own free choice. Deputies shall also have the right to refrain from any or all of these activities but shall be subject to the lawful provisions of any collective bargaining agreement entered into under this section. Strikes by deputies of any collective bargaining unit shall be prohibited at any time.*
- (2) *In any county containing a city of the first class that has adopted a merit system under KRS 70.260 to 70.273, the sheriff shall contract with a representative of the deputies described in subsection (1) of this section employed by the sheriff where the representative has established representation of a majority of the deputies, with respect to wages, hours, and terms and conditions of employment, including execution of a written contract incorporating any agreement reached between the sheriff and the representative. The sheriff shall not be required to bargain over matters of inherent managerial policy.*

Approved April 6, 2000

## CHAPTER 341

(HB 360)

AN ACT relating to retirement.

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

Section 1. KRS 95.859 is amended to read as follows:

- (1) The rate of retirement annuity shall be two and one-half percent (2.5%) of average salary, as defined in KRS 95.851(13), for each year of total service up to and including thirty (30) years, subject to a maximum of seventy-five percent (75%) of average salary. Fractional periods of service shall be considered in the calculation of such annuities according to the aforesaid rate. If the calculated benefit for a member is less than four thousand eight hundred dollars (\$4,800) per year, the board may increase the annual benefit to a minimum of four thousand eight hundred dollars (\$4,800) if the increase can be supported on an actuarially-sound basis by the fund.
- (2) Any member who retired prior to June 21, 1974, shall receive an increase of ten dollars (\$10) per month for each year or part thereof of retirement prior to June 21, 1974, with a maximum increase of one hundred and seventy dollars (\$170) per month. No surviving widow of a retiree shall receive a pension of less than one hundred and fifty dollars (\$150) per month. The board may increase the minimum benefit to no more than **five hundred dollars (\$500)**~~four hundred dollars (\$400)~~ per month if the increase can be supported on an actuarially-sound basis by the fund. When Social Security benefits are increased, the surviving widows' minimum shall be increased by a like percentage, but the pension increase shall not exceed five percent (5%).

- (3) Within six (6) months after the performance of the actuarial study required by KRS 95.872(6), the rate of retirement annuity of each annuitant shall be increased annually by an amount determined by the study to reflect so much of the annual increase in the cost of living of the annuitant as may be supported on an actuarially sound basis by the fund. So long as the same is published, such studies shall rely on the ***percentage increase in the annual average of the consumer price index for all items for the most recent calendar year as published by*** ~~["All Items Index" of]~~ the United States Department of Labor's ***Bureau of Labor Statistics, not to*** ~~[Consumer Price Indexes, but no increase in the cost of living shall]~~ exceed five percent (5%) ~~[for the actual increase in the cost of living, whichever is lower]~~. ***In any year that the percentage increase in the annual average of the consumer price index for all items is less than five percent (5%), the board may set the annual increase at a rate higher than the increase of the consumer price index but not in excess of five percent (5%), if the board determines that the increase can be supported on an actuarially-sound basis by the fund.*** The increases shall be payable to all members of the fund on the effective date of the increases, and all increases granted on July 15, 1990, or thereafter shall be compounded.
- (4) A surviving spouse who does not receive a pension increase pursuant to subsection (2) of this section or whose pension increase pursuant to the Social Security increase is less than the cost-of-living increase in subsection (3) of this section shall receive the same increase an annuitant receives pursuant to subsection (3) of this section, not to exceed a total of five percent (5%).

Section 2. KRS 95.860 is amended to read as follows:

- (1) Upon death of a member due to occupational causes, regardless of length of service, his surviving widow shall be entitled immediately upon cessation of salary or annuity, as the case may be, to an annuity equal to fifty percent (50%) of the member's last rate of salary plus the total increase the retired member may have received in his annuity pursuant to KRS 95.859(3). This annuity shall be payable until she dies or remarries. No surviving widow shall receive an annuity of less than one hundred and fifty dollars (\$150) per month. The board may increase the minimum benefit to no more than ***five hundred dollars (\$500)*** ~~four hundred dollars (\$400)]~~ per month if the increase can be supported on an actuarially-sound basis by the fund. When Social Security benefits are increased, the minimum shall be increased by a like percentage, provided the increase shall not exceed five percent (5%). In addition, if minor children, under age eighteen (18), survive the member, the widow shall receive twenty-five percent (25%) of the member's last rate of salary until the last child attains age eighteen (18). The combined payments to a widow and minor children, excluding cost-of-living increases or increases in the survivor benefit due to increases the retired member may have received in his annuity pursuant to KRS 95.859(3), shall not exceed seventy-five percent (75%) of his final rate of salary.
- (2) If a widow does not survive the member, or if she remarries, and minor children under age eighteen (18) exist, the children shall be entitled to the benefits provided in KRS 95.861(3).
- (3) If neither a widow nor minor children, eligible for benefits survive the member, each dependent parent shall be entitled to an annuity equal to twenty-five percent (25%) of the member's last rate of salary, or fifty percent (50%) to both parents.
- (4) If a widow would receive from a combination of:
- Survivor benefits pursuant to this section, excluding benefits for minor children or increases in the survivor benefit due to increases the retired member may have received in his annuity pursuant to KRS 95.859(3); and
  - Workers' compensation benefits, excluding dependent children's allowances or payments for medical expenses or legal fees related to the workers' compensation claim, an amount greater than one hundred percent (100%) of the deceased member's last rate of salary,

then the pension system survivor benefits shall be reduced to the point that the combined payments equal one hundred percent (100%) of the last rate of salary. The survivor benefit shall not be reduced, however, below an amount equal to two and one-half percent (2.5%) of average salary for each year of the deceased member's service. Any reduction in the survivor payment shall be based upon workers' compensation benefits applicable at the time the survivor payment is granted, and not upon subsequent increases in either benefit. If workers' compensation benefits are reduced at a subsequent time, the surviving spouse shall inform the board, and the board shall increase the survivor's benefit by the amount of the reductions, but not by more than an amount which would increase the survivor's benefit to fifty percent (50%) of last rate of salary, excluding cost-of-living increases or increases in the survivor benefit due to increases the retired member may have received in his annuity pursuant to KRS 95.859(3). The board of trustees may pay estimated benefits to a surviving spouse,

upon qualification for the benefits, based upon an estimate of workers' compensation benefits until such amounts are actually determined, at which time a final calculation of the spouse's actual benefits shall be determined and the account corrected retroactive to the effective date of the survivor benefit. If workers' compensation benefits are paid in lump sums, the board shall reduce the survivor benefit on a monthly rather than a lump-sum basis. The amount of the monthly reduction shall be based upon the life expectancy of the survivor. The board may request the assistance of the general manager of Kentucky retirement systems to calculate the reduction in survivor benefits when lump-sum payments are involved, and the general manager shall provide such assistance upon request.

- (5) A surviving child or parent receiving benefits pursuant to this section shall receive the same cost-of-living increase granted to retirees pursuant to KRS 95.859(3). A surviving spouse who does not receive an increase pursuant to subsection (1) of this section or whose pension increase pursuant to the Social Security increase is less than the cost-of-living increase in KRS 95.859(3) shall receive the same increase an annuitant receives pursuant to KRS 95.859(3), not to exceed a total of five percent (5%).

Section 3. KRS 95.861 is amended to read as follows:

- (1) Upon death of a member occurring while in service, arising from any cause other than in the performance of duty, provided the member has had at least three (3) years of total service, his widow shall receive an annuity equal to one and one-half percent (1-1/2%) of average salary for each year of total service, credited to the member, plus the total increase the retired member may have received in his retirement annuity pursuant to KRS 95.859(3), subject to a maximum payment, excluding cost-of-living increases of the member or the widow, to the widow of fifty percent (50%). If the member has had at least ten (10) years of total service, the widow shall receive an annuity of no less than one hundred and fifty dollars (\$150) per month. The board may increase the minimum benefit to not more than *five hundred dollars (\$500)*~~four hundred dollars (\$400)~~ per month if the increase can be supported on an actuarially-sound basis by the fund. When Social Security benefits are increased, the minimum shall be increased by a like percentage, but the increase shall not exceed five percent (5%). Payment of the annuity shall be subject to the following conditions:
  - (a) The widow had been married to the member at least one (1) year prior to his death;
  - (b) The widow is at least forty-five (45) years of age, otherwise payment will be deferred until she attains such age, except that if she is or becomes totally disabled before age forty-five (45), or has a minor child or children by the member in her care under age eighteen (18), (including adopted children provided the proceedings for adoption were initiated at least one (1) year prior to death of member) payment of the widow's annuity will begin immediately together with an additional allowance on account of the child or children;
  - (c) The widow's annuity will terminate in any event when the widow remarries. The annuity of each child or children shall continue until each child attains age eighteen (18).
- (2) If the widow has minor children under age of eighteen (18), the annuity to the widow shall be increased one-half (1/2) on account of the first child and one-fourth (1/4) on account of each additional child, subject to a maximum combined payment, excluding cost-of-living increases or increases the retired member may have received in his annuity pursuant to KRS 95.859(3), to the widow and children of seventy-five percent (75%) of the average salary as defined in KRS 95.851(13).
- (3) If the pensioner is not survived by a widow and there are minor children the following benefits shall be paid:
  - (a) One (1) minor child, fifty percent (50%) of the average salary plus the total increase the retired member may have received in his annuity pursuant to KRS 95.859(3);
  - (b) Two (2) minor children, fifteen percent (15%) of the average salary additional;
  - (c) Three (3) or more minor children, ten percent (10%) of the average salary additional,
 subject to a maximum combined payment, excluding cost-of-living increases of the member or the minor children, of seventy-five percent (75%) of the average salary as defined in KRS 95.851(13). The annuity of each child or children shall continue until each child attains age eighteen (18), or, in the case of a child regularly employed in full-time educational activities the age of twenty-three (23). The annuity payments shall be reduced in reverse order.
- (4) These benefits shall also be payable upon death of the member while on retirement, provided marriage was in effect for at least one (1) year before death.

- (5) A surviving child receiving benefits pursuant to this section shall receive the same cost-of-living increases granted to retirees pursuant to KRS 95.859(3). A surviving spouse who does not receive an increase pursuant to subsection (1) of this section or whose pension increase pursuant to the Social Security increase is less than the cost of living increase in KRS 95.859(3) shall receive the same increase an annuitant receives pursuant to KRS 95.859(3), not to exceed a total of five percent (5%).

Section 4. KRS 95.862 is amended to read as follows:

- (1) In the event a total and permanent occupational disability occurs, the member shall receive an annuity equal to seventy percent (70%) of his last rate of salary. If the calculated monthly benefit is less than **five hundred dollars (\$500)**~~four hundred dollars (\$400)~~ per month, the board may increase the monthly benefit to a minimum of **five hundred dollars (\$500)**~~four hundred dollars (\$400)~~ monthly if the increase can be supported on an actuarially-sound basis by the fund. This benefit shall begin at such time as his salary may cease, and shall be paid during his entire lifetime. Any member who retired prior to June 21, 1974, shall receive an increase of ten dollars (\$10) per month for each year or part thereof of retirement prior to June 21, 1974, with a maximum increase of one hundred and seventy dollars (\$170) per month. Upon his death, his eligible widow and minor children, if any, shall receive the benefits as provided under KRS 95.860.
- (2) If the member retired for total and permanent occupational disability would receive from a combination of (a) pension disability payments pursuant to subsection (1) of this section, and (b) workers' compensation payments, excluding spouse or dependent children's allowances or payments for medical expenses or legal fees related to the workers' compensation claim, an amount greater than one hundred percent (100%) of his last rate of salary, then the pension system benefits shall be reduced to the point that the combined payments equal one hundred percent (100%) of the last rate of salary. The benefit shall not be reduced, however, below an amount equal to two and one-half percent (2-1/2%) of average salary for each year of the member's service. Any reduction in the payment shall be based upon workers' compensation benefits applicable at the time the payment is granted, and not upon subsequent increases in either benefit. If workers' compensation benefits are reduced at a subsequent time, the retiree shall inform the board, and the board shall increase the benefit by the amount of the reductions, but not by more than an amount which would increase the benefit to seventy percent (70%) of the last rate of salary, excluding cost-of-living increases. The board of trustees may pay estimated benefits to a retiree, upon qualification for the benefits, based upon an estimate of workers' compensation benefits until such amounts are actually determined, at which time a final calculation of the actual benefits shall be determined and the account corrected retroactive to the effective date of the benefit. If workers' compensation benefits are paid in lump sums, the board shall reduce the disability retirement annuity on a monthly rather than a lump sum basis. The amount of the monthly reduction shall be based upon the life expectancy of the retired member. The board may request the assistance of the general manager of Kentucky Retirement Systems to calculate the reduction in the retirement benefit when lump sum payments are involved, and the general manager shall provide such assistance upon request.
- (3) Any member retired pursuant to this section shall receive the same cost-of-living increases granted to other retirees pursuant to the terms of KRS 95.859(3).

Section 5. KRS 95.863 is amended to read as follows:

- (1) Upon total and permanent disability of a member as the result of any cause other than occupational disability, if a member shall have rendered at least ten (10) years of total service, he shall be entitled to a disability retirement annuity. The amount of such annuity shall be equal to two and one-half percent (2-1/2%) of average salary, as defined in KRS 95.851(13), for each full year of total service, subject to a minimum payment of twenty-five percent (25%) of such average salary, and a maximum payment, excluding cost-of-living increases, of fifty percent (50%) of average salary. If the calculated monthly benefit is less than **five hundred dollars (\$500)**~~four hundred dollars (\$400)~~ per month, the board may increase the monthly benefit to a minimum of **five hundred dollars (\$500)**~~four hundred dollars (\$400)~~ monthly if the increase can be supported on an actuarially-sound basis by the fund. Payment of this annuity shall be made during disability of the member. Any member who retired prior to June 21, 1974, shall receive an increase of ten dollars (\$10) per month for each year or part thereof of retirement prior to June 21, 1974, with a maximum increase of one hundred and seventy dollars (\$170) per month. Upon death of the member, if an eligible widow or minor children survive, such survivors shall be entitled to the regular annuities provided under KRS 95.861.
- (2) Any annuity for nonoccupational disability shall begin to accrue upon the expiration of ninety (90) days following the commencement of disability provided that if the member is receiving salary for sick leave for a period of more than ninety (90) days, payment shall accrue from the date such salary ceases. If written



application for such annuity shall not have been filed with the board prior to the expiration of ninety (90) days from the date of disability, the annuity shall begin to accrue from the date the application shall be filed but not prior to the expiration of ninety (90) days from the date of disability, nor in any event prior to the time when salary payments to the employee shall have ceased.

- (3) Any member retired pursuant to this section shall receive the same cost-of-living increases granted to other retirees pursuant to the terms of KRS 95.859(3).

Section 6. KRS 61.702 is amended to read as follows:

- (1) The board of trustees of Kentucky Retirement Systems shall arrange by appropriate contract or on a self-insured basis to provide a group hospital and medical insurance plan for present and future recipients of a retirement allowance from the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System. The board shall also arrange to provide health care coverage by health maintenance organizations, as defined in KRS 18A.225, as an alternative to group hospital and medical insurance for any person eligible for hospital and medical benefits under this section. Any person who chooses coverage by a health maintenance organization shall pay, by payroll deduction from the retirement allowance or by another method, the difference in premium between the cost of health maintenance organization coverage and the benefits to which he would be entitled under this section. The board may authorize present and future recipients of a retirement allowance from any of the three (3) retirement systems, who are under age sixty-five (65), to be included in the state employees' group for hospital and medical insurance and shall provide benefits for recipients equal to those provided to state employees having the same Medicare hospital and medical insurance eligibility status.
- (2) Each employer participating in the State Police Retirement System as provided for in KRS 16.510 to 16.652, each employer participating in the County Employees Retirement System as provided in KRS 78.510 to 78.852, and each employer participating in the Kentucky Employees Retirement System as provided for in KRS 61.510 to 61.705 shall contribute to the Kentucky Retirement Systems insurance fund the amount necessary to provide hospital and medical insurance as provided for under this section. Such employer contribution rate shall be developed by appropriate actuarial method as a part of the determination of each respective employer contribution rate to each respective retirement system determined under KRS 61.565.
- (3) (a) The premium required to provide hospital and medical benefits under this section shall be paid:
  1. Wholly or partly from funds contributed by the recipient of a retirement allowance, by payroll deduction, or otherwise;
  2. Wholly or partly from funds contributed by the Kentucky Retirement Systems insurance fund;
  3. Wholly or partly from funds contributed by another state-administered retirement system under a reciprocal arrangement, except that any portion of the premium paid from the Kentucky Retirement Systems insurance fund under a reciprocal agreement shall not exceed the amount that would be payable under this section if all the member's service were in one (1) of the systems administered by the Kentucky Retirement Systems;
  4. Partly from subparagraphs 1., 2., or 3., except that any premium for hospital and medical insurance over the amount contributed by the Kentucky Retirement Systems insurance fund or another state-administered retirement system under a reciprocal agreement shall be paid by the recipient. If the board provides for cross-referencing of insurance premiums, the employer's contribution for the working member or spouse shall be applied toward the premium, and the Kentucky Retirement Systems insurance fund shall pay the balance, not to exceed the monthly contribution.
  5. In full from the Kentucky Retirement Systems insurance fund for all recipients of a retirement allowance from any of the three (3) retirement systems where such recipient is a retired former member of one (1) or more of the three (3) retirement systems (not a beneficiary or dependent child receiving benefits) and had two hundred and forty (240) months or more of service upon retirement. Should such recipient have less than two hundred forty (240) months of service but have at least one hundred eighty (180) months of service, seventy-five percent (75%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining twenty-five percent (25%) by payroll deduction from his retirement allowance or by another method. Should such recipient have less than one hundred eighty (180) months of service but have at least one hundred twenty (120) months of service, fifty percent (50%) of such

premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining fifty percent (50%) by payroll deduction from his retirement allowance or by another method. Should such recipient have less than one hundred twenty (120) months of service but have at least forty-eight (48) months of service, twenty-five percent (25%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining seventy-five percent (75%) by payroll deduction from his retirement allowance or by another method. Notwithstanding the foregoing provisions of this subsection, a State Police Retirement System member or a hazardous position employee, as defined in KRS 61.592, who becomes disabled in the line of duty as defined in KRS 16.505(19), shall have his premium paid in full as if he had two hundred forty (240) months or more of service. Further, a State Police Retirement System member or a hazardous position employee as defined in KRS 61.592, who is killed in the line of duty as defined in KRS 16.505(19), shall have the premium for the beneficiary, if the beneficiary is the member's spouse, and for each dependent child paid so long as they individually remain eligible for a monthly retirement benefit. "Months of service" as used in this section shall mean the total months of combined service used to determine benefits under any or all of the three (3) retirement systems, except service added to determine disability benefits shall not be counted as "months of service."

- (b) For a member electing insurance coverage through the Kentucky Retirement Systems, "months of service" shall include, in addition to service as described in paragraph (a) of this subsection, service credit in one of the other state-administered retirement plans.
  - 1. Effective August 1, 1998, the Kentucky Retirement Systems shall compute the member's combined service, including service credit in another state-administered retirement plan, and calculate the portion of the member's premium to be paid by the insurance fund, according to the criteria established in paragraph (a) of this subsection. Each state-administered retirement plan annually shall pay to the insurance fund the percentage of the system's cost of the retiree's monthly contribution for single coverage for hospital and medical insurance which shall be equal to the percentage of the member's number of months of service in the other state-administered retirement plan divided by his total combined service. The amounts paid by the other state-administered retirement plans and the insurance fund shall not be more than one hundred percent (100%) of the monthly contribution adopted by the respective boards of trustees.
  - 2. A member may not elect coverage for hospital and medical benefits under this subsection through more than one (1) of the state-administered retirement plans.
  - 3. A state-administered retirement plan shall not pay any portion of a member's monthly contribution for medical insurance unless the member is a recipient or annuitant of the plan.
- (4) (a) Group rates under the hospital and medical insurance plan shall be made available to the spouse, dependents, and disabled children, regardless of the disabled child's age, of a recipient who is a former member or the beneficiary, if the premium for the spouse, dependent, disabled child, or beneficiary hospital and medical insurance is paid by payroll deduction from the retirement allowance or by another method. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.
- (b) The other provisions of this section notwithstanding, the insurance fund shall pay a percentage of the monthly contribution for the spouse and dependents of a recipient who was a member of the General Assembly and is receiving a retirement allowance based on General Assembly service, of the Kentucky Employees Retirement System and determined to be in a hazardous position, of the County Employees Retirement System, and determined to be in a hazardous position or of the State Police Retirement System, or the beneficiary of the member, if the member designated only one (1) person as beneficiary. The percentage of the monthly contribution paid for the spouse and dependents *of a recipient who was in a hazardous position* shall be based solely on the member's service with the State Police Retirement System or service in a hazardous position using the formula in subsection (3)(a) of this section, *except that for any recipient of a retirement allowance from the County Employees Retirement System who was contributing to the system on January 1, 1998, for service in a hazardous position, the percentage of the monthly contribution shall be based on the total of hazardous service and any nonhazardous service as a police or firefighter with the same agency, if that agency was participating in the County Employees Retirement System but did not offer hazardous duty coverage for its police and firefighters at the time of initial participation.*

- (c) The insurance fund shall continue the same level of coverage for a recipient who was a member of the County Employees Retirement System after the age of sixty-five (65) as before the age of sixty-five (65), if the recipient is not eligible for Medicare coverage. If the insurance fund provides coverage for the spouse or dependents or beneficiary of a former member of the County Employees Retirement System, the insurance fund shall continue the same level of coverage for the spouse or dependent or beneficiary after the age of sixty-five (65) as before the age of sixty-five (65), if the spouse or dependent or beneficiary is not eligible for Medicare coverage.
- (5) After July 1, 1998, notwithstanding any other provision to the contrary, a member who holds a judicial office but did not elect to participate in the Judicial Retirement Plan and is participating instead in the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System, as provided in KRS 61.680, and who has at least twenty (20) years of total service, one-half (1/2) of which is in a judicial office, shall receive the same hospital and medical insurance benefits, including paid benefits for spouse and dependents, as provided to persons retiring under the provisions of KRS 21.427. The Administrative Office of the Courts shall pay the cost of the medical insurance benefits provided by this subsection.
- (6) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the insurance fund shall not constitute taxable income to an insured recipient. No commission shall be paid for hospital and medical insurance procured under authority of this section.

**Approved April 6, 2000**

## CHAPTER 342

(HB 385)

AN ACT relating to the Tobacco Master Settlement Agreement and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 and 2 of this Act:*

- (1) *"Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the master settlement agreement.*
- (2) *"Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned," and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent (10%) or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.*
- (3) *"Allocable share" means allocable share as that term is defined in the master settlement agreement.*
- (4) *"Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:*
  - (a) *Any roll of tobacco wrapped in paper or in any substance not containing tobacco;*
  - (b) *Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or*
  - (c) *Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this subsection.*

*The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," nine hundredths (0.09) ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."*

- (5) *"Master settlement agreement" means the settlement agreement (and related documents) entered into on November 23, 1998, by Kentucky and leading United States tobacco product manufacturers.*
- (6) *"Qualified escrow fund" means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars (\$1,000,000,000) where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with subsection (2) of Section 2 of this Act.*
- (7) *"Released claims" means released claims as that term is defined in the master settlement agreement.*
- (8) *"Releasing parties" means releasing parties as that term is defined in the master settlement agreement.*
- (9) *"Tobacco product manufacturer" means an entity that after the effective date of this Act directly (and not exclusively through any affiliate):*
  - (a) *Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the master settlement agreement) that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of the master settlement agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);*
  - (b) *Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or*
  - (c) *Becomes a successor of an entity described in paragraph (a) or (b) of this subsection.*

*The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of the definitions described in paragraph (a), (b), or (c) of this subsection.*
- (10) *"Units sold" means the number of individual cigarettes sold in Kentucky by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by Kentucky on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of Kentucky. The Revenue Cabinet shall promulgate such regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

- (1) *Any tobacco product manufacturer selling cigarettes to consumers within this state (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) after the effective date of this Act shall do one of the following:*
  - (a) *Become a participating manufacturer (as that term is defined in section II(jj) of the master settlement agreement) and generally perform its financial obligations under the master settlement agreement; or*
  - (b) *Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):*
    - 1. *For 2000: \$0.0104712 per unit sold after the effective date of this Act;*
    - 2. *For each of 2001 and 2002: \$0.0136125 per unit sold;*
    - 3. *For each of 2003 through 2006: \$0.0167539 per unit sold; and*
    - 4. *For 2007 and each year thereafter: \$0.0188482 per unit sold.*
- (2) *A tobacco product manufacturer that places funds into escrow pursuant to subsection (1)(b) of this section shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:*

- (a) *To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by Kentucky or any releasing party located or residing in Kentucky. Funds shall be released from escrow under this paragraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement;*
  - (b) *To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than Kentucky's allocable share of the total payments that such manufacturer would have been required to make in that year under the master settlement agreement (as determined pursuant to section IX(i)(2) of the master settlement agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or*
  - (c) *To the extent not released from escrow under paragraph (a) or (b) of this subsection, funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five (25) years after the date on which they were placed into escrow.*
- (3) *Each tobacco product manufacturer that elects to place funds into escrow pursuant to subsection (1)(b) of this section shall annually certify to the Attorney General that it is in compliance with subsections (1)(b) and (2) of this section. The Attorney General may bring a civil action on behalf of Kentucky against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:*
- (a) *Be required within fifteen (15) days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of subsection (1)(b) or (2) of this section, may impose a civil penalty (to be paid to the general fund of Kentucky) in an amount not to exceed five percent (5%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent (100%) of the original amount improperly withheld from escrow;*
  - (b) *In the case of a knowing violation, be required within fifteen (15) days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of subsection (1)(b) or (2) of this section, may impose a civil penalty (to be paid to the general fund of Kentucky) in an amount not to exceed fifteen percent (15%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent (300%) of the original amount improperly withheld from escrow; and*
  - (c) *In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within Kentucky (whether directly or through a distributor, retailer, or similar intermediary) for a period not to exceed two (2) years.*

*Each failure to make an annual deposit required under this section shall constitute a separate violation.*

Section 3. Whereas this Act must be in effect during one-half of the year 2000 in order for the Commonwealth to receive full benefit of enacting this Act under the Master Settlement Agreement, an emergency is declared to exist, and this Act takes effect June 30, 2000.

**Approved April 6, 2000**

## **CHAPTER 343**

**(HB 405)**

AN ACT relating to emergency medical services.

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

Section 1. KRS 211.950 is repealed, reenacted as a new section of KRS 311.652 to 311.658, and amended to read as follows:

As used in KRS *311.652 to 311.658*[~~211.952 to 211.956~~], unless the context otherwise requires:

- (1) ~~"Advisory committee" means the Emergency Medical Services for Children Advisory Committee of the Kentucky Emergency Medical Services Council established under KRS 211.9533;~~
- (2) "Ambulance" means a vehicle which has been inspected and approved by the ~~board~~~~[cabinet]~~, including a helicopter or fixed wing aircraft, except vehicles or aircraft operated by the United States government, that are specially designed, constructed, or have been modified or equipped with the intent of using the same, for the purpose of transporting any individual who is sick, injured, or otherwise incapacitated who may require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well-being;
- (2)(3) "Ambulance provider" means any individual or private or public organization, except the United States government, who is licensed by the ~~Kentucky Board of Emergency Medical Services~~~~[Cabinet for Health Services]~~ to provide medical transportation services as either basic life support or advanced life support and who may have a vehicle or vehicles, including ground vehicles, helicopters, or fixed-wing aircraft. An ambulance provider may be licensed as an air ambulance provider; as a Class I ground ambulance provider; as a Class II ground ambulance provider; or as a Class III ground ambulance provider;
- (3) **"Board" means the Kentucky Board of Emergency Medical Services;**
- (4) "Department" means the Department for Public Health;
- (5) "Emergency medical facility" means a hospital, trauma center, or any other institution licensed by the Cabinet for Health Services that furnishes emergency medical services;
- (6) "Emergency medical services" means the services utilized in responding to the perceived individual need for immediate medical care to protect against loss of life, or aggravation of physiological or psychological illness or injury;
- (7) "Emergency Medical Services for Children Program" or "EMSC Program" means the program established under **Section 5 of this Act**~~[KRS 211.9531];~~
- (8) "Emergency medical services personnel" means persons, including physicians, certified or licensed, and trained to provide emergency medical services, whether on a paid or volunteer basis, as part of basic life support, advanced life support, **or prehospital services**~~[, or hospital emergency care services or in an emergency department or critical care or specialized unit in a licensed hospital or other licensed emergency or critical care medical facility];~~
- (9) "Emergency medical services system" means a coordinated system of health-care delivery that responds to the needs of acutely sick and injured adults and children, and includes community education and prevention programs, centralized access and emergency medical dispatch, communications networks, trained emergency medical services personnel, medical first response, ground and air ambulance services,~~[emergency medical facilities and specialty care hospitals,]~~ trauma care systems, mass casualty management, medical direction, and quality control and system evaluation procedures;
- (10) **"Emergency medical technician" or "(EMT)" means a person certified under KRS 311.652 to 311.658 as an EMT-first responder, EMT-basic, EMT-basic instructor, EMT-instructor trainer, or EMT-first responder instructor;**
- (11) **"Medical director" means a physician licensed in Kentucky who is employed by, under contract to, or has volunteered to serve as the medical director of a licensed ambulance service;**
- (12) **"Paramedic" means a person who is primarily involved in the delivery of emergency medical services and is licensed under KRS 311.652 to 311.658;**
- (13) "Prehospital care" means the provision of emergency medical services or transportation by trained and certified or licensed emergency medical services personnel at the scene of an emergency or while transporting sick or injured persons to a hospital or other emergency medical facility;
- (14)(11) "Regional emergency medical services system" means a system approved by the **Kentucky Board of Emergency Medical Services**~~[Cabinet for Health Services]~~ which provides for the arrangement of personnel, facilities, equipment, or any of the above, for the effective and coordinated delivery of health-care services in an appropriate geographical area;
- (15)(12) "Trauma" means a single or multisystem life-threatening or limb-threatening injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability; and

- ~~(16)~~~~(13)~~ "Trauma care system" means a subsystem within the emergency medical services system consisting of an organized arrangement of personnel, equipment, and facilities designed to manage the treatment of the trauma patient.

SECTION 2. A NEW SECTION OF KRS 311.652 TO 311.658 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Board of Emergency Medical Services is created and shall consist of sixteen (16) members who are residents of Kentucky appointed by the Governor in conjunction with recognized state emergency medical services related organizations. Membership shall be made up of the following:*
- (a) *One (1) paramedic who works for a government agency but is not serving in an educational, management, or supervisory capacity;*
  - (b) *One (1) emergency medical technician-basic who works for a government agency but is not serving in an educational, management, or supervisory capacity;*
  - (c) *One (1) emergency medical technical-first responder who is not serving in an educational, management, or supervisory capacity;*
  - (d) *One (1) physician licensed in Kentucky having a primary practice in the delivery of emergency medical care selected from a list of three (3) physicians submitted by the Kentucky Medical Association;*
  - (e) *One (1) physician licensed in Kentucky serving as medical director of an advanced life support ambulance service, selected from a list of three (3) physicians submitted by the Kentucky Medical Association;*
  - (f) *One (1) physician licensed in Kentucky who is routinely involved in the emergency care of ill and injured children selected from a list of three (3) physicians submitted by the Kentucky Medical Association;*
  - (g) *One (1) trauma surgeon licensed in Kentucky selected from a list of three (3) physicians submitted by the Kentucky Medical Association;*
  - (h) *One (1) citizen having no involvement in the delivery of medical or emergency services;*
  - (i) *One (1) emergency medical services educator from a Kentucky college or university that provides an emergency medical services educational program;*
  - (j) *One (1) mayor of a city that operates, either directly or through contract services, a licensed Class I ground ambulance service;*
  - (k) *One (1) county judge/executive from a county that operates, whether directly or through contract services, a licensed Class I ground ambulance service;*
  - (l) *One (1) volunteer-staffed, licensed Class I ground ambulance service administrator who is a certified emergency medical technician or a licensed paramedic;*
  - (m) *One (1) fire-service-based, licensed Class I ground ambulance service administrator who is a certified emergency medical technician or a licensed paramedic;*
  - (n) *One (1) hospital administrator selected from a list of five (5) nominees submitted by the Kentucky Hospital Association;*
  - (o) *One (1) basic life support, licensed Class I government-operated ground ambulance service administrator who is a certified emergency medical technician or a licensed paramedic; and*
  - (p) *One (1) advanced life support, government-operated ambulance service administrator who is a certified emergency medical technician or a licensed paramedic.*
- (2) *No board member shall serve more than two (2) consecutive terms.*
- (3) *The board shall elect a chair by majority vote of the members present at its first annual meeting.*
- (4) *The board shall adopt a quorum and rules of procedure by administrative regulation.*
- (5) *A member of the board who misses three (3) meetings in one (1) year shall be deemed to have resigned from the board and his or her position shall be deemed vacant. The person removed under this subsection shall not be reappointed to the board for ten (10) years. The year specified in this subsection shall begin*

*with the first meeting missed and end three hundred sixty-five (365) days later or with the third meeting missed, whichever occurs earlier. The Governor shall appoint a person of the same class to fill the vacancy within ninety (90) days.*

- (6) *Members of the board and of all committees shall be entitled to reimbursement for actual and necessary expenses when carrying out official duties of the board in accordance with state administrative regulations relating to travel reimbursement. The board shall meet at least six (6) times each year.*
- (7) *The board shall:*
  - (a) *Exercise all of the administrative functions of the state in the regulation of the emergency medical services system and the practice of first responders, emergency medical technicians, paramedics, ambulance services, and training institutions;*
  - (b) *Issue, deny, suspend, limit, restrict, and revoke any licenses or certifications, and reprimand or place an individual with a license or certificate on probation;*
  - (c) *Appoint an executive director and fix the compensation. The executive director shall serve at the pleasure of the board, administer the day-to-day operations of the agency, and supervise all directives of the board. The director shall possess a baccalaureate degree and shall have no less than five (5) years of experience in public administration or in the administration of an emergency medical services program;*
  - (d) *Appoint or contract with a physician who is board certified in emergency medicine and fix the compensation. The physician shall serve as the medical advisor to the Kentucky Board of Emergency Medical Services and the staff of the board;*
  - (e) *Appoint a general counsel and fix the compensation;*
  - (f) *Employ personnel sufficient to carry out the statutory responsibilities of the board.*
    - 1. *Personnel assigned to regulate or support the emergency medical technician first responder program shall be certified emergency medical technician first responders or emergency medical technicians.*
    - 2. *Personnel assigned to regulate or support the emergency medical technician program shall be certified emergency medical technicians or paramedics.*
    - 3. *Personnel assigned to regulate or support the paramedic program shall be licensed paramedics.*
    - 4. *Personnel in purely clerical roles need not be certified in the manner specified in this section;*
  - (g) *Establish committees and subcommittees, who need not be members of the board, as necessary;*
  - (h) *Collect any fees established by the promulgation of administrative regulations;*
  - (i) *Investigate and hold hearings for any disciplinary proceedings in accordance with KRS Chapter 13B;*
  - (j) *Establish and impose fines against individuals or agencies governed by the board;*
  - (k) *Enter into contracts, apply for grants and federal funds, and disburse funds to local units of government as approved by the General Assembly;*
  - (l) *Maintain a program and provide technical assistance for the planning, development, improvement, and expansion of emergency medical services systems and trauma care systems throughout the state;*
  - (m) *Collect and analyze data for evaluation of emergency medical services in the Commonwealth;*
  - (n) *Administer the Emergency Medical Services for Children Program; and*
  - (o) *Establish minimum curriculum and standards for emergency medical services training.*
- (8) *The board may utilize materials, services, or facilities as may be made available to it by other state agencies or may contract for materials, services, or facilities.*

Section 3. KRS 211.952 is repealed, reenacted as a new section of KRS 311.652 to 311.658, and amended to read as follows:



*The Kentucky Board of Emergency Medical Services shall promulgate administrative regulations in accordance with KRS Chapter 13A to carry out the functions of KRS 311.652 to 311.658, including, but not limited to:*

- (1) ~~{The Cabinet for Health Services shall maintain a program for the planning, development, improvement, and expansion of emergency medical services systems and trauma care systems throughout the state.}~~
- (2) ~~The Cabinet for Health Services shall establish and designate a single lead agency under the supervision and direction of the commissioner of public health which will carry out all administrative functions related to the planning, development, improvement, and expansion of emergency medical services systems throughout the state. This will include:~~
  - (a) ~~The training and certification of prehospital personnel;~~
  - (b) ~~The promulgation of standards and regulations for emergency medical services personnel;~~
  - (c) ~~The promulgation of administrative regulations for the }Licensing, *inspecting*{inspection}, and *regulating*{regulation} of ambulance *services* and medical first-response providers. The administrative regulations shall address specific requirements for:~~
    - (a){1-} Air ambulance providers, which provide basic or advanced life support services;
    - (b){2-} Class I ground ambulance providers, which provide basic life support or advanced life support services to all patients for~~{ both }~~ emergencies and scheduled ambulance transportation which is medically necessary;
    - (c){3-} Class II ground ambulance providers, which provide only basic life support services but do not provide initial response to the general population with medical emergencies and which are limited to providing scheduled ambulance transportation which is medically necessary;
    - (d){4-} Class III ground ambulance providers, which provide mobile intensive care services at or above the level of advanced life support to patients with critical illnesses or injuries who must be transported between hospitals in vehicles with specialized equipment as an extension of hospital-level care; and
    - (e){5-} Medical first-response providers, *which*~~{ who }~~ provide prehospital basic life support services, or advanced life support services, but do not transport patients;
- (2){(d)} *Establishing*, planning, and *developing*~~{development of}~~ emergency medical services and trauma care systems;
- (3){(e)} *Promulgating*~~{Promulgation of}~~ voluntary standards for trauma centers and other specialized emergency medical facilities;
- ~~{(f) Provision of funding and technical assistance as shall become available; and}~~
- (4){(g)} Establishing minimum data reporting requirements, including requirements specifically related to emergency medical services and trauma care of children, for ambulance providers and trauma centers~~{ and other specialized emergency medical facilities }~~ and collection and analysis of data related to the provision of emergency medical services and trauma care;~~{ and }~~
- (5){(h)} *Maintaining*~~{Establishing}~~ the Emergency Medical Services for Children Program with federal funds so designated plus any additional funds that may be appropriated by the General Assembly, or any other funds that may become available to the *Kentucky Board of Emergency Medical Services*~~{cabinet}~~, including gifts, grants, or other sources;~~{-~~
- (3) ~~Nothing in this section shall be construed to change or alter the issuance of certificates of need for emergency medical services providers.}~~
- (6){(4)} *Developing*~~{The cabinet shall promulgate administrative regulations and perform the necessary functions to carry out the purpose of this section including:~~
  - (a) ~~Delineation, by administrative order of the secretary, of the geographic boundaries of regional emergency medical services systems.~~
  - (b) ~~Promulgation of administrative regulations providing for:~~
    1. ~~Composition of regional emergency medical services advisory boards to serve in an advisory capacity to the Kentucky Emergency Medical Services Council;~~

- 2. ~~Terms of office of regional emergency medical services advisory board members;~~
- 3. ~~Appointment of regional emergency medical services advisory board members; and~~
- 4. ~~Such other matters relating to regional emergency medical services systems as may be necessary.~~
- (e) ~~Provision of technical assistance to regional emergency medical services advisory boards, units of local government, and others in planning for the development, coordination, and monitoring of emergency medical services.~~
- (d) ~~Development of~~ a statewide plan for the implementation of emergency medical services systems and trauma care systems within the Commonwealth of Kentucky ~~that~~<sup>which</sup> specifically addresses the unique needs of rural areas;~~[-]~~
- (7)~~(e)~~ **Issuing**~~[Issuance of]~~ a format for the development of regional emergency medical services plans consistent with goals and standards included in the statewide emergency medical services plan.
- (8)~~(f)~~ **Applying**~~[Application]~~ for, **receiving**~~[receipt of]~~, and **disposing**~~[disposition]~~ of federal, state, or private funds by grant, appropriation, donation, or otherwise for emergency medical services programs, personnel, and equipment;~~[-]~~
- (g) ~~Awarding of funds to regional emergency medical services systems to implement specific objectives delineated in regional emergency medical services plans, including assistance to local governments for their provision of ambulance service.[-]~~
- (9)~~(h)~~ **Developing**~~[Development]~~, monitoring, and **encouraging**~~[encouragement]~~ of ~~such~~ other projects and programs ~~that~~<sup>which</sup> may be of benefit to emergency medical services in the Commonwealth; **and**
- (10) **Establishing standards related to the training of emergency medical services personnel.**

***Nothing in this section shall be construed to change or alter the issuance of certificates of need for emergency medical services providers.***

- ~~(i) Conducting verification inspections to ensure compliance with voluntary standards established by the cabinet for trauma centers, emergency departments, and specialized hospital-based services for which standards have been established by the cabinet for emergency medical services and trauma care systems.~~
- (5) ~~The cabinet shall establish a Kentucky Emergency Medical Services Council which shall advise the cabinet on issues relating to the development, implementation, regulation, maintenance, and reimbursement of emergency medical services systems and providers. This council shall be broadly representative of individuals, providers, and public officials having expertise in emergency medical services. The council shall consult with the Kentucky Board of Medical Licensure to establish medically appropriate standards and protocols which will be utilized by emergency medical services personnel and to assist the Kentucky Board of Medical Licensure in meeting the requirements of KRS 311.654. The council shall consult with the Kentucky Board of Nursing to establish appropriate standards and protocols to meet the requirements of KRS 314.131 for nurses who practice in emergency medical service settings.~~
- (6) ~~Data and records generated and kept by the single emergency medical services administrative agency, the Kentucky Emergency Medical Services Council, the Emergency Medical Services for Children Advisory Committee, the Kentucky Emergency Medical Services for Children Program or their contractors regarding the evaluation of emergency medical care and trauma care in the Commonwealth, including the identities of patients, emergency medical services personnel, ambulance providers, medical first response providers, and emergency medical facilities, shall be held confidential, shall not be subject to disclosure under KRS 61.805 to 61.884, shall not be admissible in court for any purpose, and shall not be subject to discovery; provided, however, that nothing in this section shall limit the discoverability or admissibility of patient medical records regularly and ordinarily kept in the course of a patient's treatment which otherwise would be admissible or discoverable.~~
- (7) ~~Nothing in this section shall limit, preclude, or otherwise restrict the practices of licensed personnel in carrying out their duties under the terms of their licenses.[-]~~

Section 4. KRS 211.953 is repealed, reenacted as a new section of KRS 311.652 to 311.658, and amended to read as follows:

The Kentucky General Assembly declares that the purpose of **Section 5 of this Act**~~[KRS 211.9531 and 211.9533]~~ is to establish a comprehensive emergency medical services system for children, as an integral part of Kentucky's overall

emergency medical services and trauma care system, in order to provide children with access to comprehensive emergency ~~and critical care medical services, including preventive, prehospital, hospital, rehabilitation, and other posthospital~~ care. The General Assembly recognizes the contributions of the federally funded Emergency Medical Services for Children program in Kentucky and desires to continue and expand the activities initiated by this program. The General Assembly finds that coordination of emergency services, additional training of emergency medical services personnel, communication among service providers, and enhanced data collection efforts will provide children with access to skilled emergency care, decrease unnecessary deaths from injury, decrease the overall costs of health care, and provide information as to the quality of emergency medical care for children.

Section 5. KRS 211.9531 is repealed, reenacted as a new section of KRS 311.652 to 311.658, and amended to read as follows:

- (1)~~There is established within the department's lead agency for emergency medical services an Emergency Medical Services for Children Program.~~
- (2)~~+~~ The **Kentucky Board of Emergency Medical Services**~~cabinet~~ may hire a coordinator for the **Emergency Medical Services for Children**~~EMSC~~ Program ~~who shall be assigned to the department's lead agency for emergency medical services. The authorized personnel cap for the department may be increased to include the coordinator~~ and other positions for which funding is provided by the General Assembly or through any other sources, including gifts, grants, or federal funds.
- (2)~~(3)~~ The coordinator shall, *subject to the direction of the Kentucky Board of Emergency Medical Services*:
  - (a) Implement and oversee the **Emergency Medical Services for Children**~~EMSC~~ Program described in this section~~; in consultation with the advisory committee established in Section 5 of this Act~~; and
  - (b) Serve as liaison for collaboration and coordination between the **Emergency Medical Services for Children**~~EMSC~~ Program, **the Kentucky Board of Emergency Medical Services**, and other public and private organizations~~; including the department's lead emergency medical services agency~~; the state traffic safety office, the maternal and child health program, the Medicaid department, the state and local child fatality review and response teams, state and local professional organizations, private sector voluntary organizations, and consumer and community representatives.
- (3)~~(4)~~ The **Emergency Medical Services for Children**~~EMSC~~ Program may include, but not be limited to, the establishment of the following:
  - (a)~~Guidelines for the approval of emergency medical services facilities for pediatric care, and designation of specialized regional pediatric critical care centers and pediatric trauma centers;~~
  - (b)~~Guidelines for referring children to the appropriate emergency medical facility;~~
  - (c)~~Guidelines for necessary out-of-hospital~~~~prehospital and other pediatric emergency and critical care~~ medical service equipment;
  - (b)~~(d)Guidelines for developing a coordinated system that will allow children to receive appropriate initial stabilization and treatment with timely provision of, or referral to, the appropriate level of care, including critical care, trauma care, or pediatric subspecialty care;~~
  - (c)~~Guidelines and protocols for out-of-hospital~~~~prehospital and hospital facilities encompassing all levels of~~ pediatric emergency medical services~~; pediatric critical care, and pediatric trauma care;~~
  - (f)~~Guidelines for rehabilitation services for critically ill or injured children;~~
  - (g)~~A system for transferring critically ill or injured children between emergency medical facilities, services, and systems;~~
  - (c)~~(h)~~ *Assistance in the development and provision of*~~Initial and continuing~~ professional education programs for emergency medical services personnel~~, which shall include training~~ in the emergency care of infants and children;
  - (d)~~(i) A public education program concerning the EMSC Program, including information on emergency access telephone numbers;~~
  - (j)~~The collection and analysis of statewide pediatric emergency and critical care medical services data from emergency medical facilities for the purpose of quality improvement by these facilities, subject to the confidentiality requirements of KRS 211.952(6);~~

- ~~(k) The establishment of cooperative interstate relationships to facilitate the provision of appropriate care for pediatric patients who must cross state borders to receive emergency medical services;~~
- ~~(4)~~ Coordination and cooperation between the **Emergency Medical Services for Children**~~[EMSC]~~ Program and other public and private organizations interested or involved in emergency~~[and critical]~~ care for children, including those persons and organizations identified in subsection ~~(2)~~~~(3)~~(b) of this section; and
- ~~(e)~~~~(m)~~ The scope of activities carried out by the **Emergency Medical Services for Children**~~[EMSC]~~ Program shall be commensurate with the availability of funds.

Section 6. KRS 211.954 is repealed, reenacted as a new section of KRS 311.652 to 311.658, and amended to read as follows:

A matching fund program is hereby created for the purpose of assisting local **units of government**~~[ambulance providers]~~ in the purchases of ambulances and equipment, **provision of an adequate number of trained emergency medical services personnel, and provision of education for personnel**. The fund shall consist of such moneys as may be appropriated by the General Assembly or may be obtained from other sources for the fund as provided in this section~~[and KRS 211.956]~~:

- (1) Application and justification of need for moneys from the fund shall be based upon the state emergency medical services plan's priorities;
- (2) Application for moneys from the fund may be made to the **Kentucky Board of Emergency Medical Services**~~[Cabinet for Health Services]~~ by any city, county, **ambulance taxing district**, or regional emergency medical services system based upon guidelines established by the **Kentucky Board of Emergency Medical Services**~~[Cabinet for Health Services]~~;
- (3) Moneys from the fund will provide for up to a maximum of fifty percent (50%) of the actual cost of any ambulance or other item of equipment desired to be procured. No county, including all grants to entities within the county, shall receive more than twenty-five thousand five hundred dollars (\$25,500) from the fund per year;
- (4) No funds awarded pursuant to this section shall be used for any other purpose than the purpose for which they were awarded. Funds remaining unexpended one (1) year from the date of the award shall lapse and shall be returned to the fund by the recipient~~[city, county, or regional emergency medical services system]~~;
- (5) Funding periods shall coincide with the fiscal year as established by the **Kentucky Board of Emergency Medical Services**~~[Cabinet for Health Services]~~; and
- (6) Each ambulance or item of equipment purchased shall meet or exceed, if a standard has been set for the particular item of equipment, the standards set by the **Kentucky Board of Emergency Medical Services**~~[Cabinet for Health Services]~~.

Section 7. KRS 211.962 is repealed, reenacted as a new section of KRS 311.652 to 311.658, and amended to read as follows:

No person shall:

- (1) Hold himself out as certified pursuant to KRS **311.652 to 311.658**~~[211.962 to 211.968]~~ nor use the **title of emergency medical technician or**~~[initials]~~ "EMT" when he does not hold a current valid certification issued pursuant to KRS **311.652 to 311.658**~~[211.962 to 211.968]~~; or
- (2) If certified, violate any provision of KRS **311.652 to 311.658**~~[211.962 to 211.968]~~ or any **administrative**~~[rule or]~~ regulation, adopted by the **Kentucky Board of Emergency Medical Services**~~[Cabinet for Health Services]~~ relating to **Section 8 of this Act**~~[KRS 211.964]~~.

Section 8. KRS 211.964 is repealed, reenacted as a new section of KRS 311.652 to 311.658, and amended to read as follows:

- (1) The **Kentucky Board of Emergency Medical Services**~~[Cabinet for Health Services]~~ shall promulgate administrative regulations relating to emergency medical technicians. The **administrative** regulations may include the classification and certification of emergency medical technicians, instructors, instructor-trainers, and students and trainees; examinations; standards of training and experience; curricula standards; issuance, renewal, suspension, denial, revocation, probation, and restriction of certificates; hearing of appeals; and other

reasonable standards~~[or regulations]~~ as may be necessary for the protection of public health and safety in the delivery of emergency medical services. ~~[Any administrative hearing conducted under authority of this section shall be conducted in accordance with KRS Chapter 13B.]~~ No additional testing or examinations shall be required for recertification, except for proficiency testing of new skills or knowledge, or areas in which there is documented evidence of deterioration of skills.

- (2) Recertification programs shall be organized to include continuing education and in-service training approved by the **Kentucky Board of Emergency Medical Services**~~[cabinet]~~. The continuing education program shall be subject to the requirements of KRS 214.610(1).
- (3) *Beginning the effective date of this Act, a new emergency medical technician shall, for initial certification, be certified using the requirements and testing established by the National Registry of Emergency Medical Technicians.*
- (4) *Beginning the effective date of this Act, a certified emergency medical technician who seeks recertification shall obtain recertification under the requirements established and maintained by the Kentucky Board of Emergency Medical Services. These requirements shall contain a minimum of sixteen (16) hours of required topics and eight (8) hours of elective topics over a two (2) year recertification period. The Kentucky Board of Emergency Medical Services shall also recertify any emergency medical technician who chooses to obtain recertification under the requirements established by the National Registry of Emergency Medical Technicians in lieu of the standards established by the Kentucky Board of Emergency Medical Services.*
- ~~(5) [In lieu of the continuing education and in-service training requirement specified by the cabinet for recertification, an emergency medical technician, certified as of July 15, 1996, or within one (1) year of July 15, 1996, may elect to recertify utilizing the continuing education and in-service training required by the National Registry of Emergency Medical Technicians or its successor organization. Upon successful completion of the National Registry recertification requirements, the emergency medical technician shall be recertified for the period of time specified by law.]~~
- ~~(4) Emergency medical technicians certifying later than one (1) year after July 15, 1996, shall, in lieu of the certification requirements specified by the cabinet under subsection (1) of this section, successfully complete the National Registry of Emergency Medical Technicians final examination for certification and shall maintain National Registry of Emergency Medical Technicians credentials in order to be recertified.~~
- ~~(5) A person who has chosen to recertify as an emergency medical technician utilizing the National Registry of Emergency Medical Technicians or its successor organization's requirements shall not be permitted to recertify utilizing the cabinet's requirements, unless the National Registry of Emergency Medical Technicians and its successor organization ceases business or there is no successor organization.~~
- ~~(6) [~~ Other than the requirements of KRS 214.610(1), the **Kentucky Board of Emergency Medical Services**~~[cabinet]~~ shall not require any additional course work, in-service training, testing, or examinations of a person who chooses the National Registry of Emergency Medical Technicians or its successor organization for certification or recertification as an emergency medical technician.
- ~~(6) [(7)]~~ Other than the requirements of KRS 214.610(1), any person **licensed**~~[certified]~~ by the **Kentucky Board of Emergency Medical Services**~~[State Board of Medical Licensure]~~ as a paramedic shall be certified as an emergency medical technician by the **board**~~[cabinet]~~. The certification shall be issued without fee, without additional training, in-service training, testing, or examination. The emergency medical technician certification shall be issued and expire at the same time that **the** paramedic **license**~~[certification]~~ is issued or expires, and if a paramedic voluntarily gives up his **or her license**~~[certification]~~ prior to the expiration of his **or her** paramedic **license**~~[certification]~~, his **or her** emergency medical technician certification shall be unaffected thereby. If a paramedic chooses not to **be relicensed**~~[recertify]~~ as a paramedic but chooses to retain his emergency medical technician certification, the paramedic shall, prior to the expiration of his paramedic **license**~~[certification]~~, **complete the requirements for recertification**~~[recertify]~~ as an emergency medical technician utilizing one (1) of the methods provided for in this section.
- ~~(7) [(8)]~~ A paramedic whose **license**~~[certification]~~ as a paramedic is suspended, revoked, or denied by the **Kentucky Board of Emergency Medical Services**~~[State Board of Medical Licensure]~~ shall have the same action taken automatically~~[by the cabinet]~~ with regard to his emergency medical technician certification.

Section 9. KRS 211.966 is repealed, reenacted as a new section of KRS 311.652 to 311.658, and amended to read as follows:

The **Kentucky Board of Emergency Medical Services**~~[secretary of the Cabinet for Health Services]~~ may, by *administrative* regulation, prescribe a reasonable schedule of fees and charges for examinations, for the issuance of *licenses or* certificates, and for the renewal of *licenses or* certificates issued pursuant to KRS 311.652 to 311.658~~[211.962 to 211.968]~~. All such fees, charges, or other moneys collected by the **Kentucky Board of Emergency Medical Services**~~[cabinet]~~ under KRS 311.652 to 311.658~~[211.962 to 211.968]~~ shall be paid into the State Treasury and credited to a trust and agency fund to be used by the **Kentucky Board of Emergency Medical Services**~~[Cabinet for Health Services]~~ for carrying out the provisions of KRS 311.652 to 311.658~~[211.962 to 211.968]~~.

Section 10. KRS 211.967 is repealed, reenacted as a new section of KRS 311.652 to 311.658, and amended to read as follows:

As a condition of being issued a certificate as an emergency medical technician, the applicant shall have completed a **Kentucky Board of Emergency Medical Services**~~[cabinet]~~ approved educational course on the transmission, control, treatment, and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome with an emphasis on appropriate behavior and attitude change.

Section 11. KRS 211.968 is repealed, reenacted as a new section of KRS 311.652 to 311.658, and amended to read as follows:

Nothing in KRS 311.652 to 311.658~~[211.962 to 211.966]~~ shall be construed to permit certification or utilization of any certified emergency medical technician *or emergency medical technician first responder* for the purpose of such individual working full time with primary responsibility and duties limited to hospitals, physicians' offices, clinics, or other definitive care facilities, except~~[for certification or utilization of a person]~~ as an emergency medical technician trainee or as a full-time instructor of emergency medical technicians.

Section 12. KRS 211.990 is amended to read as follows:

- (1) Any owner or occupant who fails to comply with an order made under the provisions of KRS 211.210 shall be guilty of a violation, and each day's continuance of the nuisance, source of filth, or cause of sickness, after the owner or occupant has been notified to remove it, shall be a separate offense.
- (2) Except as otherwise provided by law, anyone who fails to comply with the provisions of the rules and regulations adopted pursuant to this chapter or who fails to comply with an order of the cabinet issued pursuant thereto shall be guilty of a violation. Each day of such violation or noncompliance shall constitute a separate offense.
- (3) Any person who violates any provision of KRS 211.182 shall, upon first offense, be guilty of a Class A misdemeanor. Each subsequent violation of any provision of KRS 211.182 shall constitute a Class D felony.
- (4) Any person who violates any provision of KRS 211.842 to 211.852 or any regulation adopted hereunder or any order issued by the Cabinet for Health Services to comply with any provision of KRS 211.842 to 211.852 or the regulations adopted thereunder shall be guilty of a Class A misdemeanor. Each day of violation or noncompliance shall constitute a separate offense.
- ~~(5) Any person who violates KRS 211.962 or any rule or regulation of the Cabinet for Health Services adopted pursuant to KRS 211.962 to 211.968 shall be guilty of a Class A misdemeanor.~~
- ~~(6)~~ A private review agent which performs utilization review without proper registration pursuant to KRS 211.461 to 211.466 shall be guilty of a Class A misdemeanor.
- ~~(6)(7)~~ Any properly registered private review agent which willfully violates any provision of KRS 211.461 to 211.466 or of the regulations shall be guilty of a Class D felony.
- ~~(7)(8)~~ A person who performs or offers to perform lead-hazard detection or lead-hazard abatement services in target housing or child-occupied facilities who is not certified as required by KRS 211.9063 or 211.9069 shall be guilty of a Class A misdemeanor.
- ~~(8)(9)~~ Any person who performs lead-hazard detection or lead-hazard abatement services in target housing or child-occupied facilities, who willfully violates the standards for performing lead-hazard detection or lead-hazard abatement procedures included in the administrative regulations promulgated pursuant to KRS 211.9075 shall be guilty of a Class D felony.
- ~~(9)(10)~~ The penalties provided in subsections (5), (6), (7), *and* (8)~~[and (9)]~~ of this section are cumulative and are in addition to any other penalties, claims, damages, or remedies available at law or in equity.

- ~~(10)~~~~(11)~~ Any person who violates any provisions of KRS 211.760 shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). Each day of violation or noncompliance shall constitute a separate offense.

Section 13. KRS 216B.410 is amended to read as follows:

- (1) Each licensed ambulance provider and medical first response provider as defined in *Section 3 of this Act*~~KRS 211.952(2)~~ shall collect and provide to the **Kentucky Board of Emergency Medical Services**~~cabinet~~ run data and information required by the **Kentucky Board of Emergency Medical Services**~~cabinet~~ by administrative regulation.
- (2) The **Kentucky Board of Emergency Medical Services**~~cabinet~~ shall develop a run report form for the use of each class of ambulance provider and medical first response provider containing the data required in subsection (1) of this section. An ambulance provider or medical first response provider may utilize any run form it chooses in lieu of or in addition to the **Kentucky Board of Emergency Medical Services**~~cabinet~~ developed run report form. However, the data captured on the run report form shall include at least that required by the administrative regulations promulgated pursuant to subsection (1) of this section.
- (3) An ambulance provider or medical first response provider ~~shall~~~~may~~ report the required run report data and information by **completing an annual report as established by the Kentucky Board of Emergency Medical Services**~~sending copies of the completed run report forms to the cabinet~~ or by transmitting the required data and information to the cabinet in an electronic format. If the **Kentucky Board of Emergency Medical Services**~~cabinet~~ requires the use of a specific electronic format, it shall provide a copy of the file layout requirements, in either written or electronic format, to the licensed ambulance provider or medical first response provider at no charge.
- ~~(4)~~ ~~Each ambulance provider or medical first response provider shall submit its run reports or data summary reports in electronic format on the time schedule specified by the cabinet by administrative regulation.~~
- ~~(5)~~ The **Kentucky Board of Emergency Medical Services**~~cabinet~~ shall publish a comprehensive annual report reflecting the data collected, injury and illness data, treatment utilized, and other information deemed important by the **board**~~cabinet~~. The annual report shall not include patient identifying information or any other information identifying a natural person. A copy of the comprehensive annual report shall be forwarded **to the Governor and the General Assembly**~~by the cabinet to the Kentucky Board of Medical Licensure~~.
- ~~(5)~~~~(6)~~ Ambulance provider and medical first response provider run report forms and the information transmitted electronically to the **Kentucky Board of Emergency Medical Services**~~cabinet~~ shall be confidential. No person shall make an unauthorized release of information on an ambulance run report form or medical first response run report form. Only the patient or the patient's parent or legal guardian if the patient is a minor, or the patient's legal guardian or person with proper power of attorney if the patient is under legal disability as being incompetent or mentally ill, or a court of competent jurisdiction may authorize the release of information on a patient's run report form or the inspection or copying of the run report form. Any authorization for the release of information or for inspection or copying of a run report form shall be in writing.
- ~~(6)~~~~(7)~~ If a medical first response provider or ambulance provider does not use a paper form but collects patient data through electronic means, it shall have the means of providing a written run report that includes all required data elements to the medical care facility. A copy of the medical first response form or a summary of the run data and patient information shall be made available to the ambulance service that transports the patient. A copy of the ambulance run report form shall be made available to any medical care facility to which a patient is transported and shall be included in the patient's medical record by that facility. If a patient is not transported to a medical facility, the copy of the run report form that is to be given to the transporting ambulance provider or medical care facility shall be given to the patient or to the patient's parent or legal guardian. If the ambulance provider, medical facility, patient, or patient's legal guardian refuses delivery of their run report form or is unavailable to receive the form, that copy of the form shall be returned to the medical first response provider or ambulance provider and destroyed.
- ~~(7)~~~~(8)~~ All ambulance services shall be required to keep adequate reports and records to be maintained at the ambulance base headquarters and to be available for periodic review as deemed necessary by the board. Required records and reports are as follows:
  - (a) Employee records, including a resume of each employee's training and experience and evidence of current certification; and

- (b) Health records of all drivers and attendants including records of all illnesses or accidents occurring while on duty.
- (8) ***Data and records generated and kept by the Kentucky Board of Emergency Medical Services or its contractors regarding the evaluation of emergency medical care and trauma care in the Commonwealth, including the identities of patients, emergency medical services personnel, ambulance providers, medical first-response providers, and emergency medical facilities, shall be confidential, shall not be subject to disclosure under KRS 61.805 to 61.850 or KRS 61.870 to 61.884, shall not be admissible in court for any purpose, and shall not be subject to discovery. However, nothing in this section shall limit the discoverability or admissibility of patient medical records regularly and ordinarily kept in the course of a patient's treatment that otherwise would be admissible or discoverable.***

Section 14. KRS 281.014 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) (a) The term "city taxicab certificate" or "city limousine certificate" means a certificate granting authority only for the operation of a given number of motor vehicles transporting passengers for hire, the principal operation of which is confined to the corporate limits of a city of the first or second class or an urban-county area and the city's suburban area, or the corporate limits of any city and its suburban area located in a county which contains a city of the first or second class or an urban-county area, and not operating over any regular route, and the destination of which motor vehicles are designated by the passengers at the time of such transportation;
- (b) The term "county taxicab certificate" or "county limousine certificate" means a certificate granting authority only for the operation of a given number of motor vehicles transporting passengers for hire, the principal operation of which is confined to a specific county which does not contain a city of the first or second class and is not an urban-county area, and not operating over any regular route, and the destination of which motor vehicles are designated by the passengers at the time of the transportation;
- (c) A "taxicab" means a motor vehicle operated under one (1) or more taxicab certificates, and is a vehicle designed or constructed to transport not more than fifteen (15) passengers exclusive of the driver;
- (d) A "limousine" means a luxury motor vehicle passenger car which has either a standard or an extended wheelbase. The vehicle shall have additional rear seating capacity, area, and comforts, but shall be designed or constructed to transport not more than fifteen (15) passengers plus the driver;
- (e) The term "taxicab license" means a license plate issued to a taxicab authorized to operate under a taxicab certificate;
- (f) The term "limousine license" means a license plate issued to a limousine authorized to operate under a limousine certificate;
- (2) (a) An "airport shuttle certificate" means a certificate granting authority only for the operation of motor vehicles exclusively transporting passengers or baggage for hire over regular routes between points within a city or its suburban area and an airport;
- (b) An "airport shuttle vehicle" means a motor vehicle operated under one (1) or more airport shuttle certificates and which is designed or constructed to transport not more than fifteen (15) passengers plus the driver;
- (c) The term "airport shuttle vehicle license" means a license plate issued for a motor vehicle authorizing its operation under one (1) or more airport shuttle certificates;
- (3) The term "U-Drive-It" means any person who leases or rents a motor vehicle for a consideration to be used for the transportation of persons or property, but for which no driver is furnished, and the use of which motor vehicle is not for the transportation of persons or property for hire by the lessee or rentee;
- (4) The term "driveaway" means the transporting and delivering of motor vehicles, except semitrailers, and trailers, whether destined to be used in either a private or for-hire capacity, under their own power or by means of a full mount method, saddle mount method, the tow bar method, or any combination of them over the highways of this state from any point of origin to any point of destination for-hire. The transportation of such vehicles by the full mount method on trailers or semitrailers shall not be included in the term ; and



- (5) (a) "Disabled persons vehicle" means a motor vehicle especially equipped and used for the transportation of persons with disabilities and which is in compliance with the accessibility specifications of 49 C.F.R. Part 38, but it shall be designed and constructed to transport not more than fifteen (15) passengers plus the driver. It shall not mean an ambulance as defined in *Section 1 of this Act* ~~[KRS 211.950]~~. It shall not mean a motor vehicle equipped with a stretcher;
- (b) "Disabled persons carrier" means an irregular route common carrier for hire, transporting the general public who require transportation in disabled persons vehicles; and
- (c) "Disabled persons certificate" means a certificate that grants authority only for the operation of a given number of disabled persons vehicles for hire, the principle operation of which is confined to a specific county.

Section 15. KRS 281.605 is amended to read as follows:

The provisions of this chapter shall not apply, except as to safety regulations, to:

- (1) Motor vehicles used as school buses and while engaged in the transportation of students, under the supervision and control and at the direction of school authorities;
- (2) Except as provided in paragraph (e) of this subsection, motor vehicles, regardless of ownership, used exclusively:
  - (a) For the transportation of agricultural and dairy products, including fruit, livestock, meats, fertilizer, wood, lumber, cotton, products of grove or orchard, poultry, and eggs, while owned by the producer of the products, including landlord where the relation of landlord and tenant or landlord and cropper is involved, from the farm to a market, warehouse, dairy, or mill, or from one (1) market, warehouse, dairy, or mill to another market, warehouse, dairy, or mill;
  - (b) For the transportation of agricultural and dairy products, livestock, farm machinery, feed, fertilizer, and other materials and supplies essential to farm operation, from market or shipping terminal to farm;
  - (c) For both the purposes described in paragraphs (a) and (b) of this subsection;
  - (d) For the transportation of agricultural and dairy products from farm to regularly organized fairs and exhibits and return; or
  - (e) Motor vehicles used for the transportation of fly ash, in bags, sacks, or other containers, the aggregate weight of which does not exceed ten thousand (10,000) pounds; or bottom ash, waste ash, sludge, and pozatec which is being removed from the premises of a power generator facility for the purpose of disposal;
- (3) Motor vehicles used exclusively as church buses and while operated in the transportation of persons to and from a church or place of worship or for other religious work under the supervision and control and at the direction of church authorities;
- (4) Motor vehicles used exclusively for the transportation of property belonging to a nonprofit cooperative association or its members where the vehicle is owned or leased exclusively by the association;
- (5) Motor vehicles owned in whole or in part by any person and used by such person to transport commodities of which such person is the bona fide owner, lessee, consignee, or bailee; provided, however, that such transportation is for the purpose of sale, lease, rent, or bailment, and is an incidental adjunct to an established private business owned and operated by such person within the scope and in furtherance of any primary commercial enterprise of such person other than the business of transportation of property for hire;
- (6) Motor vehicles used in pick-up or delivery service within a city or within a city and its commercial area for a carrier by rail;
- (7) Motor vehicles used exclusively for the transportation of coal from the point at which such coal is mined to a railhead or tippie where the railhead or tippie is located at a point not more than fifty (50) air miles from the point at which the coal is mined;
- (8) Motor vehicles used as ambulances in transporting wounded, injured, or sick animals or as ambulances as defined in *Section 1 of this Act* ~~[KRS 211.950]~~;
- (9) Motor vehicles used by transit authorities as created and defined in KRS Chapter 96A except as required by KRS 96A.170. Vehicles operated under the authority and direct responsibility of such transit authorities,

through contractual agreement, shall be included within this exemption, without regard to the legal ownership of the vehicles, but only for such times as they are operated under the authority and responsibility of the transit authority;

- (10) Motor vehicles having a seating capacity of fifteen (15) or fewer passengers and while transporting persons between their places of residence, on the one hand, and, on the other, their places of employment, provided the driver himself is on his way to or from his place of employment, and further provided that any person who operates or controls the operation of vehicles hereunder of which said person is the owner or lessee, and any spouse of said person and any partnership or corporation with said person or his spouse having an interest therein doing such, shall be eligible to so operate an aggregate number of not more than one (1) vehicle on other than a nonprofit basis;
- (11) Motor vehicles used to transport cash letters, data processing material, instruments, or documents, regardless of the ownership of any of said cash letters, data processing material, instruments, or documents;
- (12) Motor vehicles operated by integrated intermodal small package carriers who provide intermodal-air-and-ground-transportation. For the purposes of this section, "integrated intermodal small package carrier" shall mean an air carrier holding a certificate of public convenience and necessity or qualifying as an indirect air carrier that undertakes, by itself or through a company affiliated through common ownership, to provide intermodal-air-and-ground-transportation, and "intermodal-air-and-ground-transportation" shall mean transportation involving the carriage of articles weighing not more than one hundred fifty (150) pounds by aircraft or other forms of transportation, including by motor vehicle, wholly within the Commonwealth of Kentucky. The incidental or occasional use of aircraft in transporting packages or articles shall not constitute an integrated intermodal operation within the meaning of this section; or
- (13) Motor vehicles operated pursuant to a grant of funds in furtherance of and governed by 49 U.S.C. secs. 5310 or 5311, including all amendments, and whose operators have jurisdictions and services approved annually by the Transportation Cabinet in accordance with 49 C.F.R. Title VI.

Section 16. KRS 304.17A-580 is amended to read as follows:

- (1) Health benefit plans shall educate their insureds about the availability, location, and appropriate use of emergency and other medical services, cost-sharing provisions for emergency services, and the availability of care outside an emergency department.
- (2) ***All*** health benefit plans using a defined network of health care providers shall cover ***emergency medical services and supplies and*** emergency department screening and stabilization services both in-network and out-of-network without prior authorization for use consistent with the prudent layperson standard.
- (3) Emergency department personnel shall contact a patient's primary care provider or health benefit plan, as appropriate, as quickly as possible to discuss follow-up and poststabilization care and promote continuity of care.
- (4) ***Nothing in this section shall apply to accident-only, specified disease, hospital indemnity, Medicare supplement, long-term care, disability income, or other limited benefit health insurance policies.***

Section 17. KRS 304.39-020 is amended to read as follows:

As used in this subtitle:

- (1) "Added reparation benefits" mean benefits provided by optional added reparation insurance.
- (2) "Basic reparation benefits" mean benefits providing reimbursement for net loss suffered through injury arising out of the operation, maintenance or use of a motor vehicle, subject, where applicable, to the limits, deductibles, exclusions, disqualifications and other conditions provided in this subtitle. The maximum amount of basic reparation benefits payable for all economic loss resulting from injury to any one (1) person as the result of one (1) accident shall be ten thousand dollars (\$10,000), regardless of the number of persons entitled to such benefits or the number of providers of security obligated to pay such benefits. Basic reparation benefits consist of one (1) or more of the elements defined as "loss."
- (3) "Basic reparation insured" means:
  - (a) A person identified by name as an insured in a contract of basic reparation insurance complying with this subtitle; and

- (b) While residing in the same household with a named insured, the following persons not identified by name as an insured in any other contract of basic reparation insurance complying with this subtitle: a spouse or other relative of a named insured; and a minor in the custody of a named insured or of a relative residing in the same household with the named insured if he usually makes his home in the same family unit, even though he temporarily lives elsewhere.
- (4) "Injury" and "injury to person" mean bodily harm, sickness, disease, or death.
- (5) "Loss" means accrued economic loss consisting only of medical expense, work loss, replacement services loss, and, if injury causes death, survivor's economic loss and survivor's replacement services loss. Noneconomic detriment is not loss. However, economic loss is loss although caused by pain and suffering or physical impairment.
  - (a) "Medical expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, physical rehabilitation, rehabilitative occupational training, *licensed ambulance services*, and other remedial treatment and care. "Medical expense" may include non-medical remedial treatment rendered in accordance with a recognized religious method of healing. The term includes a total charge not in excess of one thousand dollars (\$1,000) per person for expenses in any way related to funeral, cremation, and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semi-private accommodations, unless intensive care is medically required. Medical expense shall include all healing arts professions licensed by the Commonwealth of Kentucky. There shall be a presumption that any medical bill submitted is reasonable.
  - (b) "Work loss" means loss of income from work the injured person would probably have performed if he had not been injured, and expenses reasonably incurred by him in obtaining services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed by him.
  - (c) "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.
  - (d) "Survivor's economic loss" means loss after decedent's death of contributions of things of economic value to his survivors, not including services they would have received from the decedent if he had not suffered the fatal injury, less expenses of the survivors avoided by reason of decedent's death.
  - (e) "Survivor's replacement services loss" means expenses reasonably incurred by survivors after decedent's death in obtaining ordinary and necessary services in lieu of those the decedent would have performed for their benefit if he had not suffered the fatal injury, less expenses of the survivors avoided by reason of the decedent's death and not subtracted in calculating survivor's economic loss.
- (6) "Use of a motor vehicle" means any utilization of the motor vehicle as a vehicle including occupying, entering into and alighting from it. It does not include:
  - (a) Conduct within the course of a business of repairing, servicing, or otherwise maintaining motor vehicles unless the conduct occurs off the business premises; or
  - (b) Conduct in the course of loading and unloading the vehicle unless the conduct occurs while occupying, entering into, or alighting from it.
- (7) "Motor vehicle" means any vehicle which transports persons or property upon the public highways of the Commonwealth, propelled by other than muscular power except road rollers, road graders, farm tractors, vehicles on which power shovels are mounted, such other construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways, such vehicles as travel exclusively upon rails and such vehicles as are propelled by electrical power obtained from overhead wires while being operated within any municipality or where said vehicles do not travel more than five (5) miles beyond the said limits of any municipality. Motor vehicle shall not mean moped as defined in this section.
- (8) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not

exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour.

- (9) "Public roadway" means a way open to the use of the public for purposes of motor vehicle travel.
- (10) "Net loss" means loss less benefits or advantages, from sources other than basic and added reparation insurance, required to be subtracted from loss in calculating net loss.
- (11) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damages recoverable under the tort law of this Commonwealth. The term does not include punitive or exemplary damages.
- (12) "Owner" means a person, other than a lienholder or secured party, who owns or has title to a motor vehicle or is entitled to the use and possession of a motor vehicle subject to a security interest held by another person. The term does not include a lessee under a lease not intended as security.
- (13) "Reparation obligor" means an insurer, self-insurer, or obligated government providing basic or added reparation benefits under this subtitle.
- (14) "Survivor" means a person identified in KRS 411.130 as one entitled to receive benefits by reason of the death of another person.
- (15) A "user" means a person who resides in a household in which any person owns or maintains a motor vehicle.
- (16) "Maintaining a motor vehicle" means having legal custody, possession or responsibility for a motor vehicle by one other than an owner or operator.
- (17) "Security" means any continuing undertaking complying with this subtitle, for payment of tort liabilities, basic reparation benefits, and all other obligations imposed by this subtitle.

Section 18. KRS 311.550 is amended to read as follows:

As used in KRS 311.530 to 311.620 and KRS 311.990(4) to (6):

- (1) "Board" means the State Board of Medical Licensure;
- (2) "President" means the president of the State Board of Medical Licensure;
- (3) "Secretary" means the secretary of the State Board of Medical Licensure;
- (4) "Executive director" means the executive director of the State Board of Medical Licensure or any assistant executive directors appointed by the board;
- (5) "General counsel" means the general counsel of the State Board of Medical Licensure or any assistant general counsel appointed by the board;
- (6) "Regular license" means a license to practice medicine or osteopathy at any place in this state;
- (7) "Limited license" means a license to practice medicine or osteopathy in a specific institution or locale to the extent indicated in the license;
- (8) "Temporary permit" means a permit issued to a person who has applied for a regular or limited license, and who appears from verifiable information in the application to the secretary to be qualified and eligible therefor;
- (9) "Emergency permit" means a permit issued to a physician currently licensed in another state, authorizing the physician to practice in this state for the duration of a specific medical emergency, not to exceed thirty (30) days;
- (10) Except as provided in subsection (11) of this section, the "practice of medicine or osteopathy" means the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities;
- (11) The "practice of medicine or osteopathy" does not include the practice of Christian Science, the practice of podiatry as defined in KRS 311.380, the practice of a midlevel health care practitioner as defined in KRS 216.900, the practice of dentistry as defined in KRS 313.010, the practice of optometry as defined in KRS 320.210, the practice of chiropractic as defined in subsection (2) of KRS 312.015, the practice as a nurse as defined in KRS 314.011, the practice of physical therapy as defined in KRS 327.010, the performance of duties for which they have been trained by *paramedics licensed under KRS 311.652 to 311.658, emergency*

*medical technician first responders, or* emergency medical technicians~~[or medical emergency dispatchers]~~ certified *under KRS 311.652 to 311.658*~~[by the Cabinet for Health Services]~~, the practice of pharmacy by persons licensed and registered under KRS 315.050, the sale of drugs, nostrums, patented or proprietary medicines, trusses, supports, spectacles, eyeglasses, lenses, instruments, apparatus, or mechanisms that are intended, advertised, or represented as being for the treatment, correction, cure, or relief of any human ailment, disease, injury, infirmity, or condition, in regular mercantile establishments, or the practice of midwifery by women. KRS 311.530 to 311.620 shall not be construed as repealing the authority conferred on the Cabinet for Health Services by KRS Chapter 211 to provide for the instruction, examination, licensing, and registration of all midwives through county health officers;

- (12) "Physician" means a doctor of medicine or a doctor of osteopathy;
- (13) "Grievance" means any allegation in whatever form alleging misconduct by a physician;
- (14) "Charge" means a specific allegation alleging a violation of a specified provision of this chapter;
- (15) "Complaint" means a formal administrative pleading that sets forth charges against a physician and commences a formal disciplinary proceeding;
- (16) As used in KRS 311.595(4), "crimes involving moral turpitude" shall mean those crimes which have dishonesty as a fundamental and necessary element, including, but not limited to, crimes involving theft, embezzlement, false swearing, perjury, fraud, or misrepresentation;
- (17) "Physician assistant" means a person who has graduated from a physician assistant or surgeon assistant program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs and who has passed the certifying examination administered by the National Commission on Certification of Physician Assistants or who possesses a current physician assistant certificate issued by the board prior to July 15, 1998;
- (18) "Supervising physician" means a physician licensed by the board who supervises physician assistants; and
- (19) "Supervision" means overseeing the activities of, and accepting responsibility for, the medical services rendered by a physician assistant. The constant physical presence of the supervising physician is not required so long as the supervising physician and physician assistant are or can be easily in contact with one another by radio, telephone, or other telecommunication device. Each team of physicians and physician assistants shall ensure that the delegation of medical tasks is appropriate to the physician assistant's level of training and experience; that the identification of and access to the supervising physician is defined; and that a process for evaluation of the physician assistant's performance is established.

SECTION 19. A NEW SECTION OF KRS 311.652 TO 311.658 IS CREATED TO READ AS FOLLOWS:

- (1) *When the Kentucky Board of Emergency Medical Services is engaged in the investigation or discipline of an entity licensed by the Kentucky Board of Emergency Medical Services, or a paramedic, emergency medical technician first responder, or emergency medical technician, or it is alleged that a paramedic, emergency medical technician first responder, or emergency medical technician has violated a statute, administrative regulation, protocol, or practice standard relating to serving as a paramedic, emergency medical technician first responder or emergency medical technician, the paramedic, emergency medical technician first responder, emergency medical technician, his or her employer, and the ambulance service's medical director shall be parties to the action and have the right to testify at any deposition, hearing, or other proceeding relating to the investigation or discipline of the paramedic, emergency medical technician first responder, or emergency medical technician.*
- (2) *The paramedic, emergency medical technician first responder, emergency medical technician, his or her employer, and the ambulance service's medical director shall have the right to appeal any portion of a decision of the Kentucky Board of Emergency Medical Services that affects them to the Franklin Circuit Court.*
- (3) *The Kentucky Board of Emergency Medical Services shall investigate any complaint against an entity regulated by the board, a paramedic, emergency medical technician first responder, or emergency medical technician and make findings of fact and conclusions of law.*
- (4) *If it appears that the entity regulated by the board, the paramedic, emergency medical technician first responder, or emergency medical technician has violated a statute, administrative regulation, protocol, or practice standard relating to serving as an entity regulated by the board, a paramedic, emergency medical*

*technician first responder, or emergency medical technician, the board shall hold a full hearing under KRS Chapter 13B to determine whether the violation occurred. If it is determined that an entity regulated by the Kentucky Board of Emergency Medical Services, a paramedic, emergency medical technician first responder, or emergency medical technician has violated a statute, administrative regulation, protocol, or practice standard relating to serving as an entity regulated by the board, a paramedic, emergency medical technician first responder, or emergency medical technician, the Kentucky Board of Emergency Medical Services may impose any of the sanctions provided in subsection (5) of this section. Any party to the complaint shall have the right to introduce the findings of fact and conclusions of law.*

- (5) *The Kentucky Board of Emergency Medical Services may use any one (1) or more of the following sanctions when disciplining any entity regulated by the board, paramedic, emergency medical technician first responder, or emergency medical technician:*
- (a) *Private reprimand that shall be shared with each of the paramedic's, emergency medical technician first responder's, or emergency medical technician's employer and medical director;*
  - (b) *Public reprimand;*
  - (c) *Fines;*
  - (d) *Revocation of certification or licensure;*
  - (e) *Suspension of licensure until a time certain;*
  - (f) *Suspension until a certain act or acts are performed;*
  - (g) *Limitation of practice permanently;*
  - (h) *Limitation of practice until a time certain;*
  - (i) *Limitation of practice until a certain act or acts are performed; or*
  - (j) *Repassing a portion of the paramedic or emergency medical technician examination.*

Section 20. KRS 311.652 is amended to read as follows:

No person shall:

- (1) Hold himself out as ~~licensed~~~~[certified]~~ pursuant to KRS ~~311.652~~~~[311.650]~~ to 311.658 nor use the term "paramedic" when he does not hold a current valid ~~license~~~~[certification]~~ issued pursuant to KRS ~~311.652~~~~[311.650]~~ to 311.658; or
- (2) If ~~licensed~~~~[certified]~~, violate any provision of KRS ~~311.652~~~~[311.650]~~ to 311.658 or any ~~administrative~~~~[rule or]~~ regulation, adopted by the ~~Kentucky Board of Emergency Medical Services~~~~[board of Medical Licensure]~~, relating to KRS 311.654.

Section 21. KRS 311.654 is amended to read as follows:

- (1) The ~~Kentucky~~ Board of ~~Emergency Medical Services~~~~[Licensure]~~ shall promulgate administrative regulations relating to paramedics. The regulations may include, but need not be limited to, the classification and ~~licensure~~~~[certification]~~ of paramedics, instructor-trainers, instructors, and students and trainees; examinations; standards of training and experience; curricula standards; administration of drugs and controlled substances by paramedics under the direction or supervision of licensed physicians; issuance, renewal, suspension, denial, and revocation of ~~licenses~~~~[certificates]~~, and such other reasonable standards or regulations as may be necessary for the protection of public health and safety in the delivery of emergency medical services.
- (2) *Relicensure programs shall be organized to include continuing education and in-service training approved by the board.* Any continuing education required by the ~~Kentucky~~ Board of ~~Emergency Medical Services~~~~[Licensure]~~ shall include ~~an~~~~[a Cabinet for Health Services]~~ approved educational course on the transmission, control, treatment, and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome with an emphasis on appropriate behavior and attitude change, *subject to Section 26 of this Act.*

- ~~{(3) The Kentucky Board of Medical Licensure shall enter into an agreement with the Cabinet for Health Services whereby the cabinet's lead agency for emergency medical services shall carry out the day to day administration of this section under administrative regulations promulgated by the Board of Medical Licensure. The Kentucky~~

~~Emergency Medical Services Council will provide advice and recommendations to the Kentucky Board of Medical Licensure related to the provisions of KRS 311.650 to 311.658.~~

Section 22. KRS 311.656 is amended to read as follows:

The **Kentucky Board of Emergency Medical Services**~~[of Medical Licensure]~~ may, by **administrative** regulation, prescribe a reasonable schedule of fees and charges for examinations, for the issuance of **licenses**~~[certificates]~~, and for the renewal of **licenses**~~[certificates]~~ issued pursuant to KRS **311.652**~~[311.650]~~ to 311.658. All such fees, charges or other moneys collected by the board~~[of Medical Licensure]~~ under KRS **311.652**~~[311.650]~~ to 311.658 shall be paid into the State Treasury and credited to a trust and agency fund to be used by the board~~[of Medical Licensure]~~ for carrying out the provisions of KRS **311.652**~~[311.650]~~ to 311.658.

Section 23. KRS 311.658 is amended to read as follows:

- (1) *At the discretion of the employer's medical director, a paramedic may perform any procedure specified in the most recent curriculum of the United States Department of Transportation training course for paramedics published by the United States Department of Transportation. An emergency medical technician may perform any procedure specified in the most recent curriculum of the United States Department of Transportation training course for emergency medical technicians. An emergency medical technician first responder may perform any procedure specified in the most recent curriculum of the United States Department of Transportation training course for emergency medical technician first responders. Any paramedic, emergency medical technician first responder, or emergency medical technician may perform any additional procedure authorized by the Kentucky Board of Emergency Medical Services if approved by the employer's medical director and within the scope of the designated practice based upon national practice standards. With the approval of the employer's medical director, a paramedic, emergency medical technician first responder, or emergency medical technician may perform any procedure specified in the most recent curriculum of the United States Department of Transportation training course for paramedics or the most recent national standard curriculum for emergency medical technicians-basic or emergency medical technician first responder published by the United States Department of Transportation respectively, and other procedure authorized by the Kentucky Board of Emergency Medical Services. Nothing in this subsection shall prevent an employer from exercising reasonable fiscal control over the costs of providing emergency medical services to its citizens nor prevent the employer from exercising any reasonable control over paramedics, emergency medical technician first responders, or emergency medical technicians providing emergency medical care upon behalf of the licensed entity.*
- (2) *Any paramedic may draw blood samples from a criminal defendant upon the request of a peace officer and the consent of the defendant, or without the consent of the defendant upon receipt of a court order requiring the procedure, if the paramedic is authorized to do so by his or her employer. The authorization shall be in writing and may be by general written policy of the employer and the service's medical director. The paramedic who drew the blood sample shall deliver the sample to the peace officer or other person specified by the court in a court order and shall testify in court with regard thereto upon service of a proper subpoena.*
- (3) Paramedics shall be permitted to render services only~~[in emergency situations, and shall perform such services]~~ under supervision of a qualified and licensed **physician**~~[health practitioner]~~.

Section 24. KRS 311.660 is amended to read as follows:

- (1) When it appears that a person whom a paramedic who has successfully completed training in determination of death has been called to attend is dead, the paramedic shall, utilizing the protocol specified by the board by administrative regulation, determine whether or not the patient is dead after resuscitation of the patient is attempted by the paramedic or an emergency medical technician who has responded with or after the paramedic, unless the protocol indicates that the patient is not capable of being resuscitated. If, after resuscitation has been attempted on a patient who the protocol deems is capable of being resuscitated, the patient has not been successfully resuscitated according to the protocol, the paramedic may discontinue further resuscitation efforts and proceed to determine whether the patient is dead and whether to declare the patient dead. If it is determined that death has occurred in accordance with the procedures of KRS 446.400 with regard to patients who have not been resuscitated, the paramedic may make the actual determination and pronouncement of death. This section shall not apply to patients who are in a hospital when apparent death occurs.

- (2) In the event that a paramedic determines that a person is dead, the paramedic shall make the notifications required by KRS 72.020 and take the protective actions required by that statute.
- (3) Any paramedic course taught after July 15, 1998, shall include a course of instruction on the determination of death and preservation of evidence as required by the **Kentucky Board of Emergency Medical Services**~~board of Medical Licensure~~ by administrative regulation.
- (4) Any paramedic ~~relicensed~~~~recertified~~ within the **three (3)**~~two (2)~~ years following July 15, 1998, shall successfully complete in-service training required by the **Kentucky Board of Emergency Medical Services**~~board of Medical Licensure~~ by administrative regulation relating to determination of death and preservation of evidence. Any paramedic who does not successfully complete the required in-service training shall not be ~~relicensed~~~~recertified~~.
- (5) Any paramedic from another jurisdiction desiring to become a paramedic in Kentucky shall show evidence of successful completion of a training course in Kentucky meeting the requirements of subsection (4) of this section, and ~~licensure~~~~certification~~ as a paramedic shall be denied if the required evidence is not shown.
- (6) The administration of cardiopulmonary resuscitation or other basic life support measures to the apparently dead person prior to the arrival of the paramedic by any person, for the purposes of this section and KRS 446.400, shall not be considered as artificial maintenance of respiration and circulation. The administration of advanced cardiac life support procedures by any person, other than a registered nurse rendering care pursuant to KRS 314.181, prior to the arrival of the paramedic shall preclude the determination of death by the paramedic, and the provisions of KRS 446.400 shall apply. However, nothing in this section shall preclude the supervising physician from directing the paramedic to cease resuscitative efforts under approved agency medical protocols.
- (7) The resuscitative efforts of a paramedic under the protocols authorized by this section shall not invoke the provisions of KRS 446.400.

Section 25. KRS 311.990 is amended to read as follows:

- (1) Any person who violates KRS 311.250 shall be guilty of a violation.
- (2) Any college or professor thereof violating the provisions of KRS 311.300 to 311.350 shall be civilly liable on his bond for a sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation, which may be recovered by an action in the name of the Commonwealth.
- (3) Any person who presents to the county clerk for the purpose of registration any license which has been fraudulently obtained, or obtains any license under KRS 311.380 to 311.510 by false or fraudulent statement or representation, or practices podiatry under a false or assumed name or falsely impersonates another practitioner or former practitioner of a like or different name, or aids and abets any person in the practice of podiatry within the state without conforming to the requirements of KRS 311.380 to 311.510, or otherwise violates or neglects to comply with any of the provisions of KRS 311.380 to 311.510, shall be guilty of a Class A misdemeanor. Each case of practicing podiatry in violation of the provisions of KRS 311.380 to 311.510 shall be considered a separate offense.
- (4) Each first violation of KRS 311.560 is a Class A misdemeanor. Each subsequent violation of KRS 311.560 shall constitute a Class D felony.
- (5) Each violation of KRS 311.590 shall constitute a Class D felony. Conviction under this subsection of a holder of a license or permit shall result automatically in permanent revocation of such license or permit.
- (6) Conviction of willfully resisting, preventing, impeding, obstructing, threatening, or interfering with the board or any of its members, or of any officer, agent, inspector, or investigator of the board or the Cabinet for Health Services, in the administration of any of the provisions of KRS 311.550 to 311.620 shall be a Class A misdemeanor.
- (7) Each violation of subsection (1) of KRS 311.375 shall, for the first offense, be a Class B misdemeanor, and, for each subsequent offense shall be a Class A misdemeanor.
- (8) Each violation of subsection (2) of KRS 311.375 shall, for the first offense, be a violation, and, for each subsequent offense, be a Class B misdemeanor.
- (9) Each day of violation of either subsection of KRS 311.375 shall constitute a separate offense.



- (10) (a) Any person who intentionally or knowingly performs an abortion contrary to the requirements of KRS 311.723(1) shall be guilty of a Class D felony; and
  - (b) Any person who intentionally, knowingly, or recklessly violates the requirements of KRS 311.723(2) shall be guilty of a Class A misdemeanor.
- (11) (a)
  - 1. Any physician who performs a partial-birth abortion in violation of KRS 311.765 shall be guilty of a Class D felony. However, a physician shall not be guilty of the criminal offense if the partial-birth abortion was necessary to save the life of the mother whose life was endangered by a physical disorder, illness, or injury.
  - 2. A physician may seek a hearing before the State Board of Medical Licensure on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, illness, or injury. The board's findings, decided by majority vote of a quorum, shall be admissible at the trial of the physician. The board shall promulgate administrative regulations to carry out the provisions of this subparagraph.
  - 3. Upon a motion of the physician, the court shall delay the beginning of the trial for not more than thirty (30) days to permit the hearing, referred to in subparagraph 2. of this paragraph, to occur.
- (b) Any person other than a physician who performs a partial-birth abortion shall not be prosecuted under this subsection but shall be prosecuted under provisions of law which prohibit any person other than a physician from performing any abortion.
- (c) No penalty shall be assessed against the woman upon whom the partial-birth abortion is performed or attempted to be performed.
- (12) Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement of KRS 311.732 is guilty of a Class A misdemeanor.
- (13) Any person who negligently releases information or documents which are confidential under KRS 311.732 is guilty of a Class B misdemeanor.
- (14) Any person who performs an abortion upon a married woman either with knowledge or in reckless disregard of whether KRS 311.735 applies to her and who intentionally, knowingly, or recklessly fails to conform to the requirements of KRS 311.735 shall be guilty of a Class D felony.
- (15) Any person convicted of violating KRS 311.750 shall be guilty of a Class B felony.
- (16) Any person who violates KRS 311.760(2) shall be guilty of a Class D felony.
- (17) Any person who violates KRS 311.770 or 311.780 shall be guilty of a Class D felony.
- (18) A person convicted of violating KRS 311.780 shall be guilty of a Class C felony.
- (19) Any person who violates KRS 311.810 shall be guilty of a Class A misdemeanor.
- (20) Any professional medical association or society, licensed physician, or hospital or hospital medical staff who shall have violated the provisions of KRS 311.606 shall be guilty of a Class B misdemeanor.
- (21) Any person who ***falsely represents that he or she is a paramedic, emergency medical technician first responder or medical technician***~~[violates KRS 311.652 or any rule or regulation of the board of medical licensure adopted pursuant to KRS 311.654]~~ shall be guilty of a Class A misdemeanor.
- (22) Any administrator, officer, or employee of a publicly-owned hospital or publicly-owned health care facility who performs or permits the performance of abortions in violation of KRS 311.800(1) shall be guilty of a Class A misdemeanor.
- (23) Any person who violates KRS 311.914 shall be guilty of a violation.
- (24) Any person who violates the provisions of KRS 311.820 shall be guilty of a Class A misdemeanor.
- (25) (a) Any person who fails to test organs, skin, or other human tissue which is to be transplanted, or violates the confidentiality provisions required by KRS 311.281, shall be guilty of a Class A misdemeanor;

- (b) Any person who has human immunodeficiency virus infection, who knows he is infected with human immunodeficiency virus, and who has been informed that he may communicate the infection by donating organs, skin, or other human tissue who donates organs, skin, or other human tissue shall be guilty of a Class D felony.
- (26) A person who violates any provision of KRS 311.131 to 311.139 or any regulation adopted under KRS 311.131 to 311.139 shall be guilty of a Class A misdemeanor. Each day a violation is continued after the first conviction shall be a separate offense.
- (27) Any person who sells or makes a charge for any transplantable organ shall be guilty of a Class D felony.
- (28) Any person who offers remuneration for any transplantable organ for use in transplantation into himself shall be fined not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).
- (29) Any person brokering the sale or transfer of any transplantable organ shall be guilty of a Class C felony.
- (30) Any person charging a fee associated with the transplantation of a transplantable organ in excess of the direct and indirect costs of procuring, distributing, or transplanting the transplantable organ shall be fined not less than fifty thousand dollars (\$50,000) nor more than five hundred thousand dollars (\$500,000).
- (31) Any hospital performing transplantable organ transplants which knowingly fails to report the possible sale, purchase, or brokering of a transplantable organ shall be fined not less than ten thousand dollars (\$10,000) or more than fifty thousand dollars (\$50,000).

Section 26. KRS 214.610 is amended to read as follows:

- (1) The Cabinet for Health Services shall approve appropriate educational courses on the transmission, control, treatment, and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome with an emphasis on appropriate behavior and attitude change to be completed as specified in the respective chapters by each person licensed or certified under KRS Chapters 311, 312, 313, 314, 315, 320, 327, 333, 335 and emergency medical technicians ~~certified~~<sup>licensed</sup> pursuant to KRS Chapter ~~311~~<sup>214</sup>.
- (2) Each licensee or certificate holder shall submit confirmation on a form provided by the cabinet of having completed the course by July 1, 1991, except persons licensed under KRS Chapters 314 and 327 for whom the completion date shall be July 1, 1992.

Section 27. The following KRS sections are repealed:

- 211.9533 Emergency Medical Services for Children Advisory Committee.
- 211.9535 Biennial report on EMSC Program.
- 211.956 Matching fund program for providing trained emergency medical service personnel.
- 211.960 Title.
- 311.650 Definition.

Section 28. The following implementation schedule shall apply to this Act:

- (1) The members of the Kentucky Board of Emergency Medical Services shall be appointed by the Governor on September 1, 2000.
- (2) The board shall hire an executive director and essential staff on November 1, 2000.
- (3) The Kentucky Board of Emergency Medical Services, the Cabinet for Health Services, and the Kentucky Board of Medical Licensure may implement a transfer of fees, funds, functions, equipment, personal property, and records at any time mutually agreed upon after January 1, 2001, but no later than April 1, 2001.
- (4) Until such time as a function is transferred by the Cabinet for Health Services to the Kentucky Board of Emergency Medical Services or the Kentucky Board of Medical Licensure the functions shall remain the duty of the Cabinet for Health Services or the Kentucky Board of Medical Licensure.
- (5) All causes relating to the provisions of Sections 1 to 26 of this Act pending before the Cabinet for Health Services on January 1, 2001, shall be transferred to the Kentucky Board of Emergency Medical Services no later than April 1, 2001.

**Approved April 6, 2000**

## CHAPTER 344

## (HB 438)

AN ACT relating to tourism and convention commissions.

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

Section 1. KRS 91A.350 is amended to read as follows:

- (1) The local governing bodies of counties containing cities of the first class and the local governing bodies of the cities of the first class located therein may, by joint or separate action, establish tourist and convention commissions for the purpose of promoting convention and tourist activity.
- (2) The local governing bodies of counties containing cities of the second through sixth classes and the local governing bodies of the cities of the second through sixth classes located therein may, by joint or separate action, establish tourist and convention commissions for the purpose of promoting **and developing** convention and tourist **activities and facilities**~~activity~~.
- (3) The local governing bodies of two (2) or more counties may jointly establish tourist and convention commissions for the purpose of promoting convention and tourist **activities and facilities**~~activity~~.
- (4) Tourist and convention commissions may continue to fund recreational activities or projects not related to tourism or conventions that were funded by the commission prior to July 13, 1990, at a level no greater than that provided by the commission in the 1990 fiscal year.
- (5) For the purpose of promoting recreational, convention, and tourist activity in cities and counties served by joint playground and recreation boards established under KRS 97.035; to provide the boards with the same authority to issue revenue bonds granted to cities by KRS 58.010 to 58.150 and KRS 103.200 to 103.285; and to authorize the boards to build and issue bonds for facilities located on leasehold and permithold land.

Section 2. KRS 91A.360 is amended to read as follows:

- (1) The commission established pursuant to subsection (2) of KRS 91A.350 shall be composed of seven (7) members to be appointed, in accordance with the method used to establish the commission. Members of a commission established by joint action of the local governing bodies of a county and a city or cities located therein shall be appointed, jointly, by the chief executive officers of the local governing bodies that established the commission. Members of a commission established by separate action of the local governing body of a county or a city located therein shall be appointed separately by the chief executive officer of the local governing body that established the commission. The chief executive officer of a city shall mean the mayor and the chief executive officer of a county shall mean the county judge/executive. **Appointments**~~Candidates for appointment~~ to a commission shall be **made by**~~submitted to~~ the appropriate chief executive officer or officers in the following manner:
  - (a) Two (2) commissioners **shall be appointed** from a list of three (3) or more names submitted by the local city hotel and motel association **and**~~or~~.
  - ~~(b) —~~ one (1) commissioner **shall be appointed** from a list of three (3) or more names submitted by the local county hotel and motel association, provided that if only one (1) local hotel and motel association exists which covers both the city and county, then three (3) commissioners shall be appointed from a list of six (6) or more names submitted by it. If no formal local city or county hotel and motel association is in existence upon the establishment of a commission or upon the expiration of the term of a commissioner appointed pursuant to **this** subsection~~— (1)(a) and (1)(b) of this section~~, then up to three (3) commissioners shall be appointed **by the appropriate chief executive officer or officers** from~~— a list of six (6) or more names of~~ persons residing within the jurisdiction of the commission **and representing local hotels or motels**~~— submitted by the Kentucky Hotel and Motel Association~~. A local city or county hotel and motel association shall not be required to be affiliated with the Kentucky Hotel and Motel Association to be recognized as the official local city or county hotel and motel association.
  - ~~(b)(c)~~ One (1) commissioner **shall be appointed** from a list of three (3) or more names submitted by the local restaurant association or associations. If no formal local restaurant association or associations exist upon the establishment of a commission or upon the expiration of the term of a commissioner appointed pursuant to this subsection, then one (1) commissioner shall be appointed **by the appropriate chief**

*executive officer or officers* from ~~[a list of three (3) or more names of]~~ persons residing within the jurisdiction of the commission *and representing a local restaurant* ~~[submitted by the Kentucky Restaurant Association]~~. A local restaurant association or associations shall not be required to be affiliated with the Kentucky Restaurant Association to be recognized as the official local restaurant association or associations.

(c)~~(d)~~ One (1) commissioner *shall be appointed* from a list of three (3) or more names submitted by the chamber or chambers of commerce existing within those governmental units, which by joint or separate action have established the commission. If the commission is established by joint action of a county and a city or cities, then each chamber of commerce shall submit a list of three (3) names, and the chief executive officers of the participating governmental units shall jointly appoint one (1) commission member from the aggregate list. *If no local chamber of commerce is in existence upon the establishment of a commission or upon the expiration of the term of a commissioner appointed pursuant to this subsection, then one (1) commissioner shall be appointed by the appropriate chief executive officer or officers from persons residing within the jurisdiction of the commission and representing local businesses.*

(d)~~(e)~~ Two (2) commissioners *shall be* appointed in the following manner:

1. By the chief executive officer of the county or city, if the commission has been established by separate action of a county or city; or
  2. One (1) each by the chief executive officer of the county and by the chief executive officer of the most populous city participating in the establishment of the commission, if the commission has been established by joint action of a county and a city or cities.
- (2) A candidate submitted for appointment to the commission, pursuant to subsection (1)(a) to (1)(c)~~(d)~~, shall be appointed by the appropriate chief executive officer or officers within thirty (30) days of the receipt of the required list or lists; ~~if not, the association or associations shall by election within ten (10) days determine the commissioner from the list or lists submitted by plurality vote of the aggregate membership]~~. Vacancies shall be filled in the same manner that original appointments are made.
- (3) The commissioners shall be appointed for terms of three (3) years, provided, that in making the initial appointments, the appropriate chief executive officer or officers shall appoint two (2) commissioners for a term of three (3) years, two (2) commissioners for a term of two (2) years and three (3) commissioners for a term of one (1) year. There shall be no limitation on the number of terms to which a commissioner is reappointed. Subsequent appointments shall be for three (3) year terms.
- (4) The commission shall elect from its membership a chairman and a treasurer, and may employ personnel and make contracts necessary to carry out the purpose of KRS 91A.350 to 91A.390. The contracts may include, but shall not be limited to, the procurement of promotional services, advertising services, and other services and materials relating to the promotion of tourist and convention business. Contracts of the type enumerated shall be made only with persons, organizations, and firms with experience and qualifications for providing promotional services and materials, such as advertising firms, chambers of commerce, publishers, and printers.
- (5) The books of the commission *and its account as established in subsection (2) of Section 5 of this Act* shall be audited annually by an independent auditor who shall make a report to the commission, to the associations submitting lists of names from which commission members are selected, to the appropriate chief executive officer or officers, *to the State Auditor of Public Accounts*, and to the local governing body or bodies that established the commission that was audited. A copy of the audit report shall be made available by the commission to members of the public upon request and at no charge.
- (6) A commissioner may be removed from office, by joint or separate action, of the *appropriate chief executive officer or officers of the* local governing body or bodies that established the commission, ~~[consistent with the method by which the commission was established, and]~~ as provided by KRS 65.007.

Section 3. KRS 91A.372 is amended to read as follows:

- (1) The commission established pursuant to subsection (2) of KRS 91A.350 by an urban-county government shall be composed of nine (9) members appointed by the *mayor* ~~[chief elective official]~~ of the urban-county government in the following manner:
- (a) Three (3) commissioners from a list submitted by the local hotel and motel association.

- (b) One (1) commissioner from a list submitted by the local restaurant association or associations.
  - (c) One (1) commissioner from a list submitted by the local chamber of commerce.
  - (d) Four (4) commissioners who shall be residents of the urban-county.
- (2) Vacancies shall be filled in the same manner that original appointments are made.
  - (3) The commissioners shall be appointed for terms of three (3) years, provided, that in making the initial appointments, the chief elective official of the urban-county shall appoint three (3) commissioners for a term of three (3) years, three (3) commissioners for a term of two (2) years and three (3) commissioners for a term of one (1) year.
  - (4) The commission shall elect from its membership a chairman and a treasurer, and may employ such personnel and make such contracts as are necessary to effectively carry out the purpose of KRS 91A.350 to 91A.390. Such contracts may include but shall not be limited to the procurement of promotional services, advertising services and other services and materials relating to the promotion of tourist and convention business; provided, contracts of the type enumerated shall be made only with persons, organizations, and firms with experience and qualifications for providing promotional services and materials, such as event coordinators, advertising firms, chambers of commerce, publishers and printers.
  - (5) The books of the commission shall be audited by an independent auditor who shall make a report to the commission, to the organizations submitting names from which commission members are selected, and to the mayor *of the urban-county government* ~~and the chief elective official~~.

Section 4. KRS 91A.380 is amended to read as follows:

- (1) The commission established pursuant to subsection (3) of KRS 91A.350 shall be composed of six (6) members from each county to be appointed by the county judge/executive, with the approval of the fiscal court, one (1) of whom shall be a member of the General Assembly in whose district the county or part of the county is located in the following manner:
  - (a) One (1) commissioner from a list of at least three (3) persons submitted by the local restaurant association or associations;
  - (b) One (1) commissioner from a list of at least three (3) persons submitted by the local chamber of commerce;
  - (c) One (1) commissioner by the county judge/executive; and
  - (d) Two (2) commissioners from a list of at least six (6) persons submitted by the local hotel and motel association or associations.
- (2) Vacancies shall be filled in the same manner that original appointments are made.
- (3) The commissioners shall be appointed for terms of three (3) years, provided that in making the initial appointments, the county judge/executive shall appoint two (2) commissioners for a term of three (3) years, two (2) commissioners for a term of two (2) years, and two (2) commissioners for a term of one (1) year.
- (4) The commission shall elect from its membership a chairman and a treasurer, and may employ such personnel and make such contracts as are necessary to effectively carry out the purpose of KRS 91A.350 to 91A.390. Such contracts may include but shall not be limited to the procurement of promotional services, advertising services and other services and materials relating to the promotion of tourist and convention business; ~~provided, contracts of the type enumerated shall be made only with persons, organizations, and firms with experience and qualifications for providing promotional services and materials such as advertising firms, chambers of commerce, publishers and printers~~.
- (5) The books of the commission *and its account as established in subsection (2) of Section 5 of this Act* shall be audited by an independent auditor who shall make a report to the commission, to the organizations submitting names from which commission members are selected, *to the State Auditor of Public Accounts*, and to the county judge/executive of each county. *A copy of the audit report shall be made available by the commission to members of the public upon request and at no charge.*
- (6) A commissioner may be removed from office as provided by KRS 65.007.

Section 5. KRS 91A.390 is amended to read as follows:

- (1) The commission shall annually submit to the local governing body or bodies which established it a request for funds for the operation of the commission. The local governing body or bodies shall include the commission in the annual budget and shall provide funds for the operation of the commission by imposing a transient room tax, not to exceed three percent (3%) of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations businesses. In addition to the three percent (3%), the local governing body may impose a special transient room tax not to exceed one percent (1%) for the sole purpose of meeting the operating expenses of a convention center. A transient room tax imposed by an urban-county government shall not exceed four percent (4%) of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations businesses. Transient room taxes shall not apply to the rental or leasing of an apartment supplied by an individual or business that regularly holds itself out as exclusively providing apartments. Apartment means a room or set of rooms, in an apartment building, fitted especially with a kitchen and usually leased as a dwelling for a minimum period of thirty (30) days or more. The local governing body or bodies that have established a commission by joint or separate action~~[-]~~ shall enact an ordinance for~~[-the collection and]~~ the enforcement of the tax measure enacted pursuant to this section ***and the collection of the proceeds of this tax measure on a monthly basis.***
- (2) ***All moneys collected pursuant to this section and KRS 91A.400 shall be maintained in an account separate and unique from all other funds and revenues collected, and shall be considered tax revenue for the purposes of KRS 68.100 and KRS 92.330.***
- ~~(3)(2)~~ A portion of the money collected from the imposition of this tax, as determined by the, tax levying body, ***upon the advice and consent of the tourist and convention commission,*** may be used to finance the cost of acquisition, construction, operation, and maintenance of facilities useful in the attraction and promotion of tourist and convention business ~~and shall include athletic stadiums].~~ The balance of the money collected from the imposition of this tax shall be used for the purposes set forth in KRS 91A.350. Proceeds of the tax shall not be used as a subsidy in any form to any hotel, motel, or restaurant. Money not expended by the commission during any fiscal year shall be used to make up a part of the commission's budget for its next fiscal year.
- ~~(4)(3)~~ An urban-county government may impose an additional tax, not to exceed one percent (1%) of the room rents included in this subsection. This additional tax shall be collected and administered in the same manner as the regular tax with the exception that this additional tax shall be used for the purpose of funding the purchase of development rights program provided for under KRS 67A.845.
- ~~(5)(4)~~ The commission, with the approval of the tax levying body, may borrow money to pay its obligations that cannot be paid at maturity out of current revenue from the transient room tax, but shall not borrow a sum greater than can be repaid out of the revenue anticipated from the transient room tax during the year the money is borrowed. The commission may pledge its securities for the repayment of any sum borrowed.
- ~~(6)(5)~~ The fiscal court or legislative body of a city establishing a commission pursuant to subsection (1) or (2) of KRS 91A.350 and, in its own name, a commission established pursuant to subsection (1) of KRS 91A.350 is authorized and empowered to issue revenue bonds pursuant to KRS Chapter 58 for public projects. Bonds issued for the purposes of KRS 91A.350 to 91A.390, may be used to pay any cost for the acquisition of real estate, the construction of buildings and appurtenances, the preparation of plans and specifications, and legal and other services incidental to the project or to the issuance of the bonds. The payment of the bonds, with interest, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Bond and interest obligations issued pursuant to this section shall not constitute an indebtedness of the county or city. All bonds sold under the authority of this section shall be subject to competitive bidding as provided by law, and shall bear interest at a rate not to exceed that established for bonds issued for public projects under KRS Chapter 58.
- ~~(7)(6)~~ A commission established pursuant to subsection (3) of KRS 91A.350 is authorized and empowered to issue revenue bonds in its own name, payable solely from its income and revenue, pursuant to KRS Chapter 58 for revenue bonds for public projects. Bonds issued for the purposes of KRS 91A.350 to 91A.390, may be used to pay any cost for the acquisition of real estate, the construction of buildings and appurtenances, the preparation of plans and specifications, and legal and other services incidental to the project or to the issuance of the bonds. The payment of the bonds, with interest, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Bond and interest obligations issued pursuant to this section shall not constitute an indebtedness of the county. All

bonds sold pursuant to this section shall be subject to competitive bidding as provided by law, and shall not bear interest at rates exceeding those for bonds issued for public projects under KRS Chapter 58.

SECTION 6. A NEW SECTION OF KRS 91A.350 TO 91A.390 IS CREATED TO READ AS FOLLOWS:

- (1) *On an annual basis, the Auditor of Public Accounts shall issue audit standards to be followed in the audits authorized by subsection (5) of Section 2 and subsection (5) of Section 4 of this Act. These audit standards shall supplement generally accepted audit standards. Upon request, the Auditor of Public Accounts may review the final report and all related work papers and documents of the independent certified public accountant relating to the audit required under Section 2 of this Act. Any costs associated with the review or subsequent audit by the Auditor of Public Accounts shall be borne by the commission. If the Auditor of Public Accounts determines that there are substantive discrepancies in the commission's books or account, the Auditor of Public Accounts shall notify the director of the commission, the county attorney, and the appropriate legislative body of its findings.*
- (2) *Any resident of the county may bring an action in the Circuit Court to enforce the provisions of KRS 91A.350 to 91A.390. The Circuit Court shall hear the action and, on a finding that the commission has violated the provisions of KRS 91A.350 to 91A.390, shall order the commission to comply with the provisions. The Circuit Court, in its discretion, may allow the prevailing party, other than the commission, court costs, to be paid from the commission's account.*

Section 7. KRS 91A.392 is amended to read as follows:

- (1) In addition to the three percent (3%) transient room tax authorized by KRS 91A.390 and the one percent (1%) transient room tax authorized by KRS 153.440, the fiscal court in a county containing a city of the first class may levy an additional transient room tax not to exceed two percent (2%) of the rent for every occupancy of a suite, room, or rooms charged by all persons, companies, corporations, or other similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or similar accommodations businesses.
- (2) All money collected from the tax authorized by this section shall be applied toward the retirement of bonds issued pursuant to KRS ~~91A.390(6)~~~~[91A.390(5)]~~ to finance in part the expansion of a government-owned convention facility located in the central business district of the city of the first class located in the county.
- (3) After the retirement of the bonds provided for in this section, the additional transient room tax levied pursuant to this section shall be void, and the fiscal court shall take action to repeal the ordinance which levied the tax.

**Approved April 6, 2000**

## **CHAPTER 345**

**(HB 475)**

AN ACT relating to criminal justice.

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

Section 1. KRS 196.037 is amended to read as follows:

- (1) All personnel of the department, while acting for the department in any capacity entailing the maintenance of custody over any prisoners, shall have all the authority and powers of peace officers.
- (2) All department personnel who are officially requested by a law enforcement agency in a county of Kentucky or by the Kentucky State Police to assist in the apprehension of a prisoner who has escaped from the legal or physical custody of the Department of Corrections or a detention facility of the Department of Corrections shall possess, while responding to and for the duration of the matter for which the request was made, the same powers of arrest as peace officers.
- (3) Probation and parole officers, while acting for the department in any capacity entailing the maintenance of custody or supervision of any confined prisoner, paroled prisoner, escaped prisoner,~~[-or]~~ probationer, **or other person otherwise placed under their supervision** shall have all the authority and powers of peace officers.

Section 2. KRS 197.025 is amended to read as follows:

- (1) KRS 61.884 and 61.878 to the contrary notwithstanding, no person, including any inmate confined in a jail or any facility or any individual on active supervision under the jurisdiction of the department, shall have access

to any records if the disclosure is deemed by the commissioner of the department or his designee to constitute a threat to the security of the inmate, any other inmate, correctional staff, the institution, or any other person.

- (2) KRS 61.872 to the contrary notwithstanding, the department shall not be required to comply with a request for any record from any inmate confined in a jail or any facility or any individual on active supervision under the jurisdiction of the department, unless the request is for a record which pertains to that individual.
- (3) KRS 61.880 to the contrary notwithstanding, all persons confined in a penal facility shall challenge any denial of an open record with the Attorney General ***by mailing or otherwise sending the appropriate documents to the Attorney General within twenty (20) days of the denial*** pursuant to the procedures set out in KRS 61.880(2) before an appeal can be filed in a Circuit Court.
- (4) KRS 61.872 to the contrary notwithstanding, the Department of Corrections shall refuse to accept the hand delivery of an open records request from a confined inmate.
- (5) KRS 61.870 to 61.884 to the contrary notwithstanding, all records containing information expunged pursuant to law shall not be open to the public.
- (6) The policies and procedures of administrative regulations of the department which address the security and control of inmates and penitentiaries shall not be accessible to the public or inmates. The Administrative Regulations Review Subcommittee's review process for these policies and procedures shall be conducted in closed sessions.
- (7) KRS 61.880(1) to the contrary notwithstanding, upon receipt of a request for any record, the department shall determine within five (5) days after receipt of the request, excepting Saturdays, Sundays, and legal holidays, whether the record shall be released.

Section 3. KRS 197.045 is amended to read as follows:

- (1) Any person convicted and sentenced to a state penal institution may receive a credit on his sentence of not exceeding ten (10) days for each month served, except as otherwise provided in this section, to be determined by the department from the conduct of the prisoner. In addition, the department shall provide an educational good time credit of sixty (60) days to any prisoner who successfully receives a graduate equivalency diploma or a high school diploma, a two (2) or four (4) year college degree, or a two (2) year or four (4) year certification in applied sciences, or who receives a technical education diploma as provided and defined by the department; prisoners may earn additional credit for each program completed. The department may forfeit any good time previously earned by the prisoner or deny the prisoner the right to earn good time in any amount if during the term of imprisonment, a prisoner commits any offense or violates the rules of the institution.
- (2) When two (2) or more consecutive sentences are to be served, the several sentences shall be merged and served in the aggregate for the purposes of the good time credit computation or in computing dates of expiration of sentence.
- (3) An inmate may, at the discretion of the commissioner, be allowed a deduction from a sentence not to exceed five (5) days per month for performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations and programs. The allowance shall be an addition to commutation of time for good conduct and under the same terms and conditions and without regard to length of sentence.
- (4) Until successful completion of the sex offender treatment program, a sex offender may earn good time. However, the good time shall not be credited to the sex offender's sentence. Upon the successful completion of the sex offender treatment program, as determined by the program director, the offender shall be eligible for all good time earned but not otherwise forfeited under administrative regulations promulgated by the Department of Corrections. After successful completion of the sex offender treatment program, a sex offender may continue to earn good time in the manner provided by administrative regulations promulgated by the Department of Corrections. Any sex offender, as defined in KRS 197.410, who has not successfully completed the sex offender treatment program as determined by the program director shall not be entitled to the benefit of any credit on his sentence. A sex offender who does not complete the sex offender treatment program for any reason shall serve his entire sentence without benefit of good time, parole, or other form of early release. The provisions of this section shall not apply to any sex offender convicted before July 15, 1998, or to any mentally retarded sex offender.
- (5) (a) The Department of Corrections shall, by administrative regulation, specify the length of forfeiture of good time and the ability to earn good time in the future for those inmates who have civil actions



dismissed because the court found the action to be malicious,~~[or]~~ harassing, or~~[if satisfied that the action is legally without merit or]~~ factually frivolous.

- (b) Penalties set by administrative regulation pursuant to this subsection shall be as uniform as practicable throughout all institutions operated by, under contract to, or under the control of the department and shall specify a specific number of days or months of good time forfeited as well as any prohibition imposed on the future earning of good time.

Section 4. KRS 438.250 is amended to read as follows:

- (1) When a public servant, as defined in KRS 521.010, or victim of a crime is bitten by, suffers a puncture wound caused by, or is exposed to the blood or body fluids of a criminal defendant, inmate, parolee, or probationer or the blood or body fluids of a criminal defendant, inmate, parolee, or probationer have come into contact with the skin or unprotected clothing of a public servant during any incident in which the public servant and the criminal defendant, inmate, parolee, or probationer are involved, the criminal defendant, inmate, parolee, or probationer shall be ordered to submit to testing~~[of the blood]~~ for human immunodeficiency virus (HIV), hepatitis A, B, and C, and tuberculosis.
- (2) The written results of the testing shall be made available to each public servant, criminal defendant, inmate, parolee, or probationer coming within the purview of subsection (1). However, the results shall not be public records and shall be disclosed to others only on a need-to-know basis.
- (3) If a criminal defendant, inmate, parolee, or probationer fails or refuses to be tested as ordered, he may be held in criminal contempt. A Circuit or District Judge shall compel the criminal defendant, inmate, parolee, or probationer to undergo the testing required herein if he fails or refuses to do so. Undergoing compulsory testing after a failure or refusal to be tested shall not relieve the criminal defendant, inmate, parolee, or probationer of the liability imposed by this subsection.
- (4) The costs of the testing shall be borne by the criminal defendant, inmate, parolee, or probationer unless he is determined unable to pay for the test by a court of competent jurisdiction for criminal defendants and probationers and by the Department of Corrections pursuant to their indigency standards for inmates and parolees, in which case the Commonwealth shall pay for the testing.
- (5) The provisions of subsections (1) to (4) of this section shall apply to juveniles falling within any category specified in subsections (1) to (4) of this section as well as to adults.

Section 5. KRS 439.563 is amended to read as follows:

- (1) When there is an identified victim of a defendant's crime to whom restitution has been ordered but not yet paid in full, or restitution has been ordered paid to a government agency and has not yet been paid in full, the Parole Board shall order the defendant to pay restitution as a condition of parole.
- (2) When the Parole Board orders restitution, the board shall:
  - (a) Order the restitution to be paid to a specific person or organization through the Division of Probation and Parole, which shall disburse the moneys as ordered by the board;
  - ~~(b) [The Division of Probation and Parole shall be responsible for overseeing the collection of the restitution;~~
  - ~~(c) [Set the amount of restitution to be paid, if not already set;~~
  - ~~(d) [Set the amount and frequency of each restitution payment or require the payment to be made in a lump sum];~~
  - ~~(e) [Monitor the payment of the restitution to assure that payment is being made;~~
  - ~~(f) [If restitution is not being paid as ordered, institute parole violation proceedings to determine why the restitution is not being paid;~~
  - ~~(g) [If the restitution is not being paid and no good reason exists therefor, institute sanctions against the defendant; and~~
  - ~~(h) [Not release the defendant from parole supervision until restitution has been paid in full].~~
- (3) ***When the Parole Board orders restitution, the Department of Probation and Parole shall:***
  - (a) Monitor and oversee the collection of the restitution;***

- (b) *Institute parole violation proceedings if the restitution is not being paid;*
  - (c) *Institute sanctions against the defendant if restitution is not being paid and good cause is not shown for the nonpayment; and*
  - (d) *Maintain parole supervision over the defendant until restitution has been paid in full.*
- (4) The board, in addition to any other sanctions which may be imposed on the defendant, ask a court to hold a defendant who is not paying restitution in the manner or amount prescribed in contempt of court.
- (5)~~(4)~~ Any statute relating to the length of parole supervision notwithstanding, the parole for a person owing restitution shall be until the restitution is paid in full, even if this would lengthen the period of supervision beyond the statutory limit of parole supervision or the statutory limit for serving out the sentence imposed.
- (6)~~(5)~~ Payment of restitution in full prior to the end of the period of parole supervision shall not shorten the period of parole supervision.

Section 6. KRS 454.405 is amended to read as follows:

- (1) At any time, and upon its own motion or on motion of a party, a court may dismiss a civil action brought by an inmate or on behalf of an inmate if satisfied that the action is malicious or harassing or if satisfied that the action is legally without merit or factually frivolous. In addition to any other available disposition, a court may dismiss the civil action if satisfied that the affidavit of poverty in support of a request to proceed in forma pauperis is wholly or partly false or misleading.
- (2) This section does not apply to criminal or collateral criminal proceedings.
- (3) A court which dismisses a civil action brought by an inmate for any of the reasons set out in subsection (1) of this section shall include as part of its order specific findings as to the reasons for the dismissal. The court shall, upon issuing the order, direct the circuit clerk to transmit a copy of the entire court order to the official having custody of the inmate and to the county attorney of the county where the action was filed.
- (4) A court which dismisses a civil action brought by an inmate for any of the reasons set out in subsection (1) of this section may include as part of its order an assessment of fines and costs against the inmate as the court may deem reasonable and prudent. The Department of Corrections may enforce this assessment against the inmate's prison account and against any other assets of the inmate through any other mechanism provided by law.
- (5) ***No inmate may maintain a civil action for monetary damages in any state court for mental or emotional injury without a prior showing of physical injury.***

Section 7. KRS 508.025 is amended to read as follows:

- (1) A person is guilty of assault in the third degree when the actor:
  - (a) Recklessly, with a deadly weapon or dangerous instrument, or intentionally causes or attempts to cause physical injury to:
    - 1. A state, county, city, or federal peace officer;
    - 2. An employee of a detention facility, or state residential treatment facility or state secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender;
    - 3. An employee of the Department for Social Services employed as a social worker to provide direct client services, if the event occurs while the worker is performing job related duties; or
    - 4. A probation and parole officer; or
  - (b) Being a person confined in a detention facility, or state residential treatment facility or state secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender, inflicts physical injury upon or throws or causes feces,~~or~~ urine, ***or other bodily fluid*** to be thrown upon an employee of the facility.
- (2) Assault in the third degree is a Class D felony.

Section 8. KRS 510.120 is amended to read as follows:

- (1) A person is guilty of sexual abuse in the second degree when:

- (a) He subjects another person to sexual contact who is incapable of consent because he is mentally retarded or mentally incapacitated;~~[-or]~~
- (b) He subjects another person who is less than fourteen (14) years old to sexual contact; *or*
- (c) *Being an employee, contractor, vendor, or volunteer of the Department of Corrections, or a detention facility as defined in KRS 520.010, or of an entity under contract with either the department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he subjects an offender who is incarcerated, supervised, evaluated, or treated by the Department of Corrections, the detention facility, or the contracting entity, to sexual contact. In any prosecution under this paragraph, the defendant may prove in exculpation that, at the time he engaged in the conduct constituting the offense, he and the offender were married to each other.*

- (2) Sexual abuse in the second degree is a Class A misdemeanor.

Section 9. KRS 532.043 is amended to read as follows:

- (1) In addition to the penalties authorized by law, any person convicted of, pleading guilty to, or entering an Alford plea to a felony offense under KRS Chapter 510, KRS **529.030**, 530.020, 530.064,~~[-or]~~ 531.310, *or* **531.320** shall be *subject*~~[sentenced]~~ to a period of conditional discharge following release from:
  - (a) Incarceration upon expiration of sentence; or
  - (b) Completion of parole.
- (2) The period of conditional discharge shall be three (3) years.
- (3) During the period of conditional discharge, the defendant shall:
  - (a) Be subject to all orders specified by the Department of Corrections; and
  - (b) Comply with all education, treatment, testing, or combination thereof required by the Department of Corrections.
- (4) Persons under conditional discharge pursuant to this section shall be subject to the supervision of the Division of Probation and Parole.
- (5) If a person violates a provision specified in subsection (3) of this section, the violation shall be reported in writing to the Commonwealth's attorney in the county of conviction. The Commonwealth's attorney may petition the court to revoke the defendant's conditional discharge and reincarcerate the defendant *as set forth in KRS 532.060*~~[for no longer than the time remaining on the conditional discharge]~~.
- (6) The provisions of this section shall apply only to persons convicted, pleading guilty, or entering an Alford plea after July 15, 1998.

Section 10. KRS 533.025 is amended to read as follows:

- (1) When a person is convicted of, pleads guilty to, or enters an Alford plea to a felony offense and is sentenced to jail as a condition of conditional discharge or as a condition of probation, the Department of Corrections shall pay for the incarceration of that person in a county jail at the same rate and under the same conditions as for a Class D felon who is incarcerated in the county jail under KRS 532.100.
- (2) If a person incarcerated in a county jail on conditional discharge or probation under subsection (1) of this section is granted work release, he shall pay the work release fees required by law to the jailer. The amount of work release fees paid by a prisoner shall be deducted from the amount which the Department of Corrections shall pay for the incarceration of that prisoner.
- (3) *The Department of Corrections may, during the prisoner's period of incarceration in the county jail, take custody of the prisoner and hold that person in a state prison facility for the purpose of treating the following medical conditions:*
  - (a) *Chronic heart and lung conditions;*
  - (b) *Psychiatric conditions;*
  - (c) *Acute medical conditions that require diagnostic testing or hospitalization;*
  - (d) *Acute surgical conditions;*

- (e) *Pregnancy; or*
- (f) *Any other medical condition which the Department of Corrections may set out by administrative regulation.*

**Approved April 6, 2000**

## CHAPTER 346

### (HB 488)

AN ACT relating to the transportation of persons.

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

Section 1. KRS 281.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) The term "person" means any individual, firm, partnership, corporation, company, association or joint stock association, and includes any trustee, assignee, or personal representative thereof;
- (2) ***The term "cabinet" means the Kentucky Transportation Cabinet;***
- (3) The term "department" means the Department of Vehicle Regulation;
- ~~(4)(3)}~~ The term "city" means a municipality incorporated under the laws of this state;
- ~~(5)(4)}~~ The term "state" means the Commonwealth of Kentucky;
- ~~(6)(5)}~~ The term "highway" means all public roads, highways, streets, and ways in this state, whether within a municipality or outside of a municipality;
- ~~(7)(6)}~~ The term "certificate" means a certificate of public convenience and necessity issued under this chapter to common carriers by motor vehicle and irregular route common carriers, a nonprofit bus certificate issued under this chapter authorizing operation thereunder, or a certificate of compliance;
- ~~(8)(7)}~~ The term "permit" means a permit issued under this chapter to contract carriers by motor vehicle of persons and to persons engaging in the business of U-drive-it;
- ~~(9)(8)}~~ The term "interstate commerce" means commerce between any place in a state and any place in another state;
- ~~(10)(9)}~~ The term "intrastate commerce" means commerce between any place in this state and any other place in this state;
- ~~(11)(10)}~~ The term "passenger" means an individual or group of people; and
- ~~(12)(11)}~~ The term "property" means general or specific commodities including hazardous and nonhazardous materials.

Section 2. KRS 281.014 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) (a) The term "city taxicab certificate" or "city limousine certificate" means a certificate granting authority only for the operation of a given number of motor vehicles transporting passengers for hire, the principal operation of which is confined to the corporate limits of a city of the first or second class or an urban-county area and the city's suburban area, or the corporate limits of any city and its suburban area located in a county which contains a city of the first or second class or an urban-county area, and not operating over any regular route, and the destination of which motor vehicles are designated by the passengers at the time of such transportation;
- (b) The term "county taxicab certificate" or "county limousine certificate" means a certificate granting authority only for the operation of a given number of motor vehicles transporting passengers for hire, the principal operation of which is confined to a specific county which does not contain a city of the first or second class and is not an urban-county area, and not operating over any regular route, and the destination of which motor vehicles are designated by the passengers at the time of the transportation;

- (c) A "taxicab" means a motor vehicle operated under one (1) or more taxicab certificates, and is a vehicle designed or constructed to transport not more than fifteen (15) passengers exclusive of the driver;
- (d) A "limousine" means a luxury motor vehicle passenger car which has either a standard or an extended wheelbase. The vehicle shall have additional rear seating capacity, area, and comforts, but shall be designed or constructed to transport not more than fifteen (15) passengers plus the driver;
- (e) The term "taxicab license" means a license plate issued to a taxicab authorized to operate under a taxicab certificate;
- (f) The term "limousine license" means a license plate issued to a limousine authorized to operate under a limousine certificate;
- (2) (a) An "airport shuttle certificate" means a certificate granting authority only for the operation of motor vehicles exclusively transporting passengers or baggage for hire over regular routes between points within a city or its suburban area and an airport;
- (b) An "airport shuttle vehicle" means a motor vehicle operated under one (1) or more airport shuttle certificates and which is designed or constructed to transport not more than fifteen (15) passengers plus the driver;
- (c) The term "airport shuttle vehicle license" means a license plate issued for a motor vehicle authorizing its operation under one (1) or more airport shuttle certificates;
- (3) The term "U-Drive-It" means any person who leases or rents a motor vehicle for a consideration to be used for the transportation of persons or property, but for which no driver is furnished, and the use of which motor vehicle is not for the transportation of persons or property for hire by the lessee or rentee;
- (4) The term "driveaway" means the transporting and delivering of motor vehicles, except semitrailers, and trailers, whether destined to be used in either a private or for-hire capacity, under their own power or by means of a full mount method, saddle mount method, the tow bar method, or any combination of them over the highways of this state from any point of origin to any point of destination for-hire. The transportation of such vehicles by the full mount method on trailers or semitrailers shall not be included in the term ; and
- (5) (a) "Disabled persons vehicle" means a motor vehicle especially equipped and used for the transportation of persons with disabilities and which is in compliance with the accessibility specifications of 49 C.F.R. Part 38, but it shall be designed and constructed to transport not more than fifteen (15) passengers plus the driver. It shall not mean an ambulance as defined in KRS 211.950. It shall not mean a motor vehicle equipped with a stretcher;
- (b) "Disabled persons carrier" means an irregular route common carrier for hire, transporting the general public who require transportation in disabled persons vehicles;~~and~~
- (c) "Disabled persons certificate" means a certificate that grants authority only for the operation of a given number of disabled persons vehicles for hire, the principle operation of which is confined to a specific county;
- (6) ***"Human service transportation delivery" means the provision of transportation services to any person that is an eligible recipient in one (1) of the following state programs:***
  - (a) ***Nonemergency medical transportation under KRS Chapter 205;***
  - (b) ***Mental health, mental retardation, or comprehensive care under KRS Chapter 202A, 202B, 210, or 645;***
  - (c) ***Kentucky Works Program under KRS Chapter 194 or 205;***
  - (d) ***Aging services under KRS Chapter 205, 209, 216, or 273;***
  - (e) ***Vocational rehabilitation under KRS 151B or 157; or***
  - (f) ***Blind industries or rehabilitation under KRS Chapter 151B or 163;***
- (7) ***"Delivery area" means one (1) or more regions established by the cabinet in administrative regulations promulgated under KRS Chapter 13A for the purpose of providing human service transportation delivery in that region;***
- (8) ***"Broker" means a person selected by the cabinet through a request for proposal process to coordinate human service transportation delivery within a specific delivery area. A broker may also provide***

*transportation services within the specific delivery area for which the broker is under contract with the cabinet;*

- (9) *"Subcontractor" means a person who has signed a contract with a broker to provide human service transportation delivery within a specific delivery area and who meets human service transportation delivery requirements, including proper operating authority; and*
- (10) *"CTAC" means the Coordinated Transportation Advisory Committee created under Section 3 of this Act.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby created a Coordinated Transportation Advisory Committee, also known as the "CTAC", that is to be composed of designated members of the cabinet, the Cabinet for Health Services, the Cabinet for Families and Children, and the Workforce Development Cabinet.*
- (2) *Members of the CTAC shall serve terms as determined by each respective cabinet. The CTAC shall meet at least once a month, but may meet more frequently if desired, and shall maintain a written record of all meetings and actions taken. In all proceedings of the CTAC and in all actions taken by the CTAC, the cabinet, the Cabinet for Health Services, and the Cabinet for Families and Children shall each have two (2) votes and the Workforce Development Cabinet shall have one (1) vote. A quorum of the CTAC shall be required to conduct any official business.*
- (3) *The staff of the cabinet's Office of Transportation Delivery shall provide administrative support to the CTAC. The executive director of the Office of Transportation Delivery shall set the agenda for meetings of the CTAC. The Office of Transportation Delivery may promulgate administrative regulations under KRS Chapter 13A governing the human service transportation delivery program on behalf of the CTAC. The cabinet shall promulgate administrative regulations under KRS Chapter 13A to specify the duties and responsibilities of the CTAC.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall employ a pool of program coordinators. Each program coordinator shall be a state employee and reside in the cabinet.*
- (2) *The program coordinator shall initially investigate all complaints regarding recipients, subcontractors, and the broker for the area and attempt to immediately resolve the problem. All complaints relating to Medicaid fraud or abuse shall be forwarded by the cabinet to the Cabinet for Health Services. The program coordinator shall further be responsible for assisting a person with a complaint as required in subsection (4) of this section.*
- (3) *The program coordinator shall investigate issues of eligibility that result in a person being denied transportation, determine the status of the person's case, and attempt to immediately resolve the matter in order for the person to continue to receive transportation services. A broker shall not deny any person transportation services until the program coordinator resolves the question of the person's eligibility and verifies to the broker that the person is actually ineligible to receive transportation services. A broker who violates the provisions of this subsection shall be fined one thousand dollars (\$1,000) and shall be subject to his or her contract being revoked by the cabinet. The program coordinator shall coordinate information about eligibility to participate in the human service transportation delivery program between the cabinet, the Cabinet for Health Services, the Cabinet for Families and Children, and the Workforce Development Cabinet. The cabinet shall ensure each program coordinator has direct computer access to all relevant databases used by all state agencies to administer the human service transportation delivery program. The Department for Medicaid Services shall provide each program coordinator with a monthly eligibility list for the area.*
- (4) *If a program coordinator is unable to resolve a complaint against a broker or subcontractor to the satisfaction of the person lodging the complaint on the same business day the complaint is made, the program coordinator shall immediately act to assist the person in contacting the appropriate state agency to resolve the complaint. The program coordinator shall ensure that the cabinet, the Cabinet for Health Services, the Cabinet for Families and Children, and the Workforce Development Cabinet strictly adhere to the provisions of 42 CFR governing a person's right to appeal the denial of service or failure for a complaint to be acted upon promptly. The cabinet shall be required to inform in writing, every person who has either been denied transportation or who has failed to have a complaint resolved in a prompt manner under the human service transportation delivery program, of their right to a hearing to be held in the county where the person lives, and the process to follow to obtain a hearing.*

- (5) *All brokers and subcontractors shall be prohibited from retaliating or attempting retribution in any way against any person using the human service transportation delivery program who files a complaint. A broker or subcontractor who is determined by the cabinet to have violated the provisions of this subsection, after an investigation and hearing conducted by the cabinet, shall have his or her contract revoked by the cabinet within ninety (90) days of the hearing and shall be prohibited from participating in the human service transportation delivery program for five (5) years from the date of the cabinet's determination.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section and Section 6 of this Act, unless the context otherwise requires:*
- (a) *"Certificate Type 01" means a private automobile;*
  - (b) *"Certificate Type 02" means a taxicab service;*
  - (c) *"Certificate Type 03" means a bus service;*
  - (d) *"Certificate Type 04" means a non-profit transit system;*
  - (e) *"Certificate Type 07" means a specialty carrier certified to transport nonemergency, ambulatory disoriented persons;*
  - (f) *"Certificate Type 08" means a specialty carrier, using lift-equipped vehicles in compliance with the Americans with Disabilities Act, certified to transport nonemergency, nonambulatory persons; and*
  - (g) *"Level of eligibility" means the specialty transport classification a person is designated based upon the written recommendation of the person's personal physician that is used to establish the type of specialty transport needed for the person.*
- (2) *Except for members of the general public, the level of eligibility shall dictate both the necessity and the type of special carrier transport for a person participating in the human service transportation delivery program and shall ensure the person shall be transported in the appropriate vehicle designed to accommodate the person's level of eligibility. The broker shall, upon request by a recipient, provide specialty carrier transportation for a period up to thirty (30) days without written recommendation of the recipient's personal physician. A broker shall be prohibited from changing or altering a person's level of eligibility and the accompanying certificate type. A broker shall report questionable specialty classifications to the cabinet.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

- (1) *Persons participating in the human service transportation delivery program that have a level of eligibility that dictates they be transported under a Certificate Type 07 or 08 shall be ensured the freedom of personal choice in selecting either an eligible subcontractor within the delivery area, or the broker for the area if the broker also provides transportation services, to provide the person's transportation services.*
- (2) *A person expressing a personal preference under subsection (1) of this section shall contact the broker to arrange transportation services, even if the person is requesting an eligible subcontractor to provide the service. If a person does not express a preference of whom they wish to transport them under subsection (1) of this section, the broker shall determine the eligible subcontractor to provide the service. The broker may select himself or herself if the broker also provides transportation services, however, the broker shall establish a system that fairly and equitably distributes requests for transportation services in the delivery area among the broker and all subcontractors certified to transport Certificate Type 07 or Certificate Type 08.*
- (3) *All brokers shall consider their ability to allow persons with an eligibility level that dictates they be transported under a Certificate Type 02 to request the freedom of personal choice in the selection of who will provide the person's transportation services. A broker may offer freedom of choice to persons with a Certificate Type 02.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall promulgate administrative regulations governing, but not limited to, the following provisions of the human service transportation delivery program:*
- (a) *Establishment of one (1) or more specific delivery areas;*
  - (b) *The length of the term of the contract to be signed with a broker and the criteria to be used to terminate a contract;*

- (c) *Contractual matters to be specified in a request for proposals from brokers including, but not limited to:*
  - 1. *Establishment and maintenance of a central business office within the delivery area;*
  - 2. *Staffing requirements for the central business office;*
  - 3. *Collection and retention of records to be maintained by each broker and subcontractor;*
  - 4. *Collection and retention of encounter data on each trip made by the broker if the broker provides transportation services and by each subcontractor. Failure of a broker to record all data required by the cabinet for all trips the broker provided under the human service transportation delivery program shall be grounds for the cabinet to terminate the broker's contract;*
  - 5. *Reporting of all traffic accidents and moving violations involving either a broker or subcontractor; and*
  - 6. *Submission of annual financial reports by each broker;*
- (d) *Criteria for evaluating and selecting a broker subject to the provisions of subsections (2) and (3) of this section;*
- (e) *Identification of all federal statutes, federal rules, and federal administrative regulations with which state agencies, brokers, and subcontractors must comply;*
- (f) *Uniform criteria for establishing capitated rates, fees, and reimbursement procedures for all delivery areas, including a mandate that brokers shall have all reports necessary for payment to the cabinet not later than the seventh of each month. The mandate shall also include a requirement that the cabinet shall pay brokers not later than the fifteenth of each month if the broker has submitted all required reports. A broker shall promptly reimburse subcontractors within three (3) business days of payment by the cabinet;*
- (g) *Uniform responsibilities for all brokers and subcontractors including provisions for reservations and trip assignments, quality assurance, administrative oversight, and reporting;*
- (h) *Uniform criteria for contractual agreements between subcontractors and brokers in all delivery areas;*
- (i) *Uniform criteria governing the authorized provision of transportation services offered by brokers in all delivery areas;*
- (j) *Uniform guidelines brokers shall be required to adopt to educate persons in the delivery area regarding:*
  - 1. *Procedures for scheduling transportation services including the broker's normal hours of operation and how to schedule transportation after normal hours of operation, including Sundays and all holidays;*
  - 2. *Rates for services;*
  - 3. *Information the person shall be required to provide the broker when requesting transportation;*
  - 4. *Types of eligible transportation, including pick-up and delivery standards and reasons service may be denied;*
  - 5. *Permissibility of escorts and attendants;*
  - 6. *Procedures governing requests for urgent care;*
  - 7. *Standards for driver conduct;*
  - 8. *Standards for passenger conduct; and*
  - 9. *Oral and written instructions governing the complaint process and how to lodge a complaint against a subcontractor or broker;*
- (k) *Vehicle requirements governing all vehicles operated by brokers or subcontractors to transport persons under the human service transportation delivery program;*



- (l) *Driver qualifications including driver, attendant, and service personnel training;*
  - (m) *Minimum standards to be included in a mandatory orientation program provided by the broker for all subcontractors in the delivery area;*
  - (n) *Minimum standards governing volunteer and public transportation services;*
  - (o) *Minimum standards governing an operational procedures manual to be developed by all brokers;*
  - (p) *Minimum standards governing a quality assurance plan to be developed by all brokers;*
  - (q) *Performance monitoring by the cabinet of brokers and subcontractors; and*
  - (r) *Standards governing uniform software that all brokers shall be required to use to ensure the uniform collection of data and to facilitate the production and analysis of uniform reports relating to the human service transportation delivery system.*
- (2) *A person that submits a request for proposal to be a broker under the human service transportation delivery program shall be required to submit documentation that he or she has at least one (1) year experience working with persons with special needs.*
  - (3) *The cabinet shall be prohibited from awarding higher scores, or giving any type of preferential treatment to, any person that submits a request for proposal to be a broker who is also a transportation provider over a person who submits a request to be a broker but who is not a transportation provider.*
  - (4) *The cabinet shall develop a handbook specifying standard operating procedures, which shall be distributed to all providers and shall be made available to the general public.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall require and shall ensure that all brokers shall permit a person to request and receive human service transportation with less than the time notice established by administrative regulation for scheduling transportation services if the person's physician submits verification to the broker that the person needs to be seen by the physician or another physician to whom the person is being referred for medical treatment. A broker who violates the provisions of this subsection shall be fined one thousand dollars (\$1,000) and shall be subject to his or her contract being revoked by the cabinet.*
- (2) *The physician verification required under subsection (1) of this section may be transmitted in any of the following methods:*
  - (a) *Oral verification over the telephone;*
  - (b) *Written verification transmitted electronically by computer or by facsimile; or*
  - (c) *Written verification delivered by the person directly to the broker or subcontractor.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

*A broker or subcontractor who is determined by the cabinet to have violated the provisions of Section 4, 5, 6, 7, 8, or 11 of this Act, after an investigation and hearing conducted by the cabinet, shall have his or her contract revoked by the cabinet within ninety (90) days of the hearing and shall be prohibited from participating in the human service transportation delivery program for five (5) years from the date of the cabinet's determination.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

*A broker may coordinate the human service transportation delivery program with general public transportation as provided in this chapter and KRS Chapter 96A.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

*A broker shall be prohibited from imposing any requirement on any subcontractor that is not provided for in this chapter, or in an administrative regulation promulgated under KRS Chapter 13A to carry out the provisions of the human service transportation delivery program.*

Section 12. KRS 96A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires, the following words or terms shall mean as follows:

- (1) "City" means any incorporated city in the Commonwealth;

- (2) "County" means any county in the Commonwealth wherein there is located an incorporated city and for the purpose of this chapter shall also mean a county which has adopted an urban-county government;
- (3) "State" means the Commonwealth;
- (4) "Transit authority" or "authority" means a transit authority created pursuant to this chapter;
- (5) "Board" means the board of a transit authority;
- (6) "Public body" means any city or county of the Commonwealth;
- (7) "Governing body" means, as to a county, the fiscal court thereof; and as to a city, the legislative body thereof, howsoever the same may be denominated according to law;
- (8) "Proceedings" means, in the case of a county, a resolution of its fiscal court; and in the case of a city, an ordinance adopted and made effective according to law by its governing body;
- (9) "Joint proceedings" relates only to the establishment of a transit authority by two (2) or more public bodies acting in concert or by agreement, and means the proceedings, taken collectively, by the governing bodies of the public bodies, participating in the creation and establishment of a transit authority;
- (10) "Appointing authority" means, as to a county, the county judge/executive thereof; and as to any city, the elected chief officer thereof, whether designated as its mayor or the chairman of its board of trustees or otherwise;
- (11) "Area" or "transit area" means the geographical area which may be encompassed from time to time within the lawful boundaries of such cities and counties as may be involved in the creation and establishment of an authority; and of any cities or counties within any single unified metropolitan area which may subsequently become participants as provided in this chapter;
- (12) "Mass transit," or "mass transportation," means the transportation of persons and their baggage within or without a transit area, but shall not include the for-hire operation of a taxicab, or industrial bus as defined by KRS Chapter 281;
- (13) "Human service transportation delivery" means the *same as defined in Section 2 of this Act*; ~~provision of transportation for an eligible recipient in one of the following state programs:~~
  - ~~(a) Nonemergency medical transportation under KRS Chapter 205;~~
  - ~~(b) Mental health, mental retardation, or comprehensive care under KRS Chapter 202A, 202B, 210, or 645;~~
  - ~~(c) Kentucky Works Program under KRS Chapter 194 or 205;~~
  - ~~(d) Aging services under KRS Chapter 205, 209, 216, or 273;~~
  - ~~(e) Vocational rehabilitation under KRS 151B or 157; or~~
  - ~~(f) Blind industries or rehabilitation under KRS Chapter 151B or 163; and~~
- (14) *"Delivery area" means the same as defined in Section 2 of this Act; and* ~~["Human service transportation delivery area" means one (1) of the regions established by the Transportation Cabinet for the purpose of providing human service transportation delivery in that region]~~
- (15) *"Broker" means the same as defined in Section 2 of this Act.*

Section 13. KRS 96A.095 is amended to read as follows:

- (1) The Transportation Cabinet may receive and accept from the Commonwealth or any of its agencies, including the Cabinet for Families and Children, the Cabinet for Health Services, and the Cabinet for Workforce Development, and from federal agencies appropriations or grants to promote, develop, and provide capital and operating subsidies for mass transit services and human service transportation delivery in Kentucky, and to receive and accept aid or contributions from any source of either money, property, labor, or other things of value to promote mass transit services. Subject to the provisions of Section 230 of the Constitution of the Commonwealth of Kentucky, any of these funds, property, or things of value received by the Transportation Cabinet may be given directly to any of the following entities in order to accomplish the purposes of this section:
  - (a) A local transit authority as created under this chapter;

- (b) A city;
  - (c) A county;
  - (d) Other public mass transit providers;
  - (e) A nonprofit or public mass transit provider operating under 49 U.S.C. sec. 5310 or 5311; or
  - (f) An entity providing human service transportation delivery.
- (2) The Transportation Cabinet is authorized and directed to apply for any available federal funds for operating subsidies, either on a matching basis or otherwise and to make any of these funds received available to any of the following entities in order to accomplish the purposes of this section:
- (a) A local transit authority as created under this chapter;
  - (b) A city;
  - (c) A county;
  - (d) Other public mass transit providers;
  - (e) A nonprofit or public mass transit provider operating under 49 U.S.C. sec. 5310 or 5311; or
  - (f) An entity promoting or providing transit services such as safety, planning, research, coordination, or training activities.

In those cases where federal laws or regulations preclude the Transportation Cabinet from direct application for this type of federal funds, the cabinet is authorized and directed to provide assistance to any of the entities listed in this subsection as necessary to enable it to apply for and obtain this type of federal funds in order to accomplish the purposes of this section.

- (3) The Transportation Cabinet is authorized to assist cities and counties in the formation of local transit authorities in conformance with this chapter, but nothing in this chapter shall be construed as preventing the Transportation Cabinet from providing~~[- such]~~ assistance as authorized in this chapter to cities or counties where local transit authorities do not exist.
- (4) The Transportation Cabinet is authorized to contract, in accordance with the provisions of KRS ~~Chapters~~**[Chapter]** 45A **and 281**, with a~~[- transportation provider or]~~ broker to provide human **service**~~[services]~~ transportation delivery within a specific~~[- human service transportation]~~ delivery area.

~~[(5) The Transportation Cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to carry out the provisions of this section. The administrative regulations shall include, but not be limited to, the following:~~

- ~~(a) Establishment of the human service transportation delivery areas, including the counties in each area;~~
- ~~(b) Safety and other physical operating requirements for all mass transit operations and human service transportation deliveries;~~
- ~~(c) The minimum conditions and requirements of a subcontract between the Transportation Cabinet's human service transportation provider or broker contractor and an entity providing the means of the human services transportation;~~
- ~~(d) Compliance with the requirements of the United States Federal Transit Administration; and~~
- ~~(e) A mechanism for ensuring that each human services transportation provider contractor or subcontractor:~~
  - ~~1. Has appropriate operating authority issued under KRS Chapter 281;~~
  - ~~2. Is a transit authority operating under the provisions of KRS Chapter 96A; or~~
  - ~~3. Has been approved by the Transportation Cabinet to operate under the provisions of 49 U.S.C. sec. 5310 or 5311.~~

- ~~(6) All willing providers or entities who meet the applicable requirements of subsection (5) of this section shall be provided by the broker with an application for enrollment as a subcontractor for the human service transportation delivery programs.]~~

Section 14. The Transportation Cabinet shall conduct a study of the formulas used to calculate capitated rates by delivery area. The cabinet shall also review rate information collected from brokers and subcontractors since the inception of the human service transportation delivery program, as well as capitated rate need requests brokers have submitted to the cabinet. The cabinet shall report its findings to the Interim Joint Committee on Transportation through the Legislative Research Commission no later than July 1, 2001. The findings of the study shall be used to statutorily create a capitated rate formula governing the human service transportation delivery program.

Section 15. All current contracts between the cabinet and each broker may remain in force until the contractual expiration date except as provided in this section. All current contracts between the cabinet and each broker shall expire not later than July 1, 2001. The cabinet shall execute new contracts with all brokers for all delivery areas under the provisions of this Act not later than July 1, 2001.

Section 16. The provisions of subsections (1), (2), and (3) of Section 7 of this Act shall be promulgated into administrative regulations under KRS Chapter 13A not later than thirty (30) days after the effective date of this Act. The provisions of subsection (4) of Section 7 of this Act shall become effective March 1, 2001.

Approved April 6, 2000

## CHAPTER 347

(HB 542)

AN ACT relating to motor vehicle licensing.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

- (1) *Any owner of a motor vehicle required to be registered under the provisions of KRS 186.050(1) or (3)(a), except taxicabs, airport limousines, and U-Drive-Its, may in addition to registration under KRS 186.050(1) or (3)(a) obtain a five (5) year Kentucky Law Enforcement Memorial license plate. Application for a Kentucky Law Enforcement Memorial license plate shall be taken to the county clerk and transmitted to the Transportation Cabinet on or before September 1 preceding the year in which the license plate or renewal thereof is to be issued. The application shall include payment of a fifty dollar (\$50) registration fee. In addition, at the time of the application, and with each subsequent annual renewal, a ten dollar (\$10) fee shall be collected and paid to the Kentucky Law Enforcement Memorial Foundation, Inc., with the funds to be used for the erection and maintenance of a memorial for Kentucky peace officers killed in the line of duty, and for charitable and educational purposes. The application and fee shall be immediately forwarded to the cabinet.*
- (2) *The Kentucky Law Enforcement Memorial Foundation, Inc., shall develop and submit a design for a Kentucky Law Enforcement Memorial license plate to the cabinet for approval. In addition to suitable language and images identifying the plate as honoring Kentucky peace officers killed in the line of duty, the name "Kentucky", and the expiration date of the plate, the cabinet may use any other combination of letters or numerals needed in the design of the plate, or the application for the Kentucky Law Enforcement Memorial license plate may be combined with a request that the plate be a personalized plate. The cabinet shall receive a minimum of nine hundred (900) applications before it shall be required to print the license plate.*
- (3) *The cabinet shall send the Kentucky Law Enforcement Memorial license plate to the county clerk in the county in which the applicant is required to register the applicant's motor vehicle. The clerk shall issue the Kentucky Law Enforcement Memorial license plate and receive fifteen dollars (\$15), of which three dollars (\$3) shall constitute the clerk's fee and twelve dollars (\$12) shall constitute the cabinet's fee which includes the fifty cents (\$0.50) fee to reflectorize the plate under KRS 186.240(2)(c). Annually thereafter during the applicant's birth month, the clerk shall issue a decal to renew the vehicle's registration upon application as provided in subsection (1) of this section, and upon payment of twenty-five dollars (\$25), three dollars (\$3) of which shall constitute the clerk's fee, twelve dollars (\$12) shall constitute the cabinet's fee which includes the fifty cents (\$0.50) fee to reflectorize the plate under KRS 186.240(2)(c), and ten dollars (\$10) shall be paid to the Kentucky Law Enforcement Memorial Foundation, Inc. under subsection (1) of this section.*
- (4) (a) *Upon the sale, transfer, or termination of a lease of a vehicle bearing the Kentucky Law Enforcement Memorial license plate, the owner or lessee shall remove the plate and return it and the certificate of title and registration to the county clerk. The county clerk shall issue a regular license*

*plate and certificate of title and registration upon payment of a twelve dollar (\$12) fee to the cabinet which includes the fifty cents (\$0.50) fee to reflectorize the plate under KRS 186.240(2)(c), and payment of a three dollar (\$3) fee to the county clerk.*

- (b) *When the plate has been presented to the county clerk, the clerk shall reissue it upon payment to the clerk of a two dollar (\$2) fee, for use on any other vehicle of the same classification and category owned by the same person purchasing the plate for the current licensing period. The license plate and decal on the other vehicle shall be turned into the county clerk, who shall forward the license plate to the cabinet.*
- (5) *If the Kentucky Law Enforcement Memorial license plate deteriorates, and if the person has not transferred the vehicle during the current licensing period, the person may obtain a regular license plate free of charge.*

Approved April 6, 2000

## CHAPTER 348

(HB 555)

AN ACT relating to fire districts.

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

Section 1. KRS 75.031 is amended to read as follows:

- (1) (a) Upon creation of a fire protection district or a volunteer fire department district as provided in KRS 75.010, the affairs of the district shall be conducted by the board of trustees consisting of seven (7) members, four (4) to be elected by the members of the district as hereinafter set out and three (3) to be appointed by the county judge/executive. Two (2) members of the board of trustees shall be elected by the members of the firefighters of the district and shall be members of the district. No more than one (1) of the two (2) firefighter trustees may be an employee of the fire protection district or volunteer fire department district. Two (2) members of the board of trustees shall be property owners who own real or personal property which is subject to the fire protection tax pursuant to KRS 75.040, who personally reside in the district, and who are not active firefighters and shall be elected by the property owners of the district. ***Property owners voting to select representatives to the board of trustees shall have attained the age of eighteen (18)***~~*with the same qualifications*~~. The county judge/executive of the county in which the greater part of the district is located shall, with the approval of the fiscal court, appoint three (3) members of the board of trustees. In counties containing a city of the first class, trustees appointed by the county judge/executive to serve in volunteer fire prevention districts shall reside within the boundaries of that county. At the first election held after the district is formed, one (1) firefighter shall be elected to serve on the board of trustees for a period of one (1) year and one (1) for a period of three (3) years, and one (1) nonfirefighter property owner shall be elected to serve on the board of trustees for a period of two (2) years and one (1) for a period of four (4) years. On the expiration of the respective terms, the successor to each shall have the same qualifications as his ***or her*** predecessor and shall be elected for a term of four (4) years. The original appointed members of the board of trustees shall be appointed for terms of one (1), two (2), and three (3) years respectively. On the expiration of the respective terms, the successors to each shall be appointed for a term of three (3) years. In the event of a vacancy in the term of an appointed or elected trustee, the county judge/executive shall appoint with the approval of the fiscal court a trustee for the remainder of the term.
- (b) An appointed trustee may be removed from office as provided by KRS 65.007.
- (c) No person shall be an elected trustee who, at the time of his election, is not a citizen of Kentucky and has not attained the age of twenty-one (21).
- (d) Unless otherwise provided by law, an elected firefighter trustee may be removed from office by the county judge/executive of the county in which the greater part of the district is located after a hearing with notice as required by KRS Chapter 424, for inefficiency, neglect of duty, malfeasance or conflict of interest. The hearing shall be initiated and chaired by the county judge/executive, who shall prepare a written statement setting forth the reasons for removal. The trustee to be removed shall be notified of his proposed removal and the reasons for the proposed removal by registered mail sent to his last known

address at least ten (10) days prior to the hearing. The person proposed to be removed may employ counsel to represent him. A record of the hearing shall be made by the county judge/executive.

- (e) The removal of an elected firefighter trustee of a fire protection district shall be subject to the approval of the fiscal court of the county in which the greater part of the district is located.
  - (f) An elected firefighter trustee removed pursuant to paragraphs (c) and (d) of this subsection may appeal, within ten (10) days of the rendering of the decision of the fiscal court, to the Circuit Court of the county in which the greater part of the district is located. The scope of the appeal shall be limited to whether the county judge/executive or the fiscal court abused their discretion in removing the trustee.
- (2) The elective offices of members of the board of trustees shall be filled by an election to be held once each year on the fourth Saturday of June between the hours of 11:00 a.m. and 2:00 p.m. The polls shall be located at the principal fire house in the district. The date, time, and place of the election shall be advertised in accordance with KRS 424.120. This notice shall be advertised at least thirty (30) days prior to the election date and shall include the names and addresses of the candidates to be voted on for each position of trustee. In lieu of the published notice for the election of the firefighter trustees, written notice containing the information required to be advertised may be sent by first-class mail to each member of the firefighters of the fire protection district or volunteer fire department district, addressed to the firefighter at his residence, at least thirty (30) days prior to the election date. The nominations for candidates for trustees both representing the firefighters and the property owners residing in the district shall be made in accordance with the bylaws of the department. The terms of the three (3) trustees appointed by the county judge/executive shall start at the same time as the terms of the elected trustees. On or before the beginning of the second fiscal or calendar year, depending on which basis the fire protection or volunteer fire department district is being operated, after June 16, 1966, all departments organized prior to June 16, 1966, shall increase their boards of trustees from three (3) to seven (7) members and elect the elective members in the manner set forth herein.
- (3) The trustees shall elect from their number a chairman, a secretary and a treasurer, the latter of whom shall give bond in ~~an[such]~~ amount as shall be determined by the county judge/executive of the county in which the greater part of the fire protection district is located, conditioned upon the faithful discharge of the duties of his office, and the faithful accounting for all funds which may come into his ~~or her~~ possession as ~~such~~ treasurer. The premiums on ~~the[such]~~ bonds shall be paid out of the funds of the district.

**Approved April 6, 2000**

## **CHAPTER 349**

**(HB 564)**

AN ACT relating to immunizations.

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

Section 1. KRS 214.034 is amended to read as follows:

Except as otherwise provided in KRS 214.036:

- (1) All parents, guardians, and other persons having care, custody, or control of any child shall have the child immunized against diphtheria, tetanus, poliomyelitis, pertussis, measles, rubella, mumps, hepatitis B, and haemophilis influenzae disease in accordance with testing and immunization schedules established by regulations of the Cabinet for Health Services. Additional immunizations may be required by the Cabinet for Health Services through the promulgation of an administrative regulation pursuant to KRS Chapter 13A if recommended by the United States Public Health Service or the American Academy of Pediatrics. All parents, guardians, and other persons having care, custody, or control of any child shall also have any child found to be infected with tuberculosis examined and treated according to administrative regulations of the Cabinet for Health Services promulgated under KRS Chapter 13A. The persons shall also have booster immunizations administered to the child in accordance with the regulations of the Cabinet for Health Services.
- (2) A local health department may, with the approval of the Department of Public Health, require all first-time enrollees in a public or private school within the health department's jurisdiction to be tested for tuberculosis prior to entering school. Following the first year of school, upon an epidemiological determination made by the state or local health officer in accordance with administrative regulations promulgated by the Cabinet for Health Services, all parents, guardians, and other persons having care, custody, or control of any child shall

have the child tested for tuberculosis, and shall have any child found to be infected with tuberculosis examined and treated according to administrative regulations of the Cabinet for Health Services. Nothing in this section shall be construed to require the testing for tuberculosis of any child whose parent or guardian is opposed to such testing, and who objects by a written sworn statement to the testing for tuberculosis of the child on religious grounds. However, in a suspected case of tuberculosis, a local health department may require testing of this child.

- (3) All public or private primary or secondary schools, and preschool programs shall require a current immunization certificate for any child enrolled as a regular attendee, as provided by administrative regulation of the Cabinet for Health Services, promulgated under KRS Chapter 13A, to be on file within two (2) weeks of the child's attendance.
- (4) *All public or private primary schools shall require a current immunization certificate for hepatitis B for any child enrolled as a regular attendee in the sixth grade, as provided by administrative regulation of the Cabinet for Health Services, promulgated under KRS Chapter 13A, to be on file within two (2) weeks of the child's attendance. This provision shall sunset following the 2008-2009 school year unless otherwise authorized by the General Assembly.*
- (5) For each child cared for in a day-care center, certified family child-care home, or any other licensed facility which cares for children, a current immunization certificate, as provided by administrative regulation of the Cabinet for Health Services, promulgated under KRS Chapter 13A, shall be on file in the center, home, or facility within thirty (30) days of entrance into the program or admission to the facility.
- ~~(6)-(5)}~~ Any forms relating to exemption from immunization requirements shall be available at public or private primary or secondary schools, preschool programs, day-care centers, certified family child-care homes, or other licensed facilities which care for children.

**Approved April 6, 2000**

## CHAPTER 350

**(HB 593)**

AN ACT relating to Tobacco Master Settlement Agreement compliance.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "consent order" means the consent order of December 21, 1998 agreed to in Commonwealth of Kentucky v. Philip Morris Inc. et al., Docket Number 98-CI-01579, Franklin Circuit Court.*
- (2) *There is created the Tobacco Master Settlement Agreement Compliance Advisory Board in the Department of Law. The board shall be composed of six (6) members as follows:*
  - (a) *The Attorney General, or the Attorney General's designee;*
  - (b) *The secretary of the Cabinet for Health Services, or the secretary's designee;*
  - (c) *The Commissioner of Agriculture, or the commissioner's designee;*
  - (d) *The secretary of the Public Protection and Regulation Cabinet, or the secretary's designee; and*
  - (e) *Two (2) citizens at large appointed by the Attorney General.*
- (3) *The citizen members of the board shall serve for terms of one (1) year and until their successors are appointed. The citizen members shall be eligible for successive terms on the board.*
- (4) *The board shall annually elect a member to serve as its chair and shall meet at least quarterly on a date set by the board. Board members shall be reimbursed for necessary expenses incurred in serving on the board.*
- (5) *The board may adopt rules governing the conduct of its meetings, the creation of meeting agendas, and other procedural matters it deems necessary. The board may adopt reporting forms, which shall be developed in consultation with participating agencies.*
- (6) *The Office of the Attorney General shall:*

- (a) *Enter into a memorandum of agreement with the Department of Public Health of the Cabinet for Health Services, the Alcoholic Beverage Control in the Public Protection and Regulation Cabinet, and the Department of Agriculture to identify and report possible violations of the consent order;*
  - (b) *Attempt to secure funding under the master settlement agreement to reimburse the agencies specified in paragraph (a) of this subsection for any compliance activity that they perform; and*
  - (c) *Provide necessary funding and staff for administrative expenses related to the operation of the board. The board may request assistance from other state agencies.*
- (7) *The Tobacco Master Settlement Agreement Compliance Advisory Board shall:*
- (a) *Identify activities for which training is required for personnel of the state agencies specified in paragraph (a) of subsection (6) of this section that are responsible for identifying and reporting possible violations of the consent order;*
  - (b) *Determine eligible compliance training costs and seek reimbursement for the costs; and*
  - (c) *Notify the appropriate tobacco manufacturer, in writing, of any alleged violation of the consent order and request a response and, if applicable, a corrective action plan within thirty (30) days from the date of the notice. If the manufacturer fails to respond or to satisfactorily resolve the matter, the board shall review the matter at its next meeting and may refer the matter to the Office of the Attorney General for enforcement action, if warranted.*

Section 2. The General Assembly confirms Department of Law Administrative Order 99-01, signed by the Attorney General on February 3, 1999, except for Section 12, which establishes June 30, 2000 as the expiration date of the Order unless extended by subsequent Administrative Order.

**Approved April 6, 2000**

## **CHAPTER 351**

**(HB 643)**

AN ACT relating to hazardous waste.

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

Section 1. KRS 224.46-580 is amended to read as follows:

- (1) The General Assembly declares that it is the purpose of this section to promote the development of statewide programs, under the responsibility of a single agency, which are intended to protect the health of the citizens and the environment of the Commonwealth from present and future threats associated with the management of hazardous wastes and the release of toxic chemicals regulated under Title III, Section 313 of the Superfund Amendments and Reauthorization Act of 1986, including disposal, treatment, recycling, storage, and transportation. The intent of the General Assembly is to add to and coordinate, and not replace, existing efforts and responsibilities in the areas of hazardous waste management, toxic chemical manufacture, processing, or other use, and to leave the primary burden and responsibility for hazardous waste and toxic chemical reduction on private industry; and further to finance assistance and coordination by imposing assessments on the generation of hazardous waste. The assessments are intended to produce a reduction in waste generated; to promote the use of new techniques in recycling, treatment, and alternatives other than land disposal; and to place the burden of financing additional hazardous waste management activities necessarily undertaken by state agencies on the users of those products associated with the generation of hazardous waste. The General Assembly further finds that Kentucky's industries need assistance in developing and implementing pollution prevention goals and that a fund should be established to provide technical and financial assistance to those industries.
- (2) The Natural Resources and Environmental Protection Cabinet is given the authority to administer the provisions and programs of this section and the responsibility to achieve the purposes of this section.
- (3) In addition to all specific responsibilities contained elsewhere in this chapter, the cabinet shall:
  - (a) Respond effectively and in a timely manner to emergencies created by the release of hazardous substances, as defined in KRS 224.01-400, into the environment. The cabinet shall provide for adequate containment and removal of the hazardous substances in order that the threat of a release or actual



release of the substance may be abated and resultant harm to the environment minimized. The provisions of KRS 45A.695 to 45A.725 may be suspended by the cabinet if necessary to respond to an environmental emergency.

- (b) Provide for post-closure monitoring and maintenance of hazardous waste disposal sites upon termination of post-closure monitoring and maintenance responsibilities by persons permitted to operate the facility pursuant to this chapter.
  - (c) Identify, investigate, classify, contain, or clean up any release, threatened release, or disposal of a hazardous substance where responsible parties are economically or otherwise unavailable to properly address the problem and the problem represents an imminent danger to the health of the citizens and the environment of the Commonwealth.
- (4) The cabinet shall have the authority to finance the nonfederal share of the cost for clean up of sites under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Public Law 96-510).
  - (5) The cabinet shall recover, when possible, actual and necessary expenditures incurred in carrying out the duties under this section. Any expenditures recovered shall be placed in the hazardous waste management fund.
  - (6) It is the expressed purpose of this section to accomplish effective hazardous waste and toxic chemical management that results in a reduction of the generation of hazardous wastes and the release of toxic chemicals within the Commonwealth; further, it is a purpose of this chapter to allocate a portion of the cost of administering necessary governmental programs related to hazardous waste and toxic chemical management to those industries whose products are reasonably related to the generation of hazardous waste.
  - (7) There is hereby imposed upon every person engaged within this state in the generation of hazardous waste an annual hazardous waste assessment to be determined pursuant to this section according to the quantity by weight of hazardous waste generated, except that no assessment shall be levied against generators for any quantity of "special wastes," waste oil, or spent material from air pollution control devices controlling emissions from coke manufacturing facilities. The assessment shall not be imposed upon any person for any quantities of hazardous waste generated by others for which that person is a secondary handler that stores, processes, or reclaims the waste. The assessment shall be reported and paid to the Natural Resources and Environmental Protection Cabinet for the generation of hazardous waste on an annual basis on January 1 of each year. The payment shall be accompanied by a report or return in a form that the cabinet may prescribe. If a federal law is enacted which accomplishes or purports to accomplish the purposes set forth in this section and which levies an assessment or tax upon any business assessed pursuant to this section, the amount of the assessment to be levied upon the business under this section shall be reduced by the amount of the federal assessment or tax upon the business. The reduction shall only be authorized when funds raised by the federal assessment or tax are made available to the state for any of the activities to be funded under this section. If federal moneys are available to carry out the duties imposed by subsection (3) of this section, the assessment shall cease to be levied and collected until such time as federal moneys are no longer available to the Commonwealth for these purposes. The assessment shall be charged against generators of hazardous waste until June 30, ~~2002~~~~[2000]~~. After this date, no further hazardous waste management assessment shall be charged against generators.
  - (8) The assessment on generators shall be one and two-tenths cents (\$0.012) per pound if the waste is liquid, or two-tenths of a cent (\$0.002) per pound if the waste is solid.
    - (a) Hazardous waste that is injected into a permitted underground injection well shall be assessed on a dry weight basis;
    - (b) Hazardous waste treated, detoxified, solidified, neutralized, recycled, incinerated, or disposed of on-site shall be assessed at one-half (1/2) of the appropriate rate, except for recycled waste used in the steel manufacturing process which shall be exempt; and
    - (c) Waste that is subject to regulation under Section 402 or 307B of the Federal Clean Water Act shall be exempt.
  - (9) Except for waste brought into the state by a company to an affiliated manufacturing facility of the company receiving the waste, any person who transports hazardous waste into the state for land disposal or treatment which is generated outside of the state shall pay an assessment to the hazardous waste facility which first receives the waste for storage, treatment, or land disposal. The assessment rate shall be identical to the rate

described in subsection (8) of this section. The facility shall remit the assessment to the cabinet on an annual basis on January 1 of each year. The payment shall be accompanied by a return the cabinet shall prescribe.

- (10) If any generator or hazardous waste facility subject to the provisions of subsection (8) or (9) of this section fails or refuses to file a return or furnish any information requested in writing by the cabinet, the cabinet may, from any information in its possession, make an estimate and issue an assessment against the generator or hazardous waste facility and add a penalty of ten percent (10%) of the amount of the assessment so determined. This penalty shall be in addition to all other applicable penalties in this chapter.
- (11) If any generator or hazardous waste facility subject to the provisions of subsection (8) or (9) of this section fails to make and file a return required by this chapter on or before the due date of the return or the due date as extended by the cabinet, unless it is shown to the satisfaction of the cabinet, that the failure is due to reasonable cause, five percent (5%) of the assessment found to be due by the cabinet shall be added to the assessment for each thirty (30) days or fraction thereof elapsing between the due date of the return and the date on which it is filed, but the total penalty shall not exceed twenty-five percent (25%) of the assessment.
- (12) If the assessment imposed by this chapter, whether assessed by the cabinet, or the generator, or any installment or portion of the assessment is not paid on or before the date prescribed for its payment, there shall be collected, as a part of the assessment, interest upon the unpaid amount at the rate of eight percent (8%) per annum from the date prescribed for its payment until payment is actually made to the cabinet.
- (13) There is hereby created within the State Treasury a trust and agency fund which shall not lapse to be known as the hazardous waste management fund. The fund shall be deposited in an interest-bearing account. The cabinet shall be responsible for collecting and receiving funds as provided in this section, and all such assessments collected or received by the State Treasury shall be deposited in the hazardous waste management fund. All interest earned on the money deposited in the fund shall be deposited to the fund. When the State Treasurer certifies to the cabinet that the uncommitted balance of the hazardous waste management fund exceeds six million dollars (\$6,000,000), assessments shall not be collected until the State Treasurer certifies to the cabinet that the balance in the hazardous waste management fund is less than three million dollars (\$3,000,000). The implementation of the cap on the fund shall be suspended from July 13, 1990, until July 1, 1991. In addition, for assessments paid after July 1, 1991, the cabinet shall refund or grant a credit against the next assessment to come due, on a pro-rated basis, any money collected in one (1) year in excess of the cap.
- (14) There is hereby created within the State Treasury a trust and agency account which shall not lapse to be known as the pollution prevention fund. The fund shall be placed in an interest-bearing account. The fund shall be administered by the Center for Pollution Prevention. The cabinet shall remit to the fund each fiscal year twenty percent (20%) of the funds received by the hazardous waste management fund subject to the enacted budget bill. The cabinet shall provide to the center estimates of the amount of the hazardous waste assessment expected to be collected during each upcoming fiscal year.
- (15) Upon request of the secretary, moneys accumulated in the hazardous waste management fund shall be released in amounts necessary to accomplish the performance of the duties imposed by subsection (3) of this section. However, moneys from the fund shall not be used when federal moneys are available to carry out these duties, except when immediate action is required to protect public health or the environment, in which case the cabinet shall actively pursue reimbursement of the fund by any available federal moneys.
- (16) If any person responsible for a release or threatened release of a hazardous substance fails to take response actions or to make reasonable progress in completing response actions ordered by the cabinet, the cabinet may bring an action to compel performance or may take appropriate response actions and order the responsible person to reimburse the cabinet for the actual costs incurred by the cabinet.
- (17) If disposal activities have occurred at a hazardous waste site, the cabinet shall record in the office of the county clerk in the county in which a waste site is situated a notice containing a legal description of the property that discloses to any potential transferee that the land was used to dispose hazardous waste and that further information on the hazardous waste site may be obtained from the cabinet.
- (18) No person shall affect the integrity of the final cover, liners, or any other components of any containment system after closure of a hazardous waste site on or in which hazardous waste remains without prior written approval of the cabinet.

**CHAPTER 352****(HB 660)**

AN ACT relating to sales tax.

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

Section 1. KRS 139.470 is amended to read as follows:

There are excluded from the computation of the amount of taxes imposed by this chapter:

- (1) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property the gross receipts from the sale of which, or the storage, use, or other consumption of which, this state is prohibited from taxing under the Constitution or laws of the United States, or under the Constitution of this state;
- (2) Gross receipts from sales of, and the storage, use, or other consumption in this state of:
  - (a) Nonreturnable and returnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; and
  - (b) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling;

As used in this section the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers";

- (3) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property used for the performance of a lump-sum, fixed-fee contract of public works executed prior to February 5, 1960;
- (4) Gross receipts from occasional sales of tangible personal property and the storage, use, or other consumption in this state of tangible personal property, the transfer of which to the purchaser is an occasional sale;
- (5) Gross receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier;
- (6) Gross receipts from sales of tangible personal property sold through coin-operated bulk vending machines, if the sale amounts to fifty cents (\$0.50) or less, if the retailer is primarily engaged in making the sales and maintains records satisfactory to the cabinet. As used in this subsection, "bulk vending machine" means a vending machine containing unsorted merchandise which, upon insertion of a coin, dispenses the same in approximately equal portions, at random and without selection by the customer;
- (7) Gross receipts from sales to any cabinet, department, bureau, commission, board, or other statutory or constitutional agency of the state and gross receipts from sales to counties, cities, or special districts as defined in KRS 65.005. This exemption shall apply only to purchases of property or services for use solely in the government function. A purchaser not qualifying as a governmental agency or unit shall not be entitled to the exemption even though the purchaser may be the recipient of public funds or grants;
- (8)
  - (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky residents for use in heating, water heating, cooking, lighting, and other residential uses. As used in this subsection, "fuel" shall include, but not be limited to, natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood. Determinations of eligibility for the exemption shall be made by the Revenue Cabinet;
  - (b) In making the determinations of eligibility, the cabinet shall exempt from taxation all gross receipts derived from sales:
    1. Classified as "residential" by a utility company as defined by applicable tariffs filed with and accepted by the Public Service Commission;
    2. Classified as "residential" by a municipally-owned electric distributor which purchases its power at wholesale from the Tennessee Valley Authority;

3. Classified as "residential" by the governing body of a municipally-owned electric distributor which does not purchase its power from the Tennessee Valley Authority, if the "residential" classification is reasonably consistent with the definitions of "residential" contained in tariff filings accepted and approved by the Public Service Commission with respect to utilities which are subject to Public Service Commission regulation.

If the service is classified as residential, use other than for "residential" purposes by the customer shall not negate the exemption;

- (c) The exemption shall not apply if charges for sewer service, water, and fuel are billed to an owner or operator of a multi-unit residential rental facility or mobile home and recreational vehicle park other than residential classification; and
  - (d) The exemption shall apply also to residential property which may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight (98) years;
- (9) Any rate increase for school taxes and any other charges or surcharges added to the total amount of a residential telephone bill;
  - (10) Gross receipts from sales to an out-of-state agency, organization, or institution exempt from sales and use tax in its state of residence when that agency, organization, or institution gives proof of its tax-exempt status to the seller and the seller maintains a file of the proof;
  - (11) Gross receipts derived from the sale of, and the storage, use, or other consumption in this state of, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property which will be for sale are not subject to the sales or use tax. The property shall be regarded as having been purchased for resale. For purposes of this subsection, a manufacturer or industrial processor includes an individual or business entity that performs only part of the manufacturing or industrial processing activity and the person or business entity need not take title to tangible personal property that is incorporated into, or becomes the product of, the activity.
    - (a) Industrial processing includes refining, extraction of petroleum and natural gas, mining, quarrying, fabricating, and industrial assembling. As defined herein, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property which will be for sale shall mean:
      1. Materials which enter into and become an ingredient or component part of the manufactured product.
      2. Other tangible personal property which is directly used in manufacturing or industrial processing, if the property has a useful life of less than one (1) year. Specifically these items are categorized as follows:
        - a. Materials. This refers to the raw materials which become an ingredient or component part of supplies or industrial tools exempt under subdivisions b. and c. below.
        - b. Supplies. This category includes supplies such as lubricating and compounding oils, grease, machine waste, abrasives, chemicals, solvents, fluxes, anodes, filtering materials, fire brick, catalysts, dyes, refrigerants, explosives, etc. The supplies indicated above need not come in direct contact with a manufactured product to be exempt. "Supplies" does not include repair, replacement, or spare parts of any kind.
        - c. Industrial tools. This group is limited to hand tools such as jigs, dies, drills, cutters, rolls, reamers, chucks, saws, spray guns, etc., and to tools attached to a machine such as molds, grinding balls, grinding wheels, dies, bits, cutting blades, etc. Normally, for industrial tools to be considered directly used in manufacturing, they shall come into direct contact with the product being manufactured.
    3. Materials and supplies that are not reusable in the same manufacturing process at the completion of a single manufacturing cycle, excluding repair, replacement, or spare parts of any kind. A single manufacturing cycle shall be considered to be the period elapsing from the time the raw materials enter into the manufacturing process until the finished product emerges at the end of the manufacturing process.

- (b) It shall be noted that in none of the three (3) categories is any exemption provided for repair, replacement, or spare parts. Repair, replacement, or spare parts shall not be considered to be materials, supplies, or industrial tools directly used in manufacturing or industrial processing. "Repair, replacement, or spare parts" shall have the same meaning as set forth in KRS 139.170;
- (12) Any water use fee paid or passed through to the Kentucky River Authority by facilities using water from the Kentucky River basin to the Kentucky River Authority in accordance with KRS 151.700 to 151.730 and administrative regulations promulgated by the authority;
- (13) Gross receipts from the sale of newspaper inserts or catalogs purchased for storage, use, or other consumption outside this state and delivered by the seller's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the buyer or seller or an agent or representative of the buyer or seller, or whether the F.O.B. is seller's shipping point or buyer's destination.
  - (a) As used in this subsection:
    - 1. "Catalogs" means tangible personal property that is printed to the special order of the purchaser and composed substantially of information regarding goods and services offered for sale; and
    - 2. "Newspaper inserts" means printed materials that are placed in or distributed with a newspaper of general circulation.
  - (b) The seller shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the cabinet;~~[-and]~~
- (14) Gross receipts from the sale of water used in the raising of equine as a business; *and*
- (15) *Gross receipts from the sale of metal retail fixtures manufactured in this state and purchased for storage, use, or other consumption outside this state and delivered by the seller's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the buyer or seller or an agent or representative of the buyer or seller, or whether the F.O.B. is seller's shipping point or buyer's destination.*
  - (a) *As used in this subsection, "metal retail fixtures" means check stands and belted and nonbelted checkout counters, whether made in bulk or pursuant to specific customer specifications, that are to be used directly by the purchaser or to be distributed by the purchaser.*
  - (b) *The seller shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the cabinet.*

Section 2. The provisions of this Act shall apply to sales of metal retail fixtures made on or after August 1, 2000.

Approved April 6, 2000

## CHAPTER 353

(HB 693)

AN ACT relating to tourism signage.

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

Section 1. KRS 177.076 is amended to read as follows:

As used in KRS 177.076 to 177.079, unless the context requires otherwise:

- (1) "Historical site" means a cultural or educational site that is officially listed in the National Register of Historical ~~Places~~~~[Sites]~~;
- (2) "Fully controlled access highway" means a limited access highway, an interstate highway, and a parkway;
- (3) "Limited supplemental guide sign" means an official highway guide sign that is erected by the Department of Highways to give directions, furnish advance notice, show mileage or exit indicators, and indicate access to historical sites or to scenic, cultural, and recreational tourist areas or attractions and that conforms to the design standards and requirements set forth in the Manual on Uniform Traffic Control Devices (MUTCD);

- (4) "Post-interchange guide sign" means an official highway sign that may be used in conjunction with a limited supplemental guide sign and lists the name of a tourist area or attraction or an historical site and the distance from an interstate to a tourist area or attraction or an historical site. A post-interchange guide sign shall conform to the design standards and requirements set forth in the Manual on Uniform Traffic Control Devices (MUTCD);
- (5) "Rural area" means an area that does not have sufficient population to be designated as an urban area;
- (6) "Tourist area or attraction" means a cultural, recreational, or entertainment facility, *family entertainment center*, or an area of natural phenomenon or scenic beauty that is suited for outdoor recreation ~~[-or-]~~ that receives a major portion of its income or visitors during the normal business season from motorists not residing in the immediate area of the tourist area or attraction. "Tourist area or attraction" does not include any of the following:
  - (a) Lodging facilities; or
  - (b) Facilities that are primarily devoted to the retail sale of goods, unless the *facilities are a family entertainment center or the* goods are created by individuals at the tourist area or attraction or if the sale of goods is incidental to the tourist area or attraction; *or*
  - (c) *Recreational facilities that do not serve as a likely destination where individuals who are not residents of the state would remain overnight in commercial lodging at or near the tourism area or attraction;*
- (7) *"Family entertainment center" means a facility, other than a stand alone shopping center, that meets all of the following criteria:*
  - (a) *Contains a minimum of fifty thousand (50,000) square feet of building space;*
  - (b) *Is located on property encompassing at least five (5) acres adjacent or complementary to a cultural, recreational, or entertainment facility, or natural recreational area;*
  - (c) *Provides a variety of entertainment and leisure options;*
  - (d) *Contains at least one (1) restaurant and at least two (2) additional venues, including, but not limited to, live entertainment, concert halls, museums, zoos, or other cultural, recreational or leisure activities; and*
  - (e) *Is at a location where sixty percent (60%) of the developed property is devoted to entertainment and food options.*
- (8) "City" means an area with a population of one hundred thousand (100,000) or more designated by the United States Department of Commerce, Bureau of the Census.

Section 2. KRS 177.077 is amended to read as follows:

- (1) No later than February 1, 1999, the commissioner of the Department of Highways shall establish standards, procedures, and forms for the making and approval of applications for a limited supplemental guide sign by the promulgation of administrative regulations in accordance with KRS Chapter 13A.
- (2) The criteria for the approval of a limited supplemental guide sign application for an historical site or for a tourist area or attraction shall be based upon average annual attendance and distance from a fully controlled access highway interchange.
- (3) At a fully controlled access highway interchange in a rural area, the standards for approval shall be the lesser of:
  - (a) Tourist areas and attractions that have an average annual attendance of ten thousand (10,000) visitors and are located within fifty (50) miles of a fully controlled access highway;
  - (b) Tourist areas and attractions that are located within fifty (50) miles of a fully controlled access interchange and have an annual visitation equal to or greater than the average annual daily traffic count of the fully controlled access highway at the interchange from which the attraction is served.
- (4) At a fully controlled access highway interchange in a city, the standards for approval shall be the lesser of:
  - (a) Tourist areas and attractions that have an average annual attendance of seventy-five thousand (75,000) visitors and are located within fifty (50) miles of a fully controlled access highway interchange;

- (b) Tourist areas and attractions that are located within fifty (50) miles of a fully controlled access highway interchange and have an annual visitation equal to the average annual daily traffic count of the fully controlled access highway at the interchange from which the attraction is served.
- (5) Historical sites that are located in either a rural area or a city shall have an average annual attendance of five thousand (5,000) and shall be located within fifty (50) miles from a fully controlled access highway interchange.
- (6) The identification of a tourist area or attraction on a specific service sign pursuant to KRS 177.0736 shall not affect its eligibility for a limited supplemental guide sign.
- (7) Upon receipt of an application, the commissioner of the Department of Highways shall within thirty (30) days provide written notification to the applicant of any hearings pertaining to the application. The commissioner of the Department of Highways shall make a determination on whether to approve the erection of a limited supplemental guide sign within ninety (90) days after the receipt of an application and shall provide written notification to the applicant of his decision.
- (8) Supplemental guide signs, including but not limited to limited supplemental guide signs, erected prior to July 1, 1998, shall not be removed due to the site selection criteria contained in KRS 177.076 to 177.079.

Section 3. KRS 177.078 is amended to read as follows:

- (1) An application from an historical site or from a tourist area or attraction for the erection of a limited supplemental guide sign shall be made to the commissioner of the Department of Highways. The application shall include, but not be limited to:
  - (a) Evidence that demonstrates the average annual attendance;
  - (b) Evidence that the tourist area or attraction is established as a permanent business; and
  - (c) Evidence that the tourist area or attraction has all necessary and proper licenses, that normal business hours shall be maintained, that it is open to the traveling public, and that it provides recreational or educational opportunities.
- (2) ~~An [A non-refundable]~~ application fee of two hundred dollars (\$200) shall be paid to the Department of Highways **by each applicant.**
- (3) Upon approval of the application, the applicant shall pay a fee not to exceed five hundred dollars (\$500) per year for a period of ten (10) years or the total cost of the sign and its installation, amortized for a period of ten (10) years, whichever is less, to the Transportation Cabinet.

**Approved April 6, 2000**

## CHAPTER 354

**(HB 740)**

AN ACT relating to local elections.

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

Section 1. KRS 83A.047 is amended to read as follows:

In a city whose boundaries extend beyond those of a single county, candidates for nomination or election to city office shall be governed by the provisions contained in KRS 83A.045, except that all nomination papers shall be filed with the **county clerk of the county in which the candidate resides** ~~Secretary of State~~ no later than 4 p.m. local time on the day provided for in KRS 83A.045. ***On the day following the candidate filing deadline, each county clerk shall certify the names of all candidates for city office that filed nomination papers with him or her to the clerk of the other county into which the boundaries of the city extend.***

Section 2. KRS 83A.170 is amended to read as follows:

- (1) In any city which has under the provisions of KRS 83A.045 or 83A.050 required nonpartisan city elections, or in any city of the second class operating under the city manager form of government pursuant to KRS 83A.150, no person shall be elected to city office except as provided in this section or as otherwise provided in this chapter relating to nonpartisan elections.

- (2) No person shall be elected to city office without being nominated in the manner provided in this section at a nonpartisan primary election to be held at the time prescribed by KRS Chapters 116 to 121, except as otherwise provided in this chapter. Nonpartisan primary elections shall be conducted by the same officers, chosen and acting in the same manner, with the same rights and duties as in regular elections.
- (3) Each applicant for nomination shall, not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than the last date prescribed by the election law generally for filing notification and declaration forms with the county clerk ~~or the Secretary of State~~ as provided in KRS 83A.047, file a petition of nomination, which shall be in the form prescribed by the State Board of Elections signed by at least two (2) registered voters in the city. Each voter may sign individual petitions equal to the number of offices to be filled. If a voter signs petitions for more candidates than he is authorized, he shall be counted as a petitioner for the candidate whose petition is filed first.
- (4) The county clerk ~~or the Secretary of State~~ shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the county clerk ~~or the Secretary of State~~ shall notify the candidate by certified mail within twenty-four (24) hours of filing.
- (5) Immediately upon expiration of the time for filing petitions, the county clerk shall have published in accordance with KRS Chapter 424 the names of the applicants as they will appear before the voters at the primary.
- (6) Subsection (5) of this section shall not apply if it appears, immediately upon expiration of the time for filing petitions, that there are not more than two (2) applicants for nomination for each city office to be filled, or, when the nominations are for city legislative body members in cities electing legislative body members at large, and there are no more than twice the number of applicants for nomination for the number of offices to be filled. In that case, the applicants for nomination shall thereby be nominated and no drawing for ballot position nor primary election shall be held for that office.
- (7) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk.
- (8) If, before the ballots are printed, any candidate whose petition has been filed in the office of the county clerk ~~or the Secretary of State~~ dies or notifies the clerk ~~or the Secretary of State~~ in writing, signed and properly notarized, that he will not accept the nomination, the clerk shall not cause his name to be printed on the ballot.
- (9) If, after the ballots are printed, any candidate whose name appears thereon shall withdraw pursuant to KRS 118.212 or die,
  - (a) Neither the precinct election officers nor the county board of elections shall tabulate or record the votes cast for the candidate.
  - (b) The county clerk shall provide notices to the precinct election officers who shall see that a notice is conspicuously displayed at the polling place advising voters of the change, and that votes for the candidate shall not be tabulated or recorded. If the county clerk learns of the death or withdrawal at least five (5) days prior to the election and provides the notices required by this subsection and the precinct officers fail to post the notices at the polling place, the officers shall be guilty of a violation.
- (10) Names of applicants for each nomination shall be placed before the voters of the city. The voters shall be instructed to vote for one (1) candidate, except that they shall be instructed to vote for the number of legislative body members to be elected in cities nominating legislative body members at large. No party designation or emblem of any kind nor any sign indicating any applicant's political belief or party affiliation shall be used.
- (11) Persons qualified to vote at a regular election shall be qualified to vote at a nonpartisan primary election and the law applicable to challenges made at a regular election shall be applicable to challenges made at a nonpartisan primary election.
- (12) Votes shall be counted as provided in general election laws, pursuant to KRS Chapters 116 to 121, and the result shall be published as provided in KRS Chapter 424.
- (13) The two (2) applicants receiving the highest number of votes for nomination for each city office shall be nominated; or where the nominations are for city legislative body members in cities electing legislative body members at large, there shall be nominated the number of applicants receiving the highest number of votes equal to twice the number of offices to be filled.



- (14) At the regular election following a nonpartisan primary election, the names of the successful nominees and candidates who have filed a petition of candidacy as provided in this chapter to fill a vacancy shall be placed before the voters.
- (15) The nominee or candidate receiving the greater number of votes cast for each city office shall be elected.
- (16) KRS Chapters 116 to 121 prescribing duties of county clerks and other public officers in the conduct of elections shall be applicable in all respects to nonpartisan city elections, except no election officer or other person within a polling place shall tell or indicate to a voter, by word of mouth or otherwise, the political affiliation of any candidate for city office.

Section 3. KRS 83A.175 is amended to read as follows:

- (1) The election to fill the regular term of a nonpartisan city office shall be conducted in the manner prescribed in KRS 83A.165 when, in a regular election for nonpartisan city office no candidates nominated to an office as provided in KRS 83A.170 are available due to death, incapacity, or withdrawal, or when city legislative body members are to be elected at large and there are fewer nominees than there are offices to be filled, or when a city of the fourth to sixth class has not conducted a primary election pursuant to KRS 83A.045.
- (2) Each candidate shall, not earlier than the first Wednesday after the first Monday in November of the year before the year in which the office will appear on the ballot and not later than the last date prescribed by the election law generally for filing petitions of nomination with the county clerk~~{ or the Secretary of State }~~ as provided in KRS 83A.047, file a petition for candidacy. The petition shall be prescribed by the State Board of Elections and shall be signed by at least two (2) registered voters in the city. Each voter may sign individual petitions equal to the number of offices to be filled. If a voter signs petitions for more candidates than he is authorized, he shall be counted as a petitioner for the candidate whose petition is filed first.
- (3) The county clerk~~{ or the Secretary of State }~~ shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the county clerk~~{ or the Secretary of State }~~ shall notify the candidate by certified mail within twenty-four (24) hours of filing.
- (4) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk.
- (5) If, before the ballots are printed, any candidate whose petition has been filed in the office of the county clerk~~{ or the Secretary of State }~~, dies or notifies the clerk~~{ or the Secretary of State }~~ in writing, signed and properly notarized, that he will not accept the election, the clerk shall not cause his name to be printed on the ballot.
- (6) If, after the ballots are printed, any candidate whose name appears thereon shall withdraw pursuant to KRS 118.212 or die,
  - (a) Neither the precinct election officers nor the county board of elections shall tabulate or record the votes cast for the candidate.
  - (b) The county clerk shall provide notices to the precinct election officers who shall see that a notice is conspicuously displayed at the polling place advising voters of the change, and that votes for the candidate shall not be tabulated or recorded. If the county clerk learns of the death or withdrawal at least five (5) days prior to the election and provides the notices required by this subsection and the precinct officers fail to post the notices at the polling place, the officers shall be guilty of a violation.

Section 4. KRS 118.356 is amended to read as follows:

- (1) Certificates and petitions of nomination shall, in the case of candidates voted for by the state at large ~~or~~<sup>or</sup> by a district greater than one (1) county,~~{ or by a city whose boundaries extend beyond those of a single county, }~~ be filed with the Secretary of State. In the case of candidates voted for by a county or by a district less than a county, they shall be filed with the county clerk. ***In the case of candidates voted for by a city whose boundaries extend beyond those of a single county, they shall be filed with the county clerk of the county in which a candidate resides.*** In the case of candidates for Congress and for General Assembly, they shall be filed with the Secretary of State.
- (2) Certificates of nomination at a primary election held under this chapter shall be filed by the State Board of Elections or the county board of elections, depending upon which one issued the certificate. Certificates and petitions of nomination shall be filed by the candidate or by someone on his behalf.

Section 5. KRS 67.045 is amended to read as follows:

- (1) For the purposes of this section the word "district" shall mean:
  - (a) Justice's of the peace district in counties having a fiscal court composed of the county judge/executive and the justices of the peace;
  - (b) County commissioner's district in counties having a fiscal court composed of the county judge/executive and three (3) county commissioners; or
  - (c) Justice's of the peace district in counties having a fiscal court composed of the county judge/executive and three (3) county commissioners established according to KRS 67.060.
- (2) In counties where the members of the county fiscal court are nominated or elected by districts, the boundaries of those districts shall be drawn so that the districts are compact, contiguous, and the population of each district shall be as nearly equal as is reasonably possible.
- (3) In counties where the fiscal court consists of the county judge/executive and three (3) county commissioners established according to KRS 67.060, the justice of the peace districts shall be coextensive with the three (3) county commissioner districts.
- (4) The fiscal court shall initiate reapportionment proceedings in ~~May~~~~February~~ of the ~~first~~~~second~~ year following the decennial census of the United States. The fiscal court may, at other times, review the district boundaries and shall initiate reapportionment proceedings if the district boundaries are in violation of subsection (2) of this section.
- (5) To initiate a reapportionment proceeding, the fiscal court shall publish notice of the planned reapportionment in accordance with KRS Chapter 424 and appoint three (3) competent citizens of the county over twenty-one (21) years of age, and residing in different districts, and the county clerk as a nonvoting member as commissioners to reapportion the county into not less than three (3) nor more than eight (8) justices' districts in counties having a fiscal court composed of the county judge/executive and the justices of the peace or three (3) commissioner's districts in counties having a fiscal court composed of the county judge/executive and county commissioners. The commissioners, before they proceed to act, shall be sworn to faithfully perform their duties. They shall receive out of the county treasury a reasonable compensation for their services, fixed by the fiscal court.
- (6) The commissioners shall, within sixty (60) days after their appointment, lay off the boundary lines of the districts. They shall file in the office of the county clerk and with each member of the fiscal court a written report, showing the boundary of each district and the estimated population in each. Within sixty (60) days of the receipt of the report, the fiscal court shall consider the report of the commissioners and, in accordance with the provisions of KRS 67.075 to 67.077, adopt or amend the report in establishing the districts. In no event shall districts be reapportioned during the period from thirty (30) days prior to the last date for filing for candidacy for county office as provided in KRS 118.165 and the regular election for candidates for county office.
- (7) Precinct lines shall be redrawn when necessary in accordance with the provisions of KRS 117.055. No precinct shall be in more than one (1) district.
- (8) Within twenty (20) days of the establishment of the districts by the fiscal court, any registered voter of the county may bring an action in the Circuit Court to enforce the provisions of this section. The Circuit Court shall hear the action and, on a finding that the fiscal court has violated the provisions of this section, remand the matter to the fiscal court. The Circuit Court, in its discretion, may allow the prevailing party, other than the fiscal court, a reasonable attorney's fee, to be paid from the county treasury, as part of the costs.
- ~~[(9) The fiscal court of any county which has not reapportioned its districts since the 1980 decennial census of the United States shall initiate reapportionment proceedings within sixty (60) days of July 15, 1982.]~~

**Approved April 6, 2000**

## CHAPTER 355

(HB 742)

AN ACT relating to the purchase of development rights for public parks.

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

Section 1. KRS 67A.160 is amended to read as follows:

The procedure for a referendum authorized by KRS 97.590 shall be as follows:

- (1) A public parks purchase and maintenance program proposal authorized by KRS 97.590 may be submitted to the voters of an urban-county by either a resolution of the legislative body or a petition meeting the requirements of this section. The resolution or petition shall set out the matters specified in KRS 97.590(1). The proposal shall be drafted in such a way that a vote in favor of adoption shall be a vote in favor of the effect or impact of the proposal.
- (2) Petitions shall be signed by registered voters of the urban-county government equal in number to at least ten percent (10%) of the total number of votes cast in the urban-county in the last regular mayoral election of the urban-county government.
- (3) If, not later than ninety (90) days preceding the day established for a regular election, the county clerk receives a resolution adopted by a three-fifths (3/5) vote of the legislative body of the urban-county government requesting that the question be submitted to the voters or determines that a petition submitted in accordance with this section is sufficient, the legal department of the urban-county government shall prepare to place before the voters of the urban-county government at the next regular election the question, which shall appear on the ballot in the following form:

"(     )     FOR RATIFICATION OF (summary of proposed program)

(     )     AGAINST RATIFICATION OF (summary of proposed program)"

The county clerk shall cause to be published not fewer than three (3) times within thirty (30) days of the election, in a newspaper having a general circulation in the territory of the urban-county government, notice of the referendum, the exact language of the proposal, and a map prepared by the urban-county government showing the general location of the properties that may be purchased and the public parks that may be maintained under the program.

- (4) The provisions of general election law shall apply to a referendum conducted under this section. The certificate of the body authorized by law to canvass election returns shall be delivered to the mayor of the urban-county government and the certificate shall be entered upon the records of the urban-county government during the next regular meeting of the urban-county government legislative body. If a proposed program is approved, it shall become effective at the time specified in the proposal, but the effective date shall not be before the first day of January following the election.
- (5) *After complying with the provisions of this section and Section 2 of this Act, a purchase of development rights program authorized by KRS 67A.843 and KRS 67A.845 may include a public parks and maintenance program proposal authorized by KRS 97.590. In the case of a combined proposal, the urban-county government shall place before the voters a single ballot proposal that combines the purchase of development rights proposal and the public parks purchase and maintenance proposal. In that event, the proposal shall specify which tax levy or portion thereof shall provide funding for the purchase of development rights program proposal and which shall provide funding for the purchase of parks and maintenance program.*

Section 2. KRS 67A.847 is amended to read as follows:

The procedure for a referendum authorized by KRS 67A.843 shall be as follows:

- (1) A purchase of development rights program proposal authorized by KRS 67A.843 and 67A.845 may be submitted to the voters of an urban-county by either a resolution of the legislative body or a petition meeting the requirements of this section. The resolution or petition shall set out the matters specified in KRS 67A.843(1). The proposal shall be drafted in such a way that a vote in favor of adoption shall be a vote in favor of the proposal.
- (2) Petitions shall be signed by registered voters of the urban-county government equal in number to at least ten percent (10%) of the total number of votes cast in the urban-county in the last regular mayoral election of the urban-county government.
- (3) If, not later than ninety (90) days preceding the day established for a regular election, the county clerk receives a resolution adopted by a three-fifths (3/5) vote of the legislative body of the urban-county government requesting that the question be submitted to the voters or determines that a petition submitted in accordance with this section is sufficient, the legal department of the urban-county government shall prepare to place

before the voters of the urban-county government at the next regular election the question, which shall appear on the ballot in the following form:

- "( ) FOR RATIFICATION OF (summary of proposed program)  
( ) AGAINST RATIFICATION OF (summary of proposed program)".

The county clerk shall cause to be published, not fewer than three (3) times within the thirty (30) day period immediately preceding the election in a newspaper having a general circulation in the territory of the urban-county government, notice of the referendum, the exact language of the proposal, and a map prepared by the urban-county government showing the general location of the properties from which development rights may be purchased under the program.

- (4) The provisions of general election law shall apply to a referendum conducted under this section. The certificate of the body authorized by law to canvass election returns shall be delivered to the mayor of the urban-county government and the certificate shall be entered upon the records of the urban-county government during the next regular meeting of the urban-county government legislative body. If a proposed program is approved, it shall become effective at the time specified in the proposal, but the effective date shall not be before the first day of January following the election.
- (5) *After compliance with the provisions of this section and Section 1 of this Act, a purchase of development rights program authorized by KRS 67A.843 and KRS 67A.845 may be combined with a public parks purchase and maintenance program proposal authorized by KRS 97.590. In the case of a combined proposal, the urban-county government shall place before the voters a single ballot proposal that combines the purchase of development rights program proposal and the parks purchase and maintenance program proposal. In that event, the proposal shall specify which tax levy or portion thereof shall provide funding for the purchase of development rights program proposal and which will provide funding for the parks purchase and maintenance program proposal.*

Section 3. KRS 97.590 is amended to read as follows:

- (1) For the purpose of purchasing and maintaining public parks within the jurisdictional limits, cities of any class, counties, charter counties, and urban-county governments may levy taxes not exceeding five cents (\$0.05) on each one hundred dollars (\$100) of all taxable property within the corporate limits, ***subject only to the aggregate limits on property taxes set forth in the Kentucky Constitution, but not subject to the recall provisions of KRS 132.017.*** No city, county, charter county, or urban-county government shall levy the tax until a public referendum has been conducted in accordance with the provisions of KRS 83A.120 in the case of a city, county, or charter county or in accordance with the provisions of KRS 67A.160 in the case of an urban-county government and has been adopted by the city's, county's, charter county's, or urban-county government's voters. The public referendum provisions in this section shall not apply to any city, county, charter county, or urban-county government that has in effect on July 15, 1998, a tax for park purposes in accordance with this section or KRS 97.550.
- (2) The funds derived from the levy shall be held by the treasurer of the city or the treasurer of the county in a separate and distinct fund designated the "Park Fund.~~[-]~~" ***The funds~~[-]~~ shall be paid out by the treasurer only upon order issued by the park board signed by the secretary and countersigned by the president after the bill for the withdrawal has been approved by the board, unless a park board has not been appointed under KRS 97.550 to KRS 97.600, in which case the funds shall be appropriated by the city legislative body, the fiscal court, or the legislative body of the charter county government or urban-county government for purposes consistent with the levy.*** The treasurer shall not honor in any one (1) year orders for a greater sum than the amount apportioned and levied for that year for park and playground purposes.

Approved April 6, 2000

## CHAPTER 356

(HB 789)

AN ACT relating to intellectual property.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*
- (a) *"Counterfeit mark" means:*
    - 1. *Any unauthorized reproduction or copy of intellectual property; or*
    - 2. *Intellectual property knowingly affixed to any item without the authority of the owner of the intellectual property.*
  - (b) *"Intellectual property" means any trademark, service mark, trade name, label, term, device, design, or word adopted or used by a person to identify the person's goods or services.*
  - (c) *"Person" includes, in addition to its meaning under KRS 446.010, any association, organization, or entity amenable to suit in a court of law.*
  - (d) *"Retail value" means the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value shall be the counterfeiter's regular selling price of the finished product on or in which the component would be utilized.*
- (2) *Any person who willfully manufactures, uses, displays, advertises, distributes, offers for sale, sells, or possesses with intent to sell or distribute any item or service that the person knows bears or is identified by a counterfeit mark shall be guilty of counterfeiting.*
- (3) *A person having possession, custody, or control of more than twenty-five (25) items that the person knows bears or is identified by a counterfeit mark shall be presumed to possess the items with the intent to sell or distribute.*
- (4) *Any person who violates the provisions of this section shall be guilty of a Class A misdemeanor, except where the person has been previously convicted of a violation of this section or the violation involves more than one hundred (100) items bearing a counterfeit mark or the total retail value of all items bearing, or services identified by, a counterfeit mark is more than one thousand dollars (\$1,000), in which case the person shall be guilty of a Class D felony. Unless reduced by the court for extenuating circumstances and notwithstanding KRS Chapter 534, upon conviction the offender shall, in addition to any other allowable disposition, be fined an amount equal to the greater of:*
- (a) *Three (3) times the retail value of the items bearing, or services identified by, the counterfeit mark;*
  - (b) *Double the amount of the defendant's gain from commission of the offense; or*
  - (c) *As otherwise allowed in KRS Chapter 534 for felonies and misdemeanors.*
- (5) *For purposes of this section, the quantity or retail value of items or services shall include the aggregate quantity or retail value of all items bearing, or services identified by, every counterfeit mark the defendant manufactures, uses, displays, advertises, distributes, offers for sale, sells, or possesses.*
- (6) *Except for items in the possession of a person not in violation of this section, any items bearing a counterfeit mark, and all personal property, including but not limited to, any items, objects, tools, machines, equipment, instrumentalities, or vehicles of any kind, employed or used in connection with a violation of this section shall be seized by any law enforcement officer.*
- (a) *Except as otherwise provided in this subsection, all personal property seized under this subsection shall be forfeited in accordance with KRS 431.100.*
  - (b) *Upon request of the intellectual property owner, all seized items bearing a counterfeit mark shall be released to the intellectual property owner.*
  - (c) *If the intellectual property owner does not request release of seized items bearing a counterfeit mark, the items shall be destroyed unless the intellectual property owner consents to another disposition.*
- (7) *Any state or federal certificate of registration of any intellectual property shall be prima facie evidence of the facts stated in the certificate.*
- (8) *The remedies provided in this section shall be cumulative to other civil and criminal remedies provided by law.*

- (9) *Notwithstanding any statute to the contrary, fines imposed under this section shall be paid into the Crime Victims Compensation Fund established in KRS 346.185.*

Approved April 6, 2000

## CHAPTER 357

### (HB 807)

AN ACT relating to property tax.

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

Section 1. KRS 134.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Secretary" means the secretary of revenue.
- (2) "Cabinet" means the Revenue Cabinet.
- (3) "Real property" includes all lands within this state and improvements thereon.
- (4) "Personal property" includes every species and character of property, tangible and intangible, other than real property.
- (5) "Taxpayer" means any person made liable by law to file a return or pay a tax.
- (6) "Tax claim" includes, in addition to the taxes due on a tax bill, the penalties, costs, fees, interest, commissions, the lien provided in subsection (1) of KRS 134.420 and other such items or expenses that have become or are by reason of the delinquent tax bill proper legal charges *imposed by this chapter* against the delinquent taxpayer at any given time.
- (7) "Uncollectible tax bill" means a tax bill of a delinquent who owns no real property and which has been returned to the fiscal court by the sheriff or collector because there is insufficient or no personal property to satisfy it, and which has been allowed and approved in the settlement with the court as uncollectible.
- (8) "Sheriff" includes any collector whose duty it is to receive or collect state, county or district taxes.

Section 2. KRS 134.450 is amended to read as follows:

- (1) The sheriff shall sell all tax claims for which payment by the delinquent taxpayer has not been made by the closing date for the acceptance by the sheriff of offers to purchase delinquent tax claims. If there is more than one (1) willing purchaser who has made an offer, the one having made the most recent purchase of a tax claim against the same delinquent or the same property shall have preference; if there is no such person, the person being the first, in the judgment of the sheriff, to offer to pay cash in the full amount of the tax claim shall receive priority for the purchase of the tax claim. If the total of all offers to purchase exceeds ten percent (10%) of the total dollar amount of the delinquent bills offered for sale, or the sum of two hundred thousand dollars (\$200,000), whichever is less, the sheriff shall notify the Finance and Administration Cabinet of the offers of purchase within five (5) business days of the closing date when the offers were received. Upon receipt of the notice, the Finance and Administration Cabinet shall purchase the delinquent tax bills upon which the sheriff has received an offer of purchase and shall tender payment to the sheriff within fifteen (15) business days of the receipt of the sheriff's notice. Upon purchase of the tax claims, the state shall be the owner of the tax bills and may contract with the county attorney to collect all amounts due on its behalf under the terms and conditions of the county attorney's contract with the Revenue Cabinet to collect delinquent taxes. If the county attorney has not contracted with the Revenue Cabinet to collect delinquent taxes, the Revenue Cabinet shall collect all amounts due on behalf of the Finance and Administration Cabinet. If the Finance and Administration Cabinet does not purchase all of the delinquent tax bills, within fifteen (15) days of the closing date, the sheriff shall complete the sale of those tax claims for which the sheriff has received responsible offers to purchase. When a sale is made the tax bill shall be known as a certificate of delinquency and the sheriff shall inscribe thereon the date of sale, the sale price, and the name and address of the purchaser, in the place and manner prescribed by the Revenue Cabinet, and the purchaser shall be entitled to a certified copy of the certificate of delinquency.

- (2) If no responsible offer in the amount of the tax claim is received, the sheriff shall purchase it for the state, county, and taxing districts having an interest in the tax claim. In such case, the tax bill shall also be known as a certificate of delinquency, and the sheriff shall inscribe thereon the same information required when one other than the state, county, or taxing district is the purchaser.
- (3) The sheriff shall file all certificates of delinquency in the county clerk's office immediately upon completion of the tax sale and the clerk shall retain them. The county clerk shall acknowledge receipt of the certificates by signing a receipt form that has been prepared in a manner prescribed by the Revenue Cabinet. If the sheriff fails to file the certificates, he shall be liable on his official bond for the aggregate amount of the certificates not returned, but the claim of the purchaser shall not be affected by this neglect. If the sheriff fails to return any certificate, the purchaser may file his certified copy with the clerk, with the same effect as the original.
- (4) *The clerk shall make, execute, and deliver a certified copy of a certificate of delinquency to the payor, or the clerk may provide for a certified electronic register of the certificates of delinquency in the clerk's record in lieu of delivering a certified copy of the certificate of delinquency.*
- (5) *The certificate of delinquency is assignable by endorsement. The clerk shall note the assignment on the certificate of delinquency or the clerk may provide for a certified electronic certificate of delinquency in the clerk's records in lieu of delivering a certified copy of the certificate of delinquency. An assignment when noted on the record in the office of the county clerk vests in the assignee all rights and title of the original purchaser.*

Section 3. KRS 134.460 is amended to read as follows:

- (1) Certificates of delinquency shall bear interest from the date of issuance until collected at the rate of twelve percent (12%) per annum *simple interest. A fraction of a month is counted as an entire month.*
- (2) Certificates of delinquency shall be prima facie evidence that:
  - (a) The property represented by the certificate was subject to taxes levied thereon, and was assessed as required by law.
  - (b) The tax bill was valid and correct in all respects.
  - (c) The taxes were not paid at any time before the issuance of the certificate.

Section 4. KRS 134.480 is amended to read as follows:

- (1) The delinquent taxpayer or any person owning or having a legal or equitable interest in real property covered by a certificate of delinquency may at any time pay the total amount of the certificate to any purchaser thereof, and any person whatsoever may likewise pay a certificate of delinquency when the state, county, or taxing district was the purchaser. When a certificate is paid to an owner other than the state, county, or taxing district, *the assignee shall mark paid in full on the certified copy of the certificate and shall surrender the certified copy of the certificate of delinquency*~~he surrendered~~ to the person making payment, and if he is the person primarily liable on the certificate he may *file it with the county clerk and*~~by exhibiting it to the county clerk,~~ have the certificate released of record. When a certificate of delinquency has been fully paid to the state, county, and taxing districts, the clerk shall note the name and address of the person making the payment, the amount paid by him, and such other information as the Revenue Cabinet may require. *The clerk shall mark the certificate of delinquency paid in full.* Payment in such instance by one other than the person primarily liable on the certificate will amount to an assignment thereof. *The clerk shall note the assignment on the certificate of delinquency and provide the assignee a certified copy of the certificate of delinquency, or the clerk may provide for a certified electronic certificate of delinquency in the clerk's records in lieu of delivering a certified copy of the certificate of delinquency.* Anyone other than the person primarily liable who pays a certificate or purchases it from an owner other than the state, county, and taxing district may, by paying a fee of fifty cents (\$0.50), have the clerk record the payment or purchase and such recordation shall constitute an assignment thereof. Failure to obtain such an assignment shall render the claim of such payor or purchaser to any real estate represented thereby inferior to rights of other bona fide purchasers, payors, or creditors. Any owner of a certificate of delinquency once having paid the assignment fee may have a change of his address noted of record by the clerk without paying an additional charge, otherwise he shall pay a fee of fifty cents (\$0.50) to the clerk for entering such change on the certificate.
- (2) The county clerk may receive payment of the amount due on certificates of delinquency owned by the state, county, and taxing districts, and he shall give a receipt to the payor and make a report to the Revenue Cabinet, the county treasurer, and the proper officials of the taxing districts as often as such units may require, and not

less than once in every thirty (30) days. The clerk may accept payment of taxes due by any commercially acceptable means, including credit cards. He shall pay to the Revenue Cabinet for deposit with the State Treasurer all moneys collected by him due the state, to the county treasurer all moneys due the county, and to the authorized officers of the taxing districts the amount due each such district. He shall pay the amount of fees, costs, commissions, and penalties to the persons, agencies, or parties entitled thereto. He shall retain ten percent (10%) of the amount due each taxing unit for his services as a fee. This fee shall be added to the amount of the tax claim and paid by the persons paying the tax claim.

- (3) If the person entitled to pay a certificate of delinquency sends a registered letter addressed to the owner of record of the certificate, other than the state, county, or taxing district, and the letter is returned by mail unclaimed, the sender thereof may make payment to the county clerk, who shall make the necessary assignment or release and deposit the money to the account of the owner of record in the nearest bank having its deposits insured with the Federal Deposit Insurance Corporation. The clerk may deduct the sum of fifty cents (\$0.50) as a fee for such service. The name of the bank in which the money is deposited shall be noted on the certificate.
- (4) If any clerk fails to pay to the person entitled thereto, upon demand, the money received in payment of a certificate of delinquency, he and his sureties shall be liable for the same and twenty percent (20%) interest thereon annually from the time he received it until paid.
- (5) Copies of the records provided for in KRS 134.450 and this section, certified by the county clerk, shall be evidence of the facts stated in them in all the courts of this state.

Section 5. KRS 134.500 is amended to read as follows:

- (1) Uncollectible tax claims shall bear interest at twelve percent (12%) per annum *simple interest* from the date the certificate of delinquency is issued. ***A fraction of a month is counted as an entire month. The sheriff's add-on fee provided in KRS 134.430, the clerk's add-on fee provided in Section 4 of this Act, and the county attorney's add-on fee provided in this section shall be excluded from the interest calculation.*** All tax bills on omitted property that were not turned over to the sheriff in time to be collected or to make the sale provided for in KRS 134.430 and 134.440 shall also be submitted to the fiscal court but shall be carried over as a charge against the sheriff at the time he makes his next regular settlement.
- (2) The cabinet shall be responsible for the collection of certificates of delinquency and delinquent personal property tax bills; however, the cabinet shall first offer the collection duties to the county attorney, unless the cabinet determines that the county attorney has previously failed to perform collection duties in a reasonable and acceptable manner. Any county attorney desiring to perform the duties associated with the collection of delinquent tax claims shall enter into a contract with the cabinet on an annual basis. The terms of the contract shall specify the duties to be undertaken by the county attorney. These duties shall include but are not limited to the following actions:
  - (a) Within fifty (50) days after the issuance of a certificate of delinquency to the state, county, and taxing district, the county attorney or the Revenue Cabinet shall cause a notice of the purchase to be mailed by regular mail to the property owner at the address on the records of the property valuation administrator. The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent (12%) per annum, and if not paid will be subject to collection by the county attorney as provided by law.
  - (b) The county attorney shall file in the office of the county clerk a list of the names and addresses to which the notice was mailed along with a certificate that the notice was mailed in accordance with the requirements of this section.
  - (c) All notices returned as undeliverable shall be submitted to the property valuation administrator. The property valuation administrator shall attempt to correct inadequate or erroneous addresses and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the notices with the corrected information to the county attorney prior to the expiration of the one (1) year tolling period provided in KRS 134.470.
  - (d) Within ninety (90) days after the expiration of the one (1) year tolling period provided in KRS 134.470, the county attorney shall cause a notice of his intention to enforce the lien to be mailed to all owners whose tax bills remain delinquent. No second notice shall be required for addresses previously determined to be undeliverable and for which the property valuation administrator has not provided corrected information.



- (e) Failure to mail the notices shall not affect the validity of the claim of the state, county, and taxing district. The postal cost of mailing the notices shall be added to the certificate of delinquency and, upon collection, the county attorney shall be reimbursed for the postage. The county attorney shall deliver at the same time a list of the owners whose tax bills remain delinquent to the property valuation administrator. The property valuation administrator shall review this list in accordance with the provisions of KRS 132.220 to establish that the properties on the list can be identified and physically located.
- (3) The county attorney who enters into a contract with the cabinet shall have a period of two (2) years after the expiration of the one (1) year tolling period provided in KRS 134.470 to collect delinquent tax bills or to initiate court action for their collection. At the expiration of the two (2) years the cabinet may assume responsibility for all uncollected bills except those with pending court action.
- (4) The county attorney who enters into a contract with the cabinet and performs his duties in respect to the certificate of delinquency and delinquent personal property tax bills shall be entitled to twenty percent (20%) of the amount due each taxing unit, whether the tax claim is voluntarily paid or is paid through sale or under court order, and the fee shall be paid to him by the county clerk when making distribution, as provided in KRS 134.480. This fee shall be added to the amount of the tax claims and paid by the persons paying the tax claims. They shall not be paid by the taxing districts or deducted from the taxes due the taxing districts. If more than one (1) county attorney renders necessary services in an effort to collect a tax claim, the attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the fee. When the county attorney's office, in an effort to collect a certificate of delinquency, or delinquent personal property tax bills files a court action which is litigated by the taxpayer, an additional county's attorney fee equal to thirteen percent (13%) of the total tax plus ten percent (10%) penalty, may be added to the certificate or the bill and shall become part of the tax claim.
- (5) If a county attorney chooses not to contract for these collection duties or if a county attorney fails to perform the duties required by the contract, the cabinet shall assume responsibility for the collection process. In the performance of those duties, the cabinet shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of the amount due on the certificate of delinquency conferred generally upon the cabinet by Kentucky Revised Statutes including, but not limited to, KRS Chapters 131, 134, and 135. The twenty percent (20%) fee that would have otherwise been paid to the county attorney shall be paid to the cabinet for deposit in the delinquent tax fund provided for under KRS 134.400.
- (6) Any action on behalf of the state, county, and taxing districts authorized by this section or by KRS 134.470, 134.490, or 134.540 shall be filed on relation of the secretary, and the petition may be sent to the cabinet, which may require revision in instances where it deems revision or amendment necessary. The cabinet shall advise the county attorney in all actions, and may send him special assistance when the secretary deems assistance necessary. A copy of the judgment shall also be sent to the cabinet. If the cabinet sends assistance to a county attorney who contracts to prosecute the suits or proceedings, the county attorney shall be entitled to his full fee. On the same day that suit is filed, the county clerk shall be given notice of its filing. Costs incident to the suit shall become a part of the tax claim.
- (7) The cabinet may make its delinquent tax collection databases and other technical resources, including but not limited to income tax refund offsetting, available to the county attorney upon request from the county attorney. The county attorney seeking assistance shall enter into any agreements required by the cabinet to protect taxpayer confidentiality, to ensure database integrity, or to address other concerns of the cabinet.

**Approved April 6, 2000**

## **CHAPTER 358**

**(HB 852)**

AN ACT relating to incremental financing by local governments.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 11 of this Act:*

- (1) **"City"** means any city or urban-county;

- (2) *"Commencement date" means the date a development area is established, as provided in the ordinance creating the development area;*
- (3) *"County" means any county or charter county;*
- (4) *"Debt charges" means the principal, including any mandatory sinking fund deposits, interest, and any redemption premium, payable on increment bonds as the payments come due and are payable and any charges related to the payment of the foregoing;*
- (5) *"Development area" means a contiguous geographic area, which may be within one (1) or more cities or counties, defined and created for economic development purposes by an ordinance of a city or county in which one (1) or more economic development projects is proposed to be located;*
- (6) *"Economic development project" means any property, asset, or improvement certified by the governing body, which certification is conclusive as:*
  - (a) *Being for a public purpose;*
  - (b) *Being for economic development purposes;*
  - (c) *Being in or related to a development area; and*
  - (d) *Having an estimated life or period of usefulness of one (1) year or more, including, but not limited to, real estate, buildings, personal property, equipment, furnishings, and site improvements and reconstruction, rehabilitation, renovation, installation, improvement, enlargement, and extension of property, assets, or improvements so certified as having an estimated life or period of usefulness of one (1) year or more;*
- (7) *"Economic development purposes" means the development of facilities for residential, commercial, industrial, public, recreational, or other uses, or for open space, or any combination thereof, which is determined by the governing body establishing the development area as contributing to economic development;*
- (8) *"Financing agreement" means an agreement made between cities, counties, or a combination thereof providing for the release of increments under the authority of Sections 1 to 11 of this Act;*
- (9) *"Governing body" means the body possessing legislative authority in a city or county;*
- (10) *"Increment bonds" means bonds and notes issued for the purpose of paying the costs of one (1) or more economic development projects in a development area, the payment of which is secured solely by a pledge of increments or by a pledge of increments and other sources of payment that are otherwise permitted by law to be pledged or used as a source of payment of the bonds or notes;*
- (11) *"Increments" means that amount of revenue due to be received by a city or county, determined by subtracting the amount of old revenues from the amount of new revenues with respect to a development area;*
- (12) *"Issuer" means a city or county issuing increment bonds;*
- (13) *"New revenues" means the revenues received with respect to a development area in any year after the commencement date for the development area;*
- (14) *"Old revenues" means the amount of revenues received with respect to a development area in the last year prior to the commencement date for the development area;*
- (15) *"Outstanding" means increment bonds that have been issued, delivered, and paid for, except any of the following:*
  - (a) *Increment bonds canceled upon surrender, exchange, or transfer, or upon payment or redemption;*
  - (b) *Increment bonds in replacement of which or in exchange for which other bonds have been issued; or*
  - (c) *Increment bonds for the payment, or redemption or purchase for cancellation prior to maturity, of which sufficient moneys or investments, in accordance with the ordinance or other proceedings or any applicable law, by mandatory sinking fund redemption requirements, or otherwise, have been deposited, and credited in a sinking fund or with a trustee or paying or escrow agent, whether at or prior to their maturity or redemption, and, in the case of increment bonds to be redeemed prior to their stated maturity, notice of redemption has been given or satisfactory arrangements have been*

*made for giving notice of that redemption, or waiver of that notice by or on behalf of the affected bond holders has been filed with the issuer or its agent;*

- (16) *"Revenue collector" means any official charged with collecting revenues in a development area;*
- (17) *"Revenues" means ad valorem revenues and occupational license fees received by the city or county creating a development area and by each city and county that is a party to a financing agreement related to that development area;*
- (18) *"Special fund" means a special fund created in accordance with Section 5 of this Act into which increments are to be deposited;*
- (19) *"Termination date" means the date on which the development area shall cease to exist, which date shall be no earlier than the date any increment bonds secured by increments from a development area are no longer outstanding, and which shall be no later than the first December 31st that is at least thirty (30) years from the commencement date; and*
- (20) *"Year" means January 1st to December 31st of the same calendar year.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

*The General Assembly finds and declares that economic development created by the development of economic development projects to support economic revitalization and improvement in a development area which results in the increase in the value of property located in a development area or results in increased employment opportunities within or around a development area serves a public purpose.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

*In addition to any other powers conferred by law, any city or county may exercise any powers necessary or convenient to carry out the purposes of Sections 1 to 11 of this Act, including the power to:*

- (1) *Create development areas and to define their boundaries;*
- (2) *Undertake economic development projects;*
- (3) *Issue increment bonds and pledge increments to the payment of debt charges on those increment bonds;*
- (4) *Create a special fund established for the deposit of increments and other funds that may be used or pledged for the payment of increment bonds and to pay the costs of economic development projects; and*
- (5) *Utilize increments to pay the costs of economic development projects and for the payment of amounts due on increment bonds.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *Any city or county may establish or modify a development area by:*
  - (a) *Holding a public hearing by its governing body or its designee at which interested parties are afforded a reasonable opportunity to express their views on the proposed creation or modification of a development area and its boundaries. Notice of the hearing shall:*
    - 1. *Include a declaration that the purpose of the hearing is to afford interested parties an opportunity to express their views regarding the development area;*
    - 2. *Include a general description of the boundaries of the proposed development area;*
    - 3. *State the time and place of the hearing; and*
    - 4. *Be published in a local newspaper of general circulation at least seven (7) days but no more than twenty-one (21) days prior to the scheduled hearing date; and*
  - (b) *Adopting an ordinance which shall:*
    - 1. *Describe the boundaries of the development area with sufficiency to allow ordinary and reasonable certainty of the territory included. However, no development area shall include property located in any other development area;*
    - 2. *Create the development area on a date certain, which shall be referred to as the commencement date, and, if deemed appropriate by the governing body, establish a termination date;*

3. *Assign a name to the development area for identification purposes;*
  4. *Contain findings that the designation of the proposed development area will result in the increase in the value of property located in the development area or result in increased employment within or around the development area, or both;*
  5. *Approve the financing agreement, if any, relating to the economic development project;*
  6. *Establish a special fund for that development area; and*
  7. *Contain any other findings, limitations, rules or procedures regarding the development area and its establishment or maintenance as deemed necessary by the governing body; and*
- (c) *Providing the revenue collector, if the collector is not an employee of the city or county designating the development area, with a description of the development area and any other information available which is needed to determine increments or new revenues.*
- (2) *Increments generated in a development area shall be submitted by the revenue collector to the city or county establishing the special fund for that development area, deposited to that special fund and used to pay the costs of economic development projects or to pay debt charges on increment bonds, except that increments payable to any city or county other than the city or county establishing the economic development area shall be submitted to that city or county as if no development area existed unless that city or county is a party to a financing agreement that provides that some or all of the increments are to be submitted to a special fund.*
- (3) *The existence of a development area shall terminate on the termination date and if no termination date is established by the ordinance creating the development area, on the earlier of the termination date subsequently established by ordinance or the first December 31st that is at least thirty (30) years from the commencement date.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

*While increment bonds are outstanding, the issuer shall maintain a special fund which shall be pledged for the retirement of those increment bonds. Revenue collectors shall, for each year a financing agreement is in effect or any increment bonds are outstanding with respect to a development area, determine the amount of increments from the development area which they are charged with collecting and submit those increments for deposit in the special fund established by the governing body for that development area. Funds deposited in a special fund for the payment of increment bonds shall be disbursed at the times and in the amounts required to pay debt charges on those increment bonds. Accrued interest from the sale of increment bonds shall be deposited in the special fund pledged to the payment of those bonds. Amounts in a special fund which exceed the amount required to pay debt charges on related increment bonds in any fiscal year may accumulate in the special fund for the payment of future debt charges or to pay the costs of additional economic development projects in the development area, or may be transferred by the governing body from the special fund under the terms of a financing agreement or used for any lawful purpose.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

*Increment bonds shall be issued, administered, and regulated only by ordinance adopted by the governing body which, in addition to any other provisions deemed appropriate by the governing body, shall:*

- (1) *Declare the necessity of the increment bond issue;*
- (2) *State the principal amount or maximum principal amount of the increment bonds to be issued;*
- (3) *State the purpose of the increment bond issue;*
- (4) *State or provide for the date of, and the dates and amounts or maximum amount of, maturities or principal payments on the increment bonds;*
- (5) *State any provisions for a mandatory sinking fund, mandatory sinking fund redemption, or for redemption prior to maturity;*
- (6) *Provide for the rate or rates of interest, or maximum rate or rates of interest, or the method for establishing or determining the rate or rates of interest to be paid on the increment bonds; and*
- (7) *State any provision for a designated officer of the issuer to determine any of the specific terms required to be stated or provided for in this section, subject to any limitations stated in the proceedings.*

## SECTION 7. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *Increment bonds may be issued to pay the costs of economic development projects. The provisions of KRS 66.021, KRS 66.031, KRS 66.041, KRS 66.045, KRS 66.071, KRS 66.091, KRS 66.121, KRS 66.131, KRS 66.141, KRS 66.151, KRS 66.171, KRS 66.181, and KRS 66.191 shall apply to the issuance of increment bonds.*
- (2) *Debt payments on increment bonds may be paid from increments, from any other funds of the issuer, or from funds identified in a financing agreement, or any combination thereof. If increment bonds are payable solely from increments, the issuer shall, prior to the issuance of the increment bonds, make a determination that the increments are adequate to make the debt payments so long as the increment bonds are outstanding.*
- (3) *Increment bonds may also be issued to fund or refund all or any portion of outstanding increment bonds. Any increment bonds issued under this subsection shall mature as determined by the governing body consistent with KRS 66.091, but their maturity shall not be later than the date that would have been permitted by KRS 66.091, as of the date the original bonds were issued.*

## SECTION 8. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

*Any city or county may pledge increments to the payment of increment bonds by an ordinance adopted by the governing body or by a financing agreement adopted by ordinance. Any pledge of increments adopted under this section shall, as to the increments, but not as to any other revenues, be superior to any other pledge of revenues for any other purpose and shall, from the effective date of the ordinance to the termination date, supersede any statute or ordinance regarding the application or use of increments. No ordinance in conflict with an ordinance pledging increments shall be adopted while any increment bonds secured by that pledge remain outstanding. Ordinances pledging increments on a subordinate basis to any existing pledges may be adopted.*

## SECTION 9. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon establishment of a development area, any city or county may release, by a financing agreement with any other city or county, increments expected to be collected by that city or county in the related development area for a period that does not extend beyond the termination date.*
- (2) *The financing agreement shall include the following provisions:*
  - (a) *The identity of each city and county participating in the financing agreement;*
  - (b) *A detailed description of each economic development project that is the subject of the financing agreement, including an estimate of its costs of construction or acquisition and development;*
  - (c) *A detailed description of the development area;*
  - (d) *A detailed summary estimating old revenues collected and projected new revenues in the development area for each city and county that is a party to the financing agreement, on an annual basis, for the term of the proposed financing agreement;*
  - (e) *The maximum amount of increments to be released by the parties to the financing agreement, if any, and the maximum number of years the release will be effective, including an agreement to deposit the increments in a special fund created for that purpose, which, if any increment bonds are to be issued, shall be held by the issuer of the increment bonds;*
  - (f) *The times and procedures for depositing increments and other funds, if any, in the special fund to be established for the development area and any provisions relating to the collection of the increments;*
  - (g) *Any covenants regarding additional funds or to pay the costs of the economic development projects;*
  - (h) *Any covenants regarding completion of the economic development project;*
  - (i) *Terms of default and remedies, except that no remedy shall permit the withholding by any party to the financing agreement of any increments to be deposited in the special fund identified in the financing agreement so long as any increment bonds are outstanding that are secured by a pledge of those increments; and*
  - (j) *Any other provisions not inconsistent with Sections 1 to 11 of this Act that are deemed necessary or appropriate by the parties to the financing agreement.*

## SECTION 10. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

*The authority granted by Sections 1 to 11 of this Act is in addition to and not a limitation on any other authorizations granted by or pursuant to law for the same or similar purposes.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

*Sections 1 to 11 of this Act may be cited as the Kentucky Increment Financing Act.*

Approved April 6, 2000

## CHAPTER 359

### (HB 865)

AN ACT relating to city police and fire departments.

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

Section 1. KRS 90.360 is amended to read as follows:

- (1) No employee in the classified service of a city of the second or third class shall be dismissed, suspended or reduced in grade or pay for any reason except inefficiency, misconduct, insubordination or violation of law involving moral turpitude, or, in a city of the third class, violation of any rule adopted by the city legislative body or civil service commission.
- (2) Any person may prefer charges in writing against any employee by filing them with the mayor or other appointing authority who shall communicate the charges without delay to the civil service commission of the city. The charges must be signed by the person making them and must set out clearly each charge. The appointing authority shall, whenever probable cause appears, prefer charges against any employee whom he *or she* believes guilty of conduct justifying his *or her* removal. Upon the filing of charges the clerk of the civil service commission shall notify its members and serve a copy of the charges upon the accused employee with a statement of the date, place and hour at which the hearing of charges will begin, this hearing not to be held within three (3) days of the date of the service of charges upon the accused employee. The day on which the charges are served on the accused employee shall count as one (1) of the days of notice. The person accused may in writing waive the service of charges and demand trial within three (3) days after they have been filed with the clerk of the civil service commission.
- (3) Upon the hearing the charges shall be considered traversed and put in issue, and the trial shall be limited to the issues presented by the written charges.
- (4) The civil service commission shall have the power to summon and compel attendance of witnesses at all hearings by subpoena issued by the clerk of that body and served upon the witnesses by members of the police department of the city or any officer authorized to serve subpoenas. If any witness fails to appear in response to a summons or refuses to testify concerning any matter on which he may lawfully be interrogated, any District Judge, on application of the commission, may compel obedience by proceedings for contempt as in the case of disobedience of a subpoena issued from the District Court. The accused employee shall have the right to have subpoenaed any witnesses he *or she* may desire, upon furnishing their names to the clerk. As many as ten (10) subpoenas may be served on the request of the accused employee without charge but each additional subpoena requested by him shall be issued by the clerk and served by the police department only upon payment of fifty cents (\$0.50) to the city clerk by the employee. The action and decision of the civil service commission on the charges shall be reduced to writing and kept in a book for that purpose and the written charge shall be attached to the book containing the body's decision.
- (5) In cases where the head of the department or the appointing authority has probable cause to believe an employee has been guilty of conduct justifying his removal or punishment he shall immediately suspend that employee from duty or from both pay and duty pending trial and the employee shall not be placed on duty or allowed pay thereafter until the charges are heard by the civil service commission.
- (6) The civil service commission shall punish any employee found guilty by reprimand or a suspension for any length of time not to exceed six (6) months, or by reducing the grade, if the employee's classification warrants, or by combining any two (2) or more of these punishments, or by dismissal. No employee shall be reprimanded, removed, suspended or dismissed except as provided in this section.
- (7) (a) *Any of the following offices, positions, and places of employment, in the police and fire departments of a city of the second or third class, may be excluded from the classified service:*

1. *Chief of police;*
  2. *Assistant chief of police;*
  3. *Chief of firefighters; and*
  4. *Assistant chief of firefighters.*
- (b) *Any classified employee in either department who shall accept an appointment and qualify as chief of police, assistant chief of police, chief of firefighters, or assistant chief of firefighters, shall be deemed to have received a leave of absence from the classified service for, and during the incumbency of, any of those respective positions. If an individual should cease to serve in any of those positions, there shall be restored to him or her the same classification and rank which he or she held prior to his or her appointment.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 95 IS CREATED TO READ AS FOLLOWS:

*Any city of the second or third class may elect to operate under KRS 90.310 to 90.410, and, by ordinance, create a civil service commission. Any classified employee in the police or fire department, who accepts an appointment and qualifies as chief of police, assistant chief of police, chief of firefighters, or assistant chief of firefighters, shall be deemed to have received a leave of absence from the classified service for, and during the incumbency of, any of those respective positions. If an individual should cease to serve in any of those positions, there shall be restored to him or her the same classification and rank which he or she held prior to his appointment.*

Approved April 6, 2000

## CHAPTER 360

(HB 881)

AN ACT relating to real estate sales associates.

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

Section 1. KRS 324.117 is amended to read as follows:

- (1) Real estate advertising shall not be false, misleading, or deceptive. All real estate advertising shall specify the names of the real estate company listed on the licensee's real estate license or the name of the principal broker and a designation indicating that the licensee is engaged in the real estate business. The commission shall promulgate administrative regulations to define false, misleading, or deceptive advertising.
- (2) The name of a deceased broker may remain a part of the firm name.
- (3) *An associate may have his or her name in the firm name after two (2) years experience with the firm, averaging at least twenty (20) hours per week for twenty-four (24) months.* ~~No associate may have his or her name in the firm name.~~
- (4) Any sales associate or broker affiliated with a principal broker shall advertise in the name of the real estate company listed on the associate's or broker's real estate license or the name of the principal broker, unless he or she is selling, renting, leasing, or otherwise dealing in his or her own property.

Approved April 6, 2000

## CHAPTER 361

(HB 886)

AN ACT relating to optometrists.

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

Section 1. KRS 320.210 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Board" means the Kentucky Board of Optometric Examiners;

- (2) "Practice of optometry" means:
- (a) The employment of any means including the administration of pharmaceutical agents, except controlled substances classified in Schedules I and II, as authorized in KRS 320.240, except surgery in examination, diagnosis, and treatment of the human eye and its appendages, to determine the visual efficiency of the human eye, or to determine the powers or defects of vision, provided that superficial foreign bodies may be removed from the eye and its appendages;
  - (b) The prescribing, providing, furnishing, adapting, using, or employing lenses, prisms, contact lenses, visual training, orthoptics, ocular exercise, **autofractometry**, or any other means or device including pharmaceutical agents, except controlled substances classified in Schedules I and II, as authorized in KRS 320.240, excluding the use of surgery for the aid, relief, or correction of the human eye and its appendages; **and**
  - (c) **Low vision rehabilitation;**
- (3) "Appendages" means the eyelids, the eyebrows, the conjunctiva, and the lacrimal apparatus;
- (4) "Visual aid glasses" means eyeglasses, spectacles, or lenses designed or used to correct visual defects; provided, however, that nothing in the provisions of this chapter relating to the practice of optometry shall be construed to limit or restrict, in any respect, the sale of sunglasses designed and used solely to filter out light; and further provided that nothing in this chapter relating to the practice of optometry shall be construed to limit or restrict, in any respect, the sale of completely assembled eyeglasses or spectacles designed and used solely to magnify; ~~and~~
- (5) "~~An~~ Orthoptic technician" **means** ~~is~~ a person who trains and directs individuals to engage in ocular exercises designed to correct visual defects, and shall not be required to be licensed under the provisions of this chapter ~~if provided that~~ such training and directions are done pursuant to and under the instructions of a duly-licensed physician, osteopath, or optometrist and consists solely of visual training, orthoptics, or ocular exercises; **and**
- (6) **"Low vision rehabilitation" means the evaluation, diagnosis, and management of the low vision patient, including but not limited to, prescription, low vision rehabilitation therapy, education, and interdisciplinary consultation when indicated. Any person who prescribes or provides comprehensive low vision care for the rehabilitation and treatment of the visually impaired or legally blind patient; prescribes corrective eyeglasses, contact lenses, prisms, or filters; employs any means for the adaptation of lenses, low vision devices, prisms, or filters; evaluates the need for, recommends, or prescribes optical, electronic, or other low vision devices; or recommends or provides low vision rehabilitation services independent of a clinical treatment plan prescribed by an optometrist, physician, or osteopath is engaged in the practice of optometry.**

Section 2. KRS 320.220 is amended to read as follows:

- (1) No person shall practice optometry in this Commonwealth or hold himself **or herself** out as being able ~~so~~ to do **so** unless he **or she** is the holder of a license duly issued to him **or her** by the board and registered in the manner provided by KRS 320.290.
- (2) ~~At such~~ license to practice optometry shall not be required by physicians or osteopaths **currently** ~~regularly~~ licensed to practice medicine or osteopathy at any place in the Commonwealth of Kentucky.
- (3) Nothing in this chapter shall be construed to prohibit persons from fitting, adjusting, or dispensing visual aid glasses or other lenses or appurtenances **if the** ~~provided, that such~~ fitting, adjusting or dispensing is done upon the written prescription of a **currently** ~~regularly~~ licensed optometrist, physician or osteopath, **nor shall this chapter be construed** ~~or~~ as requiring **these** ~~such~~ persons to be licensed under this chapter.

Section 3. KRS 320.230 is amended to read as follows:

- (1) The Kentucky Board of Optometric Examiners shall consist of five (5) members appointed by the Governor. Four (4) members shall be **Kentucky licensed** practicing optometrists **whose licenses are in good standing and who are** ~~well-grounded in the practice of optometry~~ appointed by the Governor from a list containing three (3) names for each appointment recommended by the Kentucky Optometric Association. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. The members shall serve for a term of four (4) years and until their successors are appointed and ~~have~~ qualified. They shall receive per diem compensation to be determined by **administrative regulations promulgated** ~~by regulation of~~ the board, ~~but~~ not to exceed one hundred twenty-five dollars (\$125) per day for attending



board meetings.~~[and]~~ Members shall be reimbursed for actual expenses incurred in the performance of their duties under this chapter.

- (2) Each optometrist member shall be **a Kentucky**~~[well grounded in the theory and practice of the profession of optometry and shall have been an actual resident and]~~ licensed practicing optometrist **in good standing**~~[of this state]~~ for not less than five (5) years immediately preceding his **or her** appointment to the board. **The member**~~[He]~~ shall not be in any way connected with or interested in any optometric school, college, or institution of learning or optometric supply business.
- (3) Any vacancy occurring on the board as the result of a member not completing the term for which he **or she** was appointed shall be filled, for the unexpired term, in the same manner as is provided in subsection (1) of this section for the appointment of members.
- (4) A majority of the members of the board shall constitute a quorum for the transaction of business.

Section 4. KRS 320.240 is amended to read as follows:

- (1) The board shall meet at least once each year at which time it shall choose from among its members the president, vice president, and secretary-treasurer. In addition, the board, upon call of its officers, may hold meetings at any time as it deems necessary.~~[The secretary-treasurer shall keep]~~ A full record of **the board's**~~[its]~~ proceedings~~[which]~~ shall be **kept in the office of the board and shall be** open to inspection at all reasonable times.
- (2) The board shall keep a register containing the name, address, and license number of every person licensed to practice optometry in this state.
- (3) The Attorney General shall render to the board legal services as it may require in carrying out and enforcing the provisions of this chapter.
- (4) Subject to and consistent with the provisions of this chapter, the board shall~~[make and]~~ promulgate reasonable administrative regulations and do any and all things **that**~~[which]~~ it may deem necessary or proper for the effective enforcement of this chapter and for the full and efficient performance of its duties hereunder and the reasonable regulation of the profession of optometry and the practice thereof by licensed optometrists.
- (5) The board shall have a common seal.
- (6) The board **may**~~[shall have authority to]~~ administer oaths and~~[to]~~ require the attendance of witnesses, the production of books, records, and papers pertinent to any matters coming before the board by the issuance of process **that**~~[which]~~ shall be served and returned in the same manner as in civil actions and for the disobedience of which the board shall have the power to invoke the same rights as are provided **for**~~[in the event of]~~ disobedience of a subpoena or subpoena duces tecum in a civil action.
- (7) The board shall **promulgate**~~[make]~~ administrative regulations **necessary to regulate and control all matters set forth in**~~[governing applicants and applications for registration or license under]~~ this chapter~~[and governing the conduct of licensing examinations]~~.
- ~~(8)~~ ~~The board shall from time to time accredit schools and colleges teaching optometry, the graduates of which shall be eligible to licensing examinations.~~
- ~~(9)~~ The board shall have the right to determine what acts on the part of any person licensed as an optometrist in this state shall constitute unprofessional conduct under this chapter.
- ~~(9)~~~~(10)~~ The board **may**~~[shall have authority to]~~ assist in the prosecution of any violation of this chapter and in the enforcement of any of the provisions of this chapter.
- ~~(10)~~~~(11)~~ The board shall have other powers and duties as may be provided in the provisions of this chapter.
- ~~(11)~~~~(12)~~ The board shall~~[make a]~~ report~~[of]~~ its proceedings to the Governor on or about January 1 of each year, including an accounting of all moneys received and disbursed.
- ~~(12)~~~~(13)~~ The board may **permit**~~[authorize]~~ persons engaging in the practice of optometry under the provisions of this chapter to administer diagnostic pharmaceutical agents limited to miotics for emergency use only, mydriatics, cycloplegics, and anesthetics applied topically only, but excluding any drug classified as a controlled substance pursuant to KRS Chapter 218A. These pharmaceutical agents shall be applied in diagnostic procedures only as part of an eye examination. The application of **the**~~[such]~~ diagnostic pharmaceutical agents shall be limited to those persons who have sufficient education and professional

competence as determined by the board and who have earned transcript credits of at least six (6) semester hours in a course or courses in general and ocular pharmacology, with particular emphasis on diagnostic pharmaceutical agents applied topically to the eye, from a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or by the United States Department of Education.

~~(13)~~~~(14)~~ The board may authorize only those persons who have qualified for use of diagnostic pharmaceutical agents as set out in subsection (13) of this section to utilize and prescribe therapeutic pharmaceutical agents in the examination or treatment of any condition of the eye or its appendages. Any therapeutically-certified optometrist licensed under the provisions of this subsection shall be authorized to prescribe oral medications except controlled substances classified in Schedules I and II for any condition which an optometrist is authorized to treat under the provisions of this chapter and to use injections to administer benadryl, epinephrine, or equivalent medication to counteract anaphylaxis or anaphylactic reaction. The authority to prescribe a Schedule III, IV, or V controlled substance shall be limited to prescriptions for a quantity sufficient to provide treatment for up to seventy-two (72) hours. No refills of prescriptions for controlled substances shall be allowed. The utilization or prescribing of therapeutic pharmaceutical agents shall be limited to those persons who have sufficient education and professional competence as determined by the board and who have earned transcript credits of at least six (6) semester hours in a course or courses in general and ocular pathology and therapy, with particular emphasis on utilization of therapeutic pharmaceutical agents from a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or by the United States Department of Education. These six (6) semester hours are in addition to the six (6) semester hours required by subsection (13) of this section, making a total of twelve (12) semester hours.

~~(14)~~~~(15)~~ Any optometrist authorized by the board to utilize diagnostic pharmaceutical agents shall be permitted to purchase for use in the practice of optometry diagnostic pharmaceutical agents limited to miotics for emergency use only, mydriatics, cycloplegics, and anesthetics to be applied topically only. Any optometrist authorized by the board to utilize therapeutic pharmaceutical agents shall be permitted to prescribe in the practice of optometry therapeutic pharmaceutical agents. Optometrists so authorized by the board to purchase pharmaceutical agents shall obtain them from licensed drug suppliers or pharmacists on written orders placed in the same or similar manner as any physician or other practitioner authorized by KRS Chapter 217. Purchases shall be limited to those pharmaceutical agents specified in this subsection and in subsection (13) of this section, based upon the authority conferred upon the optometrist by the board consistent with the educational qualifications of the optometrist as set out herein. ~~[All purchases of pharmaceutical drugs by optometrists shall be upon purchase order forms approved by the board.]~~

Section 5. KRS 320.250 is amended to read as follows:

- (1) Licenses to engage in the practice of optometry shall be issued only to those who qualify ~~[therefor]~~ under the provisions of KRS 320.260 or 320.270, or who successfully pass examinations conducted **or approved by** ~~[under the direction of]~~ the board at a time and place fixed by the board. Each applicant shall comply with the provisions of KRS 214.615(1). Each license certificate shall be signed by the president and secretary-treasurer and authenticated by the seal of the board.
- (2) The **examinations may** ~~[examination shall]~~ consist of ~~[a]~~ written, ~~[and]~~ clinical, or practical **examinations** ~~[examination]~~ and shall relate to the skills needed for the practice of optometry in this Commonwealth at the time of the examination and shall seek to determine the applicant's preparedness to exercise these skills. ~~[In regard to the written examination,]~~ The examining board ~~[, at its discretion,]~~ may:
  - (a) Prepare, administer, and grade the examination;
  - (b) ~~[Approve and administer a standardized examination prepared and graded by or under the direction of the National Board of Examiners in Optometry or any other organization approved by the board as qualified to prepare an examination;~~
  - ~~(e)~~ Accept the scores of the applicant from an examination prepared, administered, and graded by the National Board of Examiners in Optometry or any other organization approved by the board as qualified to administer the examination; **and**
  - (c) **Require passage of an examination on Kentucky optometric law.**
- ~~(3)~~ ~~[The applicant, except those granted licenses under the provisions of KRS 320.260 or 320.270, shall successfully pass both the written and clinical or practical portions of the examination.]~~

~~(4)~~ Any person seeking a license to practice optometry ~~under~~~~[pursuant to]~~ the provisions of this section shall submit an application to the board on forms furnished by the board. The applicant shall show proof of the following:

- (a) The applicant is not less than eighteen (18) years of age **and is of good moral character**;
- (b) The applicant is a graduate of a school or college of optometry **that is** accredited by a regional or professional accreditation organization ~~that~~~~[which]~~ is recognized or approved by the council on postsecondary accreditation, or by the United States Department of Education, and ~~[which]~~ is in good standing, as **approved**~~[determined]~~ by the board. All applicants shall have transcript credit of at least six (6) semester hours in a course or courses from a school or college as described in this subsection in general and ocular pharmacology with particular emphasis on diagnostic pharmaceutical agents applied topically to the eye and six (6) semester hours in ocular pathology and therapy with emphasis on utilization of therapeutic pharmaceutical agents. All hours shall be from a school or college as described in this subsection;~~[-]~~
- (c) All other information requested by the board as is set out on the application.

~~(4)~~~~(5)~~ The **nonrefundable** fee for each **license application**~~[examination]~~ shall not exceed ~~six~~~~[two]~~ hundred dollars ~~(\$600)~~~~(\$200)~~ for resident applicants and four hundred dollars ~~(\$400)~~ for nonresident applicants.

~~(5)~~~~(6)~~ No **application shall be considered by the board after one (1) year from the date in which the board received the application has lapsed. After the lapse of the one (1) year period, an applicant shall submit a new application and another nonrefundable fee for further consideration by the board**~~[person shall be allowed to take the examination more than three (3) times within the period of any five (5) consecutive years]~~.

Section 6. KRS 320.270 is amended to read as follows:

***The board may license by endorsement an optometrist who holds a valid license that was obtained by examination from another state or territory of the United States if the applicant for licensure by endorsement:***

- (1) ***Has engaged in the active practice of optometry for at least five (5) years immediately preceding his or her application for licensure;***~~[Any person who has been licensed to practice optometry in another state, which state has licensing and educational requirements substantially equal to or higher than those of this state and which grants equal licensing privileges to persons licensed in this state, may be issued, without written examination, a license to practice optometry in this state upon satisfactorily complying with all regulations and procedures established by the board relating to the granting of licenses by reciprocity.]~~
- (2) ***Has not committed any act that would constitute a violation of this chapter and the administrative regulations promulgated under this chapter and is not the subject of any pending or unresolved board action or malpractice suit in this or any other state or territory;***~~[The applicant shall be required to pass an oral and clinical or practical examination and produce satisfactory evidence that he has actually practiced optometry for at least five (5) years in the state from which he is applying for reciprocity, and shall further comply with all other regulations adopted by the board relating to the granting of a license by reciprocity.]~~
- (3) ***Meets all of the qualifications for regular state licensure as set forth by the board; and***~~[The applicant shall further be required to execute and deliver an affidavit to the board stating that said applicant intends to practice optometry in the Commonwealth upon receipt of the license.]~~
- (4) ***Has completed and submitted an application for licensure by endorsement to the board, submitted a nonrefundable fee to be determined by the board in administrative regulations of no more than seven hundred dollars (\$700), and has authorized any state in which the applicant is licensed to submit information to the board indicating whether or not the applicant is in good standing with the respective state's licensing board***~~[The granting of a license by reciprocity shall be at the discretion of the board. An applicant seeking a license by reciprocity shall be charged a fee not to exceed four hundred dollars (\$400)].~~

Section 7. KRS 320.280 is amended to read as follows:

- (1) All optometrists desiring to continue practice shall annually, prior to March 1, secure from the secretary-treasurer of the board a renewal certificate upon the payment of a fee of not more than two hundred dollars (\$200). Not later than February 15 of each year the **board**~~[secretary-treasurer]~~ shall notify by mail all optometrists of the renewal date and fee. Application for a renewal shall be upon a form~~[as is]~~ prescribed by the board and the optometrist shall furnish the information required by the form.

- (2) As a prerequisite for license renewal, all optometrists now or hereafter licensed in the Commonwealth of Kentucky are and shall be required to take annual courses of study in subjects relating to the practice of optometry to the end that the utilization and application of new techniques, scientific and clinical advances, and the achievement of research will assure expansive and comprehensive care to the public. The annual courses of study shall include the course described in KRS 214.610(1). The length and content of study shall be prescribed by the board but shall not exceed eight (8) hours in any calendar year, with the exception of those optometrists who are authorized to prescribe therapeutic agents who shall be required to have additional credit hours of continuing education in ocular therapy and pharmacology, the amount of required credit hours to be determined by the board, but not to exceed an additional seventeen (17) credit hours, for a total not to exceed twenty-five (25) credit hours per year. Attendance ~~shall~~<sup>must</sup> be at a course or ~~by a sponsor~~<sup>by a sponsor</sup> ~~approved by the board.~~ Attendance at any course or courses of study ~~is~~<sup>are</sup> to be certified to the board upon a form provided by the board and shall be submitted by each licensed optometrist at the time he makes application to the board for the renewal of his license and payment of his renewal fee. ~~The board is authorized to use a portion of the annual renewal fees for the purpose of contracting with institutions of higher learning, professional organizations, or qualified individuals for the providing of educational programs that meet this requirement. The board is further authorized to treat funds set aside for the purpose of continuing education as state funds for the purpose of accepting any funds made available under federal law on a matching basis for the promulgation and maintenance of programs of continuing education. In no instance may the board require a greater number of hours of study than are available at approved courses held within the state.~~ The board ~~may~~<sup>shall</sup> waive the continuing education requirement in cases of illness or undue hardship.
- (3)~~(2)~~ Failure of any optometrist to secure his renewal certificate within sixty (60) days after March 1, shall constitute sufficient cause for the board to revoke his license.

Section 8. KRS 320.290 is amended to read as follows:

- ~~{(1) Every optometrist shall register his license with the clerk of the county or counties in which he practices. The clerk shall receive a fee pursuant to KRS 64.012 for each registration.~~
- ~~(2) Every practicing optometrist shall display in a conspicuous place at the entrance to his office the true full name of the person practicing therein and shall keep his license certificate conspicuously displayed in his place of practice so that it can easily be seen and read.~~

Section 9. KRS 320.295 is amended to read as follows:

- ~~{(1) No optometrist shall engage in any advertising of, in any form that, which contains a statement or claim which is false, or tends to be misleading, or deceptive or unfair, or which is self laudatory rather than designed to inform the public.~~
- ~~(2) No optometrist shall engage in any direct personal solicitation of business, or engage any person to conduct direct personal solicitation on his behalf, unless of an already existing client of that optometrist.~~
- ~~(3) "Advertise" means to furnish any written, printed, or broadcast information containing an optometrist's name or any other identifying information, with the exception of the following:~~
- ~~(a) A professional card identifying the optometrist by name and as an optometrist and giving his address and telephone number;~~
  - ~~(b) A brief professional announcement card stating the information contained in paragraph (a) of this subsection or any changed associations or addresses or phone numbers which may be mailed to other optometrists, patients, former patients, personal friends, and relatives;~~
  - ~~(c) A routine telephone book listing containing only the information set forth in paragraph (a) of this subsection;~~
  - ~~(d) A sign on or near the optometrist's office and in the building directory identifying the optometrist's office and containing only the information specified in paragraph (a) of this subsection; and~~
  - ~~(e) A letterhead of an optometrist containing the information set forth in paragraph (a) of this subsection and the name of any other optometrists in his office.~~
- ~~(4) The board may establish regulations to govern advertising under this section and by regulation may institute a procedure requiring prepublication approval of advertisements by the board.~~

- (5) ~~In the event that the board disapproves any advertisement pursuant to its regulations, the optometrist submitting the advertisement may request a hearing before the board. The board may consider any additional information submitted to it by the optometrist, or other individuals, and shall issue its final decision concerning the advertisement in writing.~~
- (6) ~~Any optometrist aggrieved by a final decision of the board concerning an advertisement may appeal to the Franklin Circuit Court in the same manner provided in this chapter for appeals from disciplinary actions.~~

Section 10. KRS 320.300 is amended to read as follows:

It shall be unlawful and a violation of the provisions of this chapter for any person:

- (1) To sell, fit, or dispense visual ~~aids~~~~aid glasses~~ except upon the written prescription of an optometrist, physician, or osteopath regularly licensed to practice optometry, medicine, or osteopathy;
- (2) To practice optometry, directly or indirectly, or to hold ***oneself out***~~himself~~ as being able so to do without first having obtained a license from the board~~and filing the license with the clerk of the county or counties in which he practices~~;
- (3) ~~Who~~~~if he~~ writes a prescription for visual aid glasses, to receive any part of the price paid to a third person for filling ~~the~~~~such~~ prescription~~;~~ or for ~~the~~~~such~~ third person to pay to the person writing the prescription any part of the price paid for filling the prescription;
- (4) To practice optometry under any name other than his own, except as permitted by the board in its regulations.

Section 11. KRS 320.310 is amended to read as follows:

- (1) The board ~~may~~~~shall have the power to~~ refuse to~~grant,~~ issue, ***refuse to***~~or~~ renew, ***limit or restrict,*** ~~any license to practice optometry, to~~ revoke, or suspend ~~a~~~~any~~ license~~to practice optometry~~, ~~may~~~~to~~ place ***on***~~any optometrist upon terms and conditions of~~ probation,~~to limit the license privileges of an optometrist, or to issue a private~~ or~~public~~ reprimand ***a licensee, may order restitution, may impose a fine not to exceed one thousand dollars (\$1,000) for each violation of this chapter or the corresponding administrative regulations, or may impose any combination of these penalties if it finds that an applicant or a licensee has***~~for any of the following causes~~:
  - (a) ***Engaged in any***~~Presentation to the board of any license, certificate, or graduation diploma illegally or fraudulently obtained, or the~~ practice of fraud or ***deceit in obtaining or attempting to obtain a license***~~deception in passing an examination~~;
  - (b) ***Been convicted of a felony or misdemeanor involving moral turpitude. A record of the conviction or a certified copy of the record shall be conclusive evidence***~~Conviction of a felony or any crime which involves acts which relate to the optometrist's qualifications, ability, or moral fitness to continue to practice optometry or which may create a danger to the public~~;
  - (c) Chronic or persistent inebriety or addiction to a drug habit to an extent that ***continued practice is dangerous to patients or to the public safety***~~disqualifies from practicing with safety to the public~~;
  - (d) ***Been granted a license upon a mistake of material fact***~~Loaning, selling, or fraudulently obtaining any optometry diploma, license, record, or certificate, or aiding or abetting therein~~;
  - (e) ***Engaged in***~~Gross~~ incompetence, as determined by the board;
  - (f) ***Practiced***~~Grossly unprofessional or dishonorable conduct, as determined by the board~~;
  - ~~(g) The obtaining of any fee by fraud or misrepresentation or the practice of deception or fraud upon any patient or patients;~~
  - ~~(h) Affliction with a contagious or infectious disease which, in the opinion of the board, renders practice of optometry by the licensee or applicant for license dangerous to the public health;~~
  - ~~(i) Practicing as an itinerant, peddled~~~~peddling~~ from door to door, ***established***~~establishing~~ a temporary office, or ***practiced***~~practicing~~ optometry outside of or away from his regular office or place of practice;
  - ~~(g)(j)~~ ***Employed, procured, induced, aided, or abetted***~~Employing, procuring, inducing, aiding or abetting~~ any person, not holding a ***Kentucky*** license, to practice optometry ***or in practicing optometry***;

- ~~[(k)] Seeking patronage by means of solicitors, canvassers, cappers, steerers, or agents;~~
- ~~(h)~~~~[(1)]~~ **Used**~~[Using]~~ the title "doctor" or its abbreviation without further qualifying this title or abbreviation with the word "optometrist" **or suitable words or letters designating an optometry degree;**
- ~~[(m)] Use by an optometrist of the words "infirmary," "hospital," "school," "college," "university," or "institute" in English or any other language in connection with any place where optometry may be practiced or demonstrated; Provided, however, That nothing in this section shall prevent an optometric clinic, approved by the board, from being conducted on a nonprofit basis by a school or college of optometry or an association of registered optometrists;~~
- ~~(i)~~~~[(n)]~~ **Engaged in** any conduct~~[which, in the opinion of the board, is of a character]~~ likely to deceive or defraud the public;
- ~~[(o)] Receipt by an optometrist of any part of the price paid to another person for filling a prescription prepared by the optometrist;~~
- ~~(j)~~~~[(p)]~~ **Violated**~~[Violation of]~~ any order~~[of suspension, order limiting privileges, or terms or conditions of any order of probation]~~ issued by the board;
- ~~(k)~~ ~~[(q)]~~~~Has~~ Had his license to practice optometry in any other jurisdiction revoked, suspended, **limited**, placed on conditions of probation, or subjected to **any** other disciplinary action by the licensing authority thereof;
- ~~[(r)] Receipt of any fees for services not rendered;~~
- ~~(l)~~~~[(s)]~~ **Prescribed**~~[Prescription of]~~ any therapeutic agent in~~[such]~~ an amount that the optometrist knows, or **should**~~[has reason to]~~ know, is excessive under accepted and prevailing standards, or which the optometrist knows, or has reason to know, will be used or is likely to be used other than for an accepted therapeutic purpose;
- ~~(m)~~~~[(t)]~~ **Developed**~~[Development of]~~ a physical or mental disability, or other condition, which renders the continued practice by the optometrist dangerous to~~[the]~~ patients or the public; ~~or~~~~[and]~~
- ~~(n)~~~~[(u)]~~ **Violated**~~[Violation of]~~ any statute under this chapter **or administrative regulation promulgated under those statutes**~~[pertaining to professional advertising of optometrists].~~
- ~~(2)~~~~Nothing in this section shall be construed to prohibit a licensed optometrist from issuing appointment cards to his patients when the information thereon is limited to matter pertaining to the time and place of appointment and that permitted on a professional card. For the purpose of this section, the professional card shall contain only the name, title, profession, degrees, address, telephone number, and office hours of the licensed optometrist.~~
- ~~(3)~~ Nothing in this section shall prevent an optometrist from establishing **branch offices if each**~~[not more than one (4) branch office, providing any]~~ office contains minimum equipment as~~[shall be]~~ required by **administrative** regulation of the board, **ensures patient care as necessary**, and ~~has~~~~[provided further, that]~~ a **Kentucky**~~[duly]~~ licensed optometrist~~[shall be]~~ in charge of the office.

Section 12. KRS 320.312 is amended to read as follows:

- (1) When the board has reason to believe, based upon its own information or a complaint or inquiry directed to the board, that an optometrist is suffering from a physical or mental condition that might impede his ability to practice competently, the board may order the optometrist to undergo a physical or mental examination by persons designated by the board, **at the expense of the optometrist.**
- (2) Failure of an optometrist to submit to an examination when directed shall constitute an admission that the concerned optometrist has developed a physical or mental disability, or other conditions, that continued practice is dangerous to patients or to the public and the board may act accordingly pursuant to KRS 320.310.
- (3) The board may limit the optometrist's license privileges pursuant to this section in addition to the other alternatives set forth in KRS 320.310.
- (4) An optometrist whose license has been suspended, limited, or revoked under this section shall, at reasonable intervals, be afforded an opportunity to demonstrate that he is able to resume the competent practice of optometry with reasonable skill and safety to patients.

Section 13. KRS 320.321 is amended to read as follows:

- (1) ***Grievances may be submitted by an individual, organization, or entity, including the board based upon information within the board's knowledge.*** The board may investigate any suspected grounds for disciplinary action and may hire persons to investigate on its behalf. The board shall have the power to issue investigatory subpoenas for the appearance before the board of any person within the jurisdiction of the Commonwealth of Kentucky and to require production of any record, document, or other item. The board may seek enforcement of investigatory subpoenas in the courts of the Commonwealth as may be necessary. ***A copy of the grievance shall be mailed to the licensee at the last address that the board has on record. If the licensee chooses to respond to the grievance, he or she shall submit a response within ten (10) days after the date on which the grievance was mailed.***
- (2) The board may initiate disciplinary proceedings based upon information within its knowledge or received from other persons. A majority of the board members may direct the issuance of a complaint; in these instances, the board shall prepare a written complaint, ***in accordance with KRS Chapter 13B, that***~~which~~ shall be signed by the chairman of the board and~~which~~ shall contain sufficient information to apprise the named optometrist of the nature of the charges. ***A copy of the*** complaint shall be delivered to the charged optometrist by personal delivery or ***sent*** by certified mail to the optometrist's last~~known~~ ***that the board has on record.*** The optometrist shall file a response within twenty (20) days after the ***complaint was sent or personally served upon the optometrist***~~(date of delivery)~~. ***Failure to submit a timely response or avoidance of service may be taken by the board as an admission of the charges contained in the complaint.*** The board may then review the ***grievance, information obtained by the board, and the*** optometrist's response, and dismiss the ***grievance***~~complaint~~, issue a ***complaint and notice of hearing***, or ***investigate further***~~private and confidential reprimand to the optometrist, or schedule further proceedings~~.
- (3) ~~If the board decides to schedule the matter for further proceedings, it shall assign the matter for full hearing by the board, or if the board directs, by any individual member of the board or a hearing officer. The hearing shall be conducted in accordance with KRS Chapter 13B.~~
- (4) The board may ***impose discipline upon the licensee under Section 11 of this Act if the board finds a violation of this chapter or administrative regulations promulgated under this chapter, after a hearing***~~revoke or suspend a license, place an optometrist on terms and conditions of probation, limit an optometrist's license privileges, or issue a private or public reprimand~~.
- (5)~~If a board member serves as a hearing officer for a prehearing, informal conference, or a hearing, he shall abstain from voting on any final order which results from the hearing.~~
- (6)~~All costs of the proceeding may be assessed against the charged optometrist if a finding of guilt is made by the board.~~

Section 14. KRS 320.331 is amended to read as follows:

An optometrist who, by final order of the board has been subjected to any disciplinary action may file an appeal. The action on appeal shall be filed with the Circuit Court of the county in which the violation occurred in accordance with KRS Chapter 13B. ***The commencement of proceedings under this section shall not operate as a stay on the board's order, unless specifically ordered otherwise by the court***~~board's order shall be stayed until final determination of the appeal, unless the court, upon motion of the board, finds that irreparable harm may result to the public unless the order is enforced during the pendency of the appeal~~.

Section 15. KRS 320.360 is amended to read as follows:

All fees imposed and collected under the provisions of this chapter shall be paid to the ~~secretary-treasurer of the~~ board for the use of the board, and shall be deposited in the State Treasury to the credit of an agency fund for the use of the board. The board may make such expenditures from the fund as may, in the opinion of the board, serve to further the purposes of this chapter, including payment for professional services.

Section 16. KRS 320.990 is amended to read as follows:

Any person who violates any of the provisions of this chapter shall be ***guilty of a Class A misdemeanor***~~finned not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for the first offense, and shall be fined one hundred dollars (\$100) and confined in jail for thirty (30) days for each subsequent offense~~.

Section 17. KRS 217.015 is amended to read as follows:

For the purposes of KRS 217.005 to 217.215:

- (1) "Advertisement" means all representations, disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;
- (2) "Bread" and "enriched bread" mean only the foods commonly known and described as white bread, white rolls, white buns, enriched white bread, enriched rolls, and enriched white buns, as defined under the federal act;
- (3) "Cabinet" means the Cabinet for Health Services or its designee;
- (4) "Color" means but is not limited to black, white, and intermediate grays;
- (5) "Color additive" means a material that:
  - (a) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source. Nothing in this paragraph shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest; or
  - (b) When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable, alone or through reaction with another substance, of imparting color. "Color additive" does not include any material that has been or may in the future be exempted under the federal act;
- (6) "Contaminated with filth" means any food, drug, device, or cosmetic that is not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminants;
- (7) "Cosmetic" means:
  - (a) Articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and
  - (b) Articles intended for use as a component of those articles, except that the term shall not include soap;
- (8) "Device," except when used in subsection (48) of this section, KRS 217.035(6), KRS 217.065(3), KRS 217.095(3), and KRS 217.175(10), means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:
  - (a) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or
  - (b) To affect the structure or any function of the body of man or other animals;
- (9) "Dispense" means to deliver a drug or device to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;
- (10) "Dispenser" means a person who lawfully dispenses a drug or device to or for the use of an ultimate user;
- (11) "Drug" means:
  - (a) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;
  - (b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;
  - (c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and
  - (d) Articles intended for use as a component of any article specified in this subsection but does not include devices or their components, parts, or accessories;
- (12) "Enriched," as applied to flour, means the addition to flour of vitamins and other nutritional ingredients necessary to make it conform to the definition and standard of enriched flour as defined under the federal act;
- (13) "Environmental Pesticide Control Act of 1972" means the Federal Environmental Pesticide Control Act of 1972, Pub. L. 92-516, and all amendments thereto;



- (14) "Fair Packaging and Labeling Act" means the Fair Packaging and Labeling Act as it relates to foods and cosmetics, 15 U.S.C. secs. 1451 et seq., and all amendments thereto;
- (15) "Federal act" means the Federal Food, Drug and Cosmetic Act, 21 U.S.C. secs. 301 et seq., 52 Stat. 1040 et seq., or amendments thereto;
- (16) "Filled milk" means any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, except the fat or oil of contained eggs and nuts and the fat or oil of substances used for flavoring purposes only, so that the resulting product is an imitation or semblance of milk, cream, skimmed milk, ice cream mix, ice cream, or frozen desserts, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, whether in bulk or in containers, hermetically sealed or unsealed. This definition does not mean or include any milk or cream from which no part of the milk or butter fat has been extracted, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added any substance rich in vitamins, nor any distinctive proprietary food compound not readily mistaken for milk or cream or for condensed, evaporated, concentrated, powdered, dried, or desiccated milk or cream, if the compound is prepared and designed for the feeding of infants or young children, sick or infirm persons, and customarily used on the order of a physician, and is packed in individual containers bearing a label in bold type that the contents are to be used for those purposes; nor shall this definition prevent the use, blending, or compounding of chocolate as a flavor with milk, cream, or skimmed milk, desiccated, whether in bulk or in containers, hermetically sealed or unsealed, to or with which has been added, blended or compounded no other fat or oil other than milk or butter fat;
- (17) "Flour" means only the foods commonly known as flour, white flour, wheat flour, plain flour, bromated flour, self-rising flour, self-rising white flour, self-rising wheat flour, phosphated flour, phosphated white flour, and phosphated wheat flour, defined under the federal act;
- (18) "Food" means:
  - (a) Articles used for food or drink for man or other animals;
  - (b) Chewing gum; and
  - (c) Articles used for components of any such article;
- (19) "Food additive" means any substance the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any of these uses, if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food to be safe under the conditions of its intended use; except that the term does not include:
  - (a) A pesticide chemical in or on a raw agricultural commodity;
  - (b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;
  - (c) A color additive; or
  - (d) Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act, 21 U.S.C. secs. 451 et seq.; or the Meat Inspection Act of 1907; and amendments thereto;
- (20) "Food processing establishment" means any commercial establishment in which food is manufactured, processed, or packaged for human consumption, but does not include retail food establishments;
- (21) "Food service establishment" means any fixed or mobile commercial establishment that engages in the preparation and serving of ready-to-eat foods in portions to the consumer, including, but not limited to: restaurants; coffee shops; cafeterias; short order cafes; luncheonettes; grills; tea rooms; sandwich shops; soda fountains; taverns; bars; cocktail lounges; nightclubs; roadside stands; industrial feeding establishments; private, public or nonprofit organizations or institutions routinely serving food; catering kitchens; commissaries; charitable food kitchens; or similar places in which food is prepared for sale or service on the premises or elsewhere with or without charge. It does not include food vending machines, establishments

serving beverages only in single service or original containers, or retail food stores which only cut, slice, and prepare cold-cut sandwiches for individual consumption;

- (22) "Food storage warehouse" means any establishment in which food is stored for subsequent distribution;
- (23) "Immediate container" does not include package liners;
- (24) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent illness or injury based on:
  - (a) The number of potential illnesses or injuries; or
  - (b) The nature, severity, and duration of the anticipated illness or injury;
- (25) "Interference" means threatening or otherwise preventing the performance of lawful inspections or duties by agents of the cabinet during all reasonable times of operation;
- (26) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of KRS 217.005 to 217.215 that any word, statement, or other information appearing on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper;
- (27) "Labeling" means all labels and other written, printed, or graphic matter:
  - (a) Upon an article or any of its containers or wrappers; or
  - (b) Accompanying the article;
- (28) "Legend drug" means a drug defined by the Federal Food, Drug and Cosmetic Act, as amended, and under which definition its label is required to bear the statement "Caution: Federal law prohibits dispensing without prescription.";
- (29) "Meat Inspection Act" means the Federal Meat Inspection Act, 21 U.S.C. secs. 71 et seq., 34 Stat. 1260 et seq., including any amendments thereto;
- (30) "New drug" means:
  - (a) Any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or
  - (b) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety for use under prescribed conditions, has become so recognized, but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions;
- (31) "Official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them;
- (32) "Person" means an individual, firm, partnership, company, corporation, trustee, association, or any public or private entity;
- (33) "Pesticide chemical" means any substance that alone in chemical combination, or in formulation with one or more other substances, is an "economic poison" within the meaning of the Federal Insecticide, Fungicide and Rodenticide Act and amendments thereto, and that is used in the production, storage, or transportation of raw agricultural commodities;
- (34) "Poultry Products Inspection Act" means the Federal Poultry and Poultry Products Inspection Act; 21 U.S.C. secs. 451 et seq., Pub. L. 85-172, 71 Stat. 441, and any amendments thereto;
- (35) "Practitioner" means medical or osteopathic physicians, dentists, chiropractors, and veterinarians who are licensed under the professional licensing laws of Kentucky to prescribe and administer drugs and devices. "Practitioner" includes optometrists when administering or prescribing pharmaceutical agents authorized in **subsections (12) to (14) of Section 4 of this Act**~~[KRS 320.240(13), (14), and (15)]~~, advanced registered nurse practitioners as authorized in KRS 314.011 and 314.042, and physician assistants when administering or prescribing pharmaceutical agents as authorized in KRS 311.560(3) and (4);

- (36) "Prescription" means a written or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, that is signed, given, or authorized by a medical, dental, chiropractic, veterinarian, or optometric practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
- (37) "Prescription blank" means a document that conforms with KRS 217.216 and is intended for prescribing a drug to an ultimate user;
- (38) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing;
- (39) "Retail food establishment" means any food service establishment, retail food store, or a combination of both within the same establishment;
- (40) "Retail food store" means any fixed or mobile establishment where food or food products, including prepackaged, labeled sandwiches or other foods to be heated in a microwave or infrared oven at the time of purchase, are offered for sale to the consumer, and intended for off-premises consumption, but does not include establishments which handle only prepackaged, snack-type, nonpotentially hazardous foods, markets that offer only fresh fruits and vegetables for sale, food service establishments, food and beverage vending machines, vending machine commissaries, or food processing establishments;
- (41) "Salvage distributor" means a person who engages in the business of distributing, peddling, or otherwise trafficking in any salvaged merchandise;
- (42) "Salvage processing plant" means an establishment operated by a person engaged in the business of reconditioning, labeling, relabeling, repackaging, reconditioning, sorting, cleaning, culling or who by other means salvages, sells, offers for sale, or distributes for human or animal consumption or use any salvaged food, beverage, including beer, wine and distilled spirits, vitamins, food supplements, dentifrices, cosmetics, single-service food containers or utensils, containers and packaging materials used for foods and cosmetics, soda straws, paper napkins, or any other product of a similar nature that has been damaged or contaminated by fire, water, smoke, chemicals, transit, or by any other means;
- (43) "Second or subsequent offense" has the same meaning as it does in KRS 218A.010;
- (44) "Secretary" means the secretary of the Cabinet for Health Services;
- (45) "Temporary food service establishment" means any food service establishment which operates at a fixed location for a period of time, not to exceed fourteen (14) consecutive days;
- (46) "Traffic" has the same meaning as it does in KRS 218A.010;
- (47) "Ultimate user" has the same meaning as it does in KRS 218A.010;
- (48) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts that are material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under the conditions of use as are customary or usual;
- (49) The representation of a drug in its labeling or advertisement as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use involving prolonged contact with the body; and
- (50) The provisions of KRS 217.005 to 217.215 regarding the selling of food, drugs, devices, or cosmetics shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of those articles for sale, the sale, dispensing, and giving of those articles, and the supplying or applying of those articles in the conduct of any food, drug, or cosmetic establishment.

Section 18. The following KRS section is repealed:

320.255 Inactive status for license.

Approved April 6, 2000

## CHAPTER 362

### (HB 901)

AN ACT relating to the Kentucky Information Highway.

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

Section 1. KRS 45A.605 is amended to read as follows:

- (1) As used in this section:
  - (a) "Information highway" means a communication network for voice, data, and video communications technologies; and
  - (b) "Agencies of the Commonwealth of Kentucky" includes all authorities; boards; commissions; councils; departments; program cabinets; the Kentucky Lottery Corporation; vocational schools; the Kentucky School for the Deaf; the Kentucky School for the Blind; upon written request of the Chief Justice, the Court of Justice; upon written request of the co-chairmen of the Legislative Research Commission, the General Assembly and the Legislative Research Commission; and upon written request of presidents, state institutions of higher education.
- (2) The provisions of any other law notwithstanding, the Finance and Administration Cabinet may enter into one (1) or more contracts, on behalf of agencies of the Commonwealth of Kentucky, with any person, partnership, or corporation that operates an information highway. The information highway shall enable the Commonwealth to benefit from cost-effective telecommunications technologies and shall provide opportunities for the private sector.
- (3) Upon implementation, all agencies of the Commonwealth of Kentucky shall obtain all available communications services under contracts executed pursuant to subsection (2) of this section, except as provided under subsection (4) of this section.
- (4) The secretary of the Finance and Administration Cabinet may grant exceptions to the mandatory use of the information highway upon good cause shown.
- (5) Any contract awarded under subsection (2) of this section shall be deemed, for purposes of KRS 45A.050, a state agency price contract to which all political subdivisions and state-licensed nonprofit institutions of higher education may have access and use on the same terms as agencies of the Commonwealth of Kentucky. In addition, nonprofit schools providing elementary or secondary education and nonprofit health care organizations shall be allowed to have access and use the contract on the same terms as agencies of the Commonwealth of Kentucky. "Nonprofit schools" and "nonprofit health care organizations" mean those schools and health care organizations which have been granted tax-exempt status under the United States Internal Revenue Code.
- (6) *Any contract awarded under subsection (2) of this section shall be deemed a state agency price contract to which any entity that has been approved for economic development incentives under programs approved and administered by the Kentucky Economic Development Finance Authority may have access and use on the same terms as agencies of the Commonwealth of Kentucky.*
- (7) *Any contract awarded under subsection (2) of this section shall be deemed a state agency price contract to which nonprofit organizations whose exclusive purpose is the delivery of services related to education, economic development, or cultural arts and humanities, may have access and use on the same terms as agencies of the Commonwealth of Kentucky. For the purposes of this section, "nonprofit organizations" means those organizations which have been granted tax-exempt status under Section 501(c)(3) of the United States Internal Revenue Code or those existing education based entities whose purpose is the delivery of services to state school systems, their employees, or their governing organizations and which have been granted tax-exempt status under Section 501 (c)(6) of the United States Internal Revenue Code.*

Approved April 6, 2000

**CHAPTER 363****(HB 910)**

AN ACT designating the official state bourbon festival.

WHEREAS, the Kentucky Bourbon Festival held annually in Bardstown, Kentucky, on the third weekend of September is the first and oldest Kentucky bourbon festival, having been established in 1991; and

WHEREAS, the Bardstown festival equally showcases all Kentucky distilleries and related industries for domestic and international visitors and press, with the 1999 festival attracting people from twenty states and ten foreign countries; and

WHEREAS, in addition to demonstrating the use of bourbon and bourbon by-products in cooking, agriculture, and aquaculture, the Kentucky Bourbon Festival provides food, arts and crafts, a variety of musical events, and an ever-increasing number of additional activities for children and adults that serve to promote the Commonwealth of Kentucky; and

WHEREAS, the proceeds from the Kentucky Bourbon Festival have benefited numerous nonprofit organizations and schools, a practice to be expanded by dedicating a portion of the proceeds from the September 13-17, 2000 Festival to the funding of a scholarship to be awarded to the child of a distillery worker;

NOW, THEREFORE,

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 2 IS CREATED TO READ AS FOLLOWS:

***The Kentucky Bourbon Festival, Incorporated, of Bardstown, Kentucky, is named and designated the official state bourbon festival.***

**Approved April 6, 2000**

**CHAPTER 364****(HB 950)**

AN ACT authorizing the payment of certain claims against the state that have been duly audited and approved according to law, and have not been paid because of the lapsing or insufficiency of former appropriations against which claims were chargeable, and declaring an emergency.

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

Section 1. (1) There is appropriated out of the general fund in the State Treasury for the purpose of compensating persons and companies for claims that have been duly audited and approved according to law, but have not been paid because of lapsing or insufficiency of former appropriations against which the claims were chargeable, the following amounts:

- |    |                                 |            |
|----|---------------------------------|------------|
| 1. | Anne R. Miller                  | \$114.14   |
|    | 209 Sage Road                   |            |
|    | Louisville, Kentucky 40207      |            |
| 2. | Weber and Rose, PSC             | \$2,294.33 |
|    | 2700 Aegon Center               |            |
|    | 400 West Market Street          |            |
|    | Louisville, Kentucky 40207-3364 |            |
| 3. | James B. Hord                   | \$1,007.81 |
|    | 188 St. Matthews Avenue # 3     |            |
|    | Louisville, Kentucky 40207      |            |

4.	Valley Institute of Psychiatry P.O. Box 1637 Owensboro, Kentucky 42302	\$8,918.94
5.	David P. Schoepf 880 Alexandria Pike Fort Thomas, Kentucky 41075	\$2,737.50
6.	TransCor America, Inc. 1510 Fort Negley Boulevard Nashville, Tennessee 37203	\$1,650.00
7.	Charter Ridge Behavioral Health System 3050 Rio Dosa Drive Lexington, Kentucky 50509	\$17,730.72
8.	Spectrum Care Academy 4500 Campbellsville Road Columbia, Kentucky 42728	\$27,400.81
9.	BCC Resident Account Blackburn Correctional Complex 3111 Spurr Road Lexington, Kentucky 40511	\$1,748.68
10.	KPMG Peat Marwick LLP Peat Marwick Plaza 302 East Wacker Drive Chicago, Illinois 60601-9973	\$9,000.00
11.	Brown, Todd and Heyburn P.O. Box 70087 Louisville, Kentucky 40270-0087	\$26,188.01
12.	Henderson County Fiscal Court 20 North Main Street Henderson, Kentucky 42420	\$2,500.00
13.	Mason County Detention Center 702 U.S. 68 Maysville, Kentucky 41056	\$55,000.00
14.	Weber and Rose PSC 2700 Aegon Center 400 West Market Street Louisville, Kentucky 40202-3364	\$3,878.59
15.	The Albertson Network P.O. Box 960645	\$3,344.64

	Cincinnati, Ohio 45296	
16.	Rodes Professional Apparel	\$2,503.92
	P.O. Box 70007	
	Louisville, Kentucky 40270-0007	
17.	Wyatt, Tarrant and Combs	\$11,307.54
	Citizens Plaza	
	Louisville, Kentucky 40202-2898	
18.	SSC Service Solutions	\$350.00
	P.O. Box 52370	
	Attention: Accounts Receivable	
	Knoxville, Tennessee 37950-2370	
19.	An/Dor Reporting Service, Inc.	\$240.00
	179 East Maxwell Street	
	Lexington, Kentucky 40508	
20.	Benjamin Dickinson	\$208.00
	107 Trigg Court	
	Glasgow, Kentucky 42141	
21.	Miller, Griffin, and Marks PSC	\$607.52
	Suite 700	
	271 West Short Street	
	Lexington, Kentucky 40507	
22.	Porter Paints	\$1,635.10
	P.O. Box 101397	
	Atlanta, Georgia 30392-1397	
23.	Brown, Todd and Heyburn	\$42,135.00
	P.O. Box 70087	
	Louisville, Kentucky 40270-0087	
24.	William G. Holbrook, DVM	\$222.00
	P.O. Box 66	
	West Liberty, Kentucky 41472	
25.	Preprint Publishing Company	\$277,590.00
	9550 Regency Square Boulevard	
	Suite 900	
	Jacksonville, Florida 32225	

(2) The claims listed below are for the payment of State Treasury checks payable to the persons or personal representatives, and the firms listed, but not presented for payment within a period of five (5) years from the date of issuance of the checks as required by KRS 41.370 and 413.120.

	Payee	Treasury Fee	Total Check
1.	Check #071745 dated May 8, 1961	\$483.00	\$25.00
			\$458.00

Margaret Herrmann, Administratrix				
Estate of Alfred William Prinz				
Route 4, Box 521				
Cynthiana, Kentucky 41031-9340				
2.	Check #879532 dated April 24, 1962	\$270.66	\$25.00	\$245.66
Estate of James R. Hayes				
c/o Mrs. James R. Hayes				
P.O. Box 173				
Gray Hawk, Kentucky 40434				
3.	Check #T5,379,774 dated June 9, 1976	\$172.82	\$25.00	\$147.82
Ricky and Rosemary Dingus				
110 Pine Street				
Cynthiana, Kentucky 41031				
4.	Check #T5,949,710 dated April 22, 1977	\$120.20	\$25.00	\$95.20
Robert C. and Dorothea Green				
36 Bob Green Road				
Milton, Kentucky 40045				
5.	Check #A5,079,303 dated May 1, 1982	\$171.00	\$25.00	\$146.00
Oscar Wren				
307 Wilson Avenue				
Auburn, Kentucky 42206				
6.	Check #G1,286,150 dated March 25, 1986	\$38.66	\$25.00	\$13.66
	Check #G1,309,622 dated April 8, 1986	\$38.66	\$25.00	\$13.66
	Check #G1,343,570 dated April 21, 1986	\$38.66	\$25.00	\$13.66
	Check #G1,370,765 dated May 6, 1986	\$38.66	\$25.00	\$13.66
	Check #G1,396,889 dated May 20, 1986	\$38.66	\$25.00	\$13.66
	Check #G1,420,738 dated June 2, 1986	\$38.66	\$25.00	\$13.66
	Check #G1,451,325 dated June 13, 1986	\$38.66	\$25.00	\$13.66
	Check #G1,485,946 dated June 30, 1986	\$38.66	\$25.00	\$13.66
	Check #G1,513,542 dated July 15, 1986	\$38.66	\$25.00	\$13.66
	Check #G1,555,076 dated July 31, 1986	\$38.66	\$25.00	\$13.66
	Estate of Jon Bud Harris (totals)	\$386.60	\$250.00	\$136.60
c/o Douglas Charles				
529 Hunters Knoll				
Lexington, Kentucky 40509				
7.	Check #T4,085,127 dated May 23, 1986	\$199.00	\$25.00	\$174.00
	Check #T6,757,551 dated June 28, 1898	\$561.00	\$25.00	\$536.00
	Neil Yoder (totals)	\$760.00	\$50.00	\$710.00



	11305 Brodley Drive			
	Louisville, Kentucky 40223			
8.	Check #T4,825,225 dated May 20, 1987	\$71.00	\$25.00	\$46.00
	Douglas Jefferson			
	5426 Pawnee Trail			
	Louisville, Kentucky 40222			
9.	Check #T5,024,640 dated July 7, 1987	\$389.76	\$25.00	\$364.76
	Paul R. and Marjorie R. Beach			
	230 West Hickman Street			
	Winchester, Kentucky 40391			
10.	Check #P6,041,018	\$43.51	\$25.00	\$18.51
	dated January 8, 1988			
	Check #P6,071,148	\$74.41	\$25.00	\$49.41
	dated January 18, 1988			
	Check #P7,864,260	\$71.36	\$25.00	\$46.36
	dated November 21, 1989			
	Check #G1,555,076	\$137.53	\$25.00	\$112.53
	dated December 19, 1989			
	James W. Murphy (totals)	\$326.81	\$100.00	\$226.81
	3120 Bank Street			
	Louisville, Kentucky 40212			
11.	Check #T6,577,625	\$167.00	\$25.00	\$142.00
	dated May 17, 1989			
	William L. Haynes			
	385 West Seventh Street			
	Calhoun, Kentucky 42327-2047			
12.	Check #G5,401,798	\$500.00	\$25.00	\$475.00
	dated April 24, 1990			
	Ashland Poe			
	P.O. Box 145			
	Cumberland, Kentucky 40823			
13.	Check #A1,970,873 dated June 1, 1990	\$31.00	\$25.00	\$6.00
	Leah Hampton for Meredith Willis			
	P.O. Box 127			
	Vanceburg, Kentucky 41179			
14.	Check #T7,481,918 dated June 7, 1990	\$37.00	\$25.00	\$12.00
	Perry and Ella Nora North			
	14 Summer Street			

	Hazard, Kentucky 41701			
15.	Check #T7,481,918 dated June 7, 1990	\$35.52	\$25.00	\$10.52
	Michael Fallon			
	881 Minoma Avenue			
	Louisville, Kentucky 40217			
16.	Check #E0,288,020	\$38.83	\$25.00	\$13.83
	dated November 14, 1990			
	Lucille M. Franklin			
	4001 Woodgate Lane			
	Louisville, Kentucky 40220			
17.	Check #G8,127,835	\$541.00	\$25.00	\$516.00
	dated April 17, 1992			
	T. Rothrock Miller, PSC			
	c/o T. R. Miller			
	1250 Lakewood Drive			
	Lexington, Kentucky 40502			
18.	Check #G8,171,722	\$1,050.00	\$25.00	\$1,025.00
	dated April 17, 1992			
	Richard Sanders			
	c/o Joanna Sagester			
	700 Capital Avenue, Room 316B			
	Frankfort, Kentucky 40601			
19.	Check # T9,433,681	\$3550.64	\$25.00	\$3,525.64
	dated June 12, 1992			
	Check #T9,433,682	\$184.32	\$25.00	\$159.32
	dated June 12, 1992			
	Dixie Fuel Company (totals)	\$3,734.96	\$50.00	\$3,684.96
	General Delivery			
	Grays Knob, Kentucky 40829			
20.	Check #T9,574,726 dated July 2, 1992	\$64.11	\$25.00	\$39.11
	Gray L. Bragg			
	6413 Faris Way			
	Louisville, Kentucky 40272			
21.	Check #T9,590,230 date July 2, 1992	\$129.00	\$25.00	\$104.00
	James H. and B. L. Ryle			
	1098 Cecilia Avenue			
	Covington, Kentucky 41011			
22.	Check #CS116,379	\$45.70	\$25.00	\$20.70

	dated March 2, 1993			
	Paul D. Durbin			
	505 East Park Drive			
	Edinburgh, Indiana 48124			
23.	Check #E0,725,516	\$308.52	\$25.00	\$283.52
	dated July 1, 1993			
	Robert A. and S. Perkins			
	523 West New Buckley Road			
	Ashland, Kentucky 41102			
24.	Check #T9,912,433	\$90.71	\$25.00	\$65.71
	dated March 12, 1993			
	Beatrice B. Robinson			
	2218 Stockton Road			
	Frankfort, Kentucky 40601			
25.	Check #C0,342,884	\$442.32	\$25.00	\$417.32
	dated February 15, 1994			
	Check #C0,351,884	\$442.75	\$25.00	\$417.75
	dated March 15, 1994			
	Check #C0,325,417	\$442.75	\$25.00	\$417.75
	dated December 15, 1993			
	Check #C0,334,093	\$442.75	\$25.00	\$417.75
	dated January 15, 1994			
	Charlene M. Cornell (totals)	\$1,770.57	\$100.00	\$1,670.57
	c/o Carol Coyle			
	Adult Protective Services			
	908 East Broadway, 11-W			
	Louisville, Kentucky 40203			
26.	Check #G0,304,650	\$563.64	\$25.00	\$538.64
	dated February 24, 1994			
	Check #G0,315,583	\$1,328.64	\$25.00	\$1,303.64
	dated February 28, 1994			
	Allen County Sheriff Dept. (totals)	\$1,892.28	\$50.00	\$1,842.28
	Scottsville, Kentucky 42164			
27.	Check #G0,520,276	\$2,948.00	\$25.00	\$2,923.00
	dated May 9, 1994			
	St. Stephen Baptist Church			
	1008 South Fifteenth Street			
	Louisville, Kentucky 40210-1321			

28.	Check #G8,127,835	\$228.88	\$25.00	\$203.88
	dated April 9, 1992			
	Titus L. White			
	1120 Liberty Road			
	Lexington, Kentucky 40505			

Section 2. The Finance and Administration Cabinet and the State Treasurer are authorized to pay the following listed claims from the following funds:

(1) The Kentucky Retirement Systems is authorized to make payment from their retirement fund for State Treasury checks payable to the persons or their personal representatives but not presented for payment within a period of five (5) years from the date of issuance of the checks, the following sums:

1.	Check #R2,437,308	\$221.01	\$25.00	\$196.01
	dated August 4, 1987			
	Samuel J. Flowers			
	3105 Carriage Court			
	Louisville, Kentucky 40205			
2.	Check #K0,399,849	\$137.12	\$25.00	\$112.12
	dated July 6, 1993			
	Check #K0,410,188	\$137.12	\$25.00	\$112.12
	dated August 4, 1993			
	Check #K0,420,767	\$137.12	\$25.00	\$112.12
	dated September 7, 1993			
	Check #K0,431,397	\$137.12	\$25.00	\$112.12
	dated October 5, 1993			
	Check #K0,442,101	\$137.12	\$25.00	\$112.12
	dated November 12, 1993			
	Check #K0,452,650	\$137.12	\$25.00	\$112.12
	dated December 15, 1993			
	Estate of Ruby Miller	(totals) \$822.72	\$150.00	\$672.72
	c/o Carol Zeitler			
	325 Walnut Drive			
	Nashville, Tennessee 37205			

(2) The Workforce Development Cabinet is authorized to make payment from their unemployment compensation fund for State Treasury checks payable to the persons or their personal representatives but not presented for payment within a period of five (5) years from the date of issuance of the checks, the following sums:

1.	Check #U4,362,558 dated June 18, 1982	\$136.00
	Darrell S. Meffert	
	922 Reasor Avenue	
	Louisville, Kentucky 40217	
2.	Check #U3,254,518 dated June 16, 1989	\$308.00
	Patrick Jelinek	

217 Jeffrey Drive

Radcliff, Kentucky 40160-1744

Section 3. Whereas the persons and companies named have furnished in good faith the services, supplies, and materials enumerated, and the Commonwealth has received them, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved April 6, 2000**

## **CHAPTER 365**

### **(HCR 11)**

A CONCURRENT RESOLUTION confirming the appointment of Sheila Owsley Thomas to the Postsecondary Education Nominating Committee.

WHEREAS, pursuant to KRS 164.005, the Governor has appointed Sheila Owsley Thomas as a member of the Postsecondary Education Nominating Committee to fill an unexpired term ending April 14, 2004; and

WHEREAS, appointments to the Postsecondary Education Nominating Committee are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of March 26, 1999, the Governor has delivered the name of Sheila Owsley Thomas of Booneville, Kentucky for confirmation as a member of the committee, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Sheila Owsley Thomas meets the requirements established in KRS 164.005 for membership on the Postsecondary Education Nominating Committee;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. The House of Representatives and Senate hereby confirm the appointment of Sheila Owsley Thomas to the Postsecondary Education Nominating Committee to fill the remainder of a term ending April 14, 2004.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Sheila Owsley Thomas, HC64 Box 643, Booneville, Kentucky 41314, in writing, of the General Assembly's action.

**Approved April 6, 2000**

## **CHAPTER 366**

### **(HCR 22)**

A CONCURRENT RESOLUTION confirming the appointment of Margaret Katherine Harris to the Postsecondary Education Nominating Committee.

WHEREAS, pursuant to KRS 164.005, the Governor has appointed Margaret Katherine Harris as a member of the Postsecondary Education Nominating Committee for a term ending April 14, 2004; and

WHEREAS, appointments to the Postsecondary Education Nominating Committee are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of April 22, 1998, the Governor has delivered the name of Margaret Katherine Harris of Loyall, Kentucky for confirmation as a member of the committee, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Margaret Katherine Harris meets the requirements established in KRS 164.005 for membership on the Postsecondary Education Nominating Committee;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. The House of Representatives and Senate hereby confirm the appointment of Margaret Katherine Harris to the Postsecondary Education Nominating Committee for a term ending April 14, 2004.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Margaret Katherine Harris, P.O. Box 523, Loyall, Kentucky 40854, in writing, of the General Assembly's action.

**Approved April 6, 2000**

## **CHAPTER 367**

**(HB 792)**

AN ACT relating to coal mining.

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

Section 1. KRS 350.445 is amended to read as follows:

The following performance standards shall be applicable to steep-slope strip mining and shall be in addition to those general performance standards required by KRS 350.405 to 350.435; provided, however, that the provisions of this section shall not apply to those situations in which a permittee or operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area, or where a permittee or operator is in compliance with the provisions of KRS 350.450(2):

- (1) The permittee or operator shall insure that when performing strip mining on steep slopes, debris, abandoned or disabled equipment, spoil material, or waste mineral matter not be placed on the downslope below the bench or mining cut; provided, that spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of KRS 350.410 or 350.445(2) shall be permanently stored pursuant to KRS 350.440.
- (2) The permittee or operator shall complete backfilling with spoil material and shall be required to cover completely the highwall and return the site to the approximate original contour, which material will maintain stability following mining and reclamation.
- (3) The permittee or operator may not disturb land above the top of the highwall unless the cabinet finds that the disturbance will facilitate compliance with the environmental protection standards of this subsection; provided, however, that the land disturbed above the highwall shall be limited to that amount necessary to facilitate compliance. *The land above the highwall may be disturbed for construction of a permanent road only where the applicant affirmatively demonstrates, and the cabinet makes a detailed and written determination, that the proposed disturbance facilitates compliance with this chapter and provided that the land disturbed shall be limited to that amount necessary to facilitate such compliance. The cabinet shall make this determination upon a demonstration by the permittee that:*
  - (a) *The permittee will completely eliminate the production highwall and backfill the mined areas to approximate original contour with no road remaining on the bench;*
  - (b) *The road will be placed on a solid base rather than on fill material and drainage will be diverted from the mining area;*
  - (c) *The road will comply with all applicable design criteria, including a drainage plan for avoiding seepage or uncontrolled discharge of water into the backfilled areas;*
  - (d) *The spoil calculations and spoil disposal plans include the road cut material and the extent, if any, that road cut material will be used to eliminate a production highwall;*
  - (e) *The road will connect to another road or roads and is necessary in order to support the approved postmining land uses;*
  - (f) *Where practical and feasible, an undisturbed barrier will be left between the production highwall and the road itself. When an undisturbed barrier is not feasible, witness monuments will be left at a minimum of two (2) locations above the production highwall;*
  - (g) *The road will be constructed to a size and design appropriate to support coal mining activities and the proposed post-mining land use;*

- (h) *The proposed mine plan and sequencing of the road construction in relation to the mining activity will minimize placement of spoil material into valley or hollow fills and will maximize permanent retention of mined spoil on the mine bench;*
  - (i) *There will be no coal removal from the construction of the permanent road except for incidental nonmerchtable coal that is disposed of in an approved manner; and*
  - (j) *All other performance standards of the chapter are met.*
- (4) For the purposes of this section, the term "steep slope" is any slope above twenty (20) degrees or such lesser slope as may be defined by the cabinet, by regulation, after consideration of soil, climate, and other characteristics of the region.

**Approved April 6, 2000**

## CHAPTER 368

**(HB 808)**

AN ACT relating to candidates for city elections.

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

Section 1. KRS 83A.040 is amended to read as follows:

- (1) A mayor shall be elected by the voters of each city at a regular election. ***A candidate for mayor shall be a resident of the city for not less than one (1) year prior to his or her election.*** His term of office shall begin on the first day of January following his election and shall be for four (4) years and until his successor qualifies. A mayor shall be at least twenty-five (25) years of age, shall be a qualified voter in the city, and shall reside in the city throughout his term of office.
- (2) If a vacancy occurs in the office of mayor, the following provisions shall apply:
  - (a) The legislative body of the city shall fill the vacancy within thirty (30) days.
  - (b) A member of the legislative body in any city organized and governed under the commission plan as provided by KRS 83A.140 or city manager plan as provided by KRS 83A.150 may vote for himself.
  - (c) A member of the legislative body in any city organized and governed under the mayor-council plan as provided by KRS 83A.130 and in any city of the first class organized under the mayor-alderman plan as provided by KRS Chapter 83 shall not vote for himself.
  - (d) The legislative body shall elect from among its members an individual to preside over meetings of the legislative body during any vacancy in the office of mayor in accordance with the provisions of KRS 83A.130 to 83A.150.
- (3) When voting to fill the vacancy created by a resignation of a mayor the resigning mayor shall not vote on his successor.
- (4) Each legislative body member shall be elected at-large by the voters of each city at a regular election. ***A candidate for a legislative body shall be a resident of the city for not less than one (1) year prior to his or her election.*** His term of office shall begin on the first day of January following his election and shall be for two (2) years, except as provided by KRS 83A.050. A member shall be at least twenty-one (21) years of age, shall be a qualified voter in the city and shall reside in the city throughout his term of office.
- (5) If one (1) or more vacancies on a legislative body occur in a way that one (1) or more members remain seated, the remaining members shall within thirty (30) days fill the vacancies one (1) at a time, giving each new appointee reasonable notice of his selection as will enable him to meet and act with the remaining members in making further appointments until all vacancies are filled. If vacancies occur in a way that all seats become vacant, the Governor shall appoint qualified persons to fill the vacancies sufficient to constitute a quorum. Remaining vacancies shall be filled as provided in this section.
- (6) If for any reason, any vacancy in the office of mayor or the legislative body is not filled within thirty (30) days after it occurs, the Governor shall promptly fill the vacancy by appointment of a qualified person who shall serve for the same period as if otherwise appointed.

- (7) No vacancy by reason of voluntary resignation in the office of mayor or on a legislative body shall occur unless a written resignation which specifies a resignation date is tendered to the legislative body. The resignation shall be effective at the next regular meeting of the city legislative body.
- (8) Pursuant to KRS 118.305(7), if a vacancy occurs which is required by law to be filled temporarily by appointment, the legislative body or the Governor, whichever is designated to make the appointment, shall immediately notify in writing both the county clerk and the Secretary of State of the vacancy.
- (9) Except in cities of the first class, any elected officer, in case of misconduct, incapacity, or willful neglect in the performance of the duties of his office, may be removed from office by a unanimous vote of the members of the legislative body exclusive of any member to be removed, who shall not vote in the deliberation of his removal. No elected officer shall be removed without having been given the right to a full public hearing. The officer, if removed, shall have the right to appeal to the Circuit Court of the county and the appeal shall be on the record. No officer so removed shall be eligible to fill the office vacated before the expiration of the term to which originally elected.
- (10) Removal of an elected officer in cities of the first class shall be governed by the provisions of KRS 83.660.

Section 2. This Act takes effect January 1, 2001.

**Approved April 6, 2000**

## **CHAPTER 369**

### **(HCR 114)**

A CONCURRENT RESOLUTION requesting the Interim Joint Committee on Education to conduct a study of the salaries of classified employees in local school districts.

WHEREAS, classified employees make significant contributions to the well-being of pupils, the school environment, and the improvement and progress of schools across the Commonwealth; and

WHEREAS, over 45,000 persons are employed as classified staff in local school districts across the state in a variety of positions in athletics, fiscal management, food services, health, instruction, maintenance and operations, secretarial and clerical, security and law enforcement, student services, and transportation; and

WHEREAS, classified employees contract with local school boards and are paid for services as salaried or hourly salaried employees; and

WHEREAS, many classified employees have reported that their salaries have not kept pace with the rising cost of living and are inadequate and noncompetitive;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. The Interim Joint Committee on Education shall conduct a study of the compensation of classified employees to determine its adequacy and make recommendations regarding the propriety of a statewide salary schedule, cost of living adjustments, and the financial impact of these measures on the state and local school districts. The study report shall be submitted to the Legislative Research Commission by August 31, 2001.

Section 2. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

**Approved April 6, 2000**



**CHAPTER 370****(HCR 8)**

A CONCURRENT RESOLUTION confirming the appointment of Nick Orlando Rowe to the Governor's Postsecondary Education Nominating Committee.

WHEREAS, pursuant to KRS 164.005, the Governor has appointed Nick Orlando Rowe as a member of the Governor's Postsecondary Education Nominating Committee representing the 5th Supreme Court District for a term expiring April 14, 2004; and

WHEREAS, appointments to the Governor's Postsecondary Education Nominating Committee are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of April 22, 1998, the Governor has delivered Nick Orlando Rowe's name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Nick Orlando Rowe meets the requirements established in KRS 164.005 for membership on the Governor's Postsecondary Education Nominating Committee;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. The House of Representatives and the Senate hereby confirm the appointment of Nick Orlando Rowe to the Governor's Postsecondary Education Nominating Committee for a term ending April 14, 2004.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Nick Orlando Rowe, 1101 Beaumont Centre Lane, Apartment 4104, Lexington, Kentucky 40513, in writing, of the General Assembly's action.

**Approved April 6, 2000**

**CHAPTER 371****(SB 115)**

AN ACT relating to economic development.

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

Section 1. KRS 154.20-030 is amended to read as follows:

It shall be the purpose of the Kentucky Economic Development Finance Authority to develop and expand existing and alternative sources of energy and the conservation of energy, to assist business enterprise in obtaining additional sources of financing to aid this state in achieving the goal of long-term economic growth and full employment, to meet the growing competition for business enterprises, to preserve existing jobs, to create new jobs, to reduce the cost of business and production, to reduce the costs and liabilities by encouraging and financing efforts to reduce and avoid the generation of hazardous waste and toxic by-products, to foster export activity, to foster economic development on surface mining land, and to alleviate and prevent unemployment through the retention, promotion, and development of agriculture and agricultural facilities, agribusiness, forestry and forestry facilities, commerce and commercial facilities, health care and health related facilities, export markets and export activities, industry and industrial buildings and facilities, *riverport facilities*, tourism and tourist facilities, including the sites therefor, and agricultural, forestry, commercial, and industrial machinery and equipment, water and air pollution control equipment, and solid waste disposal facilities with respect thereto or for use by individuals for private sector employment. Such purposes shall be public purposes for which public money may be spent.

Section 2. KRS 154.20-035 is amended to read as follows:

- (1) The authority may, upon approval of the board, borrow money and issue bonds or notes in accordance with KRS 154.10-035 and other provisions of this chapter appertaining, subject to KRS 42.420, for the following purposes:

- (a) To provide sufficient funds for achieving the authority's purposes and objectives, including but not limited to, amounts necessary to pay the costs of acquiring projects or any part thereof; ***to make loans for the maintenance, operation, expansion, or development of riverport facilities that are under the authority of a developmental riverport authority established under KRS 65.520***; to make loans for the cost of a project or any part thereof; to make loans pursuant to KRS 154.10-030(11) for an export-related transaction; to make grants; to provide money to guarantee or insure loans, leases, bonds, notes, or other indebtedness; to make working capital loans; for all other expenditures of the authority incident to and necessary or convenient to carry out the authority's purposes, objectives, and powers; or for any combination of the foregoing;
  - (b) To refund bonds or notes of the authority issued under this chapter, by the issuance of new bonds, whether or not the bonds or notes to be refunded have matured or are subject to prior redemption or are to be paid, redeemed, or surrendered at the time of issuance of the refunding bonds or notes; and to issue bonds or notes partly to refund such bonds or notes and partly for any other purpose provided for by this section; or
  - (c) To pay the costs of issuance of bonds or notes under this chapter; to pay interest on bonds or notes becoming payable prior to the receipt of the first revenues available for payment thereof as determined by the board; and to establish, in full or in part, a reserve for the payment of the principal and interest on the bonds or notes in such amount as shall be determined by the board.
- (2) The bonds and notes, including, but not limited to, commercial paper, shall be authorized by resolution adopted by the authority, shall bear the date or dates, and shall mature at the time or times, not exceeding fifty (50) years from the date of issuance, as the resolution provides. The bonds and notes shall bear interest at the rate or rates set, reset, or calculated from time to time as provided in the resolution. The bonds and notes shall be in the denominations; be in the form, either coupon or registered; carry the registration privileges; be transferable; be executed in the manner; be payable in the medium of payment, at the place or places; and be subject to the terms of prior redemption at the option of the authority or the holders thereof as the resolution or resolutions provide. The bonds and notes of the authority may be sold at public or private, negotiated sale, at the price or prices the authority determines. Bonds and notes may be sold at a discount.
- (3) Bonds or notes may be:
- (a) Made the subject of a put or agreement to repurchase by the authority or others;
  - (b) Secured by a letter of credit or by any other collateral which the resolution may authorize;
  - (c) Resold by the authority, once acquired by the authority, pursuant to any put or repurchase agreement without the acquisition being considered the extinguishment of the bond or note.
- (4) The authority may authorize its chairman or other officer to, by order:
- (a) Sell and deliver, and receive payment for notes or bonds;
  - (b) Refund notes or bonds by the delivery of new notes or bonds, whether or not the notes or bonds to be refunded have matured, are subject to prior redemption, or are to be paid, redeemed, or surrendered at the time of the issuance of refunding bonds or notes;
  - (c) Deliver notes or bonds, partly to refund notes or bonds and partly for any other authorized purposes;
  - (d) Buy notes or bonds so issued at not more than the face value of the notes or bonds; or
  - (e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights at the option of the authority or the holder, the place of delivery and payment, and other matters and procedures necessary to complete the transactions authorized.
- (5) Except as provided by the authority, every issue of its notes or bonds shall be general obligations of the authority payable out of revenues, properties, or money of the authority, subject only to agreements with the holders of particular notes or bonds pledging particular receipts, revenues, properties, or money as security therefor.
- (6) The notes or bonds of the authority shall be and are hereby made negotiable instruments within the meaning of and for all purposes of the Uniform Commercial Code, subject only to the provisions of the notes or bonds for registration.

- (7) A resolution authorizing notes or bonds may contain any or all of the following covenants which shall be a part of the contract with the holders thereof:
- (a) A pledge of all or a part of the fees, charges, and revenues made or received by the authority, or all or a part of the money received in payment of lease rentals, or loans and interest thereon, and other money received or to be received to secure the payment of the notes or bonds or an issue thereof, subject to agreements with bondholders or noteholders as may then exist;
  - (b) A pledge of all or a part of the assets of the authority, including leases, or notes or mortgages and obligations securing the same to secure the payment of the notes or bonds or of an issue of notes or bonds, subject to agreements with noteholders or bondholders as may then exist;
  - (c) A pledge of a loan, grant, or contribution from the federal, state, or municipality, or source in aid of a project as provided for in this chapter;
  - (d) A provision as to the use and disposition of the revenues and income from leases, or from loans, notes, and mortgages owned by the authority;
  - (e) A provision as to the establishment and setting aside of reserves or sinking funds and the regulation and disposition thereof subject to this chapter;
  - (f) Limitations on the purpose to which the proceeds of sale of the notes or bonds may be applied and limitations on pledging those proceeds to secure the payment of other bonds or notes;
  - (g) Authority for and limitations on the issuance of additional notes or bonds for the purposes provided for in the resolution and the terms upon which additional notes or bonds may be issued and secured;
  - (h) A provision for the procedure, if any, by which the terms of a contract with noteholders or bondholders may be amended or abrogated, the number of noteholders or bondholders who are required to consent thereto, and the manner in which the consent may be given;
  - (i) Vesting in a trustee, or a secured party, such property, income, revenues, receipts, rights, remedies, powers, and duties in trust or otherwise as the authority may determine necessary to appropriate to adequately secure and protect noteholders and bondholders or to limit or abrogate the rights of the noteholders and bondholders. A trust agreement may be executed by the authority with any trustee who may be located inside or outside this state to accomplish any of the foregoing;
  - (j) Providing for the payment of maintenance and repair costs of a project;
  - (k) Establishing the insurance to be carried on a project and the use and disposition of insurance money and condemnation awards;
  - (l) Establishing the terms, conditions, and agreements upon which the holder of the bonds, or a portion thereof, shall be entitled to the appointment of a receiver by the Circuit Court. A receiver may enter and take possession of the project and maintain it or lease or sell it for cash or on an installment sales contract and prescribe rentals and payments therefor and collect, receive, and apply all income and revenues thereafter arising in the same manner and to the same extent as the authority; and
  - (m) Providing for any other matters, of like or different character, which in any way affect the security or protection of the notes or bonds.
- (8) A pledge made by the authority shall be valid and binding from the time the pledge is made. The money or property pledged and received by the authority shall immediately be subject to the lien of the pledge without a physical delivery or further act. The lien of the pledge shall be valid and binding as against parties having claims of any kind in tort, contract, or otherwise against the authority and shall be valid and binding against the transfer of the money or property pledged, irrespective of whether the parties have notice. It shall not be necessary to record the resolution, the trust agreement, or any other instrument by which a pledge is created.
- (9) Neither the members of the authority nor any person executing the notes or bonds shall be liable personally on the notes or bonds or be subject to personal liability or accountability by reason of the issuance thereof.
- (10) The state shall not be liable for any financial obligations of the authority nor shall any such obligations or bonds be considered a debt of the state. The obligations shall contain on the face thereof a statement indicating this fact.

- (11) The notes and bonds of the authority shall be securities in which the public officers and bodies of this state and municipalities and municipal subdivisions, insurance companies, associations, and other persons carrying on an insurance business, banks, trust companies, savings banks and savings associations, savings and loan associations, investment companies, and administrators, guardians, executors, trustees, and other fiduciaries, and all other persons who are authorized to invest in bonds or other obligations of the state, may properly and legally invest funds.
- (12) The property of the authority and its income and operation shall be exempt from all taxation by this state or any of its political subdivisions. All bonds and notes of the authority, the interest thereon, and their transfer shall be exempt from all taxation by this state or any of its political subdivisions, except for estate, gift, and inheritance taxes, notwithstanding that interest on bonds or notes of the authority may be or become subject to federal income taxation as a result of legislative action by the federal government. The state covenants with the purchasers and all subsequent holders and transferees of notes and bonds issued by the authority under this chapter, in consideration of the acceptance of and payment for the notes and bonds, that the notes and bonds of the authority, issued pursuant to this chapter, the interest thereon, the transfer thereof, and all its fees, charges, gifts, grants, revenues, receipts, and other money received or to be received and pledged to pay or secure the payment of the notes or bonds shall at all times be free and exempt from all state or local taxation provided by the laws of this state, except for estate, gift, and inheritance taxes.

Section 3. KRS 154.20-060 is amended to read as follows:

- (1) Insurance, guarantees, or letters of credit provided or procured pursuant to KRS 154.20-040 and 154.20-045 shall be provided or procured only for projects within this state which are consistent with the purposes and objectives of the authority and this chapter.
- (2) The authority shall give paramount priority in providing or procuring insurance, guarantees, and letters of credit to projects which have the greatest potential for creating new jobs or retaining current jobs within this state.
- (3) ***Notwithstanding the provisions of subsection (2) of this section, when considering project applications from a riverport facility established under KRS 65.520, the authority shall not give priority to regulatory criteria pertaining to direct employment at these facilities and shall instead give priority to the indirect employment maintained or created.***

Approved April 7, 2000

## CHAPTER 372

(SB 119)

AN ACT relating to motor vehicle insurance.

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

Section 1. KRS 304.39-030 is amended to read as follows:

- (1) If the accident causing injury occurs in this Commonwealth every person suffering loss from injury arising out of maintenance or use of a motor vehicle has a right to basic reparation benefits, unless he has rejected the limitation upon his tort rights as provided in KRS 304.39-060(4).
- (2) If the accident causing injury occurs outside this Commonwealth but within the United States, its territories and possessions, or Canada, the following persons and their survivors suffering loss from injury arising out of maintenance or use of a motor vehicle have a right to basic reparation benefits:
- (a) Basic reparation insureds;~~[-and]~~
  - (b) The driver and other occupants of a secured vehicle who have not rejected the limitation upon their tort rights, other than:
    1. A vehicle, ***except for a vehicle as provided in paragraph (c) of this subsection***, which is regularly used in the course of the business of transporting persons or property and which is one (1) of five (5) or more vehicles under common ownership; or
    2. A vehicle owned by an obligated government other than this Commonwealth, its political subdivisions, municipal corporations, or public agencies; ***and***

- (c) *The driver and other occupants of a bus, who have not rejected the limitation upon their tort rights, are Kentucky residents, and boarded a bus in Kentucky, if the bus is:*
1. *A secured vehicle;*
  2. *Registered in Kentucky;*
  3. *Regularly used in the course of the business of transporting persons or property; and*
  4. *One (1) of five (5) or more vehicles under common ownership.*

Approved April 7, 2000

## CHAPTER 373

(SB 259)

AN ACT relating to boards of directors for community colleges.

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

Section 1. KRS 164.600 is amended to read as follows:

- (1) As used in this section, "relative" means father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.
- (2) There shall be a board of directors for each community college under the Kentucky Community and Technical College System, except as provided in KRS 165.160. Each board of directors shall:
  - (a) Recommend one (1) candidate for the community college president from three (3) candidates provided by the president of the Kentucky Community and Technical College System. The president shall have the authority to make the final appointment and shall not be bound by the recommendation from the board of directors;
  - (b) Evaluate the community college president and advise the chancellor of his or her performance. The president has final authority for the appointment and termination of the community college president;
  - (c) Approve budget requests for recommendation to the Kentucky Community and Technical College System;
  - (d) Adopt and amend an annual operating budget and submit it to the board of regents of the Kentucky Community and Technical College System for approval as to the compliance with its guidelines;
  - (e) Approve and implement a strategic plan that is developed in coordination with local employers, civic leaders, campus constituents, and other postsecondary institutions in the region and that is consistent with the strategic agenda of the General Assembly.
- (3) The president of each community college shall have full authority and discretion regarding the use and management of the budget approved by the board of regents for the Kentucky Community and Technical College System under KRS 164.350.
- (4) Each board of directors shall consist of ***ten (10)***~~nine (9)~~ members, seven (7) of whom shall be appointed by the Governor for a term set by law pursuant to Section 23 of the Constitution of Kentucky. The other ***three (3)***~~two (2)~~ board members shall be one (1) member of the teaching faculty, ***one (1) member of the staff***, and one (1) member of the student body. An appointed member's term shall be six (6) years.
- (5) The faculty member shall be on the teaching or research faculty of the community college. ***The faculty member***~~He~~ shall be elected by secret ballot of all full-time faculty members of the community college. Faculty members shall serve for terms of three (3) years and until their successors are elected and qualified. Faculty members shall be eligible for reelection, but they shall be ineligible to continue to serve as members of the boards if they cease to be members of the teaching staff of the community college. Elections to fill vacancies shall be for the unexpired term in the same manner as provided for original election.
- (6) ***The staff member shall be a classified or mid-management employee who does not hold faculty rank and who does not hold an upper administrative position. The staff member shall be elected by secret ballot of all full-time staff members of the community college. Staff members shall serve for terms of three (3) years and until their successors are elected and qualified. Staff members shall be eligible for reelection, but shall***

*be ineligible to continue to serve as members of the boards if they cease to be members of the staff of the community college. An election to fill a vacancy for an unexpired term shall be held in the same manner as an election to an original full term.*

- (7) The student member shall be the president of the student body of the community college. If the president of the student body is not a full-time student who maintains permanent residency in the Commonwealth of Kentucky, a special election shall be held to select a full-time student who does maintain permanent residency in this Commonwealth as the student member.
- ~~(8)(7)~~ The members of the board of directors shall receive no compensation for their services but shall be paid for their actual and necessary expenses.
- ~~(9)(8)~~ No citizen member of the board of directors shall be a relative of any employee of the community college under its jurisdiction. A person who is a member of the board on July 15, 1998, who is a relative of an employee of the community college may finish out the appointed term of office but the member may not be reappointed.
- ~~(10)(9)~~ The board of regents of the Kentucky Community and Technical College System may extend this type of local governance authority to each postsecondary technical institution under its control, subject to review and approval by the Council on Postsecondary Education.

Approved April 7, 2000

## CHAPTER 374

(HB 103)

AN ACT relating to reorganization.

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

Section 1. KRS 15.728 is amended to read as follows:

All law enforcement agencies and investigative bodies shall notify the **Department**~~[Division]~~ of Charitable Gaming of any investigation or prosecution of any violation of the charitable gaming laws as soon as reasonably possible after commencing the investigation or prosecution and shall coordinate any investigation with the **department**~~[division]~~.

Section 2. KRS 238.505 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "**Department**~~[Division]~~" means the **Department**~~[Division]~~ of Charitable Gaming within the **Public Protection and Regulation**~~[Justice]~~ Cabinet;
- (2) "Charitable gaming" means bingo, charity game tickets, raffles, and charity fundraising events conducted for fundraising purposes by charitable organizations licensed and regulated under the provisions of this chapter. Charitable gaming shall not include slot machines, electronic video gaming devices, wagering on live sporting events, or simulcast broadcasts of horse races;
- (3) "Charitable organization" means a nonprofit entity organized for charitable, religious, educational, literary, civic, fraternal, or patriotic purposes;
- (4) "Bingo" means a specific game of chance in which participants use cards or paper sheets, **or card-minding device representations thereof**, divided into horizontal and vertical spaces, each of which is designated by a letter and a number, and prizes are awarded on the basis of the letters and numbers on the card conforming to a predetermined and preannounced configuration of letters and numbers selected at random;
- (5) "Charity game ticket" means a game of chance using a folded or banded paper ticket, or a paper card with perforated break-open tabs, the face of which is covered or otherwise hidden from view to conceal a number, letter, symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prize winners and shall include charity game tickets that utilize a seal card. Charity game ticket shall include pulltabs;
- (6) "Seal card" means a board or placard used in conjunction with charity game tickets, that contains a seal or seals which, when removed or opened, reveal predesignated winning numbers, letters, or symbols;

- (7) "Raffle" means a game of chance in which a participant is required to purchase a ticket for a chance to win a prize, with the winner to be determined by a random drawing;
- (8) "Charity fundraising event" means a fundraising activity of limited duration at which games of chance approved by the ~~department~~<sup>division</sup> are conducted, ***including bingo, raffles, charity game tickets, special limited charitable games, and wagering on prerecorded horse races, KRS Chapter 230 notwithstanding. Examples of such activities include events that attract patrons for community, social, and entertainment purposes apart from charitable gaming, such as***~~[and examples of which include]~~ fairs, festivals, carnivals, ~~and bazaars, and wagering on prerecorded horse races, KRS Chapter 230 notwithstanding;~~
- (9) "Manufacturer" means a person who assembles from raw materials or subparts any charitable gaming equipment or supplies used in the conduct of charitable gaming, including a person who converts, modifies, and adds to or removes parts from, charitable gaming equipment and supplies. The term shall not include:
  - (a) Any person who services or repairs charitable gaming supplies and equipment, so long as that person replaces or repairs an incidental, malfunctioning, or nonfunctioning part with a similar or identical part; and
  - (b) Any distributor who cuts, collates, and packages for distribution any gaming supplies and equipment purchased in bulk;
- (10) "Distributor" means a person who sells, markets, leases, or otherwise furnishes to a charitable organization charitable gaming equipment or supplies, or both, used in the conduct of charitable gaming. "Distributor" shall not include:
  - (a) A resident printer who prints raffle tickets at the request of a licensed charitable organization; ***and***
  - (b) ***A licensed charitable organization that affects a one-time donation of charitable gaming supplies or equipment to another licensed charitable organization if the donation is first approved by the department.***
- (11) "Charitable gaming facility" means a person, including a licensed charitable organization, that owns or is a lessee of premises which are leased or otherwise made available to two (2) or more licensed charitable organizations during a one (1) year period for the conduct of charitable gaming;
- (12) "Gross receipts" means all moneys collected or received from the conduct of charitable gaming;
- (13) "Adjusted gross receipts" means gross receipts less all cash prizes and the amount paid for merchandise prizes purchased;
- (14) "Net receipts" means adjusted gross receipts less all expenses, charges, fees, and deductions authorized under this chapter;
- (15) "Charitable gaming supplies and equipment" means any material, device, apparatus, or paraphernalia customarily used in the conduct of charitable gaming, including bingo cards and paper, charity game tickets, and other apparatus or paraphernalia used in conducting games of chance at charity fundraising events subject to regulation under this chapter. The term shall not include any material, device, apparatus, or paraphernalia incidental to the game, such as pencils, daubers, playing cards, or other supplies that may be purchased from normal sources of supply;
- (16) "Door prize" means a prize awarded to a person based solely upon the person's attendance at an event or the purchase of a ticket to attend an event;
- (17) "Special limited charitable game" means roulette; blackjack; poker; keno; money wheel; baccarat; pusher-type games; any dice game where the player competes against the house; and any other game of chance as identified, defined, and approved by administrative regulation of the ~~department~~<sup>division</sup>;
- (18) "Special limited charity fundraising event" means any type of charity fundraising event, commonly known as and operated as a "casino night," "Las Vegas night," or "Monte Carlo night," at which the predominant number or types of games offered for play are special limited charitable games;
- (19) "Session or bingo session" means a single gathering at which a bingo game or series of successive bingo games are played, ~~excluding~~<sup>including</sup> bingo ~~played~~<sup>held</sup> at a charity fundraising event;
- (20) "Immediate family" means:
  - (a) Spouse and parents-in-law;

- (b) Parents and grandparents;
  - (c) Children and their spouses; and
  - (d) Siblings and their spouses; and
- (21) "Affiliate" means any corporation, partnership, association, or other business or professional entity or any natural person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a licensed manufacturer, distributor, or charitable gaming facility;
- (22) *"Secretary" means the secretary of the Public Protection and Regulation Cabinet;*
- (23) *"Commissioner" means the commissioner of the Department of Charitable Gaming within the Public Protection and Regulation Cabinet;*
- (24) *"Chairperson" means the chief executive officer and any officer, member, or employee of a licensed charitable organization who will be involved in the management and supervision of charitable gaming as designated in the organization's charitable gaming license application under subsection (9)(g) of Section 8 of this Act;*
- (25) *"Year" means calendar year except as used in subsection (7) of Section 13 of this Act, subsection (4) of Section 11 of this Act, and KRS 238.547(1), when "year" means the licensee's license year; and*
- (26) *"Card-minding device" means any mechanical, electronic, electromechanical, or computerized device that is interfaced with or connected to equipment used to conduct a game of bingo and that allows a player to store, display, and mark a bingo card face. A card-minding device shall not be designed and manufactured to resemble any electronic gaming device that utilizes a video display monitor, such as a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.*

Section 3. KRS 238.510 is amended to read as follows:

- (1) The ~~Department~~<sup>Division</sup> of Charitable Gaming is created as a ~~department~~<sup>division</sup> within the ***Public Protection and Regulation***~~Justice~~ Cabinet. The ~~department~~<sup>division</sup> shall license and regulate the conduct of charitable gaming and license and regulate charitable organizations that desire to engage in charitable gaming, charitable gaming facilities, manufacturers, and distributors in the Commonwealth of Kentucky in accordance with the provisions of this chapter.
- (2) The ~~department~~ shall be headed by a commissioner who shall be appointed by the Governor upon recommendation of the secretary. The commissioner shall employ staff~~secretary of justice shall employ a division director, an assistant director, and other staff~~ as may be necessary to administer and enforce the provisions of this chapter.
- (3) All ~~department~~<sup>division</sup> staff shall be classified and employed in accordance with applicable personnel requirements of the Personnel Cabinet ***in accordance with***~~. The division director shall be a nonmerit employee and all other staff shall be merit employees with all rights and privileges afforded under~~ KRS Chapter 18A.
- (4) No employee of the ~~department~~<sup>division</sup> during his or her term of employment shall be an officer in a charitable organization that is licensed to conduct charitable gaming or be involved in the conduct of charitable gaming as a member of a licensed charitable organization. No employee of the ~~department~~<sup>division</sup> during his or her term of employment shall be licensed as a manufacturer, distributor, or charitable gaming facility, or have a financial interest in any business that is licensed as a manufacturer, distributor, or charitable gaming facility.
- (5) *The commissioner shall appoint charitable gaming investigators who shall have the powers of peace officers throughout the Commonwealth; however, those powers shall be limited to:*
  - (a) *Enforcement of the provisions of KRS Chapter 238, relating to charitable gaming;*
  - (b) *Violations of KRS Chapter 528, relating to:*
    - 1. *Unlicensed and illegal charitable gaming;*
    - 2. *Gambling offenses committed on licensed charitable gaming premises; and*
    - 3. *Gambling offenses committed in conjunction with charitable gaming;*



- (c) *Violations of KRS Chapter 514, relating to theft, embezzlement, or other illegal diversions of charitable gaming proceeds;*
- (d) *Violations of KRS Chapters 516 and 517, relating to forgery and fraud in the conduct of charitable gaming;*
- (e) *Violations relating to the damage or destruction of real or personal property owned or leased by a charitable gaming licensee; and*
- (f) *Violation of any criminal felony offense committed:*
  - 1. *On licensed charitable gaming premises; and*
  - 2. *In the presence of a charitable gaming investigator.*
- (6) *Charitable gaming investigators shall satisfy the certification standards established by the Department of Criminal Justice Training pursuant to KRS Chapter 15. The commissioner may possess peace officer powers granted under subsection (5) of this section, if he or she is duly qualified. Charitable gaming investigators shall not qualify for hazardous duty coverage under the Kentucky Employees Retirement System.*
- (7) *Charitable gaming investigators so appointed shall not possess peace officer powers other than those provided in subsection (5) of this section.*

Section 4. KRS 238.515 is amended to read as follows:

The ~~department~~~~[division]~~ shall license and regulate the conduct of charitable gaming in the Commonwealth of Kentucky. In discharging this responsibility, the ~~department~~~~[division]~~ shall have the following powers and duties:

- (1) Licensing charitable organizations, charitable gaming facilities, manufacturers, and distributors that desire to engage in charitable gaming;
- (2) Establishing and enforcing reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities;
- (3) Prescribing reasonable fees for licenses;
- (4) Establishing standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for;
- (5) Establishing a process for reviewing complaints and allegations of wrongdoing, and for investigating complaints with merit. In furtherance of this duty, the ~~department~~~~[division]~~ shall have the authority to issue administrative subpoenas and summonses. The ~~department~~~~[division]~~ shall also establish toll-free telephone service for receiving complaints and inquiries;
- (6) Taking appropriate disciplinary action and making referrals for criminal prosecution of persons who do not operate in compliance with this chapter;
- (7) Collecting and depositing all fees and fines in the charitable gaming regulatory account and administering the account;
- (8) Employing necessary staff, securing adequate office space, and executing other administrative and logistical matters as may be necessary to assure proper functioning of the ~~department~~~~[division]~~; and
- (9) Promulgating administrative regulations, in accordance with KRS Chapter 13A, which are necessary to carry out the purposes and intent of this chapter.

Section 5. KRS 238.520 is amended to read as follows:

- (1) The Charitable Gaming Advisory Commission is created to be composed of nine (9) members consisting of:
  - (a) The secretary of the **Public Protection and Regulation**~~[Justice]~~ Cabinet or his designee;
  - (b) The Attorney General or his designee;
  - (c) One (1) representative from the Kentucky Commonwealth's Attorneys Association;
  - (d) One (1) representative from the Kentucky Charitable Gaming Association;
  - (e) One (1) certified public accountant; and

- (f) Four (4) members selected from the public at large.

The certified public accountant, the four (4) at-large members, and the representatives from the Kentucky Commonwealth's Attorneys Association and the Kentucky Charitable Gaming Association shall be appointed by the Governor. The representative from each of the two (2) associations shall be selected from a list of at least three (3) names submitted to the Governor by the respective association.

- (2) Initial appointments to the commission shall be for staggered terms as follows: one (1) member for a term of one (1) year; two (2) members for a term of two (2) years; two (2) members for a term of three (3) years; and two (2) members for a term of four (4) years. Thereafter, each member shall be appointed for a term of four (4) years. No member from the public at large shall be appointed in the same year. Vacancies shall be filled in the same manner as the original appointment for the unexpired portion of the term. No member of the commission may serve more than two (2) full terms.
- (3) The Charitable Gaming Advisory Commission shall provide ongoing advice and input to the ~~department~~~~[division]~~ and to the General Assembly ***but shall not establish policy or become directly involved in***~~to assist in establishing effective policy for~~ the licensing and regulation of charitable gaming ***by the department.***
- (4) The commission shall meet quarterly or as otherwise directed by the ~~department~~~~[division]~~. Five (5) members shall constitute a quorum for conducting business. The commission shall annually elect a chairman from its membership, ***and no person elected chairman shall serve more than two (2) consecutive terms of one (1) year each.*** Members shall receive no compensation for serving on the commission, but shall be reimbursed for travel expenses for attending meetings and performing other official functions, consistent with state reimbursement policy for state employees.

Section 6. KRS 238.525 is amended to read as follows:

- (1) Licenses shall be issued by the ~~department~~~~[division]~~ on an annual or biennial basis, except as otherwise permitted in KRS 238.530 and 238.545. A license term may be determined by the ~~department~~~~[division]~~ in any manner it deems appropriate to facilitate efficient licensing. The ~~department~~~~[division]~~ shall charge a renewal fee not to exceed the maximum amounts established in KRS 238.530, 238.535, and 238.555.
- (2) The ~~department~~~~[division]~~ may issue a temporary license to an applicant who has met the requirements for a license. A temporary license shall be valid from the date of issuance until the regular license is issued or for a period of sixty (60) days, whichever is shorter. A temporary license shall not be renewed, except for good cause and shall not exceed a total of nine (9) months in length.
- (3) An applicant for any license to be issued under KRS 238.530 and 238.555 shall be subjected to a state and national criminal history background check by the ~~department~~~~[division]~~, with the assistance of the Kentucky State Police and the Federal Bureau of Investigation. An applicant for any license to be issued under KRS 238.535 shall be subjected to a state criminal history background check and may, if deemed reasonably necessary, be subjected to a national criminal history background check by the ~~department~~~~[division]~~ with the assistance of the Kentucky State Police and the Federal Bureau of Investigation. The criminal history background check shall apply to the chief executive officer and the chief financial officer or director of an applicant; any employee or member of an applicant who has been designated as chairperson of the charitable gaming activity; the applicant itself; and any individual with a ten percent (10%) or more financial interest in the applicant. The ~~department~~~~[division]~~ shall require the fingerprinting of all applicants for licensure under KRS 238.530 and 238.555 and may require, if deemed reasonably necessary, the fingerprints of all applicants for licensure under KRS 238.535, who are natural persons in connection with the national criminal history background check to assure the identity of the applicant or applicants. The ~~department~~~~[division]~~ may charge a reasonable fee not to exceed the actual cost of fingerprinting and records searching.
- (4) No applicant shall be licensed ***and no license holder shall be able to maintain a license*** if an individual associated with the applicant ***or license holder*** in a capacity listed in subsection (3) of this section or the applicant ***or license holder*** itself has been convicted of a felony, gambling offense, criminal fraud, forgery, theft, falsifying business records, violation of KRS 238.995(7), or any two (2) misdemeanor crimes in federal court or the courts of any state, the District of Columbia, or any territory, consistent with the provisions of KRS Chapter 335B within ten (10) years preceding the application for licensure.
- (5) No applicant shall be licensed unless all applicants required to be fingerprinted under the provision of subsection (3) of this section have been fingerprinted. The Kentucky State Police may submit fingerprints of any applicant to the Federal Bureau of Investigation for the national criminal history background check. The

~~department~~~~[division]~~ may by administrative regulation impose additional qualifications to meet the requirements of Pub. L. 92-544.

- (6) If a change occurs in any information submitted during the license application process, the applicant or licensee shall notify the ~~department~~~~[division]~~ in writing within thirty (30) days of the date the change occurred.

Section 7. KRS 238.530 is amended to read as follows:

- (1) No person shall sell, offer to sell, rent, lease, or otherwise furnish charitable gaming supplies or equipment unless the person is licensed by the ~~department~~~~[division]~~ as a distributor. The ~~department~~~~[division]~~ shall charge a license fee not to exceed one thousand dollars (\$1,000).
- (2) No person shall sell, offer to sell, rent, lease, or otherwise furnish charitable gaming supplies and equipment unless the person is licensed by the ~~department~~~~[division]~~ as a manufacturer. The ~~department~~~~[division]~~ shall charge a license fee not to exceed ~~one thousand~~~~[five hundred]~~ dollars ~~(\$1,000)~~~~(\$500)~~.
- (3) No person who is licensed as a charitable organization, and no owner, officer, employee, or member of the immediate family of an owner, officer, or employee of a licensed charitable gaming facility shall be eligible for licensure as a distributor or manufacturer. No affiliate of an owner, officer, or employee, or member of the immediate family of an owner, officer, or employee of a licensed charitable gaming facility shall be licensed as a distributor or manufacturer. No person who is a licensed wholesaler or distributor of alcoholic beverages shall be licensed as a distributor or manufacturer. No person who is licensed as a distributor shall be licensed as a manufacturer, and no person licensed as a manufacturer shall be licensed as a distributor.
- (4) An applicant for a license as a manufacturer or distributor shall apply for license on forms provided by the ~~department~~~~[division]~~ and shall submit as part of the application process the following:
  - (a) The full name, address, date of birth, and Social Security number of the applicant;
  - (b) If the applicant is a corporation or other business entity, the names, addresses, dates of birth, and Social Security numbers of all officers and management personnel;
  - (c) The name, address, date of birth, and Social Security number of any individual who has ten percent (10%) or more financial interest in the applicant organization;
  - (d) Federal employer tax number;
  - (e) A sworn statement by the applicant or the appropriate officer that all information provided is true and correct and that the applicant agrees to comply with the applicable provisions of this chapter and all applicable administrative regulations promulgated thereunder;
  - (f) The name, address, and telephone number of a registered agent within the Commonwealth of Kentucky, if the applicant is not a resident; and
  - (g) Any other information the ~~department~~~~[division]~~ deems appropriate.
- (5) Each licensed manufacturer and distributor shall maintain a complete set of records as may be required by the ~~department~~~~[division]~~ to document all activities related to the sale, rental, lease, or furnishing of charitable gaming supplies and equipment in the Commonwealth of Kentucky. These records shall be available for inspection by the ~~department~~~~[division]~~ at reasonable times, and all records shall be maintained for a minimum of three (3) years. The ~~department~~~~[division]~~ may require a licensed manufacturer and distributor to report on its activity, with the content and frequency of these reports to be prescribed by administrative regulation promulgated by the ~~department~~~~[division]~~.
- (6) A distributor who does not receive payment in accordance with the terms of its sales or lease agreement from a licensed charitable organization within thirty (30) days of the delivery of charitable gaming supplies and equipment shall notify the ~~department~~~~[division]~~ of the delinquency in writing in a form and manner prescribed by the ~~department~~~~[division]~~. A manufacturer who does not receive payment in full from a distributor within sixty (60) days of the delivery of charitable gaming supplies and equipment shall notify the ~~department~~~~[division]~~ of the delinquency in writing in a form and manner prescribed by the ~~department~~~~[division]~~.
- (7) A licensed manufacturer shall not sell charitable gaming supplies and equipment to any person not licensed as a distributor in the Commonwealth of Kentucky.

- (8) A licensed distributor shall not sell charitable gaming supplies and equipment to any person not licensed as a distributor or a charitable organization in the Commonwealth of Kentucky, unless the organization is exempted from licensure under the provisions of this chapter.
- (9) A licensed distributor shall not purchase charitable gaming supplies and equipment from any person not licensed as a manufacturer or distributor in the Commonwealth of Kentucky.
- (10) No officer, owner, employee, or contractee of a licensed distributor or licensed manufacturer or their affiliates and no member of the immediate family of an owner, officer, employee, or contractee of a licensed distributor or licensed manufacturer or their affiliates, shall, with respect to a licensed charitable organization:
  - (a) Manage or otherwise be involved in the conduct of charitable gaming;
  - (b) Provide bookkeeping or other accounting services related to the conduct of charitable gaming;
  - (c) Handle any moneys generated in the conduct of charitable gaming;
  - (d) Advise a licensed charitable organization on the expenditure of net receipts;
  - (e) Provide transportation services in any manner to patrons of a charitable gaming activity;
  - (f) Provide advertisement or marketing services in any manner to a licensed charitable organization;
  - (g) Provide, coordinate, or solicit the services of personnel or volunteers in any manner;
  - (h) Provide training or consulting on the conduct of charitable gaming, except in connection with the use of its own equipment or supplies;
  - (i) Store its charitable gaming equipment or supplies in or on the premises of a licensed charitable gaming facility; or
  - (j) Donate or give any prize to be awarded in the conduct of charitable gaming.

Section 8. KRS 238.535 is amended to read as follows:

- (1) Any charitable organization conducting charitable gaming in the Commonwealth of Kentucky shall be licensed by the ~~department~~~~[division]~~. A charitable organization qualifying under subsection (8) of this section but not exceeding the limitations provided in this subsection shall be exempt from the licensure requirements when conducting the following charitable gaming activities:
  - (a) Bingo in which the gross receipts do not exceed a total of ~~twenty-five~~~~[fifteen]~~ thousand dollars ~~(\$25,000)~~~~(\$15,000)~~ per year;
  - (b) A raffle or raffles for which the gross receipts do not exceed ~~twenty-five~~~~[fifteen]~~ thousand dollars ~~(\$25,000)~~~~(\$15,000)~~ per year; and
  - (c) A charity fundraising event or events that do not involve special limited charitable games and the gross gaming receipts for which do not exceed ~~twenty-five~~~~[fifteen]~~ thousand dollars ~~(\$25,000)~~~~(\$15,000)~~ per year.

However, at no time shall a charitable organization's total limitations under this subsection exceed ~~twenty-five~~~~[fifteen]~~ thousand dollars ~~(\$25,000)~~~~(\$15,000)~~.

- (2) Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall notify the ~~department~~~~[division]~~ in writing, on a ~~simple~~ form issued by the ~~department~~~~[division]~~, of its intent to engage in exempt charitable gaming and the address at which the gaming is to occur. Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall comply with all other provisions of this chapter ~~relating to the conduct of charitable gaming~~, except:
  - (a) Payment of the fee imposed under the provisions of KRS 238.570; and
  - (b) The ~~quarterly~~ reporting requirements imposed under the provisions of KRS 238.550(5)~~(2)~~, unless the exempt charitable organization obtains a retroactive license pursuant to subsection (5) of this section.

*Before the last day of each year, a charitable organization exempt from licensure under the provisions of subsection (1) of this section shall file with the department a financial report detailing the type of gaming activity in which it engaged during that year, the total gross receipts derived from gaming, the amount of charitable gaming expenses paid, the amount of net receipts derived, and the disposition of those net receipts. This report shall be filed on a form issued by the department. Upon receipt of the yearly financial*

*report, the department shall notify the charitable organization submitting it that its exemption is renewed for the next year. If the department determines that information appearing on the financial report renders the charitable organization ineligible to possess an exemption, the department shall revoke the exemption. The organization may request an appeal of this revocation pursuant to Section 15 of this Act. If an exemption is revoked because an organization has exceeded the limit imposed in subsection (1) of this section, the organization shall apply for a retroactive license in accordance with subsection (3) of this section.*

- (3) If an organization exceeds the limit imposed by any subsection of this section it shall:
  - (a) Report the amount to the ~~department~~~~[division]~~; and
  - (b) Apply for a retroactive charitable gaming license.
- (4) Upon receipt of a report and application for a retroactive charitable gaming license, the ~~department~~~~[division]~~ shall investigate to determine if the organization is otherwise qualified to hold the license.
- (5) If the ~~department~~~~[division]~~ determines that the applicant is qualified, it shall issue a charitable gaming license retroactive to the date on which the exemption limit was exceeded. The retroactive charitable gaming license shall be issued in the same manner as regular charitable gaming licenses.
- (6) If the ~~department~~~~[division]~~ determines that the applicant is not qualified it shall deny the license and take enforcement action, if appropriate.
- (7) Once a retroactive or regular gaming license is issued to an organization, that organization shall not be eligible for exempt status in the future and shall maintain a charitable gaming license if it intends to continue charitable gaming activities, unless the charitable organization has not exceeded the exemption limitations of subsection (1) of this section for a period of two (2) years prior to its exemption request.
- (8) In order to qualify for licensure, a charitable organization shall:
  - (a)
    1. Possess a tax exempt status under 26 U.S.C. secs. 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19), or be covered under a group ruling issued by the Internal Revenue Service under authority of those sections; or
    2. Be organized within the Commonwealth of Kentucky as a common school as defined in KRS 158.030, as an institution of higher education as defined in KRS 164A.305, or as a state college or university as provided for in KRS 164.290;
  - (b) Have been established and continuously operating within the Commonwealth of Kentucky for charitable purposes, other than the conduct of charitable gaming, for a period of three (3) years prior to application for licensure;
  - (c) Have been actively engaged in charitable activities during the three (3) years immediately prior to application for licensure and be able to demonstrate, to the satisfaction of the ~~department~~~~[division]~~, reasonable progress in accomplishing its charitable purposes during this period. As used in this paragraph, ***"reasonable progress in accomplishing its charitable purposes"*** means ***the regular and uninterrupted conduct of activities within the Commonwealth or the expenditure of funds within the Commonwealth to accomplish*** relief of poverty, advancement of education, protection of health, relief from disease, relief from suffering or distress, protection of the environment, conservation of wildlife, advancement of civic, governmental, or municipal purposes, or advancement of those purposes delineated in KRS 238.505(3). ***In order to demonstrate reasonable progress in accomplishing its charitable purposes when applying to renew an existing license, a licensed charitable organization shall additionally provide to the department a detailed accounting regarding its expenditure of charitable gaming net receipts for the purposes described in this paragraph;*** and
  - (d) Have maintained an office or place of business, other than for the conduct of charitable gaming, for one (1) year in the county in which charitable gaming is to be conducted. The office or place of business shall be a separate and distinct address and location from that of any other licensee of the ~~department~~~~[division]~~; except that up to three (3) licensed charitable organizations may have the same address if they legitimately share office space. For the conduct of a raffle, the county in which charitable gaming is to be conducted shall be the county in which the raffle drawing is to be conducted. Any charitable organization that was registered with the county clerk to conduct charitable gaming in a county on or before March 31, 1992, shall satisfy this requirement if it maintained a place of business or

operation, other than for the conduct of charitable gaming, for one (1) year prior to application in a Kentucky county adjoining the county in which they were registered. Any licensed charitable organization that qualifies to conduct charitable gaming in an adjoining county under this paragraph, shall be permitted to conduct in its county of residence a charity fund raising event.

- (9) In applying for a license, the information to be submitted shall include, but not be limited to, the following:
- (a) The name and address of the charitable organization;
  - (b) The date of the charitable organization's establishment in the Commonwealth of Kentucky and the date of establishment in the county in which charitable gaming is to be conducted;
  - (c) A statement of the charitable purpose or purposes for which the organization was organized. If the charitable organization is incorporated, a copy of the articles of incorporation shall satisfy this requirement;
  - (d) A statement explaining the organizational structure and management of the organization. For incorporated entities, a copy of the organizations bylaws shall satisfy this requirement;
  - (e) A detailed accounting of the charitable activities in which the charitable organization has been engaged for the three (3) years preceding application for licensure;
  - (f) The names, addresses, dates of birth, and Social Security numbers of all officers of the organization;
  - (g) The names, addresses, dates of birth, and Social Security numbers of all employees and members of the charitable organization who will be involved in the management and supervision of charitable gaming. No fewer than two (2) employees or members of the charitable organization who are involved in the management and supervision of charitable gaming, along with the chief executive officer or the director of the applicant organization, shall be designated as chairpersons;
  - (h) The address of the location at which charitable gaming will be conducted and the name and address of the owner of the property, if it is owned by a person other than the charitable organization;
  - (i) A copy of the letter or other legal document issued by the Internal Revenue Service to grant tax-exempt status;
  - (j) A statement signed by the presiding or other responsible officer of the charitable organization attesting that the information submitted in the application is true and correct and that the organization agrees to comply with all applicable laws and administrative regulations regarding charitable gaming;
  - (k) An agreement that the charitable organization's records may be released by the federal Internal Revenue Service to the ~~department~~~~division~~; and
  - (l) Any other information the ~~department~~~~division~~ deems appropriate.
- (10) ***An organization or a group of individuals that does not meet the licensing requirements of subsection (8) of this section may hold a raffle if the gross receipts do not exceed one hundred fifty dollars (\$150) and all proceeds from the raffle are distributed to a charitable organization. The organization or group of individuals may hold up to three (3) raffles each year, and shall be exempt from complying with the notification, application, and reporting requirements of subsections (2) and (9) of this section.***
- (11) The ~~department~~~~division~~ may issue a license for a specified period of time, based on the type of charitable gaming involved and the desired duration of the activity.
- (12)~~(11)~~ The ~~department~~~~division~~ shall charge a fee for each license issued and renewed, not to exceed three hundred dollars (\$300). Specific fees to be charged shall be prescribed in a graduated scale promulgated by administrative regulations and based on type of license, type of charitable gaming, actual or projected gross receipts, or other applicable factors, or combination of factors.
- (13) (a) ***A licensed charitable organization may place its charitable gaming license in escrow if:***
- 1. The licensee notifies the department in writing that it desires to place its license in escrow; and***
  - 2. The license is in good standing and the department has not initiated disciplinary action against the licensee.***
- (b) ***During the escrow period, the licensee shall not engage in charitable gaming, and the escrow period shall not be included in calculating the licensee's retention rate under Section 9 of this Act.***

- (c) *A charitable organization may apply for reinstatement of its active license and the license shall be reinstated provided:*
1. *The charitable organization continues to qualify for licensure;*
  2. *The charitable organization has not engaged in charitable gaming during the escrow period; and*
  3. *The charitable organization pays a reinstatement fee established by the department.*

Section 9. KRS 238.536 is amended to read as follows:

- (1) The net receipts from charitable gaming retained by a charitable organization for the previous calendar year, provided the charitable organization was licensed at the start of the calendar year, shall be equal to or greater than forty percent (40%) of the adjusted gross receipts of the charitable organization for the same period. *A licensed charitable organization shall expend net receipts exclusively for purposes consistent with the charitable, religious, educational, literary, civic, fraternal, or patriotic functions or objectives for which the licensed charitable organization received and maintains federal tax-exempt status, or consistent with its status as a common school, an institution of higher education, or a state college or university. No net receipts shall inure to the benefits or financial gain of an individual.* Any charitable organization which permits its license to expire or otherwise lapse shall still be subject to the retention requirement. *The following fees and taxes shall be excluded from the calculation of the percentage retained, retroactive to calculations made for calendar year 1999:*
- (a) All fees paid to the ~~department~~*division* during the calendar year;
  - (b) *Any sales or use taxes levied under KRS Chapter 139 on charitable gaming supplies and equipment that are paid by a licensed charitable organization during the calendar year; and*
  - (c) *Any federal excise taxes levied under 26 U.S.C. secs. 4401 and 4411 and paid by a licensed charitable organization during the calendar year*~~[shall be excluded from the calculation of percentage retained].~~
- (2) The following actions shall be imposed on a licensed charitable organization that fails to retain the requisite percentage of adjusted gross receipts required in subsection (1) of this section. The calculation of percentages shall be rounded to the nearest tenth of a percent:
- (a) If the percentage retained is between thirty-five percent (35%) and thirty-nine and nine-tenths percent (39.9%), the licensee shall be placed on probation for a period of ~~six (6) months~~*one (1) year* and shall be required to submit to the ~~department~~*division* an acceptable financial plan detailing corrective actions to be taken by the licensee to achieve the forty percent (40%) threshold by the end of the ~~calendar year in which the probation is imposed~~*probationary period*;
  - (b) If the percentage retained is between thirty percent (30%) and thirty-four and nine-tenths percent (34.9%), the licensee shall ~~be placed on probation~~*have its license suspended* for a period of one (1) year ~~and shall be required to submit to the department a financial plan as described in paragraph (a) of this subsection. The department shall conduct a six (6) month review of the charitable gaming activities of a licensee placed on probation pursuant to this subsection to evaluate the licensee's compliance with its financial plan; and~~
  - (c) If the percentage retained falls ~~between twenty-nine and nine-tenths percent (29.9%) and twenty-five percent (25%), the licensee shall be placed on probation for a period of one (1) year, shall submit to the department an acceptable financial plan as described in paragraph (a) of this subsection, and shall participate in a mandatory training program designed by the department. The department shall conduct a quarterly review of the licensee's activities to evaluate the licensee's compliance with its financial plan and its progress toward achievement of the forty percent (40%) threshold during the probationary period;~~
  - (d) ~~If the percentage falls below twenty-five~~*thirty* percent (25%)~~(30%)~~ or if the licensee fails to attain the forty percent (40%) threshold for a second consecutive ~~calendar year~~*time*, the licensee shall have its license suspended for a period of ~~one (1) year; and~~*two (2) years*
  - (e) *For purposes of paragraphs (a), (b), (c), and (d) of this subsection, periods of probation and suspension shall commence, unless appealed, from the date the department notifies the licensee of its failure to satisfy the retention requirement for the previous calendar year. If a probation or*

*suspension is appealed, the action shall commence on the date final adjudication of the matter is complete.*

- (3) Any licensee that has had its license suspended under the provisions of subsection (2))~~(b) or (c)~~ of this section shall be required to submit to the ~~department~~~~division~~ an acceptable financial plan as described in subsection (2)(a) of this section, upon applying for reinstatement of its license. ***As a condition of reinstatement, the licensee shall be on probation for a period of one (1) year and shall be subject to quarterly review by the department in accordance with paragraph (c) of subsection (2) of this section.***
- (4) Any licensee that has had its license revoked, has had its renewal application denied, or has had action initiated to revoke, *suspend*, or deny its license for failure to meet the forty percent (40%) retention threshold prior to ~~the effective date of this Act~~~~(April 1, 1998)~~, may petition the ~~department~~~~division~~ for reconsideration of its action or proposed action. Upon petition for reconsideration, the ~~department~~~~division~~ shall apply the standards contained in subsection (2) of this section and shall adjust the license status of the petitioner accordingly. The ~~department~~~~division~~ shall give credit for the amount of time a license has been revoked in assessing penalties under subsection (2) of this section not to exceed the amount of time imposed under the new penalty.

Section 10. KRS 238.540 is amended to read as follows:

- (1) Charitable gaming shall be conducted by a licensed charitable organization at ~~the only one (1)~~ location, ~~and at the~~ date, and time which shall be stated on the license. A license holder shall notify the ~~department~~~~division~~ at least thirty (30) days in advance of its intent to change its location, date, or time and approval by the ~~department~~~~division~~ shall be received by the licensee prior to the conduct of charitable gaming at a new location.
- (2) All premises or facilities on which or in which charitable gaming is conducted shall meet all applicable federal, state, and local code requirements relating to life, safety, and health.
- (3) A license to conduct charitable gaming shall be prominently displayed on or in the premises where charitable gaming is conducted, in a conspicuous location that is readily accessible to gaming patrons as well as employees of the ~~department~~~~division~~, law enforcement officials, and other interested officials.
- (4) At least one (1) chairperson who is listed on the application for licensure shall be at each charitable gaming activity conducted by the charitable organization and shall be responsible for the ***administration and conduct of the*** charitable gaming activity. No person shall serve as chairperson for more than one (1) charitable organization. The chairperson shall be readily identifiable as the chairperson and shall be present on the premises continuously during the charitable gaming activity. Charitable gaming shall be conducted and administered solely by officers, members, and bona fide employees of the licensed charitable organization. Volunteer personnel, who may or may not be members of the licensed charitable organization, may be utilized if each volunteer is readily identifiable as a volunteer. No person engaged in the conduct and administration of charitable gaming shall receive any compensation for services related to the charitable gaming activities, including tipping. ***No net receipts derived from charitable gaming shall inure to the private benefit or financial gain of any individual.*** Any effort or attempt to disguise any other type of compensation ***or private inurement*** shall be considered an unauthorized diversion of funds and shall be actionable under KRS 238.995.
- (5) No licensed charitable organization shall contract with, or otherwise utilize the services of, any management company, service company, or consultant in managing or conducting any aspect of charitable gaming.
- (6) A licensed charitable organization shall not purchase or lease charitable gaming supplies and equipment from any person not licensed as a distributor in the Commonwealth of Kentucky.
- (7) A licensed charitable organization shall not accept any merchandise prizes donated by any owner, officer, employee, or contractee of a licensed manufacturer, distributor, charitable gaming facility, or any of their affiliates, or any member of their immediate families.
- (8) Any advertisement of charitable gaming, regardless of the medium used, shall contain the name of the charitable organization conducting the charitable gaming and its license number. ***An advertisement for a bingo session or sessions shall not advertise a bingo prize in excess of the limitation of five thousand dollars (\$5,000) per twenty-four (24) hour period set forth in subsection (1) of Section 11 of this Act.***

Section 11. KRS 238.545 is amended to read as follows:

- (1) A licensed charitable organization shall be limited by the following:



- (a) In the conduct of bingo, to ***one (1) session per day***, two (2) sessions per week, for a period not to exceed five (5) consecutive hours in any day and not to exceed ten (10) total hours per week. No licensed charitable organization shall conduct bingo at more than one (1) location during the same twenty-four (24) hour period. No licensed charitable organization shall award prizes for bingo that exceed five thousand dollars (\$5,000) in fair market value per twenty-four (24) hour period, including the value of door prizes. No person under the age of eighteen (18) shall be permitted to purchase bingo supplies or play bingo. A charitable organization may permit persons under age eighteen (18) to play bingo for noncash prizes if they are accompanied by a parent or legal guardian and only if the value of any noncash prize awarded does not exceed ten dollars (\$10);
  - (b) ***A licensed charitable organization may provide card-minding devices for use by players of bingo games. If a licensed charitable organization offers card-minding devices for use by players, the devices shall be capable of being used in conjunction with bingo cards or paper sheets at all times. The department shall have broad authority to define and regulate the use of card-minding devices and shall promulgate an administrative regulation concerning use and control of them;***
  - (c) Charity game tickets shall be sold only at the address of the location designated on the license to conduct charitable gaming;
  - (d)~~(e)~~ Charity game tickets may be sold, with prior approval of the ***department***~~[division]~~:
    - 1. At any authorized special charity fundraising event conducted by a licensed charitable organization at any off-site location; or
    - 2. By a licensed charitable organization possessing a special limited charitable gaming license at any off-site location; and
  - (e)~~(d)~~ An automated charity game ticket dispenser may be utilized by a licensed charitable organization, with the prior approval of the ***department***~~[division]~~, only at the address of the location designated on the license to conduct charitable gaming, and only during bingo sessions. The ***department***~~[division]~~ shall promulgate administrative regulations regulating the use and control of approved automated charity game ticket dispensers.
- (2) No prize for an individual charity game ticket shall exceed five hundred ninety-nine dollars (\$599) in value, not including the value of cumulative or carryover prizes awarded in seal card games. Cumulative or carryover prizes in seal card games shall not exceed two thousand four hundred dollars (\$2,400). Information concerning rules of the particular game and prizes that are to be awarded in excess of fifty dollars (\$50) in each separate package or series of packages with the same serial number and all rules governing the handling of cumulative or carryover prizes in seal card games shall be posted prominently in an area where charity game tickets are sold. A legible poster that lists prizes to be awarded, and on which prizes actually awarded are posted at the completion of the sale of each separate package shall satisfy this requirement. Any unclaimed money or prize shall return to the charitable organization. No charity game ticket shall be sold in the Commonwealth of Kentucky that does not conform to the standards for opacity, randomization, minimum information, winner protection, color, and cutting established by the ***department***~~[division]~~. No person under the age of eighteen (18) shall be permitted to purchase, or open in any manner, a charity game ticket.
  - (3) Tickets for a raffle shall be sold separately, and each ticket shall constitute a separate and equal chance to win. All raffle tickets shall be sold for the price stated on the ticket, and no person shall be required to purchase more than one (1) ticket or to pay for anything other than a ticket to enter a raffle. Raffle tickets shall have a unique identifier for the ticket holder. Winners shall be drawn at random at a date, time, and place announced in advance or printed on the ticket. All prizes for a raffle shall be identified in advance of the drawing and all prizes identified shall be awarded.
  - (4) ***With respect to charity fundraising events, a licensed charitable organization shall be limited as follows:***
    - (a) No licensed charitable organization shall conduct a charity fundraising event or a special limited charity fundraising event unless they have a license for the respective event issued by the ***department***~~[division]~~;
    - (b) No special license shall be required for any wheel game, such as a cake wheel, that awards only noncash prizes the value of which does not exceed one hundred dollars (\$100);~~[-]~~
    - (c) ***The department may grant approval for a licensed charitable organization to play bingo games at a charity fundraising event. Cash prizes for bingo games played during a charity fundraising event***

*may not exceed five thousand dollars (\$5,000) for the entire event. No person under the age of eighteen (18) shall be permitted to play bingo at a charity fundraising event unless accompanied by a parent or legal guardian;*

- (d) *The department may grant approval for a licensed charitable organization to play special limited charitable games at a charity fundraising event authorized under this section. The department shall not grant approval for the playing of special limited charitable games under the provisions of a charity fundraising event license unless the proposed event meets the definition of a charity fundraising event held for community, social, or entertainment purposes apart from charitable gaming in accordance with subsection (8) of Section 2 of this Act; and*
  - (e) Except for state, county, city fairs, and special limited charity fundraising events, a charity fundraising event license issued under this section shall not exceed seventy-two (72) consecutive hours. A licensed charitable organization shall not be eligible for more than four (4) total charity fundraising event licenses per year, including two (2) special limited charity fundraising event licenses. No person under eighteen (18) years of age shall be allowed to play or conduct any special limited charitable game. The ~~department~~~~division~~ shall have broad authority to regulate the conduct of special limited charity fundraising events in accordance with the provisions of KRS 238.547.
- (5) Presentation of false, fraudulent, or altered identification by a minor shall be an affirmative defense in any disciplinary action or prosecution that may result from a violation of age restrictions contained in this section, if the appearance and character of the minor were such that his or her age could not be reasonably ascertained by other means.

Section 12. KRS 238.550 is amended to read as follows:

- (1) All adjusted gross receipts from charitable gaming shall be handled only by chairpersons, officers, or employees of the licensed charitable organization.
- (2) *Within two (2) business days after the completion of a charitable gaming event or session, all gross receipts and adjusted gross receipts shall be deposited*~~[within two (2) business days]~~ *into one*~~[a]~~ *checking account devoted exclusively to charitable gaming. This checking account shall be designated the "charitable gaming account," and the licensed charitable organization shall maintain its account at a financial institution located in the Commonwealth of Kentucky. No other funds may be deposited or transferred into the charitable gaming account.*
- (3) All payments for charitable gaming expenses, *payments made for* prizes purchased, and any charitable donations from charitable gaming receipts shall be made from *the charitable gaming*~~[this checking]~~ account and ~~the~~~~any~~ payments or donations shall be made only by bona fide officers of the organization by checks having preprinted consecutive numbers and made payable to specific persons or organizations. *No check drawn on the charitable gaming account may be made payable to "cash," or "bearer," except that a licensed charitable organization may withdraw start-up funds for a charitable gaming event or session from the charitable gaming account by check made payable to "cash" or "bearer," if these start-up funds are redeposited into the charitable gaming account together with all adjusted gross receipts derived from the particular event or session. Checks shall be imprinted with the words "charitable gaming account" and shall contain the organization's license number on the face of each check. Payments for charitable gaming expenses, prizes purchased, and charitable donations may be made by electronic funds transfer if the payments are made to specific persons or organizations. The* ~~department~~~~division~~ *may by administrative regulation adopt alternative reporting requirements for charitable gaming of limited scope or duration, if these requirements are sufficient to ensure accountability for all moneys handled.*
- (4) *A licensed charitable organization shall expend net receipts exclusively for purposes consistent with the charitable, religious, educational, literary, civic, fraternal, or patriotic functions or objectives for which the licensed charitable organization received and maintains federal tax-exempt status, or consistent with its status as a common school, an institution of higher education, or a state college or university. No net receipts shall inure to the private benefit or financial gain of any individual.*
- (5)~~(2)~~ Accurate records and books shall be maintained by each *organization exempt from licensure under subsection (1) of Section 8 of this Act and each* licensed charitable organization for a period of three (3) years. ~~Department~~~~Division~~ staff shall have access to these records at reasonable times. *Licensed charitable organizations and exempt organizations shall maintain their charitable gaming records at their offices or places of business within the Commonwealth of Kentucky as identified in their license applications or*

**applications for exempt status.** All licensed charitable organizations shall be required to submit reports to the division at least quarterly. ***An exempt organization shall submit a yearly financial report in accordance with subsection (2) of Section 8 of this Act, and failure to file this report shall constitute grounds for revocation of the organization's exempt status. Failure by a licensed charitable organization to file reports required under this chapter shall constitute grounds for revocation of the organization's license or denial of the organization's application to renew its license in accordance with subsection (3) of Section 14 of this Act.*** ***Reports filed by a licensed charitable organization***~~[These reports]~~ shall include, but shall not be limited to, the following information:

- (a) All gross receipts received from charitable gaming for the reporting period, classified by type of gaming activity;
- (b) The amounts or values of all prizes paid out during the reporting period, including a listing of all prizes donated ***having a fair market value in excess of fifty dollars (\$50)***, the names of donors, and the fair market value of the donated prizes;
- (c) The names and addresses of all persons who are winners of prizes ***having a fair market value*** of six hundred dollars (\$600) or more;
- (d) All expenses paid and the names and addresses of all persons to whom expenses were paid;
- (e) All net receipts retained and the names and addresses of all charitable endeavors that received money from the net receipts; and
- (f) Any other information the ***department***~~[division]~~ deems appropriate.

~~(6)(3)~~ No licensed charitable organization shall incur ***charitable gaming*** expenses, except as provided in this chapter. No licensed charitable organization shall be permitted to expend amounts in excess of prevailing market rates for the following ***charitable gaming*** expenses:

- (a) Charitable gaming supplies and equipment;
- (b) Rent;
- (c) Utilities;
- (d) Insurance;
- (e) Advertising;
- (f) Janitorial services;
- (g) Bookkeeping and accounting services;
- (h) Security services;
- (i) Membership dues for its participation in any charitable gaming trade organization; and
- (j) Any other expenses the ***department***~~[division]~~ may determine by administrative regulation to be legitimate.

***No licensed charitable organization shall expend receipts from charitable gaming activities nor incur expenses to form, maintain, or operate as a labor organization.***

Section 13. KRS 238.555 is amended to read as follows:

- (1) No person shall operate a charitable gaming facility unless the person is licensed under the provisions of this chapter. The ***department***~~[division]~~ shall charge a license fee not to exceed two thousand five hundred dollars (\$2,500). Specific license fees to be charged shall be prescribed in a graduated scale promulgated by administrative regulation and based on the number of sessions which the facility holds per week or other applicable factors or combination of factors. Charitable gaming may be conducted in a charitable gaming facility only by a licensed charitable organization in accordance with the provisions of this chapter.
- (2) In the application process, an applicant for a charitable gaming facility license shall submit the following information:
  - (a) The address of the facility;

- (b) A description of the facility to include square footage of the gaming area, capacity levels, and available parking;
  - (c) The names, addresses, dates of birth, and Social Security numbers of all individuals employed by or contracted with the applicant to manage the facility or provide other authorized services;
  - (d) The name, address, date of birth, and Social Security number of any individual who has a ten percent (10%) or greater financial interest in the facility;
  - (e) A copy of the lease agreement used by the applicant; and
  - (f) Any other information the ~~department~~~~division~~ deems appropriate.
- (3) No owner, officer, employee, or contractee of a licensed charitable gaming facility or an affiliate, or any member of the immediate family of any officer, employee, or contractee of a licensed charitable gaming facility or an affiliate shall, concerning a lessee:
- (a) Manage or otherwise be involved in the conduct of charitable gaming;
  - (b) Provide bookkeeping or other accounting services related to the conduct of charitable gaming;
  - (c) Handle any moneys generated in the conduct of charitable gaming;
  - (d) Advise a licensed charitable organization on the expenditure of net receipts;
  - (e) Provide transportation services in any manner to patrons of a charitable gaming activity;
  - (f) Provide advertisement or marketing services in any manner to a licensed charitable organization;
  - (g) Provide, coordinate, or solicit the services of personnel or volunteers in any manner;
  - (h) Influence or require a licensed charitable organization to use a certain distributor or any particular gaming supplies; or
  - (i) Donate or give any prize to be awarded in the conduct of charitable gaming.
- (4) A licensed charitable gaming facility shall execute a lease agreement with each licensed charitable organization that desires to conduct charitable gaming at the facility. The licensed charitable gaming facility shall agree in the lease to provide gaming space, utilities, insurance for the premises, parking, tables and chairs, and other nongaming equipment necessary for the conduct of charitable gaming, adequate storage space, security, and janitorial services. The costs of the goods and services provided shall be itemized in the lease. A licensed charitable organization may elect to provide for itself any of the goods and services that a charitable gaming facility is required to provide under this subsection, provided these arrangements are clearly noted in the lease agreement, and provided the total compensation to be paid the charitable gaming facility is reduced commensurate with the cost of the goods and services as itemized in the lease. The amount of rent, goods, and services charged shall be reasonable and shall be based on prevailing market values in the general locality for the goods and services to be provided. Rent shall not be based in whole or in part, on a percentage of gross receipts or net proceeds derived from the conduct of charitable gaming or by reference to the number of people in attendance. The ~~department~~~~division~~ by administrative regulation may establish standards for the determination of prevailing market values. A copy of each signed lease agreement shall be filed with the ~~department~~~~division~~. The provisions of this subsection shall apply to any lease agreement for a facility where charitable gaming is to be conducted, whether or not it is with a licensed charitable gaming facility.
- (5) The number of bingo sessions conducted at a charitable gaming facility shall be limited to the following:
- (a) No more than eighteen (18) sessions per week if the charitable gaming facility is located in a city of the first class, in a city of the second class, in an urban-county or charter county government, or in a county containing a city of the first class or second class;
  - (b) No more than eight (8) sessions per week if the charitable gaming facility is located in a city of the third class, fourth class, fifth class, or sixth class, or in a county that does not contain a city of the first class or second class.
- (6) A licensed charitable gaming facility shall report at least quarterly to the ~~department~~~~division~~ and shall provide any information concerning its operation that the ~~department~~~~division~~ may require.

- (7) A charity fundraising event at which special limited charitable games are played may be conducted at a licensed charitable gaming facility, but no licensed charitable gaming facility shall be permitted to hold more than one (1) such event per week or more than seven (7) per year.
- (8) A licensed charitable gaming facility shall conspicuously display a sign bearing the name and the license number of the charitable organization that is conducting charitable gaming activities in the facility.
- (9) The license to operate the charitable gaming facility shall be prominently displayed on or in the premises where charitable gaming activity is being conducted, in a conspicuous location that is readily accessible to gaming patrons as well as employees of the ~~department~~~~[division]~~, law enforcement officials, and other interested officials.

Section 14. KRS 238.560 is amended to read as follows:

- (1) The ~~department~~~~[division]~~ may investigate allegations of wrongdoing upon complaint or upon its own volition. The ~~department~~~~[division]~~ by administrative regulation shall establish procedures for receiving and investigating complaints in an expeditious manner.
- (2) In carrying out its enforcement responsibilities, the ~~department~~~~[division]~~ may:
  - (a) Inspect and examine all premises in which or on which charitable gaming is conducted or charitable gaming supplies or equipment are manufactured or distributed;
  - (b) Seize and remove from premises and impound charitable gaming supplies and equipment for the purposes of examination and inspection pursuant to an appropriate court order;
  - (c) Demand access to, inspect, and audit books and records of licensees for the purpose of determining compliance with laws and administrative regulations relative to charitable gaming; and
  - (d) Conduct in-depth audits and investigations, when warranted.
- (3) The ~~department~~~~[division]~~ may take appropriate administrative action against any person licensed under this chapter for any violation of the provisions of this chapter or administrative regulations promulgated thereunder. The ~~department~~~~[division]~~ may deny a license, suspend or revoke a license, issue a cease and desist order, place a license holder on probation, issue a letter of reprimand, and levy a fine. An administrative fine shall not exceed one thousand dollars (\$1,000) for each offense. ***The department may deny the issuance of a license or a license renewal if the applicant or licensee has failed to pay a fine levied by the department.*** The ~~department~~~~[division]~~ shall by administrative regulation classify types of offenses and the recommended administrative action. The type of action to be taken shall be based on the ***history of previous violations and the*** nature, severity, and frequency of the offense. Administrative action authorized in this section shall be in addition to any criminal penalties provided in this chapter or under other provisions of law.
- (4) The ~~department~~~~[division]~~ may reinstate a license that has been revoked at any time after two (2) years from the date of revocation. A license may be reinstated only upon a finding that the violations for which the license was revoked have been corrected.
- (5) All departments, divisions, boards, agencies, officers, and institutions of the Commonwealth of Kentucky and all subdivisions thereof, in particular local law enforcement entities, shall cooperate with the ~~department~~~~[division]~~ in carrying out its enforcement responsibilities.
- (6) The ~~department~~~~[division]~~ shall report any activity or action which would constitute a criminal offense to the appropriate authorities in the county where the activity or action occurred and to the Attorney General.

Section 15. KRS 238.565 is amended to read as follows:

- (1) A license holder may appeal any administrative action taken under KRS 238.560. A license holder shall be notified in writing of any action to be taken against him. The notification may be delivered in person or mailed by certified mail, return receipt requested, to the last known address of the license holder. ***Service of notification of administrative action, whether by hand delivery or by certified mail, shall be deemed complete if the license holder fails or refuses to accept delivery. For service by hand delivery, notification shall be deemed received upon acceptance of delivery or upon failure or refusal to accept delivery, and the person affecting service on behalf of the department shall record the fact of the failure or refusal. For service by certified mail, the notification of administrative action shall be deemed received when the license holder accepts delivery or fails or refuses to accept delivery at the last known address.*** The notification shall

specify the charges against the license holder, ***specify the proposed administrative sanction***, and advise him of his right to appeal the decision within ten (10) days of the date of receipt of the notification.

- (2) Upon receipt of an appeal, the ***department***~~[division]~~ shall schedule the matter for an administrative hearing that shall be conducted in accordance with KRS Chapter 13B.
- (3) Any provisions of KRS Chapter 13B notwithstanding, within twenty (20) days after the conclusion of a hearing, the hearing officer shall prepare and present to the ***commissioner***~~[secretary of justice through the division director]~~ a recommended order based on findings of fact and conclusions of law. Within thirty (30) days of receipt of the recommended order, the ***commissioner***~~[secretary of justice]~~ shall affirm, reject, or modify, in whole or in part, the recommended order and shall issue a final order. The final order shall be the final administrative action on the matter and a copy of the final order shall be mailed to the license holder, by certified mail, return receipt requested.
- (4) Any administrative action taken under this section shall, upon appeal, be stayed until a final order is issued, with the exception of a summary suspension. The ***department***~~[division]~~ may issue an emergency order pursuant to KRS 13B.125 to summarily suspend a license upon finding that continued operation of the license holder pending a hearing would constitute a threat to the public health, safety, or welfare.
- (5) A final order ***of the commissioner*** may be appealed to Franklin Circuit Court in accordance with KRS Chapter 13B. ***If the license holder against whom administrative action is proposed does not request an appeal of the action, the department shall enter a final order imposing the proposed administrative action.***

Section 16. KRS 238.570 is amended to read as follows:

- (1) A fee is imposed on charitable gaming in the amount of four-tenths of one percent (0.4%) of gross receipts derived from all charitable gaming conducted by charitable organizations required to be licensed in the Commonwealth of Kentucky. Each licensed charitable organization shall remit to the ***department***~~[division]~~ all moneys due on a quarterly basis. ***Failure by a licensed charitable organization to timely remit the fee required under this subsection upon notice of delinquency shall constitute grounds for disciplinary action in accordance with Section 14 of this Act.***
- (2) The charitable gaming regulatory account is hereby created as a revolving account within the agency revenue fund and under the control of the ***Public Protection and Regulation***~~[Justice]~~ Cabinet. All revenues generated from the fee levied in subsection (1) of this section from license fees and from administrative fines imposed by the ***department***~~[division]~~ shall be deposited in this account. Moneys in this account shall be expended by the ***department***~~[division]~~ only in the administration and enforcement of provisions of this chapter. No later than July of each odd-numbered year, the ***department***~~[division]~~ shall assess the amount of funds raised by all fees levied in this chapter and shall make recommendations to the Legislative Research Commission concerning legislative amendments to adjust fee rates as indicated by the assessment.
- (3) If the provision of subsection (1) of this section that imposes a fee of four-tenths of one percent (0.4%) of all gross receipts derived from all charitable gaming conducted by licensed charitable organizations is declared unconstitutional in a final decision of the highest appellate court of the Commonwealth of Kentucky, for the privilege of conducting charitable gaming in the Commonwealth of Kentucky, there is hereby levied upon the use, sale, rental, lease, or distribution by sale or by gift of charitable gaming supplies and equipment a fee of ten percent (10%) of the value of all supplies and equipment used, sold, rented, leased, or otherwise distributed by a licensed distributor to any licensed charitable organization in the Commonwealth of Kentucky.
  - (a) Every distributor of charitable gaming supplies and equipment shall pay and report the fee levied pursuant to this subsection on or before the twentieth day of the calendar month next succeeding the month in which possession of the charitable gaming supplies and equipment is transferred from the distributor to the licensed charitable organization, in accordance with administrative regulations promulgated by the ***department***~~[division]~~.
  - (b) The ***department***~~[division]~~ may require a bond from distributors in accordance with the administrative regulations promulgated by the ***department***~~[division]~~.
- (4) If the alternative license fee schedule as provided in subsection (3) of this section is activated due to a final decision of the highest appellate court in the Commonwealth of Kentucky as provided in subsection (3) of this section, the distributor's license fee as provided in KRS 238.530(1) shall become inapplicable.

Section 17. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutory-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.
  - (c) Registry of Election Finance.
4. Department of Law.
  - (a) Attorney General.
5. Department of the Treasury.
  - (a) Treasurer.
6. Department of Agriculture.
  - (a) Commissioner of Agriculture.
  - (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
  - (a) Department of State Police.
  - (b) Department of Criminal Justice Training.
  - (c) Department of Corrections.
  - (d) Department of Juvenile Justice.
  - (e) Office of the Secretary.
  - (f) Offices of the Deputy Secretaries.
  - (g) Office of General Counsel.
  - (h) Division of Kentucky State Medical Examiners Office.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
  - (a) Department of Education.

- (1) Kentucky Board of Education.
- (2) Education Professional Standards Board.
- (b) Department for Libraries and Archives.
- (c) Kentucky Arts Council.
- (d) Kentucky Educational Television.
- (e) Kentucky Historical Society.
- (f) Kentucky Teachers' Retirement System Board of Trustees.
- (g) Kentucky Center for the Arts.
- (h) Kentucky Craft Marketing Program.
- (i) Kentucky Commission on the Deaf and Hard of Hearing.
- (j) Governor's Scholars Program.
- (k) Governor's School for the Arts.
- (l) Operations and Development Office.
- (m) Kentucky Heritage Council.
- (n) Kentucky African-American Heritage Commission.
- (o) Board of Directors for the Center for School Safety.
- 3. Natural Resources and Environmental Protection Cabinet:
  - (a) Environmental Quality Commission.
  - (b) Kentucky Nature Preserves Commission.
  - (c) Department for Environmental Protection.
  - (d) Department for Natural Resources.
  - (e) Department for Surface Mining Reclamation and Enforcement.
  - (f) Office of Legal Services.
  - (g) Office of Information Services.
- 4. Transportation Cabinet:
  - (a) Department of Highways.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Administrative Services.
  - (d) Department of Fiscal Management.
  - (e) Department of Rural and Municipal Aid.
  - (f) Office of General Counsel.
  - (g) Office of Public Affairs.
  - (h) Office of Personnel Management.
  - (i) Office of Minority Affairs.
  - (j) Office of Environmental Affairs.
  - (k) Office of Policy and Budget.
- 5. Cabinet for Economic Development:
  - (a) Department of Administration and Support.



- (b) Department of Job Development.
  - (c) Department of Financial Incentives.
  - (d) Department of Community Development.
  - (e) Tobacco Research Board.
  - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.
  - (b) Department of Insurance.
  - (c) Department of Housing, Buildings and Construction.
  - (d) Department of Financial Institutions.
  - (e) Department of Mines and Minerals.
  - (f) Department of Public Advocacy.
  - (g) Department of Alcoholic Beverage Control.
  - (h) Kentucky Racing Commission.
  - (i) Board of Claims.
  - (j) Crime Victims Compensation Board.
  - (k) Kentucky Board of Tax Appeals.
  - (l) Backside Improvement Commission.
  - (m) Office of Petroleum Storage Tank Environmental Assurance Fund.
  - (n) ***Department of Charitable Gaming.***
7. Cabinet for Families and Children:
- (a) Department for Social Insurance.
  - (b) Department for Social Services.
  - (c) Public Assistance Appeals Board.
  - (d) Office of the Secretary.
  - (e) Office of the General Counsel.
  - (f) Office of Program Support.
  - (g) Office of Family Resource and Youth Services Centers.
  - (h) Office of Technology Services.
  - (i) Office of the Ombudsman.
  - (j) Office of Aging Services.
8. Cabinet for Health Services.
- (a) Department for Public Health.
  - (b) Department for Medicaid Services.
  - (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission on Children with Special Health Care Needs.
  - (e) Office of Certificate of Need.
  - (f) Office of the Secretary.

- (g) Office of the General Counsel.
  - (h) Office of Program Support.
  - (i) Office of the Inspector General.
9. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
  - (b) Office of Management and Budget.
  - (c) Office of Financial Management and Economic Analysis.
  - (d) Office of the Controller.
  - (e) Department for Administration.
  - (f) Department of Facilities Management.
  - (g) Department of Information Systems.
  - (h) State Property and Buildings Commission.
  - (i) Kentucky Pollution Abatement Authority.
  - (j) Kentucky Savings Bond Authority.
  - (k) Deferred Compensation Systems.
  - (l) Office of Equal Employment Opportunity Contract Compliance.
  - (m) Office of Capital Plaza Operations.
  - (n) County Officials Compensation Board.
  - (o) Kentucky Employees Retirement Systems.
  - (p) Commonwealth Credit Union.
  - (q) State Investment Commission.
  - (r) Kentucky Housing Corporation.
  - (s) Governmental Services Center.
  - (t) Kentucky Local Correctional Facilities Construction Authority.
  - (u) Kentucky Turnpike Authority.
  - (v) Historic Properties Advisory Commission.
  - (w) Kentucky Are Health Insurance Authority.
10. Labor Cabinet:
- (a) Department of Workplace Standards.
  - (b) Department of Workers' Claims.
  - (c) Kentucky Labor-Management Advisory Council.
  - (d) Occupational Safety and Health Standards Board.
  - (e) Prevailing Wage Review Board.
  - (f) Workers' Compensation Board.
  - (g) Kentucky Employees Insurance Association.
  - (h) Apprenticeship and Training Council.
  - (i) State Labor Relations Board.
  - (j) Kentucky Occupational Safety and Health Review Commission.

- (k) Office of Administrative Services.
  - (l) Office of Labor-Management Relations and Mediation.
  - (m) Office of General Counsel.
  - (n) Workers' Compensation Funding Commission.
  - (o) Employers Mutual Insurance Authority.
11. Revenue Cabinet:
- (a) Department of Property Valuation.
  - (b) Department of Tax Administration.
  - (c) Office of Financial and Administrative Services.
  - (d) Department of Law.
  - (e) Department of Information Technology.
  - (f) Office of Taxpayer Ombudsman.
12. Tourism Development Cabinet:
- (a) Department of Travel.
  - (b) Department of Parks.
  - (c) Department of Fish and Wildlife Resources.
  - (d) Kentucky Horse Park Commission.
  - (e) State Fair Board.
  - (f) Office of Administrative Services.
  - (g) Office of General Counsel.
13. Cabinet for Workhorse Development:
- (a) Department for Adult Education and Literacy.
  - (b) Department for Technical Education.
  - (c) Department of Vocational Rehabilitation.
  - (d) Department for the Blind.
  - (e) Department for Employment Services.
  - (f) State Board for Adult and Technical Education.
  - (g) Governor's Council on Vocational Education.
  - (h) The State Board for Proprietary Education.
  - (i) The Foundation for Adult Education.
  - (j) The Kentucky Job Training Coordinating Council.
  - (k) Office of General Counsel.
  - (l) Office of Communication Services.
  - (m) Office of Development and Industry Relations.
  - (n) Office of Workhorse Analysis and Research.
  - (o) Office for Administrative Services.
  - (p) Office for Policy and Budget.
  - (q) Office of Personnel Services.

(r) Unemployment Insurance Commission.

14. Personnel Cabinet:

- (a) Office of Administrative and Legal Services.
- (b) Department for Personnel Administration.
- (c) Department for Employee Relations.
- (d) Kentucky Public Employees Deferred Compensation Authority.
- (e) Kentucky Are.
- (f) Division of Performance Management.
- (g) Division of Employee Records.
- (h) Division of Staffing Services.
- (i) Division of Classification and Compensation.
- (j) Division of Employee Benefits.
- (k) Division of Communications and Recognition.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Council on Post secondary Education.
  - (a) Kentucky Commission on Community Volunteerism and Service.
- 3. Department for Local Government.
- 4. Kentucky Commission on Human Rights.
- 5. Kentucky Commission on Women.
- 6. Department of Veterans' Affairs.
- 7. Kentucky Commission on Military Affairs.
- 8. Office of the Chief Information Officer.

Section 18. KRS 15.380 is amended to read as follows:

- (1) The following officers employed or appointed as full-time, part-time, or auxiliary officers, whether paid or unpaid, shall be certified:
  - (a) State Police officers;
  - (b) City, county, and urban-county police officers;
  - (c) Deputy sheriffs, except those identified in KRS 70.045 and 70.263(3);
  - (d) State or public university safety and security officers appointed pursuant to KRS 164.950;
  - (e) School security officers employed by local boards of education who are special law enforcement officers appointed under KRS 61.902;
  - (f) Airport safety and security officers appointed under KRS 183.880;
  - (g) Department of Alcoholic Beverage Control field representatives and investigators appointed under KRS 241.090; and
  - (h) Division of Insurance Fraud Investigators appointed under KRS 304.47-040.
- (2) The requirements of KRS 15.380 to 15.402 for certification may apply to all state peace officers employed pursuant to KRS Chapter 18A and shall, if adopted, be incorporated by the Department of Personnel for job specifications.

- (3) Additional training in excess of the standards set forth in KRS 15.380 to 15.402 for all peace officers possessing arrest powers who have specialized law enforcement responsibilities shall be the responsibility of the employing agency.
- (4) The following officers may, upon request of the employing agency, be certified by the council:
  - (a) Deputy coroners;
  - (b) Deputy constables;
  - (c) Deputy jailers;
  - (d) Deputy sheriffs under KRS 70.045 and 70.263(3);
  - (e) Officers appointed under KRS 61.360;
  - (f) Officers appointed under KRS 61.902, except those who are school security officers employed by local boards of education;
  - (g) Private security officers;~~[-and]~~
  - (h) Employees of a correctional services division created pursuant to KRS 67A.028 and employees of a metropolitan correctional services department created pursuant to KRS 67B.010 to 67B.080; **and**
  - (i) ***Investigators employed by the Department of Charitable Gaming in accordance with Section 3 of this Act.***
- (5) The following officers shall be exempted from the certification requirements but may upon their request be certified by the council:
  - (a) Sheriffs;
  - (b) Coroners;
  - (c) Constables; and
  - (d) Jailers.
- (6) Federal peace officers cannot be certified under KRS 15.380 to 15.402.

Section 19. The General Assembly hereby confirms Executive Order 98-905 of the Public Protection and Regulation Cabinet, to the extent it is not otherwise confirmed by this Act. This executive order creates the Department of Charitable Gaming within the Public Protection and Regulation Cabinet, including the Office of General Counsel, Division of Licensing and Compliance, and Division of Enforcement; and it abolishes the Division of Charitable Gaming within the Justice Cabinet and transfers all personnel, files, equipment, and funding to the Department of Charitable Gaming within the Public Protection and Regulation Cabinet.

Section 20. (1) The Interim Joint Committee on Licensing and Occupations is directed to study during the 2000-2001 interim, the following issues related to charitable gaming:

- (a) The impact of the 40% Rule on charitable organizations, with particular emphasis on charitable organizations located in areas that are in close proximity to competitive forms of gaming, such as riverboat casinos;
- (b) Development of a reasonable and workable method of establishing facility rental rates, to include a review of basing rental rates on attendance or gross receipts;
- (c) The impact of inflation on charitable gaming expenses and the need to adjust accordingly prize limits and other policies limiting gross receipts; and
- (d) Any other issue brought to the attention of the committee.

(2) The Interim Joint Committee on Licensing and Occupations shall conduct the study in cooperation with the Department of Charitable Gaming and the committee is encouraged to seek input from the:

- (a) Kentucky Charitable Gaming Advisory Committee;
- (b) Kentucky Charitable Gaming Association;
- (c) Licensed charitable organizations, manufacturers, distributors, and facility operators; and

- (d) Any other interested individuals or groups.

**Approved April 7, 2000**

**CHAPTER 375**

**(HB 161)**

AN ACT relating to speech-language pathology.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

- (1) *The Education Professional Standards Board shall have the authority and responsibility to certify as a teacher of exceptional children/communication disorders, an individual who has:*
  - (a) *Completed an approved program of preparation that corresponds to the certificate;*
  - (b) *Achieved a passing score on an appropriate assessment as determined by the Education Professional Standards Board;*
  - (c) *Fulfilled other requirements for teacher certification as determined by the Education Professional Standards Board, in accordance with KRS Chapter 161 and administrative regulations promulgated thereunder; and*
  - (d) *Completed the requirements set forth in subsection (2) of this section.*
- (2) *The Education Professional Standards Board shall issue two (2) levels of certification for teachers of exceptional children/communication disorders:*
  - (a) *Baccalaureate level certification shall be issued to a person who has:*
    1. *Completed an approved program of preparation leading to a bachelor's degree in speech-language pathology;*
    2. *Been granted licensure as a speech-language pathology assistant from the Kentucky Board of Speech-Language Pathology and Audiology, under KRS Chapter 334A; and*
    3. *Completed the other requirements set forth in subsection (1) of this section; and*
  - (b) *Master's level certification shall be issued to a person who has:*
    1. *Completed an approved program of preparation leading to a master's degree in speech-language pathology; and*
    2. *Completed the other requirements specified in subsection (1) of this section.*
- (3) *A person holding licensure through the Kentucky Board of Speech-Language Pathology and Audiology as a speech-language pathology assistant, but not certified as a teacher of exceptional children/communication disorders, may:*
  - (a) *Continue to work in the public schools as a classified employee under the provisions of KRS Chapter 334A and administrative regulations promulgated by the Kentucky Board of Speech-Language Pathology and Audiology; or*
  - (b) *Pursue certification as a baccalaureate level teacher of exceptional children/communication disorders while working as a speech-language pathology assistant.*
- (4) *Candidates for certification as a teacher of exceptional children/communication disorders shall participate in the teacher internship program under KRS 161.030.*
- (5) *A bachelor's level teacher of exceptional children/communication disorders shall work under requirements for speech-language pathology assistants set forth in KRS Chapter 334A.*
- (6) *The Education Professional Standards Board shall develop a policy through the promulgation of administrative regulations by June 30, 2001, to permit a speech-language pathology assistant with two (2) years or more of successful professional experience pursuing certification as a baccalaureate level teacher of exceptional children to:*

- (a) *Substitute prior professional experience for student teaching requirements; and*
  - (b) *Substitute prior professional experience for beginning teacher internship requirements.*
- (7) *A teacher of exceptional children/communication disorders shall receive salary and benefits, including membership in the Teachers' Retirement System, commensurate with their education, certification, and experience as prescribed by law. Years of experience as a speech-language pathology assistant shall be included in the calculation of all benefits, including membership in the Teachers' Retirement System, for individuals with baccalaureate level certification as a teacher of exceptional children/communication disorders.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

*A public postsecondary education institution with a degree program in speech-language pathology and a teacher education program, under the direction of the Council on Postsecondary Education, and in consultation with the Education Professional Standards Board and the Kentucky Board of Speech-Language Pathology and Audiology, shall:*

- (1) *Align the programs of studies for speech-language pathology and teacher education to permit a student to successfully prepare for licensure as a speech-language pathology assistant and certification as a bachelor's level teacher of exceptional children/communication disorders;*
- (2) *Increase the number of qualified students accepted into programs leading to licensure as a speech-language pathologist or speech-language pathology assistant and certification as a teacher of exceptional children/communication disorders, subject to:*
  - (a) *Requirements for program certification by national certifying bodies, including, but not limited to, student to faculty ratios;*
  - (b) *The strategic plans of the Council on Postsecondary Education and the postsecondary education institution; and*
  - (c) *The budgetary considerations of the postsecondary education institution.*
- (3) *Provide expanded opportunities for speech-language pathology assistants working in public schools to pursue licensure as a speech-language pathologist and certification as a teacher of exceptional children/communication disorders, which may include:*
  - (a) *Expanded opportunities for admission to on-campus programs;*
  - (b) *The development and expansion of distance learning opportunities in collaboration with the Kentucky Commonwealth Virtual University; and*
  - (c) *Admissions requirements that take into account successful professional experience as a speech-language pathology assistant in lieu of other admissions requirements.*

Section 3. KRS 161.030 is amended to read as follows:

- (1) Notwithstanding the age of the pupil, the certification of all teachers and other school personnel, in public schools only, is vested in the Education Professional Standards Board. When so certified, teachers and other school personnel shall not be required to have licensure, certification, or other forms of approval from any other state agency for the performance of their respective assignments within the common schools, except as provided for by law. All certificates authorized under KRS 161.010 to 161.126 shall be issued in accordance with the administrative regulations of the Education Professional Standards Board. After July 15, 1994, all certificate applications and other data collection instruments of the board shall include a request for voluntary information about the applicant's ethnic background. This information shall be available to help local school districts locate minority candidates. A person who holds a certificate prior to this requirement may request that ethnic information be added to his file. Nothing in this section shall preclude the right of an individual in a nonpublic school from seeking voluntary certification by the Education Professional Standards Board.
- (2) Certificates shall be issued upon written application and in accordance with statutes and regulations in effect at the time of application to persons who have completed, at colleges, universities, or local school district programs approved by the Education Professional Standards Board for the preparation of teachers and other school personnel, the curricula prescribed by the administrative regulations of the Education Professional Standards Board.

- (3) Certification of all new teachers and teachers seeking additional certification shall require the successful completion of appropriate assessments prior to certification. The assessments shall be selected by the Education Professional Standards Board and shall measure knowledge in the specific teaching field of the applicant, including content of the field and teaching of that content. The Education Professional Standards Board shall determine the minimum acceptable level of achievement on each assessment. The assessments shall measure those concepts, ideas, and facts which are being taught in teacher education programs in Kentucky. Upon successful completion of the assessments and the approved teacher preparation program, a certificate valid for one (1) year shall be issued. If an out-of-state teacher with less than two (2) years experience comes to Kentucky after the deadline for taking the assessments, a temporary certificate may be issued for a period up to six (6) months provided the local board cannot fill the vacant position with a certified teacher. The teacher shall take the assessments if they are administered during the period of the temporary certificate. The certificate shall be extended for the remainder of the year if the teacher successfully completes the assessments. If the teacher fails the assessments, the temporary certificate shall be valid only for the current semester.
- (4) A reasonable fee to be paid by the teacher and directly related to the actual cost of the administration of the assessments shall be established by the Education Professional Standards Board. Provisions shall be made for persons having less than minimum levels of performance on any assessment to repeat that assessment, and candidates shall be informed of their strengths and weaknesses in the specific performance areas. The Department of Education shall provide for confidentiality of the individual assessment scores. Scores shall be available only to the candidate and to the education officials who are responsible for determining whether established certification standards have been met. Scores shall be used only in the assessment for certification of new teachers and of out-of-state teachers with less than two (2) years of teaching experience who are seeking initial certification in Kentucky.
- (5) All new teachers and out-of-state teachers with less than two (2) years of successful teaching experience who are seeking initial certification in Kentucky shall serve a one (1) year internship. The teacher shall be a full-time employee or shall have an annual contract and serve on at least a half-time basis and shall have supervision, assistance, and assessment during the one (1) year internship. The internship may be served in a public school or a nonpublic school which meets the state performance standards as established in KRS 156.160 or which has been accredited by a regional or national accrediting association. Successful completion shall be determined by a majority vote of the beginning teacher committee. The internship period shall be counted as experience for the purpose of continuing contract status, retirement eligibility, and benefits for single salary experience increments. Upon successful completion of the beginning teacher program, the one (1) year initial teaching certificate shall be extended for the remainder of the usual duration period established for that particular certificate by Education Professional Standards Board administrative regulations.
- (6) The beginning teacher committee shall be composed of three (3) persons who have successfully completed special training in the supervision and assessment of the performance of beginning teachers as provided in subsection (8) of this section, *except as provided in paragraph (g) of this subsection*. The committee shall consist of a resource teacher, the school principal of the school where the internship is served, and a teacher educator appointed by a state-approved teacher training institution.
  - (a) If more than two (2) teacher interns are employed in the same school, the principal's responsibility may be shared with an assistant principal who holds certification as a principal.
  - (b) In unusual situations, the Education Professional Standards Board may permit the assistant principal to serve in lieu of the principal on a beginning teacher committee.
  - (c) If the teacher training institution is unable to provide a member, the district superintendent shall appoint an instructional supervisor from the school district.
  - (d) If the intern is teaching in a regionally or nationally accredited nonpublic school without a principal, the person filling the principal member position may have other appropriate qualifications as required by administrative regulations promulgated by the Education Professional Standards Board.
  - (e) If the teacher training institution is unable to provide a member to serve on the beginning teacher committee in a nonpublic school, the chief officer of the school shall appoint an instructional supervisor or a teacher with like qualifications and responsibilities to serve on the beginning teacher committee in lieu of the teacher educator.



- (f) The resource teacher shall be appointed by the Department of Education from a pool of qualified resource teachers, and, any statutes to the contrary notwithstanding and to the extent of available appropriations, shall be entitled to be paid a reasonable stipend by the Department of Education for work done outside normal working hours. In the case of a resource teacher in a nonpublic school, payment shall be made directly to the resource teacher by the Department of Education. Priority shall be given to resource teachers in the following order, *except as provided in paragraph (g) of this subsection*:
1. Teachers with the same certification in the same school;
  2. Teachers with the same certification in the same district;
  3. Teachers in the same school;
  4. Teachers in the same district; and
  5. Teachers in an adjacent school district.
- (g) **1. *The resource teacher for an individual pursuing initial certification as a baccalaureate level teacher of exceptional children/communication disorders shall be a master's level teacher of exceptional children/communication disorders, if one is available.***
- 2. *If a master's level teacher of exceptional children/communication disorders is not available, the Education Professional Standards Board may allow a licensed speech-language pathologist to serve on the beginning teacher committee in lieu of a resource teacher.***
- (h) The committee shall meet with the beginning teacher a minimum of three (3) times per year for evaluation and recommendation with all committee members present. In addition, each member of the committee shall observe the beginning teacher in the classroom a minimum of three (3) times per year. If the teacher's first year performance is judged by the committee to be less than satisfactory, the teacher shall be provided with an opportunity to repeat the internship one (1) time if the teacher is employed by a school district.
- (7) The resource teacher shall spend a minimum of seventy (70) hours working with the beginning teacher; twenty (20) of these hours shall be in the classroom setting; fifty (50) of these hours shall be in consultation other than class time or attending assessment meetings. The resource teacher shall have completed at least four (4) years of successful teaching experience as attested to by his or her immediate supervisor or by having achieved tenure and be able to show evidence of continuing professional development by having achieved a master's degree or its equivalent or the accumulation of two thousand (2,000) hours of continuing professional activities.
- (8) By contract with teacher education institutions in the Commonwealth, the chief state school officer shall provide special training for persons who will be serving on the beginning teacher committees. Completion of special training shall be evidenced by successfully passing the assessments as prescribed by the Education Professional Standards Board. A principal hired after July 15, 1996, shall be required to complete the beginning teacher committee training program within one (1) year after his appointment.
- (9) If an applicant establishes eligibility for a one (1) year certificate under the provisions of subsection (3) of this section, but does not become employed on the basis needed to satisfy the one (1) year internship requirement, the applicant shall be eligible for the issuance of a certificate for substitute teaching as provided by the administrative regulations of the Education Professional Standards Board. The applicant shall remain eligible for the one (1) year certificate, as provided in subsection (3) of this section, and for the opportunity to serve the internship for a period of five (5) years after establishing eligibility. If the internship is not completed within the five (5) year period, the applicant must reestablish eligibility by repeating and passing the assessment program in effect for new teachers at that time or by completing a minimum of six (6) graduate hours toward completion of a graduate program required by administrative regulations promulgated by the Education Professional Standards Board. The option for renewal through completion of graduate hours shall be available only for the first reestablishment of eligibility.
- (10) The Education Professional Standards Board shall approve the curricula of any standard college or university, or of any department thereof, for the training of teachers, and shall also approve the curricula of any local district alternative certification program, when the curricula comply with the administrative regulations of the Education Professional Standards Board for the issuance of certificates and when the institution has met the terms and conditions provided in KRS 161.010 to 161.120. Any student who has completed any of these

curricula, as approved by the Education Professional Standards Board, and who has completed the prescribed requirements for the issuance of certificates shall be granted a certificate corresponding to the curricula completed.

Section 4. KRS 334A.020 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Board" means the Kentucky Board of Speech-Language Pathology and Audiology;
- (2) "Person" means any individual, organization, or corporate body, except that only individuals can be licensed under this chapter;
- (3) "Speech-language pathologist" means one who practices speech-language pathology. A speech-language pathologist may describe himself to the public by any title or description of services incorporating the words "speech-language pathologist," "speech-language pathology," "speech-language therapy," "speech-language correction," "speech-language correctionist," "speech-language therapist," "speech clinic," "speech clinician," "language pathologist," "language pathology," "language therapist," "logopedics," "logopedist," "communicology," "communicologist," "aphasiologist," "voice therapy," "voice therapist," "voice pathology," "voice pathologist," "phoniatrist," "communication disorders," or any similar titles or descriptions;
- (4) "The practice of speech pathology" means the application of principles, methods, and procedures for the measurement, testing, audiometric screening, identification, appraisal, determination of prognosis, evaluation, consultation, remediation, counseling, instruction, and research related to the development and disorders of speech, voice, verbal and written language, cognition/communication, or oral and pharyngeal sensori-motor competencies for the purpose of designing and implementing programs for the amelioration of these disorders and conditions. Any representation to the public by title or by description of services, methods, or procedures for the evaluation, counseling, remediation consultation, measurement, testing, audiometric screening, identification, appraisal, determination of prognosis, instruction, and research of persons suffering or suspected of suffering from conditions or disorders affecting speech, voice, verbal and written language, cognition/communication, or oral and pharyngeal sensori-motor competencies shall be considered to be the practice of speech-language pathology;
- (5) "Audiologist" is defined as one who practices audiology. An audiologist may describe himself to the public by any title or description of services incorporating the words "audiologist," "audiology," "audiological," "hearing center," "hearing clinic," "hearing clinician," "hearing therapist," "audiometry," "audiometrist," "audiometrics," "otometry," "otometrist," or any similar titles or descriptions of service;
- (6) "The practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to hearing and disorders of hearing for the purpose of modifying communicative disorders involving speech, language, auditory behavior, or other aberrant behavior related to hearing loss; planning, directing, conducting, or participating in identification and hearing conservation programs; and habilitative and rehabilitative programs, including hearing aid recommendations and evaluation, auditory training, or speech reading;
- (7) "Continuing professional education" in speech-language pathology and audiology consists of planned learning experiences beyond a basic educational program leading to a degree. These experiences are designed to promote knowledge, skills, and attitudes of speech-language pathology and audiology practitioners to enable them to provide improved health care to the public.
- (8) "Speech-language pathology assistant" means one who assists in the practice of speech-language pathology only under the supervision and direction of an appropriately qualified supervisor and only within the public school system in the Commonwealth. Any speech pathology services provided without appropriate supervision, or outside the public school system shall be deemed to be the unlicensed practice of speech pathology and shall subject the offending party to penalties established pursuant to KRS 334A.990.
- (9) "Assisting in the practice of speech pathology" means the provision of certain specific components of a speech or language service program provided by a speech-language pathology assistant under the supervision and direction of an appropriately qualified supervisor.
  - (a) If the training, supervision, documentation, and planning are appropriate, the following tasks may be delegated to a speech-language pathology assistant:

1. Conduct speech-language and hearing screenings without interpretation following specified screening protocols developed by a speech-language pathologist and audiologist, respectively;
  2. Follow documented treatment plans or protocols as prescribed by the supervisor;
  3. Document student progress toward meeting established objectives as stated in the treatment plan;
  4. Provide direct treatment assistance to identified students under the supervision of the supervisor;
  5. Assist with clerical and other related duties as directed by the supervisor;
  6. Report to the supervisor about the treatment plan based on a student's performance;
  7. Schedule activities, prepare charts, records, graphs, or otherwise display data. This shall not include report generation;
  8. Perform simple checks and maintenance of equipment;
  9. Participate with the supervisor in research projects, inservice training, and public relations programs;
  10. Assist in the development and maintenance of an appropriate schedule for service delivery;
  11. Assist in implementing collaborative activities with other professionals; ~~and~~
  12. Assist in administering tests for diagnostic evaluations and progress monitoring; **and**
  13. ***Participate in parent conferences, case conferences, or any interdisciplinary team in consultation with, or in the presence of, the supervisor.***
- (b) The following activities shall be outside the scope of practice of the speech-language pathology assistant:
1. Performing any activity which violates the code of ethics promulgated by the board by administrative regulation;
  2. Interpreting test results, or performing diagnostic evaluations without supervision;
  3. ~~Participating in parent conferences, case conferences, or any interdisciplinary team without consultation with, or in the presence of, the supervisor;~~
  4. ~~Conducting client or family counseling without the recommendation, guidance, and approval of the supervisor;~~
  4. ~~5.~~ Writing, developing, or modifying a student's individualized treatment plan in any way without the recommendation, guidance, and approval of the supervisor;
  5. ~~6.~~ Treating students without following the individualized treatment plan prepared by the supervisor or without access to supervision;
  6. ~~7.~~ Signing any due process document without the co-signature of the supervisor;
  7. ~~8.~~ Selecting or discharging students;
  8. ~~9.~~ Disclosing clinical or confidential information, either orally or in writing, to anyone not designated by the supervisor;
  9. ~~10.~~ Making referrals for additional services; and
  10. ~~11.~~ Representing themselves as something other than a speech-language pathology assistant.
- (10) "Supervisor" means a person who holds a Kentucky license as a speech-language pathologist or who holds Education Professional Standards Board "***master's level***" certification as a teacher of exceptional children in the areas of speech and communication disorders as established by administrative regulation.

Section 5. KRS 334A.035 is amended to read as follows:

- (1) A person who has a master's degree in the area of speech-language pathology or audiology or substantive equivalent course work as defined by the board's administrative regulations and who has completed supervised direct clinical practicum with individuals presenting a variety of disorders of communication, the experience being obtained with a training institution or in one (1) of its cooperating programs, shall apply for an interim

license during the time that person is completing postgraduate professional experience deemed necessary by the board. This postgraduate professional experience shall be completed under the supervision of a speech-language pathologist who holds a Kentucky license, if the applicant is seeking interim licensure in speech-language pathology, or under an audiologist who holds a Kentucky license, if the applicant is seeking interim licensure in audiology. A person with interim licensure shall make every effort to take and pass an examination approved by the board. Upon completion of postgraduate professional experience deemed necessary by the board, the speech-language pathologist or audiologist shall make immediate application to the board for permanent licensure, if all requirements have been completed satisfactorily, or for renewal of the interim license at the discretion of the board. Failure to do so shall result in forfeiture of the interim license.

- (2) A person who has a baccalaureate degree in the area of speech-language pathology as defined by administrative regulation and who does not hold a valid and current *master's degree level* credential as a speech-hearing specialist issued by the **Education Professional Standards Board** ~~(Department of Education)~~, shall apply for an interim license as a speech-language pathology assistant during the time that person is completing their professional experience as established by the board by administrative regulation. This professional experience shall be completed under the supervision of an appropriately qualified supervisor. Upon completion of the professional experience, the speech-language pathology assistant shall make immediate application to the board for permanent licensure, if all requirements have been completed satisfactorily, or for renewal of the interim license at the discretion of the board. Failure to do so shall result in forfeiture of the interim license.
- (3) In order to regulate the quality of professional service to children in the public schools of the Commonwealth, any speech-language pathologist employed by the public schools shall apply for and maintain appropriate licensure until the time the Kentucky Education Professional Standards Board promulgates an administrative regulation requiring speech-language pathologists to meet the requirements of KRS 334A.050(2)(a) and (b).

Section 6. KRS 334A.060 is amended to read as follows:

- ~~(1) The board may waive the examination and educational requirements for those applicants for licensure as a speech language pathology assistant who hold a valid and current credential as a speech and hearing specialist issued by the Education Professional Standards Board or graduate with a baccalaureate degree in the area of speech language pathology as defined by the board prior to December 31, 1994. The authority of the board to grant licensure under these circumstances shall end on March 1, 1995.~~
- ~~(2)~~ The board may waive the examination and grant a license to applicants who present proof of current licensure in a state which has standards that are at least equivalent to those of this state.
- ~~(2)~~~~(3)~~ The board may waive the examination and grant a license to those who hold the Certificate of Clinical Competence of the American Speech and Hearing Association in the area for which they are applying for licensure.

Section 7. KRS 334A.033 is amended to read as follows:

- (1) The board may issue a license to practice as a speech-language pathology assistant under the following conditions:
  - (a) The practice shall be limited to the public schools and shall be under the supervision of an appropriately qualified supervisor;
  - (b) The requirements for supervision shall be set forth in administrative regulations promulgated by the board *and shall include requirements that:*
    1. *A person holding an interim license as a speech-language pathology assistant shall receive no less than three (3) hours per week of documented direct supervision and three (3) hours per week of indirect supervision from an appropriate supervisor as determined by the board;*
    2. *A person holding a license as a speech-language pathology assistant with less than three (3) years of full-time experience shall receive no less than two (2) hours per week of documented direct supervision and two (2) hours per week of indirect supervision from an appropriate supervisor as determined by the board;*
    3. *A person holding a license as a speech-language pathology assistant with three (3) or more years of full-time experience shall receive no less than one (1) hour per week of documented direct supervision and one (1) hour per week of indirect supervision, unless, in the*

*professional judgment of the supervisor, the ability of the speech-language pathology assistant requires a higher level of supervision in order to avoid compromising the quality of services provided to students; and*

**4. Supervision shall be adjusted proportionally for less than full-time employment;**

- (c) An individual shall not supervise or be listed as the supervisor for more than two (2) speech-language pathology assistants; and
  - (d) The supervisor shall delegate to the assistant the appropriate tasks pursuant to KRS 334A.020 and the supervisor and assistant shall work together to provide the appropriate services to all assigned pupils *taking into account the severity and complexity of the needs of individual students and the respective workloads of the supervisor and assistant*. The maximum number of pupils served by each speech-language pathology assistant shall not exceed the direct service caseload of the speech-language pathologist as established in KRS 334A.190.
- (2) To be eligible for licensure by the board as a speech-language pathology assistant, the applicant shall meet the following requirements:
- (a) A baccalaureate degree in the area of speech-language pathology as defined by administrative regulation;
  - (b) Completion of postgraduate professional experience deemed appropriate by the board by administrative regulation; and
  - (c) List on the application the name of the appropriately qualified supervisor who has agreed to provide supervision as set forth by the board by administrative regulation.

Section 8. KRS 334A.190 is amended to read as follows:

- (1) The caseload limitations for speech-language pathologists in the public schools shall ***not exceed sixty-five (65) pupils***.~~be as follows:~~
- ~~(1) The individual direct service caseload of a speech language pathologist in the public schools shall not exceed the following:~~
- ~~(a) Seventy five (75) pupils for the school year 1997-1998;~~
  - ~~(b) Seventy (70) pupils for the school year 1998-1999;~~
  - ~~(c) Sixty five (65) pupils for the school year 1999-2000 and thereafter;~~
- (2) The total caseload of speech-language pathologists who supervise assistants may be increased by no more than one-half (1/2) of the amount set forth in subsection (1) of this section for each speech-language pathology assistant working under their supervision.

**Approved April 7, 2000**

**CHAPTER 376**

**(HB 177)**

AN ACT relating to the use of information technology in the delivery of health services.

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

Section 1. KRS 45A.605 is amended to read as follows:

- (1) As used in this section:
- (a) "Information highway" means a communication network for voice, data, and video communications technologies; and
  - (b) "Agencies of the Commonwealth of Kentucky" includes all authorities; boards; commissions; councils; departments; program cabinets; the Kentucky Lottery Corporation; vocational schools; the Kentucky School for the Deaf; the Kentucky School for the Blind; upon written request of the Chief Justice, the Court of Justice; upon written request of the co-chairmen of the Legislative Research Commission, the

General Assembly and the Legislative Research Commission; and upon written request of presidents, state institutions of higher education.

- (2) The provisions of any other law notwithstanding, the Finance and Administration Cabinet may enter into one (1) or more contracts, on behalf of agencies of the Commonwealth of Kentucky, with any person, partnership, or corporation that operates an information highway. The information highway shall enable the Commonwealth to benefit from cost-effective telecommunications technologies and shall provide opportunities for the private sector. ***These opportunities shall include, but not be limited to, the provision of telehealth by licensed health care providers as provided in KRS Chapters 205, 211, 304.17A, 310, 311, 312, 313, 314, 314A, 315, 319, 319A, 320, 327, 334A, and 335.***
- (3) Upon implementation, all agencies of the Commonwealth of Kentucky shall obtain all available communications services under contracts executed pursuant to subsection (2) of this section, except as provided under subsection (4) of this section.
- (4) The secretary of the Finance and Administration Cabinet may grant exceptions to the mandatory use of the information highway upon good cause shown.
- (5) Any contract awarded under subsection (2) of this section shall be deemed, for purposes of KRS 45A.050, a state agency price contract to which all political subdivisions and state-licensed nonprofit institutions of higher education may have access and use on the same terms as agencies of the Commonwealth of Kentucky. In addition, nonprofit schools providing elementary or secondary education and nonprofit health care organizations shall be allowed to have access and use the contract on the same terms as agencies of the Commonwealth of Kentucky. "Nonprofit schools" and "nonprofit health care organizations" mean those schools and health care organizations which have been granted tax-exempt status under the United States Internal Revenue Code.

SECTION 2. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO READ AS FOLLOWS:

- (1) ***The Telehealth Board is created and placed for administrative purposes under the Governor's Office for Technology. This seven (7) member board shall consist of the:***
  - (a) ***Chancellor, or a designee, of the medical school at the University of Kentucky;***
  - (b) ***Chancellor, or a designee, of the medical school at the University of Louisville;***
  - (c) ***Commissioner, or a designee, of the Department for Public Health;***
  - (d) ***Chief information officer, or a designee, of the Governor's Office for Technology; and***
  - (e) ***Three (3) members at large, appointed by the Governor, who are health professionals or third parties as those terms are defined in Section 3 of this Act. To ensure representation of both groups, no more than two (2) health professionals or two (2) third parties shall be members of the board at the same time. These members shall serve a term of four (4) years, may serve no more than two (2) consecutive terms, and shall be reimbursed for their costs associated with attending board meetings.***
- (2) ***The members shall elect a chair and hold bimonthly meetings or as often as necessary for the conduct of the board's business.***
- (3) ***The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to:***
  - (a) ***Establish telehealth training centers at the University of Kentucky, University of Louisville, the pediatric-affiliated hospitals at the University of Kentucky and the University of Louisville, and one (1) each in western Kentucky and eastern Kentucky, with the sites to be determined by the board;***
  - (b) ***Develop a telehealth network, to coordinate with the training centers, of no more than twenty-five (25) rural sites, to be established based on the availability of funding and in accordance with criteria set by the board. In addition to these rural sites, the board may identify, for participation in the telehealth network, ten (10) local health departments, five (5) of which shall be administered by the University of Kentucky and five (5) of which shall be administered by the University of Louisville;***
  - (c) ***Establish protocols and standards to be followed by the training centers and rural sites; and***
  - (d) ***Maintain the central link for the network with the Kentucky information highway.***
- (4) ***The board shall, following consultation with the Governor's Office for Technology, recommend the processes and procedures for the switching and running of the telehealth network.***

- (5) *The University of Kentucky and the University of Louisville shall report semiannually to the Interim Joint Committee on Health and Welfare on the following areas as specified by the board through an administrative regulation promulgated in accordance with KRS Chapter 13A.*
- (a) *Data on utilization, performance, and quality of care;*
  - (b) *Quality assurance measures, including monitoring systems;*
  - (c) *The economic impact on and benefits to participating local communities; and*
  - (d) *Other matters related to telehealth at the discretion of the board.*
- (6) *The board shall receive and dispense funds appropriated for its use by the General Assembly or obtained through any other gift or grant.*

Section 3. KRS 205.510 is amended to read as follows:

As used in this chapter as it pertains to medical assistance unless the context clearly requires a different meaning:

- (1) *"Chiropractor" means a person authorized to practice chiropractic under KRS Chapter 312;*
- (2) "Council" means the Advisory Council for Medical Assistance;
- (3)~~(2)~~ "Dentist" means a person authorized to practice dentistry under laws of the Commonwealth;
- (4)~~(3)~~ *"Health professional" means a physician, physician assistant, nurse, doctor of chiropractic, mental health professional, optometrist, dentist, or allied health professional who is licensed in Kentucky;*
- (5) "Medical care" as used in this chapter means essential medical, surgical, *chiropractic*, dental, optometric, podiatric, *telehealth*, and nursing services, in the home, office, clinic, or other suitable places, which are provided or prescribed by physicians, optometrists, podiatrists, or dentists licensed to render such services, including drugs and medical supplies, appliances, laboratory, diagnostic and therapeutic services, nursing-home and convalescent care, hospital care as defined in KRS 205.560(1)(a), and such other essential medical services and supplies as may be prescribed by such persons; but not including abortions, or induced miscarriages or premature births, unless in the opinion of a physician such procedures are necessary for the preservation of the life of the woman seeking such treatment or except in induced premature birth intended to produce a live viable child and such procedure is necessary for the health of the mother or her unborn child. However, this section does not authorize optometrists to perform any services other than those authorized by KRS Chapter 320;
- (6)~~(4)~~ "Nurse" means a person authorized to practice professional nursing under the laws of the Commonwealth;
- (7)~~(5)~~ "Nursing home" means a facility which provides routine medical care in which physicians regularly visit patients, which provide nursing services and procedures employed in caring for the sick which require training, judgment, technical knowledge, and skills beyond that which the untrained person possesses, and which maintains complete records on patient care, and which is licensed pursuant to the provisions of KRS 216B.015;
- (8)~~(6)~~ "Optometrist" means a person authorized to practice optometry under the laws of the Commonwealth;
- (9) *"Other persons eligible for medical assistance" may include the categorically needy excluded from money payment status by state requirements and classifications of medically needy individuals as permitted by federal laws and regulations and as prescribed by administrative regulation of the secretary for health services or his designee;*
- (10)~~(7)~~ "Pharmacist" means a person authorized to practice pharmacy under the laws of the Commonwealth;
- (11)~~(8)~~ "Physician" means a person authorized to practice medicine or osteopathy under the laws of the Commonwealth;
- (12)~~(9)~~ "Podiatrist" means a person authorized to practice podiatry under the laws of the Commonwealth;
- (13)~~(10)~~ "Primary-care center" means a facility which provides comprehensive medical care with emphasis on the prevention of disease and the maintenance of the patients' health as opposed to the treatment of disease;
- (14)~~(11)~~ "Public assistance recipient" means a person who has been certified by the Department for Social Insurance of the Cabinet for Families and Children as being eligible for, and a recipient of, public assistance under the provisions of this chapter;

- (15) *"Telehealth consultation" means a medical or health consultation, for purposes of patient diagnosis or treatment, that requires the use of advanced telecommunications technology, including, but not limited to:*
- (a) *Compressed digital interactive video, audio, or data transmission;*
  - (b) *Clinical data transmission via computer imaging for teleradiology or telepathology; and*
  - (c) *Other technology that facilitates access to health care services or medical specialty expertise.*
- (16) *"Third party" means an individual, institution, corporation, company, insurance company, personal representative, administrator, executor, trustee, or public or private agency, including, but not limited to, a reparation obligor and the assigned claims bureau under the Motor Vehicle Reparations Act, subtitle 39 of KRS Chapter 304, who is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or recipient of medical assistance provided under Title XIX of the Social Security Act, 42 U.S.C. sec. 1396 et seq.; and*
- ~~[(12) "Other persons eligible for medical assistance" may include the categorically needy excluded from money payment status by state requirements and classifications of medically needy individuals as permitted by federal laws and regulations and as prescribed by regulation of the secretary for health services or his designee;]~~
- (17)~~[(13)]~~ *"Vendor payment" means a payment for medical care which is paid by the Cabinet for Health Services directly to the authorized person or institution which rendered medical care to an eligible recipient;*
- ~~(14) "Third party" means an individual, institution, corporation, company, insurance company, personal representative, administrator, executor, trustee, or public or private agency, including but not limited to a reparation obligor and the assigned claims bureau under the Motor Vehicle Reparation Act, who is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or recipient of medical assistance provided under Title XIX of the Social Security Act].~~

SECTION 4. A NEW SECTION OF KRS 205.510 TO 205.630 IS CREATED TO READ AS FOLLOWS:

- (1) *The Cabinet for Health Services and any regional managed care partnership or other entity under contract with the cabinet for the administration or provision of the Medicaid program shall provide Medicaid reimbursement for a telehealth consultation that is provided by a Medicaid-participating practitioner who is licensed in Kentucky and that is provided in the telehealth network established in subsection (3)(b) of Section 2 of this Act.*
- (2)
  - (a) *The cabinet shall establish reimbursement rates for a telehealth consultations. A request for reimbursement shall not be denied solely because an in-person consultation between a Medicaid-participating practitioner and a patient did not occur.*
  - (b) *A telehealth consultation shall not be reimbursable under this section if it is provided through the use of an audio-only telephone, facsimile machine, or electronic mail.*
- (3) *A health-care facility that receives reimbursement under this section for consultations provided by a Medicaid-participating provider who practices in that facility and a health professional who obtains a consultation under this section shall establish quality-of-care protocols and patient confidentiality guidelines to ensure that telehealth consultations meet all requirements and patient care standards as required by law.*
- (4) *The cabinet shall not require a telehealth consultation if an in-person consultation with a Medicaid-participating provider is reasonably available where the patient resides, works, or attends school or if the patient prefers an in-person consultation.*
- (5) *The cabinet shall request any waivers of federal laws or regulations that may be necessary to implement this section.*
- (6)
  - (a) *The cabinet and any regional managed care partnership or other entity under contract with the cabinet for the administration or provision of the Medicaid program shall study the impact of this section on the health care delivery system in Kentucky and shall, upon implementation, issue a quarterly report to the Legislative Research Commission. This report shall include an analysis of:*
    - 1. *The economic impact of this section on the Medicaid budget, including any costs or savings as a result of decreased transportation expenditures and office or emergency room visits;*
    - 2. *The quality of care as a result of telehealth consultations rendered under this section; and*



3. *Any other issues deemed relevant by the cabinet.*

(b) *In addition to the analysis required under paragraph (a) of this subsection, the cabinet report shall compare telehealth reimbursement and delivery among all regional managed care partnerships or other entities under contract with the cabinet for the administration or provision of the Medicaid program.*

(7) *The cabinet shall promulgate an administrative regulation in accordance with KRS Chapter 13A to designate the claim forms, records required, and authorization procedures to be followed in conjunction with this section.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

*The Department for Public Health may develop programs for local health departments to participate in telehealth and to seek reimbursement for services as provided for other health care providers under KRS Chapter 205 or 304.17A.*

Section 6. KRS 304.17A-005 is amended to read as follows:

As used in this subtitle, unless the context requires otherwise:

- (1) "Association" means an entity, other than an employer-organized association, that has been organized and is maintained in good faith for purposes other than that of obtaining insurance for its members and that has a constitution and bylaws;
- (2) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the insurer to the individual or small group, or employer as defined in KRS 304.17A-0954, with similar case characteristics for health benefit plans with the same or similar coverage;
- (3) "Bona fide association" means an entity as defined in 42 U.S.C. sec. 300gg-91(d)(3);
- (4) "Church plan" means a church plan as defined in 29 U.S.C. sec. 1002(33);
- (5) "COBRA" means any of the following:
  - (a) 26 U.S.C. sec. 4980B other than subsection (f)(1) as it relates to pediatric vaccines;
  - (b) The Employee Retirement Income Security Act of 1974 (29 U.S.C. sec. 1161 et seq. other than sec. 1169); or
  - (c) 42 U.S.C. sec. 300bb;
- (6) (a) "Creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:
  1. A group health plan;
  2. Health insurance coverage;
  3. Part A or Part B of Title XVIII of the Social Security Act;
  4. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928;
  5. Chapter 55 of Title 10, United States Code;
  6. A medical care program of the Indian Health Service or of a tribal organization;
  7. A state health benefits risk pool;
  8. A health plan offered under Chapter 89 of Title 5, United States Code;
  9. A public health plan, as defined in regulations; or
  10. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. sec. 2504(e)).
- (b) This term does not include coverage consisting solely of coverage of excepted benefits as defined in subsection (10) of this section;
- (7) "Eligible individual" means an individual:

- (a) For whom, as of the date on which the individual seeks coverage, the aggregate of the periods of creditable coverage is eighteen (18) or more months and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan. A period of creditable coverage under this paragraph shall not be counted if, after that period, there was a sixty-three (63) day period of time, excluding any waiting or affiliation period, during all of which the individual was not covered under any creditable coverage;
  - (b) Who is not eligible for coverage under a group health plan, Part A or Part B of Title XVIII of the Social Security Act (42 U.S.C. secs. 1395j et seq.), or a state plan under Title XIX of the Social Security Act (42 U.S.C. secs. 1396 et seq.) and does not have other health insurance coverage;
  - (c) With respect to whom the most recent coverage within the coverage period described in paragraph (a) of this subsection was not terminated based on a factor described in KRS 304.17A-240(2)(a), (b), and (c);
  - (d) If the individual had been offered the option of continuation coverage under a COBRA continuation provision or under KRS 304.18-110, who elected the coverage; and
  - (e) Who, if the individual elected the continuation coverage, has exhausted the continuation coverage under the provision or program;
- (8) "Employer-organized association" means any of the following:
- (a) Any entity that was qualified by the commissioner as an eligible association prior to April 10, 1998, and that has actively marketed a health insurance program to its members since September 8, 1996, and which is not insurer-controlled;
  - (b) Any entity organized under KRS 247.240 to 247.370 that has actively marketed health insurance to its members and that is not insurer-controlled; or
  - (c) Any entity that is a bona fide association as defined in 42 U.S.C. sec. 300gg-91(d)(3), whose members consist principally of employers, and for which the entity's health insurance decisions are made by a board or committee, the majority of which are representatives of employer members of the entity who obtain group health insurance coverage through the entity or through a trust or other mechanism established by the entity, and whose health insurance decisions are reflected in written minutes or other written documentation.
- Except as provided in KRS 304.17A-200, 304.17A.210, and 304.17A-220, no employer-organized association shall be treated as an association, small group, or large group under this subtitle;
- (9) "Employer-organized association health insurance plan" means any health insurance plan, policy, or contract issued to an employer-organized association, or to a trust established by one (1) or more employer-organized associations, or providing coverage solely for the employees, retired employees, directors and their spouses and dependents of the members of one (1) or more employer-organized associations;
- (10) "Excepted benefits" means benefits under one (1) or more, or any combination thereof, of the following:
- (a) Coverage only for accident, or disability income insurance, or any combination thereof;
  - (b) Coverage issued as a supplement to liability insurance;
  - (c) Liability insurance, including general liability insurance and automobile liability insurance;
  - (d) Workers' compensation or similar insurance;
  - (e) Automobile medical payment insurance;
  - (f) Credit-only insurance;
  - (g) Coverage for on-site medical clinics;
  - (h) Other similar insurance coverage, specified in administrative regulations, under which benefits for medical care are secondary or incidental to other insurance benefits;
  - (i) Limited scope dental or vision benefits;
  - (j) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof;
  - (k) Such other similar, limited benefits as are specified in administrative regulations;

- (l) Coverage only for a specified disease or illness;
  - (m) Hospital indemnity or other fixed indemnity insurance;
  - (n) Benefits offered as Medicare supplemental health insurance, as defined under section 1882(g)(1) of the Social Security Act;
  - (o) Coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code; and
  - (p) Coverage similar to that in paragraphs (n) and (o) of this subsection that is supplemental to coverage under a group health plan;
- (11) "Governmental plan" means a governmental plan as defined in 29 U.S.C. sec. 1002(32);
- (12) "Guaranteed acceptance program participating insurer" means an insurer that is required to or has agreed to offer health benefit plans in the individual market to guaranteed acceptance program qualified individuals;
- (13) "Guaranteed acceptance program plan" means a health benefit plan in the individual market issued by an insurer that provides health benefits to a guaranteed acceptance program qualified individual and is eligible for assessment and refunds under the guaranteed acceptance program;
- (14) "Guaranteed acceptance program" means the Kentucky Guaranteed Acceptance Program established and operated under KRS 304.17A-400 to 304.17A-480;
- (15) "Guaranteed acceptance program qualified individual" means an individual who:
- (a) Is not an eligible individual;
  - (b) Is not eligible for or covered by other health benefit plan coverage;
  - (c) Within the previous three (3) years has been diagnosed with or treated for a high-cost condition or has had benefits paid under a health benefit plan for a high-cost condition, or is a high risk individual as defined by the underwriting criteria applied by an insurer under the alternative underwriting mechanism established in KRS 304.17A-430(3);
  - (d) Has been a resident of Kentucky for at least twelve (12) months immediately preceding the effective date of the policy; and
  - (e) Has not had his or her most recent coverage under any health benefit plan terminated or nonrenewed because of any of the following:
    - 1. The individual failed to pay premiums or contributions in accordance with the terms of the plan or the insurer had not received timely premium payments;
    - 2. The individual performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage; or
    - 3. The individual engaged in intentional and abusive noncompliance with health benefit plan provisions;
- (16) "Guaranteed acceptance plan supporting insurer" means either an insurer that is not a guaranteed acceptance plan participating insurer or is a stop loss carrier, provided that a guaranteed acceptance plan supporting insurer shall not include an employer-sponsored self-insured health benefit plan exempted by ERISA;
- (17) "Health benefit plan" means any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; provider sponsored integrated health delivery network; a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; health maintenance organization contract; or any health benefit plan that affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky, and does not include policies covering only accident, credit, dental, disability income, fixed indemnity medical expense reimbursement policy, long-term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance, short-term coverage, student health insurance offered by a Kentucky-licensed insurer under written contract with a university or college whose students it proposes to insure, medical expense reimbursement policies specifically designed to fill gaps in primary coverage, coinsurance, or

deductibles and provided under a separate policy, certificate, or contract, or coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code;

- (18) "Health care provider" or "provider" means any facility or service required to be licensed pursuant to KRS Chapter 216B, pharmacist as defined pursuant to KRS Chapter 315, and any of the following independent practicing practitioners:
- (a) Physicians, osteopaths, and podiatrists licensed under KRS Chapter 311;
  - (b) Chiropractors licensed under KRS Chapter 312;
  - (c) Dentists licensed under KRS Chapter 313;
  - (d) Optometrists licensed under KRS Chapter 320;
  - (e) Physician assistants regulated under KRS Chapter 311;
  - (f) Nurse practitioners licensed under KRS Chapter 314; and
  - (g) Other health care practitioners as determined by the department by administrative regulations promulgated under KRS Chapter 13A;
- (19) (a) "High-cost condition" means a covered condition in an individual policy as listed in paragraph (c) of this subsection or as added by the commissioner in accordance with KRS 304.17A-280, but only to the extent that the condition exceeds the numerical score or rating established pursuant to uniform underwriting standards prescribed by the commissioner under paragraph (b) of this subsection that account for the severity of the condition and the cost associated with treating that condition.
- (b) The commissioner by administrative regulation shall establish uniform underwriting standards and a score or rating above which a condition is considered to be high-cost by using:
- 1. Codes in the most recent version of the "International Classification of Diseases" that correspond to the medical conditions in paragraph (c) of this subsection and the costs for administering treatment for the conditions represented by those codes; and
  - 2. The most recent version of the questionnaire incorporated in a national underwriting guide generally accepted in the insurance industry as designated by the commissioner, the scoring scale for which shall be established by the commissioner.
- (c) The diagnosed medical conditions are: acquired immune deficiency syndrome (AIDS), angina pectoris, ascites, chemical dependency cirrhosis of the liver, coronary insufficiency, coronary occlusion, cystic fibrosis, Friedreich's ataxia, hemophilia, Hodgkin's disease, Huntington chorea, juvenile diabetes, leukemia, metastatic cancer, motor or sensory aphasia, multiple sclerosis, muscular dystrophy, myasthenia gravis, myotonia, open heart surgery, Parkinson's disease, polycystic kidney, psychotic disorders, quadriplegia, stroke, syringomyelia, and Wilson's disease;
- (20) "Index rate" means, for each class of business as to a rating period, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate;
- (21) "Individual market" means the market for the health insurance coverage offered to individuals other than in connection with a group health plan;
- (22) "Insurer" means any insurance company; health maintenance organization; self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA; provider-sponsored integrated health delivery network; self-insured employer-organized association, or nonprofit hospital, medical-surgical, dental, or health service corporation authorized to transact health insurance business in Kentucky;
- (23) "Insurer-controlled" means that the commissioner has found, in an administrative hearing called specifically for that purpose, that an insurer has or had a substantial involvement in the organization or day-to-day operation of the entity for the principal purpose of creating a device, arrangement, or scheme by which the insurer segments employer groups according to their actual or anticipated health status or actual or projected health insurance premiums;
- (24) "Large group" means:
- (a) An employer with fifty-one (51) or more employees; or
  - (b) An affiliated group with fifty-one (51) or more eligible members;

- (25) "Managed care" means systems or techniques generally used by third-party payors or their agents to affect access to and control payment for health care services and that integrate the financing and delivery of appropriate health care services to covered persons by arrangements with participating providers who are selected to participate on the basis of explicit standards for furnishing a comprehensive set of health care services and financial incentives for covered persons using the participating providers and procedures provided for in the plan;
- (26) "Market segment" means the portion of the market covering one (1) of the following:
  - (a) Individual;
  - (b) Small group;
  - (c) Large group; or
  - (d) Association;
- (27) "Provider network" means an affiliated group of varied health care providers that is established to provide a continuum of health care services to individuals;
- (28) "Provider-sponsored integrated health delivery network" means any provider-sponsored integrated health delivery network created and qualified under KRS 304.17A-300 and KRS 304.17A-310;
- (29) "Purchaser" means an individual, organization, employer, association, or the Commonwealth that makes health benefit purchasing decisions on behalf of a group of individuals;
- (30) "Rating period" means the calendar period for which premium rates are in effect. A rating period shall not be required to be a calendar year;
- (31) "Restricted provider network" means a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of the providers that have entered into a contractual arrangement with the insurer to provide health care services to covered individuals;
- (32) "Self-insured plan" means a group health insurance plan in which the sponsoring organization assumes the financial risk of paying for covered services provided to its enrollees;
- (33) "Small employer" means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least two (2) but not more than fifty (50) employees on business days during the preceding calendar year and who employs at least two (2) employees on the first day of the plan year;
- (34) "Small group" means:
  - (a) A small employer with two (2) to fifty (50) employees; or
  - (b) An affiliated group or association with two (2) to fifty (50) eligible members;~~and~~
- (35) "Standard benefit plan" means the plan identified in KRS 304.17A-250; **and**
- (36) ***"Telehealth" has the meaning provided in Section 8 of this Act.***

SECTION 7. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) (a) ***A health benefit plan shall not exclude a service from coverage solely because the service is provided through telehealth and not provided through a face-to-face consultation if the consultation is provided through the telehealth network established under Section 2 of this Act. A health benefit plan may provide coverage for a consultation at a site not within the telehealth network at the discretion of the insurer.***
- (b) ***A telehealth consultation shall not be reimbursable under this section if it is provided through the use of an audio-only telephone, facsimile machine, or electronic mail.***
- (2) ***Benefits for a service provided through telehealth required by this section may be made subject to a deductible, copayment, or coinsurance requirement. A deductible, copayment, or coinsurance applicable to a particular service provided through telehealth shall not exceed the deductible, copayment, or coinsurance required by the health benefit plan for the same service provided through a face-to-face consultation.***

- (3) *Payment made under this section may be consistent with any provider network arrangements that have been established for the health benefit plan.*
- (4) *The department shall promulgate an administrative regulation in accordance with KRS Chapter 13A to designate the claim forms and records required to be maintained in conjunction with this section.*

Section 8. KRS 311.550 is amended to read as follows:

As used in KRS 311.530 to 311.620 and KRS 311.990(4) to (6):

- (1) "Board" means the State Board of Medical Licensure;
- (2) "President" means the president of the State Board of Medical Licensure;
- (3) "Secretary" means the secretary of the State Board of Medical Licensure;
- (4) "Executive director" means the executive director of the State Board of Medical Licensure or any assistant executive directors appointed by the board;
- (5) "General counsel" means the general counsel of the State Board of Medical Licensure or any assistant general counsel appointed by the board;
- (6) "Regular license" means a license to practice medicine or osteopathy at any place in this state;
- (7) "Limited license" means a license to practice medicine or osteopathy in a specific institution or locale to the extent indicated in the license;
- (8) "Temporary permit" means a permit issued to a person who has applied for a regular or limited license, and who appears from verifiable information in the application to the secretary to be qualified and eligible therefor;
- (9) "Emergency permit" means a permit issued to a physician currently licensed in another state, authorizing the physician to practice in this state for the duration of a specific medical emergency, not to exceed thirty (30) days;
- (10) Except as provided in subsection (11) of this section, the "practice of medicine or osteopathy" means the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities;
- (11) The "practice of medicine or osteopathy" does not include the practice of Christian Science, the practice of podiatry as defined in KRS 311.380, the practice of a midlevel health care practitioner as defined in KRS 216.900, the practice of dentistry as defined in KRS 313.010, the practice of optometry as defined in KRS 320.210, the practice of chiropractic as defined in subsection (2) of KRS 312.015, the practice as a nurse as defined in KRS 314.011, the practice of physical therapy as defined in KRS 327.010, the performance of duties for which they have been trained by emergency medical technicians or medical emergency dispatchers certified by the Cabinet for Health Services, the practice of pharmacy by persons licensed and registered under KRS 315.050, the sale of drugs, nostrums, patented or proprietary medicines, trusses, supports, spectacles, eyeglasses, lenses, instruments, apparatus, or mechanisms that are intended, advertised, or represented as being for the treatment, correction, cure, or relief of any human ailment, disease, injury, infirmity, or condition, in regular mercantile establishments, or the practice of midwifery by women. KRS 311.530 to 311.620 shall not be construed as repealing the authority conferred on the Cabinet for Health Services by KRS Chapter 211 to provide for the instruction, examination, licensing, and registration of all midwives through county health officers;
- (12) "Physician" means a doctor of medicine or a doctor of osteopathy;
- (13) "Grievance" means any allegation in whatever form alleging misconduct by a physician;
- (14) "Charge" means a specific allegation alleging a violation of a specified provision of this chapter;
- (15) "Complaint" means a formal administrative pleading that sets forth charges against a physician and commences a formal disciplinary proceeding;
- (16) As used in KRS 311.595(4), "crimes involving moral turpitude" shall mean those crimes which have dishonesty as a fundamental and necessary element, including, but not limited to, crimes involving theft, embezzlement, false swearing, perjury, fraud, or misrepresentation;
- (17) "Physician assistant" means a person who has graduated from a physician assistant or surgeon assistant program accredited by the American Medical Association's Committee on Allied Health Education and

Accreditation or the Commission on Accreditation of Allied Health Education Programs and who has passed the certifying examination administered by the National Commission on Certification of Physician Assistants or who possesses a current physician assistant certificate issued by the board prior to July 15, 1998;

- (18) "Supervising physician" means a physician licensed by the board who supervises physician assistants; and
- (19) "Supervision" means overseeing the activities of, and accepting responsibility for, the medical services rendered by a physician assistant. The constant physical presence of the supervising physician is not required so long as the supervising physician and physician assistant are or can be easily in contact with one another by radio, telephone, or other telecommunication device. Each team of physicians and physician assistants shall ensure that the delegation of medical tasks is appropriate to the physician assistant's level of training and experience; that the identification of and access to the supervising physician is defined; and that a process for evaluation of the physician assistant's performance is established.
- (20) *"Telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of medical data, and medical education.*

SECTION 9. A NEW SECTION OF KRS 311.530 TO 311.620 IS CREATED TO READ AS FOLLOWS:

- (1) *A treating physician who provides or facilitates the use of telehealth shall ensure:*
  - (a) *That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and*
  - (b) *That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.*
- (2) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:*
  - (a) *Prevent abuse and fraud through the use of telehealth services;*
  - (b) *Prevent fee-splitting through the use of telehealth services; and*
  - (c) *Utilize telehealth in the provision of medical services and in the provision of continuing medical education.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 310 IS CREATED TO READ AS FOLLOWS:

- (1) *A treating dietitian or nutritionist who provides or facilitates the use of telehealth shall ensure:*
  - (a) *That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and*
  - (b) *That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.*
- (2) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:*
  - (a) *Prevent abuse and fraud through the use of telehealth services;*
  - (b) *Prevent fee-splitting through the use of telehealth services; and*
  - (c) *Utilize telehealth in the provision of dietitian and nutrition services and in the provision of continuing education.*
- (3) *For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.*

## SECTION 11. A NEW SECTION OF KRS CHAPTER 312 IS CREATED TO READ AS FOLLOWS:

- (1) *A treating chiropractor who provides or facilitates the use of telehealth shall ensure:*
  - (a) *That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and*
  - (b) *That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.*
- (2) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:*
  - (a) *Prevent abuse and fraud through the use of telehealth services;*
  - (b) *Prevent fee-splitting through the use of telehealth services; and*
  - (c) *Utilize telehealth in the provision of chiropractic services and in the provision of continuing education.*
- (3) *For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.*

## SECTION 12. A NEW SECTION OF KRS CHAPTER 313 IS CREATED TO READ AS FOLLOWS:

- (1) *A treating dentist who provides or facilitates the use of telehealth shall ensure:*
  - (a) *That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and*
  - (b) *That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.*
- (2) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:*
  - (a) *Prevent abuse and fraud through the use of telehealth services;*
  - (b) *Prevent fee-splitting through the use of telehealth services; and*
  - (c) *Utilize telehealth in the provision of dental services and in the provision of continuing education.*
- (3) *For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.*

## SECTION 13. A NEW SECTION OF KRS 314.011 TO 314.161 IS CREATED TO READ AS FOLLOWS:

- (1) *A treating nurse who provides or facilitates the use of telehealth shall ensure:*
  - (a) *That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and*
  - (b) *That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.*
- (2) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:*
  - (a) *Prevent abuse and fraud through the use of telehealth services;*



- (b) Prevent fee-splitting through the use of telehealth services; and*
- (c) Utilize telehealth in the provision of nursing services and in the provision of continuing education.*
- (3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.*

SECTION 14. A NEW SECTION OF KRS CHAPTER 314A IS CREATED TO READ AS FOLLOWS:

- (1) A treating respiratory care practitioner who provides or facilitates the use of telehealth shall ensure:*
  - (a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and*
  - (b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.*
- (2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:*
  - (a) Prevent abuse and fraud through the use of telehealth services;*
  - (b) Prevent fee-splitting through the use of telehealth services; and*
  - (c) Utilize telehealth in the provision of respiratory care services and in the provision of continuing education.*
- (3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.*

SECTION 15. A NEW SECTION OF KRS CHAPTER 315 IS CREATED TO READ AS FOLLOWS:

- (1) A treating pharmacist who provides or facilitates the use of telehealth shall ensure:*
  - (a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and*
  - (b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.*
- (2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:*
  - (a) Prevent abuse and fraud through the use of telehealth services;*
  - (b) Prevent fee-splitting through the use of telehealth services; and*
  - (c) Utilize telehealth in the provision of pharmacy services and in the provision of continuing education.*
- (3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.*

SECTION 16. A NEW SECTION OF KRS CHAPTER 319 IS CREATED TO READ AS FOLLOWS:

- (1) A treating psychologist or psychological associate who provides or facilitates the use of telehealth shall ensure:*
  - (a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and*

- (b) *That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.*
- (2) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:*
  - (a) *Prevent abuse and fraud through the use of telehealth services;*
  - (b) *Prevent fee-splitting through the use of telehealth services; and*
  - (c) *Utilize telehealth in the provision of psychological services and in the provision of continuing education.*
- (3) *For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.*

SECTION 17. A NEW SECTION OF KRS CHAPTER 319A IS CREATED TO READ AS FOLLOWS:

- (1) *A treating occupational therapist who provides or facilitates the use of telehealth shall ensure:*
  - (a) *That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and*
  - (b) *That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.*
- (2) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:*
  - (a) *Prevent abuse and fraud through the use of telehealth services;*
  - (b) *Prevent fee-splitting through the use of telehealth services; and*
  - (c) *Utilize telehealth in the provision of occupational therapy services and in the provision of continuing education.*
- (3) *For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.*

SECTION 18. A NEW SECTION OF KRS CHAPTER 320 IS CREATED TO READ AS FOLLOWS:

- (1) *A treating optometrist who provides or facilitates the use of telehealth shall ensure:*
  - (a) *That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and*
  - (b) *That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.*
- (2) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:*
  - (a) *Prevent abuse and fraud through the use of telehealth services;*
  - (b) *Prevent fee-splitting through the use of telehealth services; and*
  - (c) *Utilize telehealth in the provision of optometric services and in the provision of continuing education.*

- (3) *For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.*

SECTION 19. A NEW SECTION OF KRS CHAPTER 327 IS CREATED TO READ AS FOLLOWS:

- (1) *A treating physical therapist who provides or facilitates the use of telehealth shall ensure:*
- (a) *That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and*
  - (b) *That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.*
- (2) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:*
- (a) *Prevent abuse and fraud through the use of telehealth services;*
  - (b) *Prevent fee-splitting through the use of telehealth services; and*
  - (c) *Utilize telehealth in the provision of physical therapy and in the provision of continuing education.*
- (3) *For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.*

SECTION 20. A NEW SECTION OF KRS 335.010 TO 335.160 IS CREATED TO READ AS FOLLOWS:

- (1) *A treating clinical social worker who provides or facilitates the use of telehealth shall ensure:*
- (a) *That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and*
  - (b) *That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.*
- (2) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:*
- (a) *Prevent abuse and fraud through the use of telehealth services;*
  - (b) *Prevent fee-splitting through the use of telehealth services; and*
  - (c) *Utilize telehealth in the provision of clinical social work services and in the provision of continuing education.*
- (3) *For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.*

SECTION 21. A NEW SECTION OF KRS 335.300 TO 335.399 IS CREATED TO READ AS FOLLOWS:

- (1) *A treating marriage and family therapist who provides or facilitates the use of telehealth shall ensure:*
- (a) *That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and*
  - (b) *That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.*

- (2) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:*
- (a) *Prevent abuse and fraud through the use of telehealth services;*
  - (b) *Prevent fee-splitting through the use of telehealth services; and*
  - (c) *Utilize telehealth in the provision of marriage and family therapy services and in the provision of continuing education.*
- (3) *For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.*

SECTION 22. A NEW SECTION OF KRS CHAPTER 334A IS CREATED TO READ AS FOLLOWS:

- (1) *A treating speech-language pathologist or audiologist who provides or facilitates the use of telehealth shall ensure:*
- (a) *That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and*
  - (b) *That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conforms to applicable federal law.*
- (2) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:*
- (a) *Prevent abuse and fraud through the use of telehealth services;*
  - (b) *Prevent fee-splitting through the use of telehealth services; and*
  - (c) *Utilize telehealth in the provision of speech-language pathology or audiology services and in the provision of continuing education.*
- (3) *For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.*

Section 23. KRS 197.020 is amended to read as follows:

- (1) The Department of Corrections shall:
- (a) Formulate and prescribe all necessary regulations and bylaws for the government and discipline of the penitentiary, the rules for the government and official conduct of all officials connected with the penitentiary and for the government of the prisoners in their deportment and conduct;
  - (b) Prescribe the character of food and diet of the prisoners; rules for the preservation of the health of the prisoners; the daily cleansing of the penitentiary; the cleanliness of the persons of the prisoners; the general sanitary government of the penitentiary and prisoners; the character of the labor; and quantity of food and clothing; and the length of time during which the prisoners shall be employed daily;
  - (c) Adopt, amend, and rescind, as the department deems necessary, administrative regulations governing the disposition of abandoned, lost, or confiscated property of prisoners; and
  - (d) Cause the administrative regulations prescribed by them, together with the law allowing commutation of time to prisoners for good conduct, to be printed and posted in conspicuous places in the cell houses and workshops.
- (2) The department may impose a reasonable fee for the use of medical facilities by a prisoner who has the ability to pay for the medical and dental care. These funds may be deducted from the prisoner's inmate account. A prisoner shall not be denied medical or dental treatment because he has insufficient funds in his inmate account.

- (3) ***The department may promulgate administrative regulations in accordance with KRS Chapter 13A to implement a program that provides for reimbursement of telehealth consultations.***

Section 24. (1) The provisions of Sections 3 to 4 of this Act shall take effect on July 15, 2001, or upon approval of any federal waivers, whichever first occurs.

(2) The provisions of Sections 6 to 7 of this Act shall take effect on July 15, 2001, and shall apply to a health benefit plan that is delivered, issued, or renewed on or after that date.

**Approved April 7, 2000**

## CHAPTER 377

### (HB 181)

AN ACT relating to waiver of tuition fees for dependents of veterans.

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

Section 1. KRS 164.505 is amended to read as follows:

- (1) ~~Any~~ person ***shall not be required to pay any matriculation or tuition fees upon admission to any state supported university, junior college, or vocational training institution, if the person's deceased parent or stepparent, or if the person's deceased spouse, if the person has not remarried***~~[whose parent or any nonremarried widow or widower whose spouse]~~ was a resident of the Commonwealth of Kentucky upon joining the Kentucky National Guard or ***upon entering***~~[entrance into]~~ military service and;~~[who]~~
- (a) Was killed while serving in state active duty, active duty for training, ***or*** inactive duty training with the Kentucky National Guard, or ***while on active duty*** in the Armed Forces of the United States, during a national emergency, or wars declared by Congress, or actions of the United Nations, or was killed by hostile fire while on active duty in the Armed Forces of the United States or the Kentucky National Guard; or
- (b) ~~[who]~~ Died as a result of a service-connected disability ***acquired while serving in state active duty, active duty for training, or inactive duty training with the Kentucky National Guard or Reserve Component, or while on active duty in the Armed Forces of the United States, during a national emergency, or wars declared by Congress, or actions of the United Nations***~~[shall not be required to pay any matriculation or tuition fee upon his admission to any state supported university, junior college, or vocational training institution].~~
- (2) In order to obtain the benefits conferred by subsection (1), the parent-child relationship must be shown by birth certificate, adoption papers, ***marriage certificate***, or other documentary evidence. ***A stepchild must have been a member of the veteran's household at the time of the veteran's death.*** The spousal relationship must be shown by a marriage certificate or other documentary evidence. The parent's or spouse's service and the cause of death must be evidenced by certification from the records of the Kentucky Department of Military Affairs or the Veterans Administration Records, or the Department of Defense of the United States. In the event one so admitted to a state-supported university, junior college, or vocational training institution under the provisions of this section shall have obtained a cash scholarship paid or payable to ~~the~~~~[such]~~ institution, from whatever source, the amount of ~~the~~~~[such]~~ scholarship shall be applied to the credit of ~~the~~~~[such]~~ applicant in the payment of incidental expenses off ~~his~~ attendance at ~~the~~~~[such]~~ institution, and any balance, if the terms of the scholarship permit, shall be returned to ~~the~~~~[such]~~ applicant.

SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) ***The nonremarried spouse, regardless of age, and any child, stepchild, or orphan, between the ages of seventeen (17) and twenty-three (23), of a deceased veteran shall not be required to pay any matriculation or tuition fees upon admission to any state supported university, junior college, or vocational training institute for a period not in excess of the thirty-six (36) months in order to obtain a diploma, nor in excess of the lesser number of months required for a certificate of completion, if the deceased parent or spouse:***
- (a) 1. ***Served in the Armed Forces of the United States during a national emergency, wars declared by Congress, or actions of the United Nations; or***

2. *Died while on active duty in the Armed Forces of the United States regardless of wartime service; or*
  3. *Died as a result of a service connected disability acquired while on active duty with the Armed Forces of the United States regardless of wartime service; and*
- (b) 1. *Was a resident of the Commonwealth of Kentucky at the time of death; and*
2. *If discharged, was under honorable conditions.*
- (2) *In order to obtain the benefits conferred by subsection (1), the parent-child relationship must be shown by birth certificate, adoption papers, marriage certificate, or other documentary evidence. A stepchild must have been a member of the veteran's household at the time of the veteran's death. The spousal relationship must be shown by a marriage certificate or other documentary evidence. The parent's or spouse's service and the cause of death must be evidenced by certification from the records of the Kentucky Department of Military Affairs, the Veterans Administration Records, or the Department of Defense of the United States. In the event one so admitted to a state-supported university, junior college, or vocational training institution under this section shall have obtained a cash scholarship paid or payable to the institution, from whatever source, the amount of the scholarship shall be applied to the credit of the applicant in the payment of incidental expenses of attendance at the institution, and any balance, if the terms of the scholarship permit, shall be returned to the applicant.*

Section 3. KRS 164.515 is amended to read as follows:

- (1) The spouse, regardless of age, and any child, *stepchild*, or orphan of a permanently and totally disabled member of the Kentucky National Guard *or Reserve Component* injured while on state active duty, active duty for training, or inactive duty training, *or* a permanently and totally disabled war veteran, *or a one hundred percent (100%) service connected disabled veteran regardless of wartime service*, or prisoner of war or member of the Armed Services declared missing in action, who is over the age of seventeen (17) and under the age of twenty-three (23) shall not be required to pay any matriculation or tuition ~~fees~~~~fee~~ upon his admission to any state supported institution of higher education or to any state supported vocational training school for a period not in excess of thirty-six (36) months in order to obtain a diploma, nor in excess of the lesser number of months required for a certificate of completion.
- (2) To be entitled to benefits under this section the parent *or stepparent* of the child claiming benefits if living must be rated permanently and totally disabled for pension purposes or one hundred percent (100%) disabled for compensation purposes by the United States Veterans Administration or the Department of Defense or if deceased the claim to benefits is to be based on the rating held by the veteran at the time of death or if a prisoner of war or missing in action, must have been declared as such by the Department of Defense. Members of the Kentucky National Guard must be rated permanently and totally disabled as provided in KRS Chapter 342. The parent's, *stepparent's*, or spouse's service and rating must be evidenced by certification from the records of the Kentucky Department of Military Affairs, Veterans Administration Records, or the Department of Defense of the United States.
- ~~(3) In the absence of certification of permanent and total disability by the Kentucky Department of Workers' Claims, the United States Veterans Administration or the Department of Defense, medical evidence showing permanent and total disability or the existence of permanent and total disability for a period of at least thirty (30) days immediately prior to death may be accepted, if this evidence is signed by a physician licensed to practice or an official of an accredited medical hospital.~~
- ~~(4)~~ The parent-child relationship must be shown by birth certificate, legal adoption papers, *marriage certificate*, or other documentary evidence. *A stepchild must be a member of the veteran's household.* The spousal relationship must be shown by a marriage certificate or other documentary evidence.
- ~~(4)(5)~~ To entitle a spouse, child, *stepchild*, or orphan to benefit under this section the disabled member of the National Guard or *Reserve Component*~~war~~ veteran living or deceased must have served on state active duty, active duty for training, or inactive duty training~~with the National Guard~~ *or active duty with*~~during time of war or the Korean conflict or subsequent periods of federally recognized hostilities or have been disabled by hostile fire in~~ the Armed Forces of the United States, and his discharge ~~therefrom~~ must have been under honorable conditions. He must be a resident or if deceased, was a resident of the Commonwealth of Kentucky.
- ~~(5)(6)~~ No provision of this section shall serve to deny these benefits to an eligible spouse, child, *stepchild*, or orphan, who enlists, or who fulfills a military obligation, in the Armed Forces of the United States and is

discharged~~[therefrom]~~ under honorable conditions; ~~the~~~~[such]~~ period of time spent in the military service to be compensated by like time, beyond the age of twenty-three (23) years if required, but not in excess of the period of enrollment as set forth in subsection (1) of this section.

- (6)~~(7)~~ The marriage of an eligible child, *stepchild*, or orphan, shall not serve to deny full entitlement to the benefits provided in this section.

Approved April 7, 2000

## CHAPTER 378

(HB 278)

AN ACT relating to military burial honors, and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

- (1) *The Commonwealth of Kentucky recognizes the need to provide for honorable burials for Kentuckians who have served their state and nation in the Armed Forces. Historically these burial services have been conducted by the active military units in Kentucky, the Kentucky National Guard, the military reserves, and the veterans' service organizations. However, increasing death rates, declining military resources, and an aging membership of veterans' service organizations present the need for new initiatives in support of military burial honors.*
- (2) *To correct this situation, and recognizing the immediate need, the Department of Military Affairs shall oversee a military burial honors program, in coordination with the Department of Veterans' Affairs, on behalf of the Commonwealth of Kentucky.*
- (3) *The Department of Military Affairs, in consultation with and as a supplement to the Department of Defense, active United States military commands in Kentucky, the Department of Veterans Affairs, the military reserves, and veterans service organizations, shall implement and administer the provisions of Sections 1 to 4 of this Act through the promulgation of administrative regulations. These regulations shall be in accordance with the provisions of KRS Chapter 13A and shall comply with and supplement the Department of Defense and the Armed Services' guidance.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

- (1) *There is established and created in the State Treasury a fund entitled the "Burial Honor Guard Trust Fund" to provide funds to offset the costs of the burial honor guard program. The fund may receive state appropriations, gifts, grants, federal funds, and any other funds both public and private. Moneys deposited in the fund shall be disbursed by the State Treasurer upon the warrant of the Adjutant General or his representative. Any unallocated or unencumbered balances in the fund shall be invested as provided in KRS 42.500(9), and any income earned from the investments along with the unallotted or unencumbered balances in the fund shall not lapse, and shall be deemed a trust and agency account and made available solely for the purposes and benefits of the burial honor guard program.*
- (2) *The fund shall be used to support the costs, beyond federal reimbursements, that the Department of Military Affairs and the Department of Veterans Affairs incur and deem necessary in providing and supporting the personnel and activities of Sections 1 to 4 of this Act.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

- (1) *The Department of Military Affairs shall promulgate administrative regulations to implement the burial honor guard program.*
- (2) *The Department of Military Affairs shall coordinate military burial honors for those who are determined to be eligible by federal and state regulations.*
- (3) *The Department of Veterans Affairs shall coordinate the burial honors program with veterans' service organizations, Kentucky veterans and their dependents, and the United States Department of Veterans Affairs in support of the Department of Military Affairs.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 36 IS CREATED TO READ AS FOLLOWS:

- (1) *Recognizing the participation of secondary school students in the military burial honor program, excused absences may be granted by local school boards to students of secondary school JROTC programs or other students who participate in the burial honor guard program. This includes time spent training, traveling, and participating in the burial honor guard program.*
- (2) *Local school boards may also adopt a policy to allow students to participate in the military burial honor guard program as a part of the instructional program.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) *An excused absence may be granted, subject to approval by the local school board, to all students of Kentucky secondary schools who participate in the burial honor guard program, as set out in Sections 1 to 4 of this Act. Most likely these would be students already participating in JROTC, drum corps, or other military programs, however, the burial honor guard program is not limited to these students. This excused absence should include time spent training, traveling, and participating in the burial honor guard program.*
- (2) *The local school board may also adopt a policy to allow students to participate in the military burial honor guard program as a part of the instructional program.*
- (3) *This policy of either excused absences or including burial honor guard program participation as a part of the instructional program shall not in any way penalize the local school district.*

Section 6. Whereas the Commonwealth's next fiscal year begins on July 1 and the General Assembly finds that it is critical that the provisions of this Act take effect at the beginning of the fiscal year, an emergency is declared to exist and this Act takes effect July 1, 2000.

Section 7. This Act takes effect July 1, 2000.

**Approved April 7, 2000**

## **CHAPTER 379**

### **(HB 310)**

AN ACT relating to medical licensure.

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

Section 1. KRS 311.571 is amended to read as follows:

- (1) No applicant who is a graduate of a medical or osteopathic school located within the United States and its territories and protectorates or Canada shall be eligible for a regular license to practice medicine in the Commonwealth unless the applicant:
  - (a) Is able to understandably speak, read, and write the English language;
  - (b) Has graduated from an accredited college or university or has satisfactorily completed a collegiate course of study necessary for entry into an approved medical or osteopathic school or college;
  - (c) Has graduated from a prescribed course of instruction in a medical or osteopathic school or college situated in the United States or Canada and approved by the board;
  - (d) Has satisfactorily completed a prescribed course of postgraduate training of ~~a~~*[at least one (1) full year's]* duration ~~to be established and approved~~ by the board *in an administrative regulation promulgated in accordance with KRS Chapter 13A, after consultation with the University of Kentucky College of Medicine, the University of Louisville School of Medicine, and the Pikeville College School of Osteopathic Medicine;*
  - (e) Has successfully completed, in a single sitting, an examination prescribed by the board;
  - (f) Has complied with the requirements of KRS 214.615(1); and
  - (g) Has fulfilled all other reasonable qualifications for regular licensure that the board may prescribe by regulation.
- (2) No applicant who is a graduate of a medical or osteopathic school located outside the United States or Canada shall be eligible for a regular license to practice medicine in the Commonwealth unless the applicant:



- (a) Is able to understandably speak, read, and write the English language;
  - (b) Has successfully completed a course of study necessary for entry into an approved medical or osteopathic school or college;
  - (c) Has graduated from a prescribed course of instruction in a medical or osteopathic school or college situated outside the United States or Canada and approved by the board or is a citizen of the United States and has been awarded a diploma by an approved medical or osteopathic school located within the United States or Canada as part of a program designed to allow for the transfer of students to such schools from schools located outside the United States or Canada;
  - (d) Has successfully completed, in a single sitting, an examination prescribed by the board;
  - (e) Has been certified by the educational commission for foreign medical graduates or by an approved United States specialty board;
  - (f) Has satisfactorily completed ~~a[at least three (3) full years of]~~ prescribed ~~course[courses]~~ of postgraduate training *of a duration to be established[approved] by the board in an administrative regulation promulgated in accordance with KRS Chapter 13A, after consultation with the University of Kentucky College of Medicine, the University of Louisville School of Medicine, and the Pikeville College School of Osteopathic Medicine;*
  - (g) Has complied with the requirements of KRS 214.615(1); and
  - (h) Has fulfilled all other reasonable qualifications for regular licensure that the board may prescribe by regulation.
- (3) No applicant shall be eligible for a limited license-institutional practice unless the applicant:
- (a) Has fulfilled all the requirements for regular licensure as delineated in subsection (1) of this section; or
  - (b) Has fulfilled the requirements for regular licensure as delineated in paragraphs (a) through (e) and (h) of subsection (2) of this section and in addition has satisfactorily completed a prescribed course of postgraduate training of at least one (1) full year's duration approved by the board;
  - (c) Has complied with the requirements of KRS 214.615(1); and
  - (d) Has fulfilled all other reasonable qualifications for limited licensure that the board may prescribe by regulation.
- (4) The board may grant an applicant a limited license-institutional practice for an unrenowable period of one (1) year if the applicant:
- (a) Has fulfilled the requirements for regular licensure as delineated in paragraphs (a), (b), (d), (e), and (h) of subsection (2) of this section;
  - (b) Has fulfilled the requirements for a limited license-institutional practice as indicated in subsection (3)(d) of this section;
  - (c) Has satisfactorily completed a prescribed course of postgraduate training of at least one (1) full year's duration approved by the board; and
  - (d) Has complied with the requirements of KRS 214.615(1).
- (5) An applicant seeking regular licensure in the Commonwealth who was originally licensed in another state may obtain licensure in the Commonwealth without further testing and training if the applicant:
- (a) Has been endorsed in writing by the applicant's original licensing state as being currently licensed in good standing in that state; and
  - (b) Would have satisfied all the requirements for regular licensure described in the preceding subsections had the applicant sought original licensure in this state.
- (6) No applicant shall be granted licensure in the Commonwealth unless the applicant has successfully completed an examination prescribed by the board in accordance with any rules that the board may establish by regulation concerning passing scores, testing opportunities and test score recognition.
- (7) Notwithstanding any of the requirements for licensure established by subsections (1) to (6) of this section, the board may deny licensure to an applicant or the reregistrant of an inactive license without a prior hearing upon

a finding that the applicant or reregistrant has violated any provision of KRS 311.595 or 311.597 or is otherwise unfit to practice. Orders denying licensure may be appealed pursuant to KRS 311.593.

- (8) Notwithstanding any of the foregoing, the board may grant licensure to an applicant in extraordinary circumstances upon a finding by the board that based on the applicant's exceptional education, training, and practice credentials, the applicant's practice in the Commonwealth would be beneficial to the public welfare.

**Approved April 7, 2000**

## **CHAPTER 380**

**(HB 354)**

AN ACT relating to insurance.

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

Section 1. KRS 304.13-011 is amended to read as follows:

*As used in this subtitle, unless the context requires otherwise:*

- (1) A "market" is the interaction between buyers and sellers consisting of a product market component and a geographic market component. A product market component consists of identical or readily substitutable products including but not limited to consideration of coverage, policy terms, rate classifications, and underwriting. A geographic market component is a geographical area in which buyers have a reasonable degree of access to insurance sales outlets. Determination of a geographic market component shall consider existing market patterns.
- (2) "Supplementary ~~rating~~~~rate~~ information" ~~includes~~~~is~~ any manual or plan of rates, classification, rating schedule, minimum premium, policy ~~fees~~~~fee~~, rating ~~rules~~~~rule~~, ~~or~~~~and~~ any other similar information needed to determine the applicable rate *or premium. This shall include underwriting rules, but only to the extent necessary to determine the rate or premium that will be applicable to a risk should the insurer decide to provide coverage. This does not include guidelines that relate to the selection of those risks that are acceptable to an insurer*~~[in effect or to be in effect]~~.
- (3) "Supporting information" is the experience and judgment of the filer and the experience or data of other insurers or organizations relied on by the filer, the interpretation of any ~~other~~~~[statistical]~~ data relied on by the filer, descriptions of methods used in making the rates, and any other~~[similar]~~ information required to be filed by the commissioner.
- (4) "Personal risks" *means homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and other*~~[are those covered by]~~ property and casualty insurance for personal, family, or household needs.
- (5) "Commercial risks" are any kinds of risks that are not personal risks.
- (6) "Joint underwriting" is a voluntary arrangement established~~[on an ad hoc basis]~~ to provide insurance coverage for a~~[commercial]~~ risk pursuant to which two (2) or more insurers ~~jointly~~~~[separately]~~ contract with the insured at a price and under policy terms agreed on between the insurers.
- (7) A "pool" is a voluntary arrangement, other than by a contract of reinsurance, established on a general and continuing basis pursuant to which two (2) or more insurers participate in the sharing of risks on a predetermined basis. A pool may operate through an association, syndicate or other pooling agreement.
- (8) A "residual market mechanism" is an agreement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance that may be afforded applicants who are unable to obtain insurance through ordinary methods.
- (9) An "advisory organization" is any *entity, including its affiliates or subsidiaries*,~~[organization]~~ which either has two (2) or more member insurers or is controlled *either directly or indirectly* by two (2) or more insurers and which assists insurers in ratemaking related activities. Two (2) or more insurers having a common ownership or operating in this state under common management or control constitute a single insurer *for purposes of this definition*.
- (10) A "competitive market" is a market that has not been found to be noncompetitive pursuant to KRS 304.13-041 and for which no such order is in effect.

- (11) A "noncompetitive market" is a market for which there is an order in effect pursuant to KRS 304.13-041 that a reasonable degree of competition does not exist.
- (12) "~~Loss~~ Trending" is any ~~appropriate~~ procedure for projecting developed losses to the average date of loss, **or premiums or exposures to the average date of writing**, for the period during which the policies are to be effective.
- (13) "Expenses" are those portions of any rate attributable to ~~unallocated loss adjustment expenses,~~ acquisition, field supervision, and collection expenses, general expenses, and **premium** taxes, licenses, and fees. ~~Expenses do not include those directly allocated by the insurer to the settlement of specific losses.~~
- (14) "Profit" is the portion of any rate attributable to funds needed for growth, contingencies, and return to stockholders.
- (15) "Pure premium" **means the loss cost per unit of exposure excluding all loss adjustment expenses** ~~is the loss cost per unit of exposure plus the loss adjustment expense directly allocated to the settlement of specific losses.~~
- (16) **"Classification system" or "classification" means the process of grouping risks with similar risk characteristics so that differences in cost may be recognized.**
- (17) **"Developed losses" means losses (including loss adjustment expenses) adjusted, using standard actuarial techniques, to their ultimate anticipated value.**
- (18) **"Experience rating" means a rating procedure utilizing past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity modification.**
- (19) **"Form provider" means a person who prepares, files, and distributes policy contract forms and endorsements and consults with members, subscribers, customers, or others relative to their use and application, but is not an advisory organization as defined in this subtitle.**
- (20) **"Loss adjustment expenses" means the expenses incurred by the insurer in the course of settling claims.**
- (21) **"Prospective loss costs" means that portion of a rate that does not include provisions for expenses (other than loss adjustment expenses) or profit, and are based on historical aggregate losses or output from simulation models and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time. Loss costs, derived in part or entirely upon output from simulation models, must be approved by the commissioner before they become effective.**
- (22) **"Rate" means the expected value of the future cost of insurance per exposure unit which accounts for the treatment of losses, expenses, and profit prior to any application of individual risk variations based on loss or expense considerations, but does not include minimum premium.**
- (23) **"Special assessments" means guaranty fund assessments, residual market mechanism assessments, and other similar assessments which are included in ratemaking. Special assessments shall not be considered as either expenses or losses. Additional charges collected by the insurer and returned to a governmental agency on behalf of an insured are not special assessments. Examples of these additional charges include, but are not limited to, the Special Fund charge for workers' compensation imposed by KRS Chapter 342, local government premium tax imposed by KRS 91A.080, and the Revenue Cabinet surcharge imposed by KRS Chapter 136.**
- (24) **"Statistical agent" means an entity that has been licensed by the commissioner to collect statistics from insurers and provide reports developed from these statistics to the commissioner for the purpose of fulfilling the statistical reporting obligations of those insurers under this chapter.**

Section 2. KRS 304.13-021 is amended to read as follows:

KRS 304.13-011 to 304.13-161 apply to all types of insurance written on risks in this state by any insurer authorized under this chapter to do business in this state, except:

- (1) Life insurance;
- (2) Annuities;
- (3) ~~Water~~ **marine and transportation** insurance;

- (4) Accident and health insurance;
- (5) Reinsurance;
- (6) Assessment or cooperative companies operating under the provisions of KRS Chapter 299;~~and~~
- (7) Individual and group workers' compensation self-insurers;
- (8) ***Title insurance; and***
- (9) ***Liability self-insurance groups.***

Section 3. KRS 304.13-031 is amended to read as follows:

- (1) In a noncompetitive market, rates shall be made in accordance with the following provisions:
  - (a) Manual, minimum, class rates, rating schedules or rating plans, shall be made and adopted, except in the case of specific inland marine rates on risks specially rated;
  - (b) Rates shall not be excessive, inadequate or unfairly discriminatory;
  - (c) Due consideration shall be given:
    - 1. To past and prospective loss experience within and outside this state;
    - 2. To the conflagration and catastrophe hazards;
    - 3. To a reasonable margin for underwriting profit and contingencies;
    - 4. To dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers;
    - 5. To past and prospective expenses both ***countrywide***~~countywide~~ and those specially applicable to this state;
    - 6. To all other relevant factors within and outside this state; and
    - 7. In the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during a period of not less than the most recent three (3) year period for which such experience is available;
  - (d) ~~The systems of expense provisions included in the rates for use by any insurer or group of insurers shall may differ from those of other insurers or group of insurers to~~ reflect the requirements of the operating methods of any such insurer or group ***and its anticipated expenses***, with respect to any kind of insurance or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable;
  - (e) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks which ***can be demonstrated to***~~may~~ have a probable effect upon losses or expenses. Rates made in accordance with this section may be used subject to this subtitle.

Section 4. KRS 304.13-061 is amended to read as follows:

- (1) The information furnished in support of a filing may include:
  - (a) The experience or judgment of the insurer;
  - (b) The insurer's interpretation of any statistical data it relies on;
  - (c) The experience of other insurers; and
  - (d) Any other relevant factors.
- (2) The commissioner may adopt reasonable ***administrative regulations***~~rules~~ for use by insurers to record and report to the commissioner their rates and other information determined by the commissioner to be necessary or appropriate for the administration of KRS 304.13-011 to 304.13-161, ***and the effectuation of its purposes. The commissioner may adopt reasonable administrative regulations to assure that the experience of all insurers is made available at least annually in such form and detail as is necessary to aid in determining***

*whether rating systems comply with the standards set forth in this subtitle.* ~~[However, except for workers' compensation reports, no insurer shall be required to report its loss experience on a classification basis that is inconsistent with the rating system filed by it.]~~ The commissioner may designate one (1) or more advisory organizations *or statistical agents* to assist him in gathering, compiling, and reporting such information, *which shall be a matter of public record. The scope of these rules may include the data which must be reported by insurers, definitions of data elements, the timing and frequency of statistical reporting by insurers, data quality standards, data edit and audit requirements, data retention requirements, reports to be generated by advisory organizations or statistical agents to fulfill the requirements of this section, and the timing of such reports.* ~~[Insurers shall record and report their workers' compensation experience on a classification basis consistent with that of an advisory organization designated by the commissioner.]~~

- (3) *The commissioner may promulgate administrative regulations for the interchange of data necessary for the application of rating plans.*
- (4) *In order to further uniform administration of rate regulatory laws, the commissioner and every insurer, advisory organization, and statistical agent may exchange information and experience data with insurance supervisory officials, insurers, and advisory organizations in other states and may consult with them with respect to the application of rating systems and the collection of statistical data.*

Section 5. KRS 304.13-081 is amended to read as follows:

- (1) All rates, supplementary rate information, and supporting information filed under KRS 304.13-011 to 304.13-161 shall be open to public inspection at any reasonable time. Copies may be obtained by any person on request and on payment of a charge specified in Subtitle 4 of this chapter.
- (2) The commissioner shall *utilize,* ~~[designate certain types of personal risks coverages for which the commissioner shall]~~ develop, *or cause to be developed* a consumer information system that will *provide and* disseminate price and other relevant information on a readily available basis *to purchasers of homeowners or private passenger insurance. The commissioner may utilize, develop, or cause to be developed a consumer information system which will provide and disseminate price and other relevant information on a readily available basis to purchasers of insurance for commercial risks and personal risks not otherwise specified in this section. Such activity may be conducted internally within the department, in cooperation with other state insurance departments, through outside contractors, or in any other appropriate manner. To the extent the commissioner considers necessary and appropriate,* ~~[~~ insurers, advisory organizations, *statistical agents*, and other persons or organizations involved in conducting the business of insurance in this state, *to which this section applies*, shall cooperate with the commissioner in the development and *utilization* ~~[in the operation]~~ of a consumer information system. The reasonable cost of developing a consumer information system shall be assessed against insurers subject to this chapter on an equitable basis.

SECTION 6. KRS 304.13-091 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *No advisory organization, statistical agent, or form provider shall provide any otherwise permitted service, and no insurer shall utilize the services unless the organization has obtained a license pursuant to subsection (3) of this section.*
- (2) *No advisory organization, statistical agent, or form provider shall refuse to supply any services for which it is licensed in Kentucky to any insurer authorized to do business in Kentucky and offering to pay the fair and usual compensation for the services.*
- (3) *An advisory organization, statistical agent, or form provider applying for a license shall include with its application:*
  - (a) *A copy of its constitution, charter, articles of organization, agreement, association or incorporation, bylaws, plan of operation, and any other rules or regulations governing the conduct of its business;*
  - (b) *A list of its members, subscribers, and customers;*
  - (c) *The name and address of one (1) or more residents of Kentucky upon whom notices, process affecting it, or orders of the commissioner may be served;*
  - (d) *A statement showing its technical qualifications for acting in the capacity for which it seeks a license;*
  - (e) *A biography of the ownership and management of the organization; and*

(f) *Any other relevant information and documents that the commissioner may require.*

- (4) *Every organization which has applied for a license shall notify the commissioner of every material change in the facts or in the documents on which its application was based. Any amendment to a document filed under this section shall be filed at least thirty (30) days before it becomes effective.*
- (5) *If the commissioner finds that the applicant and the natural persons through whom it acts are competent, trustworthy, and technically qualified to provide the services proposed, and that all requirements of the law are met, he or she shall issue a license specifying the authorized activity of the applicant. The commissioner shall not issue a license if the proposed activity would tend to create a monopoly or to substantially lessen the competition in any market. At the request of the licensee, licenses issued under this section may be renewed on an annual basis.*
- (6) *Licenses issued pursuant to this section shall remain in effect for one (1) year unless:*
  - (a) *The licensee fails to pay fees required by law for the continuance or renewal of its license;*
  - (b) *The licensee withdraws from the state; or*
  - (c) *The license is suspended or revoked.*

*The commissioner may at any time, after a hearing to be conducted in accordance with the provisions of this chapter and KRS 304.2-310, revoke or suspend the license of an advisory organization, statistical agent, or form provider which does not comply with the requirements and standards of this chapter.*

- (7) *The commissioner shall by administrative regulation establish a written summary of information that shall be included in an application for licenses issued under this section.*
- (8) *Advisory organizations wishing to operate as statistical agents or form providers may be so authorized under their license as an advisory organization. A separate license is not required.*
- (9) *Each advisory organization, statistical agent, and form provider shall pay fees as required by KRS 304.4-010 for the application, continuance, or renewal of its license.*

Section 7. KRS 304.13-111 is amended to read as follows:

No advisory organization *or statistical agent* shall:

- (1) Make an agreement with an insurer or another advisory organization that has the purpose or effect of substantially lessening competition in an insurance market; *or*
- (2) After January 1, 1983, compile or distribute recommendations relating to rates that include profit or expenses, except loss adjustment expenses~~;~~~~or~~
- ~~(3) File rates or other information on behalf of an insurer.~~

Section 8. KRS 304.13-121 is amended to read as follows:

*Any*~~Any~~ advisory organization *in addition to other activities not prohibited, is authorized, on behalf of its members and subscribers, to*~~may~~:

- (1) Collect statistical data from members, *subscribers*, or any other source;
- (2) Develop statistical plans including territorial and class definitions;
- (3) *Prepare, file, and distribute prospective loss costs which may include provisions for special assessments. Loss costs, derived in part or entirely upon output from simulation models, must be approved by the commissioner before they become effective*~~Distribute pure premium data, adjusted for loss development and loss trending, in accordance with its statistical plans;~~
- (4) *Prepare, file, and distribute manuals of rating rules,*~~and~~ *rating schedules, and other supplementary rating information that do*~~except that the manuals may~~ *not include final rates, expense provisions, profit provisions, or minimum premiums*~~or permit calculation of final rates without outside information;~~
- (5) *Prepare, file, and distribute factors, calculations, or formulas pertaining to classification, territory, increased limits, and other variables*~~Distribute information by circulars that are filed with the commissioner and open to public inspection;~~
- (6) *Distribute information that is required or directed to be filed with the commissioner;*

- (7) Conduct research and ~~on-site~~<sup>field</sup> inspections ***in order*** to prepare ***classifications of*** public fire ~~defenses,~~<sup>defense classifications</sup> and to consult with public officials regarding public fire protection as it would affect members, ***subscribers*** and others;
- (8)~~(7)~~ Conduct research ***in order*** to ***discover***, identify, and classify information ***relating to***~~on the~~ causes or prevention of losses;
- (9) ***Conduct research relating to the impact of statutory changes upon prospective loss costs and special assessments;***
- (10)~~(8)~~ Prepare, ***file, and distribute*** policy forms and endorsements and consult with members, ***subscribers***, and others ***relative to their***~~on~~ use and application;
- (11)~~(9)~~ Conduct research and ~~on-site~~<sup>field</sup> inspections ***for the purpose of providing risk***~~to collect~~ information~~for calculating rates or collecting statistics~~ relating to individual ~~structures~~<sup>risks</sup>~~;~~<sup>and</sup>
- (12) ***Conduct on-site inspections to determine rating classifications for individual insureds;***
- (13) ***For workers' compensation insurance, establish a committee which may include insurance company representatives to review the determination of the rating classification for individual insureds and suggest modifications to the classification system, pursuant to subsection (1) of Section 11 of this Act;***
- (14)~~(10)~~ ***Collect, compile, and publish***~~distribute~~ past and current prices of ***individual*** insurers, if such information is ~~also~~<sup>filed with the commissioner and is</sup> made available to the public ***at a reasonable cost***;
- (15) ***Collect and compile exposure and loss experience for the purpose of individual risk experience ratings;***
- (16) ***File final rates, at the direction of the commissioner, for residual market mechanisms; and***
- (17) ***Furnish any other services, as approved or directed by the commissioner, related to those enumerated in this section.***

SECTION 9. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

***In addition to other activities not prohibited, any statistical agent is authorized, on behalf of its members and subscribers, to:***

- (1) ***Develop statistical plans including territorial and class definitions;***
- (2) ***Collect historical data from members, subscribers, or any other source;***
- (3) ***Distribute information that is required or directed to be filed with the commissioner;***
- (4) ***Collect, compile, and distribute past and current prices of individual insurers and publish such information;***
- (5) ***Collect and compile exposure and loss experience for the purpose of individual risk experience ratings; and***
- (6) ***Furnish any other services, as approved or directed by the commissioner, related to those enumerated in this section.***

SECTION 10. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) ***Every advisory organization shall file with the commissioner every statistical plan, all prospective loss costs, provisions for special assessments, and all supplementary rating information, and every change or amendment or modification of any of the foregoing proposed for use in Kentucky. Each filing shall be filed thirty (30) days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed thirty (30) days, if written notice is given within the initial thirty (30) day period to the advisory organization that additional time is needed for the consideration of the filing. The commissioner may, upon giving written notice to the advisory organization, request additional information that is needed to complete the review of the filing. If the commissioner requests such additional information prior to the filing becoming effective, the filing shall become effective thirty (30) days after the additional information is provided to the commissioner.***
- (2) ***Upon written application by the advisory organization, the commissioner may authorize an earlier effective date.***

- (3) *All filings shall be subject to the provisions of Section 5 of this Act and all other provisions of this chapter relating to filings made by insurers.*

SECTION 11. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Every workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating system filed with the commissioner by an advisory organization designated by the commissioner.*
- (2) *Every workers' compensation insurer shall report its experience in accordance with the statistical plans and other reporting requirements in use by an advisory organization designated by the commissioner.*
- (3) *A workers' compensation insurer may develop subclassifications of the uniform classification system upon which rates may be made. These subclassifications and their filing shall be subject to the provisions of this chapter applicable to filings generally.*
- (4) *A workers' compensation insurer may develop rating plans which identify loss experience as a factor to be used. These rating plans and their filing shall be subject to the provisions of this chapter applicable to filings generally.*
- (5) *The commissioner shall disapprove subclassifications, rating plans, or other variations from manual rules filed by a workers' compensation insurer if the insurer fails to demonstrate that the data thereby produced can be reported consistent with the uniform classification system and experience rating system and in such a fashion so as to allow for the application of experience rating filed by the advisory organization.*

SECTION 12. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*No person shall willfully withhold information which will affect the rates or premiums chargeable under this subtitle from, or knowingly give false or misleading information to, the commissioner, any statistical agent, any advisory organization, or any insurer.*

Section 13. KRS 304.13-131 is amended to read as follows:

- (1) No insurer **or advisory organization** shall make *any arrangement*~~[an agreement]~~ with any other insurer, advisory organization, or **other** person that has the purpose or effect of unreasonably restraining trade or ~~unreasonably~~~~[of substantially]~~ lessening competition in *the business of*~~[an]~~ insurance~~[market]~~.
- (2) *No insurer or advisory organization shall:*
  - (a) *Attempt to monopolize, or combine, or conspire with any other person to monopolize an insurance market; or*
  - (b) *Engage in a boycott, on a concerted basis, of an insurance market.*
- (3) No insurer shall agree with any other insurer or with an advisory organization to ~~mandate adherence~~~~[adhere]~~ to, *or to mandate use of*, any rate, **prospective loss cost**, rating plan, rating schedule, rating rule, **policy or bond form**, rate classification, rate territory, underwriting rule,~~[or]~~ survey, **inspection or similar material**, except as needed to *facilitate the reporting of statistics to advisory organizations, statistical agents, or the commissioner*~~[develop and maintain statistical plans permitted by KRS 304.13-011 to 304.13-161]~~. *The fact that two (2) or more insurers, whether or not members or subscribers of an advisory organization, use consistently or intermittently the same rates, prospective loss cost, rating plans, rating schedules, rating rules, policy or bond forms, rate classifications, rate territories, underwriting rules, surveys, or inspections or similar materials is not sufficient in itself to support a finding that an agreement exists.*
- ~~(4)(3)~~ Two (2) or more insurers having a common ownership or operating in this state under common management or control may act in concert between or among themselves with respect to **any matters pertaining to** those activities authorized in this chapter as if they ~~constituted~~~~[were]~~ a single insurer.

Section 14. KRS 304.13-141 is amended to read as follows:

- (1) The commissioner may examine any insurer, pool, advisory organization, **statistical agent, form provider**, or residual market or joint underwriting mechanism as deemed necessary to ascertain compliance with **this chapter**~~[KRS 304.13-011 to 304.13-161]~~. Any examination made by the commissioner or by examiners



designated by him shall be at the expense of the organization examined as specified in Subtitle 2 of KRS Chapter 304.

- (2) Every insurer, pool, advisory organization, **statistical agent**, and residual market or joint underwriting mechanism shall maintain reasonable records, adapted to its method of operation, containing its experience or the experience of its members. Records shall include the statistics and other information used by it in its activities. The records shall be available at all reasonable times and at a reasonable location to enable the commissioner to determine whether the activities of an insurer, **pool**, advisory organization, **statistical agent**, **residual market or joint underwriting mechanism** ~~for other association formed pursuant to KRS 304.13-011 to 304.13-161~~ are in compliance with this chapter.
- (3) In lieu of an examination, the commissioner may accept the report of an examination by the insurance supervisory official of another state, if the report is made pursuant to the laws of that state.

Section 15. KRS 304.13-151 is amended to read as follows:

- (1) Notwithstanding **subsection (2)(a) of KRS 304.13-131**, insurers participating in joint underwriting, **joint reinsurance** pools, or residual market mechanisms may, in connection with such activity, cooperate **with each other** in the making of rates, rating systems, policy forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss and expense statistics ~~or and~~ other information, **or carrying on** ~~and the undertaking of~~ research. ~~{A} Joint underwriting, joint reinsurance pools, and {pool or} residual market mechanisms {mechanism} shall not be deemed {an} advisory organizations {organization}.~~
- (2) **Except to the extent modified by this section, insurers, joint underwriting, joint reinsurance pool and residual market mechanism activities are subject to the provisions of this chapter.**
- (3) **Every** ~~{A}~~ pool shall file with the commissioner a copy of its constitution, bylaws, rules, **and regulations** governing its activities, and articles of incorporation, agreement, or association. It shall also file with the commissioner a list of its members and the name and address of a resident of this state on whom notices or orders of the commissioner **or process** may be served, **and any changes in amendments or changes in the foregoing.**
- ~~(4){(3)}~~ Any **residual market mechanism**, plan, or agreement to implement a residual market mechanism, **and any changes or amendments in the plan** shall be submitted **in writing** to the commissioner for **consideration and approval, together with any other information as may be reasonably required.** The commissioner shall approve only those agreements that **he or she finds contemplates both** ~~{contemplate}~~ the use of rates **which meet the standards of this chapter and activities and practices** ~~{that are adequate but not excessive}~~, that are not **unfair, unreasonable, or** ~~{unfairly discriminatory, and that are}~~ otherwise **inconsistent with the provisions of this chapter** ~~{consistent with KRS 304.13-011 to 304.13-161}~~. **At any time after any agreements are in effect, the commissioner may review the practices and activities of the adherents to these agreements and if, after a hearing, the commissioner finds that any practice or activity is unfair or unreasonable, or is otherwise inconsistent with the provisions of this Chapter, the commissioner may issue a written order to the parties and either require the discontinuance of these acts or revoke approval of any such agreement.**
- ~~(5){(4)}~~ If the commissioner finds after a hearing that **any** ~~{an}~~ activity **or practice** of an insurer participating in joint underwriting ~~or {a}~~ pool **is unfair, is unreasonable,** ~~{or a residual market mechanism}~~ will tend to ~~substantially~~ lessen competition in **any** ~~{an insurance}~~ market, or is otherwise inconsistent with the provisions **or purposes of this chapter** ~~{KRS 304.13-011 to 304.13-161}~~, an order may be issued ~~{specifying in what respects the activity is anticompetitive or inconsistent with KRS 304.13-011 to 304.13-161 and}~~ requiring the discontinuance of the activity **or practice.**
- ~~(6){(5)}~~ As a condition of its authority under this chapter to transact casualty insurance (as defined in KRS 304.5-070) in this state, every insurer so authorized shall become and remain a signatory to the "Kentucky automobile insurance plan" as it is presently formulated or as it is hereafter amended with the approval of the commissioner. The "Kentucky automobile insurance plan" shall be deemed to be a mandated "residual market mechanism" as defined in KRS 304.13-011(8).

Section 16. KRS 304.13-350 is amended to read as follows:

The commissioner shall review, approve, and hear appeals on the assignment, reassignment, or modification of any fire protection classification of any fire protection district, municipality, or locality in the state which is made by any lawful **insurer, advisory** ~~{rating}~~ organization, or agency operating in the Commonwealth.

Section 17. KRS 304.13-355 is amended to read as follows:

Any fire protection district, municipality, or locality in the state which is assigned a fire protection classification by any lawful ~~advisory[rating]~~ organization or insurer which makes its own rates, operating in the Commonwealth, may appeal to the commissioner for modification or reassignment of the classification within thirty (30) days of receipt of the classification. The commissioner shall determine the manner in which an appeal may be filed.

Section 18. KRS 304.13-360 is amended to read as follows:

- (1) The commissioner shall make such investigation as he deems necessary or convenient for proper determination regarding an appeal.
- (2) The books, accounts, papers and records of every fire protection classification ~~advisory[rating]~~ organization or insurer which makes its own rates, operating in the Commonwealth, shall be available to the commissioner for inspection and examination. By notice and order, the commissioner may require their production or the production of verified copies at such time and place as he designates, any expense incurred to be borne by the rating organization or insurer so ordered.

Section 19. KRS 304.13-365 is amended to read as follows:

- (1) Within thirty (30) days of the filing of an appeal, the commissioner shall hold an administrative hearing to be conducted in accordance with KRS ~~304.2-310[Chapter 13B]~~. Whenever the commissioner determines that a fire protection classification is unreasonable, he shall by final order prescribe a reasonable classification to be followed for a period not to exceed one (1) year. A subsequent evaluation by the ~~advisory[rating]~~ organization or insurer shall not be permitted until the expiration of the period set by the commissioner.
- (2) The commissioner may compel obedience to its final orders by proper proceedings in the Franklin Circuit Court or any other court of competent jurisdiction, and these proceedings shall have priority over all pending cases.

Section 20. KRS 304.13-370 is amended to read as follows:

- (1) No insurer may increase premiums for fire insurance based on a fire protection classification until the expiration of the thirty (30) day period for appeal by the fire protection district, municipality or locality, as provided in KRS 304.13-355. If an appeal is filed, no insurer may increase such premiums until approval of the fire protection classification by the commissioner.
- (2) If the commissioner's reassignment or modification of a fire protection classification results in lower fire insurance premiums, the appropriate insurers shall make any refunds of paid premiums due to customers within the affected fire protection district, municipality or locality. Such refunds shall be determined from the date the ~~advisory[rating]~~ organization or insurer last assigned or reassigned the classification appealed.

Section 21. KRS 304.14-120 is amended to read as follows:

- (1) No basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or printed rider or indorsement form or form of renewal certificate, shall be delivered, or issued for delivery in this state, unless the form has been filed with and approved by the commissioner. This provision shall not apply to any rates filed under Subtitle 17A of this chapter, surety bonds, or to specially-rated inland marine risks, or to policies, riders, indorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner or distribution of benefits or to the reservation of rights and benefits under life or health insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to group insurance policies issued and delivered to an association outside this state but covering persons resident in this state, all or substantially all of the premiums for which are payable by the insured members, the group certificates to be delivered or issued for delivery in this state shall be filed with and approved by the commissioner.
  - (a) As to forms for use in property, marine (other than wet marine and transportation insurance), casualty and surety insurance coverages (*other than accident and health*) the filing required by this subsection may be made by ~~advisory[rating]~~ organizations *or form providers* on behalf of ~~their[its]~~ members and subscribers; but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.

- (b) *Every advisory organization and form provider shall file with the commissioner for approval every property and casualty policy form and endorsement before distribution to members, subscribers, customers, or others.*
  - (c) *Every property and casualty insurer shall file with the commissioner notice of adoption before use of any approved form filed by an advisory organization or form provider or filed by the insurer pursuant to paragraph (a) of this subsection.*
- (2) Every such filing shall be made not less than sixty (60) days in advance of any such delivery. At the expiration of such sixty (60) days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may extend by not more than a thirty (30) day period within which he may so affirmatively approve or disapprove any such form, by giving notice to the insurer of such extension before expiration of the initial sixty (60) day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may at any time, after notice and for cause shown, withdraw any such approval.
  - (3) Any order of the commissioner disapproving any such form or any notice of the commissioner withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such detail as reasonably to inform the insurer thereof. Any such withdrawal of a previously approved form shall be effective at expiration of such period, not less than thirty (30) days after the giving of the notice of withdrawal, as the commissioner shall in such notice prescribe.
  - (4) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order to which, in his opinion, this section may not practicably be applied, or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.
  - (5) Appeals from orders of the commissioner disapproving any such form or withdrawing a previous approval shall be taken as provided in Subtitle 2 of this chapter.
  - (6) *For the purposes of this section, unless the context requires otherwise:*
    - (a) *"Advisory organization" has the meaning provided in Section 1 of this Act; and*
    - (b) *"Form provider" has the meaning provided in Section 1 of this Act.*

SECTION 22. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*As used Sections 22 to 28 of this Act:*

- (1) *"Rental vehicle agent" means an individual or business entity that is licensed to sell, solicit, or negotiate rental vehicle insurance under this subtitle.*
- (2) *"Managing employee" means a salaried full-time employee of a licensed business entity that holds a license as an individual under Section 24 of this Act and is responsible for the supervision of the other employees engaged in the placement of insurance under this section.*
- (3) *"Rental agreement" means any written agreement that states the terms and conditions that govern the use or lease of a rental vehicle during the rental period.*
- (4) *"Rental period" means the term of the rental agreement that is sixty (60) days or less.*
- (5) *"Rental vehicle" or "vehicle" means a motor vehicle operated by a driver who is not required to possess a commercial driver's license to operate the motor vehicle and the motor vehicle is either a private motor vehicle or a cargo van. A "private motor vehicle" includes a passenger vehicle, passenger van, minivan, or sport utility vehicle. A "cargo van" includes a cargo van, pickup truck, or truck with a gross vehicle weight of less than twenty-six thousand (26,000) pounds.*
- (6) *"Rental vehicle insurance" means insurance underwritten by an insurer authorized to transact business in this state that is sold in connection with and incidental to a rental agreement.*

SECTION 23. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A rental vehicle agent may sell, solicit, or negotiate insurance at the rental vehicle company office as specified in this section for any of the following types of insurance:*
- (a) *Insurance that covers the risks of travel, including accident and health insurance that provides coverage to renters and other rental vehicle occupants for accidental death or dismemberment and reimbursement for medical expenses that result from the operation or use of the rental vehicle during the rental period;*
  - (b) *Liability insurance that provides coverage to renters and other authorized drivers of rental vehicles for liability that arises from the operation or use of the rental vehicle, which may include uninsured motorist and underinsured motorist coverage, whether offered separately or in combination with other liability insurance;*
  - (c) *Personal property insurance that provides coverage to renters and other rental vehicle occupants for the loss of or damage to personal effects that occurs during the rental period;*
  - (d) *Roadside assistance;*
  - (e) *Emergency sickness protection programs; and*
  - (f) *Any other insurance incidental to the rental of a motor vehicle and approved by the commissioner.*
- (2) *When a renter purchases any of the rental vehicle insurance coverages listed in subsection (1) of this section, the coverages shall be primary over any other coverages which may be available to the renter or authorized driver covering the same loss.*

SECTION 24. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A license issued under this section shall permit rental vehicle insurance sales by the license holder provided the sales are conducted in accordance with the provisions of Section 25 of this Act.*
- (2) *A business entity licensee shall register with the commissioner each separate business location where its employees sell, solicit, or negotiate insurance and may pay a location registration fee for each separate location.*
- (3) *The commissioner may issue to an applicant qualified under this section a license to act as a rental vehicle agent.*
- (4) *For a license to be issued under this section, the applicant shall submit to the commissioner all of the following:*
- (a) *A written application, signed by the applicant, on a form prescribed by the commissioner, that contains the information prescribed by the commissioner;*
  - (b) *A certification by an insurer authorized to do business in this state, signed, and affirmed as true under penalty of perjury by an officer stating that:*
    - 1. *The insurer has satisfied itself that the named applicant is trustworthy and competent to act as the insurer's agent; and*
    - 2. *The insurer has appointed the applicant to act as agent for the type of insurance specified;*
  - (c) *The application fee, appointment fee, and location registration fee as provided in KRS 304.4-010 and Sections 22 to 28 of this Act;*
  - (d) *A business entity applicant shall submit a list of physical locations where activities authorized by the rental vehicle agent license will be conducted;*
  - (e) *A business entity applicant shall certify that each proposed licensed managing employee has successfully completed education and training programs, successfully passed course examinations, and will receive continuing education all approved by the commissioner in accordance with Section 28 of this Act; and*
  - (f) *A business entity applicant shall submit proof that the applicant will provide education, training, and continuing education approved by the commissioner in accordance with Section 28 of this Act for each rental vehicle employee or representative. However, a test shall not be required for each rental vehicle employee or representative who is not a licensed managing employee.*

- (5) *The commissioner may require any documents reasonably necessary to verify the information contained in the application submitted in accordance with subsection (4) of this section.*

SECTION 25. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A license issued to a business entity under Section 24 of this Act shall authorize an employee or representative of the business entity licensee to sell, solicit, or negotiate rental vehicle insurance without being licensed, registered, or otherwise individually identified, if all of the following are true:*
- (a) *The employee, representative, or managing employee operates with permission from the business entity licensee;*
  - (b) *The business entity licensee assumes responsibility for the insurance activities of its unlicensed employees or representatives;*
  - (c) *The employee or representative operates under the supervision of a managing employee who is licensed as a rental vehicle agent and who shall be available at all times for consultation for and adequate supervision of the business locations registered with the commissioner during the sale, solicitation, or negotiation of rental vehicle insurance. However, a managing employee need not be present at each business location registered with the commissioner;*
  - (d) *The business entity maintains an adequate number of managing employees available for consultation and supervision for the employees or representatives offering insurance products;*
  - (e) *The employee, representative, or managing employee has been instructed by the rental vehicle agent with respect to the consumer disclosures that are required under Section 26 of this Act prior to the sale of the rental vehicle insurance;*
  - (f) *The employee or representative is not primarily compensated based on the amount of insurance sold by the employee or representative; and*
  - (g) *The business location is registered with the commissioner.*
- (2) *A licensee shall not advertise, represent, or otherwise hold out the licensee or any employee or representative of the licensee as a licensed insurance agent under another section of this subtitle, unless the entity or individual actually holds the applicable license.*

SECTION 26. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Insurance shall not be transacted under Sections 22 to 28 of this Act at any location unless the following consumer protection disclosures are made in writing that meets the readability standards set forth in KRS 304.14-440 and the regulations promulgated thereunder prior to the sale of rental vehicle insurance and are included with the rental vehicle agreement:*
- (a) *A clear and concise description of the material terms and conditions of the coverage, including a description of exclusions;*
  - (b) *A description of the process for filing a claim and a toll-free telephone number for reporting a claim;*
  - (c) *A statement that the coverage offered by the rental vehicle agent may be a duplication of coverage already provided by the renter's personal automobile insurance policy or by another source of coverage;*
  - (d) *A statement that the renter is not required to purchase any insurance from the rental vehicle company in order to rent a vehicle. However, the rental vehicle company may refuse to rent a vehicle to an uninsured driver;*
  - (e) *The name and address of the underwriting insurer;*
  - (f) *A separate itemization of all costs for the rental vehicle insurance;*
  - (g) *Confirmation that the insurer underwriting coverage is authorized to transact insurance in Kentucky; and*
  - (h) *A statement that the rental vehicle insurance is primary coverage as set forth in subsection (2) of Section 23 of this Act.*

SECTION 27. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*A rental vehicle agent who is licensed in accordance with this subtitle shall not sell, solicit, or negotiate insurance that is not sold in conjunction with a rental vehicle transaction.*

SECTION 28. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *If a licensee violates a provision of this chapter, the commissioner may take administrative action and impose penalties in accordance with this chapter.*
- (2) *A licensed business entity under Section 24 of this Act shall provide to the commissioner its courses of instruction, course examinations for managing employees, employee training, and continuing education material for all employees subject to the commissioner's approval prior to issuance of a license under this section.*
- (3) *A licensee under Section 24 of this Act may receive commissions or other compensation for services rendered in connection with the sale of rental vehicle insurance.*
- (4) *Licenses shall be renewed biennially as set forth in KRS 304.9-260 and 304.9-270.*
- (5) *The commissioner shall promulgate administrative regulations to carry out the purpose of Sections 22 to 28 of this Act.*

Section 29. KRS 304.2-150 is amended to read as follows:

- (1) The commissioner shall carefully preserve in the department and in permanent form, a correct account of all his transactions and of all fees and moneys received by him by virtue of his office, together with all financial statements, examination reports, correspondence, filings, and documents duly received by the department. The commissioner shall hand the same over to his successor in office.
- (2) The commissioner shall keep a suitable record of all insurer certificates of authority and of all licenses issued under this code, together with all applicable suspensions and revocations and of the causes thereof.
- (3) Unless otherwise provided by law, records of the department shall be open to the extent provided by the Kentucky Open Records Act, KRS 61.872 to 61.884:
  - (a) The following records shall be open:
    1. Rate and form filings and information filed in support thereof;
    2. Other records as provided by law; and
    3. All information filed by the department with the National Association of Insurance Commissioners, which that association makes available;
  - (b) The following records shall be closed:
    1. All information received in confidence from *insurance supervisory officials of other states or countries, or* the National Association of Insurance Commissioners, including, but not limited to, information from the insurance regulatory information system. However, records described in this paragraph may be used by the commissioner in enforcement prosecutions and proceedings for disciplinary action, and may be disclosed to other law enforcement authorities; and
    2. Other records as provided by law; and
  - (c) When inspection of department records is denied, any person challenging the denial shall follow the procedures set forth in the Kentucky Open Records Act, KRS 61.872 to 61.884.
- (4) After five (5) years, the commissioner may destroy unneeded or obsolete records and filings in the department.
- (5) The department shall not charge a fee inconsistent with fees charged by other state agencies for copies of records requested by the public pursuant to this section.

Section 30. The following KRS section is repealed:

304.24-410 Acquisition of insurer's securities -- Approval by commissioner -- Presumption of control.

## CHAPTER 381

## (HB 373)

AN ACT relating to a sick leave bank for local school district employees.

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

Section 1. KRS 161.155 is amended to read as follows:

- (1) As used in this section:
  - (a) "Teacher" shall mean any person for whom certification is required as a basis of employment in the common schools of the state;
  - (b) "Employee" shall mean any person, other than a teacher, employed in the public schools, whether on a full or part-time basis;
  - (c) "Immediate family" shall mean the teacher's spouse, children including stepchildren, grandchildren, parents and spouse's parents, grandparents, and spouse's grandparents, without reference to the location or residence of said relative, and any other blood relative who resides in the teacher's home; and
  - (d) "Sick leave bank" shall mean an aggregation of sick leave days contributed by teachers *or employees* for use by teachers *or employees* who have exhausted all sick leave and other available paid leave days.
- (2) Each district board of education shall allow to each teacher in its common school system not less than ten (10) days of sick leave during each school year, without deduction of salary. Sick leave shall be granted to a teacher if he presents a personal affidavit or a certificate of a physician stating that the teacher was ill, that the teacher was absent for the purpose of attending to a member of his immediate family who was ill, or for the purpose of mourning a member of his immediate family. The ten (10) days of sick leave ~~herein~~ granted *in this subsection* may be taken by a teacher on any ten (10) days of the school year and shall be granted in addition to accumulated sick leave days that have been credited to the teacher under the provisions of subsection (3) of this section.
- (3) Days of sick leave not taken by a teacher during any school year shall accumulate without limitation and be credited to that teacher. Accumulated sick leave may be taken in any school year. Any district board of education may, in its discretion, allow teachers in its common school system sick leave in excess of the number of days prescribed in this section and may allow school district employees and teachers to use up to three (3) days' sick leave per school year for emergency leave pursuant to KRS 161.152(3). Any accumulated sick leave days credited to a teacher shall remain so credited in the event he transfers his place of employment from one (1) school district to another within the state or to the Kentucky Department of Education or transfers from the Department of Education to a school district after June 30, 1985.
- (4) Accumulated days of sick leave shall be granted to a teacher if, prior to the opening day of the school year, an affidavit or a certificate of a physician is presented to the district board of education, stating that the teacher is unable to commence his duties on the opening day of the school year, but will be able to assume his duties within a period of time that the board determines to be reasonable.
- (5) Any school *teacher or* employee may repurchase previously used sick leave days with the concurrence of the local school board by paying to the district an amount equal to the total of all costs associated with the used sick leave.
- (6) A district board of education may adopt a plan for a sick leave bank. The plan may include limitations upon the number of days a teacher *or employee* may annually contribute to the bank and limitations upon the number of days a teacher *or employee* may annually draw from the bank. Only those teachers *or employees* who contribute to the bank may draw upon the bank. Days contributed will be deducted from the days available to the contributing teacher *or employee*. The sick leave bank shall be administered in accordance with a policy adopted by the board of education.
- (7) (a) A district board of education shall establish a sick leave donation program to permit teachers *or employees* to voluntarily contribute sick leave to teachers *or employees* in the same school district who are in need of an extended absence from school. A teacher *or employee* who has accrued more than fifteen (15) days sick leave may request the board of education to transfer a designated amount of sick leave to another teacher *or employee* who is authorized to receive the sick leave donated. A teacher *or*

*employee* may not request an amount of sick leave be donated that reduces his or her sick leave balance to less than fifteen (15) days.

- (b) A teacher *or employee* may receive donations of sick leave if:
  - 1. *a.* The teacher *or employee* or a member of his or her immediate family suffers from a medically certified illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the teacher *or employee* to be absent for at least ten (10) days; *or*
  - b.* *The teacher or employee suffers from a catastrophic loss to his or her personal or real property, due to either a natural disaster or fire, that either has caused or will likely cause the employee to be absent for at least ten (10) consecutive working days;*
  - 2. The teacher's *or employee's* need for the absence and use of leave are certified by a licensed physician *for leave requested under subparagraph 1.a. of this subsection;*
  - 3. The teacher *or employee* has exhausted his or her accumulated sick leave, personal leave, and any other leave granted by the school district; and
  - 4. The teacher *or employee* has complied with the school district's policies governing the use of sick leave.
- (c) While *a teacher or an* employee is on sick leave provided by this section, he or she shall be considered a school district employee, and his or her salary, wages, and other employee benefits shall not be affected.
- (d) Any sick leave that remains unused, is not needed by a teacher *or employee*, and will not be needed in the future shall be returned to the teacher *or employee* donating the sick leave.
- (e) The board of education shall adopt policies and procedures necessary to implement the sick leave donation program.
- (8) A teacher may use up to thirty (30) days of sick leave following the birth or adoption of a child or children. Additional days may be used when the need is verified by a physician's statement.
- (9) After July 1, 1982, a district board of education may compensate, at the time of retirement, an employee or a teacher for each unused sick leave day. The rate of compensation for each unused sick leave day shall be based on a percentage of the daily salary rate calculated from the employee's or teacher's last annual salary, not to exceed thirty percent (30%). Payment for unused sick leave days shall be incorporated into the annual salary of the final year of service; provided that the member makes the regular retirement contribution for members on the sick leave payment. The accumulation of these days includes unused sick leave days held by the employee or teacher at the time of implementation of the program.
- (10) Any statute to the contrary notwithstanding, employees and teachers who transferred from the Department of Education to a school district, from a school district to the Department of Education, or from one (1) school district to another school district after July 15, 1981, shall receive credit for any unused sick leave to which the employee or teacher was entitled on the date of transfer. This credit shall be for the purposes set forth in subsection (9) of this section.

**Approved April 7, 2000**

## **CHAPTER 382**

**(HB 462)**

AN ACT relating to education finance.

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

Section 1. KRS 164A.300 is amended to read as follows:

- (1) The General Assembly of the Commonwealth of Kentucky hereby declares as a legislative finding of fact that the general welfare and well-being of the Commonwealth are directly related to the educational levels and skills of the citizens of the Commonwealth. Therefore, a vital and valid public purpose of the Commonwealth



is served by the creation and implementation of programs which encourage and make possible the attainment of higher education by the greatest number of citizens of the Commonwealth.

- (2) The General Assembly finds, declares, and recognizes that the Commonwealth has limited resources to provide additional programs for higher education funding and that the continued operation and maintenance of the institutions of higher education in Kentucky and the general welfare of the citizens and the Commonwealth will be enhanced by creation of a program pursuant to which citizens and others may invest money in a public trust for future application to the payment of higher education costs in the Commonwealth and elsewhere and that the creation of a means of encouragement of citizens in the investment of funds for such future higher education application represents the carrying out of a valid and vital public purpose of the Commonwealth. In order to make available to the citizens of the Commonwealth an opportunity to fund future higher education needs for beneficiaries~~[with certain public assistance]~~, it is necessary that a public trust be established in which the citizens of the Commonwealth and others may invest moneys for future educational use.~~[It is further necessary to establish and create an endowment trust, which may be funded with public funds, among other sources, the income from which will be made available to participants in the savings plan trust to enhance their savings invested for future higher education costs.]~~
- (3) It is the intent of the General Assembly of the Commonwealth of Kentucky to create the Kentucky Educational Savings Plan Trust~~[with a separate endowment trust to enhance the investment return of the savings plan trust]~~. The implementation and effectuation of the Kentucky Educational Savings Plan Trust as provided by KRS ~~164A.300~~~~[164A.310]~~ to 164A.380 constitutes the carrying out of a valid and vital public purpose for which public funds of the Commonwealth may be expended.
- (4) It is in the best interest of the people of the Commonwealth to establish and provide for the operation of the Kentucky Educational Savings Plan Trust in a manner conforming to federal law that allows participants and beneficiaries federal income taxation benefits on contributions and earnings on contributions expended by the trust for the higher education costs of a beneficiary.

Section 2. KRS 164A.305 is amended to read as follows:

As used in KRS 164A.300 to 164A.380, except where the context clearly requires another interpretation:

- (1) "Act" means the Kentucky Educational Savings Plan Trust Act codified at KRS 164A.300 to 164A.380;
- (2) "Administrative fund" means the funds used to administer the Kentucky Educational Savings Plan Trust;
- (3) "Beneficiary" means:
  - (a) Any person designated at the commencement of participation by a participation agreement to benefit from payments for higher education costs at an institution of higher education;
  - (b) The new beneficiary, in the case of a change of beneficiaries pursuant to KRS 164A.330~~(4)~~~~(7)~~; or
  - (c) The scholarship recipient, in the case of a participation agreement entered into as part of a scholarship program operated by a state or local government organization or an organization described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. sec. 501(c)(3), that is exempt from federal income taxation pursuant to Section 501(a) of that code;
- (4) "Benefits" means the payment of higher education costs on behalf of a beneficiary by the savings plan trust during the beneficiary's attendance at an institution of higher education;
- (5) "Board" means the board of directors of the Kentucky Higher Education Assistance Authority;
- ~~(6) "Endowment trust" means the endowment fund established pursuant to KRS 164A.337 which shall be administered as a separate trust;~~
- ~~(7)~~ "Higher education costs" means the costs specified in section 529(e)(3) of the Internal Revenue Code of 1986 as amended for attendance at an institution of higher education as determined and certified by the institution of higher education in the same manner as prescribed in Title IV of the Higher Education Act of 1965, 20 U.S.C. sec. 1087II, as amended;
- ~~(7)~~~~(8)~~ "Institution of higher education" means an institution as defined in Section 529(e)(5) of the Internal Revenue Code of 1986, as amended;
- ~~(8)~~~~(9)~~ "Kentucky Educational Savings Plan Trust" or "savings plan trust" means the trust created pursuant to KRS 164A.310;

- ~~(9)~~~~(40)~~ "Participant" means an organization described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. sec. 501(c)(3), that is exempt from federal income taxation pursuant to Section 501(a) of that code, an individual, firm, corporation, a state or local government organization, or a legal representative of any of the foregoing who has entered into a participation agreement pursuant to KRS 164A.300 to 164A.380 for the advance payment of higher education costs on behalf of a beneficiary;
- ~~(10)~~~~(11)~~ "Participation agreement" means an agreement between a participant and the savings plan trust, pursuant to and conforming with the requirements of KRS 164A.300 to 164A.380;
- ~~(11)~~~~(12)~~ "Program administrator" means the administrator of the savings plan trust appointed by the board to administer and manage the trust;
- ~~(12)~~~~(13)~~ "Program fund" means the program fund established by KRS 164A.335 which shall be held as a separate fund within the savings plan trust;
- ~~(13)~~~~(14)~~ "Tuition" means the quarterly or semester charges imposed to attend an institution of higher education and required as a condition of enrollment;
- ~~(14)~~~~(15)~~ "Vested participation agreement" means a participation agreement which has been in full force and effect during eight (8) continuous years of residency of the beneficiary in the Commonwealth while participating in the savings plan trust.

Section 3. KRS 164A.310 is amended to read as follows:

There is hereby created an instrumentality of the Commonwealth to be known as the Kentucky Educational Savings Plan Trust. The board, in the capacity of trustee, shall have the power and authority to:

- (1) Sue and be sued;
- (2) Make and enter into contracts necessary for the administration of the savings plan trust pursuant to KRS 164A.300 to 164A.380;
- (3) Adopt a corporate seal and to change and amend it from time to time;
- (4) Invest moneys within the program fund in any investments determined by the board to be appropriate, notwithstanding any other statutory limitations contained in the Kentucky Revised Statutes, which are specifically determined to be inapplicable to the savings plan trust;
- (5) Enter into agreements with any institution of higher education, the Commonwealth of Kentucky, or any federal or other state agency or other entity as required for the effectuation of its rights and duties pursuant to KRS 164A.300 to 164A.380;
- (6) Accept any grants, gifts, legislative appropriations, and other moneys from the Commonwealth, any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit to the administrative fund or the program fund, which, in the case of any contributions from other than general funds of the Commonwealth, may be limited in application to definite classes of beneficiaries;
- (7) Enter into participation agreements with participants;
- (8) Make payments to institutions of higher education pursuant to participation agreements on behalf of beneficiaries;
- (9) Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in KRS 164A.300 to 164A.380;
- (10) Appoint a program administrator and to determine the duties of the program administrator and other staff as necessary and fix their compensation within the provisions of KRS Chapter 18A;
- (11) ***Delegate to the program administrator general supervision and direction over the administrative function of the trust and its employees in carrying out the policies, programs, administrative regulations, and directives of the board;***
- (12) Make provision for the payment of costs of administration and operation of the savings plan trust;
- ~~(13)~~~~(12)~~ Carry out the duties and obligations of the savings plan trust pursuant to KRS 164A.300 to 164A.380 and to have any and all other powers as may be reasonably necessary for the effectuation of the purposes of the savings plan trust and KRS 164A.300 to 164A.380; and

~~(14)~~~~(13)~~ Promulgate administrative regulations to implement the provisions of KRS 164A.300 to 164A.380 consistent with the federal Internal Revenue Code and administrative regulations issued pursuant to that code.

Section 4. KRS 164A.325 is amended to read as follows:

In addition to effectuating and carrying out all of the powers granted by KRS 164A.300 to 164A.380, the board, *as trustee*, shall have all powers necessary to carry out and effectuate the purposes, objectives, and provisions of KRS 164A.300 to 164A.380 pertaining to the savings plan trust, including, but not limited to, the power to:

- (1) Engage investment advisors to assist in the investment of savings plan trust assets;
- (2) Carry out studies and projections in order to advise participants regarding present and estimated future higher education costs and levels of financial participation in the trust required in order to enable participants to achieve their educational funding objectives;
- (3) Contract, *in accordance with the provisions of KRS 45A.345 to 45A.460 under KRS 45A.343*, for goods and services and engage personnel as necessary, including consultants, actuaries, managers, counsel, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice, all of which contract obligations and services shall be payable from any moneys of the trust;
- (4) Participate in any other way in any federal, state, or local governmental program for the benefit of the savings plan trust;
- (5) Promulgate, impose, and collect administrative fees and charges in connection with transactions of the savings plan trust, and provide for reasonable service charges, including penalties for cancellations and late payments in respect of participation agreements;
- (6) Procure insurance against any loss in connection with the property, assets or activities of the savings plan trust;
- (7) Administer the funds of the savings plan trust;
- (8) Procure insurance indemnifying any member of the board from personal loss or accountability arising from liability resulting from a member's action or inaction as a member of the board; and
- (9) Promulgate reasonable rules and regulations for the administration of the savings plan trust.

Section 5. KRS 164A.330 is amended to read as follows:

The savings plan trust shall have the authority to enter into participation agreements with participants on behalf of beneficiaries pursuant to the following terms and agreements:

- (1) Each participation agreement shall require a participant to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary. Participation agreements may be amended to provide for adjusted levels of contributions based upon changed circumstances or changes in educational plans and may contain penalties for failure to make contributions when scheduled;
- (2) Notwithstanding the provisions of subsection (1) of this section, participants may elect to enter into a lump-sum contribution participation agreement in connection with which a single, lump-sum contribution is made by the participant for the benefit of a beneficiary;
- (3) ~~[The participation agreement shall specify the minimum rate of interest which shall be borne by the investment made by the participant;~~
- (4) ~~Beneficiaries designated in participation agreements may be designated from date of birth through age fourteen (14);~~
- (5) ~~Payment of benefits provided under participation agreements must begin not later than the first full academic semester at an institution of higher education following the eighteenth birthday of the subject beneficiary unless the participant notifies the program administrator to delay payment of benefits for a designated period of time. At the end of that designated period of time, the payment of benefits shall begin unless the participant again notifies the program administrator to delay payment of benefits;~~
- (6) ~~The }Execution of a participation agreement by the trust shall not guarantee in any way that higher education costs will be equal to projections and estimates provided by the trust or that the beneficiary named in any participation agreement will:~~
  - (a) Be admitted to an institution of higher education;

- (b) If admitted, be determined a resident for tuition purposes by the institution of higher education, unless the participation agreement is vested;
- (c) Be allowed to continue attendance at the institution of higher education following admission; or
- (d) Graduate from the institution of higher education;
- ~~(4)(7)~~ Beneficiaries may be changed as permitted by the rules and regulations of the board upon written request of the participant~~[prior to the date of admission of any beneficiary under a participation agreement by an institution of higher education]~~ provided, however, that the substitute beneficiary shall be eligible;
- ~~(5)(8)~~ Participation agreements shall be freely amended throughout their terms in order to enable participants to increase or decrease the level of participation, change the designation of beneficiaries, and carry out similar matters;
- ~~(6)(9)~~ Each participation agreement shall provide that for vested participation agreements, the beneficiary shall be considered a resident of the Commonwealth for tuition purposes if the beneficiary enrolls in an institution of higher education in Kentucky~~[prior to enrollment in any other educational institution]~~;
- ~~(7)(10)~~ Each participation agreement shall provide that it may be canceled under the terms and conditions, including payment of the fees and costs, set forth in the rules and regulations promulgated by the board;
- ~~(8)(11)~~ The participation agreement shall ensure that contributions made pursuant to subsections (1) and (2) of this section shall not be made in real or personal property other than cash and shall not exceed the anticipated higher education costs of the beneficiary;
- ~~(9)(12)~~ The participation agreement shall provide that the participant and the beneficiary shall not directly or indirectly or otherwise control the investment of contributions or earnings on contributions;
- ~~(10)(13)~~ Information obtained from a participant or a beneficiary and other personally identifiable records made by the trust in the administration of this chapter~~[are confidential and]~~ shall not be published or be open for public inspection pursuant to KRS 61.870 to 61.884, except as provided below:
  - (a) Upon written request, a participant or beneficiary or his legal representative shall be entitled to be advised of the aggregate balance of contributions and earnings for all participation agreements that designate that same beneficiary;
  - (b) Information may be made available to public employees in the performance of their duties, but the agency receiving the information shall assure the confidentiality, as provided for in this section, of all information so released;
  - (c) Statistical information derived from information and records obtained or made by the trust may be published, if it in no way reveals the identity of any participant or beneficiary; and
  - (d) Nothing in this section shall preclude the program administrator or any employee of the board from testifying or introducing as evidence information or records obtained or made by the trust in any proceeding under this chapter, in an action to which the trust is a party, or upon order of a court.

Section 6. KRS 164A.335 is amended to read as follows:

The board, *as trustee*, shall segregate moneys received by the savings plan trust into two (2) funds, which shall be identified as the program fund and the administrative fund. Transfers may be made from the program fund to the administrative fund for the purpose of paying operating costs associated with administering the trust and as required by KRS 164A.300 to 164A.380. All moneys credited to the administrative fund shall be deposited in accordance with KRS 41.070. All moneys paid by participants in connection with participation agreements shall be deposited as received into the program fund and shall be promptly invested and accounted for separately. Contributions shall be accounted for separately for each beneficiary. Deposits and interest thereon accumulated on behalf of participants in the program fund of the savings plan trust may be used for payments to any institution of higher education.~~[However, no rights to any moneys derived from the endowment trust shall exist if moneys payable under the participation agreement are paid to an education institution which is not an institution of higher education in Kentucky, as defined by KRS 164A.300 to 164A.380.]~~

Section 7. KRS 164A.350 is amended to read as follows:

For all purposes of Kentucky law, the following shall be applicable:

- (1) The ~~trust~~~~participant~~ shall ~~exercise~~~~retain~~ ownership of all contributions made under any participation agreement ***and all interest derived from the investment of the contributions made by the participant*** up to the date of utilization for payment of higher education costs for the beneficiary.~~[-and] All contributions made under any participant agreement and interest derived from the investment of the contributions made by the participant shall be deemed to be held in trust for the benefit of the beneficiary;~~
- (2) Any participant may cancel a participation agreement ***at any time, and terminate the trust's ownership rights thereby created in whole or in part, by delivering an instrument in writing signed and delivered to the program administrator or his designee.*** In the event the participation agreement is terminated ***in part***, the ~~trust~~~~participant~~ shall retain ownership of all contributions made under the participation agreement not previously expended for the higher education costs of the beneficiary and ***not returned to the participant. The participant shall retain*** a reversionary right to receive ***upon termination the actual market value of the participant's account at the time of the cancellation, including*** interest~~[-on all the contributions at the rate of interest at which the contributions were invested]~~, except that the participant shall be required to pay a penalty upon the interest that has been credited to the participant's account in accordance with subsection (7) of this section;
- (3) If the beneficiary graduates from an institution of higher education, and a balance remains in the participant's account, then the program administrator shall pay the balance to the participant, except that the participant shall be required to pay a penalty upon the interest that has been credited to the participant's account in accordance with subsection (7) of this section;
- (4) The institution of higher education shall obtain ownership of the ***distributions made from the participant's account***~~contributions made~~ for the higher education costs paid to the institution at the time each payment is made to the institution;
- (5) Any amounts ***received by the trust***~~which may be paid~~ pursuant to the Kentucky Educational Savings Plan Trust which are not listed in this section, shall be owned by the trust;
- (6) A participant may transfer ***the participant's***~~ownership~~ rights to another eligible participant, including, but not limited to, a gift of the ***participant's***~~ownership~~ rights to a minor beneficiary pursuant to KRS Chapter 385, except that, notwithstanding KRS 385.202(1), the transfer shall be affected and the property distributed in accordance with administrative regulations promulgated by the board or the terms of the participation agreement;
- (7) Notwithstanding any other law to the contrary, if any earnings on contributions are refunded due to cancellation of the participation agreement by the participant or nondistribution of the funds for payment of the beneficiary's higher education costs, the board shall charge a penalty to the participant against the earnings on contributions. No penalty shall be charged when a refund is made due to:
  - (a) The death, permanent disability, or mental incapacity of the beneficiary; or
  - (b) The beneficiary's receipt of a scholarship, an educational assistance allowance under Chapters 30, 31, 32, 34, or 35 of Title 38, United States Code, or a payment exempt from income taxation by any law of the United States, other than a gift, bequest, devise, or inheritance within the meaning of Section 102(a) of the Internal Revenue Code, 26 U.S.C. sec. 102(a), for educational expenses, or attributable to attendance at an institution of higher education, to the extent that the amount refunded does not exceed the amount of the scholarship, allowance, or payment; and
- (8) Notwithstanding any other provision of law to the contrary, contributions and earnings on contributions held by the trust shall be exempt from levy of execution, attachment, garnishment, distress for rent, or fee bill by a creditor of the participant or the beneficiary. No interest of the participant or beneficiary in the trust shall be pledged or otherwise encumbered as security for a debt.

Section 8. KRS 164A.360 is amended to read as follows:

***The board, as trustee, may establish, by the promulgation of administrative regulations in accordance with KRS Chapter 13A, a program of lending from any funds available to the trust, for participants and beneficiaries to***~~in connection with any participation agreement as to which benefits for payment of higher education costs have accrued and are being paid or are eligible to be paid, the participant thereof may~~ borrow from the trust~~[-but only] for the sole purpose of paying higher education costs to an institution of higher education. The interest rate payable by borrowers~~~~participants~~ for any such borrowing shall be a rate~~[-as]~~ established by the board from time to time. Any

contribution to such loan program from ~~the program fund~~~~[trust funds]~~ or any loan made ~~from the program fund~~~~[with trust funds]~~ shall be insured.

Section 9. KRS 164A.370 is amended to read as follows:

The property of the trust and its income from operations shall be exempt from all taxation by the Commonwealth of Kentucky or any of its political subdivisions. ~~Investment income~~~~[Interest]~~ earned on ~~contributions~~~~[moneys]~~ paid by any participant **and used for higher education costs defined in KRS 164A.305(7) or refunded under KRS 164A.350(7)(a) or 164A.350(7)(b)** shall not be subject to Kentucky income tax by either a participant or any beneficiary of a participation agreement, the purposes for which the ~~investment income~~~~[interest]~~ was accrued being deemed and declared to be entirely public in nature. **Earnings that are not used for higher education costs as defined in KRS 164A.305(7) and are refunded shall be subject to Kentucky income tax, except for earnings refunded pursuant to KRS 164A.350(7)(a) and 164A.350(7)(b).**

Section 10. KRS 164A.375 is amended to read as follows:

The assets of the trust, including the program fund~~[and the endowment fund]~~, shall at all times be preserved, invested and expended solely and only for the purposes of the trust and shall be held in trust for the participants and beneficiaries and no property rights therein shall exist in favor of the Commonwealth. The assets shall not be transferred or used by the Commonwealth for any purposes other than the purposes of the trust.

Section 11. KRS 164.7874 is amended to read as follows:

As used in KRS 164.7871 to 164.7885:

- (1) "Academic term" means a semester or other time period specified in an administrative regulation promulgated by the council;
- (2) "Academic year" means a period consisting of at least the minimum school term, as defined in KRS 158.070;
- (3) "ACT score" means the composite score achieved on the American College Test or an equivalent score, as determined by the council, on the Scholastic Assessment Test;
- (4) "Authority" means the Kentucky Higher Education Assistance Authority;
- (5) "Award period" means two (2) consecutive academic terms;
- (6) "Commonwealth merit scholarship" means a scholarship provided to an eligible student to attend a participating institution;
- (7) "Commonwealth merit scholarship curriculum" means five (5) courses of study in an academic year as determined by administrative regulation promulgated by the council;
- (8) "Commonwealth merit scholarship trust fund" means the Wallace G. Wilkinson Commonwealth merit scholarship trust fund;
- (9) "Council" means the Council on Postsecondary Education created under KRS 164.011;
- (10) "Eligible student" means any person who is a Kentucky resident enrolling in a Kentucky high school, after July 1, 1998, who, while meeting the Commonwealth merit scholarship curriculum requirements, has a grade point average of 2.5 or above at the end of any academic year beginning after July 1, 1998, and who is not a convicted felon;
- (11) "Full-time student" means a student enrolled in a postsecondary program of study that meets the full-time student requirements of the participating institution in which the student is enrolled;
- (12) "Grade point average" means the grade point average earned by an eligible student based on a scale of 4.0 or its equivalent if the high school or participating institution that the student attends does not use the 4.0 grade scale;
- (13) "High school" means any Kentucky public high school, and any private, parochial, or church school that has been certified by the Kentucky Board of Education as voluntarily complying with curriculum, certification, and textbook standards established by the Kentucky Board of Education under KRS 156.160;
- (14) "Maximum award amount" means the sum of the proportionate base scholarship amount earned by an eligible student in each academic year of high school study and any supplemental award earned by an eligible student. The amount so determined shall be the maximum amount available to the eligible student for any award period;

- (15) "Participating institution" means an "institution" as defined in KRS 164.001 that actively participates in the federal Pell Grant program, executes a contract with the authority on terms the authority deems necessary or appropriate for the administration of its programs, and:
- (a) 1. Is publicly operated; or
  - 2. Is licensed by the Commonwealth of Kentucky and has operated for at least ten (10) years, offers an associate or baccalaureate degree program of study not comprised solely of sectarian instruction, and admits as regular students only high school graduates or recipients of a general equivalency diploma or students transferring from another accredited degree granting institution; ~~or~~~~and~~
  - 3. ***Is designated by the Council on Postsecondary Education as an approved out-of-state institution that offers a degree program in a field of study that is not offered at any institution in the Commonwealth; and***
  - (b) Continues to commit financial resources to student financial assistance programs and provides annual documentation to the authority of compliance;
- (16) "Part-time student" means a student enrolled in a postsecondary program of study who does not meet the full-time student requirements of the participating institution in which the student is enrolled and who is enrolled for at least six (6) credit hours or the equivalent for an institution that does not use credit hours; and
- (17) "Supplemental award" means commitment of additional scholarship funds under KRS 164.7879(3) to an eligible student based on the eligible student's ACT score.

SECTION 12. A NEW SECTION OF KRS CHAPTER 164.7871 TO 164.7889 IS CREATED TO READ AS FOLLOWS:

***An eligible student who has earned a Kentucky educational excellence scholarship, or the Kentucky educational excellence scholarship and the supplemental award and who is enrolled in an out-of-state institution shall be eligible to receive the Kentucky educational excellence scholarship, or the Kentucky educational excellence scholarship and the supplemental award if he or she is enrolled in a degree program in a field of study that is not available at any participating institution in the Commonwealth. The Council on Postsecondary Education shall promulgate administrative regulations to establish procedures to designate an out-of-state institution as an approved participating institution as defined in KRS 164.7874 and to notify the Kentucky Higher Education Assistance Authority of its approval to transfer to the out-of-state institution the amount of the scholarship and supplemental award earned by the eligible student.***

Section 13. Moneys held by the Kentucky Educational Savings Plan Trust on June 30, 2000, as an endowment for purposes of distributing investment earnings to beneficiaries enrolled in an institution of higher education in Kentucky may, at the discretion of the board of directors of the Kentucky Higher Education Assistance Authority in its capacity of trustee, be distributed as follows:

- (1) The investment earnings on the endowment fund accrued as of June 30, 2000, shall be allocated and proportionally added to each participant's account in the program fund; and
- (2) The remainder of the moneys held in the endowment fund on June 30, 2000, including, but not limited to, any contributions to the endowment, may be distributed in any amount and combination of the following dispositions:
  - (a) Proportionally added to each participant's account in the program fund; or
  - (b) Transferred to the administrative fund.

**Approved April 7, 2000**

## **CHAPTER 383**

**(HB 525)**

AN ACT relating to medical directors of managed care plans.

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

Section 1. KRS 304.17A-545 is amended to read as follows:

- (1) A managed care plan shall appoint a medical director who:
  - (a) Is a physician licensed to practice in ~~this[the]~~ state; ~~[in which he or she is employed and who]~~
  - (b) ***Is in good standing with the State Board of Medical Licensure;***
  - (c) ***Has not had his or her license revoked or suspended, under KRS 311.530 to 311.620;***
  - (d) ***Shall sign any decision to deny any health care benefit; and***
  - (e) Shall be responsible for the treatment policies, protocols, quality assurance activities, and utilization management decisions of the plan.
- (2) The medical director shall ensure that:
  - (a) Any utilization management decision to deny, reduce, or terminate a health care benefit or to deny payment for a health care service because that service is not medically necessary shall be made by a physician, except in the case of a health care service rendered by a chiropractor or optometrist, that decision shall be made respectively by a chiropractor or optometrist duly licensed in Kentucky;
  - (b) A utilization management decision shall not retrospectively deny coverage for health care services provided to a covered person when prior approval has been obtained from the insurer for those services, unless the approval was based upon fraudulent, materially inaccurate, or misrepresented information submitted by the covered person or the participating provider;
  - (c) In the case of a managed care plan, a procedure is implemented whereby participating physicians have an opportunity to review and comment on all medical and surgical and emergency room protocols, respectively, of the insurer and whereby other participating providers have an opportunity to review and comment on all of the insurer's protocols that are within the provider's legally authorized scope of practice;
  - (d) The utilization management program is available to respond to authorization requests for urgent services and is available, at a minimum, during normal working hours for inquiries and authorization requests for nonurgent health care services; and
  - (e) In the case of a managed care plan, a covered person is permitted to choose or change a primary care provider from among participating providers in the provider network and, when appropriate, choose a specialist from among participating network providers following an authorized referral, if required by the insurer, and subject to the ability of the specialist to accept new patients.
- (3) A managed care plan shall develop comprehensive quality assurance or improvement standards adequate to identify, evaluate, and remedy problems relating to access, continuity, and quality of health care services. These standards shall be made available to the public during regular business hours and include:
  - (a) An ongoing written, internal quality assurance or improvement program;
  - (b) Specific written guidelines for quality of care studies and monitoring, including attention to vulnerable populations;
  - (c) Performance and clinical outcomes-based criteria;
  - (d) A procedure for remedial action to correct quality problems, including written procedures for taking appropriate corrective action;
  - (e) A plan for data gathering and assessment; and
  - (f) A peer review process.
- (4) Each managed care plan shall have a process for the selection of health care providers who will be on the plan's list of participating providers, with written policies and procedures for review and approval used by the plan.
  - (a) The plan shall establish minimum professional requirements for participating health care providers. An insurer may not discriminate against a provider solely on the basis of the provider's license by the state;
  - (b) The plan shall demonstrate that it has consulted with appropriately qualified health care providers to establish the minimum professional requirements;
  - (c) The plan's selection process shall include verification of each health care provider's license, history of license suspension or revocation, and liability claims history;



- (d) A managed care plan shall establish a formal written, ongoing process for the reevaluation of each participating health care provider within a specified number of years after the provider's initial acceptance into the plan. The reevaluation shall include an update of the previous review criteria and an assessment of the provider's performance pattern based on criteria such as enrollee clinical outcomes, number of complaints, and malpractice actions.
- (5) A managed care plan shall not use a health care provider beyond, or outside of, the provider's legally authorized scope of practice.

**Approved April 7, 2000**

## CHAPTER 384

(HB 533)

AN ACT relating to crimes and punishment.

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

Section 1. KRS 441.125 is amended to read as follows:

- (1) (a) *As used in this section, "community-service-related project" means a project involving work for:*
  - 1. *The Commonwealth or an agency of the Commonwealth;*
  - 2. *A county, urban-county, charter county, city, special district, or an agency of any of these entities; or*
  - 3. *A nonreligious-sponsored nonprofit, charitable, or service organization.*
- (b) *Work on a community-service-related project shall not confer private benefit on a person except as may be incidental to the public benefit.*~~As used in this section community service related project means work for a county, a city or a special district or an agency thereof. Prisoner work on community service related projects shall not confer a private benefit on a person except as may be incidental to the public benefit.~~
- (2) *Each jailer shall write a policy governing prisoners working on community-service-related projects, which shall be submitted to the fiscal court for approval. The written policy shall state at a minimum:*
  - (a) *Which type of prisoner, if any, shall be assigned to which type of work, taking into account the physical and mental abilities of prisoners and security of the jail and the general public;*
  - (b) *That no prisoner shall be assigned to unduly hazardous work that would endanger the life or health of the prisoner or others; and*
  - (c) *That any prisoner may, for a valid medical reason, decline to work on community-service-related projects. No prisoner shall be punished or otherwise penalized for this refusal.*~~Pursuant to a written policy adopted by the fiscal court on the advice of the jailer, the jailer may permit certain prisoners to work on community service related projects. Before a prisoner is permitted to work in this type project, the county judge/executive or his designee shall sign his approval to the prisoner's participation.~~
- (3) *A prisoner shall not begin work on a particular community-service-related project without the approval of the director of the relevant entity referred to in subsection (1)(a) of this section, or the director's designee.*~~In determining which prisoners may be worked on community service related projects and the nature of work to which a prisoner may be assigned, the jailer and the county judge/executive shall consider the physical and mental ability of the prisoner and the security of the jail and the general public. No prisoner shall be assigned to unduly hazardous work that would endanger the life or health of the prisoner or others.~~
- (4) *Participation in community-service-related projects shall not be deemed employment for any purpose, and a prisoner shall not be deemed an employee or agent of the entity for which he or she performs the community service work.*~~Any prisoner may, for a valid medical reason, decline to work on community service related projects. No prisoner shall be punished or otherwise penalized for such refusal.~~
- (5) ~~The place of working such prisoners shall be determined by the county judge/executive and he shall enter an order on the order book of the county judge/executive, specifying the manner in which the prisoner may be worked.~~

~~(6) Participation in community services related projects shall not be deemed employment for any purpose.~~

Section 2. KRS 441.510 is amended to read as follows:

- (1) If an accused is confined in a detention facility, he shall be transported as necessary in accordance with the following provisions, unless otherwise ordered by the court:
  - (a) If he is lodged in an urban-county facility in the county where the trial is to be held, the jailer shall carry out this duty; and
  - (b) In all other cases, the sheriff ~~or jailer~~ of the county where the prisoner is incarcerated shall carry out this duty as provided in subsection (3) of this section.
- (2) If an accused is sentenced to confinement, the sheriff shall deliver him to the proper detention facility, with the exception that in the case of a sentence to an urban-county detention facility, the jailer shall carry out this duty.
- (3) In each county ***where there is no jail***, the fiscal court or the legislative body of a charter county government, as appropriate, shall adopt a transportation plan which establishes the party responsible for transporting prisoners as necessary:
  - (a) The fiscal court or the legislative body of a charter county government, as appropriate, may require the jailer to serve as transportation officer to be responsible for transporting prisoners as necessary; or
  - (b) The fiscal court or the legislative body of a charter county government, as appropriate, may require the sheriff to serve as transportation officer to be responsible for transporting prisoners as necessary; or
  - (c) The fiscal court or the legislative body of a charter county government, as appropriate, may adopt any reasonable transportation plan so long as the party responsible for transporting prisoners is specified.
- (4) ***Upon the recommendation of the jailer, the fiscal court shall employ a female transportation officer for purposes of assisting the jailer during the transportation of female prisoners, when deemed necessary by the jailer.***
- (5) In any county where there is no jail and the jailer does not transport prisoners, the jailer shall serve as a bailiff to the Circuit and District Courts of the county as provided for in KRS 71.050.
- (6) ***Nothing in this section shall prohibit the jailer from transporting the prisoners as he or she deems necessary.***

Section 3. KRS 532.100 is amended to read as follows:

- (1) When an indeterminate term of imprisonment is imposed, the court shall commit the defendant to the custody of the Department of Corrections for the term of his sentence and until released in accordance with the law.
- (2) When a definite term of imprisonment is imposed, the court shall commit the defendant to the county or city correctional institution or to a regional correctional institution for the term of his sentence and until released in accordance with the law.
- (3) When a sentence of death is imposed, the court shall commit the defendant to the custody of the Department of Corrections with directions that the sentence be carried out according to law.
- (4)
  - (a) The provisions of KRS 500.080(5) notwithstanding, if a Class D felon is sentenced to an indeterminate term of imprisonment of five (5) years or less, he shall serve that term in a county jail in a county in which the fiscal court has agreed to house state prisoners; except that, when an indeterminate sentence of two (2) years or more is imposed on a Class D felon convicted of a sexual offense enumerated in KRS 197.410(1), the sentence shall be served in a state institution. Counties choosing not to comply with the provisions of this ~~paragraph~~<sub>subsection</sub> shall be granted a waiver by the commissioner of the Department of Corrections.
  - (b) ***1. The provisions of KRS 500.080(5) notwithstanding, and except as provided in subparagraph 2. of this paragraph, a Class C or D felon with a sentence of more than five (5) years who is classified by the Department of Corrections as community custody, shall serve that term in a county jail in a county in which the fiscal court has agreed to house state prisoners if:***
    - a. *Beds are available in the county jail;*
    - b. *State facilities are at capacity; and*

- c. Halfway house beds are being utilized at the contract level as of July 15, 2000.*
2. *When an indeterminate sentence of two (2) years or more is imposed on a felon convicted of a sexual offense enumerated in KRS 197.410(1), the sentence shall be served in a state institution.*
  3. *Counties choosing not to comply with the provisions of this paragraph shall be granted a waiver by the commissioner of the Department of Corrections.*
- (c) *Any jail that houses state inmates under paragraph (a) or (b) of this subsection shall offer programs as recommended by the Jail Standards Commission. The Department of Corrections shall adopt the recommendations of the Jail Standards Commission and promulgate administrative regulations establishing required programs for a jail that houses state inmates under paragraph (a) or (b) of this subsection.*
- (5) The jailer of a county in which a Class D felon *or a Class C felon* is incarcerated may request the commissioner of the Department of Corrections to incarcerate the felon in a state corrections institution if the jailer has reasons to believe that the felon is an escape risk, a danger to himself or other inmates, an extreme security risk, or needs protective custody beyond that which can be provided in a county jail. The commissioner of the Department of Corrections shall evaluate the request and transfer the inmate if he deems it necessary. If the commissioner refuses to accept the felon inmate, and the Circuit Judge of the county that has jurisdiction of the offense charged is of the opinion that the felon cannot be safely kept in a county jail, the Circuit Judge, with the consent of the Governor, may order the felon transferred to the custody of the Department of Corrections.
  - (6) Class D felons *and Class C felons* serving their time in a local jail shall be considered state prisoners, and the Department of Corrections shall pay the jail in which the prisoner is incarcerated a per diem amount determined according to KRS 431.215(2). For other state prisoners and parole violator prisoners, the per diem payments shall also begin on the date prescribed in KRS 431.215(2).
  - (7) State prisoners, excluding the Class D felons *and Class C felons* qualifying to serve time in county jails, shall be transferred to the state institution within forty-five (45) days of final sentencing.

**Approved April 7, 2000**

## CHAPTER 385

**(HB 537)**

AN ACT relating to retirement.

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

Section 1. KRS 16.505 is amended to read as follows:

As used in KRS 16.510 to 16.652, unless the context otherwise requires:

- (1) "System" means the State Police Retirement System created by KRS 16.510 to 16.652;
- (2) "Board" means the board of trustees of the Kentucky Retirement Systems;
- (3) "Employer" or "State Police" means the Department of State Police, or its successor;
- (4) "Current service" means the number of years and completed months of employment as an employee subsequent to July 1, 1958, for which creditable compensation was paid by the employer and employee contributions deducted except as otherwise provided~~in KRS 61.555~~;
- (5) "Prior service" means the number of years and completed months of employment as an employee prior to July 1, 1958, for which creditable compensation was paid to the employee by the Commonwealth. Twelve (12) months of current service in the system are required to validate prior service;
- (6) "Service" means the total of current service and prior service;
- (7) "Accumulated contributions" at any time means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the member's contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4), together with interest credited on

such amounts as provided in KRS 16.510 to 16.652, and any other amounts the member shall have contributed, including interest credited;

- (8) "Creditable compensation" means all salary and wages, *including payments for compensatory time*, paid to the employee as a result of services performed for the employer *or for time during which the member is on paid leave*, which are includable on the member's federal form W-2 wage and tax statement *under the heading "wages, tips, other compensation"*, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4). *A lump sum bonus, severance pay, or employer provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's service with the employer.* Living allowances, expense reimbursements, payments received after the date of termination of employment for accrued vacation leave, and other items determined by the board shall be excluded. Creditable compensation shall also include amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code;
- (9) "Final compensation" at any time means the creditable compensation of a member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during the three (3) year period, multiplied by twelve (12); the three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-eight (28), one (1) or more additional fiscal years shall be used;
- (10) "Final rate of pay" means the actual rate upon which earnings of a member were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, one thousand nine hundred fifty (1,950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, or one (1) year;
- (11) "Retired member" means any former member receiving a retirement allowance or any former member who has filed the necessary documents for retirement benefits and is no longer contributing to the retirement system;
- (12) "Retirement allowance" means the retirement payments to which a retired member is entitled;
- (13) "Actuarially equivalent benefits" means benefits which are of equal value when computed upon the basis of actuarial tables adopted by the board, except that, in case of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;
- (14) "Authorized leave of absence" means any time during which a person is absent from employment but retained in the status of an employee in accordance with the personnel policy of the Department of State Police;
- (15) "Normal retirement date" means the first day of the month following a member's fifty-fifth birthday, except that for members over age fifty-five (55) on July 1, 1958, it shall mean January 1, 1959~~]. A member of the State Police Retirement System, a member of the County Employees Retirement System, or a member of the Kentucky Employees Retirement System covered by this section with twenty (20) or more years of service credit, at least fifteen (15) of which are current, may declare his "normal retirement date" to be some date prior to his fifty fifth birthday];~~
- (16) "Disability retirement date" means the first day of the month following total and permanent disability or hazardous disability;
- (17) "Dependent child" means a child en ventre sa mere and a natural or legally adopted child of the member who has neither attained age eighteen (18) nor married or who is an unmarried full-time student who has not attained age twenty-two (22);
- (18) "Optional allowance" means an actuarially equivalent benefit elected by the member in lieu of all other benefits provided by KRS 16.510 to 16.652;
- (19) "Act in line of duty" means an act occurring or a thing done, which, as determined by the board, was required in the performance of the duties specified in KRS 16.060. For employees in hazardous positions under KRS 61.592, an "act in line of duty" shall mean an act occurring which was required in the performance of the principal duties of the position as defined by the job description;

- (20) "Early retirement date" means the retirement date declared by a member who is not less than fifty (50) years of age and has fifteen (15) years of service;
- (21) "Member" means any officer included in the membership of the system as provided under KRS 16.520 whose membership has not been terminated under KRS 61.535;
- (22) "Regular full-time officers" means the occupants of positions as set forth in KRS 16.010;
- (23) "Hazardous disability" as used in KRS 16.510 to 16.652 means a disability which results in an employee's total incapacity to continue as an employee in a hazardous position, but the employee is not necessarily deemed to be totally and permanently disabled to engage in other occupations for remuneration or profit;
- (24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, "beneficiary" does not mean an estate, trust, or trustee;
- (26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;
- (27) "Person" means a natural person;
- (28) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (29) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula adopted by the board for purchase of service under KRS 61.552(9), except the employee shall pay a single payment of fifty percent (50%) of the total cost of the service with no cost to the employer, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member;
- (30) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543, 61.543, or 78.615 to the retirement office in order for the employee to receive current service credit for the month. ***Last day of paid employment does not mean a date the employee receives payment for accrued leave, whether by lump sum or otherwise, if that date occurs twenty-four (24) or more months after previous contributions;***
- (31) "Objective medical evidence" means ~~medical histories;~~ reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable laboratory diagnostic techniques, including, but not limited to, chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests;
- (32) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year; ~~and~~
- (33) "Participating" means an employee is currently earning service credit in the system as provided in KRS 16.543; ***and***
- (34) ***"Month" means a calendar month.***

Section 2. KRS 16.560 is amended to read as follows:

- (1) The member contribution account shall be the account to which all members' contributions, or contributions picked up by the employer after August 1, 1982, and interest allowances as provided in KRS 16.510 to 16.652 shall be credited; only funds from this account shall be used to return accumulated contributions of a member when required by reason of any provision of KRS 16.510 to 16.652. ***Prior to the member's retirement, death, or refund in accordance with Section 21 of this Act, no funds shall be made available from the member's contribution account.***

- (2) Each member's contribution or contribution picked up by the employer shall be credited to the individual account of the contributing member.
- (3) Each member on June 30 of each year shall have his individual account credited with interest at a rate determined by the board but not less than two and one-half percent (2.5%) per annum on the accumulated contributions of the member on June 30 of the preceding fiscal year and the amounts so credited shall be transferred from the retirement allowance account.
- (4) Upon the retirement of a member, his accumulated contribution shall be transferred from the member's contribution account to the retirement allowance account.
- (5) Included as a part of such member's contribution account shall be his accumulated contributions in the Kentucky Employees Retirement System, if any, transferred to this system.

Section 3. KRS 16.577 is amended to read as follows:

- (1) Upon retirement at early retirement date, a member may receive an annual retirement allowance payable monthly during his lifetime which shall be determined in the same manner as for retirement at his normal retirement date, with years of service and final compensation being determined as of the date of his actual retirement, but the amount of the retirement allowance so determined shall be reduced to reflect the earlier commencement of benefits.
- (2) ***There shall be no reduction in the retirement allowance of a member who has twenty (20) or more years of service credit, at least fifteen (15) of which are current service.***

Section 4. KRS 16.582 is amended to read as follows:

- (1)
  - (a) Total and permanent disability means a disability which results in the member's incapacity to engage in any occupation for remuneration or profit. Loss by severance of both hands at or above the wrists, or both feet at or above the ankles, or one (1) hand above the wrist and one (1) foot above the ankle, or the complete, irrevocable loss of the sight of both eyes shall be considered as total and permanent.
  - (b) Hazardous disability means a disability which results in the member's total incapacity to continue as a regular full-time officer or as an employee in a hazardous position, as defined in KRS 61.592, but which does not result in the member's total and permanent incapacity to engage in other occupations for remuneration or profit.
  - (c) In determining whether the disability meets the requirement of this section, any reasonable accommodation provided by the employer as provided in 42 U.S.C. sec. 12111(9) and 29 C.F.R. Part 1630 shall be considered.
  - (d) If the board determines that the total and permanent disability of a member receiving a retirement allowance under this section has ceased, then the board shall determine if the member has a hazardous disability.
- (2) Any person may qualify to retire on disability, subject to the following:
  - (a) The person shall have sixty (60) months of service, twelve (12) of which shall be current service credited under KRS 16.543(1), 61.543(1), or 78.615(1). The service requirement shall be waived if the disability is a total and permanent disability or a hazardous disability and is a direct result of an act in line of duty;
  - (b) The person shall ***not be eligible for an unreduced retirement allowance***~~be less than normal retirement age~~;
  - (c) The person's application shall be on file in the retirement office no later than ***twenty-four (24)***~~twelve (12)~~ months after the person's last day of paid employment, as defined in KRS 16.505, as a regular full-time officer or in a regular full-time hazardous position under KRS 61.592;
  - (d) The person shall receive a satisfactory determination pursuant to KRS 61.665; and
  - (e) ~~A~~***No*** person's disability application based on the same claim of incapacity shall be accepted and ***reconsidered***~~considered~~ for disability ~~if~~***if*** ~~for any person who has previously applied for and been denied disability benefits unless it is~~ accompanied by ***new objective medical*** evidence~~of a substantial change in the person's condition which shall satisfy subsection (4) of this section~~. The application shall

be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment as a regular full-time officer or in a regular full-time hazardous position.

- (3) Upon the examination of the objective medical evidence by licensed physicians pursuant to KRS 61.665, it shall be determined that:
- (a) The incapacity results from bodily injury, mental illness, or disease. For purposes of this section, "injury" means any physical harm or damage to the human organism other than disease or mental illness;
  - (b) The incapacity is deemed to be permanent; and
  - (c) The incapacity does not result directly or indirectly from:
    - 1. Injury intentionally self-inflicted while sane or insane;
    - 2. Injury or disease resulting from military service; or
    - 3. Bodily injury, mental illness, disease, or condition which pre-existed membership in the system or reemployment, whichever is most recent, unless:
      - a. The disability results from bodily injury, mental illness, disease, or a condition which has been substantially aggravated by an injury or accident arising out of or in the course of employment; or
      - b. The person has at least sixteen (16) years' current or prior service for employment with employers participating in the retirement systems administered by the Kentucky Retirement Systems.

For purposes of this subparagraph, "reemployment" shall not mean a change of employment between employers participating in the retirement systems administered by the Kentucky Retirement Systems with no loss of service credit.

- (4) (a) 1. An incapacity shall be deemed to be permanent if it is expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months from the person's last day of paid employment in a position as regular full-time officer or a hazardous position.
2. The determination of a permanent incapacity shall be based on the medical evidence contained in the member's file and the member's residual functional capacity and physical exertion requirements.
- (b) The person's residual functional capacity shall be the person's capacity for work activity on a regular and continuing basis. The person's physical ability shall be assessed in light of the severity of the person's physical, mental, and other impairments. The person's ability to walk, stand, carry, push, pull, reach, handle, and other physical functions shall be considered with regard to physical impairments. The person's ability to understand, remember, and carry out instructions and respond appropriately to supervision, coworkers, and work pressures in a work setting shall be considered with regard to mental impairments. Other impairments, including skin impairments, epilepsy, visual sensory impairments, postural and manipulative limitations, and environmental restrictions, shall be considered in conjunction with the person's physical and mental impairments to determine residual functional capacity.
- (c) The person's physical exertion requirements shall be determined based on the following standards:
- 1. Sedentary work shall be work that involves lifting no more than ten (10) pounds at a time and occasionally lifting or carrying articles such as large files, ledgers, and small tools. Although a sedentary job primarily involves sitting, occasional walking and standing may also be required in the performance of duties.
  - 2. Light work shall be work that involves lifting no more than twenty (20) pounds at a time with frequent lifting or carrying of objects weighing up to ten (10) pounds. A job shall be in this category if lifting is infrequently required but walking and standing are frequently required, or if the job primarily requires sitting with pushing and pulling of arm or leg controls. If the person has the ability to perform substantially all of these activities, the person shall be deemed capable of light work. A person deemed capable of light work shall be deemed capable of sedentary work unless the person has additional limitations such as the loss of fine dexterity or inability to sit for long periods.

3. Medium work shall be work that involves lifting no more than fifty (50) pounds at a time with frequent lifting or carrying of objects weighing up to twenty-five (25) pounds. If the person is deemed capable of medium work, the person shall be deemed capable of light and sedentary work.
  4. Heavy work shall be work that involves lifting no more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing up to fifty (50) pounds. If the person is deemed capable of heavy work, the person shall also be deemed capable of medium, light, and sedentary work.
  5. Very heavy work shall be work that involves lifting objects weighing more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing fifty (50) or more pounds. If the person is deemed capable of very heavy work, the person shall be deemed capable of heavy, medium, light, and sedentary work.
- (5) The disability retirement allowance shall be determined as provided in KRS 16.576, subject to the following:
- (a) If the member's total service credit on his last day of paid employment in a regular full-time position is less than twenty (20) years, service shall be added beginning with his last date of paid employment and continuing to his fifty-fifth birthday. The maximum service credit added shall not exceed the total service the member had on his last day of paid employment, and the maximum service credit for calculating his retirement allowance, including his total service and service added under this section, shall not exceed twenty (20) years;
  - (b) If the member's total service credit on his last day of paid employment is twenty (20) or more years, then his total service credit shall be used.
- (6) If the member receives a satisfactory determination of total and permanent disability or hazardous disability pursuant to KRS 61.665 and the disability is the direct result of an act in line of duty, the member's retirement allowance shall be calculated as follows:
- (a) For the disabled member, benefits as provided in subsection (5) of this section except that the monthly retirement allowance payable shall not be less than twenty-five percent (25%) of the member's monthly final rate of pay; and
  - (b) For each dependent child of the member on his disability retirement date, who is alive at the time any particular payment is due, a monthly payment equal to ten percent (10%) of the disabled member's monthly final rate of pay; however, total maximum dependent children's benefit shall not exceed forty percent (40%) of the member's monthly final rate of pay. The payments shall be payable to each dependent child, or to a legally appointed guardian or as directed by the system.
- (7) No benefit provided in this section shall be reduced as a result of any change in the extent of disability of any retired member who is age fifty-five (55) or older.
- (8) If a regular full-time officer or hazardous position member has been approved for benefits under a hazardous disability, the board shall, upon request of the member, permit the member to receive the hazardous disability allowance while accruing benefits in a nonhazardous position, subject to proper medical review of the nonhazardous position's job description by the system's medical examiner.
- (9) For a member of the State Police Retirement System, in lieu of the allowance provided in subsection (5) or (6) of this section, the member may be retained on the regular payroll and receive the compensation authorized by KRS 16.165, if he is qualified.

Section 5. KRS 16.601 is amended to read as follows:

- (1) If the death of a member in service occurs on or after August 1, 1992, as a direct result of an "act in line of duty" and the member has on file in the retirement office at the time of his death a written designation of only one (1) beneficiary, who is his spouse, the beneficiary may elect to receive a lump-sum payment of ten thousand dollars (\$10,000) and a monthly payment equal to twenty-five percent (25%) of the member's monthly final rate of pay beginning in the month following the member's death and continuing each month until death or until the spouse remarries, whichever occurs first.
- (2) If the death of a member in service occurs on or after July 1, 1968, as a direct result of an "act in line of duty" and the member has on file in the retirement office at the time of his death a written designation of **only one**~~one~~



beneficiary other than his spouse, who is a dependent receiving at least one-half (1/2) of his support from the deceased member, the beneficiary may elect to receive a lump-sum payment of ten thousand dollars (\$10,000).

- (3) In the period of time following a member's death during which dependent children survive, monthly payments shall be made for each dependent child who is alive, equal to ten percent (10%) of the deceased member's monthly final rate of pay; however, total maximum dependent children's benefits shall not be greater than forty percent (40%) of the deceased member's monthly final rate of pay at the time any particular payment is due. The payments shall commence in the month following the date of death of the member and shall be payable to the beneficiaries, or to a legally appointed guardian or as directed by the system. Benefits shall be payable under this subsection notwithstanding an election by a beneficiary to withdraw the deceased member's accumulated contributions as provided in KRS 61.625 or benefits under any other provisions of KRS 16.510 to 16.652.
- (4) A beneficiary eligible for benefits under subsection (1) or (2) of this section who is also eligible for benefits under any other provisions of KRS 16.510 to 16.652 may elect benefits under this section or any other section of KRS 16.510 to 16.652 but cannot elect to receive both.

Section 6. KRS 16.640 is amended to read as follows:

The government and control of the system is hereby vested in the board of trustees of the Kentucky Retirement Systems. The board shall carry out the provisions of KRS 16.510 to 16.652 in the same manner in which it administers the Kentucky Employees Retirement System. In all matters concerning the administration of KRS 16.510 to 16.652, the same rights, duties, and obligations shall apply to the board, as now apply under the provisions of KRS 61.510 to 61.692, except that members of the board, when acting for the State Police Retirement System, shall be paid a per diem of **thirty dollars (\$30)**~~ten dollars (\$10)~~ plus actual expenses.

Section 7. KRS 16.645 is amended to read as follows:

The following subjects shall be administered in the same manner subject to the same limitations and requirements as provided for the Kentucky Employees Retirement System as follows:

- (1) Cessation of membership, as provided for by KRS 61.535;
- (2) Medical examiners and hearing procedures, as provided for by KRS 61.665;
- (3) Actuarial bases, as provided for by KRS 61.670;
- (4) Duties of the employer, as provided for by KRS 61.675;
- (5) Exemption of benefits of the system for taxation, as provided for by KRS 61.690;
- (6) Retirement allowance increase, as provided for by KRS 61.691;
- (7) Calculation of retirement allowance, as provided for by KRS 61.595(3) and (4);
- (8) Beneficiaries to be designated by member, change, rights, as provided for by KRS 61.542;
- (9) Year of service credit, as provided for by KRS 61.545;
- (10) Refund of contributions, death after retirement, as provided by KRS 61.630;
- (11) Custodian of fund, payments made, when, as provided for by KRS 61.660;
- (12) Credit for service prior to membership date, as provided for by KRS 61.526;
- (13) Transfer of dormant accounts, as provided for by KRS 61.626;
- (14) Member's account, confidential, as provided for by KRS 61.661;
- (15) Cessation of membership, loss of benefits, as provided for by KRS 61.550;
- (16) Correction of errors in records, as provided for by KRS 61.685;
- (17) Maximum disability benefit, as provided for by KRS 61.607;
- (18) Retirement application procedure, effective retirement date, as provided for by KRS 61.590;
- (19) Employer contributions, as provided for by KRS 61.565;
- (20) Reinstatement of lost service credit, purchase of service credit, interest paid, delayed contribution and installment payments, as provided for by KRS 61.552;

- (21) Reciprocal arrangement between systems, as provided by KRS 61.680;
- (22) Refund of contributions, conditions, as provided by KRS 61.625;
- (23) Hospital and medical insurance plan, as provided by KRS 61.702;
- (24) Death benefit, as provided by KRS 61.705;
- (25) Disability retirement allowance, reduction, discontinuance, as provided by KRS 61.615;
- (26) Service credit, Armed Forces, as provided by KRS 61.555;
- (27) Reinstated employee, contributions on creditable compensation, as provided for by KRS 61.569;
- (28) Statement to be made under oath, good faith reliance, as provided for in KRS 61.699;~~and~~
- (29) Retirement of persons in hazardous positions, as provided for by KRS 61.592; *and*
- (30) *Direct deposit of recipient's retirement allowance as provided in Section 30 of this Act.*

SECTION 8. A NEW SECTION OF KRS 16.510 TO 16.652 IS CREATED TO READ AS FOLLOWS:

- (1) *There are created and established:*
  - (a) *An excess benefit plan to be known as the State Police Retirement System Excess Benefit Plan. The plan is created for the purpose of providing the retirement allowances payable from the retirement system under KRS 16.510 to 16.652 that would otherwise be limited by 26 U.S.C. sec. 415; and*
  - (b) *A state fund to be known as the "State Police Retirement System Excess Benefit Fund" which shall consist of all the assets of the plan.*
- (2) *The administration and assets of the plan shall be as set forth in Section 32 of this Act.*

Section 9. KRS 61.510 is amended to read as follows:

As used in KRS 61.515 to 61.705, unless the context otherwise requires:

- (1) "System" means the Kentucky Employees Retirement System created by KRS 61.515 to 61.705;
- (2) "Board" means the board of trustees of the system as provided in KRS 61.645;
- (3) "Department" means any state department or board or agency participating in the system in accordance with appropriate executive order, as provided in KRS 61.520. For purposes of KRS 61.515 to 61.705, the members, officers, and employees of the General Assembly and any other body, entity, or instrumentality designated by executive order by the Governor, shall be deemed to be a department, notwithstanding whether said body, entity, or instrumentality is an integral part of state government;
- (4) "Examiner" means the medical examiners as provided in KRS 61.665;
- (5) "Employee" means the members, officers, and employees of the General Assembly and every regular full-time, appointed or elective officer or employee of a participating department, including the Department of Military Affairs. The term does not include persons engaged as independent contractors, seasonal, emergency, temporary, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 61.515 to 61.705;
- (6) "Employer" means a department or any authority of a department having the power to appoint or select an employee in the department, including the Senate and the House of Representatives, or any other entity, the employees of which are eligible for membership in the system pursuant to KRS 61.525;
- (7) "State" means the Commonwealth of Kentucky;
- (8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;
- (9) "Service" means the total of current service and prior service as defined in this section;
- (10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1956, except that for members, officers, and employees of the General Assembly this date shall be January 1, 1960, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided~~in KRS 61.552(7) and 61.555~~, and each member, officer, and employee of the General Assembly

shall be credited with a month of current service for each month he occupies the position during a legislative biennium subsequent to January 1, 1960;

- (11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1956, for which creditable compensation was paid; except that for members, officers, and employees of the General Assembly, this date shall be January 1, 1960. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work; provided, however, that each member, officer, and employee of the General Assembly shall be credited with a month of prior service for each month he occupied the position during a legislative biennium prior to January 1, 1960. Twelve (12) months of current service in the system are required to validate prior service; except that for an employee participating in any of the three (3) systems administered by the Kentucky Retirement Systems whose prior service was in a position in an office of a Commonwealth's attorney the prior service may be validated by at least twelve (12) months of current service in the Kentucky Employees Retirement System or by at least fifteen (15) years of current service in the County Employees Retirement System. An employee participating in any of the three (3) systems administered by the Kentucky Retirement Systems who wishes to validate prior service in a position in an office of a Commonwealth's attorney with fifteen (15) years of County Employees Retirement System service shall notify the Kentucky Retirement Systems of his or her eligibility for the service prior to January 1, 1999;
- (12) "Accumulated contributions" at any time means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4), together with interest credited on such amounts and any other amounts the member shall have contributed thereto, including interest credited thereon;
- (13) "Creditable compensation" means all salary, wages, tips to the extent the tips are reported for income tax purposes, and fees, ***including payments for compensatory time***, paid to the employee as a result of services performed for the employer ***or for time during which the member is on paid leave***, which are includable on the member's federal form W-2 wage and tax statement ***under the heading "wages, tips, other compensation"***, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4), except that for members of the General Assembly, it shall mean an assumed salary of twenty-seven thousand five hundred dollars (\$27,500) per annum which shall include per diem and expense payments authorized by KRS Chapter 6. The creditable compensation of members, officers, and employees of the General Assembly shall be calculated as having been received in equal amounts for each month of the biennium. ***A lump sum bonus, severance pay, or employer provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's service with the employer.*** In cases where compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. ***Living allowances, expense reimbursements, payments received after the date of termination of employment for accrued vacation leave, and other items determined by the board shall be excluded.*** Creditable compensation shall also include amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code;
- (14) "Final compensation" of a member means the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12), except that for members of the General Assembly who retire pursuant to KRS 61.600, or who die in office, "final compensation" shall be twenty-seven thousand five hundred dollars (\$27,500). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;
- (15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4). In the case of members of the General Assembly, the "final rate of pay" shall be the creditable compensation. The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, nineteen hundred fifty (1,950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;
- (16) "Retirement allowance" means the retirement payments to which a member is entitled;

- (17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables that are from time to time adopted by the board, except in cases of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;
- (18) "Normal retirement date" means the sixty-fifth birthday of a member, unless otherwise provided in KRS 61.515 to 61.705;
- (19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year;
- (20) "Officers and employees of the General Assembly" means the occupants of those positions enumerated in KRS 6.150 and the assistants if employed by the General Assembly for at least six (6) legislative bienniums;
- (21) "Regular full-time positions," as used in subsection (5) of this section, shall mean all positions that average one hundred (100) or more hours per month determined by using the number of months actually worked within a calendar or fiscal year, including all positions except:
- (a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and which may recur regularly from year to year, the period of time shall not exceed nine (9) months;
  - (b) Emergency positions which are positions which do not exceed thirty (30) working days and are nonrenewable;
  - (c) Temporary positions which are positions of employment with a participating department for a period of time not to exceed nine (9) months;~~and~~
  - (d) Part-time positions which are positions which may be permanent in duration, but which require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty; **and**
  - (e) ***Interim positions which are positions established for a one-time or recurring need not to exceed nine (9) months;***
- (22) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula adopted by the board for purchase of service under KRS 61.552(9), except the employee shall pay a single payment of fifty percent (50%) of the total cost of the service with no cost to the employer, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434;
- (23) "Parted employer" means a department, portion of a department, board, or agency, such as Outwood Hospital and School, which previously participated in the system, but due to lease or other contractual arrangement is now operated by a publicly held corporation or other similar organization, and therefore is no longer participating in the system;
- (24) "Retired member" means any former member receiving a retirement allowance or any former member who has filed the necessary documents for retirement benefits and is no longer contributing to the retirement system;
- (25) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (26) "Beneficiary" means the person or persons or estate or trust or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, "beneficiary" does not mean an estate, trust, or trustee;
- (27) "Recipient" means the retired member or the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;
- (28) "Level-percentage-of-payroll amortization method" means a method of determining the annual amortization payment on the unfunded past service liability as expressed as a percentage of payroll over a set period of years. Under this method, the percentage of payroll shall be projected to remain constant for all years

remaining in the set period and the unfunded past service liability shall be projected to be fully amortized at the conclusion of the set period;

- (29) "Increment" means twelve (12) months of service credit which are purchased. The twelve (12) months need not be consecutive. The final increment may be less than twelve (12) months;
- (30) "Person" means a natural person;
- (31) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (32) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543, 61.543, or 78.615 to the retirement office in order for the employee to receive current service credit for the month. ***Last day of paid employment does not mean a date the employee receives payment for accrued leave, whether by lump sum or otherwise, if that date occurs twenty-four (24) or more months after previous contributions;***
- (33) "Objective medical evidence" means ~~medical histories;~~ reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable laboratory diagnostic techniques, including, but not limited to, chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests; ~~and~~
- (34) "Participating" means an employee is currently earning service credit in the system as provided in KRS 61.543; ***and***
- (35) ***"Month" means a calendar month.***

Section 10. KRS 61.520 is amended to read as follows:

- (1) Each department shall participate in the system when the Governor by appropriate executive order, the authority to issue such executive order being granted, directs such department to participate in the system. The effective date of such participation shall be fixed by the Governor in his executive order.
- (2)
  - (a) Notwithstanding the provisions of subsection (1) of this section the Governor is authorized to permit any state college or university, which he directs by appropriate executive order to participate in the system after January 1, 1972, to include its noninstructional employees in the membership of the system while excluding the instructional employees of the state college or university from membership.
  - (b) All employees of an agency participating under authority of subsection (2)(a) of this section shall be considered noninstructional employees except the members of the instructional staff of the state college or university who are responsible for teaching and the administrative positions which are included in the Teachers' Insurance and Annuity Association (TIAA) or the Kentucky Teachers' Retirement System.
- (3) All executive orders issued under authority of this section since July 1, 1956, are hereby ratified by the General Assembly and each participating and contributing department, board, agency, corporation, mental health-mental retardation board, or entity participating since that date under such executive order is hereby declared to be a participating department under the Kentucky Employees Retirement System.
- (4) Once a department participates it shall thereafter continue to participate. ***Any position initially required to participate in the Kentucky Employees Retirement System shall continue to participate as long as the position exists.***

Section 11. KRS 61.525 is amended to read as follows:

Membership in the system shall consist of the following:

- (1) All persons who become employees of a participating department after the date such department first participates in the system, except a person who did not elect membership pursuant to KRS 61.545(3);
- (2) (a) All persons who are employees of a department on the date the department first participates in the system, either in service or on authorized leave from service, and who elect within thirty (30) days following the department's participation, or in the case of persons on authorized leave, within thirty (30) days of their return to active service, to become members and thereby agree to make contributions as provided in KRS 61.515 to 61.705;

*(b) All persons who are employees of a department who did not elect to participate within thirty (30) days of the date the department first participated in the system or within thirty (30) days of their return to active service and who subsequently elect to participate the first day of a month after the department's date of participation;*

- (3) All persons who are employees of any credit union whose membership was initially limited to employees of state government and their families and which subsequently may have been extended to local government employees and their families;
- (4) All persons who were professional staff employees of the Council on Postsecondary Education or the Higher Education Assistance Authority and were contributing to the system on ~~on~~ ~~or after~~ the effective date of Executive Order 74-762 or 75-964, respectively, and file a written election of their desire to continue in the system and all administrative and professional staff employees of the Higher Education Assistance Authority who, on or after January 1, 1993, are not participating in another retirement plan sponsored by the Higher Education Assistance Authority;
- (5) All persons who were professional staff employees of the Kentucky Authority for Educational Television on and after July 1, 1974;
- (6) All persons who are employees of the Teachers' Retirement System except employees who are required to participate under the Teachers' Retirement System under KRS 161.220(4)(d);
- (7) Membership in the system shall not include those employees who are simultaneously participating in another state-administered defined benefit plan within Kentucky other than those administered by the Kentucky Retirement Systems, except for employees who have ceased to contribute to one (1) of the state-administered retirement plans as provided in KRS 21.360; and
- (8) Effective January 1, 1998, employees of the Kentucky Community and Technical College System who were previously contributing members and are not required to participate in the Teachers' Retirement System as a member; employees who were previously contributing members transferred from the Cabinet for Workforce Development as provided in KRS 164.5805(1)(a) and who have not exercised the option to participate in the new Kentucky Community and Technical College personnel system as provided in KRS 164.5805(1)(e); and new employees as of July 1, 1997, who are not eligible under the Teachers' Retirement System or who are not contributing to an optional retirement plan established by the board of regents for the Kentucky Community and Technical College System.

Section 12. KRS 61.542 is amended to read as follows:

- (1) Prior to the time the first retirement allowance payment is issued by the State Treasurer:
  - (a) Each member may designate one (1) or more persons as a principal beneficiary or beneficiaries and one (1) or more persons as contingent beneficiary or beneficiaries; or each member may designate his estate as principal or contingent beneficiary; or each member may designate a trust or trustee as principal or contingent beneficiary.
  - (b) If multiple persons are designated, the member shall indicate the percentage of total benefits each person is to receive.
    1. If percentages are not indicated, payments will be disbursed equally to the named beneficiaries.
    2. If any of the multiple beneficiaries die prior to the member's death, the remaining beneficiaries shall be entitled to the deceased beneficiary's percentage of the total benefits, and each shall receive a percentage of the deceased's share which is equal to the percentage allotted them by the member.
    3. If any or all multiple beneficiaries die after the first retirement allowance has been issued by the State Treasurer, the deceased beneficiary's estate shall receive a lump-sum payment which is the actuarial equivalent of the remaining monthly payments the deceased beneficiary was entitled to receive.
  - (c) This designation shall remain in full force and effect until changed by the member, except:
    1. A final divorce decree terminates an ex-spouse's status as beneficiary, unless the member has on file in the retirement office a beneficiary designation that redesignates the ex-spouse as beneficiary subsequent to the issuance of the divorce decree.

2. If a beneficiary or beneficiaries are convicted of any crime which prohibits that person or persons from receiving the benefits under KRS 381.280, the beneficiary or beneficiaries shall not be eligible for any of the benefits and the remaining beneficiary or beneficiaries or, if none, the member's estate, shall become the beneficiary.
  3. When a notification of retirement has been filed at the retirement office, the designation of beneficiary on the notification of retirement, which shall be one (1) person, his estate, or a trust or trustee, shall supersede the designation of all previous beneficiaries.
  4. When a request for refund has been filed at the retirement office, the member's estate shall become the member's beneficiary if the member dies.
- (2) If the member dies prior to filing a notification of retirement or a request for refund, any retirement benefits shall be payable to the principal beneficiary, except that:
- (a) If the death of the principal beneficiary or beneficiaries precedes the death of the member, or if the principal beneficiary is terminated by a divorce decree, the contingent beneficiary or beneficiaries become the principal beneficiary or beneficiaries.
  - (b) If the principal beneficiary is the one (1) person who is the member's spouse and they are divorced on the date of the member's death, the contingent beneficiary or beneficiaries become the principal beneficiary or beneficiaries.
  - (c) If the member is survived by his principal beneficiary or beneficiaries who subsequently die prior to having on file at the retirement office the necessary forms prescribed under authority of KRS 61.590, the contingent beneficiary shall become the principal beneficiary or beneficiaries.
  - (d) If the deaths of all the principal beneficiaries and all of the contingent beneficiaries precede the death of the member, the estate of the member becomes the beneficiary.
- (3) Prior to the member's retirement, a monthly benefit payable for life shall not be offered if the beneficiary is more than one (1) person, the member's estate, or a trust or trustee.
- (4) When a notification of retirement has been filed at the retirement office:
- (a) The designation of beneficiary on the notification of retirement shall supersede the designation of all previous beneficiaries.
  - (b) The beneficiary designated by the member on the member's notification of retirement shall be one (1) person, the member's estate, or a trust or trustee.
  - (c) If the death of the beneficiary named on the notification of retirement precedes the date the first benefit payment has been issued by the State Treasurer, the member may designate another beneficiary on the member's notification of retirement.
- (5) After the first retirement allowance payment is issued by the State Treasurer and subsequent thereto, a member shall not have the right to change his beneficiary, except that:
- (a) The estate of the retired member becomes the beneficiary if the date of death of the beneficiary precedes or coincides with the date of death of the retired member.
  - (b) The estate of the retired member becomes the beneficiary if the retired member had designated a ~~person~~~~[spouse]~~ as beneficiary ***who was the spouse or who later married the member*** and they were divorced on the date of the retired member's death. An ex-spouse who was the named beneficiary on the member's notification of retirement shall be reinstated as the member's beneficiary for the payment options provided by KRS 61.635(2), (3), (4), and (8)(b) if they are remarried ***to each other*** as of the date of the retired member's death.
  - (c) The estate of the member shall not receive monthly payments if the member selected one (1) of the payment options provided by KRS 61.635(2), (3), (4), and (8)(b).

Section 13. KRS 61.545 is amended to read as follows:

- (1) The board shall determine by appropriate administrative regulations how much service in any year is the equivalent of a year of service credit and how much service in any calendar month is the equivalent of a month of service credit. It shall not allow credit for more than one (1) year of service for all service rendered in any

period of twelve (12) consecutive months except as provided in KRS 61.546 and in subsection (2) of this section.

- (2) (a) Employees participating in one (1) of the state-administered retirement systems who are or have been employed by a school board participating in the County Employees Retirement System, a state-operated school under KRS Chapter 167, or a Kentucky institution of higher education which participates in the Kentucky Employees Retirement System, to work less than twelve (12) months each year, may purchase the additional months of service credit needed to total one (1) year of service credit except the amount purchased shall not exceed three (3) months. The employee~~[-, the state-operated school under KRS Chapter 167, the Kentucky institution of higher education, or the school board]~~ may purchase the service credit by paying the retirement system the member and employer contributions calculated on the average monthly rate multiplied by the number of months to be purchased. The payment shall be received by the retirement system by December 31 immediately following the school year in which the fractional year's service occurred. If the additional service credit is not purchased by December 31 following the close of each school year, the member shall pay interest on the cost of purchasing the credit at a rate established by the board of trustees. Members who have service credit prior to July 1, 1992, or their employers, ***the state-operated school under KRS Chapter 167, the Kentucky institution of higher education, or the school board*** may purchase service credit ***on behalf of the employee*** for previous years by paying the retirement system the member and employer contributions calculated on the average monthly rate, multiplied by the number of months to be purchased plus interest at the actuarial rate.
- (b) The cost of service under this subsection may be paid by both the employer and employee. The employer shall pay the employer contributions plus interest and the employee shall pay the employee contributions plus interest. The payment by the employer shall not be deposited to the member's account. Service credit shall not be credited to the member's account until both the employer's and employee's payment are received by the retirement system.
- (3) (a) An employee who is simultaneously eligible for membership in more than one (1) retirement system administered by the Kentucky Retirement Systems may, at his option, choose to participate in only one (1) of those systems. The choice, once made, shall remain in effect so long as the employee is eligible for membership in more than one (1) system.
- (b) If the employee participates in more than one (1) of the retirement systems administered by the Kentucky Retirement Systems, the employee's service credit shall be divided between each system determined by dividing the employee's creditable compensation in each system by the employee's total creditable compensation in all systems.
- (c) If the employee earns creditable compensation in both a hazardous position, as defined by KRS 61.592, and a nonhazardous position, the employee's service credit shall be divided between the employee's hazardous and nonhazardous positions determined by dividing the employee's creditable compensation in the hazardous and nonhazardous positions by the employee's combined hazardous and nonhazardous creditable compensation.

Section 14. KRS 61.552 is amended to read as follows:

- (1) Any employee participating in one (1) of the state-administered retirement systems~~[- or an employee of a parted employer]~~ who has been refunded his accumulated contributions under the provisions of KRS 16.645(22), 61.625, or 78.545(15), thereby losing service credit, may regain the credit by paying to the system from which he received the refund or refunds the amount or amounts refunded with interest at a rate determined by the board of the respective retirement system. If the participating employee dies before regaining lost service credit, the employee's beneficiary, as designated according to the requirements of the employee's retirement system, may regain the credit by paying the amount refunded with interest at a rate determined by the board of the respective retirement system. Thereafter the beneficiary shall be entitled to the benefits that are payable based upon the deceased employee's total service credit. The provisions of KRS 161.470 shall be met in order to regain the credit in the Teachers' Retirement System. KRS 21.460 shall govern with respect to regaining credit in the Judicial Retirement Plan or Legislators' Retirement Plan. The beneficiary shall make the payment within one (1) year of the date of the employee's death. The payment, including interest as determined by the board, shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. The payments shall not be picked up, as described in KRS 61.560(4), by the employer.



- (2) Any employee participating in one (1) of the state-administered retirement systems who did not elect membership in the County Employees Retirement System, as provided in KRS 78.540(2), may obtain credit in the County Employees Retirement System for prior service and for current service by paying to the County Employees Retirement System a delayed contribution payment for the service he would have received had he elected membership. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.
- (3) Any employee participating in one (1) of the state-administered retirement systems who did not elect membership in the Kentucky Employees Retirement System, as provided in KRS 61.525(2), may obtain credit in the Kentucky Employees Retirement System for prior service and for current service by paying to the system a delayed contribution payment for the service he would have received had he elected membership. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.
- (4) An employee *participating in one (1) of the state-administered retirement systems* may obtain credit in the Kentucky Employees Retirement System for current service between July 1, 1956, and the effective date of participation of his department by paying to the system a delayed contribution payment for the service he would have received had his department participated on July 1, 1956. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments. Effective August 1, 1988, each employee of the Kentucky Racing Commission who was employed by the racing commission on the date that agency first participated in the Kentucky Employees Retirement System, whether or not the employee was eligible to participate in the retirement system on that date, shall receive current service credit for all employment with the racing commission from July 1, 1956, to the date the employee first began participating in the retirement system. The cost of the service credit shall be paid at the time of each member's retirement by the racing commission and shall be credited to the retirement allowance account.
- (5) (a) An employee *participating in one (1) of the state-administered retirement systems*~~[who is or was an employee of a county participating in the County Employees Retirement System which did not participate in the system effective July 1, 1958,]~~ may obtain credit in the County Employees Retirement System for current service between July 1, 1958, and the effective date of participation of his county by paying to the County Employees Retirement System a delayed contribution payment for the service he would have received had his county participated on July 1, 1958. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer.
- (b) An employee participating in the Kentucky Employees Retirement System or the County Employees Retirement System, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) may obtain credit for the period of his service with an area development district created pursuant to KRS 147A.050 or with a business development corporation created pursuant to KRS 155.001 to 155.230 if that service was not covered by a state-administered retirement system. The member shall pay to the retirement system in which he participates the full cost of the service credit purchased, as determined by the board's actuary. The employee may obtain credit for employment with a business development corporation only if the Kentucky Retirement Systems receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. Payment may be by lump sum or the employee may pay by increments.
- (6) After August 1, 2000~~[1988]~~, service credit obtained under *the* subsections~~[(1) to (5), (8) to (12), (14), (15), and (17) to (25)]~~ of this section *which do not require the employee to have a minimum number of years of service credit to be eligible to make a purchase* shall be disallowed and the recontribution of refund, including interest as determined by the board or other payment, if any, shall be paid to the member~~[, upon request,]~~ if the member does not obtain for service performed six (6) months' additional current service credit in one (1) of the state-administered retirement systems~~[or as an employee of a parted employer]~~. The service requirement shall be waived if the member dies or becomes disabled as provided for by KRS 61.600 *or Section 4 of this Act*.
- (7) The members shall not receive benefit of service for the same period of time in another public defined benefit retirement fund.
- (8) Any employee participating in one (1) of the state-administered retirement systems who has at least forty-eight (48) months' service if age sixty-five (65) or at least sixty (60) months' service if under age sixty-five (65) in one (1) of the retirement systems administered by the Kentucky Retirement Systems, who formerly worked for

a state university in a position which would have qualified as a regular full-time position had the university been a participating department, and who did not have the option to be covered at the university by a defined benefit retirement program, or did not participate in a retirement system which can be consolidated with other accounts pursuant to KRS 61.680(2), may obtain credit in the County Employees Retirement System, the Kentucky Employees Retirement System, or the State Police Retirement System for prior and current service by paying either retirement system a delayed contribution payment for the service he would have received had his period of university employment been covered by the County Employees, Kentucky Employees Retirement System, or State Police Retirement System. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum, or the employee may pay by increments.

- (9) (a) Effective August 1, 1980, any county participating in the County Employees Retirement System may purchase current service, between July 1, 1958, and participation date of the county, for present employees of the county who have obtained coverage under KRS 78.540(2);
- (b) Effective July 1, 1973, any department participating in the Kentucky Employees Retirement System may purchase current service between July 1, 1956, and participation date of the department, for present employees of the department who were employees on the participation date of the department and elected coverage under KRS 61.525(2);
- (c) Cost of the service credit purchased under this subsection shall be determined by computing the discounted value of the additional service credit based on an actuarial formula recommended by the board's consulting actuary and approved by the board. A department shall make payment for the service credit within the same fiscal year in which the option is elected. The county shall establish a payment schedule subject to approval by the board for payment of the service credit. The maximum period allowed in a payment schedule shall be ten (10) years with interest at the rate actuarially assumed by the board; however, a shorter period is desirable and the board may approve any schedule provided it is not longer than a ten (10) year period;
- (d) If a county or department elects the provisions of this subsection, any present employee who would be eligible to receive service credit under the provisions of this subsection and has purchased service credit under subsection (4) or (5) of this section shall have his payment for the service credit refunded with interest at the rate paid under KRS 61.575 or 78.640;
- (e) Any payments made by a county or department under this subsection shall be deposited to the retirement allowance account of the proper retirement system and these funds shall not be considered accumulated contributions of the individual members.
- (10) Interest paid by a member of the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System under this section or other similar statutes under KRS 16.510 to 16.652, KRS 61.515 to 61.705, or KRS 78.520 to 78.852 prior to June 19, 1976, shall be credited to the individual member's contribution account in the appropriate retirement system and considered as accumulated contributions of the member.
- (11) ~~Employees~~~~Members~~ who served as assistants to officers and employees of the General Assembly who were unable to acquire service under KRS 61.510(20) may purchase credit for the service performed after January 1, 1960, if the service purchased when added to other accumulated service will total at least forty-eight (48) months. Service credit under this section shall be obtained by the payment of a delayed contribution which shall not be picked up by the employer as described in KRS 61.560(4).
- (12) (a) Effective August 1, 1988, any employee participating in one (1) of the state-administered retirement systems may purchase service credit for seasonal, emergency, or temporary employment or part-time employment averaging one hundred (100) or more hours of work per month on a calendar or fiscal year basis. If the average number of hours of work is less than one hundred (100) per month, the member shall be allowed credit only for those months he receives creditable compensation for one hundred hours of work. The cost will be determined by computing the member and employer contributions for the period of time involved plus interest compounded annually at the current actuarial rate, which shall not be picked up by the employer as described in KRS 61.560(4).
- (b) Any noncertified employee of a school board may purchase service credit for part-time employment prior to the 1990-91 school year which averaged eighty (80) or more hours of work per month on a calendar or fiscal year basis by paying to the County Employees Retirement System a delayed

contribution payment. The delayed contribution payment shall not be picked up, as described in KRS 78.610(4), by the employer. Payment may be by lump sum or the employee may pay by increments. If the average number of hours of work is less than eighty (80) per month, the noncertified employee of a school board shall be allowed credit only for those months he receives creditable compensation for eighty (80) hours of work. The cost will be determined by computing the member and employer contributions for the period of time involved plus interest compounded annually at the current actuarial rate, which shall not be picked up by the employer as described in KRS 78.610(4).

- (13) A retired member, who is contributing to one (1) of the state-administered retirement programs and purchases service credit under this section in the system or systems from which he is retired, shall have his retirement allowance recomputed:
  - (a) Upon termination from employment, if the member is contributing to the same system or systems from which he was retired; or
  - (b) Upon completion of six (6) months' service credit as required under subsection (6) of this section, if the member is contributing to a system other than the system or systems from which he is retired.
- (14) Any employee participating in one (1) of the state-administered retirement systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) may obtain credit for prior or current service for any period of approved educational leave, or for agency-approved leave to work for a work-related labor organization if the agency subsequently participated in the County Employees Retirement System, by paying to the respective retirement system a delayed contribution payment. The employee may also obtain credit for agency-approved leave to work for a work-related labor organization if the agency subsequently participated in the County Employees Retirement System, but only if the Kentucky Retirement Systems receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer, and shall be deposited to the individual member's account.
- (15) Any employee participating in one (1) of the state-administered retirement systems may obtain credit for prior or current service for any period of approved maternity leave ~~granted prior to January 1, 1972~~, or for any period of approved sick leave without pay, by paying to the respective retirement system a delayed contribution payment. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer, and shall be deposited to the individual member's account.
- (16) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems may purchase service credit under any of the provisions of KRS 16.510 to 16.652, KRS 61.515 to 61.705, or KRS 78.520 to 78.852 by making installment payments in lieu of a lump-sum payment.
  - (a) The cost of the service shall be computed in the same manner as for a lump-sum payment which shall be the principal; and interest, at the actuarial rate in effect at the time the member elects to make the purchase compounded annually, shall be added for the period that the installments are to be made. Multiple service purchases may be combined under a single installment purchase; however, no employee may make more than one (1) installment purchase at the same time. ***Once multiple service purchases have been combined in an installment purchase, the employee may not separate the purchases or pay a portion of one of the purchases.*** The employee may elect to stop the installment payments by notifying the retirement system; may have the installment purchase recalculated to add one (1) or more additional service purchases; or may pay by lump sum the remaining principal.
  - (b) Twelve (12) consecutive monthly installment payments shall be made for each one thousand dollars (\$1,000) or any part thereof of the total cost, except that the total number of installments shall not be less than twelve (12) and shall not exceed sixty (60).
  - (c) The employee shall pay the installments by payroll deduction each pay period. Upon notification by the retirement system, the employer shall report the installment payments separate from regular employee contributions on the forms or by the computer format specified by the board. The payments made under this subsection shall be considered accumulated contributions of the member and shall not be picked up by the employer pursuant to KRS 61.560(4) and no employer contributions shall be paid on the installments.
  - (d) The retirement system shall determine how much of the total cost represents payment for one (1) month of the service to be purchased and shall credit one (1) month of service to the member's account each

time this amount has been paid. The first service credited shall represent the first calendar month of the service to be purchased and each succeeding month of service credit shall represent the succeeding months of that service.

- (e) If the employee *elects to stop the installment payments*, dies, retires, or does not continue employment in a position required to participate in the retirement system, the member, or in the case of death, the beneficiary, shall have sixty (60) days to pay the remaining principal of the purchase by lump sum. If the member or beneficiary does not pay the remaining cost, the retirement system shall refund to the member or the beneficiary the payment, payments, or portion of a payment that does not represent a full month of service purchased.
  - (f) If the employer does not report installment payments on an employee for sixty (60) days, the installment purchase shall cease and the retirement system shall refund to the employee the payment, payments, or portion of a payment that does not represent a full month of service purchased.
  - (g) If payments have ceased under paragraph(e) or (f) of this subsection and the member later becomes a participating employee in one (1) of the three (3) systems administered by Kentucky Retirement Systems, the employee may complete the adjusted original installment purchase by lump sum or installment payments. If the employee elects to renew the installment purchase, the cost of the remaining service shall be recalculated in accordance with paragraph (a) of this subsection. If the original installment purchase was for multiple service purchases, the employee may not separate those purchases under a new installment purchase.
  - (h) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems may purchase service credit under any of the provisions of KRS 16.510 to 16.652, KRS 61.515 to 61.705, or KRS 78.520 to 78.852 by transferring funds *pursuant to the rules in 26 U.S.C. sec. 401(a)(31)* directly from a retirement plan *or a deferred compensation arrangement* maintained by his employer which is a qualified plan pursuant to *26 U.S.C. sec. 401(a)*. *Service credit may also be purchased*~~[Section 401(a) of the Internal Revenue Code or]~~ by a rollover of funds from *a qualified retirement*~~[the]~~ plan pursuant to the rules specified in *26 U.S.C. sec. 402(c)*.~~[Section 402(c) of the Internal Revenue Code and]~~ The Kentucky Retirement Systems shall accept the transfer or rollover to the extent permitted under the rules specified in *26 U.S.C. secs. [Section] 402(c) and [Section] 401(a)(31)*~~[of the Internal Revenue Code]~~. The amount shall be credited to the individual member's contribution account in the appropriate retirement system and shall be considered accumulated contributions of the member.
- (17) After August 1, 1998, any employee participating in one (1) of the state-administered retirement systems who is age sixty-five (65) or older and has forty-eight (48) months' service credit in the Kentucky Employees Retirement System or the County Employees Retirement System or, if younger, who has sixty (60) months' service credit in the Kentucky Employees Retirement System or the County Employees Retirement System may purchase credit in the system in which the employee has the service credit for up to ten (10) years service in a regular full-time position that was credited to a state or local government-administered public defined benefit plan in another state other than a defined benefit plan for teachers. The employee shall pay the full cost of the service as determined by the system. Payment may be by lump sum, or the employee may pay by increments. The employee may transfer funds directly from the other state's plan if eligible to the extent permitted under subsection (16)(h) of this section and to the extent permitted by the other state's laws and shall provide proof that he is not eligible for a retirement benefit for the period of service from the other state's plan.
- (18) After August 1, 1998, any employee participating in one (1) of the state-administered retirement systems, who has sixty (60) or more months of service in the State Police Retirement System or in a hazardous position in the Kentucky Employees Retirement System or the County Employees Retirement System, may purchase credit in the system in which the employee has the sixty (60) months of service credit for up to ten (10) years of service in a regular full-time position that was credited to a defined benefit retirement plan administered by a state or local government in another state, if the service could be certified as hazardous pursuant to KRS 61.592. The employee shall pay the full cost of the service credit as determined by the system. Payment may be by lump sum or by increments. The employee may transfer funds directly from the other unit of government's plan if eligible to the extent permitted under subsection (16)(h) of this section and to the extent permitted by the other state's laws, and the employee shall provide proof that he is not eligible for a retirement benefit for the period of service from the other unit of government's plan.

- (19) Any employee participating in one (1) of the state-administered retirement systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) who has completed service as a volunteer in the Kentucky Peace Corps, created by KRS 154.01-720, may purchase service credit for the time served in the corps by making delayed contribution payments.
- (20) An employee participating in any state-administered retirement system who has at least forty-eight (48) months' service if age sixty-five (65), or at least sixty (60) months' service if under age sixty-five (65), and who was formerly employed in a regional community mental health and mental retardation services program, organized and operated under the provisions of KRS 210.370 to 210.480, which does not participate in a state-administered retirement system may obtain credit for the period of his service in the regional community mental health and mental retardation program, by paying to the state retirement system in which he participates the full cost of the service credit purchased, as determined by the system. Payment to one (1) of the retirement systems administered by the Kentucky Retirement Systems may be made by lump sum or in increments.
- (21) An employee participating in any state-administered retirement system who has at least forty-eight (48) months' service if age sixty-five (65) or at least sixty (60) months' service if under age sixty-five (65), who was employed by a vocational technical school in a noncertified part-time position averaging eighty (80) or more hours per month, determined by using the number of months actually worked within a calendar or fiscal year, may purchase service credit in the Kentucky Employees Retirement System. The cost of the service shall be determined by computing the member and employer contributions for the period of time involved plus interest compounded annually at the current actuarial rate, which shall not be picked up by the employer as described in KRS 61.560(4).
- (22) Any employee participating in one (1) of the state-administered retirement systems on June 30, 2000, may obtain credit for subsequent service with a parted employer from the Commonwealth operating for the purposes of KRS 163.475, by paying to the respective retirement system a delayed contribution payment if the respective retirement system receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. The delayed contribution payment shall be deposited to the individual member's account. The delayed contribution payment shall not be picked up by the employer as described in KRS 61.560(4).
- (23) Any employee participating in the County Employees Retirement System who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) may purchase service credit for service with a city, county, or joint city-county planning commission, if that service was not covered by a state-administered retirement system. Notwithstanding any statute to the contrary, the employee shall be entitled to a full month of service for each month or portion of month that the employee occupied the position whether or not the employee would have qualified, at the time of planning commission service, for the service under KRS 6.525. The employee shall pay to the retirement system the full cost of the service credit purchased, as determined by the board's actuary. The payment shall not be picked up, as described in KRS 78.610(4), by the employer and shall be deposited to the member's account. Payment may be by lump sum or in increments. The employee may obtain credit for service with a city, county, or joint city-county planning commission only if the Kentucky Retirement Systems receives a favorable letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor.
- (24)
  - (a) Any member or retired member of one (1) of the retirement systems administered by the Kentucky Retirement Systems who is entitled to service credit for employment which was not reported in accordance with KRS 16.543, 61.543, or KRS 78.615 may obtain credit for the service by paying the employee contributions due within six (6) months of notification by the system. No interest shall be added to the contributions. The service credit shall not be credited to the member's account until the employer contributions are received. If a retired member makes the payment within six (6) months, the retired member's retirement allowance shall be adjusted to reflect the added service after the employer contributions are received by the retirement system.
  - (b) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who is entitled to service credit under paragraph (a) of this subsection and who has not repaid the employee contributions due within six (6) months of notification by the system may regain the credit after the six (6) months by paying to the system the employee contributions plus interest at the actuarially assumed rate from the date of initial notification under paragraph (a) of this subsection. Service credit shall not be credited to the member's account until the employer contributions are

received by the retirement system. The payments shall not be picked up, as described in KRS 61.560(4), by the employer.

- (25) Any employee participating in one (1) of the state-administered retirement systems may purchase service credit for employment with a public agency that would have been eligible to participate under KRS 61.520 but which did not participate in the Kentucky Employees Retirement System or a political subdivision that would have been eligible to participate under KRS 78.530 but which did not participate in the County Employees Retirement System if the former public agency or political subdivision has merged with or been taken over by a participating department or county. The cost of the service shall be determined as a delayed contribution payment for the respective retirement system. Payment may be made by lump sum or in increments. The payment shall not be picked up, as described in KRS 61.560(4) or KRS 78.610(4), by the employer.
- (26) Any employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems on or after August 1, 1998, who has at least two hundred forty (240) months of service credit may purchase a combined maximum total of five (5) years of retirement service credit which is not otherwise purchasable under any of the provisions of KRS 16.510 to 16.652, KRS 61.510 to 61.705, and KRS 78.510 to 78.852. The purchase price for the retirement service credit shall be calculated and paid for based on the full actuarial cost as determined by the system. The payment shall not be picked up, as described in KRS 16.545(4), KRS 61.560(4), KRS 78.610(4), by the employer, and the employee's payment shall be paid into the individual member's contribution account in the appropriate retirement system and shall be considered accumulated contributions of the member. Payment by the member may be by lump sum or by increments.
- (27) *An employee participating in one (1) of the state-administered retirement systems, who has at least forty-eight (48) months of service if age sixty-five (65), or at least sixty (60) months of service if under age sixty-five (65), may obtain credit in the County Employees Retirement System for the period of that employee's service with a community action agency created under KRS 273.405 to 273.453 if that service was not covered by a state-administered retirement system. The member shall pay to the retirement system the full actuarial cost of the service credit purchased. Payment may be made by lump sum or in increments. The payment shall not be picked up, as described in KRS 61.560(4) or 78.610(4), by the employer.*

Section 15. KRS 61.555 is amended to read as follows:

- (1) After August 1, 1998, any employee entering the Armed Forces of the United States after he first participates in the system, being on leave of absence from service and not withdrawing his accumulated contributions, shall be entitled to have credited as current service his period of active military duty in the Armed Forces of the United States, not to exceed six (6) years, if his discharge therefrom is honorable and he returns to work with an employer participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems within two (2) years after ***completion of the period of active military duty***~~[discharge]~~, or upon the subsequent termination of any total disability which existed at the expiration of the two (2) years after discharge.
- (2) After August 1, 1998, any ~~employee~~~~[member of the system]~~ who, prior to the date he first participated in the system, terminated his employment in order to enter the Armed Forces of the United States and who returns to work with an employer participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems within two (2) years after ***completion of the period of active military duty***~~[this honorable discharge therefrom]~~, or upon the subsequent termination of any total disability which existed at the expiration of the two (2) years after discharge, shall be entitled to have credited as prior service his period of active military duty in the Armed Forces, not to exceed six (6) years.
- (3) Any National Guard technician involuntarily serving on active military duty during the period between January 26, 1968, and January 1, 1970, who completes his eight (8) years' service while on military duty during this period, shall have that portion of his active military duty, necessary to the completion of eight (8) years' current service, credited to his account, as current service without having to meet the reemployment criteria.
- (4) Any employee eligible for retirement as prescribed in KRS 61.559 or any employee upon completion of five (5) years of service shall receive current service credit for a maximum of four (4) years for his period of active military duty in the Armed Forces of the United States, if his discharge therefrom is honorable and he has not been credited with the service under subsections (1) to (3) of this section if he pays thirty-five percent (35%) of the cost of the service based on the formula adopted by the board. The payment by the member shall not be picked up by the employer, as described in KRS 61.560(4), and shall be deposited to his individual member's account. The remaining sixty-five percent (65%) shall be paid by the state from funds appropriated specifically for the purpose and these payments shall be deposited to the respective retirement allowance accounts. If no

funds are available in the special appropriation account, the system shall not accept employee payments until funds are available in the account.

- (5) ***Any employee participating in one (1) of the state-administered retirement systems***~~[A member]~~ eligible to purchase military service credit under subsection (4) of this section shall receive current service credit for active military duty as provided under subsection (4) of this section without payment of the current employee contribution ratio if the member was taken prisoner by a hostile power at any time during active military service.
- (6) (a) Any ***employee participating in one (1) of the state-administered retirement systems***~~[member]~~ age sixty-five (65) or older who has forty-eight (48) months of service, at least twelve (12) of which are current service, or ***if younger***~~[any other member]~~ who has sixty (60) months of service, at least twelve (12) of which are current service~~[(or his beneficiary if the member dies prior to retirement)]~~ shall receive current service for a maximum of four (4) years for his period of active military duty in the Armed Forces of the United States, if his discharge therefrom is honorable and he has not been credited with the service under subsections (1) to (4) of this section, by paying the retirement system a delayed contribution payment as defined in KRS 61.510(22). Payment shall be by lump sum, except that members may pay by increments. The delayed contribution payment shall not be picked up, as described KRS 61.560(4), by the employer and shall be deposited to the individual member's account.
- (b) ***After August 1, 2000, an employee who purchased the maximum period of active military duty described in paragraph (a) of this subsection may purchase any qualified active military duty time in excess of the maximum by paying the retirement system the full actuarial cost as determined by the system. Payment may be made by lump sum or in increments. The payment shall not be picked up by the employer as described in KRS 16.545(4), 61.560(4), or 78.610(4) and shall be deposited in the member's individual retirement account.***
- (7) Effective July 1, 1978, no veteran shall be eligible to purchase military service credit under this section if he is receiving a military pension or is eligible for such pension in the future; but nothing in this section shall prohibit the purchase of credit if the military pension results from service primarily on inactive duty in a reserve component of the Armed Forces, or if the military pension is a disability pension, or is for a veteran sixty-five (65) years of age or older who is considered permanently and totally disabled. Any veteran receiving a military disability pension who retired prior to July 15, 1986, who was unable to purchase military service credit pursuant to subsection (4) or subsection (6) of this section, may make the payment required by subsection (4) or subsection (6), and his retirement benefits shall be recalculated to apply to all retirement allowances and insurance benefits received after the date of the payment. Retiree payments pursuant to subsection (4) of this section shall not be accepted unless matching state funds are available in the special appropriation account.
- (8) Any ***employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems***~~[member of the Kentucky Employees Retirement System]~~ age sixty-five (65) or older who has forty-eight (48) months of service, at least twelve (12) of which are current service, or ***if younger***~~[any member of the Kentucky Employees Retirement System or the State Police Retirement System]~~ who has sixty (60) months of service, at least twelve (12) of which are current service, shall receive one (1) month of current service for each six (6) months of service in the National Guard or the military reserves of the United States, by paying the retirement system the full actuarial cost as determined by the system. The service shall be treated as service earned prior to participation in the system and shall not be included in the member's final compensation. Payment may be made by lump sum or in increments. The payment shall not be picked up by the employer, as described in KRS 16.545(4), 61.560(4), or 78.610(4) and shall be deposited in the member's individual retirement account.

Section 16. KRS 61.575 is amended to read as follows:

- (1) The members' contribution account shall be the account to which all members' contributions, or contributions picked up by the employer after August 1, 1982, and interest allowances as provided in KRS 61.510 to 61.692 shall be credited. From this account shall be paid the accumulated contributions of a member required to be returned to him upon withdrawal, or paid in the event of his death before retirement. ***Prior to the member's retirement, death, or refund in accordance with Section 21 of this Act, no funds shall be made available from the member contribution account.***
- (2) Each member's contribution or contribution picked up by the employer shall be credited to the individual account of the contributing member.

- (3) Each member on June 30 of each year shall have his individual account credited with interest at a rate determined by the board but not less than two percent (2%) per annum on the accumulated contributions of the member on June 30 of the preceding fiscal year and the amounts so credited shall be transferred from the retirement allowance account.
- (4) Upon the retirement of a member, his accumulated contributions shall be transferred from the members' contribution account to the retirement allowance account.

Section 17. KRS 61.592 is amended to read as follows:

- (1) "Hazardous position" means any position whose principal duties involve active law enforcement, including the positions of probation and parole officer and Commonwealth detective, active fire suppression or prevention, or other positions, including, but not limited to, pilots of the Transportation Cabinet and paramedics and emergency medical technicians, with duties that require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning. Hazardous positions shall include positions in the Department of Corrections in state correctional institutions and the Kentucky Correctional Psychiatric Center with duties that regularly and routinely require face-to-face contact with inmates.
- (2) Each employer may request of the board hazardous duty coverage for those positions as defined in subsection (1) of this section, but a county, narrowly defined as one (1) of Kentucky's one hundred and twenty (120) counties, the provisions of KRS 78.510(3) notwithstanding, shall request hazardous duty coverage for its full-time paid firefighters. Upon request, each employer shall certify to the system, in the manner prescribed by the board, the names of all employees working in a hazardous position as defined in subsection (1) of this section for which coverage is requested. The certification of the employer shall bear the approval of the agent or agency responsible for the budget of the department or county indicating that the required employer contributions have been provided for in the budget of the employing department or county. The system shall determine whether the employees whose names have been certified by the employer are working in positions meeting the definition of a hazardous position as provided by subsection (1) of this section.
- (3)
  - (a) An employee participating in the Kentucky Employees Retirement System who is determined by the system to be working in a hazardous position in accordance with subsection (2) of this section shall contribute, for each pay period for which he receives compensation, seven percent (7%) of his creditable compensation. An employee participating in the County Employees Retirement System who is determined by the system to be working in a hazardous duty position in accordance with subsection (2) of this section shall contribute, for each pay period for which he receives compensation, eight percent (8%) of his creditable compensation;
  - (b) Each employer shall pay employer contributions based on the creditable compensation of the employees determined by the system to be working in a hazardous position at the employer contribution rate as determined by the board. The rate shall be determined by actuarial methods consistent with the provisions of KRS 61.565;
  - (c) If the employer participated in the system prior to electing hazardous duty coverage, the employer may pay to the system the cost ***of converting [in order that] the nonhazardous service to hazardous service from the date of participation to the date the payment is made [be credited as hazardous service]***, or the employer may establish a payment schedule for payment of the cost of the hazardous service above that which would be funded within the existing employer contribution rate. The employer may extend the payment schedule to a maximum of thirty (30) years. Payments made by the employer under this subsection shall be deposited to the retirement allowance account of the proper retirement system and these funds shall not be considered accumulated contributions of the individual members. If the employer elects not to make the additional payment, the employee may make the lump-sum payment in his own behalf or may pay by increments. Payments made by the employee under this subsection shall not be picked up, as described in KRS 61.560(4), by the employer. If neither the employer nor employee makes the payment, the service prior to hazardous coverage shall remain nonhazardous.
- (4) Except for the employee contribution by members of the Kentucky Employees Retirement System, the normal retirement age, retirement allowance, other benefits, eligibility requirements, rights, and responsibilities of a member in a hazardous position, as prescribed by subsections (1), (2), and (3) of this section, and the responsibilities, rights, and requirements of his employer shall be as prescribed for a member and employer participating in the State Police Retirement System as provided for by KRS 16.510 to 16.652. The employee contribution for a member of the Kentucky Employees Retirement System shall be seven percent (7%).



- (5) Any person employed in a hazardous position after July 1, 1972, shall be required to undergo a thorough medical examination by a licensed physician, and a copy of the medical report of the physician shall be retained on file by the employee's department or county and made available to the system upon request.
- (6) If doubt exists regarding the benefits payable to a hazardous position employee under this section, the board shall determine the benefits payable under KRS 61.515 to 61.705, or 78.520 to 78.852, or 16.510 to 16.652.

Section 18. KRS 61.590 is amended to read as follows:

- (1) A member or beneficiary eligible to receive retirement benefits under any of the provisions of KRS 61.510 to 61.705, KRS 78.510 to 78.852, and KRS 16.510 to 16.652 shall have on file at the retirement office on the form prescribed by the board, notification of retirement, giving his name, address, Social Security number, last day of employment, and other information the system may require. ***The notification of retirement shall not be filed more than six (6) months before the member's effective retirement date.***
- (2) Within ten (10) days of the receipt of the notification of retirement form ***submitted within two (2) months of the effective date of retirement***, the system shall cause to be prepared an estimate of the amounts the member or beneficiary may expect to receive under the various plans available to the member or beneficiary. This information shall be recorded on a form entitled "Estimated Retirement Allowance" and forwarded to the member or beneficiary. ***If the member submits a notification of retirement form more than two (2) months prior to the effective retirement date, the system shall provide the estimated retirement allowance within forty-five (45) days of the member's effective retirement date.***
- (3) The member or beneficiary shall file at the retirement office the form entitled "Estimated Retirement Allowance" after he has checked the plan of his choice, signed the document and had his signature witnessed. A member or beneficiary may not select a different plan after the first retirement allowance payment has been issued by the State Treasurer.
- (4) A member or beneficiary choosing a monthly payment plan shall have on file at the retirement office his birth certificate or other acceptable evidence of date of birth. If a survivorship plan is chosen, proof of dates of birth of the beneficiary and member shall be on file at the retirement office.
- (5) The effective date of normal retirement shall be the first month following the month in which employment was terminated from a regular full-time position. The effective date of disability retirement shall be the first month following the month in which the member's last day of paid employment in a regular full-time position occurred. The effective date of early retirement shall be the first month following the month the notification of retirement form is filed at the retirement office, if employment in a regular full-time position has been terminated.
- (6) The effective date of a deferred retirement option as provided under KRS 16.576(5) shall be the month following age sixty-five (65), or the month following written notification from the member that he wishes to begin receiving retirement payments. In the event of the death of a member who has deferred his retirement allowance, the effective date of retirement shall be the month following the member's death.
- (7) Notwithstanding the provisions of KRS 16.578 or 61.640, the effective date of a beneficiary's retirement allowance under normal, early, or disability retirement shall be as prescribed in subsection (5) or (6) of this section if the member dies before the first retirement allowance has been issued by the State Treasurer and his beneficiary becomes eligible for payments under KRS 16.578 or 61.640.

Section 19. KRS 61.600 is amended to read as follows:

- (1) Any person may qualify to retire on disability, subject to the following conditions:
  - (a) The person shall have sixty (60) months of service, twelve (12) of which shall be current service credited under KRS 16.543(1), 61.543(1) or 78.615(1);
  - (b) The person shall ***not be eligible for an unreduced retirement allowance***~~less than normal retirement age~~;
  - (c) The person's application shall be on file in the retirement office no later than ***twenty-four (24)***~~twelve (12)~~ months after the person's last day of paid employment, as defined in KRS 61.510, in a regular full-time position, as defined in KRS 61.510 or KRS 78.510;
  - (d) The person shall receive a satisfactory determination pursuant to KRS 61.665; and

- (e) ~~A[No] person's~~ disability application based on the same claim of incapacity shall be accepted and ~~reconsidered[considered]~~ for disability ~~if[for any person who has previously applied for and been denied disability benefits unless it is]~~ accompanied by **new objective medical** evidence~~[of a substantial change in the person's condition which shall satisfy subsection (4) of this section]~~. The application shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment in a regular full-time position.
- (2) Upon the examination of the objective medical evidence by licensed physicians pursuant to KRS 61.665, it shall be determined that:
  - (a) The person, since his last day of paid employment, has been mentally or physically incapacitated to perform the job, or jobs of like duties, from which he received his last paid employment. In determining whether the person may return to a job of like duties, any reasonable accommodation by the employer as provided in 42 U.S.C. sec. 12111(9) and 29 C.F.R. Part 1630 shall be considered;
  - (b) The incapacity is a result of bodily injury, mental illness, or disease. For purposes of this section, "injury" means any physical harm or damage to the human organism other than disease or mental illness;
  - (c) The incapacity is deemed to be permanent; and
  - (d) The incapacity does not result directly or indirectly from bodily injury, mental illness, disease, or condition which pre-existed membership in the system or reemployment, whichever is most recent. For purposes of this subsection, reemployment shall not mean a change of employment between employers participating in the retirement systems administered by the Kentucky Retirement Systems with no loss of service credit.
- (3) Paragraph (d) of subsection (2) shall not apply if:
  - (a) The incapacity is a result of bodily injury, mental illness, disease, or condition which has been substantially aggravated by an injury or accident arising out of or in the course of employment; or
  - (b) The person has at least sixteen (16) years' current or prior service for employment with employers participating in the retirement systems administered by the Kentucky Retirement Systems.
- (4)
  - (a)
    1. An incapacity shall be deemed to be permanent if it is expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months from the person's last day of paid employment in a regular full-time position.
    2. The determination of a permanent incapacity shall be based on the medical evidence contained in the member's file and the member's residual functional capacity and physical exertion requirements.
  - (b) The person's residual functional capacity shall be the person's capacity for work activity on a regular and continuing basis. The person's physical ability shall be assessed in light of the severity of the person's physical, mental, and other impairments. The person's ability to walk, stand, carry, push, pull, reach, handle, and other physical functions shall be considered with regard to physical impairments. The person's ability to understand, remember, and carry out instructions and respond appropriately to supervision, coworkers, and work pressures in a work setting shall be considered with regard to mental impairments. Other impairments, including skin impairments, epilepsy, visual sensory impairments, postural and manipulative limitations, and environmental restrictions, shall be considered in conjunction with the person's physical and mental impairments to determine residual functional capacity.
  - (c) The person's physical exertion requirements shall be determined based on the following standards:
    1. Sedentary work shall be work that involves lifting no more than ten (10) pounds at a time and occasionally lifting or carrying articles such as large files, ledgers, and small tools. Although a sedentary job primarily involves sitting, occasional walking and standing may also be required in the performance of duties.
    2. Light work shall be work that involves lifting no more than twenty (20) pounds at a time with frequent lifting or carrying of objects weighing up to ten (10) pounds. A job shall be in this category if lifting is infrequently required but walking and standing are frequently required, or if the job primarily requires sitting with pushing and pulling of arm or leg controls. If the person has the ability to perform substantially all of these activities, the person shall be deemed capable

of light work. A person deemed capable of light work shall be deemed capable of sedentary work unless the person has additional limitations such as the loss of fine dexterity or inability to sit for long periods.

3. Medium work shall be work that involves lifting no more than fifty (50) pounds at a time with frequent lifting or carrying of objects weighing up to twenty-five (25) pounds. If the person is deemed capable of medium work, the person shall be deemed capable of light and sedentary work.
4. Heavy work shall be work that involves lifting no more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing up to fifty (50) pounds. If the person is deemed capable of heavy work, the person shall also be deemed capable of medium, light, and sedentary work.
5. Very heavy work shall be work that involves lifting objects weighing more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing fifty (50) or more pounds. If the person is deemed capable of very heavy work, the person shall be deemed capable of heavy, medium, light, and sedentary work.

~~{(5) Persons who have previously qualified for disability retirement and have had benefits discontinued shall be reevaluated under the criteria of subsection (2) of this section.}~~

Section 20. KRS 61.605 is amended to read as follows:

Upon disability retirement, an employee may receive an annual retirement allowance payable monthly during his lifetime which shall be determined in the same manner as for retirement at his normal retirement date with years of service and final compensation being determined as of the date of his disability except that service credit shall be added to the employee's total service beginning with his last date of paid employment and continuing to his sixty-fifth (65th) birthday; however, the maximum service credit added shall not exceed the total service the employee had upon his last day of paid employment, and the maximum combined service credit for calculating his disability retirement allowance, including total service and added service shall not exceed twenty-five (25) years. If, however, an employee has accumulated twenty-five (25) or more years of total service, he shall receive added service necessary to bring his combined service credit, including total and added service, to **twenty-seven (27)**~~{thirty (30)}~~ years.~~{When the employee has accumulated total service of thirty (30) or more years, his total service shall be used in computing disability benefits. For employees hired on or after July 15, 1998, the total service and added service for determining disability benefits shall not exceed twenty-seven (27) years.}~~

Section 21. KRS 61.625 is amended to read as follows:

- (1) A member if living, or if not living, his designated beneficiary, shall have the right to request a refund of his accumulated contributions, including the amount of any employee contributions picked up by the employer pursuant to KRS 61.560(4), reduced by the amount of any retirement allowances previously received if:
  - ~~(a) the member's employment has been terminated and the member is not participating in the same retirement system;~~
  - ~~(b) The member is employed in an employment status as defined in KRS 61.510(21)(a) to (d) that does not require the member to participate in the system; or~~
  - ~~(c) The member has been laid off for ninety (90) days or more.~~
- (2) Payments made under this section shall be in lieu of any other benefits due for the period of service under any of the provisions of KRS 16.510 to 16.652, 61.515 to 61.705, and 78.520 to 78.852, unless the period of service is regained as provided under KRS 61.552. Payments of taxable distributions made pursuant to this section shall be subject to state and federal tax as appropriate.
- (3) Refund of contributions of members whose benefits have been terminated pursuant to KRS 6.696 shall be governed by that section.

Section 22. KRS 61.637 is amended to read as follows:

- (1) A retired member who is receiving monthly retirement payments under any of the provisions of KRS 61.515 to 61.705 and 78.520 to 78.852 and who is reemployed as an employee by a participating agency **prior to August 1, 1998**, shall have his retirement payments suspended for the duration of reemployment, except as provided in subsection (7) of this section. Monthly payments shall not be suspended for a retired member who is

reemployed if he anticipates that he will receive less than the maximum permissible earnings as provided by the Federal Social Security Act in compensation as a result of reemployment during the calendar year. The payments shall be suspended at the beginning of the month in which the reemployment occurs.

- (2) Employer and employee contributions shall be made as provided in KRS 61.515 to 61.705 and 78.520 to 78.852 on the compensation paid during reemployment, except where monthly payments were not suspended as provided in subsection (1) of this section or would not increase the retired member's last monthly retirement allowance by at least one dollar (\$1), and the member shall be credited with additional service credit.
- (3) In the month following the termination of reemployment, retirement allowance payments shall be reinstated under the plan under which the member was receiving payments prior to reemployment.
- (4)
  - (a) Notwithstanding the provisions of this section, the payments suspended in accordance with subsection (1) of this section shall be paid retroactively to the retired member, or his estate, if he does not receive more than the maximum permissible earnings as provided by the Federal Social Security Act in compensation from participating agencies during any calendar year of reemployment;
  - (b) If the retired member is paid suspended payments retroactively in accordance with this section, employee contributions deducted during his period of reemployment, if any, shall be refunded to the retired employee, and no service credit shall be earned for the period of reemployment;
  - (c) If the retired member is not eligible to be paid suspended payments for his period of reemployment as an employee, his retirement allowance shall be recomputed under the plan under which the member was receiving payments prior to reemployment as follows:
    1. The retired member's final compensation shall be recomputed using creditable compensation for his period of reemployment; however, the final compensation resulting from the recalculation shall not be less than that of the member when his retirement allowance was last determined;
    2. If the retired member initially retired on or subsequent to his normal retirement date, his retirement allowance shall be recomputed by using the formula in KRS 61.595(1);
    3. If the retired member initially retired prior to his normal retirement date, his retirement allowance shall be recomputed using the formula in KRS 61.595(2), except that the member's age used in computing benefits shall be his age at the time of his initial retirement increased by the number of months of service credit earned for service performed during reemployment;
    4. The retirement allowance payments resulting from the recomputation under this subsection shall be payable in the month following the termination of reemployment in lieu of payments under subparagraph 3. The member shall not receive less in benefits as a result of the recomputation than he was receiving prior to reemployment or would receive as determined under KRS 61.691;
    5. Any retired member who was reemployed prior to March 26, 1974, shall begin making contributions to the system in accordance with the provisions of this section on the first day of the month following March 26, 1974.
- (5) A retired member, or his estate, shall pay to the retirement fund the total amount of payments which are not suspended in accordance with subsection (1) of this section if the member received more than the maximum permissible earnings as provided by the Federal Social Security Act in compensation from participating agencies during any calendar year of reemployment, except the retired member or his estate may repay the lesser of the total amount of payments which were not suspended or fifty cents (\$0.50) of each dollar earned over the maximum permissible earnings during reemployment if under age sixty-five (65), or one dollar (\$1) for every three dollars (\$3) earned if over age sixty-five (65).
- (6)
  - (a) "Reemployment" or "reinstatement" as used in this section shall not include a retired member who has been ordered reinstated by the Personnel Board under authority of KRS 18A.095; and
  - (b) A retired member who has been ordered reinstated by the Personnel Board under authority of KRS 18A.095 or by court order or by order of the Human Rights Commission and accepts employment by an agency participating in the Kentucky Employees Retirement System or County Employees Retirement System shall void his retirement by reimbursing the system in the full amount of his retirement allowance payments received.
- (7) If a member is retired from a hazardous position, as defined by KRS 61.592, the member shall be permitted to seek and hold an elected city or county office under the provisions of this subsection:

- (a) The member may receive the pay for the elected city or county office but shall not contribute to, receive benefits from, or otherwise participate in the office's retirement system; and
  - (b) The member's pension and benefits received because of retirement from the hazardous position shall not be affected if he holds an elected city or county office.
- (8) Effective August 1, 1998, the provisions of subsections (1) to (4) of this section shall no longer apply to a retired member who is reemployed in a position covered by the same retirement system from which the member retired. Reemployed retired members shall be treated as new members upon reemployment. Any retired member whose reemployment date preceded August 1, 1998, who does not elect, within sixty (60) days of notification by the retirement systems, to remain under the provisions of subsections (1) to (4) of this section shall be deemed to have elected to participate under this subsection.
- (9) *A retired member or his employer shall notify the retirement system if he has accepted employment with an agency that participates in the retirement system from which the member retired.*
- (10) *If the retired member is under a contract, the member shall submit a copy of that contract to the retirement system, and the retirement system shall determine if the member is an independent contractor for purposes of retirement benefits.*
- (11) *If a member is receiving a retirement allowance, or has filed the forms required for a retirement allowance, and is employed within one (1) month of the member's initial retirement date in a position that is required to participate in the same retirement system from which the member retired, the member's retirement shall be voided and the member shall repay to the retirement system all benefits received. The member shall contribute to the member account established for him prior to his voided retirement. The retirement allowance for which the member shall be eligible upon retirement shall be determined by total service and creditable compensation.*
- (12) (a) 1. *A retired member of the Kentucky Employees Retirement System or the State Police Retirement System who, after initial retirement, is hired by an agency that participates in the Kentucky Employees Retirement System or the State Police Retirement System shall be considered to have been hired by the same employer.*
2. *If a member of the Kentucky Employees Retirement System retires from a department which participates in more than one (1) retirement system and is reemployed within one (1) month of his initial retirement date by the same department in a position participating in another retirement system, the retired member's retirement allowance shall be suspended for the first month of his retirement and the member shall repay to the retirement system all benefits received for the month.*
- (b) *A retired member of the County Employees Retirement System who after initial retirement is hired by the county from which the member retired shall be considered to have been hired by the same employer.*
- (13) (a) *If a hazardous member who retired prior to age fifty-five (55), or a nonhazardous member who retired prior to age sixty-five (65), is reemployed within six (6) months of the member's initial retirement date by the same employer, the member shall obtain from his previous and current employers a copy of the job description established by the employers for the position and a statement of the duties performed by the member for the position from which he retired and for the position in which he has been reemployed.*
- (b) *The job descriptions and statements of duties shall be filed with the retirement office.*
- (14) *If the retirement system determines that the retired member has been employed in a position with the same principal duties as the position from which the member retired:*
- (a) *The member's retirement allowance shall be suspended during the period that begins on the month in which the member is reemployed and ends six (6) months after the member's initial retirement date.*
  - (b) *The retired member shall repay to the retirement system all benefits that the member received after reemployment began.*
  - (c) *Upon termination, or subsequent to expiration of the six (6) month period from the date of initial retirement, the retired member's retirement allowance based on his initial retirement account shall*

*no longer be suspended and the member shall receive the amount to which he is entitled, including an increase as provided by KRS 61.691.*

- (d) *Except as provided in subsection (7) of this section, if the position in which a retired member is employed after initial retirement is a regular full-time position, the retired member shall contribute to a second member account established for him in the retirement system. Service credit gained after the member's date of reemployment shall be credited to the second member account.*
- (e) *Upon termination, the retired member shall be entitled to benefits payable from his second retirement account.*
- (15) (a) *If the retirement system determines that the retired member has not been reemployed in a position with the same principal duties as the position from which he retired, the retired member shall continue to receive his retirement allowance.*
- (b) *If the position is a regular full-time position, the member shall contribute to a second member account in the retirement system.*
- (16) (a) *If a retired member is reemployed at least one (1) month after initial retirement in a different position, or at least six (6) months after initial retirement in the same position, and prior to normal retirement age, the retired member shall contribute to a second member account in the retirement system and continue to receive a retirement allowance from the first member account.*
- (b) *Service credit gained after reemployment shall be credited to the second member account. Upon termination, the retired member shall be entitled to benefits payable from the second member account.*
- (17) *A retired member who is reemployed and contributing to a second member account shall not be eligible to purchase service credit under any of the provisions of KRS 16.510 to 16.652, KRS 61.515 to 61.705, or KRS 78.520 to 78.852 which he was eligible to purchase prior to his initial retirement.*

Section 23. KRS 61.645 is amended to read as follows:

- (1) The County Employees Retirement System, Kentucky Employees Retirement System, and State Police Retirement System shall be administered by the board of trustees of the Kentucky Retirement Systems composed of nine (9) members, who shall be selected as follows:
  - (a) The secretary of the Personnel Cabinet shall serve as trustee for as long as he occupies the position of secretary under KRS 18A.015, except as provided under subsections (5) and (6) of this section;
  - (b) Two (2) trustees, who shall be members or retired from the County Employees Retirement System, elected by the members and retired members of the County Employees Retirement System;
  - (c) One (1) trustee, who shall be a member or retired from the State Police Retirement System, elected by the members and retired members of the State Police Retirement System;
  - (d) Two (2) trustees, who shall be members or retired from the Kentucky Employees Retirement System, elected by the members and retired members of the Kentucky Employees Retirement System; and
  - (e) Three (3) trustees, appointed by the Governor of the Commonwealth. Of the three (3) trustees appointed by the Governor, one (1) shall be knowledgeable about the impact of pension requirements on local governments.
- (2) The board is hereby granted the powers and privileges of a corporation, including, but not limited to, the following powers:
  - (a) To sue and be sued in its corporate name;
  - (b) To make bylaws not inconsistent with the law;
  - (c) To conduct the business and promote the purposes for which it was formed;
  - (d) To contract for investment counseling, actuarial, auditing, and other professional services as its statutory purpose may require, notwithstanding the provisions of KRS Chapters 45 and 45A;
  - (e) To purchase fiduciary liability insurance;

- (f) To acquire, hold, sell, dispose of, pledge, lease, or mortgage any such property as its purpose may require, notwithstanding the limitations of KRS Chapters 45, 45A, and 56; and
  - (g) The board shall reimburse any trustee or officer for any legal expense resulting from a civil action arising out of the performance of his official duties.
- (3) ~~[(a)]~~ Notwithstanding the provisions of subsection (1) of this section, each trustee shall serve a term of four (4) years or until his successor is duly qualified except as otherwise provided in this section. An elected trustee shall not serve more than three (3) consecutive four (4) year terms. An elected trustee who has served three (3) consecutive terms may be elected again after an absence of four (4) years from the board; ~~[(b)]~~ ~~The trustee to be elected by the members of the County Employees Retirement System who replaces the Attorney General on the board shall have an initial term expiring on March 31, 1977, and nominations for this position and the election process shall take place within ninety (90) days after March 26, 1974, with the Attorney General serving until the elected member has been duly qualified and administered the oath of office;~~ ~~[(c)]~~ ~~The term of office of the trustee elected by the membership of the Kentucky Employees Retirement System which now expires on December 10, 1975, shall be succeeded by a term expiring on March 31, 1978].~~
- (4) (a) The trustees selected by the membership of each of the various retirement systems shall be elected by ballot. For each trustee to be elected, the board ~~may~~~~shall~~ nominate, not less than six (6) months before a term of office of a trustee is due to expire, ~~at least~~ three (3) constitutionally eligible individuals;
- (b) Individuals may be nominated by the retirement system members which are to elect the trustee by presenting to the general manager, not less than four (4) months before a term of office of a trustee is due to expire, a petition, bearing the name, Social Security number, and signature of no less than one-tenth (1/10) of the number voting in the last election by the retirement system members;
- (c) Within **four (4)**~~three (3)~~ months of the nominations made in accordance with paragraphs (a) and (b) of this subsection, the general manager shall cause to be prepared an official ballot. The ballot shall carry the name, address, and position title of each individual nominated by the board and by petition. Provisions shall also be made for write-in votes;
- (d) The ballots shall be distributed to the eligible voters by mail to their last known residence address;
- (e) The ballots shall be addressed to the Kentucky Retirement Systems in care of a predetermined box number at a United States Post Office located within Kentucky. Access to this post office box shall be limited to the board's contracted auditing firm. The individual receiving a plurality of votes shall be declared elected;
- (f) The eligible voter shall cast his ballot by checking a square opposite the name of the candidate of his choice. He shall record his Social Security number, sign, and mail the ballot at least thirty (30) days prior to the date the term to be filled is due to expire. The latest mailing date shall be printed on the ballot;
- (g) The board's contracted auditing firm shall report in writing the outcome to the chairman of the board of trustees. Cost of an election shall be payable from the funds of the system for which the trustee is elected.
- (5) Any vacancy which may occur in an appointed position shall be filled in the same manner which provides for the selection of the particular trustee, and any vacancy which may occur in an elected position shall be filled by appointment by a majority vote of the remaining trustees, and if the secretary of the Personnel Cabinet resigns his position as trustee, it shall be filled by appointment made by the Governor; however, any vacancy shall be filled only for the duration of the unexpired term.
- (6) (a) Membership on the board of trustees shall not be incompatible with any other office unless a constitutional incompatibility exists. No trustee shall serve in more than one (1) position as trustee on the board; and if a trustee holds more than one (1) position as trustee on the board, he shall resign a position.
- (b) A trustee shall be removed from office upon conviction of a felony or for a finding of a violation of any provision of KRS 11A.020 or 11A.040 by a court of competent jurisdiction.

- (7) Trustees who do not otherwise receive a salary from the State Treasury shall receive a per diem of ~~eighty-sixty~~ dollars ~~(\$80)(\$60)~~ for each day they are in session or on official duty, and they shall be reimbursed for their actual and necessary expenses in accordance with state administrative regulations and standards.
- (8) The board shall meet at least once in each quarter of the year and may meet in special session upon the call of the chairman or the general manager. It shall elect a chairman and a vice chairman. A majority of the trustees shall constitute a quorum and all actions taken by the board shall be by affirmative vote of a majority of the trustees present.
- (9) The board shall:
- (a) Appoint or contract for the services of a general manager and fix his compensation without limitation by the provisions of KRS Chapter 18A and KRS 64.640. The general manager shall be the chief administrative officer of the board;
  - (b) Authorize the general manager to appoint the employees he deems necessary. Appointees deemed to be in a policy-making position shall be unclassified and their salaries shall be determined by the board. Other appointees shall be subject to the personnel classification system and salaries shall be subject to the secretary of the Personnel Cabinet;
  - (c) Require the general manager and the employees as it thinks proper to execute bonds for the faithful performance of their duties notwithstanding the limitations of KRS Chapter 62;
  - (d) Establish a system of accounting; and
  - (e) Do all things, take all actions, and promulgate all administrative regulations, not inconsistent with the provisions of KRS 61.515 to 61.705, KRS 16.510 to 16.652, and KRS 78.520 to 78.852, necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, KRS 16.510 to 16.652, and KRS 78.520 to 78.852. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that the provisions of KRS 61.515 to 61.705, KRS 16.510 to 16.652, and KRS 78.520 to 78.852 conform with federal statute or regulation **and meet the qualification requirements under 26 U.S.C. sec. 401(a)**. Provisions of KRS 61.515 to 61.705, KRS 16.510 to 16.652, and KRS 78.520 to 78.852 which conflict with federal statute or regulation **or qualification under 26 U.S.C. sec. 401(a)** shall not be available to the member. The board shall have the authority to promulgate administrative regulations to conform with federal statute and regulation **and to meet the qualification requirements under 26 U.S.C. sec. 401(a)**.
- (10) All employees of the board shall serve during its will and pleasure. Notwithstanding any statute to the contrary, employees shall not be considered legislative agents under KRS 6.611.
- (11) The Attorney General, or an assistant designated by him, may attend each meeting of the board and ~~may~~~~shall~~ receive the agenda, board minutes, and other information distributed to trustees of the board **upon request**. The Attorney General may act as legal adviser and attorney for the board, and the board may contract for legal services, notwithstanding the limitations of KRS Chapter 12 or 13B.
- (12) The system shall publish an annual financial report showing all receipts, disbursements, assets, and liabilities. The annual report shall include a copy of an audit conducted in accordance with generally accepted auditing standards. The board may select an independent certified public accountant or the Auditor of Public Accounts to perform the audit. If the audit is performed by an independent certified public accountant, the Auditor of Public Accounts shall not be required to perform an audit pursuant to KRS 43.050(2)(a), but may perform an audit at his discretion. All proceedings and records of the board shall be open for inspection by the public. The system shall make copies of the audit required by this subsection available for examination by any member, retiree, or beneficiary in the office of the general manager of the Kentucky Retirement Systems and in other places as necessary to make the audit available to all members, retirees, and beneficiaries. A copy of the annual audit shall be sent to the Legislative Research Commission no later than ten (10) days after receipt by the board.
- (13) All expenses incurred by or on behalf of the system and the board in the administration of the system during a fiscal year shall be paid from the retirement allowance account. Any other statute to the contrary notwithstanding, authorization for all expenditures relating to the administrative operations of the system shall be contained in the biennial budget unit request, branch budget recommendation, and the financial plan adopted by the General Assembly pursuant to KRS Chapter 48.



- (14) Any person adversely affected by a decision of the board, except as provided under subsection (16) of this section or KRS 61.665, involving KRS 16.510 to 16.652, KRS 61.515 to 61.705, and KRS 78.520 to 78.852, may appeal the decision of the board to the Franklin Circuit Court within sixty (60) days of the board action.
- (15) (a) A trustee shall discharge his duties as a trustee, including his duties as a member of a committee:
1. In good faith;
  2. On an informed basis; and
  3. In a manner he honestly believes to be in the best interest of the Kentucky Retirement Systems.
- (b) A trustee discharges his duties on an informed basis if, when he makes an inquiry into the business and affairs of the Kentucky Retirement Systems or into a particular action to be taken or decision to be made, he exercises the care an ordinary prudent person in a like position would exercise under similar circumstances.
- (c) In discharging his duties, a trustee may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
1. One (1) or more officers or employees of the Kentucky Retirement Systems whom the trustee honestly believes to be reliable and competent in the matters presented;
  2. Legal counsel, public accountants, actuaries, or other persons as to matters the trustee honestly believes are within the person's professional or expert competence; or
  3. A committee of the board of trustees of which he is not a member if the trustee honestly believes the committee merits confidence.
- (d) A trustee shall not be considered as acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by paragraph (c) of this subsection unwarranted.
- (e) Any action taken as a trustee, or any failure to take any action as a trustee, shall not be the basis for monetary damages or injunctive relief unless:
1. The trustee has breached or failed to perform the duties of the trustee's office in compliance with this section; and
  2. In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety, or property.
- (f) A person bringing an action for monetary damages under this section shall have the burden of proving by clear and convincing evidence the provisions of paragraphs (e)1. and (e)2. of this subsection, and the burden of proving that the breach or failure to perform was the legal cause of damages suffered by the Kentucky Retirement Systems.
- (g) Nothing in this section shall eliminate or limit the liability of any trustee for any act or omission occurring prior to July 15, 1988.
- (16) When an order by the system substantially impairs the benefits or rights of a member, retired member, or recipient, except action which relates to entitlement to disability benefits, the affected member, retired member, or recipient may request a hearing to be held in accordance with KRS Chapter 13B. The member, retired member, or recipient aggrieved by a final order of the board following the hearing may appeal the decision to the Franklin Circuit Court, in accordance with KRS Chapter 13B.
- (17) The board shall give the Kentucky Education Support Personnel Association twenty-four (24) hours notice of the board meetings, to the extent possible.

Section 24. KRS 61.665 is amended to read as follows:

- (1) The board shall employ at least three (3) physicians, ~~licensed practicing~~ in the state and not members of the system, upon terms and conditions it prescribes to serve as medical examiners, whose duty it shall be to pass upon all medical examinations required under KRS 61.510 to 61.705, KRS 16.505 to 16.652, and KRS 78.510 to 78.852, to investigate all health or medical statements and certificates made by or in behalf of any person in connection with the payment of money to the person under KRS 61.510 to 61.705, KRS 16.505 to 16.652, and KRS 78.510 to 78.852, and who shall report in writing to the system the conclusions and recommendations upon all matters referred to them. ***The board may employ one (1) or more licensed mental health***

***professionals as consultants to assist in making determinations where there is objective medical evidence of mental impairments.***

- (2) (a) Each employee requesting disability retirement shall ***file at***~~furnish~~ the retirement office~~with~~ the names and addresses of ***all, but no fewer than*** two (2),~~or more~~ physicians who have the necessary information to report the employee's physical and mental condition. The employee shall also file at the retirement office a complete description of the job and duties from which he received his last pay as well as evidence that the employee has made a request for reasonable accommodation as provided for in 42 U.S.C. sec. 12111(9) and 29 C.F.R. Part 1630. ***If an employee fails to file, at the retirement office within six (6) months of the date the employee filed his notification of retirement, any of the information required by this subsection, the employee's application for disability benefits shall be void.***
- (b) The employer shall file at the retirement office a complete description of the job and duties for which the employee was last paid and shall submit a detailed description of reasonable accommodations attempted.
- (c) The board shall prescribe forms upon which medical evidence shall be recorded. The forms shall be sent to the employee's physicians with the request that the documents be completed and filed at the retirement office.
- (d) The cost of a medical examination shall be paid by the employee. The physicians shall be paid a reasonable amount by the retirement system for the filing of the medical report with the retirement office, pursuant to an administrative regulation promulgated by the board.
- (e) The system shall select a medical examiner to evaluate the medical evidence submitted by the employee's physician. The examiner shall recommend that disability retirement be approved, or that disability retirement be denied. If the medical examiner recommends denial of disability benefits, the system shall submit the member's application to ***one (1)***~~two (2)~~ additional medical ~~examiner~~~~examiners~~. ***If the second medical examiner recommends approval, the application shall be submitted to a third medical examiner.*** Both of the additional medical examiners shall recommend approval of disability benefits to overturn the original recommendation. ***If there is objective medical evidence of mental impairments, the medical examiners may request the board's licensed mental health professional to assist in determining the level of the mental impairment.*** Recommendations by the examiners shall be submitted to the board for approval.
- (f) If the medical examiners recommend that the employee be approved for disability retirement, the general manager shall make retirement payments in accordance with the retirement plan selected by the employee.
- (g) If the medical examiners recommend that the employee be denied disability retirement, the general manager shall notify the employee of this recommendation. The employee shall have sixty (60) days to file at the retirement office additional medical information or to appeal his denial for disability benefits by filing at the retirement office a request for a formal hearing. An extension of time may be granted by the system for a medical examiner to evaluate additional medical information. The extensions of time shall not be for more than sixty (60) days for any one (1) extension, and no more than three (3) extensions shall be granted. The cumulative extension of time shall not exceed one hundred twenty (120) days. The extension of time shall end upon request of a formal hearing.
- (h) The medical examiners shall be paid a reasonable amount by the retirement system for each case evaluated.
- (i) Notwithstanding the foregoing provisions of this section, the system may pay for one (1) or more medical examinations requested by the examiners for the purpose of providing medical information deemed necessary by the examiners. The system may direct that a specialist be sought.
- (3) Any person aggrieved by a final order or determination of the system may file at the retirement office a request that a hearing be conducted by the system in accordance with KRS Chapter 13B. The right to demand a hearing shall be limited to a period of sixty (60) days after the requester has had notice, as described in subsection (6) of this section, of the system's determination. If any extensions of time are granted by the system, they shall be as provided for in subsection (2)(g) of this section.

- (a) Any person whose disability benefits have been reduced, discontinued, or denied pursuant to subsection (2)(g) of this section or KRS 61.615(1) may file at the retirement office a request for an administrative hearing with the system. The right to demand a hearing shall be limited to a period of sixty (60) days after the requester has had notice, as described in subsection (6) of this section, of the system's determination. The request shall be filed with the general manager, at the system's central office in Frankfort. The request for a hearing shall include a short and plain statement of the reasons the reduction, discontinuance, or denial of disability benefits is being contested. The request shall not operate as a stay of any reduction, discontinuance, or denial of benefits.
- (b) Failure of the member to request a formal hearing within the period of time specified shall preclude the member from proceeding any further with his cause of action, except as provided in KRS 61.600(1)(e). This paragraph shall not limit the member's right to appeal to a court.
- (c) The system may require the member requesting the formal hearing to submit to one (1) or more medical or psychological examinations. Notice of the time and place of the examination shall be mailed to the member or his legal representative. The system shall be responsible for the cost of the examination.
- (d) A final order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based.
- (e) A final order of the board which alters or amends the decision recommended pursuant to subsection (2)(g) of this section shall relate back and take effect on the date of the recommendation.
- (f) All requests for a hearing pursuant to this section shall be made in writing.
- (4) The board may establish an appeals committee whose members shall be appointed by the chairman and who shall have the authority to act upon the recommendations and reports of the hearing officer pursuant to this section on behalf of the board.
- (5) Any person aggrieved by a final order of the board may seek judicial review after all administrative appeals have been exhausted by filing a petition for judicial review in the Franklin Circuit Court in accordance with KRS Chapter 13B.
- (6) The system, pursuant to regulations, may refer an employee determined by it to be disabled to the Kentucky Office of Vocational Rehabilitation for evaluation and, if appropriate, retraining.
  - (a) The cost of the evaluation and retraining shall be paid by the system in accordance with the regulations established by the board.
  - (b) The member shall perform all acts that are necessary to enroll in and satisfy the requirements of Vocational Rehabilitation as prescribed by the board. This shall include the exchange of confidential information between Kentucky Retirement Systems and the Kentucky Office of Vocational Rehabilitation as necessary to conduct the rehabilitation process. Failure of the member to cooperate with the system or Vocational Rehabilitation may result in his disability allowance being discontinued, reduced, or denied until the member complies with the agency requests. If the refusal continues for one (1) year, all his rights to any further disability allowance shall cease.

Section 25. KRS 61.680 is amended to read as follows:

- (1) Prior to August 1, 1982, every employee shall be deemed to consent and agree to any deduction from his compensation required by KRS 6.500 to 6.535, 16.510 to 16.652, 61.510 to 61.692, 78.510 to 78.852, and to all other provisions thereof. Thereafter, employee contributions shall be picked up by the employer pursuant to KRS 61.560(4).
- (2) (a) Notwithstanding any other provisions of KRS 6.500 to 6.535, 16.510 to 16.652, 61.510 to 61.692, 78.510 to 78.852 and 161.220 to 161.714, upon death, disability, or service retirement, a member's accounts under the Legislators' Retirement Plan, State Police Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, and Teachers' Retirement System shall be consolidated for the purpose of determining eligibility and amount of benefits. Vested service credit in a retirement system, other than the Teachers' Retirement System, sponsored by a Kentucky institution of higher education and accepted by the Kentucky Employees Retirement System or the County Employees Retirement System, may be used to determine eligibility for *twenty-seven (27)*~~thirty (30)~~ year retirement but not the amount of benefits. The computation of benefits shall be based on the applicable formula in each system and service credit in each system, but the final compensation shall be determined

as if all service were in one (1) system. If the member has prior service in more than one (1) system, he shall obtain at least twelve (12) months' current service in each system in which he has prior service in order to validate the prior service in each system for purposes of determining consolidated benefits under this section. Upon the determination of benefits, each system shall pay the applicable percentage of total benefits.

- (b) The provisions of paragraph (a) of this subsection shall be waived if the member notifies the system of his desire to maintain separate retirement accounts in the State Police Retirement System, Kentucky Employees Retirement System, or County Employees Retirement System, or if he is a member of the State Police Retirement System or is working in a hazardous position under the Kentucky Employees Retirement System or County Employees Retirement System and as a result of an act in line of duty, becomes disabled or deceased.
  - (c) If the member has not contributed at least one (1) year in a system in which he has prior service, his current service in the system shall be valid for purposes of determining eligibility and in computation of benefits on a consolidated basis.
- (3) A member with service credit in the Kentucky Employees Retirement System, State Police Retirement System, or the County Employees Retirement System who becomes the holder of an office entitling him to membership in the Judicial Retirement Plan or the Legislators' Retirement Plan, but who does not elect within thirty (30) days after taking office in such service to participate in the plan, in accordance with KRS 6.505 or 21.360, shall be deemed to have elected to retain membership in the system in which he is a member, either the Kentucky Employees Retirement System, State Police Retirement System, or the County Employees Retirement System. In that event, the agency employing the member shall withhold employee contributions, or picked-up employee contributions after August 2, 1982, make employer contributions and remit these contributions to the system in which the member retained his membership. Any person entitled to membership in the Judicial Retirement Plan or the Legislators' Retirement Plan, who does not elect within thirty (30) days after taking office to participate in the plan, in accordance with KRS 6.505 or 21.360, and who at the time of taking office is not a contributing member of, or does not have service credit in, any of the retirement systems mentioned in this section, or the Teachers' Retirement System, shall participate in the Kentucky Employees Retirement System. A member of one (1) of the state-administered retirement plans who ceases to contribute to the plan as provided in KRS 21.360 and who is employed in a nonelected position by an agency participating in the Kentucky Retirement Systems shall be deemed to have elected membership in the system in which the employer of the nonelected position participates. A member of one (1) of the state-administered retirement plans who ceases to contribute to the plan as provided in KRS 21.360 and who is not employed in a nonelected position by an agency participating in the Kentucky Retirement Systems shall be deemed to have elected membership in the Kentucky Employees Retirement System.
- (4)
  - (a) Prior to July 1, 1976, a person entering the service of an employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System with service credit in the Teachers' Retirement System and who desires to retain membership in the Teachers' Retirement System, and who is permitted by that system to continue, shall be exempt from participating in the Kentucky Employees Retirement System or the County Employees Retirement System.
  - (b) Any person who has elected to retain membership in the Teachers' Retirement System as provided in paragraph (a) of this subsection may cancel his election and participate in the system under which his position would normally participate, if he elects to cancel his option prior to January 1, 1977.
  - (c) Any member of the General Assembly who upon election is a contributing member of the Teachers' Retirement System and who does not elect within thirty (30) days after taking office to participate in the Legislators' Retirement Plan, in accordance with KRS 6.505, shall during his term of office participate in the Kentucky Employees Retirement System unless an election to retain membership in the Teachers' Retirement System is filed in writing within ninety (90) days after his term of office begins. No contributions may be made to the Teachers' Retirement System for the same period of service under the Legislators' Retirement Plan or the Kentucky Employees Retirement System as a member of the General Assembly, but contributions made to the Teachers' Retirement System while a member of the General Assembly shall be transferred to the Legislators' Retirement Plan, as provided for in KRS 6.535, when the member elects to join the Legislators' Retirement Plan, and service credit in the Legislators' Retirement Plan shall be granted as provided for in KRS 6.505(3).

- (5) Effective July 1, 1974, any member of the Kentucky Employees Retirement System or County Employees Retirement System who is working in a position covered by one (1) of these retirement systems and his employee contributions, service credit and employer contributions made on his behalf are being transferred to the other retirement system shall contribute to the system in which his employer participates, or after August 1, 1982, the employer shall pick up the employee contributions, and no further contributions or service credit shall be transferred to the system in which he elected to retain membership, as subsection (2) of this section eliminates the necessity of the transfers.
- (6) Any member of the Kentucky Employees Retirement System or County Employees Retirement System who is working in more than one (1) position covered by the same retirement system, shall have his wages and contributions consolidated and his retirement account administered as a single account. If part-time positions are involved, an accumulation of all hours worked within the same retirement system shall be used to determine eligibility under KRS 61.510(21).
- (7) Notwithstanding the provisions of subsection (2)~~(3)~~ of this section, a person who does not have the amount of service required for service retirement in the State Police Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, Legislators' Retirement Plan, or Teachers' Retirement System, but who is a member of one (1) of the systems or is a former member of one (1) or more of the systems with valid service credit therein, shall become eligible for service retirement benefits attributable to the amount of his actual service credit in each system in which he has service credit when his combined service credit in all the systems, plus any service credit he has in the Judicial Retirement Plan, is equal to that required for service retirement in each respective system. The computation of benefits shall be based on the applicable formula in each system and service credit in each system. The final compensation shall be determined by using the creditable compensation reported to the State Police Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, Legislators' Retirement Plan, or Teachers' Retirement System and only as much of the compensation earned in the Judicial Retirement Plan as is needed to satisfy the final compensation requirement applicable in the respective retirement systems.

Section 26. KRS 61.690 is amended to read as follows:

- (1) All retirement allowances and other benefits accrued or accruing to any person under the provisions of KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852, and the accumulated contributions and cash securities in the funds created under KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852, are hereby exempt from any state, county, or municipal tax, and shall not be subject to execution, attachment, garnishment, or any other process, and an assignment thereof shall not be enforceable in any court. Except retirement benefits accrued or accruing to any person under the provisions of KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852 on or after January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent provided in KRS 141.010 and 141.0215.
- (2) A retirement allowance, a disability allowance, a member's accumulated contributions, or any other benefit under the system shall not be classified as marital property *or as an economic circumstance as provided in* ~~pursuant to~~ KRS 403.190~~(4)~~ in an action for dissolution of marriage ~~if the property of the other party to the action is exempted from a marital property classification pursuant to KRS 161.700(2)~~.
- (3) ~~Qualified domestic relations and~~ Child support orders for current, owed, or to-be-owed child support, issued by a court or administrative agency shall be honored by the retirement systems if the orders are in compliance with the regulation adopted by the board pursuant to KRS 61.645(9)(e).

Section 27. KRS 61.701 is amended to read as follows:

- (1) There is hereby created and established a state fund to be known as "Kentucky Retirement Systems Insurance Fund."
- (2) The fund is created for the purpose of providing a fund separate from the retirement funds and is to be used to provide fringe benefits *as provided in Section 28 of this Act* to retired recipients and employees of employers participating in the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System, and to certain of their dependents or beneficiaries ~~named in KRS 61.702~~.
- (3) The fund shall be administered by the board of trustees of the Kentucky Retirement Systems and the board shall manage the assets of the fund in the same manner in which it administers the retirement funds.

Section 28. KRS 61.702 is amended to read as follows:

- (1) (a) The board of trustees of Kentucky Retirement Systems shall arrange by appropriate contract or on a self-insured basis to provide a group hospital and medical insurance plan for present and future recipients of a retirement allowance from the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System. The board shall also arrange to provide health care coverage by health maintenance organizations, as defined in KRS 18A.225, as an alternative to group hospital and medical insurance for any person eligible for hospital and medical benefits under this section. Any person who chooses coverage by a health maintenance organization shall pay, by payroll deduction from the retirement allowance or by another method, the difference in premium between the cost of health maintenance organization coverage and the benefits to which he would be entitled under this section. The board may authorize present and future recipients of a retirement allowance from any of the three (3) retirement systems~~[- who are under age sixty five (65).]~~ to be included in the state employees' group for hospital and medical insurance and shall provide benefits for recipients equal to those provided to state employees having the same Medicare hospital and medical insurance eligibility status. ***Notwithstanding the provisions of any other statute, recipients shall be included in the same class as current state employees in determining medical insurance policies and premiums.***
- (b) ***For recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky having the same Medicare hospital and medical insurance eligibility status, the board shall provide a medical insurance reimbursement plan as described in subsection (7) of this section.***
- (2) Each employer participating in the State Police Retirement System as provided for in KRS 16.510 to 16.652, each employer participating in the County Employees Retirement System as provided in KRS 78.510 to 78.852, and each employer participating in the Kentucky Employees Retirement System as provided for in KRS 61.510 to 61.705 shall contribute to the Kentucky Retirement Systems insurance fund the amount necessary to provide hospital and medical insurance as provided for under this section. Such employer contribution rate shall be developed by appropriate actuarial method as a part of the determination of each respective employer contribution rate to each respective retirement system determined under KRS 61.565.
- (3) (a) The premium required to provide hospital and medical benefits under this section shall be paid:
1. Wholly or partly from funds contributed by the recipient of a retirement allowance, by payroll deduction, or otherwise;
  2. Wholly or partly from funds contributed by the Kentucky Retirement Systems insurance fund;
  3. Wholly or partly from funds contributed by another state-administered retirement system under a reciprocal arrangement, except that any portion of the premium paid from the Kentucky Retirement Systems insurance fund under a reciprocal agreement shall not exceed the amount that would be payable under this section if all the member's service were in one (1) of the systems administered by the Kentucky Retirement Systems;
  4. Partly from subparagraphs 1., 2., or 3., except that any premium for hospital and medical insurance over the amount contributed by the Kentucky Retirement Systems insurance fund or another state-administered retirement system under a reciprocal agreement shall be paid by the recipient. If the board provides for cross-referencing of insurance premiums, the employer's contribution for the working member or spouse shall be applied toward the premium, and the Kentucky Retirement Systems insurance fund shall pay the balance, not to exceed the monthly contribution.
  5. In full from the Kentucky Retirement Systems insurance fund for all recipients of a retirement allowance from any of the three (3) retirement systems where such recipient is a retired former member of one (1) or more of the three (3) retirement systems (not a beneficiary or dependent child receiving benefits) and had two hundred and forty (240) months or more of service upon retirement. Should such recipient have less than two hundred forty (240) months of service but have at least one hundred eighty (180) months of service, seventy-five percent (75%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining twenty-five percent (25%) by payroll deduction from his retirement allowance or by another method. Should such recipient have less than one hundred eighty (180) months of service but have at least one hundred twenty (120) months of service, fifty percent (50%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the

remaining fifty percent (50%) by payroll deduction from his retirement allowance or by another method. Should such recipient have less than one hundred twenty (120) months of service but have at least forty-eight (48) months of service, twenty-five percent (25%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining seventy-five percent (75%) by payroll deduction from his retirement allowance or by another method. Notwithstanding the foregoing provisions of this subsection, a State Police Retirement System member or a hazardous position employee, as defined in KRS 61.592, who becomes disabled in the line of duty as defined in KRS 16.505(19), shall have his premium paid in full as if he had two hundred forty (240) months or more of service. Further, a State Police Retirement System member or a hazardous position employee as defined in KRS 61.592, who is killed in the line of duty as defined in KRS 16.505(19), shall have the premium for the beneficiary, if the beneficiary is the member's spouse, and for each dependent child paid so long as they individually remain eligible for a monthly retirement benefit. "Months of service" as used in this section shall mean the total months of combined service used to determine benefits under any or all of the three (3) retirement systems, except service added to determine disability benefits shall not be counted as "months of service."

- (b) For a member electing insurance coverage through the Kentucky Retirement Systems, "months of service" shall include, in addition to service as described in paragraph (a) of this subsection, service credit in one of the other state-administered retirement plans.
  - 1. Effective August 1, 1998, the Kentucky Retirement Systems shall compute the member's combined service, including service credit in another state-administered retirement plan, and calculate the portion of the member's premium to be paid by the insurance fund, according to the criteria established in paragraph (a) of this subsection. Each state-administered retirement plan annually shall pay to the insurance fund the percentage of the system's cost of the retiree's monthly contribution for single coverage for hospital and medical insurance which shall be equal to the percentage of the member's number of months of service in the other state-administered retirement plan divided by his total combined service. The amounts paid by the other state-administered retirement plans and the insurance fund shall not be more than one hundred percent (100%) of the monthly contribution adopted by the respective boards of trustees.
  - 2. A member may not elect coverage for hospital and medical benefits under this subsection through more than one (1) of the state-administered retirement plans.
  - 3. A state-administered retirement plan shall not pay any portion of a member's monthly contribution for medical insurance unless the member is a recipient or annuitant of the plan.
- (4) (a) Group rates under the hospital and medical insurance plan shall be made available to the spouse, dependents, and disabled children, regardless of the disabled child's age, of a recipient who is a former member or the beneficiary, if the premium for the spouse, dependent, disabled child, or beneficiary hospital and medical insurance is paid by payroll deduction from the retirement allowance or by another method. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.
- (b) The other provisions of this section notwithstanding, the insurance fund shall pay a percentage of the monthly contribution for the spouse and dependents of a recipient who was a member of the General Assembly and is receiving a retirement allowance based on General Assembly service, of the Kentucky Employees Retirement System and determined to be in a hazardous position, of the County Employees Retirement System, and determined to be in a hazardous position or of the State Police Retirement System, or the beneficiary of the member, if the member designated only one (1) person as beneficiary. The percentage of the monthly contribution paid for the spouse and dependents shall be based solely on the member's service with the State Police Retirement System or service in a hazardous position using the formula in subsection (3)(a) of this section.
- (c) The insurance fund shall continue the same level of coverage for a recipient who was a member of the County Employees Retirement System after the age of sixty-five (65) as before the age of sixty-five (65), if the recipient is not eligible for Medicare coverage. If the insurance fund provides coverage for the spouse or dependents or beneficiary of a former member of the County Employees Retirement System, the insurance fund shall continue the same level of coverage for the spouse or dependent or

beneficiary after the age of sixty-five (65) as before the age of sixty-five (65), if the spouse or dependent or beneficiary is not eligible for Medicare coverage.

- (5) After July 1, 1998, notwithstanding any other provision to the contrary, a member who holds a judicial office but did not elect to participate in the Judicial Retirement Plan and is participating instead in the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System, as provided in KRS 61.680, and who has at least twenty (20) years of total service, one-half (1/2) of which is in a judicial office, shall receive the same hospital and medical insurance benefits, including paid benefits for spouse and dependents, as provided to persons retiring under the provisions of KRS 21.427. The Administrative Office of the Courts shall pay the cost of the medical insurance benefits provided by this subsection.
- (6) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the insurance fund shall not constitute taxable income to an insured recipient. No commission shall be paid for hospital and medical insurance procured under authority of this section.
- (7) *The board shall promulgate an administrative regulation to establish a medical insurance reimbursement plan to provide reimbursement for hospital and medical insurance premiums of recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky and having the same Medicare hospital and medical insurance eligibility status. An eligible recipient shall file proof of payment for hospital and medical insurance at the retirement office. Reimbursement to eligible recipients shall be made on a quarterly basis. The recipient shall be eligible for reimbursement of substantiated medical insurance premiums for an amount not to exceed the total monthly premium determined under subsection (3) of this section. The plan shall not be made available if all recipients are eligible for the same coverage as recipients living in Kentucky.*

Section 29. KRS 61.705 is amended to read as follows:

- (1) Upon the death of a retired member of the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System who had a minimum of forty-eight (48) months of service, a death benefit of five thousand dollars (\$5,000) shall be paid. *If the retired member had more than one (1) account in the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System, the system shall pay only one (1) five thousand dollar (\$5,000) death benefit.* Application for the death benefit made to the Kentucky Retirement Systems shall include acceptable evidence of death and of the eligibility of the applicant to act on the deceased retired member's behalf.
- (2) The death benefit shall be paid to a beneficiary named by the retired member. Upon retirement or any time thereafter, the retired member may designate on the form prescribed by the board, death benefit designation, an individual, his estate, a trust or trustee as the beneficiary of the death benefit. The beneficiary for the death benefit may or may not be the same beneficiary designated in accordance with KRS 61.590(1). If the beneficiary designated under this section dies prior to the member *or if the beneficiary was the spouse and they were divorced on the date of the retired member's death*, the retired member's estate shall become the beneficiary, unless the retired member has filed a subsequent death benefit designation.

SECTION 30. A NEW SECTION OF KRS 61.515 TO 61.705 IS CREATED TO READ AS FOLLOWS:

- (1) *A recipient who begins receiving a retirement allowance August 1, 2000, or after, from the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System shall have the retirement allowance paid by electronic fund transfer to a financial institution designated by the recipient.*
- (2) *When an individual becomes eligible to receive a monthly retirement allowance, the retirement system shall provide an Authorization for Deposit of Retirement Payment form to the recipient to have the monthly retirement allowance deposited to an account in a financial institution.*
- (3) *The recipient and the financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's office to the designated financial institution.*
- (4) *At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new Authorization for Deposit of Retirement Payment form and filing the form at the retirement office in Frankfort. The last Authorization for Deposit of Retirement Payment on file at the retirement office shall control the electronic transfer of the recipient's retirement allowance.*



- (5) (a) *A recipient may request to be paid by check issued by the State Treasurer instead of by electronic transfer by completing and filing at the retirement office a Request for Payment by Check form.*
- (b) *The request shall be approved if:*
1. *The recipient certifies that he does not currently have an account with a financial institution;*
  2. *The recipient's bank certifies that it does not participate in the electronic funds transfer program; or*
  3. *The recipient shows that the requirement would create an undue hardship.*
- (c) *The retirement office shall, every five (5) years, require the recipient to certify that the original conditions under which he requested payment by check continue. If the original conditions do not exist, the recipient shall complete an Authorization for Direct Deposit of Retirement Payment form and file it with the retirement office.*

SECTION 31. A NEW SECTION OF KRS 61.515 TO 61.705 IS CREATED TO READ AS FOLLOWS:

*There is created and established:*

- (1) *An excess benefit plan to be known as the Kentucky Employees Retirement System Excess Benefit Plan. The plan is created for the purpose of providing the retirement allowances payable from the retirement system under KRS 61.515 to 61.705 that would otherwise be limited by 26 U.S.C. sec. 415.*
- (2) *A state fund to be known as the Kentucky Employees Retirement System Excess Benefit Fund which shall consist of all the assets of the plan.*
- (3) *The administration and assets of the plan shall be as set forth in Section 32 of this Act.*

SECTION 32. A NEW SECTION OF KRS 61.515 TO 61.705 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Employees Excess Benefit Plan established in Section 31 of this Act, the County Employees Excess Benefit Plan established in Section 39 of this Act, and the State Police Excess Benefit Plan established in Section 8 of this Act shall be administered by the board of trustees of the Kentucky Retirement Systems. The board shall have the same authority in its administration as it has in the administration of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System.*
- (2) *The plans shall constitute qualified governmental excess benefit plans as provided in 26 U.S.C. sec. 415(m).*
- (3) *All retired members and beneficiaries of the three (3) retirement systems administered by the Kentucky Retirement Systems whose effective retirement dates are July 1, 1998, or after, and whose retirement allowances have been limited by 26 U.S.C. sec. 415 shall be participants in the plans. Each member's participation in the plans shall be determined each fiscal year and will cease for any year in which the retirement allowance is not limited by 26 U.S.C. sec. 415.*
- (4) *A participant shall receive a benefit equal to the difference between the retirement allowance otherwise payable from the system prior to any reduction or limitation required by 26 U.S.C. sec. 415 and the actual retirement allowance payable as limited by 26 U.S.C. sec. 415. The benefit shall be subject to withholding for applicable state and federal taxes. The benefit shall be paid in accordance with the retirement payment option selected by the member or beneficiary for the retirement allowance.*
- (5) (a) *The board, in accordance with the recommendation of the actuary, shall determine the required contribution for each of the three (3) plans to pay benefits each fiscal year. The required contribution for each of the three (3) plans in each fiscal year shall be the total amount of benefits payable under this section to all participants plus the amount required to pay the administrative expenses of the plan and the employer's share of any employment taxes on the benefits paid from the plan.*
- (b) *The required contribution shall be paid by the participating employers.*
- (c) *The required contribution for each plan shall be deposited into the separate fund. The plan is intended to be exempt from federal income tax under 26 U.S.C. sec. 115 and 26 U.S.C. sec. 415(m)(1).*
- (d) *The benefit liability of each plan shall be determined on a fiscal year basis, and contributions shall not be accumulated to pay benefits in future fiscal years. Any assets of the plans not used to pay*

*benefits in the current fiscal year shall be used for payment of the administrative expenses of the plan for the current or future fiscal years or shall be paid to the appropriate retirement system as an additional employer contribution.*

- (6) *The benefits payable from the plans shall be treated in accordance with Section 26 of this Act.*
- (7) *The board shall promulgate administrative regulations to modify the benefits payable under the plans as necessary for the plans to be qualified under 26 U.S.C. sec. 415(m).*
- (8) *The provisions of this section, and any administrative regulations promulgated as a result of this section, shall be applied retroactively to retired members, and beneficiaries, whose effective retirement dates are between July 1, 1998, and the effective date of this Act.*

Section 33. KRS 78.510 is amended to read as follows:

As used in KRS 78.520 to 78.852, unless the context otherwise requires:

- (1) "System" means the County Employees Retirement System;
- (2) "Board" means the board of trustees of the system as provided in KRS 78.780;
- (3) "County" means any county, or nonprofit organization created and governed by a county, counties, or elected county officers, sheriff and his employees, county clerk and his employees, circuit clerk and his deputies, former circuit clerks or former circuit clerk deputies, or political subdivision or instrumentality, including school boards, charter county government, or urban-county government participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency, organization, or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;
- (4) "School board" means any board of education participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;
- (5) "Examiner" means the medical examiners as provided in KRS 61.665;
- (6) "Employee" means every regular full-time appointed or elective officer or employee of a participating county and the coroner of a participating county, whether or not he qualifies as a regular full-time officer. The term shall not include persons engaged as independent contractors, seasonal, emergency, temporary, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 78.520 to 78.852;
- (7) "Employer" means a county, as defined in subsection (3) of this section, the elected officials of a county, or any authority of the county having the power to appoint or elect an employee to office or employment in the county;
- (8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;
- (9) "Service" means the total of current service and prior service as defined in this section;
- (10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1958, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided~~[in KRS 61.552(7), 61.555, and 78.530];~~
- (11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1958, for which creditable compensation was paid. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work. Twelve (12) months of current service in the system shall be required to validate prior service;
- (12) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4), together with interest credited on the amounts, and any other amounts the member shall have contributed thereto, including interest credited thereon;

- (13) "Creditable compensation" means all salary, wages, and fees, ***including payments for compensatory time***, paid to the employee as a result of services performed for the employer ***or for time during which the member is on paid leave***, which are includable on the member's federal form W-2 wage and tax statement ***under the heading "wages, tips, other compensation"***, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). ***A lump sum bonus, severance pay, or employer-provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's service with the employer.*** If compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. ***Living allowances, expense reimbursements, payments received after the date of termination of employment for accrued vacation leave, sick leave except as provided in subsection (5) of Section 36 of this Act, and other items determined by the board shall be excluded.*** Creditable compensation shall also include amounts that are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code;
- (14) "Final compensation" means:
- (a) For a member who is employed in a nonhazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;
  - (b) For a member who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-eight (28), one (1) or more additional fiscal years shall be used;
- (15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, and shall include employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2080) hours for eight (8) hour workdays, nineteen hundred fifty (1950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;
- (16) "Retirement allowance" means the retirement payments to which a member is entitled;
- (17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables as are from time to time adopted by the board, except in case of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;
- (18) "Normal retirement date" means the sixty-fifth (65th) birthday of a member unless otherwise provided in KRS 78.520 to 78.852;
- (19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year;
- (20) "Agency reporting official" means the person designated by the participating agency who shall be responsible for forwarding all employer and employee contributions and a record of the contributions to the system and for performing other administrative duties pursuant to the provisions of KRS 78.520 to 78.852;
- (21) "Regular full-time positions," as used in subsection (6) of this section, shall mean all positions that average one hundred (100) or more hours per month, determined by using the number of hours actually worked in a calendar or fiscal year, or eighty (80) or more hours per month in the case of noncertified employees of school boards, determined by using the number of hours actually worked in a calendar or school year, unless otherwise specified, except:

- (a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and that may recur regularly from year to year, in which case the period of time shall not exceed six (6) months in any event;
  - (b) Emergency positions that are positions that do not exceed thirty (30) working days and are nonrenewable;
  - (c) Temporary, also referred to as probationary, positions that are positions of employment with a participating agency for a period of time not to exceed twelve (12) months and not renewable; or
  - (d) Part-time positions that are positions that may be permanent in duration, but that require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty, except in case of noncertified employees of school boards, the school term average shall be eighty (80) hours of work per month, determined by using the number of months actually worked in a calendar or school year, in the performance of duty;
- (22) "Alternate participation plan" means a method of participation in the system as provided for by KRS 78.530(3);
- (23) "Retired member" means any former member receiving a retirement allowance or any former member who has on file at the retirement office the necessary documents for retirement benefits and is no longer contributing to the system;
- (24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, beneficiary shall not mean an estate, trust, or trustee;
- (26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;
- (27) "Person" means a natural person;
- (28) "School term or year" means the twelve (12) months from July 1 through the following June 30;
- (29) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (30) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula adopted by the board for purchase of service under KRS 61.552(9), except the employee shall pay a single payment of fifty percent (50%) of the total cost of the service with no cost to the employer, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434;~~and~~
- (31) "Participating" means an employee is currently earning service credit in the system as provided in KRS 78.615; *and*
- (32) ***"Month" means a calendar month.***

Section 34. KRS 78.540 is amended to read as follows:

Membership in the system shall consist of the following:

- (1) All persons who become employees of a participating county after the date the county first participates in the system, except a person who did not elect membership pursuant to KRS 61.545(3), and except that mayors and members of city legislative bodies may decline prior to their participation in the system and city managers or other appointed local government executives who participate in a retirement system, other than Social Security, which operates in more than one (1) state, may decline prior to their participation in the system;
- (2) (a) All persons who are employees of a county on the date the county first participates in the system, either in service or on authorized leave from service, and who elect within thirty (30) days next following the

county's participation, or in the case of persons on authorized leave, within thirty (30) days of their return to active service, to become members and thereby agree to make contributions as provided in KRS 78.520 to 78.852;

***(b) All persons who are employees of a county who did not elect to participate within thirty (30) days of the date the county first participated in the system or within thirty (30) days of their return to active service and who subsequently elect to participate the first day of a month after the county's date of participation; and***

- (3) All persons electing coverage in the system under KRS 78.530(3)(d).
- (4) The provisions of subsections (1) and (2) of this section notwithstanding, cities which participate in the CERS and close existing local pension systems to new, or all members pursuant to the provisions of KRS 78.530, 95.520, 95.621 or 95.852 shall not be required to provide membership in the County Employees Retirement System to employees in any employee category not covered by a city pension system at the date of participation.
- (5) Membership in the system shall not include those employees who are simultaneously participating in another state-administered defined benefit plan within Kentucky other than those administered by the Kentucky Retirement Systems, except for employees who have ceased to contribute to one (1) of the state-administered retirement plans as provided in KRS 21.360.

Section 35. KRS 78.545 is amended to read as follows:

The following matters shall be administered in the same manner subject to the same limitations and requirements as provided for the Kentucky Employees Retirement System as follows:

- (1) Cessation of membership, conditions, as provided for by KRS 61.535;
- (2) Statement of member and employer, as provided for by KRS 61.540;
- (3) Beneficiary to be designated by member, change, rights, as provided for by KRS 61.542;
- (4) Service credit determination, as provided for by KRS 61.545;
- (5) Cessation of membership, loss of benefits, as provided for by KRS 61.550;
- (6) Service credit, Armed Forces, as provided for by KRS 61.555;
- (7) Normal and early retirement eligibility requirements, as provided for by KRS 61.559;
- (8) Retirement allowance increases as provided for by KRS 61.691;
- (9) Retirement application procedure, effective retirement date, as provided for by KRS 61.590;
- (10) Disability retirement, conditions, as provided for by KRS 61.600;
- (11) Disability retirement, allowance, as provided for by KRS 61.605;
- (12) Medical examination after disability retirement, as provided for by KRS 61.610;
- (13) Disability retirement allowance, reduction, as provided for by KRS 61.615;
- (14) Determination of retirement allowance, as provided for by KRS 61.595;
- (15) Refund of contributions, conditions, as provided for by KRS 61.625;
- (16) Refund of contributions, death after retirement, as provided for by KRS 61.630;
- (17) Optional retirement plans, as provided for by KRS 61.635;
- (18) Suspension of retirement payments on reemployment, reinstatement, as provided for by KRS 61.637;
- (19) Death before retirement, beneficiary's options, as provided for by KRS 61.640;
- (20) Board of trustees, conflict of interest, as provided for by KRS 61.655;
- (21) Custodian of funds, payments made, when, as provided for by KRS 61.660;
- (22) Medical examiners and hearing procedures, as provided for by KRS 61.665;
- (23) Actuarial bases, as provided for by KRS 61.670;

- (24) Employer's administrative duties, as provided for by KRS 61.675;
- (25) Correction of errors in records, as provided for by KRS 61.685;
- (26) Exemptions of retirement allowances, as provided for by KRS 61.690;
- (27) Credit for service prior to membership date, as provided for by KRS 61.526;
- (28) Creditable compensation of fee officers, as provided for by KRS 61.541;
- (29) Transfer of dormant accounts, as provided for by KRS 61.626;
- (30) Members' account, confidential, as provided for by KRS 61.661;
- (31) Retirement plan for employees determined to be in a hazardous position, as provided for by KRS 61.592;
- (32) Maximum disability benefit, as provided for by KRS 61.607;
- (33) Consent of employees to deductions and reciprocal arrangement between systems, as provided for by KRS 61.680;
- (34) Employer contributions, as provided for by KRS 61.565;
- (35) Recontribution and delayed contribution payments, purchase of service credit, interest, and installment payments, as provided for by KRS 61.552;
- (36) Hospital and medical insurance plan, as provided by KRS 61.702;
- (37) Death benefit, as provided by KRS 61.705;
- (38) Reinstated employee, contributions on creditable compensation, as provided for by KRS 61.569;
- (39) Statement to be made under oath, good faith reliance, as provided for in KRS 61.699;~~[-and]~~
- (40) Disability procedure for members in hazardous positions as provided for in KRS 16.582; *and*
- (41) *Direct deposit of recipient's retirement allowance as provided for in Section 30 of this Act.***

Section 36. KRS 78.616 is amended to read as follows:

- (1) Any agency participating in the County Employees Retirement System which has formally adopted a sick-leave program that is universally administered to its employees may purchase service credit with the retirement system for up to six (6) months of unused sick leave for each retiring employee.
- (2) Participation under this section shall be at the option of each participating employer. The election to participate shall be made by the governing authority of the participating employer and shall be certified in writing to the system on forms prescribed by the board. The certification shall provide for equal treatment of all employees participating under this section.
- (3)
  - (a) Upon the member's notification of retirement as prescribed in KRS 61.590, the employer shall certify the retiring employee's unused, accumulated sick-leave balance to the system. The member's sick-leave balance, expressed in days, shall be divided by the average number of working days per month in county service and rounded to the nearest number of whole months. A maximum of six (6) months of the member's sick-leave balance, expressed in months, shall be added to his service credit for the purpose of determining his annual retirement allowance under KRS 78.510 to 78.852 and for the purpose of determining whether the member is eligible to receive a retirement allowance under KRS 78.510 to 78.852. Accumulated sick-leave in excess of six (6) months shall be added to the member's service credit if the member or employer pays to the retirement system the value of the additional service credit based on the formula adopted by the board.
  - (b) The employer may elect to pay fifty percent (50%) of the cost of the sick leave in excess of six (6) months on behalf of its employees. The employee shall pay the remaining fifty percent (50%). The payment by the employer shall not be deposited to the member's account. Service credit shall not be credited to the member's account until both the employer's and employee's payments are received by the retirement system.
  - (c) Once the employer elects to pay all or fifty percent (50%) of the cost on behalf of its employees, it shall continue to pay the same portion of the cost.

- (4) The system shall compute the cost of the sick-leave credit of each retiring employee and bill ~~each the~~ employer **with whom the employee accrued sick leave** accordingly. The employer shall remit payment within thirty (30) days from receipt of the bill.
- (5) As an alternative to subsections (1), (3), (4), and (6) of this section, any agency participating in the County Employees Retirement System which has formally adopted a sick-leave program that is universally administered to its employees, or administered to a majority of eligible employees in accordance with subsection (6) of this section, shall, at the time of termination, compensate the employee for unused sick-leave days the employee has accumulated which it is the uniform policy of the agency to allow. The rate of compensation for each unused sick-leave day shall be based on the daily salary rate calculated from the employee's current rate of pay. Payment for unused sick-leave days shall be incorporated into the employee's final compensation if the employee and employer make the regular employee and employer contributions, respectively, on the sick-leave payment. The number of sick-leave days for which the employee is compensated shall be divided by the average number of working days per month in county service and rounded to the nearest number of whole months. This number of months shall be added to the employee's total service credit and to the number of months used to determine creditable compensation, pursuant to KRS 78.510, but no more than sixty (60) months shall be used to determine final compensation.
- (6) Any city of the first class that has two (2) or more sick-leave programs for its employees may purchase service credit with the retirement system for up to six (6) months of unused sick leave for each retiring employee who participates in the sick-leave program administered to a majority of the eligible employees of the city. An employee participating in a sick-leave program administered to a minority of the eligible employees shall become eligible for the purchase of service credit under this subsection when the employee commences participating in the sick-leave program that is administered to a majority of the eligible employees of the city.

Section 37. KRS 78.640 is amended to read as follows:

- (1) The members' contribution account shall be the account to which all members' contributions, or contributions picked up by the employer after August 1, 1982, and interest allowances as provided in KRS 78.510 to 78.852 shall be credited. From this account shall be paid the accumulated contributions of a member required to be returned to him upon withdrawal, or paid in the event of his death before retirement. ***Prior to the member's retirement, death, or refund in accordance with Section 21 of this Act, no funds shall be made available from the member contribution account.***
- (2) Each member's contribution or contribution picked up by the employer shall be credited to the individual account of the contributing member.
- (3) Each member on June 30 of each year shall have his individual account credited with interest at a rate determined by the board but not less than two percent (2%) per annum on the accumulated contributions of the member on June 30 of the preceding fiscal year and the amounts so credited shall be transferred from the retirement allowance account.
- (4) Upon the retirement of a member, his accumulated contributions shall be transferred from the members' contribution account to the retirement allowance account.

Section 38. KRS 78.780 is amended to read as follows:

- (1) The government and control of the system is vested in the board of trustees of the Kentucky Retirement Systems. The board shall carry out the provisions of KRS 78.510 to 78.852 in the same manner in which it administers the Kentucky Employees Retirement System. In all matters concerning the administration of KRS 78.510 to 78.852, the same rights, duties, and obligations shall apply to the board as apply under the provisions of KRS 61.510 to 61.705, except that members of the board, when acting for the County Employees Retirement System, shall be paid a per diem of ~~eighty-sixty~~ dollars ~~(\$80)(\$60)~~, plus actual expenses.
- (2) Expenses incurred by or on behalf of the system and the board in the administration of the system during a fiscal year shall be paid from the retirement allowance account. Any other statute to the contrary notwithstanding, authorization for all expenditures relating to the administrative operations of the system, including investment related expenditures, shall be contained in the biennial budget unit request, branch budget recommendation, and the financial plan adopted by the General Assembly pursuant to KRS Chapter 48. Nothing herein shall be construed as limiting appropriations which may be made to the system from other sources.

SECTION 39. A NEW SECTION OF KRS 78.520 TO 78.852 IS CREATED TO READ AS FOLLOWS:

*There is created and established:*

- (1) *An excess benefit plan to be known as the County Employees Retirement System Excess Benefit Plan. The plan is created for the purpose of providing the retirement allowances payable from the retirement systems under KRS 78.520 to 78.852 that would otherwise be limited by 26 U.S.C. sec. 415.*
- (2) *A state fund to be known as the County Employees Retirement System Excess Benefit Fund which shall consist of all the assets of the plan.*
- (3) *The administration and assets of the plan shall be as set forth in Section 32 of this Act.*

SECTION 40. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

*Any other statute to the contrary notwithstanding, the Executive Department of government shall accept from the unified prosecutorial system all accrued annual and sick leave balances and service credits of employees leaving the unified prosecutorial system and accepting appointments to the Executive Department. These leave balances shall be attested to by the former employer of the employee and shall not exceed those limits established by statute or administrative regulation for employees of the Executive Department. This provision shall apply to Executive Department employees who were contributing to the Kentucky Employees Retirement System or the State Police Retirement System on or after July 1, 2000.*

Section 41. KRS 161.507 is amended to read as follows:

- (1) An active contributing member of the Teachers' Retirement System may receive service credit for active service rendered in the uniformed services of the Armed Forces of the United States, including the commissioned corps of the Public Health Service, subject to the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 and to administrative regulations promulgated by the board of trustees. Military service includes service in the uniformed services that occurs before the employment of a member in a position covered by the retirement system or where a member leaves covered employment without giving advance written or verbal notice of performing duty in the uniformed services. Service in the uniformed services also includes uniformed service that occurs after employment in a position covered by the retirement system where the member has given advance written or verbal notice of performing duty in the uniformed services and the member returns directly from uniformed services to covered employment. Military service may be credited only if discharge was honorable or was not terminated upon the occurrence of any of the events listed in 38 U.S.C. sec. 4304. Service shall be considered as Kentucky teaching service, except that service may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1) unless the service occurred after the member gave written or verbal notice of performing duty in the uniformed services and the member returned directly from uniformed services to covered employment. A maximum of six (6) years of military service may be credited, but in no case a greater number of years than the actual years of contributing service in Kentucky.
- (2) No credit shall be granted for military service which has been or will be used in qualifying for annuity benefit payments from another retirement system financed wholly or in part by public funds.
- (3) A member having twenty (20) years or more of active duty in the military service, and who is qualified for regular federal retirement benefits based on this military service, may not receive credit for any military service in the Teachers' Retirement System. This subsection shall apply to service presented for credit on July 1, 1975, and after this date.
- (4)
  - (a) A member receiving retirement credit for active duty in the armed services of the United States prior to employment in a position covered by the retirement system or where the member leaves covered employment without giving advance written or verbal notice of performing duty in the uniformed services shall contribute to the retirement system an amount equal to thirty-five percent (35%) of the actuarial cost for each year of service for which the member is receiving credit. Two percent (2%) of the thirty-five percent (35%) required payment shall be allocated to the medical insurance fund. These contributions shall not be picked up, as described in KRS 161.540(2). In purchasing retirement credit for active duty in the armed services, the latest years of service shall be considered first in allowing credit toward retirement. The board of trustees shall adopt a table of actuarial factors to be used in calculating the amount of contribution required for crediting this service.
  - (b) If military service occurred after the member gave written or verbal notice of performing duty in the uniformed services and the member returns directly from uniformed services to covered employment, the member shall contribute the regular member contribution required by KRS 161.540. The member



may make the payment of delayed contributions in a lump sum payment or in installments not to exceed five (5) years beginning with the member's date of reemployment. Interest at the rate of eight percent (8%) per annum shall be charged for delayed contributions beginning with the member's date of reemployment until paid.

- (5) An active contributing member of the Teachers' Retirement System may receive service credit for service in the military reserves of the United States or the National Guard. The member may purchase one (1) month of service for each six (6) months of service in the reserves or the National Guard. ***Notwithstanding any other statute, regulation, or policy to the contrary, the system shall provide a member, upon request, the estimated actuarial cost of the National Guard or military reserves service purchase based upon the information available at the time of the request. The member shall be entitled to enter into a contract with the system at the time of the request to purchase the National Guard or military reserve service by paying to the system the estimated actuarial cost, either by installments or in lump sum.*** ~~The member shall pay the full actuarial cost of the service in the military reserves or the National Guard.~~ Service in the military reserves or the National Guard shall be treated as service earned prior to participation in the system and shall not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1). The payment shall not be picked up by the employer, as described in KRS 161.540(2).

Section 42. The following KRS sections are repealed:

61.554 Persons employed by Legislative Research Commission for six legislative bienniums may purchase credit in Kentucky Employees Retirement System.

61.596 Service credit bonus for early retirement -- Payments by agencies -- Forfeiture upon reemployment.

**Approved April 7, 2000**

## CHAPTER 386

**(HB 561)**

AN ACT relating to public protection.

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

Section 1. KRS 95A.040 is amended to read as follows:

- (1) The commission shall ~~have authority to~~ make full and complete studies, recommendations and reports to the Governor, ***the Kentucky Community and Technical College System***, and the Legislature for the purpose of ***establishing***:
- (a) ~~Suggesting~~ Minimum standards and education of fire protection personnel appointed to positions in municipal fire departments, who are to be engaged in fire protection to include fire suppression, fire prevention, arson investigation and other allied fields;
  - (b) ~~Suggesting~~ Basic minimum courses of training for fire protection personnel;
  - (c) ~~Suggesting~~ Procedure for the certification of fire protection personnel and the certification of fire protection instructors.
- (2) The commission shall have the authority to:
- (a) Certify fire protection training and education programs as having attained the minimum required standards suggested by such commission;
  - (b) Certify instructors as having qualified as fire protection instructors under such conditions as the commission may prescribe;
  - (c) Direct research in the field of fire protection and accept gifts and grants for such purposes;
  - (d) Recommend curricula for advanced courses and seminars in fire science training in colleges and institutions of higher education.
- (3) The commission shall have authority to receive and to the extent required by federal law to disburse all grants and funds from the federal government for the purpose of fire protection personnel training and education. Except as otherwise provided by law, the ***commission*** ~~Department of Insurance~~ shall administer all state

programs and all state and federally funded grant programs related to fire protection personnel training and education.

Section 2. KRS 198B.664 is amended to read as follows:

- (1) Every master heating, ventilation, and air conditioning contractor's license and journeyman heating, ventilation, and air conditioning mechanic's license issued by the board ~~[shall expire on June 30 of each year and]~~ may be renewed ***annually***, upon payment of a renewal fee ~~[prior to July 1 of each year]~~. Failure to renew shall cause the license to expire.
- (2) Applications for restoration may be made within ninety (90) days of expiration of a license upon payment of the renewal fee, payment of a restoration fee, and if applicable proof of insurance as required by KRS 198B.668.
- (3) Those persons previously licensed by the board as a master heating, ventilation, and air conditioning contractor and not engaged in the practice of heating, ventilating, and air conditioning contracting in the Commonwealth may apply and be granted inactive status by the board in accordance with administrative regulations promulgated by the board. Licensees granted inactive status shall not retain the right to statewide practice of heating, ventilation, and air conditioning contracting. An inactive license shall not be a valid license. A licensee on inactive status may petition the board for restoration of a license to practice actively. The petitioner shall pay a reactivation fee, provide proof of the satisfaction of all other requirements as determined by the board, and obtain the insurance as required by KRS 198B.668.

Section 3. KRS 198B.686 is amended to read as follows:

- (1) Effective July 1, 1995, any person for whom licensure or certification is required who is not licensed or certified by the board and practices heating, ventilation, and air conditioning contracting services shall be guilty of a Class A misdemeanor. Each violation shall be regarded as a separate offense.
- (2) ***Any person who advertises or otherwise holds himself out as being a licensed master or journeyman heating, ventilation, or air conditioning contractor and is not so licensed shall be guilty of a Class A misdemeanor. Each violation shall be regarded as a separate offense.***

Section 4. The following KRS sections are repealed:

17.260 Expenditure of allotted funds.

17.270 List of approved expenditures.

**Approved April 7, 2000**

## **CHAPTER 387**

**(HB 588)**

AN ACT relating to small business.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO READ AS FOLLOWS:

- (1) ***There is created the Commission on Small Business Advocacy. The commission shall be a separate administrative body of state government within the meaning of KRS 12.010(8).***
- (2) ***It shall be the purpose of the Commission on Small Business Advocacy to:***
  - (a) ***Address matters of small business as it relates to government affairs;***
  - (b) ***Promote a cooperative and constructive relationship between state agencies and the small business community to ensure coordination and implementation of statewide strategies that benefit small business in the Commonwealth;***
  - (c) ***Coordinate and educate the small business community of federal, state, and local government initiatives of value and importance to the small business community;***
  - (d) ***Create a process by which the small business community is consulted in the development of public policy as it affects their industry sector;***

- (e) *Aid the small business community in navigating the regulatory process, when that process becomes cumbersome, time consuming, and bewildering to the small business community; and*
  - (f) *Advocate for the small business, as necessary when regulatory implementation is overly burdensome, costly, and harmful to the success and growth of small businesses in the Commonwealth.*
- (3) *The Commission on Small Business Advocacy shall consist of twenty-seven (27) members:*
  - (a) *The Governor, or the Governor's designee;*
  - (b) *The secretaries of the following cabinets, or their designees:*
    - 1. *Economic Development;*
    - 2. *Natural Resources and Environmental Protection;*
    - 3. *Revenue; and*
    - 4. *Transportation;*
  - (c) *The state director of the Small Business Development Centers in Kentucky;*
  - (d) *One (1) representative of each of the following organizations, appointed by the Governor from a list of three (3) nominees submitted by the governing bodies of each organization:*
    - 1. *Associated Industries of Kentucky;*
    - 2. *National Federation of Independent Business;*
    - 3. *Kentucky Chamber of Commerce;*
    - 4. *Kentucky Federation of Business and Professional Women's Club, Inc.*
    - 5. *Kentucky Retail Federation;*
    - 6. *Professional Women's Forum;*
    - 7. *Kentuckiana Minority Supplier Development Council;*
    - 8. *Greater Lexington Chamber of Commerce*
    - 9. *Lexington chapter of the National Association of Women Business Owners;*
    - 10. *Greater Louisville, Inc.;*
    - 11. *Louisville chapter of the National Association of Women Business Owners;*
    - 12. *Northern Kentucky Chamber of Commerce, Inc.;*
    - 13. *Northern Kentucky - Greater Cincinnati chapter of the National Association of Women Business Owners; and*
    - 14. *Bowling Green chapter of the National Association of Women Business Owners;*
    - 15. *Henderson - Henderson County Chamber of Commerce;*
  - (e) *One (1) representative from small business from each of the following areas, appointed by the Governor:*
    - 1. *A city of the second class;*
    - 2. *A city of the third class;*
    - 3. *A city of the fourth class; and*
    - 4. *A city of the fifth class; and*
  - (f) *One (1) representative who is a small business owner served by each of the following organizations, appointed by the Governor:*
    - 1. *The Center for Rural Development; and*
    - 2. *Community Ventures Corporation.*

- (4) *The terms of all members appointed by the Governor shall be for four (4) years, except that the original appointments shall be staggered so that seven (7) appointments shall expire at two (2) years, seven (7) appointments shall expire at three (3) years, and seven (7) appointments shall expire at four (4) years from the dates of initial appointment.*
- (5) *The Governor shall appoint the chair and vice chair of the commission from the list of appointed members.*
- (6) *The commission shall meet quarterly and at other times upon call of the chair or a majority of the commission.*
- (7) *A quorum shall be a majority of the membership of the commission.*
- (8) *Members of the commission shall serve without compensation but shall be reimbursed for their necessary travel expenses actually incurred in the discharge of their duties on the commission, subject to Finance and Administration Cabinet administrative regulations.*
- (9) *There shall be an executive director, who shall be the administrative head and chief executive officer of the commission, recommended by the commission and appointed by the Governor. The executive director shall have authority to hire staff, contract for services, expend funds, and operate the normal business activities of the commission.*
- (10) *The Commission on Small Business Advocacy shall be an independent agency attached to the Office of the Governor.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO READ AS FOLLOWS:

- (1) *The duties of the Commission on Small Business Advocacy shall include, but not be limited to:*
  - (a) *Coordinate and promote the awareness of the Federal Small Business Regulatory Enforcement Fairness Act of 1996, and its subsequent amendments within the small business community of the Commonwealth;*
  - (b) *Develop a process by which the small business community is made aware of state legislation and administrative regulations affecting it, both prior to its enactment and during its implementation;*
  - (c) *Advocate for the small business sectors when state legislation and administrative regulations are overly burdensome, costly, or harmful to the success and growth of the sector; and*
  - (d) *Collect information and research those public policies and government practices which are helpful or detrimental to the success and growth of the small business community.*
- (2) *By September 1 of each year, the commission shall submit a report to the Governor and the Interim Joint Committee on Economic Development and Tourism detailing its work in the prior fiscal year, including, but not limited to the following:*
  - (a) *Activities and achievements of the commission in accomplishing its purposes and duties;*
  - (b) *Findings of the commission related to its collection of information and research on public policies and government practices affecting small businesses, including specific legislation and administrative regulations that are helpful or detrimental to the success of small businesses; and*
  - (c) *Specific recommendations of ways state government could better promote the economic development efforts of small businesses in the Commonwealth.*

Section 3. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

- I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
  2. Lieutenant Governor.
  3. Department of State.
    - (a) Secretary of State.
    - (b) Board of Elections.
    - (c) Registry of Election Finance.
  4. Department of Law.
    - (a) Attorney General.
  5. Department of the Treasury.
    - (a) Treasurer.
  6. Department of Agriculture.
    - (a) Commissioner of Agriculture.
    - (b) Kentucky Council on Agriculture.
  7. Superintendent of Public Instruction.
  8. Auditor of Public Accounts.
  9. Railroad Commission.
- II. Program cabinets headed by appointed officers:
1. Justice Cabinet:
    - (a) Department of State Police.
    - (b) Department of Criminal Justice Training.
    - (c) Department of Corrections.
    - (d) Department of Juvenile Justice.
    - (e) Office of the Secretary.
    - (f) Offices of the Deputy Secretaries.
    - (g) Office of General Counsel.
    - (h) Division of Kentucky State Medical Examiners Office.
    - (i) Parole Board.
    - (j) Kentucky State Corrections Commission.
    - (k) Commission on Correction and Community Service.
  2. Education, Arts, and Humanities Cabinet:
    - (a) Department of Education.
      - (1) Kentucky Board of Education.
      - (2) Education Professional Standards Board.
    - (b) Department for Libraries and Archives.
    - (c) Kentucky Arts Council.
    - (d) Kentucky Educational Television.
    - (e) Kentucky Historical Society.
    - (f) Kentucky Teachers' Retirement System Board of Trustees.

- (g) Kentucky Center for the Arts.
  - (h) Kentucky Craft Marketing Program.
  - (i) Kentucky Commission on the Deaf and Hard of Hearing.
  - (j) Governor's Scholars Program.
  - (k) Governor's School for the Arts.
  - (l) Operations and Development Office.
  - (m) Kentucky Heritage Council.
  - (n) Kentucky African-American Heritage Commission.
  - (o) Board of Directors for the Center for School Safety.
3. Natural Resources and Environmental Protection Cabinet:
- (a) Environmental Quality Commission.
  - (b) Kentucky Nature Preserves Commission.
  - (c) Department for Environmental Protection.
  - (d) Department for Natural Resources.
  - (e) Department for Surface Mining Reclamation and Enforcement.
  - (f) Office of Legal Services.
  - (g) Office of Information Services.
4. Transportation Cabinet:
- (a) Department of Highways.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Administrative Services.
  - (d) Department of Fiscal Management.
  - (e) Department of Rural and Municipal Aid.
  - (f) Office of General Counsel.
  - (g) Office of Public Affairs.
  - (h) Office of Personnel Management.
  - (i) Office of Minority Affairs.
  - (j) Office of Environmental Affairs.
  - (k) Office of Policy and Budget.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
  - (b) Department of Job Development.
  - (c) Department of Financial Incentives.
  - (d) Department of Community Development.
  - (e) Tobacco Research Board.
  - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.

- (b) Department of Insurance.
  - (c) Department of Housing, Buildings and Construction.
  - (d) Department of Financial Institutions.
  - (e) Department of Mines and Minerals.
  - (f) Department of Public Advocacy.
  - (g) Department of Alcoholic Beverage Control.
  - (h) Kentucky Racing Commission.
  - (i) Board of Claims.
  - (j) Crime Victims Compensation Board.
  - (k) Kentucky Board of Tax Appeals.
  - (l) Backside Improvement Commission.
  - (m) Office of Petroleum Storage Tank Environmental Assurance Fund.
7. Cabinet for Families and Children:
- (a) Department for Social Insurance.
  - (b) Department for Social Services.
  - (c) Public Assistance Appeals Board.
  - (d) Office of the Secretary.
  - (e) Office of the General Counsel.
  - (f) Office of Program Support.
  - (g) Office of Family Resource and Youth Services Centers.
  - (h) Office of Technology Services.
  - (i) Office of the Ombudsman.
  - (j) Office of Aging Services.
8. Cabinet for Health Services.
- (a) Department for Public Health.
  - (b) Department for Medicaid Services.
  - (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission on Children with Special Health Care Needs.
  - (e) Office of Certificate of Need.
  - (f) Office of the Secretary.
  - (g) Office of the General Counsel.
  - (h) Office of Program Support.
  - (i) Office of the Inspector General.
9. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
  - (b) Office of Management and Budget.
  - (c) Office of Financial Management and Economic Analysis.
  - (d) Office of the Controller.

- (e) Department for Administration.
  - (f) Department of Facilities Management.
  - (g) Department of Information Systems.
  - (h) State Property and Buildings Commission.
  - (i) Kentucky Pollution Abatement Authority.
  - (j) Kentucky Savings Bond Authority.
  - (k) Deferred Compensation Systems.
  - (l) Office of Equal Employment Opportunity Contract Compliance.
  - (m) Office of Capital Plaza Operations.
  - (n) County Officials Compensation Board.
  - (o) Kentucky Employees Retirement Systems.
  - (p) Commonwealth Credit Union.
  - (q) State Investment Commission.
  - (r) Kentucky Housing Corporation.
  - (s) Governmental Services Center.
  - (t) Kentucky Local Correctional Facilities Construction Authority.
  - (u) Kentucky Turnpike Authority.
  - (v) Historic Properties Advisory Commission.
  - (w) Kentucky Kare Health Insurance Authority.
10. Labor Cabinet:
- (a) Department of Workplace Standards.
  - (b) Department of Workers' Claims.
  - (c) Kentucky Labor-Management Advisory Council.
  - (d) Occupational Safety and Health Standards Board.
  - (e) Prevailing Wage Review Board.
  - (f) Workers' Compensation Board.
  - (g) Kentucky Employees Insurance Association.
  - (h) Apprenticeship and Training Council.
  - (i) State Labor Relations Board.
  - (j) Kentucky Occupational Safety and Health Review Commission.
  - (k) Office of Administrative Services.
  - (l) Office of Labor-Management Relations and Mediation.
  - (m) Office of General Counsel.
  - (n) Workers' Compensation Funding Commission.
  - (o) Employers Mutual Insurance Authority.
11. Revenue Cabinet:
- (a) Department of Property Valuation.
  - (b) Department of Tax Administration.



- (c) Office of Financial and Administrative Services.
  - (d) Department of Law.
  - (e) Department of Information Technology.
  - (f) Office of Taxpayer Ombudsman.
12. Tourism Development Cabinet:
- (a) Department of Travel.
  - (b) Department of Parks.
  - (c) Department of Fish and Wildlife Resources.
  - (d) Kentucky Horse Park Commission.
  - (e) State Fair Board.
  - (f) Office of Administrative Services.
  - (g) Office of General Counsel.
13. Cabinet for Workforce Development:
- (a) Department for Adult Education and Literacy.
  - (b) Department for Technical Education.
  - (c) Department of Vocational Rehabilitation.
  - (d) Department for the Blind.
  - (e) Department for Employment Services.
  - (f) State Board for Adult and Technical Education.
  - (g) Governor's Council on Vocational Education.
  - (h) The State Board for Proprietary Education.
  - (i) The Foundation for Adult Education.
  - (j) The Kentucky Job Training Coordinating Council.
  - (k) Office of General Counsel.
  - (l) Office of Communication Services.
  - (m) Office of Development and Industry Relations.
  - (n) Office of Workforce Analysis and Research.
  - (o) Office for Administrative Services.
  - (p) Office for Policy and Budget.
  - (q) Office of Personnel Services.
  - (r) Unemployment Insurance Commission.
14. Personnel Cabinet:
- (a) Office of Administrative and Legal Services.
  - (b) Department for Personnel Administration.
  - (c) Department for Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.
  - (e) Kentucky Kare.
  - (f) Division of Performance Management.

- (g) Division of Employee Records.
- (h) Division of Staffing Services.
- (i) Division of Classification and Compensation.
- (j) Division of Employee Benefits.
- (k) Division of Communications and Recognition.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Council on Postsecondary Education.
  - (a) Kentucky Commission on Community Volunteerism and Service.
- 3. Department for Local Government.
- 4. Kentucky Commission on Human Rights.
- 5. Kentucky Commission on Women.
- 6. Department of Veterans' Affairs.
- 7. Kentucky Commission on Military Affairs.
- 8. Office of the Chief Information Officer.
- 9. ***Commission on Small Business Advocacy.***

Section 4. KRS 12.023 is amended to read as follows:

The following organizational units and administrative bodies shall be attached to the Office of the Governor:

- (1) Council on Postsecondary Education;
- (2) Department of Military Affairs;
- (3) Department for Local Government;
- (4) Kentucky Commission on Human Rights;
- (5) Kentucky Commission on Women;
- (6) Kentucky Commission on Military Affairs;
- (7) Coal Marketing and Export Council;
- (8) Governor's Office of Child Abuse and Domestic Violence Services;
- (9) Office of the Chief Information Officer;~~[-and]~~
- (10) Office of Coal Marketing and Export; ***and***
- (11) ***Commission on Small Business Advocacy.***

**Approved April 7, 2000**

**CHAPTER 388**

**(HB 634)**

AN ACT relating to investments.

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

SECTION 1. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

***As used in this subtitle:***

- (1) ***"Acceptable collateral" means:***

- (a) *As to securities lending transactions, and for the purpose of calculating counterparty exposure amount, cash, cash equivalents, letter of credit, direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States, any agency of the United States, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, and as to lending foreign securities, sovereign debt rated 1 by the SVO;*
- (b) *As to repurchase transactions, cash, cash equivalents, direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States, any agency of the United States, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation; and*
- (c) *As to reverse repurchase transactions, cash and cash equivalents.*
- (2) *"Acceptable private mortgage insurance" means insurance written by a private insurer protecting a mortgage lender against loss occasioned by a mortgage loan default and issued by a licensed mortgage insurance company, with an SVO 1 designation or a rating issued by a nationally recognized statistical rating organization equivalent to an SVO 1 designation, that covers losses to an eighty percent (80%) loan-to-value ratio.*
- (3) *"Accident and health insurance" means protection that provides payment of benefits for covered sickness or accidental injury, excluding credit insurance, disability insurance, accidental death and dismemberment insurance, and long-term care insurance.*
- (4) *"Accident and health insurer" means a licensed life or health insurer or health service corporation whose insurance premiums and required statutory reserves for accident and health insurance constitute at least ninety-five percent (95%) of total premium considerations or total statutory required reserves, respectively.*
- (5) *"Admitted assets" means assets permitted to be reported as admitted assets in accordance with Subtitle 6 of KRS Chapter 304 on the statutory financial statement of the insurer most recently required to be filed with the commissioner, but excluding assets of separate accounts.*
- (6) *"Affiliate" means, as to any person, another person that, directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with the person.*
- (7) *"Asset-backed security" means a security or other instrument, excluding a mutual fund, evidencing an interest in, or the right to receive payments from, or payable from distributions on, an asset, a pool of assets, or specifically divisible cash flows that are legally transferred to a trust or another special purpose bankruptcy-remote business entity, on the following conditions:*
  - (a) *The trust or other business entity is established solely for the purpose of acquiring specific types of assets or rights to cash flows, issuing securities and other instruments representing an interest in or right to receive cash flows from those assets or rights, and engaging in activities required to service the assets or rights and any credit enhancement or support features held by the trust, or other business entity; and*
  - (b) *The assets of the trust or other business entity consist solely of interest bearing obligations or other contractual obligations representing the right to receive payment from the cash flows from the assets or rights. However, the existence of credit enhancement, such as letters of credit or guarantees, or support features such as swap agreements, shall not cause a security or other instrument to be ineligible as an asset-backed security.*
- (8) *"Business entity" includes a sole proprietorship, corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, trust, joint tenancy, or other similar form of business organization, whether organized for profit or not-for-profit.*
- (9) *"Cap" means an agreement obligating the seller to make payments to the buyer, with each payment based on the amount by which a reference price, level, or the performance or value of one (1) or more underlying interests exceeds a predetermined number, sometimes called the strike rate or strike price.*
- (10) *"Capital and surplus" means the sum of the capital and surplus of the insurer required to be shown on the statutory financial statement of the insurer most recently required to be filed with the commissioner.*
- (11) *"Cash equivalents" means short-term, highly rated, and highly liquid investments or securities readily convertible to known amounts of cash without penalty and so near maturity that they present insignificant*

*risk of change in value. Cash equivalents include government money market mutual funds and class one money market mutual funds. For purposes of this definition:*

- (a) *"Short-term" means investments with a remaining term to maturity of ninety (90) days or less; and*
- (b) *"Highly rated" means an investment rated P-1 by Moody's Investors Service, Inc., or A-1 by Standard and Poor's division of The McGraw-Hill Companies, Inc. or its equivalent rating by a nationally recognized statistical rating organization recognized by the SVO.*
- (12) *"Class one bond mutual fund" means a mutual fund that at all times qualifies for investment using the bond class one reserve factor under the Purposes and Procedures of the Securities Valuation Office, or any successor publication.*
- (13) *"Class one money market mutual fund" means a money market mutual fund that at all times qualifies for investment using the bond class one reserve factor under the Purposes and Procedures of the Securities Valuation Office, or any successor publication.*
- (14) *"Code" means KRS Chapter 304 and all administrative regulations promulgated as authorized.*
- (15) *"Collar" means an agreement to receive payments as the buyer of an option, cap, or floor and to make payment as the seller of a different option, cap, or floor.*
- (16) *"Commercial mortgage loan" means a loan secured by a mortgage, other than a residential mortgage loan.*
- (17) *"Construction loan" means a loan of less than three (3) years in term, made for financing the cost of construction of a building or other improvement to real estate, that is secured by the real estate.*
- (18) *"Control" means the possession, directly or indirectly, of the power to direct, or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist in fact. The commissioner may determine, after furnishing all interested persons notice and an opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.*
- (19) *"Counterparty exposure amount" means:*
  - (a) *The net amount of credit risk attributable to a derivative instrument entered into with a business entity other than through a qualified exchange, qualified foreign exchange, or cleared through a qualified clearinghouse ("over-the-counter derivative instrument"). The amount of credit risk equals:*
    - 1. *The market value of the over-the-counter derivative instrument if the liquidation of the derivative instrument would result in a final cash payment to the insurer; or*
    - 2. *Zero (0) if the liquidation of the derivative instrument would not result in a final cash payment to the insurer.*
  - (b) *If over-the-counter derivative instruments are entered into under a written master agreement that provides for netting of payments owed by the respective parties, and the domiciliary jurisdiction of the counterparty is either within the United States or if not within the United States, within a foreign jurisdiction listed in the Purposes and Procedures of the Securities Valuation Office as eligible for netting, the net amount of credit risk shall be the greater of zero (0) or the net sum of:*
    - 1. *The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment to the insurer; and*
    - 2. *The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment by the insurer to the business entity.*
  - (c) *For open transactions, market value shall be determined at the end of the most recent quarter of the insurer's fiscal year and shall be reduced by the market value of acceptable collateral held by the insurer or placed in escrow by one (1) or both parties.*

- (20) *"Covered" means that an insurer owns or can immediately acquire, through the exercise of options, warrants, or conversion rights already owned, the underlying interest in order to fulfill or secure its obligations under a call option, cap, or floor it has written, or has set aside under a custodial or escrow agreement, cash, or cash equivalents with a market value equal to the amount required to fulfill its obligations under a put option it has written, in an income generation transaction.*
- (21) *"Credit tenant loan" means a mortgage loan that is made primarily in reliance on the credit standing of a major tenant, structured with an assignment of the rental payments to the lender with real estate pledged as collateral in the form of a first lien.*
- (22) (a) *"Derivative instrument" means an agreement, option, instrument, a series, or combination thereof:*
1. *To make or take delivery of, or assume or relinquish, a specified amount of one (1) or more underlying interests, or to make a cash settlement in lieu thereof; or*
  2. *That has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one (1) or more underlying interests.*
- (b) *Derivative instruments include options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, forwards, futures, any other agreements, options, or instruments substantially similar thereto, or any series or combination thereof, and any agreements, options, or instruments permitted under administrative regulations promulgated under Section 6 of this Act. Derivative instruments shall not include an investment authorized by Sections 9 to 15, 17, and 23 to 28 of this Act.*
- (23) *"Derivative transaction" means a transaction involving the use of one (1) or more derivative instruments.*
- (24) *"Direct" or "directly", when used in connection with an obligation, means that the designated obligor is primarily liable on the instrument representing the obligation.*
- (25) *"Dollar roll transaction" means two (2) simultaneous transactions with different settlement dates no more than ninety-six (96) days apart, so that in the transaction with the earlier settlement date, an insurer sells to a business entity, and in the other transaction the insurer is obligated to purchase from the same business entity, substantially similar securities of the following types:*
- (a) *Asset-backed securities issued, assumed, or guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or their respective successors; and*
  - (b) *Other asset-back securities referred to in Section 106 of Title I of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. sec. 77r-1), as amended.*
- (26) *"Domestic jurisdiction" means the United States, Canada, any state, any province of Canada, or any political subdivision of any of the foregoing.*
- (27) *"Equity interest" means any of the following that are not rated credit instruments:*
- (a) *Common stock;*
  - (b) *Preferred stock;*
  - (c) *Trust certificate;*
  - (d) *Equity investment in an investment company other than a money market mutual fund or a class one bond mutual fund;*
  - (e) *Investment in a common trust fund of a bank regulated by a federal or state agency;*
  - (f) *An ownership interest in mineral, oil, or gas, the rights to which have been separated from the underlying fee interest in the real estate where the mineral, oil, or gas are located;*
  - (g) *Instruments that are mandatorily, or at the option of the issuer, convertible to equity;*
  - (h) *Limited partnership interests and those general partnership interests authorized under subsection (4) of Section 4 of this Act;*
  - (i) *Member interests in limited liability companies;*

- (j) *Warrants or other rights to acquire equity interests that are created by the person that owns or would issue the equity to be acquired; or*
- (k) *Instruments that would be rated credit instruments except for the provisions of subsection (70)(b) of this section.*
- (28) *"Equivalent securities" means:*
  - (a) *In a securities lending transaction, securities that are identical to the loaned securities in all features including the amount of the loaned securities, except as to certificate number if held in physical form, but if any different security shall be exchanged for a loaned security by recapitalization, merger, consolidation, or other corporate action, the different security shall be deemed to be the loaned security;*
  - (b) *In a repurchase transaction, securities that are identical to the purchased securities in all features including the amount of the purchased securities, except as to the certificate number if held in physical form; or*
  - (c) *In a reverse repurchase transaction, securities that are identical to the sold securities in all features including the amount of the sold securities, except as to the certificate number if held in physical form.*
- (29) *"Floor" means an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount by which a predetermined number, sometimes called the floor rate or price, exceeds a reference price, level, performance, or value of one (1) or more underlying interests.*
- (30) *"Foreign currency" means a currency other than that of a domestic jurisdiction.*
- (31) (a) *"Foreign investment" means an investment in a foreign jurisdiction, or an investment in a person, real estate, or asset domiciled in a foreign jurisdiction, that is substantially of the same type as those eligible for investment under this subtitle, other than Sections 15 and 28 of this Act. An investment shall not be deemed to be foreign if the issuing person, qualified primary credit source, or qualified guarantor is a domestic jurisdiction or a person domiciled in a domestic jurisdiction, unless:*
  - 1. *The issuing person is a shell business entity; and*
  - 2. *The investment is not assumed, accepted, guaranteed, insured, or otherwise backed by a domestic jurisdiction or a person that is not a shell business entity, domiciled in a domestic jurisdiction.*
- (b) *For purposes of this definition:*
  - 1. *"Shell business entity" means a business entity having no economic substance, except as a vehicle for owning interests in assets issued, owned, or previously owned by a person domiciled in a foreign jurisdiction;*
  - 2. *"Qualified guarantor" means a guarantor against which an insurer has a direct claim for full and timely payment, evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction; and*
  - 3. *"Qualified primary credit source" means the credit source to which an insurer looks for payment as in an investment and against which an insurer has a direct claim for full and timely payment, evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction.*
- (32) *"Foreign jurisdiction" means a jurisdiction other than a domestic jurisdiction.*
- (33) *"Forward" means an agreement other than a future, to make, take delivery of, or effect a cash settlement based on the actuarial or expected price, level, performance, or value of one (1) or more underlying interests.*
- (34) *"Future" means an agreement, traded on a qualified exchange or qualified foreign exchange, to make, take delivery of, or effect a cash settlement based on the actual or expected price, level, performance, or value of one (1) or more underlying interest.*
- (35) *"Government money market mutual fund" means a money market mutual fund that at all times:*

- (a) *Invests only in obligations issued, guaranteed, or insured by the federal government of the United States or collateralized repurchase agreements composed of these obligations; and*
  - (b) *Qualifies for investment without a reserve under the Purposes and Procedures of the Securities Valuation Office or any successor publication.*
- (36) *"Government sponsored enterprise" means a :*
  - (a) *Governmental agency; or*
  - (b) *Corporation, limited liability company, association, partnership, joint stock company, joint venture, trust, or other entity or instrumentality organized under the laws of any domestic jurisdiction to accomplish a public policy or other governmental purpose.*
- (37) *"Guaranteed or insured", when used in connection with an obligation acquired under this subtitle, means that the guarantor or insurer has agreed to:*
  - (a) *Perform or insure the obligation of the obligor or purchase the obligation; or*
  - (b) *Be unconditionally obligated until the obligation is repaid to maintain in the obligor a minimum net worth, fixed charge coverage, stockholders' equity, or sufficient liquidity to enable the obligor to pay the obligation in full.*
- (38) *"Hedging transaction" means a derivative transaction that is entered into and maintained to reduce:*
  - (a) *The risk of a change in the value, yield, price, cash flow, or quantity of assets or liabilities that the insurer has acquired or incurred or anticipates acquiring or incurring; or*
  - (b) *The currency exchange rate risk or the degree of exposure as to assets or liabilities that an insurer has acquired or incurred or anticipates acquiring or incurring.*
- (39) *"High grade investment" means a rated credit instrument rated 1 or 2 by the SVO.*
- (40) *"Income" means, as to a security, interest, accrual of discount, dividends, or other distributions, such as rights, tax or assessment, or assessment credits, warrants, and distributions in kind.*
- (41) *"Income generation transaction" means a derivative transaction involving the writing of covered call options, covered put options, covered caps, or covered floors that is intended to generate income or enhance return.*
- (42) *"Initial margin" means that amount of cash, securities, or other consideration initially required to be deposited to establish a futures position.*
- (43) *"Insurance future" means a future relating to an index or pool that is based on insurance-related items.*
- (44) *"Insurance futures option" means an option on an insurance future.*
- (45) *"Investment company" means an investment company as defined in Section 3(a) of the Investment Company Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended, and a person described in Section 3(c) of that Act.*
- (46) *"Investment company series" means an investment portfolio of an investment company that is organized as a series company and to which assets of the investment company have been specifically allocated.*
- (47) *"Investment practices" means transactions of the types described in Sections 14, 16, 27, and 29 of this Act.*
- (48) *"Investment subsidiary" means a subsidiary of an insurer engaged or organized to engage exclusively in the ownership and management of assets authorized as investment for the insurer if each subsidiary agrees to limit its investment in any asset so that its investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations or avoid any other provisions of this subtitle applicable to the insurer. As used in this subsection, the total investment of the insurer shall include:*
  - (a) *Direct investment by the insurer in an asset; and*
  - (b) *The insurer's proportionate share of an investment in an asset by an investment subsidiary of the insurer, that shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership interest in the subsidiary.*

- (49) *"Investment strategy" means the techniques and methods used by an insurer to meet its investment objectives, such as active bond portfolio management, passive bond portfolio management, interest rate anticipation, growth investing, and value investing.*
- (50) *"Letter of credit" means a clean, irrevocable, and unconditional letter of credit issued or confirmed by, and payable and presentable at, a financial institution on the list of financial institutions meeting the standards for issuing letters of credit under the Purposes and Procedures of the Securities Valuation Office or any successor publication. To constitute acceptable collateral for the purposes of Sections 14 and 27 of this Act, a letter of credit shall have an expiration date beyond the term of the subject transaction.*
- (51) *"Limited liability company" means a business organization, excluding partnerships and ordinary business corporations, organized or operating under the laws of the United States or any state thereof that limits the personal liability of investors to the equity investment of the investor in the business entity.*
- (52) *"Lower grade investment" means a rated credit instrument rated 4, 5, or 6 by the SVO.*
- (53) *"Market value" means:*
- (a) *As to cash and letters of credit, the amounts thereof; and*
  - (b) *As to security as of any date, the price for the security on that date obtained from a generally recognized source or the most recent quotation from such a source or, to the extent no generally recognized source exists, the price for the security as determined in good faith by the parties to a transaction, plus accrued but unpaid income thereon to the extent not included in the price as of that date.*
- (54) *"Medium grade investment" means a rated credit instrument rated 3 by the SVO.*
- (55) *"Money market mutual fund" means a mutual fund that meets the conditions of 17 Code of Federal Regulations Par. 270.2a-7, under the Investment Company Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended or renumbered.*
- (56) *"Mortgage loan" means an obligation secured by a mortgage, deed of trust, trust deed, or other consensual lien on real estate.*
- (57) *"Multilateral development bank" means an international development organization of which the United States is a member.*
- (58) *"Mutual fund" means an investment company or, in the case of an investment company that is organized as a series company, an investment company series, that, in either case, is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended.*
- (59) *"NAIC" means the National Association of Insurance Commissioners.*
- (60) *"Obligation" means a bond, note, debenture, or a trust certificate including an equipment certificate, production payment, negotiable bank certificate of deposit, bankers' acceptance, credit tenant loan, loan secured by financing net leases, and other evidence of indebtedness for the payment of money or participations, certificates, or other evidences of an interest in any of the foregoing, whether constituting a general obligation of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment.*
- (61) *"Option" means an agreement giving the buyer the right to buy or receive (a "call option"), sell or deliver (a "put option"), enter into, extend, terminate, or effect a cash settlement based on the actual or expected price level, performance or value of one (1) or more underlying interests.*
- (62) *"Person" means an individual, a business entity, a multilateral development bank, or a government or quasi-governmental body, such as a political subdivision or a government sponsored enterprise.*
- (63) *"Potential exposure" means the amount determined in accordance with the NAIC Annual Statement Instructions.*
- (64) *"Preferred stock" means preferred, preference, or guaranteed stock of a business entity authorized to issue the stock, that has a preference in liquidation over the common stock of the business entity.*
- (65) *"Qualified bank" means:*



- (a) *A national bank, state bank, or trust company that at all times is no less than adequately capitalized as determined by standards adopted by the United States banking regulators and that is either regulated by state banking laws, or is a member of the Federal Reserve Bank of New York; or*
  - (b) *A bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as a bank or trust company by that country's government or an agency thereof and that at all times is no less than adequately capitalized as determined by the standards adopted by international banking authorities.*
- (66) *"Qualified business entity" means a business entity that is:*
- (a) *An issuer of obligations or preferred stock that are rated 1 or 2 by SVO or an issuer of obligations, preferred stock, or derivative instruments that are rated the equivalent of 1 or 2 by the SVO or by a nationally recognized statistical rating organization recognized by the SVO; or*
  - (b) *A primary dealer in United States government securities, recognized by the Federal Reserve Bank of New York.*
- (67) *"Qualified clearinghouse" means a clearinghouse for, and subject to the rules of, a qualified exchange or a qualified foreign exchange, that provides clearing service, including acting as a counterparty to each of the parties to a transaction such that the parties no longer have credit risks as to each other.*
- (68) *"Qualified exchange" means:*
- (a) *A securities exchange registered as a national securities exchange, or a securities market regulated under the Securities Exchange Act of 1934 (15 U.S.C. sec. 78 et seq.), as amended;*
  - (b) *A board of trade or commodities exchange designated as a contract market by the Commodity Futures Trading Commission or any successor thereof;*
  - (c) *Private Offerings, Resales, and Trading through Automated Linkages (PORTAL);*
  - (d) *A designated offshore securities market as defined in Securities Exchange Commission Regulation S, 17 C.F.R. Part 230, as amended; or*
  - (e) *A qualified foreign exchange.*
- (69) *"Qualified foreign exchange" means a foreign exchange, board of trade, or contract market located outside the United States, its territories, or possessions:*
- (a) *That has received regulatory comparability relief under Commodity Futures Trading Commission (CFTC) Rule 30.10, as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30;*
  - (b) *That is, or its members are, subject to the jurisdiction of a foreign futures authority that has received regulatory comparability relief under CFTC Rule 30.10, as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30, as to futures transactions in the jurisdiction where the exchange, board of trade, or contract market is located; or*
  - (c) *Upon which foreign stock index futures contracts are listed that are the subject of no-action relief issued by the CFTC's Office of General Counsel, provided that an exchange, board of trade, or contract market that qualifies as a qualified foreign exchange only under this subsection shall only be a qualified foreign exchange as to foreign stock index futures contracts that are the subject of no-action relief.*
- (70) (a) *"Rated credit instrument" means a contractual right to receive cash or another rated credit instrument from another entity that:*
- 1. *Is rated or required to be rated by the SVO;*
  - 2. *In the case of an instrument with a maturity of three hundred ninety-seven (397) days or less, is issued, guaranteed, or insured by an entity that is rated by, or another obligation of the entity is rated by, the SVO or by a nationally recognized statistical rating organization recognized by the SVO;*
  - 3. *In the case of an instrument with a maturity of ninety (90) days or less is issued by a qualified bank;*

4. *Is a share of a class one bond mutual fund; or*
5. *Is a share of a money market mutual fund.*
- (b) *However, "rated credit instrument" does not mean:*
  1. *An instrument that is mandatorily, or at the option of the issuer, convertible to an equity interest; or*
  2. *A security that has a par value and whose terms provide that the issuer's net obligation to repay all or part of the security's par value is determined by reference to the performance of an equity, a commodity, a foreign currency, or an index of equities, commodities, foreign currencies, or combinations thereof.*
- (71) *"Real estate" means:*
  - (a)
    1. *Real property;*
    2. *Interests in real property, such as leaseholds, minerals, oil, and gas that have not been separated from the underlying fee interest;*
    3. *Improvements and fixtures located on or in real property; and*
    4. *The seller's equity in a contract providing for a deed of real estate.*
  - (b) *As to a mortgage on a leasehold estate, real estate shall include the leasehold estate only if it has an unexpired term, including renewal options exercisable at the option of the lessee, extending beyond the scheduled maturity date of the obligation that is secured by a mortgage on the leasehold estate by a period equal to at least twenty percent (20%) of the original term of the obligation or ten (10) years, whichever is greater.*
- (72) *"Replication transaction" means a derivative transaction that is intended to replicate the performance of one (1) or more assets that an insurer is authorized to acquire under this subtitle. A derivative transaction that is entered into as a hedging transaction shall not be considered a replication transaction.*
- (73) *"Repurchase transaction" means a transaction in which an insurer purchases securities from a business entity that is obligated to repurchase the purchased securities or equivalent securities from the insurer at a specified price, either within a specified period of time or upon demand.*
- (74) *"Required liabilities" means total liabilities required to be reported on the statutory financial statement of the insurer most recently required to be filed with the commissioner.*
- (75) *"Residential mortgage loan" means a loan primarily secured by a mortgage on real estate improved with a one (1) to four (4) family residence.*
- (76) *"Reverse repurchase transaction" means a transaction in which an insurer sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price, either within a specified period of time or upon demand.*
- (77) *"Secured location" means the contiguous real estate owned by one (1) person.*
- (78) *"Securities lending transaction" means a transaction in which securities are loaned by an insurer to a business entity that is obligated to return the loaned securities or equivalent securities to the insurer, either within a specified period of time or upon demand.*
- (79) *"Series company" means an investment company that is organized as a series company, as defined in Rule 18f-2(a) adopted under the Investment Company Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended.*
- (80) *"Sinking fund stock" means preferred stock that:*
  - (a) *Is subject to a mandatory sinking fund or similar arrangement that will provide for the redemption or open market purchase of the entire issue over a period not longer than forty (40) years from the date of acquisition; and*
  - (b) *Provides for mandatory sinking fund installments or open market purchases commencing not more than ten and one-half (10 1/2) years from the date of issue, with the sinking fund installments providing for the purchase or redemption, on a cumulative basis commencing ten (10) years from the date of issue, of at least two and one-half percent (2.5%) per year of the original number of shares of that issue of preferred stock.*

(81) *"Special rated credit instrument" means a rated credit instrument that is:*

- (a) *An instrument that is structured so that, if it is held until retired by or on behalf of the issuer, its rate of return, based on its purchase cost and any cash flow stream possible under the structure of the transaction, may become negative due to reasons other than the credit risk associated with the issuer of the instrument; however, a rated credit instrument shall not be a special rated credit instrument under this subsection if it is:*
  - 1. *A share in a class one bond mutual fund;*
  - 2. *An instrument, other than an asset-backed security, with payments of par value fixed as to amount and timing, or callable but in any event payable only at par or greater, and interest or dividend cash flows that are based on either a fixed or variable rate determined by reference to a specified rate or index;*
  - 3. *An instrument, other than an asset-backed security, that has a par value and is purchased at a price not greater than one hundred ten percent (110%) of par;*
  - 4. *An instrument, including an asset-backed security, whose rate of return would become negative only as a result of a prepayment due to casualty, condemnation, or economic obsolescence of collateral or change of law;*
  - 5. *An asset-backed security that relies on collateral that meets the requirements of subparagraph 2. of this paragraph, the par value of which collateral:*
    - a. *Is not permitted to be paid sooner than one-half (1/2) of the remaining term to maturity from the date of acquisition;*
    - b. *Is permitted to be paid prior to maturity only at a premium sufficient to provide a yield to maturity for the investment, considering the amount prepaid and reinvestment rates at the time of early repayment, at least equal to the yield to maturity of the initial investment; or*
    - c. *Is permitted to be paid prior to maturity at a premium at least equal to the yield of a Treasury issue of comparable remaining life; or*
  - 6. *An asset-backed security that relies on cash flows from assets that are not prepayable at any time at par, but is not otherwise governed by subparagraph 5. of this paragraph, if the asset-backed security has a par value reflecting principal payments to be received if held until retired by or on behalf of the issuer and is purchased at a price no greater than one hundred five percent (105%) of the par amount.*
- (b) *An asset-backed security that:*
  - 1. *Relies on cash flows from assets that are prepayable at par at any time;*
  - 2. *Does not make payments of par that are fixed as to amount and timing; and*
  - 3. *Has a negative rate of return at the time of acquisition if a prepayment threshold assumption is used with the prepayment threshold assumption defined as either:*
    - a. *Two (2) times the prepayment expectation reported by a recognized, publicly available source as being the median of expectations contributed by broker dealers or other entities, except insurers, engaged in the business of selling or evaluating the securities or assets. The prepayment expectation used in this calculation shall be, at the insurer's election, the prepayment expectation for pass-through securities of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or for other assets of the same type as the assets that underlie the asset-backed security, in either case with a gross weighted average coupon comparable to the gross weighted average coupon of the assets that underlie the asset-backed security; or*
    - b. *Another prepayment threshold assumption specified by the commissioner by administrative regulation promulgated under Section 6 of this Act.*
- (c) *For purposes of paragraph (b) of this subsection, if the asset-backed security is purchased in combination with one (1) or more other asset-backed securities that are supported by identical*

*underlying collateral, the insurer may calculate the rate of return for these specific combined asset-backed securities in combination. The insurer shall maintain documentation demonstrating that the securities were acquired and are continuing to be held in combination.*

- (82) *"State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.*
- (83) *"Substantially similar securities" means securities that meet all criteria for substantially similar securities specified in the NAIC Accounting Practices and Procedures manual, as amended, and in an amount that constitutes good delivery form as determined from time to time by the Public Securities Administration.*
- (84) *"SVO" means the Securities Valuation Office of the NAIC or any successor office established by the NAIC.*
- (85) *"Swap" means an agreement to exchange or to net payments at one (1) or more times based on the actual or expected price, level, performance, or value of one (1) or more underlying interests.*
- (86) *"Underlying interest" means the assets, liabilities, other interests, or a combination thereof underlying a derivative instrument, such as any one (1) or more securities, currencies, rates, indices, commodities, or derivative instruments.*
- (87) *"Unrestricted surplus" means the amount by which total admitted assets exceed one hundred twenty-five percent (125%) of the insurer's required liabilities.*
- (88) *"Warrant" means an instrument that gives the holder the right to purchase an underlying financial instrument at a given price and time or at a series of prices and times outlined in the warrant agreement. Warrants may be issued alone or in connection with the sale of other securities, for example, as part of a merger, recapitalization agreement, or to facilitate divestiture of the securities of another business entity.*

SECTION 2. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1)
  - (a) *Insurers may acquire, hold, or invest investments or engage in investment practices as set forth in this subtitle. Investments not conforming to this subtitle or otherwise expressly allowed in this chapter shall not be admitted assets.*
  - (b) *This subtitle shall apply to investments and investment practices of domestic insurers and United States branches of alien insurers entered through this state. This subtitle shall not apply to separate accounts of an insurer except to the extent that the provisions of Section 31 of this Act so provide.*
- (2) *Subject to subsection (3) of this section, an insurer shall not acquire or hold an investment as an admitted asset unless at the time of acquisition it is:*
  - (a) *Eligible for the payment or accrual of interest or discount, whether in cash or other securities, eligible to receive dividends or other distributions, or is otherwise income producing; or*
  - (b) *Acquired under Section 13(3), 14, 16, 18, 26(3), 27, 29, or 30 of this Act, or under the authority of sections of the code other than in this subtitle.*
- (3) *An insurer may acquire or hold as admitted assets investments that do not otherwise qualify under this subtitle if the insurer has not acquired them for the purpose of circumventing any limitations contained in this subtitle, if the insurer acquires the investments in the following circumstances and the insurer complies with the provisions of Section 4 of this Act as to the investments:*
  - (a) *As payment on account of existing indebtedness or in connection with the refinancing, restructuring, or workout of existing indebtedness, if taken to protect the insurer's interest in that investment;*
  - (b) *As realization on collateral for an obligation;*
  - (c) *In connection with an otherwise qualified investment or investment practice, as interest on a dividend, other distribution related to the investment, investment practice, or in connection with the refinancing of the investment, in each case for no additional or only nominal consideration;*
  - (d) *Under a lawful and bona fide agreement of recapitalization, voluntary, or involuntary reorganization in connection with an investment held by the insurer; or*
  - (e) *Under a bulk reinsurance, merger, or consolidation transaction approved by the commissioner if the assets constitute admissible investments for the ceding, merged, or consolidated companies.*

- (4) *A foreign insurer that becomes a domestic insurer in accordance with KRS 304.24-500 may hold as admitted assets investments that do not otherwise qualify under this subtitle if the investments were qualified as admitted assets in the insurer's former state of domicile immediately prior to the insurer's becoming a Kentucky domestic insurer, if the insurer has not acquired the investments for the purpose of circumventing any limitations contained in this subtitle and if the insurer complies with the provisions of Section 4 of this Act as to the investments.*
- (5) *An investment or portion of an investment acquired by an insurer under subsections (3) or (4) of this section shall become a nonadmitted asset three (3) years, or five (5) years in the case of mortgage loans and real estate, from the date of its acquisition, unless within that period the investment has become a qualified investment under this subtitle other than subsections (3) or (4) of this section, but an investment acquired under an agreement of bulk reinsurance, merger, or consolidation may be qualified for a longer period if so provided in the plan for reinsurance, merger, or consolidation as approved by the commissioner. Upon application by the insurer and a showing that the nonadmission of an asset held under subsections (3) or (4) of this section would materially injure the interests of the insurer, the commissioner may extend the period for admissibility for an additional reasonable period of time.*
- (6) *Except as provided in subsections (7) and (9) of this section, an investment shall qualify under this subtitle if, on the date the insurer committed to acquire the investment or on the date of its acquisition, it would have qualified under this subtitle. For the purposes of determining limitations contained in this subtitle, an insurer shall give appropriate recognition to any commitments to acquire investments.*
- (7)
  - (a) *An investment held as an admitted asset by an insurer on the effective date of this Act that qualified under this subtitle shall remain qualified as an admitted asset under this subtitle.*
  - (b) *Each specific transaction constituting an investment practice of the type described in this subtitle that was lawfully entered into by an insurer and was in effect on the effective date of this Act shall continue to be permitted under this subtitle until its expiration or termination under its terms.*
- (8) *Unless otherwise specified, an investment limitation computed on the basis of an insurer's admitted assets or capital and surplus shall relate to the amount required to be shown on the statutory balance sheet of the insurer most recently required to be filed with the commissioner. For purposes of computing any limitation based upon admitted assets, the insurer shall deduct from the amount of its admitted assets the amount of the liability recorded on its statutory balance sheet for:*
  - (a) *The return of acceptable collateral received in a reverse repurchase transaction or a securities lending transaction;*
  - (b) *Cash received in a dollar roll transaction; and*
  - (c) *The amount reported as borrowed money in the most recently filed financial statement to the extent not included in paragraphs (a) and (b) of this subsection.*
- (9) *An investment qualified, in whole or in part, for acquisition or holding as an admitted asset may be qualified or requalified at the time of acquisition or a later date, in whole or in part, under any other section of this subtitle, if the relevant conditions contained in the other section of this subtitle are satisfied at the time of qualification or requalification.*
- (10) *An insurer shall maintain documentation demonstrating that investments were acquired in accordance with this subtitle, and specifying the section of this subtitle under which they were acquired.*
- (11) *An insurer shall not enter into an agreement to purchase securities in advance of their issuance for resale to the public as part of a distribution of the securities by the issuer, or otherwise guarantee the distribution, except that an insurer may acquire privately placed securities with registration rights.*
- (12) *Notwithstanding the provisions of this subtitle, the commissioner, for good cause, may order under the state's administrative regulations, an insurer to nonadmit, limit, dispose of, withdraw from or discontinue an investment or investment practice. The authority of the commissioner under this subsection is in addition to any other authority of the commissioner.*
- (13) *Insurance futures and insurance futures options are not considered investments or investment practices for the purposes of this subtitle.*

SECTION 3. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *An insurer's board of directors shall adopt a written plan for acquiring and holding investments and for engaging in investment practices that specifies guidelines as to the quality, maturity, diversification of investments, and other specifications including investment strategies intended to assure that the investments and investment practices are appropriate for the business conducted by the insurer, its liquidity needs, and its capital and surplus. The board shall review and assess the insurer's technical investment and administrative capabilities and expertise before adopting a written plan concerning an investment strategy or investment practice.*
- (2) *Investments acquired and held under this subtitle shall be acquired and held under the supervision and direction of the board of directors of the insurer. The board of directors shall evidence by formal resolution, at least annually, that it has determined whether all investments have been made in accordance with delegations, standards, limitations, and investment objectives prescribed by the board or a committee of the board charged with the responsibility to direct its investments.*
- (3) *On no less than a quarterly basis, and more often if deemed appropriate, an insurer's board of directors or committee of the board of directors shall:*
  - (a) *Receive and review a summary report on the insurer's investment portfolio, its investment activities, and investment practices engaged in under delegated authority, in order to determine whether the investment activity of the insurer is consistent with its written plan; and*
  - (b) *Review and revise, as appropriate, the written plan.*
- (4) *In discharging its duties under this section, the board of directors shall require that records of any authorizations or approvals, other documentation as the board may require, and reports of any action taken under authority delegated under the plan referred to in subsection (1) of this section shall be made available on a regular basis to the board of directors.*
- (5) *In discharging their duties under this section, the directors of an insurer shall perform their duties in good faith and with that degree of care that ordinarily prudent individuals in like positions would use under similar circumstances.*
- (6) *If an insurer does not have a board of directors, all references to the board of directors in this subtitle shall be deemed to be references to the governing body of the insurer having authority equivalent to that of a board of directors.*

SECTION 4. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*An insurer shall not, directly or indirectly:*

- (1) *Invest in an obligation or security or make a guarantee for the benefit of or in favor of an officer or director of the insurer, except as provided in Section 5 of this Act;*
- (2) *Invest in an obligation or security, make a guarantee for the benefit of or in favor of, or make other investments in a business entity of which ten percent (10%) or more of the voting securities or equity interests are owned directly or indirectly by or for the benefit of one (1) or more officers or directors of the insurer, except as authorized in KRS 304.37-110, or provided in Section 5 of this Act;*
- (3) *Engage on its own behalf or through one (1) or more affiliates in a transaction or series of transactions designed to evade the prohibitions of this subtitle;*
- (4) (a) *Invest in a partnership as a general partner, except that an insurer may make an investment as a general partner;*
  1. *If all other partners in the partnership are subsidiaries of the insurer;*
  2. *For the purpose of :*
    - a. *Meeting cash calls committed to prior to the effective date of this Act;*
    - b. *Completing those specific projects or activities of the partnership in which the insurer was a general partner as of the effective date of this Act that had been undertaken as of that date; or*
    - c. *Making capital improvements to property owned by the partnership on the effective date of this Act if the insurer was a general partner as of that date; or*

3. *In accordance with subsection (3) of Section 2 of this Act;*
- (b) *This subsection shall not prohibit a subsidiary or other affiliate of the insurer from becoming a general partner; or*
- (5) *Invest in or lend its funds upon the security of shares of its own stock, except that an insurer may acquire shares of its own stock for the following purposes, but the shares shall not be admitted assets of the insurer;*
  - (a) *Conversion of a stock insurer into a mutual or reciprocal insurer or a mutual or reciprocal insurer into a stock insurer;*
  - (b) *Issuance to the insurer's officers, employees, or agents in connection with a plan approved by the commissioner for converting a publicly held insurer into a privately held insurer or in connection with other stock option and employee benefit plans; or*
  - (c) *In accordance with any other plan approved by the commissioner.*

SECTION 5. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Except as provided in subsection (2) of this section, an insurer shall not, without the prior written approval of the commissioner, directly or indirectly:*
  1. *Make a loan to or invest in an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest;*
  2. *Make a guarantee for the benefit of or in favor of an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest;*
  3. *Enter into an agreement for the purchase or sale of property from or to an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest.*
- (b) *For purposes of this section, an officer or director shall not be deemed to have a financial interest by reason of an interest that is held directly or indirectly through the ownership of equity interests representing less than two percent (2%) of all outstanding equity interests issued by a person that is a party to the transaction, or solely by reason of that individual's position as a director or officer of a person that is a party to the transaction.*
- (c) *This subsection does not permit an investment that is prohibited by Section 4 of this Act.*
- (d) *This subsection does not apply to a transaction between an insurer and any of its subsidiaries or affiliates that is entered into in compliance with Subtitle 37 of KRS Chapter 304, other than a transaction between an insurer and its officer or director.*
- (2) *An insurer may make, without the prior written approval of the commissioner;*
  - (a) *Policy loans in accordance with the terms of the policy or contract and Section 17 of this Act;*
  - (b) *Advances to officers or directors for expenses reasonably expected to be incurred in the ordinary course of the insurer's business or guarantees associated with credit or charge cards issued or credit extended for the purpose of financing these expenses;*
  - (c) *Loans secured by the principal residence of an existing or new officer of the insurer made in connection with the officer's relocation at the insurer's request, if the loans comply with the requirements of Section 13 or 26 of this Act, and the terms and conditions otherwise are the same as those generally available from unaffiliated third parties;*
  - (d) *Secured loans to an existing or new officer of the insurer made in connection with the officer's relocation at the insurer's request, if the loans:*
    1. *Do not have a term exceeding two (2) years;*
    2. *Are required to finance mortgage loans outstanding at the same time on the prior and new residences of the officer;*
    3. *Do not exceed an amount equal to the equity of the officer in the prior residence; and*

4. *Are required to be fully repaid upon the earlier of the end of the two (2) year period or the sale of the prior residence; and*
- (e) *Loans and advances to officers or directors made in compliance with state or federal law specifically related to the loans and advances by a regulated noninsurance subsidiary or affiliate of the insurer in the ordinary course of business and on terms no more favorable than available to other customers of the entity.*

SECTION 6. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*The commissioner may promulgate administrative regulations implementing the provisions of this subtitle.*

SECTION 7. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*Sections 7 to 18 of this Act shall apply to the investments and investment practices of domestic life and health insurers, and of United States branches of alien life and health insurers entered through this state.*

SECTION 8. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Except as otherwise specified in this subtitle, an insurer shall not acquire, directly or indirectly through an investment subsidiary, an investment under this subtitle if, as a result of and after giving effect to the investment, the insurer would hold more than three percent (3%) of its admitted assets in investments of all kinds issued, assumed, accepted, insured, or guaranteed by a single person.*
- (b) *This three percent (3%) limitation shall not apply to the aggregate amounts insured by a single financial guaranty insurer with the highest generic rating issued by a nationally recognized statistical rating organization.*
- (c) *Asset-backed securities shall not be subject to the limitations of paragraph (a) of this subsection, however an insurer shall not acquire an asset-backed security if, as a result of and after giving effect to the investment, the aggregate amount of asset-backed securities secured by or evidencing an interest in a single asset or single pool of assets held by a trust or other business entity, then held by the insurer would exceed three percent (3%) of its admitted assets.*
- (2) (a) *An insurer shall not acquire, directly or indirectly through an investment subsidiary, an investment under Sections 9, 12, and 15 of this Act, or counterparty exposure under subsection (4) of Section 16 of this Act, if, as a result of and after giving effect to the investment:*
  1. *The aggregate amount of medium and lower grade investments then held by the insurer would exceed twenty percent (20%) of its admitted assets;*
  2. *The aggregate amount of lower grade investments then held by the insurer would exceed ten percent (10%) of its admitted assets;*
  3. *The aggregate amount of investments rated 5 or 6 by the SVO then held by the insurer would exceed three percent (3%) of its admitted assets;*
  4. *The aggregate amount of investments rated 6 by the SVO then held by the insurer would exceed one percent (1%) of its admitted assets; or*
  5. *The aggregate amount of medium and lower grade investments then held by the insurer that receive as cash income less than the equivalent yield for Treasury issues with a comparative average life, would exceed one percent (1%) of its admitted assets.*
- (b) *An insurer shall not acquire, directly or indirectly through an investment subsidiary, an investment under Sections 9, 12, and 15 of this Act, or counterparty exposure under subsection (4) of Section 16 of this Act, if, as a result of and after giving effect to the investment:*
  1. *The aggregate amount of medium and lower grade investments issued, assumed, guaranteed, accepted, or insured by any one (1) person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed one percent (1%) of its admitted assets; or*



2. *The aggregate amount of lower grade investments issued, assumed, guaranteed, accepted, or insured by any one (1) person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed one-half of one percent (0.5%) of its admitted assets.*
- (c) *If an insurer attains or exceeds the limit of any one (1) rating category referred to in this subsection, the insurer shall not thereby be precluded from acquiring investments in other rating categories subject to the specific multicategory limits applicable to those investments.*
- (3) (a) *An insurer shall not acquire, directly or indirectly through an investment subsidiary, a Canadian investment authorized by this subtitle, if as a result of and after giving effect to the investment, the aggregate amount of these investments then held by the insurer would exceed forty percent (40%) of its admitted assets, or if the aggregate amount of Canadian investments not acquired under subsection (2) of Section 9 of this Act then held by the insurer would exceed twenty-five percent (25%) of its admitted assets.*
- (b) *However, as to an insurer that is authorized to do business in Canada or that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in Canada and denominated in Canadian currency, the limitations of paragraph (a) of this subsection shall be increased by the greater of:*
  1. *The amount the insurer is required by Canadian law to invest in Canada or to be denominated in Canadian currency; or*
  2. *One hundred fifteen percent (115%) of the amount of its reserves and other obligations under contracts on lives or risks resident or located in Canada.*

SECTION 9. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*Subject to the limitations of subsection (6) of this section, an insurer may acquire rated credit instruments:*

- (1) *Subject to the limitations of subsection (2) of Section 8 of this Act, but not the limitations of subsection (1) of Section 8 of this Act, an insurer may acquire rated credit instruments issued, assumed, guaranteed, or insured by:*
  - (a) *The United States; or*
  - (b) *A government sponsored enterprise of the United States, if the instruments of the government sponsored enterprise are assumed, guaranteed, or insured by the United States, or are otherwise backed or supported by the full faith and credit of the United States.*
- (2) (a) *Subject to the limitations of subsection (2) of Section 8 of this Act, but not to the limitations of subsection (1) of Section 8 of this Act, an insurer may acquire rated credit instruments issued, assumed, guaranteed, or insured by:*
  1. *Canada; or*
  2. *A government sponsored enterprise of Canada, if the instruments of the government sponsored enterprise are assumed, guaranteed, or insured by Canada or are otherwise backed or supported by the full faith and credit of Canada;*
- (b) *However, an insurer shall not acquire an instrument under this subsection if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this subsection would exceed forty percent (40%) of its admitted assets.*
- (3) (a) *Subject to the limitations of subsection (2) of Section 8 of this Act, but not to the limitations of subsection (1) of Section 8 of this Act, an insurer may acquire rated credit instruments, excluding asset-backed securities:*
  1. *Issued by a government money market mutual fund, a class one money market mutual fund, or a class one bond mutual fund;*
  2. *Issued, assumed, guaranteed, or insured by a government sponsored enterprise of the United States other than those eligible under subsection (1) of this section;*

3. *Issued, assumed, guaranteed, or insured by a state, if the instruments are general obligations of the state; or*
4. *Issued by a multilateral development bank;*
- (b) *However, an insurer shall not acquire an instrument of any one (1) fund, any one (1) enterprise or entity, or any one (1) state under this subsection if, as a result of and after giving effect to the investment, the aggregate amount of investments then held in any one (1) fund, enterprise, entity, or state under this subsection would exceed ten percent (10%) of its admitted assets.*
- (4) *Subject to the limitations of Section 8 of this Act, an insurer may acquire preferred stocks that are not foreign investments and that meet the requirements of rated credit instruments if, as a result of and after giving effect to the investment;*
  - (a) *The aggregate amount of preferred stocks then held by the insurer under this subsection does not exceed twenty percent (20%) of its admitted assets; and*
  - (b) *The aggregate amount of preferred stocks then held by the insurer under this subsection which are not sinking fund stocks or rated P1 or P2 by the SVO does not exceed ten percent (10%) of its admitted assets.*
- (5) *Subject to the limitations of Section 8 of this Act, in addition to those investments eligible under subsections (1) to (4) of this section, an insurer may acquire rated credit instruments that are not foreign investments.*
- (6) *An insurer shall not acquire special rated credit instruments under this section if, as a result of and after giving effect to the investment, the aggregate amount of special rated credit instruments then held by the insurer would exceed five percent (5%) of its admitted assets.*

SECTION 10. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *An insurer may acquire investments in investment pools that :*
  - (a) *Invest only in:*
    1. *Obligations that are rated 1 or 2 by SVO or have an equivalent of an SVO 1 or 2 rating or, in the absence of a 1 or 2 rating or equivalent rating, the issuer has outstanding obligations with an SVO 1 or 2 or equivalent rating by a nationally recognized statistical rating organization recognized by the SVO and have:*
      - a. *A remaining maturity of three hundred ninety-seven (397) days or less or a put that entitles the holder to receive the principal amount of the obligation which put may be exercised through maturity at specified intervals not exceeding three hundred ninety-seven (397) days; or*
      - b. *A remaining maturity of three (3) years or less and a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index (federal funds, prime rate, treasury bills, London InterBank Offered Rate (LIBOR), or commercial paper) and is subject to no maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes;*
    2. *Government money market mutual funds or class one money market mutual funds; or*
    3. *Securities lending, repurchase, and reverse repurchase transactions that meet all the requirements of Section 14 of this Act, except the quantitative limitations subsection (4) of Section 14 of this Act; or*
  - (b) *Invest only in investments that an insurer may acquire under this subtitle, if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of this subtitle.*
- (2) *For an investment in an investment pool to be qualified under this subtitle, the investment pool shall not:*
  - (a) *Acquire securities issued, assumed, guaranteed, or insured by the insurer or an affiliate of the insurer;*

- (b) *Borrow or incur any indebtedness for borrowed money, except for securities lending and reverse repurchase transactions that meet the requirements of Section 14 of this Act, except the quantitative limitations of subsection (4) of Section 14 of this Act; or*
  - (c) *Permit the aggregate value of securities then loaned or sold to, purchased from, or invested in any one (1) business entity under this section to exceed ten percent (10%) of the total assets of the investment pool.*
- (3) *The limitations of subsection (1) of Section 8 of this Act shall not apply to an insurer's investment in an investment pool, however an insurer shall not acquire an investment in an investment pool under this section if, as a result of and after giving effect to the investment, the aggregate amount of investment then held by the insurer under this section:*
  - (a) *In any one (1) investment pool would exceed ten percent (10%) of its admitted assets;*
  - (b) *In all investment pools investing in investments permitted under paragraph (b) of subsection (1) of this section would exceed twenty-five (25%) of its admitted assets; or*
  - (c) *In all investment pools would exceed thirty-five percent (35%) of its admitted assets.*
- (4) *For an investment in an investment pool to be qualified under this subtitle, the manager of the investment pool shall:*
  - (a) *Be organized under the laws of the United States or a state and designated as the pool manager in a pooling agreement;*
  - (b) *Be the insurer, an affiliated insurer or a business entity affiliated with the insurer, a qualified bank, a business entity registered under the Investment Advisors Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended or, in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact, or in the case of a United States branch of an alien insurer, its United States manager or affiliates or subsidiaries of its United States manager;*
  - (c) *Compile and maintain detailed accounting records setting forth:*
    - 1. *The cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool;*
    - 2. *A complete description of all underlying assets of the investment pool, including amount, interest rate, maturity date if any, and other appropriate designations; and*
    - 3. *Other records that, on a daily basis, allow third parties to verify each participant's investment in the investment pool; and*
  - (d) *Maintain the assets of the investment pool in one (1) or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement shall:*
    - 1. *State and recognize the claims and rights of each participant;*
    - 2. *Acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investments in the investment pool; and*
    - 3. *Contain an agreement that the underlying assets of the investment pool shall not be commingled with the general assets of the custodian qualified bank or any other person.*
- (5) *The pooling agreement for each investment pool shall be in writing and shall provide that:*
  - (a) *An insurer and its affiliated insurers or, in the case of an investment pool investing solely in investments permitted under paragraph (a) of subsection (1) of this section, the insurer and its subsidiaries, affiliates, or any pension or profit sharing plan of the insurer, its subsidiaries and affiliates or, in the case of a United States branch of an alien insurer, affiliates or subsidiaries of its United States manager, shall at all times, hold one hundred percent (100%) of the interest in the investment pool;*
  - (b) *The underlying assets of the investment pool shall not be commingled with the general assets of the pool manager or any other person;*

- (c) *In proportion to the aggregate amount of each pool participant's interest in the investment pool:*
  - 1. *Each participant owns an undivided interest in the underlying assets of the investment pool; and*
  - 2. *The underlying assets of the investment pool are held solely for the benefit of each participant;*
- (d) *A participant, or in the event of the participant's insolvency, bankruptcy, or receivership, its trustee, receiver, or other successor-in-interest, may withdraw all or any portion of its investment from the investment pool under the terms of the pooling agreement;*
- (e) *Withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds shall occur within a reasonable and customary period thereafter not to exceed five (5) business days. Distributions under this paragraph shall be calculated in each case net of all then applicable fees and expenses of the investment pool. The pooling agreement shall provide that the pool manager shall distribute to a participant, at the discretion of the pool manager:*
  - 1. *In cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool;*
  - 2. *In kind, a pro rata share of each underlying asset; or*
  - 3. *In a combination of cash and in-kind distributions, a pro rata share in each underlying asset; and*
- (f) *The pool manager shall make the records of the investment pool available for inspection by the commissioner.*

SECTION 11. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to the limitations of Section 8 of this Act, an insurer may acquire equity interests in business entities organized under the laws of any domestic jurisdiction.*
- (2) *An insurer shall not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of investment then held by the insurer under this section would exceed twenty percent (20%) of its admitted assets, or the amount of equity interests then held by the insurer that are not listed on a qualified exchange would exceed five percent (5%) of its admitted assets. An accident and health insurer shall not be subject to this section but shall be subject to the same aggregate limitation on equity interests as a property and casualty insurer under Section 24 of this Act and also to the provisions of Section 20 of this Act.*
- (3) *An insurer shall not acquire under this section any investment that the insurer may acquire under Section 13 of this Act.*
- (4) *An insurer shall not short sell equity investments unless the insurer covers the short sale by owning the equity investment or an unrestricted right to the equity instrument exercisable within six (6) months of the short sale.*

SECTION 12. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Subject to the limitations of Section 8 of this Act, an insurer may acquire tangible personal property or equity interests therein located or used wholly or in part within a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subsection (4) of Section 4 of this Act, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments.*
- (b) *Investments acquired under paragraph (a) of this subsection shall be eligible only if:*
  - 1. *The property is subject to a lease or other agreement with a person whose rated credit instruments in the amount of the purchase price of the personal property the insurer could then acquire under Section 9 of this Act; and*
  - 2. *The lease or other agreement provides the insurer the right to receive rental, purchase, or other fixed payments for the use or purchase of the property, and the aggregate value of the*

*payments, together with the estimated residual value of the property at the end of its useful life and the estimated tax benefits to the insurer resulting from ownership of the property, shall be adequate to return the cost of the insurer's investment in the property, plus a return deemed adequate by the insurer.*

- (2) *The insurer shall compute the amount of each investment under this section on the basis of the out-of-pocket purchase price and applicable related expenses paid by the insurer for the investment, net of each borrowing made to finance the purchase price and expenses, to the extent the borrowing is without recourse to the insurer.*
- (3) *An insurer shall not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under this section would exceed;*
  - (a) *Two percent (2%) of its admitted assets; or*
  - (b) *One-half of one percent (0.5%) of its admitted assets as to any single item of tangible personal property.*
- (4) *For purposes of determining compliance with the limitations of Section 8 of this Act, investments acquired by an insurer under this section shall be aggregated with those acquired under Section 9 of this Act, and each lessee of the property under a lease referred to in this section shall be the issuer of an obligation in the amount of the investment of the insurer in the property determined as provided in subsection (2) of this section.*
- (5) *Nothing in this section is applicable to tangible personal property lease arrangements between an insurer and its subsidiaries and affiliates under a cost sharing arrangement or agreement permitted under KRS 304.37-030.*

SECTION 13. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Subject to the limitations of Section 8 of this Act, an insurer may acquire, either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subsection (4) Section 4 of this Act, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments, obligations secured by mortgages on real estate situated within a domestic jurisdiction, but a mortgage loan that is secured by other than a first lien shall not be acquired unless the insurer is the holder of the first lien. The obligations held by the insurer and any obligations with an equal lien priority, shall not, at the time of acquisition of the obligation, exceed:*
  - 1. *Ninety percent (90%) of the fair market value of the real estate, if the mortgage loan is secured by a purchase money mortgage or like security received by the insurer upon disposition of the real estate;*
  - 2. *Eighty percent (80%) of the fair market value of the real estate, if the mortgage loan requires immediate scheduled payment in periodic installments of principal and interest, has an amortization period of thirty (30) years or less, and periodic payments made no less frequently than annually. Each periodic payment shall be sufficient to assure that at all times the outstanding principal balance of the mortgage loan shall be no greater than the outstanding principal balance that would be outstanding under a mortgage loan with the same original principal balance, with the same interest rate, and requiring equal payments of principal and interest with the same frequency over the same amortization period. Mortgage loans permitted under this subsection are permitted notwithstanding the fact that they provide for a payment of the principal balance prior to the end of the period of amortization of the loan. For residential mortgage loans, the eighty percent (80%) limitation may be increased to ninety-seven percent (97%) if acceptable private mortgage insurance has been obtained; or*
  - 3. *Seventy-five percent (75%) of the fair market value of the real estate for mortgage loans that do not meet the requirements of subparagraph 1. or 2. of this paragraph.*
- (b) *For purposes of paragraph (a) of this subsection, the amount of an obligation required to be included in the calculation of the loan-to-value ratio may be reduced to the extent the obligation is*

*insured by the Federal Housing Administration, guaranteed by the Administrator of Veteran Affairs, or their successors.*

- (c) *A mortgage loan that is held by an insurer under subsection (7) of Section 2 of this Act or acquired under this section and is restructured in a manner that meets the requirements of a restructured mortgage loan in accordance with the NAIC Accounting Practices and Procedures Manual or successor publication shall continue to qualify as a mortgage loan under this subtitle.*
- (d) *Subject to the limitations of Section 8 of this Act, credit lease transactions that do not qualify for investment under Section 9 of this Act with the following characteristics shall be exempt from the provisions of paragraph (a) of this subsection :*
  - 1. *The loan amortizes over the initial fixed lease term at least in an amount sufficient so that the loan balance at the end of the lease term does not exceed the original appraised value of the real estate;*
  - 2. *The lease payments cover or exceed the total debt service over the life of the loan;*
  - 3. *A tenant or its affiliated entity whose rated credit instruments have a SVO 1 or 2 designation or a comparable rating from a nationally recognized statistical rating organization recognized by the SVO has a full faith and credit obligation to make the lease payments;*
  - 4. *The insurer holds or is the beneficial holder of a first lien mortgage on the real estate;*
  - 5. *The expenses of the real estate are passed through to the tenant, excluding exterior, structural, parking, and heating, ventilation, and air conditioning replacement expenses, unless annual escrow contributions, from cash flows derived from the lease payments, cover the expense shortfall; and*
  - 6. *There is a perfected assignment of the rents due in accordance with the lease to or for the benefit of the insurer.*
- (2) (a) *An insurer may acquire, manage, and dispose of real estate situated in a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subsection (4) of Section 4 of this Act, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments. The real estate shall be income producing or intended for improvement or development for investment purposes under an existing program in which case the real estate shall be deemed to be income producing.*
- (b) *The real estate may be subject to mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with paragraphs (b) and (c) of subsection (4) of this section.*
- (3) (a) *An insurer may acquire, manage, and dispose of real estate for the convenient accommodation of the insurer's, which may include its affiliates, business operations, including home office, branch office, and field office operations:*
  - 1. *Real estate acquired under this subsection may include excess space for rent to others, if the excess space, valued at its fair market value, would otherwise be a permitted investment under subsection (2) of this section and is so qualified by the insurer;*
  - 2. *The real estate acquired under this subsection may be subject to one (1) or more mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with paragraph (d) of subsection (4) of this section; and*
  - 3. *For purposes of this subsection, "business operations" shall not include that portion of real estate used for the direct provision of health care services by an accident and health insurer or its insured. An insurer may acquire real estate used for these purposes under subsection (2) of this section.*

- (4) (a) *An insurer shall not acquire an investment under subsection (1) of this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under subsection (1) of this section would exceed;*
1. *One percent (1%) of its admitted assets in mortgage loans covering any one (1) secured location;*
  2. *One-quarter of one percent (0.25%) of its admitted assets in construction loans covering any one (1) secured location; or*
  3. *Two percent (2%) of its admitted assets in construction loans in the aggregate.*
- (b) *An insurer shall not acquire an investment under subsection (2) of this section if, as a result of and after giving effect to the investment and any outstanding guarantees made by the insurer in connection with the investment, the aggregate amount of investments then held by the insurer under subsection (2) of this section plus the guarantees then outstanding would exceed:*
1. *One percent (1%) of its admitted assets in one (1) parcel or group of contiguous parcels of real estate, except that this limitation shall not apply to that portion of real estate used for the direct provision of health care services by an accident and health insurer for its insureds, such as hospitals, medical clinics, medical professional buildings, or other health facilities used for the purpose of providing health services; or*
  2. *Fifteen percent (15%) of its admitted assets in the aggregate, but not more than five percent (5%) of its admitted assets as to properties that are to be improved or developed.*
- (c) *An insurer shall not acquire an investment under subsection (1) or (2) of this section if, as a result of and after giving effect to the investment and any guarantees made by the insurer in connection with the investment, the aggregate amount of all investments then held by the insurer under subsections (1) and (2) of this section plus the guarantees then outstanding would exceed forty-five percent (45%) of its admitted assets. However, an insurer may exceed this limitation by no more than thirty percent (30%) of its admitted assets if:*
1. *This increased amount is invested only in residential mortgage loans;*
  2. *The insurer has no more than ten percent (10%) of its admitted assets invested in mortgage loans other than residential mortgage loans;*
  3. *The loan-to-value ratio of each residential mortgage loan does not exceed sixty percent (60%) at the time the mortgage loan is qualified under this increased authority, and the fair market value is supported by an appraisal no more than two (2) years old, prepared by an independent appraiser;*
  4. *A single mortgage loan qualified under this increased authority shall not exceed one-half of one percent (0.5%) of its admitted assets;*
  5. *The insurer files with the commissioner, and receives approval from the commissioner for, a plan that is designed to result in a portfolio of residential mortgage loans that is sufficiently geographically diversified; and*
  6. *The insurer agrees to file annually with the commissioner records that demonstrate that its portfolio of residential mortgage loans is geographically diversified in accordance with the plan.*
- (d) *The limitations of Section 8 of this Act shall not apply to an insurer's acquisition of real estate under subsection (3) of this section. An insurer shall not acquire real estate under subsection (3) of this section if, as a result of and after giving effect to the acquisition, the aggregate amount of real estate then held by the insurer under subsection (3) of this section would exceed ten percent (10%) of its admitted assets. With the permission of the commissioner, additional amounts of real estate may be acquired under subsection (3) of this section.*

SECTION 14. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*An insurer may enter into securities lending, repurchase, reverse repurchase, and dollar roll transactions with business entities, subject to the following requirements:*

- (1) *The insurer's board of directors shall adopt a written plan that is consistent with the requirements of the written plan in Section 3 of this Act that specifies guidelines and objectives to be followed, such as:*
  - (a) *A description of how cash received will be invested or used for general corporate purposes of the insurer;*
  - (b) *Operational procedures to manage interest rate risk, counterparty default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business, and the use of acceptable collateral in a manner that reflects the liquidity needs of the transactions; and*
  - (c) *The extent to which the insurer may engage in these transactions.*
- (2) *The insurer shall enter into a written agreement for all transactions authorized in this section other than dollar roll transactions. The written agreement shall require that each transaction terminate not more than one (1) year from its inception or upon the earlier demand of the insurer. The agreement shall be with the business entity counterparty, but for securities lending transactions, the agreement may be with an agent acting on behalf of the insurer, if the agent is a qualified business entity, and if the agreement:*
  - (a) *Requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and*
  - (b) *Prohibits securities lending transactions under the agreement with the agent or its affiliates.*
- (3) *Cash received in a transaction under this section shall be invested in accordance with this subtitle and in a manner that recognizes the liquidity needs of the transaction or used by the insurer for its general corporate purposes. For so long as the transaction remains outstanding, the insurer, its agent, or its custodian shall maintain, as to acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the Federal Reserve, Depository Trust Company, Participants Trust Company, or other securities depositories approved by the commissioner:*
  - (a) *Possession of the acceptable collateral;*
  - (b) *A perfected security interest in the acceptable collateral; or*
  - (c) *In the case of a jurisdiction outside of the United States, title to, or rights of a secured creditor to, the acceptable collateral.*
- (4) *The limitations of Sections 8 and 15 of this Act shall not apply to the business entity counterparty exposure created by transactions under this section. For purposes of calculations made to determine compliance with this subsection, no effect will be given to the insurer's future obligation to resell securities, in the case of a repurchase transaction, or to repurchase securities, in the case of a reverse repurchase transaction. An insurer shall not enter into a transaction under this section if, as a result of and after giving effect to the transaction:*
  - (a) *The aggregate amount of securities then loaned, sold to, or purchased from any one (1) business entity counterparty under this section would exceed five percent (5%) of its admitted assets. In calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement; or*
  - (b) *The aggregate amount of all securities then loaned, sold to, or purchased from all business entities under this section would exceed forty percent (40%) of its admitted assets.*
- (5) *In a securities lending transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to one hundred two percent (102%) of the market value of the securities loaned by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent (102%) of the market value of the loaned securities.*
- (6) *In a reverse repurchase transaction, other than a dollar roll transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to ninety-five percent (95%) of the market value of the securities transferred by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than ninety-five percent (95%) of the market value of the*



*securities so transferred, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals ninety-five percent (95%) of the market value of the transferred securities.*

- (7) *In a dollar roll transaction, the insurer shall receive cash in an amount at least equal to the market value of the securities transferred by the insurer in the transaction as of the transaction date.*
- (8) *In a repurchase transaction, the insurer shall receive as acceptable collateral transferred securities having a market value at least equal to one hundred two percent (102%) of the purchase price paid by the insurer for the securities. If at any time the market value of the acceptable collateral is less than one hundred percent (100%) of the purchase price paid by the insurer, the business entity counterparty shall be obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent (102%) of the purchase price. Securities acquired by an insurer in a repurchase transaction shall not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.*

SECTION 15. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to the limitations of Section 8 of this Act, an insurer may acquire foreign investments, or engage in investment practices with persons of or in foreign jurisdictions, of substantially the same types as those that an insurer is permitted to acquire under this subtitle, other than of the type permitted under Section 10 of this Act, if, as a result of and after giving effect to the investment:*
  - (a) *The aggregate amount of foreign investments then held by the insurer under this subsection does not exceed twenty percent (20%) of its admitted assets; and*
  - (b) *The aggregate amount of foreign investments then held by the insurer under this subsection in a single foreign jurisdiction does not exceed ten percent (10%) of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or three percent (3%) of its admitted assets as to any other foreign jurisdiction.*
- (2) *Subject to the limitations of Section 8 of this Act, an insurer may acquire investments, or engage in investment practices denominated in foreign currencies, whether or not they are foreign investments acquired under subsection (1) of this section, or additional foreign currency exposure as a result of the termination or expiration of a hedging transaction with respect to investments denominated in a foreign currency, if:*
  - (a) *The aggregate amount of investments then held by the insurer under this subsection denominated in foreign currencies does not exceed ten percent (10%) of its admitted assets; and*
  - (b) *The aggregate amount of investments then held by the insurer under this subsection denominated in the foreign currency of a single foreign jurisdiction does not exceed ten percent (10%) of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or three percent (3%) of its admitted assets as to any other foreign jurisdiction;*
  - (c) *However, an investment shall not be considered denominated in a foreign currency if the acquiring insurer enters into one (1) or more contracts in transactions permitted under Section 16 of this Act and the business entity counterparty agrees under the contract or contracts to exchange all payments made on the foreign currency denominated investment for United States currency at a rate that effectively insulates the investment cash flows against future changes in currency exchange rates during the period the contract or contracts are in effect.*
- (3) *In addition to investments permitted under subsections (1) and (2) of this section, an insurer that is authorized to do business in a foreign jurisdiction, and that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in that foreign jurisdiction and denominated in foreign currency of that jurisdiction, may acquire foreign investment respecting that foreign jurisdiction, and may acquire investments denominated in the currency of that jurisdiction, subject to the limitations of Section 8 of this Act. However, investments made under this subsection in obligations of foreign governments, their political subdivisions, and government sponsored enterprises shall not be subject to the limitations of Section 10 of this Act if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection shall not exceed the greater of:*

- (a) *The amount the insurer is required by the law of the foreign jurisdiction to invest in the foreign jurisdiction; or*
- (b) *One hundred fifteen percent (115%) of the amount of its reserves, net of reinsurance, and other obligations under the contracts on lives or risks resident or located in the foreign jurisdiction.*
- (4) *In addition to investments permitted under subsections (1) and (2) of this section, an insurer that is not authorized to do business in a foreign jurisdiction, but that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in that foreign jurisdiction and denominated in foreign currency of that jurisdiction, may acquire foreign investments respecting that foreign jurisdiction, and may acquire investments denominated in the currency of that jurisdiction subject to the limitations of Section 8 of this Act. However, investments made under this subsection in obligations of foreign governments, their political subdivisions, and government sponsored enterprises shall not be subject to the limitations of Section 8 of this Act if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection shall not exceed one hundred five percent (105%) of the amount of its reserves, net of reinsurance, and other obligations under the contracts on lives or risks resident or located in the foreign jurisdiction.*
- (5) *Investments acquired under this section shall be aggregated with investments of the same types made in accordance with this subtitle, and in a similar manner, for purposes of determining compliance with the limitations, if any, contained in this subtitle. Investments in obligations of foreign governments, their political subdivisions, and government sponsored enterprises of these persons, except for those exempted under subsections (3) and (4) of this section, shall be subject to the limitations of Section 8 of this Act.*

SECTION 16. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section under the following conditions:*

- (1) (a) *An insurer may use derivative instruments under this section to engage in hedging transactions and certain income generation transactions, as these terms may be further defined in regulations promulgated by the commissioner; and*
- (b) *An insurer shall be able to demonstrate to the commissioner the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of the transactions through cash flow testing or other appropriate analyses.*
- (2) *An insurer may enter into hedging transactions under this section if, as a result of and after giving effect to the transaction:*
  - (a) *The aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed seven and one-half percent (7.5%) of its admitted assets;*
  - (b) *The aggregate statement value of options, caps, and floors written in hedging transactions does not exceed three percent (3%) of its admitted assets; and*
  - (c) *The aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed six and one-half percent (6.5%) of its admitted assets.*
- (3) *An insurer may only enter into the following types of income generation transactions if, as a result of and after giving effect to the transactions, the aggregate statement value of the fixed income assets that are subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the puts, does not exceed ten percent (10%) of its admitted assets:*
  - (a) *Sales of covered call options on noncallable fixed income securities, callable fixed income securities if the option expires by its terms prior to the end of the noncallable period, or derivative instruments based on fixed income securities;*
  - (b) *Sales of covered call options on equity securities, if the insurer holds in its portfolio, or can immediately acquire through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call options sold;*

- (c) *Sales of covered puts on investments that the insurer is permitted to acquire under this subtitle, if the insurer has escrowed or entered into a custodian agreement segregating cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put during the complete term of the put option sold; or*
- (d) *Sales of covered caps or floors, if the insurer holds in its portfolio the investments generating the cash flow to make the required payments under the caps or floors during the complete term that the cap or floor is outstanding.*
- (4) *An insurer shall include all counterparty exposure amounts in determining compliance with the limitations of Section 8 of this Act.*
- (5) *In accordance with administrative regulations promulgated under Section 6 of this Act, the commissioner may approve additional transactions involving the use of derivative instruments in excess of the limits of subsection (2) of this section or for other risk management purposes under administrative regulations promulgated by the commissioner, but replication transactions shall not be permitted for other than risk management purposes.*

SECTION 17. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*A life insurer may lend to a policyholder on the security of the cash surrender value of the policyholder's policy a sum not exceeding the legal reserve that the insurer is required to maintain on the policy.*

SECTION 18. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Solely for the purpose of acquiring investments that exceed the quantitative limitations of Sections 8 to 15 of this Act, an insurer may acquire under this subsection an investment, or engage in investment practices described in Section 14 of this Act, but an insurer shall not acquire an investment, or engage in investment practices described in Section 14 of this Act, under this subsection if, as a result of and after giving effect to the transaction:*
  - (a) *The aggregate amount of investments then held by an insurer under this subsection would exceed three percent (3%) of its admitted assets; or*
  - (b) *The aggregate amount of investments as to one (1) limitation in Sections 8 to 15 of this Act then held by the insurer under this subsection would exceed one percent (1%) of its admitted assets.*
- (2) (a) *In addition to the authority provided under subsection (1) of this section, an insurer may acquire under this subsection an investment of any kind, or engage in investment practices described in Section 14 of this Act, that are not specifically prohibited by this subtitle, without regard to the categories, conditions, standards, or other limitations of Sections 8 to 15 of this Act if, as a result of and after giving effect to the transaction, the aggregate amount of investments then held under this subsection would not exceed the lesser of:*
  - 1. *Ten percent (10%) of its admitted assets; or*
  - 2. *Seventy-five percent (75%) of its capital and surplus.*
- (b) *However, an insurer shall not acquire any investment or engage in any investment practice under this subsection if, as a result of and after giving effect to the transaction, the aggregate amount of all investments in any one (1) person then held by the insurer under this subsection would exceed three percent (3%) of its admitted assets.*
- (3) *In addition to the investments acquired under subsections (1) and (2) of this section, an insurer may acquire under this subsection an investment of any kind, or engage in investment practices described in Section 14 of this Act, that are not specifically prohibited by this subtitle without regard to any limitations of Sections 8 to 15 of this Act if:*
  - (a) *The commissioner grants prior approval;*
  - (b) *The insurer demonstrates that its investments are being made in a prudent manner and that the additional amounts will be invested in a prudent manner; and*
  - (c) *As a result of and after giving effect to the transaction, the aggregate amount of investments then held by the insurer under this subsection does not exceed the greater of:*

1. *Twenty-five percent (25%) of its capital and surplus; or*
  2. *One hundred percent (100%) of capital and surplus less ten percent (10%) of its admitted assets.*
- (4) *An investment prohibited under Section 4 of this Act, not permitted under Section 16 of this Act, or additional derivative instruments acquired under Section 16 of this Act shall not be acquired under this section.*

SECTION 19. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*Sections 19 to 30 of this Act shall apply to the investments and investment practices of domestic property and casualty, title, financial guaranty, and mortgage guaranty insurers, of domestic insurers and United States branches of alien property and casualty, financial guaranty, and mortgage guaranty insurers entered through this state.*

SECTION 20. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to all other limitations and requirements of this subtitle, a property and casualty, financial guaranty, mortgage guaranty, or accident and health insurer shall maintain an amount at least equal to one hundred percent (100%) of adjusted loss reserves and loss adjustment expense reserves, one hundred percent (100%) of adjusted unearned premium reserves, and one hundred percent (100%) of statutorily required policy and contract reserves in :*
- (a) *Cash and cash equivalents;*
  - (b) *High and medium grade investments that qualify under Section 22 or 23 of this Act;*
  - (c) *Equity interests that qualify under Section 24 of this Act and that are traded on a qualified exchange;*
  - (d) *Investments of the type set forth in Section 28 of this Act, if the investments are rated in the highest generic rating category by a nationally recognized statistical rating organization recognized by the SVO for rating foreign jurisdictions and if any foreign currency exposure is effectively hedged through the maturity date of the investments;*
  - (e) *Qualifying investments of the type set forth in paragraph (b), (c), or (d) of this subsection that are acquired under Section 30 of this Act;*
  - (f) *Interest and dividends receivable on qualifying investments of the type set forth in paragraphs (a) to (e) of this subsection; or*
  - (g) *Reinsurance recoverable on paid losses.*
- (2) *Determination of the reserve requirement amount shall be as follows:*
- (a) *For purposes of determining the amount of assets to be maintained under this subsection, the calculation of adjusted loss reserves and loss adjustment expense reserves, adjusted unearned premium reserves, and statutorily required policy and contract reserves shall be based on the amounts reported as of the most recent annual or quarterly statement date;*
  - (b) *Adjusted loss reserves and loss adjustment expense reserves shall be equal to the sum of the amounts derived from the following calculations:*
    1. *The result of each amount reported by the insurer as losses and loss adjustment expenses unpaid for each accident year for each individual line of business; multiplied by*
    2. *The discount factor that is applicable to the line of business and accident year published by the Internal Revenue Service under Internal Revenue Code Section 846 (26 U.S.C. sec. 846), as amended, for the calendar year that corresponds to the most recent annual statement of the insurer; minus*
    3. *Accrued retrospective premiums discounted by an average discount factor. The discount factor shall be calculated by dividing the losses and loss adjustment expenses unpaid after discounting (the product of subparagraphs 1. and 2. of this paragraph) by loss and loss adjustment expense reserves before discounting subparagraph 1. of this paragraph; and*

4. *For purposes of these calculations, the losses and loss adjustment expenses unpaid shall be determined net of anticipated salvage and subrogation, and gross of any discount for the time value of money or tabular discount.*
- (c) *Adjusted unearned premium reserves shall be equal to the result of the following calculation:*
  1. *The amount reported by the insurer as unearned premium reserves; minus*
  2. *The admitted asset amounts reported by the insurer as:*
    - a. *Premiums in and agents' balances in the course of collection, accident and health premiums due and unpaid, and uncollected premiums for accident and health premiums;*
    - b. *Premiums, agents' balances, and installments booked but deferred and not yet due; and*
    - c. *Bills receivable, taken for premium.*
- (d) *Statutorily required policy and contract reserves also shall include, in the case of a title insurer, the amounts required by KRS 304.6-080 and, in the case of a mortgage guaranty insurer, the amounts required by KRS 304.6-090 and, in the case of an accident and health insurer, the amounts required by KRS 304.6-070.*
- (3) *A property and casualty, financial guaranty, mortgage guaranty, or accident and health insurer shall supplement its annual statement with a reconciliation and summary of its assets and reserve requirements as required in subsection (1) of this section. A reconciliation and summary showing that an insurer's assets as required in subsection (1) of this section are greater than or equal to its undiscounted reserves referred to in subsection (1) of this section shall be sufficient to satisfy this requirement. Upon prior notification, the commissioner may require an insurer to submit a reconciliation and summary with any quarterly statement filed during the calendar year.*
- (4) *If a property and casualty, financial guaranty, mortgage guaranty, or accident and health insurer's assets and reserves do not comply with subsection (1) of this section, the insurer shall notify the commissioner immediately of the amount by which the reserve requirements exceed the annual statement value of the qualifying assets, explain why the deficiency exists, and within thirty (30) days of the date of the notice propose a plan of action to remedy the deficiency.*
- (5) *If the commissioner determines that an insurer is not in compliance with subsection (1) of this section, the commissioner shall require the insurer to eliminate the condition causing the noncompliance within a specified time from the date the notice of the commissioner's requirement is mailed or delivered to the insurer.*
- (6) *If an insurer fails to comply with the commissioner's requirement under subsection (5) of this section, the insurer is deemed to be in hazardous financial condition, and the commissioner shall take one (1) or more of the actions authorized by Subtitle 33 of KRS Chapter 304, and KRS 304.3-200.*

SECTION 21. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise specified in this subtitle, an insurer shall not acquire directly or indirectly through an investment subsidiary an investment under this subtitle if, as a result of and after giving effect to the investment, the insurer would hold more than five percent (5%) of its admitted assets in investments of all kinds issued, assumed, accepted, insured, or guaranteed by a single person.*
- (2) *This five percent (5%) limitation shall not apply to the aggregate amounts insured by a single financial guaranty insurer with the highest generic rating issued by a nationally recognized statistical rating organization.*
- (3) *Asset-backed securities shall not be subject to the limitations of subsection (1) of this section. However, an insurer shall not acquire an asset-backed security if, as a result of and after giving effect to the investment, the aggregate amount of asset-backed securities secured by or evidencing an interest in a single asset or single pool of assets held by a trust or other business entity, then held by the insurer would exceed five percent (5%) of its admitted assets.*

- (4) *An insurer shall not acquire, directly or indirectly through an investment subsidiary, an investment under Section 22, 25, or 28 of this Act, or counterparty exposure under subsection (4) of Section 29 of this Act if, as a result of and after giving effect to the investment:*
- (a) *The aggregate amount of all medium and lower grade investments then held by the insurer would exceed twenty percent (20%) of its admitted assets;*
  - (b) *The aggregate amount of lower grade investments then held by the insurer would exceed ten percent (10%) of its admitted assets;*
  - (c) *The aggregate amount of investments rated 5 or 6 by the SVO then held by the insurer would exceed five percent (5%) of its admitted assets;*
  - (d) *The aggregate amount of investments rated 6 by the SVO then held by the insurer would exceed one percent (1%) of its admitted assets; or*
  - (e) *The aggregate amount of medium and lower grade investments then held by the insurer that receive as cash income less than the equivalent yield for Treasury issues with a comparative average life, would exceed one percent (1%) of its admitted assets.*
- (5) *An insurer shall not acquire, directly or indirectly through an investment subsidiary, an investment under Section 22, 25, or 28 of this Act, or counterparty exposure under subsection (4) of Section 29 of this Act if, as a result of and after giving effect to the investment:*
- (a) *The aggregate amount of medium and lower grade investments issued, assumed, guaranteed, accepted, or insured by any one (1) person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed one percent (1%) of its admitted assets; or*
  - (b) *The aggregate amount of lower grade investments issued, assumed, guaranteed, accepted, or insured by any one (1) person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed one-half of one percent (0.5%) of its admitted assets.*
- (6) *If an insurer attains or exceeds the limit of any one (1) rating category referred to in subsections (4) to (6) of this section, the insurer shall not thereby be precluded from acquiring investments in other rating categories subject to the specific and multicategory limits applicable to those investments.*
- (7) *An insurer shall not acquire, directly or indirectly through an investment subsidiary, any Canadian investments authorized by this subtitle, if as a result of and after giving effect to the investment, the aggregate amount of these investments then held by the insurer would exceed forty percent (40%) of its admitted assets, or if the aggregate amount of Canadian investments not acquired under subsection (2) of Section 22 of this Act then held by the insurer would exceed twenty-five percent (25%) of its admitted assets.*
- (8) *However, as to an insurer that is authorized to do business in Canada or that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in Canada and denominated in Canadian currency, the limitations of subsection (7) of this section shall be increased by the greater of:*
- (a) *The amount the insurer is required by Canadian law to invest in Canada or to be denominated in Canadian currency; or*
  - (b) *One hundred twenty-five percent (125%) of the amount of its reserves and other obligations under contracts on risks resident or located in Canada.*

SECTION 22. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to the limitations of subsections (4) to (6) of Section 21 of this Act, but not to the limitations of subsections (1) to (3) of Section 21 of this Act, an insurer may acquire rated credit instruments issued, assumed, guaranteed, or insured by:*
- (a) *The United States; or*
  - (b) *A government sponsored enterprise of the United States, if the instruments of the government sponsored enterprise are assumed, guaranteed, or insured by the United States or are otherwise backed or supported by the full faith and credit of the United States.*

- (2) (a) *Subject to the limitations of subsections (4) to (6) of Section 21 of this Act, but not to the limitations of subsections (1) to (3) of Section 21 of this Act, an insurer may acquire rated credit instruments issued, assumed, guaranteed, or insured by:*
  - 1. *Canada; or*
  - 2. *A government sponsored enterprise of Canada, if the instruments of the government sponsored enterprise are assumed, guaranteed, or insured by Canada or are otherwise backed or supported by the full faith and credit of Canada;*
- (b) *However, an insurer shall not acquire an instrument under this subsection if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this subsection would exceed forty percent (40%) of its admitted assets.*
- (3) (a) *Subject to the limitations of subsections (4) to (6) of Section 21 of this Act, but not to the limitations of subsections (1) to (3) of Section 21 of this Act, an insurer may acquire rated credit instruments, excluding asset-backed securities:*
  - 1. *Issued by a government money market mutual fund, a class one money market mutual fund, or a class one bond mutual fund;*
  - 2. *Issued, assumed, guaranteed, or insured by a government sponsored enterprise of the United States other than those eligible under subsection (1) of this section;*
  - 3. *Issued, assumed, guaranteed, or insured by a state, if the instruments are general obligations of the state; or*
  - 4. *Issued by a multilateral development bank;*
- (b) *However, an insurer shall not acquire an instrument of any one (1) fund, any one (1) enterprise or entity, or any one (1) state under this subsection if, as a result of and after giving effect to the investment, the aggregate amount of investments then held in any one (1) fund enterprise or entity, or state under this subsection would exceed ten percent (10%) of its admitted assets.*
- (4) *Subject to the limitations of Section 21 of this Act, an insurer may acquire preferred stocks that are not foreign investments and that meet the requirements of rated credit instruments if, as a result of and after giving effect to the investment:*
  - (a) *The aggregate amount of preferred stocks then held by the insurer under this subsection does not exceed twenty percent (20%) of its admitted assets; and*
  - (b) *The aggregate amount of preferred stocks then held by the insurer under this subsection that are not sinking fund stocks or rated P1 or P2 by the SVO does not exceed ten percent (10%) of its admitted assets.*
- (5) *Subject to the limitations of Section 21 of this Act, in addition to those investments eligible under subsections (1) to (4) of this section, an insurer may acquire rated credit instruments that are not foreign investments.*
- (6) *An insurer shall not acquire special rated credit instruments under this section if, as a result of and after giving effect to the investment, the aggregate amount of special rated credit instruments then held by the insurer would exceed five percent (5%) of its admitted assets.*

SECTION 23. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *An insurer may acquire investments in investment pools that:*
  - (a) *Invest only in:*
    - 1. *Obligations that are rated 1 or 2 by the SVO or have an equivalent of an SVO 1 or 2 rating or, in the absence of a 1 or 2 rating or equivalent rating, the issuer has outstanding obligations with an SVO 1 or 2 equivalent rating by a nationally recognized statistical rating organization recognized by the SVO and have:*
      - a. *A remaining maturity of three hundred ninety-seven (397) days or less or a put that entitles the holder to receive the principal amount of the obligation which put may be*





- (d) *Maintain the assets of the investment pool in one (1) or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement shall:*
  - 1. *State and recognize the claims and rights of each participant;*
  - 2. *Acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investment in the investment pool; and*
  - 3. *Contain an agreement that the underlying assets of the investment pool shall not be commingled with the general assets of the custodian qualified bank or any other person.*
- (5) *The pooling agreement for each investment pool shall be in writing and shall provide that:*
  - (a) *An insurer and its affiliated insurers or, in the case of an investment pool investing solely in investments permitted under paragraph (a) of subsection (1) of this section, the insurer and its subsidiaries, affiliates, or any pension or profit sharing plan of the insurer, its subsidiaries and affiliates or, in the case of a United States branch of an alien insurer, affiliates or subsidiaries of its United States manager, shall, at all times, hold one hundred percent (100%) of the interests in the investment pool;*
  - (b) *The underlying assets of the investment pool shall not be commingled with the general assets of the pool manager or any other person;*
  - (c) *In proportion to the aggregate amount of each pool participant's interest in the investment pool:*
    - 1. *Each participant owns an undivided interest in the underlying assets of the investment pool; and*
    - 2. *The underlying assets of the investment pool are held solely for the benefit of each participant;*
  - (d) *A participant, or in the event of the participant's insolvency, bankruptcy, or receivership, its trustee, receiver, or other successor-in-interest, may withdraw all or any portion of its investment from the investment pool under the terms of the pooling agreement;*
  - (e) *Withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds shall occur within a reasonable and customary period thereafter not to exceed five (5) business days. Distributions under this paragraph shall be calculated in each case net of all then applicable fees and expenses of the investment pool. The pooling agreement shall provide that the pool manager shall distribute to a participant, at the discretion of the pool manager:*
    - 1. *In cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool;*
    - 2. *In kind, a pro rata share of each underlying asset; or*
    - 3. *In a combination of cash and in-kind distributions, a pro rata share in each underlying asset; and*
  - (f) *The pool manager shall make the records of the investment pool available for inspection by the commissioner.*

SECTION 24. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to the limitations of Section 21 of this Act, an insurer may acquire equity interests in business entities organized under the laws of any domestic jurisdiction.*
- (2) *An insurer shall not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section would exceed the greater of twenty-five percent (25%) of its admitted assets or one hundred percent (100%) of its surplus as regards policyholders.*
- (3) *An insurer shall not acquire under this section any investments that the insurer may acquire under Section 26 of this Act.*

- (4) *An insurer shall not short sell equity investments unless the insurer covers the short sale by owning the equity investment or an unrestricted right to the equity instrument exercisable within six (6) months of the short sale.*

SECTION 25. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Subject to the limitations of Section 21 of this Act, an insurer may acquire tangible personal property or equity interests therein located or used wholly or in part within a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subsection (4) of Section 4 of this Act, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments.*
- (b) *Investments acquired under paragraph (a) of this subsection shall be eligible only if:*
1. *The property is subject to a lease or other agreement with a person whose rated credit instruments in the amount of the purchase price of the personal property the insurer could then acquire under Section 22 of this Act; and*
  2. *The lease or other agreement provides the insurer the right to receive rental, purchase, or other fixed payments for the use or purchase of the property, and the aggregate value of the payments, together with the estimated residual value of the property at the end of its useful life and the estimated tax benefits to the insurer resulting from ownership of the property, shall be adequate to return the cost of the insurer's investment in the property, plus a return deemed adequate by the insurer.*
- (2) *The insurer shall compute the amount of each investment under this section on the basis of the out-of-pocket purchase price and applicable related expenses paid by the insurer for the investment, net of each borrowing made to finance the purchase price and expenses, to the extent the borrowing is without recourse to the insurer.*
- (3) *An insurer shall not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under this section would exceed;*
- (a) *Two percent (2%) of its admitted assets; or*
  - (b) *One-half of one percent (0.5%) of its admitted assets as to any single item of tangible personal property.*
- (4) *For purposes of determining compliance with the limitations of Section 21 of this Act, investments acquired by an insurer under this section shall be aggregated with those acquired under Section 22 of this Act, and each lessee of the property under a lease referred to in this section shall be deemed the issuer of an obligation in the amount of the investment of the insurer in the property determined as provided in subsection (2) of this section.*
- (5) *Nothing in this section is applicable to tangible personal property lease arrangements between an insurer and its subsidiaries and affiliates under a cost-sharing arrangement or agreement permitted under KRS 304.37-030.*

SECTION 26. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to the limitations of Section 21 of this Act, an insurer may acquire, either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subsection (4) of Section 4 of this Act, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments, obligations secured by mortgages on real estate situated within a domestic jurisdiction, but a mortgage loan that is secured by other than a first lien shall not be acquired unless the insurer is the holder of the first lien. The obligations held by the insurer and any obligations with an equal lien priority, shall not, at the time of acquisition of the obligation, exceed:*
- (a) *Ninety percent (90%) of the fair market value of the real estate, if the mortgage loan is secured by a purchase money mortgage or like security received by the insurer upon disposition of the real estate;*

- (b) *Eighty percent (80%) of the fair market value of the real estate, if the mortgage loan requires immediate scheduled payments in periodic installments of principal and interest, has an amortization period of thirty (30) years or less, and periodic payments made no less frequently than annually. Each periodic payment shall be sufficient to assure that at all times the outstanding principal balance of the mortgage loan shall not be greater than the outstanding principal balance that would be outstanding under a mortgage loan with the same original principal balance, with the same interest rate, and requiring equal payments of principal and interest with the same frequency over the same amortization period. Mortgage loans permitted under this subsection are permitted notwithstanding the fact that they provide for a payment of the principal balance prior to the end of the period of amortization of the loan. For residential mortgage loans, the eighty percent (80%) limitation may be increased to ninety-seven percent (97%) if acceptable private mortgage insurance has been obtained; or*
  - (c) *Seventy-five percent (75%) of the fair market value of the real estate for mortgage loans that do not meet the requirements of paragraph (a) or (b) of this subsection.*
- (2) *For purposes of subsection (1) of this section, the amount of an obligation required to be included in the calculation of the loan-to-value ratio may be reduced to the extent the obligation is insured by the Federal Housing Administration, guaranteed by the Administrator of Veteran Affairs, or their successors.*
- (3) *A mortgage loan that is held by an insurer under subsection (7) of Section 2 of this Act or acquired under this section and is restructured in a manner that meets the requirement of a restructured mortgage loan in accordance with the NAIC Accounting Practices and Procedures Manual or successor publication shall continue to qualify as a mortgage loan under this subtitle.*
- (4) *Subject to the limitations of Section 21 of this Act, credit lease transactions that do not qualify for investment under Section 22 of this Act with the following characteristics shall be exempt from the provisions of subsection (1) of this section:*
  - (a) *The loan amortizes over the initial fixed lease term at least in an amount sufficient so that the loan balance at the end of the lease term does not exceed the original appraised value of the real estate;*
  - (b) *The lease payments cover or exceed the total debt service over the life of the loan;*
  - (c) *A tenant or its affiliated entity whose rated credit instruments have a SVO 1 or 2 designation or a comparable rating from a nationally recognized statistical rating organization recognized by the SVO has a full faith and credit obligation to make the lease payments;*
  - (d) *The insurer holds or is the beneficial holder of a first lien mortgage on the real estate;*
  - (e) *The expenses of the real estate are passed through to the tenant excluding exterior, structural, parking, and heating, ventilation and air conditioning replacement expenses, unless annual escrow contributions, from cash flows derived from the lease payments, cover the expense shortfall; and*
  - (f) *There is a perfected assignment of the rents due under the lease to or for the benefit of the insurer.*
- (5) *An insurer may acquire, manage, and dispose of real estate situated in a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subsection (4) of Section 4 of this Act, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments. The real estate shall be income producing or intended for improvement or development for investment purposes under an existing program, in which case the real estate shall be deemed to be income producing.*
- (6) *The real estate may be subject to mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsections (9) and (10) of this section.*
- (7) *An insurer may acquire, manage, and dispose of real estate for the convenient accommodation of the insurer's, which may include its affiliates, business operations, including home office, branch office, and field office operations.*
  - (a) *Real estate acquired under this subsection may include excess space for rent to others if the excess space, valued at its fair market value, would otherwise be a permitted investment under subsections (5) and (6) of this section and is so qualified by the insurer;*

- (b) *The real estate acquired under this subsection may be subject to one (1) or more mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsection (11) of this section; and*
- (c) *For purposes of this subsection, "business operations" shall not include that portion of real estate used for the direct provision of health care services by an insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least ninety-five percent (95%) of total premium considerations or total statutory required reserves, respectively. An insurer may acquire real estate used for these purposes under subsections (5) and (6) of this section.*
- (8) *An insurer shall not acquire an investment under subsections (1) to (4) of this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under subsections (1) to (4) of this section would exceed:*
  - (a) *One percent (1%) of its admitted assets in mortgage loans covering any one (1) secured location;*
  - (b) *One-quarter of one percent (0.25%) of its admitted assets in construction loans covering any one (1) secured location; or*
  - (c) *One percent (1%) of its admitted assets in construction loans in the aggregate.*
- (9) *An insurer shall not acquire an investment under subsections (5) and (6) of this section if, a result of and after giving effect to the investment and any outstanding guarantees made by the insurer in connection with the investment, the aggregate amount of investments then held by the insurer under subsections (5) and (6) of this section plus the guarantees then outstanding would exceed:*
  - (a) *One percent (1%) of its admitted assets in any one (1) parcel or group of contiguous parcels of real estate, except that this limitation shall not apply to that portion of real estate used for the direct provision of health care services by an insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least ninety-five percent (95%) of total premium considerations or total statutory required reserves, respectively, such as hospitals, medical clinics, medical professional buildings, or other health facilities used for the purpose of providing health services; or*
  - (b) *The lesser of ten percent (10%) of its admitted assets or forty percent (40%) of its surplus as regards policyholders in the aggregate, except for an insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least ninety-five percent (95%) of total premium considerations or total statutory required reserves, respectively, this limitation shall be increased to fifteen percent (15%) of its admitted assets in the aggregate.*
- (10) *An insurer shall not acquire an investment under subsections (1) to (6) of this section if, as a result of and after giving effect to the investment and any guarantees it has made in connection with the investment, the aggregate amount of all investments then held by the insurer under subsections (1) to (6) of this section plus the guarantees then outstanding would exceed twenty-five percent (25%) of its admitted assets.*
- (11) *The limitations of Section 21 of this Act shall not apply to an insurer's acquisition of real estate under subsection (7) of this section. An insurer shall not acquire real estate under subsection (7) of this section if, as a result of and after giving effect to the acquisition, the aggregate amount of all real estate then held by the insurer under subsection (7) of this section would exceed ten percent (10%) of its admitted assets. With the permission of the commissioner, additional amounts of real estate may be acquired under subsection (7) of this section.*

SECTION 27. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*An insurer may enter into securities lending, repurchase, reverse repurchase and dollar roll transactions with business entities, subject to the following requirements:*

- (1) *The insurer's board of directors shall adopt a written plan that is consistent with the requirements of the written plan in subsection (1) of Section 3 of this Act that specifies guidelines and objectives to be followed, such as:*

- (a) *A description of how cash received will be invested or used for general corporate purposes of the insurer;*
  - (b) *Operational procedures to manage interest rate risk, counterparty default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business, and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction; and*
  - (c) *The extent to which the insurer may engage in these transactions.*
- (2) *The insurer shall enter into a written agreement for all transactions authorized in this section other than dollar roll transactions. The written agreement shall require that each transaction terminate not more than one (1) year from its inception or upon the earlier demand of the insurer. The agreement shall be with the business entity counterparty, but for securities lending transactions, the agreement may be with an agent acting on behalf of the insurer, if the agent is a qualified business entity, and if the agreement:*
  - (a) *Requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and*
  - (b) *Prohibits securities lending transactions under the agreement with the agent or its affiliates.*
- (3) *Cash received in a transaction under this section shall be invested in accordance with this subtitle and in a manner that recognizes the liquidity needs of the transaction or used by the insurer for its general corporate purposes. For so long as the transaction remains outstanding, the insurer, its agent, or custodian shall maintain, as to acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the Federal Reserve, Depository Trust Company, Participants Trust Company, or other securities depositories approved by the commissioner:*
  - (a) *Possession of the acceptable collateral;*
  - (b) *A perfected security interest in the acceptable collateral; or*
  - (c) *In the case of a jurisdiction outside of the United States, title to, or rights of a secured creditor to, the acceptable collateral.*
- (4) *The limitations of Sections 21 and 28 of this Act shall not apply to the business entity counterparty exposure created by transactions under this section. For purposes of calculations made to determine compliance with this subsection, no effect will be given to the insurer's future obligation to resell securities, in the case of a repurchase transaction, or to repurchase securities, in the case of a reverse repurchase transaction. An insurer shall not enter into a transaction under this section if, as a result of and after giving effect to the transaction:*
  - (a) *The aggregate amount of securities then loaned, sold to, or purchased from any one (1) business entity counterparty under this section would exceed five percent (5%) of its admitted assets. In calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement; or*
  - (b) *The aggregate amount of all securities then loaned, sold to, or purchased from all business entities under this section would exceed forty percent (40%) of its admitted assets, but the limitation of this subsection shall not apply to reverse repurchase transactions for so long as the borrowing is used to meet operational liquidity requirements resulting from an officially declared catastrophe and subject to a plan approved by the commissioner.*
- (5) *In a securities lending transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to one hundred two percent (102%) of the market value of the securities loaned by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent (102%) of the market value of the loaned securities.*
- (6) *In a reverse repurchase transaction, other than a dollar roll transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to ninety-five percent (95%) of the market value of the securities transferred by the insurer in the transaction as of that date. If at any time the*

*market value of the acceptable collateral is less than ninety-five percent (95%) of the market value of the securities so transferred, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals ninety-five percent (95%) of the market value of the transferred securities.*

- (7) *In a dollar roll transaction, the insurer shall receive cash in an amount at least equal to the market value of the securities transferred by the insurer in the transaction as of the transaction date.*
- (8) *In a repurchase transaction, the insurer shall receive as acceptable collateral transferred securities having a market value at least equal to one hundred two percent (102%) of the purchase price paid by the insurer for the securities. If at any time the market value of the acceptable collateral is less than one hundred percent (100%) of the purchase price paid by the insurer, the business entity counterparty shall be obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent (102%) of the purchase price. Securities acquired by an insurer in a repurchase transaction shall not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.*

SECTION 28. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to the limitations of Section 21 of this Act, an insurer may acquire foreign investments, or engage in investment practices, with persons of or in foreign jurisdictions of substantially the same types as those that an insurer is permitted to acquire under this subtitle, other than of the type permitted under Section 23 of this Act, if, as a result of and after giving effect to the investment:*
  - (a) *The aggregate amount of foreign investments then held by the insurer under this subsection does not exceed twenty percent (20%) of its admitted assets; and*
  - (b) *The aggregate amount of foreign investments then held by the insurer under this subsection in a single foreign jurisdiction does not exceed ten percent (10%) of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or five percent (5%) of its admitted assets as to any other foreign jurisdiction.*
- (2) *Subject to the limitations of Section 21 of this Act, an insurer may acquire investments, or engage in investment practices denominated in foreign currencies, whether or not they are foreign investments acquired under subsection (1) of this section, or additional foreign currency exposure as a result of the termination or expiration of a hedging transaction with respect to investments denominated in a foreign currency, if:*
  - (a) *The aggregate amount of investments then held by the insurer under this subsection denominated in foreign currencies does not exceed fifteen percent (15%) of its admitted assets; and*
  - (b) *The aggregate amount of investments then held by the insurer under this subsection denominated in the foreign currency of a single foreign jurisdiction does not exceed ten percent (10%) of its admitted assets to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or five percent (5%) of its admitted assets as to any other foreign jurisdiction;*
  - (c) *However, an investment shall not be considered denominated in a foreign currency if the acquiring insurer enters into one (1) or more contracts in transactions permitted under Section 29 of this Act and the business entity counterparty agrees under the contract or contracts to exchange all payments made on the foreign currency denominated investment for United States currency at a rate that effectively insulates the investment cash flows against future changes in currency exchange rates during the period the contract or contracts are in effect.*
- (3) *In addition to investments permitted under subsections (1) and (2) of this section, an insurer that is authorized to do business in a foreign jurisdiction and that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in a foreign jurisdiction and denominated in foreign currency of that jurisdiction, may acquire foreign investments respecting that foreign jurisdiction, and may acquire investments denominated in the currency of that jurisdiction subject to the limitations set forth in Section 21 of this Act. However, investments made under this subsection in obligations of foreign governments, their political subdivisions, and government sponsored enterprises shall not be subject to the limitations of Section 21 of this Act if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection shall not exceed the greater of:*

- (a) *The amount the insurer is required by law to invest in the foreign jurisdiction; or*
  - (b) *One hundred twenty-five percent (125%) of the amount of its reserves, net of reinsurance, and other obligations under the contracts.*
- (4) *In addition to investments permitted under subsections (1) and (2) of this section, an insurer that is not authorized to do business in a foreign jurisdiction but that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in a foreign jurisdiction and denominated in foreign currency of that jurisdiction, may acquire foreign investments respecting that foreign jurisdiction, and may acquire investments denominated in the currency of that jurisdiction subject to the limitations set forth in Section 21 of this Act. However, investments made under this subsection in obligations of foreign governments, their political subdivisions, and government sponsored enterprises shall not be subject to the limitations of Section 21 of this Act if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection shall not exceed one hundred five percent (105%) of the amount of its reserves, net of reinsurance, and other obligations under the contracts on risks resident or located in the foreign jurisdiction.*
- (5) *Investments acquired under this section shall be aggregated with investments of the same types made under this subtitle, and in a similar manner, for purposes of determining compliance with the limitations of this subtitle, if any. Investments in obligations of foreign governments, their political subdivisions, and government sponsored enterprises of these persons, except for those exempted under subsections (3) and (4) of this section, shall be subject to the limitations of Section 21 of this Act.*

SECTION 29. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section under the following conditions:*
- (a) *An insurer may use derivative instruments under this section to engage in hedging transactions and certain income generation transactions, as these terms may be further defined in administrative regulations promulgated by the commissioner.*
  - (b) *An insurer shall be able to demonstrate to the commissioner the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of transactions through cash flow testing or other appropriate analyses.*
- (2) *An insurer may enter into hedging transactions under this section if, as a result of and after giving effect to the transaction:*
- (a) *The aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed seven and one-half percent (7.5%) of its admitted assets;*
  - (b) *The aggregate statement value of options, caps, and floors written in hedging transactions does not exceed three percent (3%) of its admitted assets; and*
  - (c) *The aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed six and one-half percent (6.5%) of its admitted assets.*
- (3) *An insurer may only enter into the following types of income generation transactions if, as a result of and after giving effect to the transactions, the aggregate statement value of the fixed income assets that are subject to call plus the face value of fixed income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the puts, does not exceed ten percent (10%) of its admitted assets:*
- (a) *Sales of covered call options on noncallable fixed income securities, callable fixed income securities if the option expires by its terms prior to the end of the noncallable period, or derivative instruments based on fixed income securities;*
  - (b) *Sales of covered call options on equity securities, if the insurer holds in its portfolio, or can immediately acquire through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold; or*
  - (c) *Sales of covered puts on investments that the insurer is permitted to acquire under this subtitle, if the insurer has escrowed, or entered into a custodian agreement segregating, cash or cash equivalents*

*with a market value equal to the amount of its purchase obligations under the put during the complete term of the put option sold.*

- (4) *An insurer shall include all counterparty exposure amounts in determining compliance with the limitations of Section 21 of this Act.*
- (5) *In accordance with administrative regulations promulgated under Section 6 of this Act, the commissioner may approve additional transactions involving the use of derivative instruments in excess of the limits of subsection (2) of this section or for other risk management purposes under administrative regulations promulgated by the commissioner, but replication transactions shall not be permitted for other than risk management purposes.*

SECTION 30. A NEW SECTION OF SUBTITLE 7 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *An insurer may acquire under this section investments, or engage in investment practices, of any kind that are not specifically prohibited by this subtitle, or engage in investment practices, without regard to any limitation in Sections 21 to 28 of this Act, but an insurer shall not acquire an investment or engage in an investment practice under this section if, as a result of and after giving effect to the transaction, the aggregate amount of the investments then held by the insurer under this section would exceed the greater of:*
  - (a) *Its unrestricted surplus; or*
  - (b) *The lesser of:*
    - 1. *Ten percent (10%) of its admitted assets; or*
    - 2. *Fifty percent (50%) of its surplus as regards policyholders.*
- (2) *An insurer shall not acquire any investment or engage in any investment practice under paragraph (b) of subsection (1) of this section if, as a result of and after giving effect to the transaction, the aggregate amount of all investments in any one (1) person then held by the insurer under that subsection would exceed five percent (5%) of its admitted assets.*

Section 31. KRS 304.7-240 is amended to read as follows:

- (1) The amounts allocated to each separate account established by the insurer in connection with a pension, retirement or profit-sharing plan, life insurance or an annuity pursuant to KRS 304.15-390 together with accumulations thereon, may be invested and reinvested in any class of investments which may be authorized in the written contract or agreement without regard to any requirements or limitations prescribed by this subtitle; except, that to the extent that the insurer's reserve liability with regards to:
  - (a)~~[(1)]~~ Benefits guaranteed as to amount and duration; and
  - (b)~~[(2)]~~ Funds guaranteed as to principal amount or stated rate of interest, is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be invested in accordance with the applicable provisions of this subtitle.

The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to other investments of the insurer.

- (2) *On application by an insurer, the commissioner may approve different investment limitations and restrictions for specified separate accounts of the insurer. The commissioner shall only approve the insurer's proposed limitations and restrictions if he finds that the requested investment limitations and restrictions adequately protect the interests of the insured protected by the separate account and the solvency of the insurer.*

Section 32. KRS 304.7-320 is amended to read as follows:

- (1) An insurer may enter into an agreement for the purpose of protecting its interests in securities lawfully held by it, or for the purpose of reorganization of the corporation which issued or is obligated on account of ~~the [such]~~ securities, and may deposit ~~the [such]~~ securities with a committee appointed under ~~[such]~~ an agreement.
- (2) An insurer may accept corporate stocks, bonds or other securities distributed *in accordance with the [pursuant to any such]* agreement or reorganization. Any securities so received which are otherwise ineligible as investments of the insurer shall be disposed of as provided in *Section 2 of this Act* ~~[KRS 304.7-300]~~.



Section 33. KRS 304.7-340 is amended to read as follows:

An insurer shall not invest in any note or other evidence of indebtedness of any director or officer of the insurer, except as to policy loans authorized under **Section 5 of this Act**~~[KRS 304.7-180]~~ and obligations subject to **Section 13 of this Act**~~[the provisions of KRS 304.7-200]~~ secured by first mortgages or deeds of trust upon improved real property to be occupied as a personal residence by such director or officer of the insurer.

Section 34. KRS 304.7-350 is amended to read as follows:

- (1) All obligations having a fixed term, rate, and face value held by an insurer authorized to do business in this state may, if amply secured and not in default either as to principal or interest, be valued as follows: if acquired at face value, at the face value; if acquired above or below face value, on the basis of the purchase price adjusted annually to bring the value to face value at maturity and so as to yield in each year the effective rate of interest at which the purchase was made. The amortization provided for in this subsection may be calculated with reasonable approximations. The commissioner shall have the power to determine by rule the eligibility of investments for valuation under this subsection.
- (2)
  - (a) Securities, other than those referred to in subsection (1) of this section, held by an insurer shall be valued, in the discretion of the commissioner, at their fair market value, at their appraised value, or at prices determined by the commissioner as representing their fair market value.
  - (b) Preferred or guaranteed stock or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the commissioner and in accordance with the method of computation he approves.
  - (c) Securities qualifying under KRS 304.7-120, **Section 18 of this Act, or Section 30 of this Act**~~and 304.7-270]~~ shall be valued at their fair value or net equity value, except that securities of a subsidiary insurance corporation as provided for in KRS 304.7-120 shall be valued either at cost or on a net equity basis, whichever is greater.
- (3)
  - (a) Real property acquired pursuant to a mortgage loan or contract for sale, in the absence of a recent appraisal deemed by the commissioner to be reliable, shall not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of acquisition, together with any taxes and expenses paid or incurred in connection with acquisition, and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.
  - (b) Other real property held by an insurer shall not be valued at an amount in excess of fair value as determined by recent appraisal deemed by the commissioner to be reliable. If valuation is based on an appraisal more than three (3) years old, the commissioner may, at his discretion, call for and require a new appraisal in order to determine fair value.
  - (c) Personal property acquired pursuant to chattel mortgages or security agreements~~[made in accordance with subsection (10) of KRS 304.7-200]~~ shall not be valued at an amount greater than the unpaid principal of the defaulted loan at the date of acquisition, together with any taxes and expenses paid or incurred in connection with acquisition, or the fair value of the property, whichever amount is the lesser.
- (4) However, in all cases securities shall be valued in accordance with the standards promulgated by~~[the securities valuation office of]~~ the National Association of Insurance Commissioners **including the Purposes and Procedures of the Securities Valuation Office, the Valuation of Securities Manual, the Accounting Practices and Procedures Manual, the Annual Statement Instructions, or any successor valuation procedures officially adopted by the NAIC**~~[and other assets shall be valued in accordance with standards promulgated by the National Association of Insurance Commissioners Financial Condition Subcommittee].~~

Section 35. The following KRS sections are repealed:

304.7-020 Eligible investments.

304.7-030 General qualifications.

304.7-040 Authorization.

304.7-050 Diversification.

304.7-060 Public obligations.

- 304.7-070 Obligations and stock of certain federal and international agencies.
- 304.7-080 Corporate obligations.
- 304.7-085 Unconditional obligations.
- 304.7-090 Definitions of "obligations" and "institution."
- 304.7-100 Preferred or guaranteed stocks.
- 304.7-110 Common stocks.
- 304.7-120 Stock of subsidiaries -- Investment in foreign companies.
- 304.7-130 Equipment securities.
- 304.7-140 Acceptances, bills of exchange.
- 304.7-145 Limitation on investments -- Quality ratings for securities.
- 304.7-150 Savings institutions.
- 304.7-160 Common trust funds, mutual funds.
- 304.7-170 Hydrocarbon production payments.
- 304.7-180 Policy loans.
- 304.7-190 Collateral loans.
- 304.7-200 Mortgage loans.
- 304.7-205 Mortgage pass-through securities.
- 304.7-210 Real estate.
- 304.7-220 Housing developments.
- 304.7-230 Leased property.
- 304.7-260 Investments in foreign countries.
- 304.7-265 Bona fide hedging transactions.
- 304.7-270 Miscellaneous investments.
- 304.7-290 Time limit for disposal of real estate.
- 304.7-300 Time limit for disposal of other property and securities.
- 304.7-310 Failure to dispose of real estate, personal property or securities.
- 304.7-340 Prohibited investments.

**Approved April 7, 2000**

## **CHAPTER 389**

**(HB 668)**

AN ACT relating to school finance.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

- (1) *The local district superintendent shall appoint a finance officer who shall be responsible for the cash, investment, and financial management of the school district.*
- (2) *The school finance officer shall be required to complete forty-two (42) hours of continuing education every two (2) years from a provider approved by the Department of Education.*

Section 2. KRS 157.320 is amended to read as follows:

As used in KRS 157.310 to 157.440, unless the context otherwise requires:

- (1) "Average daily attendance" means the aggregate days attended by pupils in a public school, adjusted for weather-related low attendance days if applicable, divided by the actual number of days the school is in session, after the five (5) days with the lowest attendance have been deducted.
  - (a) Aggregate days shall include, in addition to the aggregate number of days attended by a pupil who was suspended during a school year, the number of days the pupil was suspended, not to exceed ten (10) days in total for the school year; and
  - (b) Aggregate days shall include, in addition to the aggregate number of days attended by a pupil who was expelled for behavioral problems, the number of days the pupil was expelled up to a total of one hundred seventy-five (175) days. This total may extend into the next school year and shall be counted in the average daily attendance for the next year;
- (2) "Base funding level" means a guaranteed amount of revenue per pupil to be provided for each school district, to be used for regular operating and capital expenditures;
- (3) "Board" means the board of education of any county or independent school district;
- (4) "District" means any school district as defined by law;
- (5) "Elementary school" means a school consisting of the primary school program through grade eight (8) as defined in KRS 158.030, or any appropriate combination of grades within this range, as determined by the plan of organization for schools authorized by the district board;
- (6) "Support Education Excellence in Kentucky" means the level of educational services and facilities which is to be provided in each district from the public school fund;
- (7) "Kindergarten full-time equivalent pupil in average daily attendance" means each kindergarten pupil counted no more than one-half (1/2) day in the aggregate days attended by kindergarten pupils in a public school divided by the actual number of days school is in session after the five (5) days with the lowest attendance have been deducted. Kindergarten is the entry level of the primary program and shall be provided no less than the equivalent of one-half (1/2) day, five (5) days a week for a full school year for each kindergarten pupil;
- (8) "Public school fund" means the fund created by KRS 157.330 for use in financing education in public elementary and secondary schools;
- (9) "Administrative regulations of the Kentucky Board of Education" means those regulations which the Kentucky Board of Education may adopt upon the recommendation and with the advice of the *commissioner of education*~~{chief state school officer}~~. The *commissioner of education*~~{chief state school officer}~~ shall recommend administrative regulations necessary for carrying out the purposes of KRS 157.310 to 157.440;
- (10) "Experience" means employment as a teacher, other than as a substitute or nursery school teacher, for a minimum of one hundred and forty (140) days during a school year in a public or nonpublic elementary or secondary school or college or university that is approved by the public accrediting authority in the state in which the teaching duties were performed. A teacher who is employed by a board for at least one hundred forty (140) days of a school year and who performs teaching duties for the equivalent of at least seventy (70) full school days during that school year, regardless of the schedule on which those duties were performed, shall be credited with one (1) year of experience. A teacher who is employed by a board for at least one hundred forty (140) days during each of two (2) school years and who performs teaching duties for the equivalent of at least seventy (70) full school days during those years shall be credited with one (1) year of experience. No more than one (1) year of experience shall be credited for the performance of teaching duties during a single school year;
- ~~(11) "Salary schedule summary" means the summary of all salaries paid teachers by the board from the single salary schedule. Teachers shall be grouped by training and experience and by source of funds;~~
- ~~(12)~~ "Secondary school" means a school consisting of grades seven (7) through twelve (12), or any appropriate combination of grades within this range as determined by the plan of organization for schools authorized by the district board. When grades seven (7) through nine (9) or ten (10) are organized separately as a junior high school, or grades ten (10) through twelve (12) are organized separately as a senior high school and are conducted in separate school plant facilities, each shall be considered a separate secondary school for the purposes of KRS 157.310 to 157.440;

- (12)~~(13)~~ "Single salary schedule" means a schedule adopted by a local board from which all teachers are paid for one hundred eighty-five (185) days and is based on training, experience, and such other factors as the Kentucky Board of Education may approve and which does not discriminate between salaries paid elementary and secondary teachers. If the budget bill contains a minimum statewide salary schedule, no teacher shall be paid less than the amount specified in the biennial budget salary schedule for the individual teacher's educational qualifications and experience;
- (13)~~(14)~~ "Teacher" means any regular or special teacher, principal, supervisor, superintendent, assistant superintendent, librarian, director of pupil personnel, or other member of the teaching or professional staff engaged in the service of the public elementary and secondary school for whom certification is required as a condition of employment;
- (14)~~(15)~~ "Percentage of attendance" means the aggregate days attended by pupils in a public school for the school year divided by the aggregate days' membership of pupils in a public school for the school year;
- (15)~~(16)~~ "Middle school" means a school consisting of grades five (5) through eight (8) or any appropriate combination of grades as determined by the plan of organization for schools authorized by the district board; and
- (16)~~(17)~~ "Weather-related low attendance day" means a school day on which the district's attendance falls below the ~~percentage of~~ average daily attendance for the prior year due to inclement weather. The district shall submit a request to substitute the prior year's average daily attendance for its attendance on up to ten (10) designated days, along with documentation that the low attendance was due to inclement weather, for approval by the *commissioner of education*~~Kentucky Board of Education~~ in accordance with *Kentucky Board of Education*~~its~~ administrative regulations.

Section 3. KRS 157.360 is amended to read as follows:

- (1) In determining the cost of the program to support education excellence in Kentucky, the statewide guaranteed base funding level, as defined in KRS 157.320, shall be computed by dividing the amount appropriated for this purpose by the prior year's statewide average daily attendance.
- (2) Each district shall receive an amount equal to the base funding level for each pupil in average daily attendance in the district in the previous year. Each district's base funding level shall be adjusted by the following factors:
  - (a) The number of at-risk students in the district. At-risk students shall be identified as those approved for the free lunch program under state and federal guidelines. The number of at-risk students shall be multiplied by a factor to be established by the General Assembly. Funds generated under this paragraph may be used to pay a hazardous duty pay supplement as determined by the local board of education to the teachers who work in alternative programs with students who are violent or assaultive;
  - (b) The number and types of exceptional children in the district as defined by KRS 157.200.~~[No later than October 1, 1993,] Specific weights for each category of exceptionality shall be developed by the Department of Education and shall be used in the calculation of the add-on factor for exceptional children. Prior to the development of the necessary weights, the General Assembly shall determine the costs associated with the education of exceptional children based on the count of pupils with different exceptionalities, an appropriate pupil-teacher ratio, and total per-pupil costs;~~ and
  - (c) Transportation costs. The per-pupil cost of transportation shall be calculated as provided by KRS 157.370.~~[No later than October 1, 1991, the Office of Education Accountability's Division of School Finance shall examine the components of the current system for allocating transportation funds, and recommend any needed changes to the General Assembly, the Governor, and the State Board for Elementary and Secondary Education.] Districts which contract to furnish transportation to students attending nonpublic schools may adopt any payment formula which assures that no public school funds are used for the transportation of nonpublic students.~~
- (3) The program to support education excellence in Kentucky shall be fully implemented by the 1994-95 school year.~~[No district shall receive an annual increase in state funds of less than eight percent (8%) for 1990-91 and five percent (5%) in 1991-92 or more than twenty five percent (25%) in either year.]~~
- (4) (a) Except for those schools which have implemented school-based decision making, the chief state school officer shall enforce maximum class sizes for every academic course requirement in all grades except in vocal and instrumental music, and physical education classes. Except as provided in subsection (5) of this section, the maximum number of pupils enrolled in a class shall be as follows:

1. Twenty-four (24) in primary grades (kindergarten through third grade);
  2. Twenty-eight (28) in grade four (4);
  3. Twenty-nine (29) in grades five (5) and six (6);
  4. Thirty-one (31) in grades seven (7) to twelve (12);
- (b) Except for those schools which have implemented school-based decision making, class size loads for middle and secondary school classroom teachers shall not exceed the equivalent of one hundred fifty (150) pupil hours per day.
- (c) The chief state school officer, upon approval of the Kentucky Board of Education, shall adopt administrative regulations for enforcing this provision. These administrative regulations shall include procedures for a superintendent to request an exemption from the Kentucky Board of Education when unusual circumstances warrant an increased class size for an individual class. A request for an exemption shall include specific reasons for the increased class size with a plan for reducing the class size prior to the beginning of the next school year. A district shall not receive in any one (1) year exemptions for more classes than enroll twenty percent (20%) of the pupils in the primary grades and grades four (4) through eight (8).
- (d) In all schools the chief state school officer shall enforce the special education maximum class sizes set by administrative regulations adopted by the Kentucky Board of Education. A superintendent may request an exemption pursuant to paragraph (c) of this subsection. A local school council may request a waiver pursuant to KRS 156.160(2). An exemption or waiver shall not be granted if the increased class size will impede any exceptional child from achieving his individual education program in the least restrictive environment.
- (5) In grades four (4) through six (6) with combined grades, the maximum class size shall be the average daily attendance upon which funding is appropriated for the lowest assigned grade in the class. There shall be no exceptions to the maximum class size for combined classes. In combined classes other than the primary grades, no ungraded students shall be placed in a combined class with graded students. In addition, there shall be no more than two (2) consecutive grade levels combined in any one (1) class in grades four (4) through six (6). However, this shall not apply to schools which have implemented school-based decision making.
- (6) If a local school district, through its admission and release committee, determines that an appropriate program in the least restrictive environment for a particular child with a disability includes either part-time or full-time enrollment with a private school or agency within the state or a public or private agency in another state, the school district shall count as average daily attendance in a public school the time that the child is in attendance at the school or agency, contingent upon approval by the chief state school officer.
- (7) Pupils attending a center for child learning and study established under an agreement pursuant to KRS 65.210 to 65.300 shall, for the purpose of calculating average daily attendance, be considered as in attendance in the school district in which the child legally resides and which is party to the agreement. For purposes of subsection (1) of this section, teachers who are actually employees of the joint or cooperative action shall be considered as employees of each school district which is a party to the agreement.
- (8) Program funding shall be increased when the average daily attendance in any district for the first two (2) months of the current school year is greater than the average daily attendance of the district for the first two (2) months of the previous school year. The program funds allotted the district shall be increased by the percent of increase. The average daily attendance in kindergarten is the kindergarten full-time equivalent pupils in average daily attendance.
- (9) If the average daily attendance for the current school year in any district decreases by ten percent (10%) or more than the average daily attendance for the previous school year, the average daily attendance for purposes of calculating program funding for the next school year shall be increased by an amount equal to two-thirds (2/3) of the decrease in average daily attendance. If the average daily attendance remains the same or decreases in the succeeding school year, the average daily attendance for purposes of calculating program funding for the following school year shall be increased by an amount equal to one-third (1/3) of the decrease for the first year of the decline.
- (10) If the percentage of attendance of any school district shall have been reduced more than two percent (2%) during the previous school year, the program funding allotted the district for the current school year shall be

increased by the difference in the percentage of attendance for the two (2) years immediately prior to the current school year less two percent (2%).

- (11) (a) Instructional salaries for vocational agriculture classes shall be ~~be allotted~~ for twelve (12) months per year. Vocational agriculture teachers shall be responsible for the following program of instruction during the time period beyond the regular school term established by the local board of education: supervision and instruction of students in agriculture experience programs; group and individual instruction of farmers and agribusinessmen; supervision of student members of agricultural organizations who are involved in leadership training or other activity required by state or federal law; or any program of vocational agriculture established by the Division of Secondary Vocational Education in the Department of Education. ~~[Salary allotments for vocational agriculture teachers shall be computed by proportionately increasing the salary schedule allocation based on the regular one hundred eighty-five (185) day school year for teachers with comparable qualifications and experience.]~~ During extended employment, no vocational agriculture teacher shall receive salary on a day that the teacher is scheduled to attend an institution of higher education class which could be credited toward meeting any certification requirement.
- (b) Each teacher of agriculture employed shall submit an annual plan for summer program to the local school superintendent for approval. The summer plan shall include a list of tasks to be performed, purposes for each task, and time to be spent on each task. Approval by the local school superintendent shall be in compliance with the guidelines developed by the State Department of Education. The supervision and accountability of teachers of vocational agriculture's summer programs shall be the responsibility of the local school superintendent. The local school superintendent shall submit to the chief state school officer a completed report of summer tasks for each vocational agriculture teacher. Twenty percent (20%) of the approved vocational agriculture programs shall be audited annually by the State Department of Education to determine that the summer plan has been properly executed.
- ~~[(c) For the 1990-91 and the 1991-92 school years, an add-on appropriation shall be made to local school districts which are operating secondary vocational education programs. The amount provided in the budget shall be allocated on a per-pupil basis and shall be used to meet the higher per student cost of operating vocational education programs.]~~
- (12) (a) In allotting program funds for home and hospital instruction, statewide guaranteed base funding, excluding the capital outlay, shall be allotted for each child in average daily attendance in the prior school year who has been properly identified according to Kentucky Board of Education administrative regulations. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported monthly on forms provided by the Department of Education; and
- (b) Pursuant to administrative regulations of the **Kentucky Board**~~Department~~ of Education, local school districts shall be reimbursed for home and hospital instruction for pupils unable to attend regular school sessions because of short term health impairments. A reimbursement formula shall be established by administrative regulations to include such factors as a reasonable per hour, per child allotment for teacher instructional time, with a maximum number of funded hours per week, a reasonable allotment for teaching supplies and equipment, and a reasonable allotment for travel expenses to and from instructional assignments, but the formula shall not include an allotment for capital outlay. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported **annually**~~monthly~~ on forms provided by the Department of Education.
- (13) Except for those schools which have implemented school-based decision making and the school council has voted to waive this subsection, kindergarten aides shall be provided for each twenty-four (24) full-time equivalent kindergarten students enrolled.

Section 4. KRS 157.390 is amended to read as follows:

- (1) (a) The chief state school officer, under administrative regulations of the Kentucky Board of Education, shall classify teachers in rank as follows:
  - Rank I. Those holding regular certificates and who have a master's degree in a subject field approved by the Education Professional Standards Board or equivalent continuing education and who have earned thirty (30) semester hours of approved graduate work or equivalent continuing education; those teachers who, as of September 1, 1962, were included in Rank I, having earned twenty-four (24) semester hours of additional approved

graduate work; and those teachers who have met the requirements for Rank II and hold current certification of the National Board for Professional Teaching Standards.

Rank II. Those holding regular certificates and who have a master's degree in a subject field approved by the Education Professional Standards Board or equivalent continuing education.

Rank III. Those holding regular certificates and who have an approved four (4) year college degree or the equivalent.

Rank IV. Those holding certificates and who have ninety-six (96) to one hundred twenty-eight (128) semester hours of approved college training or the equivalent.

Rank V. Those holding certificates and who have sixty-four (64) to ninety-five (95) semester hours of approved college training or the equivalent.

- (b) In determining ranks, the chief state school officer, under administrative regulations of the Kentucky Board of Education, shall classify teachers who hold valid certificates in the respective ranks according to approved college semester hours of credit or equivalent continuing education. The chief state school officer, in defining preparation for certain types of vocational teachers as equivalent to college training, shall give consideration to apprenticeship training and industrial experience.
  - (c) Nothing in this subsection shall allow the Kentucky Board of Education by regulation to reclassify downward any teachers currently in Ranks I or II.
- (2) The chief state school officer, under administrative regulations of the Kentucky Board of Education, shall classify teachers in each rank by their years of experience for purposes of the state teacher salary schedule as follows:
1. Zero (0) to three (3) years;
  2. Four (4) to nine (9) years;
  3. Ten (10) to fourteen (14) years;
  4. Fifteen (15) to nineteen (19) years; and
  5. Twenty (20) or more years.
- (3) ~~[(a)]~~ The rank and experience of the teacher shall be determined on September 15.
- ~~[(b)] The amount to be included in each school year in the base funding level of a district for teachers' salaries shall be based on the categories of experience in subsection (2) of this section.~~
- (4) The amount to be included in the base funding level for capital outlay shall be determined by multiplying the average daily attendance by the amounts set forth in the biennial budget.
- (5) The amount to be included in the public school fund of each district for transportation shall be determined in accordance with the provisions of KRS 157.370.
- (6) The total amount of money distributable to each district from the public school fund shall ***include the base funding per pupil in average daily attendance, an amount for at-risk students, an amount for the types and numbers of students with disabilities, an amount for students served in home and hospital settings, and*** ~~be the sum of~~ the allotments in subsections ~~[(3),~~ (4), and (5) of this section, less the amount of local tax revenues generated for school purposes, up to a maximum equivalent local rate of thirty cents (\$0.30) as defined by KRS 157.615(6).
- (7) The Kentucky Board of Education shall create a Kentucky professional compensation plan. The plan shall be designed to compensate all teachers at adequate and competitive salary levels throughout their teaching careers. The plan shall establish progressive salary levels with advancement opportunities based upon the professional skills of the teacher and include education, rank, years of teaching service, related duties, specialized training, nonteaching experience, length of work year, performance, and any other professionally-recognized factors which the board considers relevant. The plan shall be developed during the 1992-94 biennium. Development work shall be conducted by Department of Education staff with support from recognized compensation experts, and staff from the Legislative Research Commission, the Office of Education Accountability, and the Governor's Office of Policy and Management. Upon approval by the Kentucky Board of Education, the new plan and its fiscal impact shall be submitted to the General Assembly.

## Section 5. KRS 157.410 is amended to read as follows:

For each school year the Finance and Administration Cabinet, on the certification of the chief state school officer, shall draw warrants on the State Treasurer for the amount of the public school fund due each district. Checks shall be issued by the State Treasurer and transmitted to the Department of Education *or electronically transferred* for distribution to the proper officials of the school districts when the districts have fully complied with the school laws and administrative regulations of the Kentucky Board of Education. The chief state school officer shall determine on or before August 15 of each year the tentative allotment of school funds to which each district is entitled under the provisions of KRS 157.310 to 157.440. On July 1, August 1, and September 1, of each fiscal year, one-twelfth (1/12) of the prior year's allotment minus the capital outlay shall be paid each school district. On the first of each month thereafter until the final calculation is completed, one-twelfth (1/12) of each district's share of the tentative calculation *minus capital outlay* ~~for instructional salaries, current expenses, and transportation of the public school fund~~ shall be distributed. On or before May 1 of each year the chief state school officer shall determine the exact amount of the public common school fund to which each district is entitled and the remainder of the amount due each district for the year shall be distributed in equal installments beginning the first month after completion of final calculation and for each successive month thereafter. ~~Capital outlay shall be made in two (2) payments. The first, on or before October 1, shall be one-half (1/2) of the amount calculated on the tentative allocation for capital outlay. The balance due shall be paid on or before May 1.~~

## Section 6. KRS 160.470 is amended to read as follows:

- (1) ~~Each district board of education shall prepare a general school budget in formats prescribed and furnished by the Kentucky Board of Education, showing the amount of money needed for current expenses, debt service, capital outlay, and other necessary expenses of the schools during the succeeding fiscal year, the estimated total amount that will be received from the common school fund and other sources, the assessed valuation of property subject to local taxation in the school district furnished as provided in subsection (3) of KRS 160.460, an estimate made by the Revenue Cabinet of public service company assessments and assessments of other property in the school district not furnished under the provisions of subsection (3) of KRS 160.460, and the amount that will be needed to be raised by local taxation, including the rate of levy necessary to raise such an amount.~~
- (2) (a) Notwithstanding any statutory provisions to the contrary, ~~no district board of education shall levy a general tax rate, voted general tax rate, or voted building tax rate for 1979-80 which will produce more revenue, exclusive of revenue from net assessment growth as defined in KRS 132.010, than would be produced by application of the maximum general tax rate, voted general tax rate, or voted building tax rate, respectively, that could have been levied in 1978-79, to the 1978-79 assessment, except as provided in subsection (12) of this section and KRS 157.440. In succeeding years,~~ no district board of education shall levy a general tax rate, ~~a voted general tax rate, or a voted building tax rate~~ which will produce more revenue, exclusive of revenue from net assessment growth as defined in KRS 132.010, than would be produced by application of the general tax rate, ~~maximum voted general tax rate, or maximum voted building tax rate, respectively,~~ that could have been levied in the preceding year to the preceding year's assessment, except as provided in subsection (9) ~~(12)~~ of this section and KRS 157.440.
- (b) If an election is held as provided for in KRS 132.017 and the question should fail, such failure shall not reduce the ". . . general tax rate, ~~maximum voted general tax rate, or maximum voted building tax rate, respectively,~~ that could have been levied in the preceding year. . .," referred to in subsection (1) ~~(2)~~ (a) of this section, for purposes of computing the general tax rate, ~~voted general tax rate, or voted building tax rate~~ for succeeding years.

In the event of a merger of school districts, the limitations contained in this section shall be based upon the combined revenue of the merging districts, as computed under the provisions of this section.

- (2) ~~(3)~~ No district board of education shall levy a general tax rate, ~~voted general tax rate, or voted building tax rate~~ within the limits imposed in subsection (1) ~~(2)~~ of this section which respectively exceeds the compensating tax rate defined in KRS 132.010, except as provided in subsection (9) ~~(12)~~ of this section, KRS 157.440, and KRS 157.621, until the district board of education has complied with the provisions of subsection (7) ~~(10)~~ of this section.
- (3) ~~(4)~~ *Upon receipt of property assessments from the Revenue Cabinet, the commissioner of education* ~~The chief state school officer~~ shall certify the following to each district board of education, ~~by June 30 of each year~~:



- (a) The general tax rate~~[, voted general tax rate, or voted building tax rate]~~ that a district board of education could levy under the provisions of subsection (1)~~[(2)]~~ of this section, and the amount of revenue expected to be produced~~[by each]~~;
  - (b) The compensating tax rate as defined in KRS 132.010 for a district's general tax rate~~[, voted general tax rate, or voted building tax rate, and]~~ the amount of revenue expected to be produced~~[by each]~~;
  - (c) The general tax rate~~[, voted general tax rate, or voted building tax rate]~~ which will produce, respectively, no more revenue from real property, exclusive of revenue from new property, than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, and the amount of revenue expected to be produced~~[by each]~~.
- ~~(4) [(5)]~~ Upon completion of action on property assessment data, the Revenue Cabinet shall submit certified property assessment data as required in KRS 133.125 to the chief state school officer.
- ~~(5) [(6)]~~ Within thirty (30) days after the district board of education has received its assessment data, *the rates levied*~~[three (3) copies of the budget]~~ shall be forwarded to the Kentucky Board of Education for its approval or disapproval. The failure of the district board of education to furnish the *rates*~~[budget]~~ within the time prescribed shall not invalidate any levy made thereafter.
- ~~(6) [(7)]~~ The budget shall be disapproved by the Kentucky Board of Education if it is financially unsound or fails to provide for:
- (a) — Payment of maturing principal and interest on any outstanding voted school improvement bonds of the school district, authorized and issued pursuant to KRS 162.080 and 162.090 with the written approval of the Kentucky Board of Education; or
  - (b) — Payment of rentals in connection with any outstanding school building revenue bonds issued for the benefit of a school district by the appropriate city or county as authorized and provided under the provisions of KRS 162.120 to 162.300 and KRS 58.010 to 58.140, with the written approval of the Kentucky Board of Education; or
  - (c) — Fails to comply with the law.
- ~~— The Kentucky Board of Education shall state the reason for disapproval and the district board of education shall amend its budget, within the limitations of this section, to obviate the reasons for disapproval and resubmit the budget to the Kentucky Board of Education for final approval.~~
- ~~(8) — If the budget as amended specifies a tax levy different from that levied under the disapproved budget, the tax levying authority shall amend its levy so that the levy as amended shall comply with the provisions of subsection (1) of KRS 160.460. No general school budget shall become effective and no ad valorem levy shall be made until approved by the Kentucky Board of Education.~~
- ~~(9) [(9)]~~ (a) Each district board of education shall, on or before January 31 of each calendar year, formally and publicly examine detailed line item estimated revenues and proposed expenditures for the subsequent fiscal year. On or before May 30 of each calendar year, each district board of education shall adopt a tentative working budget which shall include a minimum reserve of two percent (2%) of the total budget.
- (b) Each district board of education shall submit to the Kentucky Board of Education no later than September 30, a close estimate or working budget which shall conform to the administrative regulations prescribed by the Kentucky Board of Education~~[, and which shall be consistent in its major divisions with the general school budget previously prepared]~~.
- ~~(7) [(10)]~~ (a) Except as provided in subsection ~~(9) [(12)]~~ of this section and KRS 157.440, a district board of education proposing to levy a general tax rate~~[, voted general tax rate, or voted building tax rate]~~ within the limits of subsection (1)~~[(2)]~~ of this section which exceed the compensating tax rate defined in KRS 132.010 shall hold a public hearing to hear comments from the public regarding the proposed tax rate. The hearing shall be held in the principal office of the taxing district or, in the event the taxing district has no office, or the office is not suitable for such a hearing, the hearing shall be held in a suitable facility as near as possible to the geographic center of the district.
- (b) The district board of education shall advertise the hearing by causing the following to be published at least twice for two (2) consecutive weeks, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches:

1. The general tax rate~~[- voted general tax rate, and voted building tax rate]~~ levied in the preceding year, and the revenue produced by *that rate*~~[those rates]~~;
  2. The general tax rate~~[- voted general tax rate, and voted building tax rate proposed]~~ for the current year, and the revenue expected to be produced by *that rate*~~[those rates]~~;
  3. The compensating general~~[- voted general, and voted building]~~ tax *rate*~~[rates]~~, and the revenue expected from *it*~~[them]~~;
  4. The revenue expected from new property and personal property;
  5. The general areas to which revenue in excess of the revenue produced in the preceding year is to be allocated;
  6. A time and place for the public hearing which shall be held not less than seven (7) days nor more than ten (10) days after the day that the second advertisement is published;
  7. The purpose of the hearing; and
  8. A statement to the effect that the General Assembly has required publication of the advertisement and the information contained herein.
- (c) In lieu of the two (2) published notices, a single notice containing the required information may be sent by first-class mail to each person owning real property, addressed to the property owner at his residence or principal place of business as shown on the current year property tax roll.
- (d) The hearing shall be open to the public. All persons desiring to be heard shall be given an opportunity to present oral testimony. The district board of education may set reasonable time limits for testimony.
- ~~(8)(11)~~ (a) That portion of a general tax rate~~[- a voted general tax rate, or a voted building tax rate,]~~ except as provided in subsection ~~(9)(12)~~ of this section, KRS 157.440, and KRS 157.621, levied by an action of a district board of education which will produce, respectively, revenue from real property, exclusive of revenue from new property, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, shall be subject to a recall vote or reconsideration by the district board of education as provided for in KRS 132.017, and shall be advertised as provided for in paragraph (b) of this subsection.
- (b) The district board of education shall, within seven (7) days following adoption of an ordinance, order, resolution, or motion to levy a general tax rate~~[- voted general tax rate, or voted building tax rate,]~~ except as provided in subsection ~~(9)(12)~~ of this section and KRS 157.440, which will produce revenue from real property, exclusive of revenue from new property as defined in KRS 132.010, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, cause the following to be published, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches:
1. The fact that the district board of education has adopted such a rate;
  2. The fact that the part of the rate which will produce revenue from real property, exclusive of new property as defined in KRS 132.010, in excess of four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010 is subject to recall; and
  3. The name, address, and telephone number of the county clerk of the county or urban-county in which the school district is located, with a notation to the effect that that official can provide the necessary information about the petition required to initiate recall of the tax rate.
- ~~(9)(12)~~ (a) Notwithstanding any statutory provisions to the contrary, effective for school years beginning after June 30, 1990, the board of education of each school district shall levy a minimum equivalent tax rate of thirty cents (\$0.30) for general school purposes. Equivalent tax rate is defined as the rate which results when the income collected during the prior year from all taxes levied by the district for school purposes is divided by the total assessed value of property plus the assessment for motor vehicles certified by the Revenue Cabinet. School districts collecting school taxes authorized by KRS 160.593 to 160.597, 160.601 to 160.633, or 160.635 to 160.648 for less than twelve (12) months during a school year shall have included in income collected under this section the pro rata tax collection for twelve (12) months.

- (b) If a board fails to comply with **paragraph (a) of this subsection** ~~[(12)(a) of this section]~~, its members shall be subject to removal from office for willful neglect of duty pursuant to KRS 156.132.

Section 7. KRS 160.560 is amended to read as follows:

- (1) Each board of education shall elect a treasurer for the board. The board may elect its secretary to serve as treasurer. The board may remove the treasurer from office at any time for cause by a vote of a majority of the members of the board.
- (2) The treasurer shall execute an official bond for the faithful performance of the duties of his office, to be approved by the local board and the **commissioner of education** ~~[Kentucky Board of Education]~~. The bond shall be guaranteed by a surety company authorized to do business in this state, and shall be in an amount determined by the board of education in accordance with the **administrative** ~~[rules and]~~ regulations **promulgated by** ~~[of]~~ the Kentucky Board of Education. The premium on the bond shall be paid by the board of education. A copy of the bond shall be filed with the board of education and with the **commissioner of education** ~~[Kentucky Board of Education]~~. ~~All treasurer's bond forms shall be prepared by the chief state school officer and approved by the Kentucky Board of Education.~~
- (3) The treasurer shall receive all moneys to which the board is entitled by the Constitution or by the statutes, except as otherwise provided by law, or which may in any way come into its possession, and deposit such funds in the properly designated depository. He shall withdraw such funds from the depository only upon proper order of the board. He shall keep a full and complete account of all funds in such manner and make such reports concerning them as is required by the board of education or by the Kentucky Board of Education. He shall preserve all records relating to the transactions and duties of the office and turn them over to his successor along with all public funds in his hands and all accounts and records after due and proper audit is made by a competent outside agent when he is required to do so by the board of education.
- (4) The treasurer shall issue his check on the depository for payment of all legal claims which have been authorized for payment in accordance with policies previously adopted by the local board of education and approved by the **commissioner of education** ~~[Kentucky Board of Education]~~.

Section 8. KRS 160.570 is amended to read as follows:

- (1) Each board of education shall appoint a bank, trust company, or savings and loan association to serve as its depository, and if its annual receipts from all sources exceed one hundred thousand dollars (\$100,000), it may designate three (3) depositories, except boards of education of school districts in counties containing cities of the first class may designate up to five (5) depositories. The depository may be designated for a period not to exceed two (2) years, and before entering upon its duties shall agree with the board as to the rate of interest to be paid on average daily or monthly balances.
- (2) The depository selected shall, before entering upon its duties, execute bond for the faithful performance of its duties, to be approved by the local board of education **in accordance with Kentucky Board of Education administrative regulations, and to be approved by the commissioner of education** ~~[and the Kentucky Board of Education]~~. The bond shall be guaranteed by at least five (5) solvent personal sureties whose solvency must exceed the amount of the bond, or by a surety company authorized to do business in this state, or through the execution of a collateral bond consistent with the general banking laws of the state and the bonding laws applying to the safeguarding of state funds. The penal sum of the depository bond shall be determined by the board of education in accordance with the **administrative** ~~[rules and]~~ regulations **promulgated by** ~~[of]~~ the Kentucky Board of Education. A board of education may enter into an agreement with its depository whereby the premium on a bond guaranteed by a surety company may be paid either by the board or by the depository. If the board pays the premium, the depository shall allow the board not less than two percent (2%) interest on its average daily or average monthly balances. All depository bond forms shall be prepared by the chief state school officer and approved by the Kentucky Board of Education.
- (3) The depository shall hold for the board all funds deposited by the treasurer of the board or its tax collector or duly authorized agent, subject to withdrawal by the board at any time, and shall pay all funds so deposited to such person and in such manner as the board directs. The depository shall keep full and complete accounts of all of the board's funds, and make reports to the board or its authorized agents upon request. The depository shall keep all records relating to the transactions and duties of the office and turn them over to the successor of its office along with all school funds in hand. The board of education may at any time require a due and proper audit of the depository's records of the funds of the board by a competent outside agent.

- (4) A board of education may designate as its depository the authorized and bonded depository of the governing authority of the territory which the school district embraces. In such cases, the bond of the depository shall be made to cover specifically the safekeeping of the school board's funds, and all conditions set out in this section shall be carried out.

Section 9. KRS 157.440 is amended to read as follows:

- (1) (a) Notwithstanding any statutory provisions to the contrary, effective for school years beginning after July 1, 1990, the board of education of each school district may levy an equivalent tax rate as defined in subsection ~~(9)(12)~~(a) of KRS 160.470 which will produce up to fifteen percent (15%) of those revenues guaranteed by the program to support education excellence in Kentucky. The levy for the 1990-91 school year shall be made no later than October 1, 1989, and no later than October 1, 1990, for the 1991-92 school year, and by October 1 of each odd-numbered year thereafter. Effective with the 1990-91 school year, revenue generated by this levy shall be equalized at one hundred fifty percent (150%) of the statewide average per pupil assessment.
- (b) To participate in the Facilities Support Program of Kentucky, the board of education of each school district shall commit at least an equivalent tax rate of five cents (\$0.05) to debt service, new facilities, or major renovations of existing school facilities. The five cents (\$0.05) shall be in addition to the thirty cents (\$0.30) required by KRS 160.470~~(9)(12)~~ and any levy pursuant to paragraph (a) of this subsection. The levy shall be made no later than October 1 of each odd-numbered year. Eligibility for equalization funds for the biennium shall be based on the district funds committed to debt service on that date. The five cents (\$0.05) shall be equalized at one hundred fifty percent (150%) of the statewide average per pupil assessment. The equalization funds shall be committed to debt service to the greatest extent possible, but any excess equalization funds not needed for debt service shall be deposited to a restricted building fund account. The funds may be escrowed for future debt service or used to address categorical priorities listed in the approved facilities plan pursuant to KRS 157.420.
- (c) The board of education of each school district may contribute the levy equivalent tax rate of five cents (\$0.05) and equalization funds for energy conservation measures under guaranteed energy savings contracts pursuant to KRS 45A.345, 45A.352, and 45A.353. Use of these funds, as provided under KRS 45A.353, 56.774, and 58.600 shall be based on the following guidelines:
1. Energy conservation measures shall include facility alteration;
  2. Energy conservation measures shall be identified in the district's approved facility plan pursuant to KRS 157.420;
  3. The current facility systems are consuming excess maintenance and operating costs;
  4. The savings generated by the energy conservation measures are guaranteed;
  5. The levy equivalent tax rate of five cents (\$0.05) and equalization funds contributed to the energy conservation measures shall be defined as capital cost avoidance as provided in KRS 45A.345(2) and shall be subject to the restrictions on usage as specified in KRS 45A.352(9); and
  6. The equipment that is replaced has exceeded its useful life as determined by a life cycle cost analysis.
- (d) The rate levied by a district board of education under the provisions of this subsection shall not be subject to the public hearing provisions of KRS 160.470~~(7)(10)~~ or to the recall provisions of KRS 160.470~~(8)(11)~~.
- (e) A school district which is at or above the equivalent tax rates permitted under the provisions of the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476, shall not be required to levy an equivalent tax rate which is lower than the rate levied during the 1989-90 school year.
- (2) (a) A district may exceed the maximum provided by subsection ~~(1)(2)~~ of KRS 160.470 provided that, upon request of the board of education of the district, the county board of elections shall submit to the qualified voters of the district, in the manner of submitting and voting as prescribed in paragraph (b) of this subsection, the question whether a rate which would produce revenues in excess of the maximum provided by subsection ~~(1)(2)~~ of KRS 160.470 shall be levied. The rate that may be levied under this section may produce revenue up to no more than thirty percent (30%) of the revenue guaranteed by the program to support education excellence in Kentucky plus the revenue produced by the tax authorized

by this section. Revenue produced by this levy shall not be equalized with state funds. If a majority of those voting on the question favor the increased rate, the tax levying authority shall, when the next tax rate for the district is fixed, levy a rate not to exceed the rate authorized by the voters.

- (b) The election shall be held not less than fifteen (15) or more than thirty (30) days from the time the request of the board is filed with the county clerk, and reasonable notice of the election shall be given. The election shall be conducted and carried out in the school district in all respects as required by the general election laws and shall be held by the same officers as required by the general election laws. The expense of the election shall be borne by the school district.
- (3) For the 1966 tax year and for all subsequent years for levies which were approved prior to December 8, 1965, no district board of education shall levy a tax at a rate under the provisions of this section which exceeds the compensating tax rate as defined in KRS 132.010, except as provided in subsection (4) of this section and except that a rate which has been approved by the voters under this section but which was not levied by the district board of education in 1965 may be levied after it has been reduced to the compensating tax rate as defined in KRS 132.010, and except that in any school district where the rate levied in 1965 was less than the maximum rate which had been approved by the voters, the compensating tax rate shall be computed and may be levied as though the maximum approved rate had been levied in 1965 and the amount of revenue which would have been produced from such maximum levy had been derived therefrom.
- (4) Notwithstanding the limitations contained in subsection (3) of this section, no tax rate shall be set lower than that necessary to provide such funds as are required to meet principal and interest payments on outstanding bonded indebtedness and payments of rentals in connection with any outstanding school revenue bonds issued under the provisions of KRS Chapter 162.
- (5) The chief state school officer shall certify the compensating tax rate to the levying authorities.

Section 10. KRS 157.621 is amended to read as follows:

- (1) Local school districts that have experienced student population growth during a five (5) year period may levy a five cents (\$0.05) tax for debt service and new facilities in addition to the five cents (\$0.05) levied under the school construction funding program provided in KRS 157.620. The tax rate levied by the district under this provision shall not be subject to a recall vote as provided in KRS 160.470(8)~~[(11)]~~ and shall not be equalized by state funding.
- (2) A local school district shall meet the following criteria in order to levy the tax provided in subsection (1) of this section:
  - (a) Growth of at least one hundred fifty (150) students in average daily attendance and three percent (3%) overall growth for the five (5) preceding years;
  - (b) Bonded debt to the maximum capability of at least eighty percent (80%) of capital outlay from the Support Education Excellence in Kentucky funding program, all revenue from the local facility tax, and all receipts from state equalization on the local facility tax;
  - (c) Current student enrollment in excess of available classroom space; and
  - (d) A local school facility plan that has been approved by the Kentucky Board of Education and certified to the School Facilities Construction Commission.
- (3) When the state appropriations amount to the total cost of equalizing the five cents (\$0.05) at the rate prescribed in KRS 157.620, as evidenced in the biennial budget and the budget memorandum, the provisions of this section shall expire.

Section 11. KRS 160.473 is amended to read as follows:

- (1) In the event that a general tax rate~~[, voted general tax rate, or voted building tax rate]~~ applicable to real property levied by a district board of education will produce a percentage increase in revenue from personal property less than the percentage increase in revenue from real property, the district board of education may levy a general tax rate~~[, voted general tax rate, or voted building tax rate]~~ applicable to personal property which will produce the same percentage increase in revenue from personal property as the percentage increase in revenue from real property; however, in no event shall the general tax rate~~[, voted general tax rate, or voted building tax rate]~~ levied by the district board of education applicable to personal property exceed the prior year general tax rate~~[, voted general tax rate, or voted building tax rate]~~ applicable to personal property levied by the respective district board of education.

- (2) The general tax rate~~[, voted general tax rate, or voted building tax rate]~~ applicable to personal property levied by a district board of education under the provisions of subsection (1) of this section shall not be subject to the public hearing provisions of KRS 160.470(7)~~(10)~~ and to the recall provisions of KRS 160.470(8)~~(11)~~.

Section 12. KRS 160.475 is amended to read as follows:

- (1) Except as otherwise provided in KRS 157.440, 160.470(1)~~(2)~~, and 160.476(4), the ad valorem tax levy for school purposes, other than sinking fund purposes, in each school district, shall be not more than one dollar and fifty cents (\$1.50) annually on each one hundred dollars (\$100) of property subject to local taxation.
- (2) All existing subdistrict school tax levies, except those required to retire voted bonds, are hereby abolished.

Section 13. The following KRS section is repealed:

160.474 Cumulative increase for 1982-83 only -- Limit -- Public hearing and recall not applicable.

**Approved April 7, 2000**

## **CHAPTER 390**

### **(HB 675)**

AN ACT relating to retirement.

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

Section 1. KRS 161.155 is amended to read as follows:

- (1) As used in this section:
- (a) "Teacher" shall mean any person for whom certification is required as a basis of employment in the common schools of the state;
  - (b) "Employee" shall mean any person, other than a teacher, employed in the public schools, whether on a full or part-time basis;
  - (c) "Immediate family" shall mean the teacher's spouse, children including stepchildren, grandchildren, parents and spouse's parents, grandparents, and spouse's grandparents, without reference to the location or residence of said relative, and any other blood relative who resides in the teacher's home; and
  - (d) "Sick leave bank" shall mean an aggregation of sick leave days contributed by teachers for use by teachers who have exhausted all sick leave and other available paid leave days.
- (2) Each district board of education shall allow to each teacher in its common school system not less than ten (10) days of sick leave during each school year, without deduction of salary. Sick leave shall be granted to a teacher if he presents a personal affidavit or a certificate of a physician stating that the teacher was ill, that the teacher was absent for the purpose of attending to a member of his immediate family who was ill, or for the purpose of mourning a member of his immediate family. The ten (10) days of sick leave herein granted may be taken by a teacher on any ten (10) days of the school year and shall be granted in addition to accumulated sick leave days that have been credited to the teacher under the provisions of subsection (3) of this section.
- (3) Days of sick leave not taken by *an employee or* a teacher during any school year shall accumulate without limitation and be credited to that *employee or* teacher. Accumulated sick leave may be taken in any school year. Any district board of education may, in its discretion, allow *employees or* teachers in its common school system sick leave in excess of the number of days prescribed in this section and may allow school district employees and teachers to use up to three (3) days' sick leave per school year for emergency leave pursuant to KRS 161.152(3). Any accumulated sick leave days credited to *an employee or* a teacher shall remain so credited in the event he transfers his place of employment from one (1) school district to another within the state or to the Kentucky Department of Education or transfers from the Department of Education to a school district~~[after June 30, 1985]~~.
- (4) Accumulated days of sick leave shall be granted to a teacher if, prior to the opening day of the school year, an affidavit or a certificate of a physician is presented to the district board of education, stating that the teacher is unable to commence his duties on the opening day of the school year, but will be able to assume his duties within a period of time that the board determines to be reasonable.

- (5) Any school employee may repurchase previously used sick leave days with the concurrence of the local school board by paying to the district an amount equal to the total of all costs associated with the used sick leave.
- (6) A district board of education may adopt a plan for a sick leave bank. The plan may include limitations upon the number of days a teacher may annually contribute to the bank and limitations upon the number of days a teacher may annually draw from the bank. Only those teachers who contribute to the bank may draw upon the bank. Days contributed will be deducted from the days available to the contributing teacher. The sick leave bank shall be administered in accordance with a policy adopted by the board of education.
- (7)
  - (a) A district board of education shall establish a sick leave donation program to permit teachers to voluntarily contribute sick leave to teachers in the same school district who are in need of an extended absence from school. A teacher who has accrued more than fifteen (15) days sick leave may request the board of education to transfer a designated amount of sick leave to another teacher who is authorized to receive the sick leave donated. A teacher may not request an amount of sick leave be donated that reduces his or her sick leave balance to less than fifteen (15) days.
  - (b) A teacher may receive donations of sick leave if:
    - 1. The teacher or a member of his or her immediate family suffers from a medically certified illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the teacher to be absent for at least ten (10) days;
    - 2. The teacher's need for the absence and use of leave are certified by a licensed physician;
    - 3. The teacher has exhausted his or her accumulated sick leave, personal leave, and any other leave granted by the school district; and
    - 4. The teacher has complied with the school district's policies governing the use of sick leave.
  - (c) While an employee is on sick leave provided by this section, he or she shall be considered a school district employee, and his or her salary, wages, and other employee benefits shall not be affected.
  - (d) Any sick leave that remains unused, is not needed by a teacher, and will not be needed in the future shall be returned to the teacher donating the sick leave.
  - (e) The board of education shall adopt policies and procedures necessary to implement the sick leave donation program.
- (8) A teacher may use up to thirty (30) days of sick leave following the birth or adoption of a child or children. Additional days may be used when the need is verified by a physician's statement.
- (9) After July 1, 1982, a district board of education may compensate, at the time of retirement, an employee or a teacher for each unused sick leave day. The rate of compensation for each unused sick leave day shall be based on a percentage of the daily salary rate calculated from the employee's or teacher's last annual salary, not to exceed thirty percent (30%). Payment for unused sick leave days shall be incorporated into the annual salary of the final year of service; provided that the member makes the regular retirement contribution for members on the sick leave payment. The accumulation of these days includes unused sick leave days held by the employee or teacher at the time of implementation of the program.
- (10) Any statute to the contrary notwithstanding, employees and teachers who transferred from the Department of Education to a school district, from a school district to the Department of Education, or from one (1) school district to another school district after July 15, 1981, shall receive credit for any unused sick leave to which the employee or teacher was entitled on the date of transfer. This credit shall be for the purposes set forth in subsection (9) of this section.

**Approved April 7, 2000**

## **CHAPTER 391**

**(HB 676)**

AN ACT relating to nursing.

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

SECTION 1. A NEW SECTION OF KRS 314.011 TO 314.161 IS CREATED TO READ AS FOLLOWS:

*The board may require a criminal background investigation of an applicant for endorsement by means of a fingerprint check by the State Police and the Federal Bureau of Investigation.*

SECTION 2. A NEW SECTION OF KRS 314.011 TO 314.161 IS CREATED TO READ AS FOLLOWS:

- (1) *The board may, on petition by an interested party, issue a declaratory ruling relating to the applicability to any person, property, or state of facts of a statute, administrative regulation, decision, order, or other written statement of law or policy within the jurisdiction of the board.*
- (2) *A declaratory ruling shall be binding on the board and all parties to the proceedings on the statement of facts alleged.*
- (3) *The board may not retroactively change a declaratory ruling, but nothing in this section shall prevent the board from prospectively changing a declaratory ruling.*
- (4) *The board shall promulgate an administrative regulation in accordance with KRS Chapter 13A on procedures for submission, consideration, and disposition of a petition for a declaratory ruling.*
- (5) *A declaratory ruling of the board may be appealed to the Circuit Court of the county in which the board's offices are located within thirty (30) days of the date of the final ruling by the board.*

SECTION 3. A NEW SECTION OF KRS 314.011 TO 314.161 IS CREATED TO READ AS FOLLOWS:

*Any person licensed by the board shall maintain a current mailing address with the board and immediately notify the board in writing of a change of mailing address. As a condition of holding a license from the board, a licensee is deemed to have consented to service of notices or orders of the board at the mailing address on file with the board, and any notice or order of the board mailed or delivered to the mailing address on file with the board constitutes valid service of the notice or order.*

SECTION 4. A NEW SECTION OF KRS 314.011 TO 314.161 IS CREATED TO READ AS FOLLOWS:

*Any person licensed by the board shall immediately notify the board in writing if any professional or business license that is issued to the person by any agency of the Commonwealth or any other jurisdiction is surrendered or terminated under threat of disciplinary action or is refused, suspended, or revoked, or if renewal of continuance is denied.*

SECTION 5. A NEW SECTION OF KRS 314.011 TO 314.161 IS CREATED TO READ AS FOLLOWS:

*Any person licensed by the board shall, within thirty (30) days of entry of the final judgment, notify the board in writing of any misdemeanor or felony criminal conviction in this or any other jurisdiction. Upon learning of any failure to notify the board under this section, the board may initiate an action for immediate temporary suspension under KRS 314.089 until the person submits the required notification.*

Section 6. KRS 314.011 is amended to read as follows:

As used in KRS 314.011 to 314.161 and KRS 314.991, unless the context thereof requires otherwise:

- (1) "Board" ~~means~~~~[shall mean]~~ Kentucky Board of Nursing.
- (2) "Delegation" means directing a competent person to perform a selected nursing activity or task in a selected situation under the nurse's supervision and pursuant to administrative regulations promulgated by the board in accordance with the provisions of KRS Chapter 13A.
- (3) "Nurse" ~~means~~~~[shall mean]~~ a person licensed under the provisions of this chapter as a registered nurse or as a licensed practical nurse.
- (4) "Nursing process" means the investigative approach to nursing practice utilizing a method of problem-solving by means of:
  - (a) Nursing diagnosis, a systematic investigation of a health concern, and an analysis of the data collected in order to arrive at an identifiable problem; and
  - (b) Planning, implementation, and evaluation based on nationally-accepted standards of nursing practice.
- (5) "Registered nurse" ~~means~~~~[shall mean]~~ one who is licensed under the provisions of this chapter to engage in registered nursing practice.



- (6) "Registered nursing practice" ~~means~~~~[shall mean]~~ the performance of acts requiring substantial specialized knowledge, judgment, and nursing skill based upon the principles of psychological, biological, physical, and social sciences in the application of the nursing process in:
- (a) The care, counsel, and health teaching of the ill, injured, or infirm.
  - (b) The maintenance of health or prevention of illness of others.
  - (c) The administration of medication and treatment as prescribed by a physician, physician assistant, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally-accepted organizations of registered nurses. Components of medication administration include, but are not limited to:
    - 1. Preparing and giving medications in the prescribed dosage, route, and frequency;
    - 2. Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;
    - 3. Intervening when emergency care is required as a result of drug therapy;
    - 4. Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;
    - 5. Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and
    - 6. Instructing an individual regarding medications.
  - (d) The supervision, teaching of, and delegation to other personnel in the performance of activities relating to nursing care.
  - (e) The performance of other nursing acts which are authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally-accepted organizations of registered nurses.
- (7) "Advanced registered nurse practitioner" ~~means~~~~[shall mean]~~ one who is registered and designated to engage in advanced registered nursing practice including~~[-, but not limited to,]~~ the nurse anesthetist, nurse midwife, **clinical nurse specialist**, and nurse practitioner pursuant to KRS 314.042.
- (8) "Advanced registered nursing practice" ~~means~~~~[shall mean]~~ the performance of additional acts by registered nurses who have gained added knowledge and skills through an organized postbasic program of study and clinical experience and who are certified by the American Nurses' Association or other nationally-established organizations or agencies recognized by the board to certify registered nurses for advanced nursing practice. The additional acts shall, subject to approval of the board, include, but not be limited to, prescribing treatment, drugs, devices, and ordering diagnostic tests. Advanced registered nurse practitioners who engage in these additional acts shall be authorized to issue prescriptions for **and dispense** nonscheduled legend drugs as defined in KRS 217.905, under the conditions set forth in KRS 314.042. Nothing in this chapter shall be construed as requiring an advanced registered nurse practitioner designated by the board as a nurse anesthetist to obtain prescriptive authority pursuant to this chapter or any other provision of law in order to deliver anesthesia care. The performance of these additional acts shall be consistent with the certifying organization or agencies' scopes and standards of practice recognized by the board by administrative regulation.
- (9) "Licensed practical nurse" ~~means~~~~[shall mean]~~ one who is licensed under the provisions of this chapter to engage in licensed practical nursing practice.
- (10) "Licensed practical nursing practice" ~~means~~~~[shall mean]~~ the performance of acts requiring knowledge and skill such as are taught or acquired in approved schools for practical nursing in:
- (a) The observing and caring for the ill, injured, or infirm under the direction of a registered nurse, a licensed physician, or dentist.
  - (b) The giving of counsel and applying procedures to safeguard life and health, as defined and authorized by the board.
  - (c) The administration of medication or treatment as authorized by a physician, physician assistant, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board which is

consistent with the National Federation of Licensed Practical Nurses or with Standards of Practice established by nationally-accepted organizations of licensed practical nurses.

- (d) Teaching, supervising, and delegating except as limited by the board.
- (e) The performance of other nursing acts which are authorized or limited by the board and which are consistent with the National Federation of Practical Nurses' Standards of Practice or with Standards of Practice established by nationally-accepted organizations of licensed practical nurses.
- (11) "School of nursing" ~~means[shall mean]~~ a nursing education program preparing persons for licensure as a registered nurse or a practical nurse.
- (12) "Continuing education" ~~means[shall mean]~~ offerings beyond the basic nursing program that present specific content planned and evaluated to meet competency based behavioral objectives which develop new skills and upgrade knowledge.
- (13) "Nursing assistance" ~~means[shall mean]~~ the performance of delegated nursing acts by unlicensed nursing personnel for compensation under supervision of a nurse.
- (14) "Sexual assault nurse examiner" ~~means[shall mean]~~ a registered nurse who has completed the required education and clinical experience and been credentialed by the board as provided under KRS 314.142 to conduct forensic examinations of victims of sexual offenses under the medical protocol issued by the State Medical Examiner pursuant to KRS 216B.400(2).
- (15) ***"Competency" means the application of knowledge and skills in the utilization of critical thinking, effective communication, interventions, and caring behaviors consistent with the nurse's practice role within the context of the public's health, safety, and welfare.***
- (16) ***"Credential" means a current license, registration, or certificate that is issued by the board and that permits the practice of nursing.***
- (17) ***"Dispense" means to receive and distribute noncontrolled legend drug samples from pharmaceutical manufacturers to patients at no charge to the patient or any other party.***

Section 7. KRS 314.025 is amended to read as follows:

- (1) There is hereby created the Kentucky nursing incentive scholarship fund.
- (2) It is the intent of the General Assembly of the Commonwealth of Kentucky to address the nursing workforce needs throughout the Commonwealth; further it is the intent of the General Assembly to give preference for these scholarships to financially needy residents, registered nurses pursuing graduate nursing education, and licensed practical nurses of the Commonwealth. ***The fund also may issue grants for nursing workforce competency development.***
- (3) ***It further is the intent of the General Assembly that an applicant who has been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property may not be eligible for a Kentucky nursing incentive scholarship.***

Section 8. KRS 314.031 is amended to read as follows:

- (1) It shall be unlawful for any person to call or hold herself or himself out as or use the title of nurse or to practice or offer to practice as a nurse unless licensed under the provisions of this chapter.
- (2) It shall be unlawful for any person to operate or to offer to operate or to represent or advertise the operation of a school of nursing unless the school of nursing has been approved under the provisions of this chapter.
- (3) It shall be unlawful for any person knowingly to employ a nurse unless the nurse is licensed under the provisions of this chapter.
- (4) It shall be unlawful for any nurse, employer of nurses, or any person having knowledge of facts to refrain from reporting to the board a nurse who:
  - (a) Has been convicted of a misdemeanor or felony which involved acts that bear directly on the qualifications or ability of the applicant or licensee to practice nursing; or
  - (b) Is suspected of fraud or deceit in procuring or attempting to procure a license to practice nursing; or
  - (c) ***Is suspected*** of negligently or willfully acting in a manner inconsistent with the practice of nursing; or

- (d) *Is suspected* of being unfit or incompetent to practice nursing by reason of negligence or other causes including, but not limited to, being unable to practice nursing with reasonable skill or safety; or
- (e) *Is suspected* of ~~willfully or repeatedly~~ violating any provisions of this chapter; or
- (f) ~~(e)~~ Has a license to practice as a nurse denied, limited, suspended, probated, ~~for~~ revoked, *or otherwise disciplined* in another jurisdiction on grounds sufficient to cause a license to be denied, limited, suspended, probated, ~~or~~ revoked, *or otherwise disciplined* in this Commonwealth; or
- (g) ~~(d)~~ Is practicing nursing without a current active license or valid temporary work permit issued by the board; *or*
- (h) *Is suspected of abusing, misusing, or misappropriating any drugs placed in the custody of the nurse for administration, or for use of others; or*
- (i) *Is suspected of falsifying or in a negligent manner making incorrect entries or failing to make essential entries on essential records.*

Section 9. KRS 314.041 is amended to read as follows:

- (1) An applicant for a license to practice as a registered nurse shall file with the board a written application for a license and submit evidence, verified by oath: ~~that~~
  - (a) That the applicant ~~has completed at least an approved four (4) year high school course of study or the equivalent thereof;~~ has completed the basic curriculum for preparing registered nurses in an approved school of nursing and *has completed requirements for graduation* ~~holds a diploma~~ therefrom;
  - (b) Has fulfilled the requirements of KRS 214.615(1); and
  - (c) Is able to understandably speak and write the English language and to read the English language with comprehension.
- (2) An applicant shall be required to pass an examination in any subjects as the board may *determine* ~~prescribe~~. ~~Each written examination may be supplemented by an oral or practical examination.~~ Application for licensure by examination shall be received by the board at such time as *determined* ~~prescribed~~ by regulation by the board.
- (3) Upon successfully completing all requirements for licensure, the board ~~may~~ *shall* issue to the applicant a license to practice nursing as a registered nurse, *if in the determination of the board the applicant is qualified to practice as a registered nurse in this state.*
- (4) The board may issue a license to practice nursing as a registered nurse to any applicant who has passed the examination prescribed by the board or its equivalent and been licensed as a registered nurse under the laws of another state, territory, or foreign country, if in the opinion of the board the applicant is qualified to practice *as a registered nurse* ~~professional nursing~~ in this state.
- (5) The applicant for licensure to practice as a registered nurse shall pay a licensure application fee, and examination fees if applicable, as set forth in a regulation by the board promulgated pursuant to the provisions of KRS Chapter 13A.
- (6) Any person who holds a license to practice as a registered nurse in this state shall have the right to use the title "registered nurse" and the abbreviation "R.N." No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is a registered nurse. No person shall practice as a registered nurse unless licensed under this section.
- (7) Those persons previously licensed by the board and not engaged in the practice of nursing in the Commonwealth of Kentucky, but desiring to maintain the right to use the title "R.N." may apply and be granted inactive status by the board in accordance with regulations promulgated by the board. Inactive status shall be renewed *in accordance with regulations promulgated by the board in accordance with KRS Chapter 13A* ~~at least biennially~~ and those persons granted inactive status shall not be governed by the continuing *competency* ~~education~~ provisions contained in this chapter. A registered nurse on inactive status may petition the board for a renewal of a license to actively practice and shall complete the requirements as established in KRS Chapter 314 and by regulation of the board.

- (8) Any person heretofore licensed as a registered nurse under the licensing laws of this state who has allowed the license to lapse by failure to renew may apply for reinstatement of the license under the provisions of this chapter.
- (9) A license to practice registered nursing may be limited by the board in accordance with regulations promulgated by the board and as defined in this chapter.

Section 10. KRS 314.042 is amended to read as follows:

- (1) An applicant for registration and designation to practice as an advanced registered nurse practitioner shall file with the board a written application for registration and designation and submit evidence, verified by oath, that the applicant has completed an organized postbasic program of study and clinical experience acceptable to the board; has fulfilled the requirements of KRS 214.615(1); is certified by a nationally-established organization or agency recognized by the board to certify registered nurses for advanced nursing practice; and is able to understandably speak and write the English language and to read the English language with comprehension.
- (2) The board may issue a registration to practice advanced registered nursing to an applicant who holds a current active registered nurse license issued by the board and meets the qualifications of subsection (1) of this section. An advanced registered nurse practitioner shall be designated by the board as a nurse anesthetist, nurse midwife, nurse practitioner, or *clinical nurse specialist*~~{any other designation as determined by the board}~~.
- (3) The applicant for registration and designation or renewal thereof to practice as an advanced registered nurse practitioner shall pay a fee to the board as set forth in regulation by the board.
- (4) An advanced registered nurse practitioner shall maintain a current active registered nurse license issued by the board and maintain current certification by the appropriate national organization or agency recognized by the board.
- (5) Any person who holds a registration and designation to practice as an advanced registered nurse practitioner in this state shall have the right to use the title "advanced registered nurse practitioner" and the abbreviation "ARNP." No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is an advanced registered nurse practitioner. No person shall practice as an advanced registered nurse practitioner unless registered under this section.
- (6) Any person heretofore registered as an advanced registered nurse practitioner under the provisions of this chapter who has allowed the registration to lapse may be reinstated on payment of current fee and by meeting the provisions of this chapter and regulations promulgated by the board pursuant to the provisions of KRS Chapter 13A.
- (7) The board may authorize a person to practice as an advanced registered nurse practitioner temporarily and pursuant to applicable regulations promulgated by the board pursuant to the provisions of KRS Chapter 13A if the person is awaiting the results of the national certifying examination for the first time or is awaiting licensure by endorsement. A person awaiting the results of the national certifying examination shall use the title "ARNP Applicant" or "ARNP App."
- (8) Before an advanced registered nurse practitioner engages in the prescribing *or dispensing* of nonscheduled legend drugs as authorized by KRS 314.011(8), the advanced registered nurse practitioner shall enter into a written collaborative practice agreement with a physician that defines the scope of the prescriptive authority.
- (9) Nothing in this chapter shall be construed as requiring an advanced registered nurse practitioner designated by the board as a nurse anesthetist to enter into a collaborative practice agreement with a physician, pursuant to this chapter or any other provision of law, in order to deliver anesthesia care.

Section 11. KRS 314.051 is amended to read as follows:

- (1) An applicant for a license to practice as a licensed practical nurse shall file with the board a written application for a license verified by oath, that the applicant:
  - (a)~~{~~—Has completed at least an approved four (4) year high school course of study or its equivalent;
  - ~~(b)}~~ Has fulfilled the requirements of KRS 214.615(1);
  - ~~(b)}~~~~(c)}~~ Has completed the required educational program in practical nursing at an approved school of nursing and *has completed requirements for graduation*~~{holds a diploma or certificate}~~ therefrom; and

- (c)~~(d)~~ Is able to understandably speak and write the English language and to read the English language with comprehension.
- (2) The applicant for licensure to practice as a licensed practical nurse shall pay a licensure application fee, and examination fees if applicable, as set forth in a regulation by the board.
  - (3) An applicant shall be required to pass an examination in any subjects the board may determine. ~~Each written examination may be supplemented by an oral or practical examination.~~ Application for licensure by examination shall be received by the board at the time as **determined**~~prescribed~~ by regulation by the board.
  - (4) Upon successfully completing all requirements for licensure, the board **may**~~shall~~ issue to the applicant a license to practice as a licensed practical nurse **if, in the determination of the board, the applicant is qualified to practice as a licensed practical nurse in this state.**
  - (5) The board may issue a license to practice as a licensed practical nurse to any applicant who has passed the examination prescribed by the board or its equivalent, and has been licensed or registered as a licensed practical nurse or a person licensed to perform similar services under a different title, under the laws of another state, territory or foreign country if, in the opinion of the board, the applicant meets the requirements for a licensed practical nurse in this state.
  - (6) Any person who holds a license to practice as a licensed practical nurse in this state shall have the right to use the title "licensed practical nurse" and the abbreviation "L.P.N." No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is a licensed practical nurse. No person shall practice as a licensed practical nurse unless licensed under this chapter.
  - (7) Those persons previously licensed by the board and not engaged in the practice of nursing in the Commonwealth of Kentucky, but desiring to maintain the right to use the title "L.P.N." may apply and be granted inactive status by the board in accordance with regulations promulgated by the board. Inactive status shall be renewed **in accordance with administrative regulations promulgated by the board in accordance with KRS Chapter 13A,**~~at least biennially,~~ and those persons granted inactive status shall not be governed by the continuing **competency**~~education~~ provisions contained in this chapter. A licensed practical nurse on inactive status may petition the board for a renewal of a license to actively practice and shall complete the requirements as established in this chapter and by regulation of the board.
  - (8) Any person heretofore licensed as a practical nurse under the licensing laws of this state who has allowed the license to lapse by failure to renew may apply for reinstatement of the license under the provisions of this chapter.
  - (9) A license to practice practical nursing may be limited by the board in accordance with regulations promulgated by the board and as defined in this chapter.

Section 12. KRS 314.061 is amended to read as follows:

- (1) Every **credential**~~license~~ issued by the board shall have the seal of the board affixed. A **holder of a credential**~~licensee~~ shall ~~sign his license,~~ retain it in his possession, and be prepared to exhibit ~~it~~**it**~~his license or board certification of licensure~~ upon demand by an employer or anyone to whom the **holder of the credential**~~licensee~~ offers nursing services, or any board or staff member of the Kentucky Board of Nursing.
- (2) Failure or refusal to produce a license or certification thereof upon demand shall be prima facie evidence that no such license exists.

Section 13. KRS 314.073 is amended to read as follows:

- (1) Except for the first licensure renewal following the issuance of an original license by the board, as a prerequisite for license renewal, all individuals licensed under provisions of this chapter shall be required to document~~the completion of~~ continuing **competency during the immediate past**~~education requirements not to exceed thirty (30) contact hours in a given~~ licensure period as prescribed in regulations promulgated by the board. ~~A "contact hour" is defined as fifty (50) minutes of an approved, organized learning experience.~~
- (2) ~~Contact hours required to satisfy~~ The continuing **competency**~~education~~ requirement shall be **documented**~~completed~~ and reported ~~as~~**as**~~in accordance with board requirements~~ set forth by **the board in administrative regulations promulgated in accordance with KRS Chapter 13A**~~regulation~~.

- (3) The board shall approve providers of continuing education. The approval may include recognition of providers approved by national organizations and state boards of nursing with comparable standards. Standards for these approvals shall be set by the board in administrative regulations promulgated in accordance with the provisions of KRS Chapter 13A.
- (4) The board shall work cooperatively with professional nursing organizations, approved nursing schools, and other potential sources of continuing education programs to assure that adequate continuing education offerings are available statewide. The board may enter into contractual agreements to implement the provisions of this section.
- (5) The board shall be responsible for notifying applicants for licensure and licensees applying for license renewal, of continuing ~~competency~~~~education~~ requirements.
- (6) The continuing ~~competency requirements~~~~education~~ shall include the completion of the course described in KRS 214.610(1).
- (7) In order to offset administrative costs incurred in the implementation of the mandatory continuing ~~competency~~~~education~~ requirements, the board may charge reasonable fees as established by regulation in accordance with the provisions of KRS Chapter 13A.
- (8) The continuing ~~competency~~~~education~~ requirements shall include at least five (5) contact hours in pharmacology **continuing education** for any person registered as an advanced registered nurse practitioner.

Section 14. KRS 314.085 is amended to read as follows:

- (1) If the board has reasonable cause to believe that any licensee; applicant for licensure by examination, endorsement, reinstatement, or change of status; or holder of a temporary work permit is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it may require the person to submit to a mental or physical examination by a physician or psychologist it designated. Upon the failure of the person to submit to a mental or physical examination, unless due to circumstances beyond the person's control, the board may initiate an action for immediate temporary suspension pursuant to KRS 314.089 **or deny the application** until the person submits to the required examination.
- (2) Every licensee; applicant for licensure by examination, endorsement, reinstatement, or change of status; or holder of a temporary work permit shall be deemed to have given consent to submit to a mental or physical examination when so directed in writing by the board. The direction to submit to an examination shall contain the basis of the board's reasonable cause to believe that the person is unable to practice with reasonable skill and safety, or has abused alcohol or drugs. The person shall be deemed to have waived all objections to the admissibility of the examining physician's or psychologist's testimony or examination reports on the ground of privileged communication.
- (3) The licensee; applicant for licensure by examination, endorsement, reinstatement, or change of status; or holder of a temporary work permit shall bear the cost of any mental or physical examination ordered by the board.

Section 15. KRS 314.091 is amended to read as follows:

- (1) The board shall have power to **reprimand**, deny, limit, revoke, probate, or suspend any license **or credential** to practice nursing issued by the board or applied for in accordance with this chapter, or to otherwise discipline a licensee, **credential holder, or applicant**, or to deny admission to the licensure examination, or to require evidence of evaluation and therapy upon proof that the person:
  - (a) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;
  - (b) Has been convicted of a misdemeanor or felony which involved **fraud, deceit, a breach of trust, or physical harm or endangerment to others**, acts that bear directly on the qualifications or ability of the applicant or licensee to practice nursing;
  - (c) Has been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510, 530.064, or 531.310, or has been found by the board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the nurse;
  - (d) Has negligently or willfully acted in a manner inconsistent with the practice of nursing;
  - (e) Is unfit or incompetent to practice nursing by reason of negligence or other causes, including but not limited to, being unable to practice nursing with reasonable skill or safety;

- (f) Abuses use of controlled substances, ***prescription medications, or alcohol***; ~~or~~
  - (g) Has misused or misappropriated any drugs placed in the custody of the nurse for ***administration***~~medication~~, or ***for*** use of others;
  - (h)~~(g)~~ Has falsified or in a ~~repeatedly~~ negligent manner made incorrect entries or failed to make essential entries on essential records;
  - (i)~~(h)~~ Has a license ***or credential*** to practice as a nurse denied, limited, suspended, probated, revoked, or otherwise disciplined in another jurisdiction on grounds sufficient to cause a license to be denied, limited, suspended, probated, revoked, or otherwise disciplined in this Commonwealth; ~~or~~
  - (j)~~(i)~~ Has ~~willfully or repeatedly~~ violated any of the provisions of this chapter; ~~or~~
  - (k) ***Has*** violated any lawful order or directive previously entered by the board; ~~or~~
  - (l) ***Has violated*** any administrative regulation promulgated by the board; ***or***
  - (m) ***Has been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property.***
- (2) All hearings ~~for denial, limitation, probation, suspension, or revocation of the license of a registered or practical nurse~~ shall be conducted in accordance with KRS Chapter 13B. A suspended or revoked license ***or credential*** may be reinstated at the discretion of the board, and in accordance with regulations promulgated by the board.
  - (3) The executive director may issue subpoenas to compel the attendance of witnesses and the production of documents in the conduct of an investigation. The subpoenas may be enforced by the Circuit Court as for contempt. Any order or subpoena of the court requiring the attendance and testimony of witnesses and the production of documentary evidence may be enforced and shall be valid anywhere in this state.
  - (4) At all hearings on request of the board the Attorney General of this state or one (1) of the assistant attorneys general designated by the Attorney General shall appear and represent the board.
  - (5) A final order of the board shall be by majority vote thereof.
  - (6) Any person adversely affected by any final order of the board may obtain a review thereof by filing a written petition for review with the Circuit Court of the county in which the board's offices are located in accordance with KRS Chapter 13B.
  - (7) If the board substantiates that sexual contact occurred between a nurse and a patient while the patient was under the care of or in a professional relationship with the nurse, the nurse's license ***or credential*** may be revoked or suspended with mandatory treatment of the nurse as prescribed by the board. The board may require the nurse to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact.

Section 16. KRS 314.101 is amended to read as follows:

- (1) This chapter does not prohibit: the furnishing of nursing assistance in an emergency; the practice of nursing which is incidental to the program of study by individuals enrolled in nursing education programs and refresher courses approved by the board or in graduate programs in nursing; the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of his or her official duties; or the practice of any currently licensed nurse of another state whose responsibilities include transporting patients into, out of, or through this state.
- (2) Nothing in this chapter shall be construed as prohibiting care of the sick with or without compensation or personal profit when done in connection with the practice of the religious tenets of any recognized or established church by adherents thereof as long as they do not engage in the practice of nursing as defined in this chapter.
- (3) Nothing in this chapter shall limit, preclude, or otherwise restrict the practices of other licensed personnel in carrying out their duties under the terms of their licenses.
- (4) A temporary work permit may be issued by the board to persons who have completed the requirements for, applied for, and paid the fee for licensure by examination or endorsement. Temporary work permits shall be issued only for the length of time required to process applications for endorsement or, in the case of applications for licensure by examination, for no longer than six (6) months from the first day of the month

following completion of the program of nursing requirements, and shall not be renewed. No temporary work permit shall be issued to an applicant who has failed the licensure examination.

- (5) The board may summarily withdraw a temporary work permit upon determination that the person does not meet the requirements for licensure or has disciplinary action pending against the person's license in this or another jurisdiction.
- (6) A new graduate who holds a temporary work permit shall have the right to use the title "registered nurse applicant" and the abbreviation "RN App" or "licensed practical nurse applicant" and the abbreviation "LPN App" according to the type of permit issued.
- (7) Any nurse educated outside the United States who has passed the state board test pool examination or its equivalent as determined by the board ~~[or who has passed the commission on graduates of foreign nursing schools examination]~~ may be issued a temporary work permit.

Section 17. KRS 314.111 is amended to read as follows:

- (1) An institution desiring to conduct a school of nursing shall apply to the board and submit evidence that it is prepared to carry out the minimum approved basic curriculum in nursing and that it is prepared to fulfill other requirements of standards which are established by KRS 314.011 to 314.161 and KRS 314.991 and the administrative regulations promulgated by the board. No person shall operate a nursing education program or school of nursing without complying with the provisions of this section.
- (2) A survey of the institution and its proposed education program shall be made by the executive director or an authorized employee of the board who shall submit a written report of the survey to the board. If in the opinion of the board the requirements for an approved nursing education program or school of nursing are met it shall approve the school.
- (3) ~~[Periodic surveys of all schools of nursing shall be made under the supervision of the board. Written reports of such surveys shall be submitted to the board.]~~ If the board determines that any approved school of nursing is not maintaining the standards required by the statutes and the administrative regulations of the board, notice thereof in writing specifying their deficiencies shall be immediately given to the school. A school which fails to correct these conditions to the satisfaction of the board within a reasonable time shall be discontinued after an administrative hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 18. KRS 314.121 is amended to read as follows:

- (1) The Governor shall appoint a Board of Nursing consisting of **sixteen (16)** ~~[fifteen (15)]~~ members;
  - (a) **Nine (9)** ~~[Eight (8)]~~ members shall be registered nurses licensed to practice in the Commonwealth;
  - (b) Three (3) members shall be practical nurses licensed to practice in the Commonwealth;
  - (c) One (1) member shall be a nurse service administrator who is a registered nurse licensed to practice in the Commonwealth;
  - (d) One (1) member shall be engaged in practical nurse education who is a registered nurse licensed to practice in the Commonwealth; and
  - (e) Two (2) members shall be citizens at large, who are not associated with or financially interested in the practice or business regulated.
- (2) Each appointment shall be for a term of four (4) years expiring on June 30 of the fourth year. The cycle for appointments and expiration of terms shall be as follows:
  - (a) The first year of the four (4) year cycle, the terms for **three (3)** ~~[two (2)]~~ registered nurses and one (1) licensed practical nurse shall expire;
  - (b) The second year of the four (4) year cycle, the terms for three (3) registered nurses and one (1) citizen at large shall expire;
  - (c) The third year of the four (4) year cycle, the terms for two (2) registered nurses, one (1) licensed practical nurse, and the one (1) member engaged in practical nurse education who is a registered nurse shall expire; and
  - (d) The fourth year of the four (4) year cycle, the terms for two (2) registered nurses, one (1) licensed practical nurse, and one (1) citizen at large shall expire.



- (3) (a) By March 1, the Kentucky Nurses Association shall submit to the Governor a list of members qualified for appointment as R.N. members, in number not less than twice the number of appointments to be made, from which list the Governor shall make each appointment or appointments necessary by July 1.
- (b) By March 1, the Kentucky State Association of Licensed Practical Nurses shall submit to the Governor a list of names qualified for appointment as L.P.N. members, in number not less than twice the number of appointments to be made, from which list the Governor shall make each appointment or appointments as necessary by July 1.
- (c) By March 1 of the year in which the nurse service administrator's term shall expire, the Kentucky Organization of Nurse Executives, an affiliate of the Kentucky Hospital Association, shall submit to the Governor two (2) names of qualified individuals for appointment as the nurse service administrator from which list the Governor shall make an appointment as necessary by July 1.
- (d) By March 1, the Kentucky Association of Nonprofit Homes and Services for the Aging, Inc., shall submit to the Governor two (2) names of qualified individuals for appointments as its R.N. representative to the board, from which the Governor shall make an appointment by July 1.
- (e) By March 1 of the year in which the Kentucky Association of Health Care Facilities representative's term shall expire, the Kentucky Association of Health Care Facilities shall submit to the Governor two (2) names of qualified individuals for appointment as its R.N. representative to the board, from which list the Governor shall make an appointment as necessary by July 1.
- (f) Initially, the Governor shall appoint one (1) member to serve as the registered nurse who is engaged in practical nurse education to serve the term remaining according to the cycle specified in subsection (2) of this section. By August 1, 1996, the Kentucky State Association of Licensed Practical Nurses shall submit to the Governor two (2) names of qualified individuals for the appointment, from which list the Governor shall make the appointment by September 1, 1996. Thereafter, by March 1 of the year in which the practical nurse educator's term expires, the Kentucky State Association of Licensed Practical Nurses shall submit to the Governor two (2) names of qualified individuals for the appointment, from which list the Governor shall make the appointment by July 1.
- (g) The Governor shall appoint two (2) members who shall be citizens at large, who are not associated with or financially interested in the practice or business regulated. The Governor shall make the appointments by July 1 of the year in which the citizen members' terms expire.
- (4) A vacancy on the board shall be filled by the Governor as provided for under subsection (1) of this section.
- (5) The Governor may remove any member from the board for neglect of duty, incompetence, or unprofessional or dishonorable conduct.
- (6) Each R.N. member of the board shall be a citizen of the United States, a resident of Kentucky, a graduate of an approved school of nursing, and a registered nurse in this state. All shall have had at least five (5) years of experience in nursing, three (3) of which shall immediately precede such appointment. Five (5) members shall be engaged in nursing practice; three (3) shall be engaged in nursing education; **one (1) shall be engaged in advanced registered nursing practice**; and one (1) shall be in nursing administration.
- (7) Each L.P.N. member of the board shall be a citizen of the United States, a resident of Kentucky, a graduate of an approved school of practical nursing or its equivalent, licensed as a licensed practical nurse in this state, ~~and~~ have at least five (5) years of experience in nursing, three (3) of which shall immediately precede this appointment, **and be currently engaged in nursing practice**.

Section 19. KRS 314.131 is amended to read as follows:

- (1) The board shall meet at least annually and shall elect from its members a president **and any other officers that it deems necessary** ~~[a president elect, and a secretary]~~. **Nine members** ~~[A majority]~~ of the board including one (1) officer shall constitute a quorum at any meeting. The board is authorized to promulgate administrative regulations not inconsistent with the law and subject to the provisions of KRS Chapter 13A, as may be necessary to enable it to carry into effect the provisions of this chapter.
- (2) The board shall approve **programs** ~~[curricula and standards for schools]~~ of nursing ~~[and courses preparing persons for licensure]~~ and shall monitor **compliance with** standards for nurse competency under this chapter. It shall ~~[provide for surveys of schools and courses at any time as may be necessary, approve schools and courses meeting the requirements of this chapter and of the board, evaluate and approve courses for affiliation, and]~~

examine, license, and renew the license of duly-qualified applicants; determine notice of place and time of licensure examinations; approve providers of continuing education; administer continuing education requirements; issue advisory opinions *or declaratory rulings* dealing with the practice of nursing; register and designate those persons qualified to engage in advanced nursing practice; and it shall conduct administrative hearings in accordance with KRS Chapter 13B upon charges calling for discipline of a licensee and cause the prosecution of all persons violating any provisions of this chapter. It shall keep a record of all its proceedings and make an annual report to the Governor.

- (3) The board shall develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by a nurse licensed by the board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure that the process does not revictimize the alleged victim or cause harm if a nurse is falsely accused.
- (4) The board and investigators hired by the board shall receive training on the dynamics of sexual misconduct of professionals, including the nature of this abuse of authority, characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedure in sex offense cases, and effective intervention with victims and offenders.
- (5) The board shall employ a qualified person to serve as executive director to the board, and shall fix the compensation and define the duties of the executive director. It may employ other persons as may be necessary to carry on the work of the board.
- (6) The executive director shall have at least the qualifications for board members, and a master's degree in nursing or equivalent and shall have had at least two (2) years of experience in nursing administration immediately preceding the time of appointment.
- (7) Each member of the board shall receive, in addition to traveling, hotel, and other necessary expenses, one hundred ~~fifty~~ dollars ~~(\$150)~~~~(\$100)~~ for each day the member is actually engaged in the discharge of official duties.
- (8) The board may, in its discretion, purchase liability insurance for board and staff members against acts performed in good faith discharge of duties.
- (9) The board may, by administrative regulation issued pursuant to the provisions of KRS Chapter 13A, determine which disciplinary action records may be expunged. Any records which are expunged shall be exempt from disclosure under the Kentucky Open Records Law, KRS 61.870 to 61.884. The board shall not report its disciplinary actions for any purpose other than statistical.
- (10) *The board may reimburse any person appointed by direction of the board to any committee, subcommittee, or task force created by the board for his or her travel and subsistence expenses as established through the promulgation of administrative regulations in accordance with KRS Chapter 13A.*

Section 20. KRS 314.181 is amended to read as follows:

- (1) *A registered nurse who is employed by an ambulance service shall complete training in determination of death and preservation of evidence as required by the board through the promulgation of administrative regulations in accordance with KRS Chapter 13A.*
- (2) *A registered nurse who is employed by an ambulance service shall determine whether or not a patient served by the ambulance service is dead. The registered nurse shall utilize the protocol specified by the board by administrative regulations. The registered nurse shall, when responding to a patient, first attempt resuscitation, unless the protocol indicates that the patient is not capable of being resuscitated.*~~[When it appears that a person whom a registered nurse who has successfully completed training in determination of death has been called to attend is dead, the registered nurse shall, utilizing the protocol specified by the board by administrative regulation, determine whether or not the patient is dead after resuscitation of the patient is attempted by the registered nurse or a paramedic or an emergency medical technician who has responded with or after the registered nurse, unless the protocol indicates that the patient is not capable of being resuscitated. If, after resuscitation has been attempted on a patient who the protocol deems is capable of being resuscitated, the patient has not been successfully resuscitated according to the protocol, the nurse may discontinue further resuscitation efforts and proceed to determine whether the patient is dead and whether to declare the patient dead].~~
- (3) If it is determined that death has occurred in accordance with the procedures of KRS 446.400 with regard to patients who have not been resuscitated, the registered nurse *who is employed by an ambulance service* may

make the actual determination and pronouncement of death. This section shall not apply to patients who are in a hospital when apparent death occurs.

- (4)(2) In the event that a registered nurse ***who is employed by an ambulance service*** determines that a person is dead, the registered nurse shall make the notifications required by KRS 72.020 and take the protective actions required by that statute.
- (5)(3) ~~Any registered nursing course taught in pre licensure programs after July 15, 1998, shall include a course of instruction on the determination of death and preservation of evidence as required by the Board of Nursing by administrative regulation.~~
- (4) ~~Any registered nurse within the two (2) years following July 15, 1998, shall successfully complete in service training required by the Board of Nursing by administrative regulation relating to determination of death and preservation of evidence.~~
- (5) ~~Any registered nurse from another jurisdiction desiring to become a registered nurse in Kentucky shall show evidence of successful completion of a training course in Kentucky meeting the requirements of subsection (4) of this section.~~
- (6) The administration of cardiopulmonary resuscitation or other basic life support measures to the apparently dead person, prior to the arrival of the registered nurse ***who is employed by an ambulance service***, by any person, ~~for the purposes of this section and KRS 446.400,~~ shall not be considered as artificial maintenance of respiration and circulation ***for the purposes of this section and KRS 446.400***. The administration of advanced cardiac life support procedures by any person, other than a paramedic rendering care pursuant to KRS 311.660, prior to the arrival of the registered nurse shall preclude the determination of death by the registered nurse, and the provisions of KRS 446.400 shall apply. ~~However,~~ Nothing in this section shall preclude the supervising physician from directing the registered nurse ***who is employed by an ambulance service*** to cease resuscitative efforts under approved agency medical protocols.
- (6)(7) The resuscitative efforts of a nurse under protocols authorized by this section shall not invoke the provisions of KRS 446.400.

SECTION 21. A NEW SECTION OF KRS 314.011 TO 314.161 IS CREATED TO READ AS FOLLOWS:

***Jurisdiction, both as to person and subject matter, under KRS 314.011 to 314.161 vests with the board upon application for licensure and shall continue during periods of licensure and lapse of licensure. The jurisdiction of the board shall be continuous over the individual applicant or licensee and shall not be divested by voluntary surrender of a license or withdrawal of an application.***

Section 22. KRS 315.040 is amended to read as follows:

- (1) Nothing in this chapter shall be construed to prevent, restrict, or otherwise interfere with the sale of nonprescription drugs in their original packages by any retailer. No rule or regulation shall be adopted by the Board of Pharmacy under this chapter which shall require the sale of nonprescription drugs by a licensed pharmacist or under the supervision of a licensed pharmacist.
- (2) Nothing in this chapter shall interfere with the professional activities of any licensed practicing physician, or prevent the physician from keeping any drug or medicine that he or she may need in his or her practice, from compounding the physician's own medications, or from dispensing or supplying to patients any article that seems proper to the physician.
- (3) Nothing in this chapter shall be construed to interfere with the activities of a midlevel health care practitioner as provided in KRS 216.925.
- (4) Nothing in this chapter pertaining to the use of collaborative care agreements shall apply in any hospital or other health facility operated by a hospital without the express written permission of the hospital's governing body. Collaborative care agreements may be restricted by the policies and procedures of the facility.
- (5) Nothing in this chapter shall interfere with the activities of a physician assistant as authorized in KRS Chapter 311.
- (6) ***Nothing in this chapter shall interfere with the activities of an advanced registered nurse practitioner as authorized in KRS Chapter 314.***

Section 23. The following KRS section is repealed:

314.074 In-service training for nurses on child sexual abuse.

Section 24. To provide for the initial appointment of the advanced registered nurse practitioner member to the Board of Nursing under Section 18 of this Act, the Kentucky Nurses Association shall submit two (2) names to the Governor by August 1, 2000, and the Governor shall make the appointment no later than August 15, 2000. The initial term of this member shall be for a period of four (4) years.

**Approved April 7, 2000**

## **CHAPTER 392**

### **(HB 824)**

AN ACT relating to property valuation administrators.

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

Section 1. KRS 132.370 is amended to read as follows:

- (1) There shall be a property valuation administrator in each county in lieu of a county assessor. Property valuation administrators shall be state officials and all deputies and assistants of their offices shall be unclassified state employees.
- (2) Property valuation administrators shall be elected in the year in which county elections are held and shall enter upon the discharge of the duties of their office on the first Monday in December after their election and continue in office for a period of four (4) years, and until the election and qualification of their successors. Property valuation administrators shall possess the qualifications required by Section 100 of the Constitution and by KRS 132.380 and shall be eligible for reelection.
- (3) The property valuation administrators and all deputies and assistants of their offices who qualify as full-time employees shall be eligible for participation in the provisions of KRS 18A.205, 18A.230 to 18A.355, and 61.510 to 61.705.
- (4) A property valuation administrator may be removed from office by the Circuit Court of his county, upon petition of any taxpayer, or by the secretary of revenue for any of the following grounds: willful disobedience of any just or legal order of the cabinet, or for misfeasance or malfeasance in office or willful neglect in the discharge of his official duties, including but not limited to intentional underassessment or overassessment of properties and chronic underassessment of properties. For purposes of this section and KRS 134.385, "chronic underassessment" shall mean a widespread pattern and practice of assessing properties at levels substantially below fair market value which persists for a period of two (2) or more years as disclosed by randomly selected sample appraisals conducted under the provisions of KRS 133.250, special audits conducted pursuant to KRS 134.385, or other means.
- (5) If the secretary determines that a property valuation administrator should be removed from office, the property valuation administrator shall be notified in writing, and the notice of intent to remove shall state the specific reasons for removal. The notice shall also advise the property valuation administrator of his right to a preremoval conference and an administrative hearing.
- (6) A property valuation administrator may request a preremoval conference to appear with or without counsel before the secretary or his designee to answer the charges against him. The preremoval conference shall be requested in writing within six (6) working days of the date on which the notice of intent to remove is received, and a preremoval conference shall be scheduled within seven (7) working days of the date on which the request is received. The secretary or his designee shall render a decision within five (5) working days of the conclusion of the preremoval conference. Failure of a property valuation administrator to request a preremoval hearing shall not waive his right to contest his removal through an administrative hearing.
- (7) If an action to remove a property valuation administrator is initiated by the secretary of revenue, the property valuation administrator shall have the right to appeal and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B. Appeal of the final order of the secretary of revenue may be filed in a Circuit Court of an adjacent judicial circuit in accordance with KRS Chapter 13B, notwithstanding the provisions of KRS Chapter 18A.

- (8) If a property valuation administrator is removed from office as provided in subsections (4) to (7) of this section, he shall be ineligible to serve in the office at any future date and shall forfeit any and all certification from the Revenue Cabinet pertaining to the office.
- (9) *Notwithstanding the provisions of KRS 18A.110(5)(c), the cabinet shall promulgate administrative regulations allowing property valuation administrators and their deputies to receive lump-sum payments for accrued annual leave and compensatory time when separated from employment because of termination by the employer, resignation, retirement, or death.*

Approved April 7, 2000

## CHAPTER 393

(HB 875)

AN ACT relating to insurance.

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

Section 1. KRS 304.9-020 is amended to read as follows:

*As used in this subtitle:*

- (1) *"Agent" means an individual or business entity required to be licensed and appointed under the laws of this state to sell, solicit, or negotiate insurance or annuity contracts.*
- (2) *"Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, employer group, professional employer organization, or other legal entity.*
- (3) *"Home state" means the District of Columbia and any state or territory of the United States in which a licensee maintains his or her principal place of residence or principal place of business and is licensed by that state.*
- (4) *A "general lines" agent is an agent who transacts any one (1) or more of the following kinds of insurance:*
- (a) *Property insurance;*
  - (b) *Casualty insurance;*
  - (c) *Surety insurance;*
  - (d) *Marine and transportation insurance;*
  - (e) *Health insurance, when transacted for an insurer also represented by the same agent as to property or causality insurance; and*
  - (f) *Mortgage guaranty insurance.*
- (5) *"Limited line credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, automobile dealer gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the commissioner determines should be designated a form of limited line credit insurance.*
- (6) *"Limited line credit insurance agent " means an individual or business entity who sells, solicits, or negotiates one (1) or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.*
- (7) *"Negotiate" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract.*
- (8) *"Sell" means to exchange a contract of insurance by any means, for money or other valuable consideration, on behalf of an insurer.*
- (9) *"Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.*

- (10) *"Terminate" means the cancellation of the relationship between an agent and the insurer or the termination of an agent's authority to transact insurance.*
- (11) *"Uniform business entity application" means the current version of the National Association of Insurance Commissioners Uniform Business Entity Application for resident and nonresident business entities.*
- (12) *"Uniform application" means the current version of the National Association of Insurance Commissioners Uniform Application for resident and nonresident agent licensing.*

~~[An "agent" is an individual, firm, partnership, limited partnership, corporation, or limited liability company appointed by an insurer to solicit applications for insurance or annuity contracts or to negotiate insurance or annuity contracts on its behalf, and if authorized to do so by the insurer, to effectuate and countersign insurance contracts.]~~

Section 2. KRS 304.9-030 is amended to read as follows:

- (1) *Unless denied a license under this subtitle, applicants who have met the requirements for the license in accordance with this subtitle, shall be issued the applicable license*~~[A "general lines" agent is an agent who transacts any one (1) or more of the following kinds of insurance:~~
  - ~~(a) — Property insurance;~~
  - ~~(b) — Casualty insurance;~~
  - ~~(c) — Surety insurance;~~
  - ~~(d) — Marine and transportation insurance;~~
  - ~~(e) — Health insurance, when transacted for an insurer also represented by the same agent as to property or casualty insurance; and~~
  - ~~(f) — Mortgage guaranty insurance].~~
- (2) *An insurance agent may receive qualification for a license in one (1) or more of the following lines of authority:*
  - (a) *Life--insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;*
  - (b) *Health--insurance coverage for sickness, bodily injury, or accidental death and may include benefits for disability income;*
  - (c) *Property--insurance coverage for the direct or consequential loss or damage to property of every kind;*
  - (d) *Casualty--insurance coverage against legal liability, including that for death, injury, or disability, or damage to real or personal property;*
  - (e) *Variable life and variable annuity products--insurance coverage provided under variable life insurance contracts, variable annuities, or any other life insurance or annuity product that reflects the investment experience of a separate account;*
  - (f) *Limited line insurance as identified in KRS 304.9-230;*
  - (g) *Marine and transportation insurance as defined in KRS 304.5-080;*
  - (h) *Mortgage guaranty insurance as defined in KRS 304.5-100; and*
  - (i) *Any other line of insurance authorized by Kentucky law and deemed by the commissioner appropriate to be issued as a separate line of authority.*

~~[A "life" agent is an agent who transacts life insurance or annuity business. An agent may be appointed for life insurance only, if the insurer is a life and health insurer.~~

- ~~(3) — A "health" agent is an agent who transacts health insurance only, whether licensed by a life insurer or other than life insurer.~~
- ~~(4) — A "life and health" agent is an agent who transacts life insurance or annuity business, and includes also the transaction of health insurance on behalf of an insurer for whom the agent is also licensed as to life insurance.]~~

Section 3. KRS 304.9-035 is amended to read as follows:

Any *insurer*~~[insurance company]~~ shall be liable for the acts of its agents when the agents are acting in their capacity as representatives of the *insurer*~~[insurance company]~~ and are acting within the scope of their authority.

Section 4. KRS 304.9-080 is amended to read as follows:

- (1) *An individual or business entity shall not sell, solicit, or negotiate insurance in this state unless the individual or business entity is licensed for that line of authority in accordance with this subtitle.*
- (2) No *individual or business entity*~~[person]~~ shall in this state be, act as, or hold himself *or herself* out as ~~a~~*an* ~~agent, solicitor,~~ consultant~~[-]~~ or adjuster unless then licensed as ~~a~~*an* ~~agent, solicitor,~~ consultant~~[-]~~ or adjuster respectively.
- ~~{(2) No agent, or solicitor shall solicit or take applications for, procure or place for others any kind of insurance as to which he is not then licensed.} No consultant shall act as a consultant~~[such]~~ with respect to any kind of insurance as to which he *or she* is not then licensed as a consultant.~~
- (3) A consultant license must cover either or both of the following categories, as selected by the licensee:
  - (a) General lines;
  - (b) Life and health.

A consultant licensed in both categories shall qualify separately for, and be licensed in, each category.

- (4) No *individual*~~[person]~~ licensed as a consultant shall act as a consultant until he *or she* has filed with the commissioner a bond or insurance as prescribed in KRS 304.9-330.
- (5) Except as provided in KRS 304.9-410 *and subsection (3) of Section 21 of this Act*, no agent shall place, and no insurer shall accept, any insurance with any insurer as to which *the agent*~~[he]~~ does not then hold a license and appointment as agent under this subtitle.
- (6) The commissioner shall prescribe and furnish all forms required under this subtitle as to licenses and appointments.

Section 5. KRS 304.9-085 is amended to read as follows:

- (1) A "managing general agent" is an individual *or business entity*~~[firm, or corporation]~~ appointed by an insurer to solicit applications from agents for insurance contracts or to negotiate insurance contracts on behalf of an insurer, and if authorized to do so by an insurer, to effectuate and countersign insurance contracts.
- (2) No *individual or business entity*~~[person]~~ shall in this state be, act as, or hold himself *or herself* out as a managing general agent unless then licensed as a managing general agent. In order to qualify for a managing general agent license, *an individual*~~[a person]~~ shall:
  - (a) Hold a general lines~~[insurance]~~ agent license and be appointed by each authorized insurer the *licensee*~~[person]~~ holds the contract to represent;
  - (b) If a nonresident, hold a nonresident general lines~~[insurance]~~ agent license and be appointed by each authorized insurer the *licensee*~~[person]~~ represents in Kentucky. Nonresidents are subject to the restrictions of KRS 304.9-140; and
  - (c) Hold a surplus lines broker license if any unauthorized insurers are represented or used.

In order for a *business entity*~~[corporation or firm]~~ to qualify for a managing general agent license, all *individuals*~~[persons]~~ acting on behalf of the corporation or firm under its license shall be licensed general lines~~[insurance]~~ agents.

- (3) As used in this chapter, "agent" includes managing general agent unless the context requires otherwise.
- (4) A managing general agent is a representative of the insurers which the managing general agent holds a contract to represent. Such insurers are liable for the acts of the managing general agent in representing the insurers.
- (5) The commissioner shall issue managing general agent licenses to expire on March 31, 1988, and to be renewed biennially thereafter.

Section 6. KRS 304.9-090 is amended to read as follows:

- (1) The definition of ~~agent, solicitor or~~ consultant shall not be deemed to include ~~the following:~~
- ~~(1) Salaried employees in the office of a general lines agent, which employees devote full time to clerical and administrative services, with incidental taking of insurance applications and receiving premiums in the office of the employer agent if the employee does not receive any commissions on such applications and his compensation is not varied by the volume of applications or premiums taken or received by such employee;~~
  - ~~(2) the supervising managing general agent (except as defined in KRS 304.9-085) or supervising officer or employee of an insurer who solicits only with duly licensed resident agents of the insurer;~~
  - ~~(3) Newsboys and managers of newspaper distribution offices who incidentally take applications of so called "newspaper accident insurance" and receive premiums in connection therewith;~~
  - ~~(4) Employees or other representatives of a group policyholder engaged in enrolling certificate holders and performing other activities in the administration of the group policy.~~
- (2) *Nothing in this subtitle shall be construed to require an insurer to obtain an agent license. As used in this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries, or affiliates.*
- (3) *A license as an agent or consultant shall not be required of the following:*
- (a) An officer, director, or employee of an insurer or of an agent, provided that the officer, director or employee does not receive any commission or other valuable consideration on policies written or sold to insurer risks residing, located, or to be performed in this state and whose compensation is not varied by the volume of applications taken or received and:*
    - 1. The officer, director, or employee's full-time activities are devoted to functions that are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance; or*
    - 2. The officer, director, or employee's function relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or*
    - 3. The officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting agents where the officer's, director's, or employee's activities are limited to providing technical advice and assistance to licensed agents and do not include the sale, solicitation, or negotiation of insurance;*
  - (b) The individual secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance, or for the purpose of enrolling individuals under plans, issuing certificates under plans, or otherwise assisting in administering plans; or performs administrative services related to a mass marketed property and casualty insurance, where no commission is paid to the individual for the service;*
  - (c) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, directors, or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees, or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;*
  - (d) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating, or classification of risks, or in the supervision of the training of agents who are not individually engaged in the sale, solicitation, or negotiation of insurance;*
  - (e) An individual or business entity whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the individual or business entity does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state;*
  - (f) An individual or business entity who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one (1) state insured under that contract, provided that the individual or business entity is*



*otherwise licensed as an agent to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state;*

- (g) *A salaried full-time employee who counsels or advises his or her employer relative to the insurance interest of the employer or of the subsidiaries or business affiliates of the employer, provided that the employee does not sell, solicit, or negotiate insurance or receive a commission; or*
- (h) *Employees of an insurer or an agent who responds to requests from existing policy holders on existing policies, provided that those employees are not directly compensated based on the volume of premiums that may result from these services, and provided that those employees do not otherwise sell, solicit, or negotiate insurance.*

Section 7. KRS 304.9-105 is amended to read as follows:

*An individual applying for an agent license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the applicant*~~[For the protection of the people of this state, the commissioner shall not issue, continue, or permit to exist, any permanent agent or solicitor license for or on behalf of any natural person unless the person demonstrates to the satisfaction of the commissioner that he is qualified therefor pursuant to the standards contained in this section and any other applicable section of this subtitle]:~~

- (1) *Is at least*~~[That the person has attained the age of]~~ eighteen (18) years *of age*~~[or more]~~;
- (2) ~~[That the person]~~Has fulfilled the residence requirements as set forth in KRS 304.9-120;
- (3) *Has not committed any act that is a ground for denial, suspension, or revocation set forth in Section 34 of this Act;*
- (4) ~~[That the person]~~Is trustworthy, reliable, and of good reputation, evidence of which *shall*~~[may]~~ be submitted on behalf of the *applicant*~~[person]~~ in the form of:
  - (a) A certificate by the insurer or agent by which or whom the *applicant*~~[person]~~ is to be appointed or employed, subject to the issuance of the license, stating that the insurer~~[or agent]~~ has either made, or caused to be made by responsible investigators, an investigation into the trustworthiness, reliability, and good reputation of the *applicant*~~[person]~~ together with a brief synopsis of the findings resulting therefrom; or
  - (b) Three (3) letters of recommendation attesting to the trustworthiness, reliability, and good reputation of the person written on his *or her* behalf by persons not related to him *or her* by blood or marriage and one (1) of whom shall be a licensed resident insurance agent, which letters shall also state the extent of familiarity, both as to length of time and degree of knowledge, possessed by the writer with regard to both personal and business conduct of the person.
- (5)~~[(4)]~~ ~~[That the person]~~Is competent to exercise the license and has:
  - (a) Successfully attained a general educational level equivalent to that required for graduation from an accredited high school in this state;
  - (b) *Except for limited lines licenses, completed a forty (40) hour prelicensing classroom course of study for the lines of authority for which the individual has applied. The commissioner shall promulgate administrative regulations to carry out the purpose of this section*~~[Successfully completed specific courses of instruction in the field of insurance as the commissioner shall by regulation prescribe for a license when initially issued, which courses of instruction shall in the aggregate consist of or equal forty (40) hours of classroom instruction administered by or under the supervision of persons qualifying with and approved by the commissioner for the purpose and the successful completion of which shall be certified to the commissioner, on forms prescribed by him, by the person under whose supervision the instruction was administered. Programs of instruction provided by insurers authorized, or agent associations recognized, by the commissioner may be substituted for the specific courses of instruction prescribed by the commissioner when the programs have been reviewed and approved by the commissioner prior to their use, which approval shall not be unreasonably withheld if the programs of instruction are substantially similar in content and emphasis placed thereon to those prescribed by the commissioner];~~

- (c) *Except for limited line licenses, successfully passed the examinations required by the commissioner for the lines of authority for which the individual has applied*~~[Successfully passed any written examination required by the commissioner for the license pursuant to KRS 304.9-160 unless exempt pursuant to KRS 304.9-170]; and~~
- (d) *Paid the fees set forth in KRS 304.4-010*~~[The requirements contained in this subsection and subsection (3) of this section shall not be applicable to the continuance of any license issued prior to June 17, 1978].~~
- (6)~~(5)~~ ~~[That the person]~~Is financially responsible to exercise the license and has:
- (a) 1. Filed with the commissioner the certificate of an insurer authorized to write legal liability insurance in this state, that the insurer has and will keep in effect on behalf of the person a policy of insurance covering the legal liability of the licensed person as the result of erroneous acts or failure to act in his *or her* capacity as an insurance agent, and enuring to the benefit of any aggrieved party as the result of any single occurrence in the sum of not less than ten thousand dollars (\$10,000) and fifty thousand dollars (\$50,000) in the aggregate for all occurrences within one (1) year, and that the policy shall not be terminated unless at least thirty (30) days' prior written notice will have been given to the commissioner; or
  - 2.~~(b)~~ Deposited with the commissioner cash, or a cash surety bond executed by an insurer authorized to write business in this Commonwealth, in the sum of ten thousand dollars (\$10,000), which shall be subject to lawful levy of execution by any party to whom the *licensee*~~[licensed person]~~ has been found to be legally liable as the result of erroneous acts or failure to act in his *or her* capacity as an~~[insuree]~~ agent; or
  - 3.~~(c)~~ Had filed with the commissioner on his *or her* behalf, by an authorized insurer or group of affiliated insurers for which he *or she* is or is to become an exclusive agent, an agreement whereby the insurer or group of affiliated insurers agrees to assume responsibility, to the benefit of any aggrieved party, for legal liability of the licensed person as the result of erroneous acts or failure to act in his *or her* capacity as an insurance agent on behalf of the insurer or group of affiliated insurers in the sum of ten thousand dollars (\$10,000) for any single occurrence and that the agreement shall not be terminated until the license is surrendered to the commissioner or at least thirty (30) days' prior written notice will have been given to the commissioner, whichever shall first occur; and
- (b)~~(d)~~ Agreed with the commissioner that if at any time notice is given to the commissioner that any policy filed *in accordance with*~~[pursuant to]~~ paragraph (a) of this subsection, or agreement filed *in accordance with*~~[pursuant to]~~ paragraph (c) of this subsection, is to be terminated and has not been replaced by another policy or agreement within the time established by regulations of the commissioner, or if any deposit *in accordance with*~~[pursuant to]~~ paragraph (b) of this subsection be reduced through levy of execution and not replaced by any necessary additional deposit within the time established by regulations of the commissioner, any and all licenses held by the *licensee*~~[person]~~ are revoked and shall be promptly surrendered to the commissioner without demand.
- (7)~~(6)~~ ~~[That the person,]~~To whom an agent's license has been or is to be issued, is the duly appointed agent of an authorized insurer, subject to issuance of the license.
- The commissioner may require additional information or submissions for resident applications and may obtain any documents or information reasonably necessary to verify the information contained in an application.*
- ~~(7) That the person, to whom a solicitor's license has been or is to be issued, is regularly employed by a presently licensed resident agent, or is to be so employed subject to issuance of the license.~~
- ~~(8) Subsection (4)(b) of this section shall not apply to any person holding a limited license pursuant to KRS 304.9-230.~~
- ~~(9) No institution included in the Farm Credit System, as set forth and identified in 12 U.S.C. sec. 2002 (Public Law 92-181, sec. 1.2, Dec. 10, 1971, 85 Stat. 583) or any subsidiary or affiliate thereof doing business in this state, nor any officer or employee of any institution included in the Farm Credit System, or any subsidiary or affiliate thereof, may directly or indirectly be licensed to sell or solicit any type of insurance, except term life,~~

~~credit life, accident, disability and health, and crop hail insurance in an amount appropriate to insure repayment of the loan.]~~

Section 8. KRS 304.9-107 is amended to read as follows:

The following persons shall be exempt from the licensing qualifications and requirements of KRS 304.9-105(5)~~[(4)]~~(b) and, if otherwise properly qualified, shall be issued licenses without satisfying KRS 304.9-105(5)~~[(4)]~~(c):

- (1) Persons holding a certified life underwriter degree;~~[and]~~
- (2) Persons holding a certified property and casualty underwriter degree; *and*
- (3) ***Persons holding a certified insurance counselor designation.***

Section 9. KRS 304.9-120 is amended to read as follows:

- (1) Each applicant for license as ***a resident licensee shall be qualified to designate and shall designate Kentucky as the applicant's home state at the date of application for the license and shall maintain that eligibility throughout the duration of the license***~~[agent, who is an independent contractor agent compensated on a commission basis, and each applicant for license as a solicitor must be a bona fide resident of this state at the date of application for the license and must continue to be a resident of this state while so licensed].~~
- (2) In determining the good faith of an applicant's claim ***that Kentucky is the applicant's principal place of***~~to such]~~ residence, the commissioner may give due consideration to the following:
  - (a) The amount of time actually spent by the applicant within this state during the claimed residence period;
  - (b) The circumstances of ***the applicant's***~~[such]~~ residence, that is, whether in a single or multiple family-type dwelling, or leased apartment, or permanent residential type; or in hotel, resort, motel, mobile home, or other temporary or transient type of dwelling or accommodation;
  - (c) The circumstances of the applicant, his ***or her*** past history and activities, and the probability that he ***or she*** will continue as a resident of this state indefinitely into the future if the license were to be issued;
  - (d) All other pertinent factors.

~~[(3) The requirements of subsection (1) of this section shall not apply as to:~~

- ~~(a) One employed to manage the insurance agency of a deceased licensed resident agent;~~
- ~~(b) An applicant or agent residing in any part of a city located partly within this state, if the other state in which the city is located in part has established a like exception to any residency requirement;~~
- ~~(c) Life or health insurance agents;~~
- ~~(d) Agents who are employees of the insurer or an affiliate of the insurer.~~
- ~~(4) The commissioner shall license as life insurance agent any person, firm, or corporation who is otherwise qualified therefor under this code, but who is not a resident of this state, if by the laws of the state or province of the residence of such person, firm, or corporation, residents of this state may be licensed in such state or province as nonresident life and general lines insurance agents and the commissioner may negotiate and enter into reciprocal arrangements with the insurance supervisory official of any other state or province under which the residence requirements of this subsection will be waived in favor of residents of such other state or province if like privileges in such other state or province are granted to residents of this state.~~
- ~~(5) If, under the laws of any other state or province, greater restrictions regarding residents and personal qualifications are imposed upon the licensing of residents of this state as agents than those imposed upon the licensing of nonresidents of this state under the laws of this state, then the commissioner may, when he considers such action necessary for the protection of domestic insurers or resident agents, impose such greater restrictions upon the licensing of residents of such state or province.]~~

Section 10. KRS 304.9-130 is amended to read as follows:

- (1) ***A business entity acting as an agent is required to obtain an agent license. Application shall be made using the uniform business entity application or other application prescribed by the commissioner. Before approving the application, the commissioner shall find that:***
  - (a) ***The business entity has paid the fees set forth in KRS 304.4-010;***

- (b) *Each officer, director, and member of the business entity who is acting as an agent has obtained an agent's license;*
- (c) *The business entity has disclosed to the insurance department the identity of all officers and directors and whether or not they are licensed as agents; and*
- (d) *The business entity has designated a licensed agent responsible for the business entity's compliance with the insurance laws and regulations of this state*~~[firm or corporation may be licensed as an agent. If a firm, each general partner and each other individual to act for the firm under the license, and if a corporation each individual to act for the corporation under the license, shall be named in or registered with the commissioner as to the license, and shall qualify as though an individual licensee].~~
- (2) *The licensee shall promptly notify the commissioner of all changes among its members, directors, officers, and other individuals designated in or registered as to the license*~~[An individual who does not meet the residence requirements as provided in KRS 304.9-120 shall not be so named in or registered as to such a license and shall not have the right to exercise the license powers].~~
- (3) *Each agent authorized to act for the business entity shall be named in or registered with the commissioner as to the license, and shall qualify as though an individual licensee*~~[A license shall not be issued to a firm or corporation unless it maintains a place of business in this state, and the transaction of business under the license is within the purposes stated in the firm's partnership agreement or the corporation's articles].~~
- (4) *The commissioner may obtain any documents or information reasonably necessary to verify the information contained in an application*~~[licensee shall promptly notify the commissioner of all changes among its members, directors, officers and other individuals designated in or registered as to the license].~~

Section 11. KRS 304.9-140 is amended to read as follows:

- (1) *Unless denied a license in accordance with this subtitle, a nonresident individual or business entity shall receive an agent license if:*
  - (a) *The applicant is currently licensed and in good standing in his or her home state;*
  - (b) *The applicant has submitted the proper request for license and has paid the fees required by KRS 304.4-010 and administrative regulations;*
  - (c) *The applicant has submitted or transmitted to the commissioner the application for a license that the applicant submitted to his or her home state or a completed uniform application or uniform business entity application;*
  - (e) *The applicant has complied with his or her home state's continuing education requirements;*
  - (f) *The applicant's home state awards nonresident licenses to residents of this state on the same basis; and*
  - (g) *The applicant has complied with any other applicable legal requirements*~~[Notwithstanding the provisions of KRS 304.9-120, a nonresident of this state may be licensed as a life insurance agent upon compliance with the provisions of KRS 304.9-105, except as to the residence requirement].~~
- (2) *The commissioner may verify the applicant's license status through the database maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries*~~[Notwithstanding the provisions of KRS 304.9-120, a nonresident of this state may be licensed as a general lines insurance agent upon compliance with the provisions of KRS 304.9-105 except as to the residence requirement].~~
- (3) *A nonresident licensee who changes his or her home state to a state other than Kentucky shall file a change of address and provide certification from the new home state within thirty (30) days of the change of home state. No fee or license application is required*~~[Nonresidents of this state, other than those referred to in subsection (1) of this section, may be licensed as insurance agents in this state without taking an examination if:~~
  - (a) ~~A written examination is required of applicants for an insurance agent's license in such other state.~~
  - (b) ~~The appropriate official of such other state certifies that the applicant holds a currently valid license as an insurance agent in such other state and either passed such written examination or was the holder of an insurance agent's license prior to the time such written examination was required.~~

~~(c) In such other state, a resident of this state is privileged to procure an insurance agent's license upon the foregoing conditions and without discrimination as to fees or otherwise in favor of the residents of such other state}.~~

- (4) Notwithstanding *any other provisions of this chapter, on or after July 1, 2002, an individual licensed as a surplus lines broker in his or her home state shall receive a nonresident surplus lines broker license by meeting the requirements of subsection (1) of this section. Except as to subsection (1) of this section, nothing in this section otherwise amends or supersedes any provision of Subtitle 10 of this chapter*~~the provisions of KRS 304.9-120, a nonresident of this state who is a full time employee of an insurer or an affiliate of an insurer, and not compensated on a commission basis, may be licensed as a general lines insurance agent upon compliance with the provisions of KRS 304.9-105, except as to the residence requirement, and may act as an agent in Kentucky under said license, provided that such insurer maintains a place of business in this state}.~~
- (5) *Notwithstanding any other provision of this subtitle, an individual licensed as a limited lines agent in his or her home state shall receive a nonresident limited lines agent license in accordance with subsection (1) of this section, granting the same scope of authority as granted under the license issued by the agent's home state.*

Section 12. KRS 304.9-150 is amended to read as follows:

- (1) Application for~~an agent or solicitor license shall be made to the commissioner by an insurer. The application for~~ a consultant license shall be made by the applicant. Applications under this subsection shall be signed and sworn to by the applicant before a notary public or other person authorized by law to take acknowledgments of deeds.
- (2) The form of application shall require full answers to any questions as may be reasonably necessary to determine the applicant's identity, residence, personal history, business record, financial responsibility, experience in insurance, purpose for which the license is to be used, and other facts as required by the commissioner to determine whether the applicant meets the applicable qualifications for the license applied for.
- (3) ~~[If for an agent's or consultant's license,]The application shall state the kinds of insurance proposed to be transacted[, and if an agent's, the application shall be deemed an appointment of the applicant as agent for the kinds of insurance, by an authorized insurer, subject to issuance of the license].~~
- (4) ~~[If for solicitor's license, the application shall be accompanied by written appointment of the applicant as solicitor by a licensed resident general lines agent, subject to issuance of the license.~~
- ~~(5) If the applicant for an agent's license is a firm or corporation, the application shall show in addition, the names of all members, officers, and directors, and shall designate each individual who is to exercise the license powers; and each individual shall furnish information with respect to himself, as part of the application, as though for an individual license.~~
- ~~(6) If for license as agent, or solicitor, or consultant,]The application shall also show whether the applicant was ever previously licensed to transact any kind of insurance in this state or elsewhere; whether any license was ever refused, suspended, revoked, or renewal or continuance denied, whether any insurer, general agent, agent, claims applicant is indebted to it, and if so, the details thereof; whether applicant has ever had an agency contract canceled, and the facts thereof; and, if applicant is a married person, like information with respect to the spouse.~~
- ~~(7) As part of the application for agent's or solicitor's license, the commissioner shall require the certificate of the insurer or agent, proposed to be represented, relative to applicant's identity, residence, experience, or instruction as to the kinds of insurance to be transacted, trustworthiness, and reputation].~~
- ~~(5) [(8)]~~ All applications shall be accompanied by the applicable license fee~~, appointment fee,~~ and examination fee, in the respective amounts stated in KRS 304.4-010.
- ~~(6) [(9)]~~ No applicant for license under this subtitle shall willfully misrepresent or withhold any fact or information called for in the application form or in connection therewith.

Section 13. KRS 304.9-160 is amended to read as follows:

- (1) *An individual applying for any license under this subtitle requiring an examination shall pass a written examination*~~[After completion and filing of application with the commissioner as required by KRS 304.9-150, the commissioner shall subject each applicant for license as agent, or solicitor,] unless exempt~~~~[exempted]~~

~~therefrom~~] under KRS 304.9-170. *Examinations required by this section shall be developed and conducted in accordance with administrative regulations promulgated*~~], to a written examination as to his competence to act as such agent or solicitor, which he must personally take and pass to the satisfaction of the commissioner prior to having his application for a license considered]~~ by the commissioner.

- (2) *The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in KRS 304.4-010*~~Hf the applicant is a firm or corporation the examination shall be so taken by each individual who is to be named in or registered as to the license, as provided in KRS 304.9-130].~~
- (3) *Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the commissioner as set forth in KRS 304.5-010*~~[examination of an applicant for an agent's license shall cover all the kinds of insurance which the appointing insurer or insurers are authorized to transact in this state; except as to a limited license provided for under KRS 304.9-230 and except that an applicant to be licensed as to health insurance only or mortgage guaranty insurance only shall not be examined as to other kinds of insurance. The commissioner shall permit applicants appointed by a life insurer authorized in this state to issue kinds of insurance other than life and health insurance and annuities, as provided in KRS 304.3-110, to take examinations covering either the other kinds of insurances, or covering life and health insurance and annuities only, or both. In the case of life insurers authorized to issue variable annuities in this state, the commissioner may require applicants appointed by such insurers to solicit such contracts in this state, in addition to completing examinations qualifying for a life agent's license, to successfully pass a supplemental examination covering the subject of variable annuities in order to solicit, place or procure variable annuity contracts in this state].~~
- (4) *An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination*~~[of an applicant for a solicitor's license shall cover all kinds of insurance, other than life or health insurance, as to which the appointing agent is licensed.~~
- ~~(5) Written application for the examination shall be filed with the commissioner by or on behalf of the applicant prior to the date fixed for the examination, as provided in KRS 304.9-190, and shall be accompanied by the fee for such application as specified in KRS 304.4-010].~~

Section 14. KRS 304.9-170 is amended to read as follows:

KRS 304.9-160 shall not apply and no~~[such]~~ examination shall be required of:

- (1) Any applicant for license covering *any line of authority*~~[the same kind or kinds of insurance as]~~ to which the applicant was licensed under a similar license in *Kentucky*~~[this state]~~, other than a temporary license, within the twenty-four (24) months next preceding date of application, unless the previous license was revoked~~[,] or suspended[, or continuation thereof refused]~~ by the commissioner for reasons other than failure to maintain financial responsibility *or meeting continuing education requirements* as required by KRS 304.9-105 *and Section 24 of this Act*.
- (2) *An individual who applies for an agent license in Kentucky who was previously licensed for the same lines of authority in another state shall not be required to complete any prelicensing education or examination. This exemption is only available if the applicant is currently licensed in the other state or if the application is received within ninety (90) days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's database records, maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries, indicate that the agent is or was licensed in good standing for the line of authority requested*~~[In the commissioner's discretion, any applicant who has been licensed under a similar license in another state within twelve (12) months prior to his application for license in this state, and who files with the commissioner the certificate of the public official having supervision of insurance in the other state as to applicant's license and good conduct in the state].~~
- (3) *An individual licensed as an agent in another state within the last twelve (12) months who moves to Kentucky shall make application within ninety (90) days of establishing legal residence to become a resident licensee. No prelicensing education or examination shall be required of that applicant to obtain a license for any line of authority previously held in the prior home state except where the commissioner determines otherwise by administrative regulation*~~[Persons representing public carriers who, in the course of~~

~~their representation, solicit or sell insurance incidental to the transportation of persons or to the storage or transportation of property].~~

- (4) ~~Persons soliciting or negotiating credit life, credit health and accident, credit personal property, and credit unemployment insurance contracts.~~

- (5) ~~†~~ An applicant for an agent's license who is currently licensed as a solicitor or as a consultant as to the same *line of authority* ~~[kind or kinds of insurance]~~, or has been so licensed within twelve (12) months next preceding the date of application for the license, unless the previous license was revoked or suspended or continuation thereof refused by the commissioner for reasons other than failure to maintain financial responsibility as required by KRS 304.9-330 ~~[304.9-105]~~.

- (5) ~~(6)†~~ Any applicant for license covering the same *line of authority* ~~[kind or kinds of insurance]~~ as to which that applicant shall have held a valid license issued *in accordance with* ~~[pursuant to]~~ this subtitle or other applicable Kentucky law which was surrendered, *in accordance with* ~~[pursuant to]~~ KRS 304.2-080 or other applicable law, in order to accept employment with the Department of Insurance, provided, however, that the applicant shall apply for relicensing within one (1) year of the date of termination of his *or her* employment with the Department of Insurance.

- ~~(7)† Persons soliciting or negotiating mechanical breakdown insurance contracts.]~~

Section 15. KRS 304.9-180 is amended to read as follows:

- (1) ~~The~~ ~~[Each]~~ examination *shall test the* ~~[for license as agent, consultant, or solicitor shall reasonably test the applicant's competence and his]~~ knowledge *or relevant skills and abilities of the individual concerning the lines of authority for which application is made,* ~~[of the kinds of insurance, policies and transactions to be handled under the license applied for, of]~~ the duties and responsibilities of ~~[such]~~ a licensee, and ~~[of]~~ the pertinent insurance laws *and administrative regulations* of this state.
- (2) The commissioner shall make available to applicants for license, printed information as to the general scope of, and principal subjects to be covered by, the examination for a particular license, together with information as to published books and other reference sources which may be studied by the applicant to prepare for the examination; but the commissioner shall not furnish lists of examination questions and examination questions shall not be selected from lists ~~[thereof]~~ known to the commissioner to have been furnished applicants.

Section 16. KRS 304.9-190 is amended to read as follows:

- (1) The commissioner shall provide a reasonable opportunity to all applicants to take the *examinations* ~~[examination]~~ required by *this subtitle* ~~[KRS 304.9-160]~~. Examinations shall be held at least monthly at places in this state designated by the commissioner reasonably accessible to applicants, and at least weekly at Frankfort.
- ~~(2)† All the kinds of insurance which the applicant proposes to transact under the license applied for shall be included in the same examination.~~
- ~~(3)†~~ The commissioner shall give, conduct and grade all examinations in a fair and impartial manner and without unfair discrimination as between individuals examined.
- ~~(3)† (4)†~~ The commissioner may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same *line* ~~[kind or kinds]~~ of *authority* ~~[insurance]~~.

Section 17. KRS 304.9-200 is amended to read as follows:

- (1) *An agent license shall remain in effect unless terminated, canceled, expired, revoked, or suspended as long as the fees set forth in KRS 304.4-010 and all administrative regulations promulgated thereunder are paid and any applicable continuing education requirements for individual agents are met by the due date.*
- (2) *An individual agent who allows his or her license to lapse may, within twelve (12) months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination. However, a penalty may be imposed as provided in KRS 304.99-020.*
- (3) *A licensed agent who is unable to comply with license renewal procedures due to military service, a long-term medical disability, or some other extenuating circumstance may request a waiver of those procedures. The agent may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.*

- (4) *The license shall contain the licensee's name, address, personal identification number, and the date of issuance, the lines of authority, and any other information the commissioner deems necessary.*
- (5) *Licensees shall inform the commissioner in writing in a format acceptable to the commissioner of a change of address or change of name within thirty (30) days of the change.*
- (6) After completion of application for a license, and the taking and passing of any examination required under this subtitle, the commissioner shall promptly consider the same. If the commissioner finds that the applicant has fully met the requirements *for licensure*~~therefor~~, the commissioner shall promptly issue the license to the applicant; otherwise, the commissioner shall refuse to issue the license and promptly notify the applicant and the appointing insurer or agent of ~~the~~~~such~~ refusal, stating the grounds thereof.
- ~~(7)(2)~~ If a license is refused, the commissioner shall promptly refund the appointment fee tendered with the license application. All other fees for application for agent, consultant,~~solicitor,~~ or adjuster licenses shall be deemed earned when paid and shall not be refundable.

Section 18. KRS 304.9-210 is amended to read as follows:

- ~~(1)~~ ~~The license shall state the name and address of the licensee, date of issue, general conditions relative to expiration or termination, the kind or kinds of insurance covered by the license, if applicable, and such other conditions as the commissioner deems proper for inclusion in the license certificate. No license shall be issued in a trade name unless the name has been duly registered or filed as required by law.~~
- ~~(2)~~ The license of an agent shall not specify the name of any particular insurer by which the licensee is appointed as agent~~, except as provided by subsection (5) of this section, as to limited licenses,~~ and the licensee may~~, subject to KRS 304.9-220 as to life agents,~~ represent as *an*~~such~~ agent under the one (1) license as many insurers as may appoint *the agent*~~him therefor~~ in accordance with this subtitle.
- ~~(3)~~ ~~The license of a solicitor shall show the name and address of the employer agent.~~
- ~~(2)(4)~~ The license of a consultant shall show whether the license is for a "general lines consultant" or a "life consultant."
- ~~(5)~~ ~~Each limited license issued pursuant to KRS 304.9-230 shall show the name of the insurer so represented, and a separate license shall be required as to each such insurer.~~

Section 19. KRS 304.9-230 is amended to read as follows:

- (1) The commissioner may issue *in accordance with Section 4 of this Act, an agent's license with the line of authority*~~to an applicant qualified therefor, including, but not~~ limited~~to, financial responsibility pursuant to KRS 304.9-105(5), under this code limited agent's licenses~~ as follows:
  - (a) *To*~~Covering~~ motor vehicle physical damage insurance only;
  - (b) *To*~~persons representing~~ common *carrier insurance, incidental to the transportation of persons or to the storage or transportation of property only, and solicited or sold by persons representing common carriers in the course of that representation*~~carriers, as provided in KRS 304.9-170~~;
  - (c) *To limited line credit insurance*~~Covering~~ only~~insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured~~;
  - ~~(d)~~ ~~Covering only credit life, credit health, credit personal property, and credit unemployment insurance;~~
  - ~~(e)~~ ~~Covering agents writing mortgage guaranty insurance only;~~
  - ~~(f)~~ ~~Covering agents:~~
    - ~~1. Writing industrial life insurance only; or~~
    - ~~2. Licensed by an insurer issuing policies having a face amount not in excess of five thousand dollars (\$5,000) on the debit plan, if the agent actually collects and services a debit for the insurer;~~
  - ~~(g)~~ ~~Covering agents writing only policies commonly referred to as mortgage redemption insurance, which consist of reducing term life insurance and accident and health insurance, if any, contained therein or sold in conjunction therewith;~~
  - ~~(h)~~ *To*~~Covering agents writing~~ crop-hail insurance only;~~and~~



(e)~~(i)~~ ~~To~~~~Covering agents writing~~ mechanical breakdown insurance only; **and**

(f) **To other limited line insurance only, as specified by the commissioner through the promulgation of administrative regulations.**

- (2) The **commissioner shall promulgate administrative regulations to establish the requirements for prelicensing courses of instruction and examination**~~fee~~ **for each limited lines license**~~licenses is as specified in KRS 304.4-010~~.

Section 20. KRS 304.9-260 is amended to read as follows:

- (1) Each~~solicitor,~~ consultant, adjuster, and surplus lines broker license issued under this code shall continue in force until expired, suspended, revoked, or otherwise terminated, but subject to payment to the commissioner at his **or her** office in Frankfort on or before March 31 of the applicable continuation fee for any appointment, or license in the case of a limited license, not terminated on or prior to December 31 of the preceding calendar year as stated in KRS 304.4-010, accompanied by written request for continuation. Request for continuation shall be made as follows:
- (a) As to adjuster and surplus lines broker licenses, request made and signed by the licensee.
- (b)~~As to solicitor licenses, request made and signed by the employer as to whom licensed.~~
- ~~(e)~~ As to limited licenses issued under KRS 304.9-230, request made and signed by the insurer so represented.
- (2) Biennially, before January 31, the department shall distribute to each respective licensee, employer, and insurer a listing of the names and addresses of that person's licensees referred to in subsection (1) whose appointments were in effect during the preceding calendar year and who were not terminated on or prior to December 31 of that calendar year. Any appointment or license not expressly terminated shall continue in effect as to the kinds of insurance or classifications~~thereof~~ for which the respective licensees are currently appointed and subject to payment of the fees specified under KRS 304.4-010. On or before March 31, each licensee, employer, or insurer shall submit the continuation of appointment fee, as specified in KRS 304.4-010, for each appointment or license not terminated on or prior to December 31 of the preceding calendar year. Any license referred to in subsection (1) of this section as to which request for continuation and fee are not so received by the commissioner shall be deemed to have expired at midnight on March 31; except that any request and fees received by the commissioner after March 31 and prior to the next following June 30 may be accepted and effectuated by the commissioner, in his **or her** discretion, if accompanied by a penalty as provided in Subtitle 99 of this chapter.
- (3) The license of an agent shall continue in force as long as there is in effect as to the licensee, as shown by the commissioner's records, an appointment or appointments as agent of authorized insurers covering collectively all of the **lines of authority**~~kinds of insurance or classifications thereof~~ included in the agent's license. Upon termination of all of the licensee's~~agency~~ appointments as to a particular **line of authority**~~kind of insurance or classification thereof~~ and failure to replace an appointment within sixty (60) days thereafter, the license shall~~thereupon~~ expire and terminate as to the **line of authority**~~kind or classification of insurance~~ and the licensee shall promptly deliver his **or her** license to the commissioner for reissuance, without fee or charge, as to the **line of authority**~~kinds of insurance or classifications thereof~~, if any, covered by the licensee's remaining agency appointments. Upon termination of all of the licensee's~~agency~~ appointments **and failure to obtain a new appointment within sixty (60) days**, the license shall~~forthwith~~ terminate **and be surrendered to the commissioner.**
- (4) As a condition to or in connection with the continuation of any agent ~~or~~~~solicitor~~ consultant~~, or solicitor~~ license, the commissioner may require the licensee to file with him **or her** information relative to use made of the license during the next preceding calendar year and especially as to whether the license has been used principally for the writing of controlled business, as defined in KRS 304.9-100.
- (5) As a condition to or in connection with the continuation of any agent~~or solicitor~~ license, the commissioner shall require continuous demonstration of financial responsibility as required by KRS 304.9-105~~(6)~~~~(5)~~, and any license shall terminate and be surrendered to the commissioner, as provided~~for~~ therein, if and when ~~the~~~~such~~ demonstration becomes impaired whether or not valid appointments under the license are then existent.
- (6) Except as to the provisions of subsection (5) hereof, this section does not apply to temporary licenses issued under KRS 304.9-300.

Section 21. KRS 304.9-270 is amended to read as follows:

- (1) Each insurer appointing an agent in this state shall ***obtain approval of the appointment from the commissioner by filing***~~file~~ with the commissioner the ***notice of*** appointment in writing, specifying the kinds of insurance or classifications thereof to be transacted by the agent for the insurer, and submit the license fee with the license application and the appointment fee with every appointment~~thereafter~~, or license fee in the case of limited licenses, as specified in KRS 304.4-010.
- (2) ***No agent shall claim to be an agent or representative of, or in any way imply a contractual relationship with, a particular insurer, or place applications for insurance with an insurer unless the agent becomes an appointed agent of the insurer and the agent's appointment has been approved by the commissioner.***
- (3) ***An agent may act as a representative of and place insurance with an insurer without first obtaining approval of the appointment by the commissioner for a period of thirty (30) days from the date the first insurance application is executed by the agent subject to the following criteria:***
  - (a) ***The agent has filed with the commissioner, and kept in force, evidence of financial responsibility in the sum of not less than one million dollars (\$1,000,000) per occurrence, and the sum of two million dollars (\$2,000,000) in the aggregate, for all occurrences within one (1) year, either in the form of an errors and omissions insurance policy issued by an authorized insurer, a bond issued by an authorized corporate surety, a deposit, or any combination of these evidences of financial responsibility. Such a policy, bond, deposit, or combination shall not be terminated unless at least thirty (30) days prior written notice is given to the licensee and the commissioner.***
  - (b) ***If the agent does not receive from the insurer acknowledgment that the agent's appointment has been approved by the commissioner within thirty (30) days from the date the first insurance application is executed, the agent shall immediately discontinue acting as an agent on behalf of the insurer until acknowledgment is received.***
- (4)
  - (a) ***The insurer shall, no later than forty-five (45) days from the date the agency contract is executed or the first insurance application is submitted by an agent, whichever is earlier, file with the commissioner a written notice of appointment on a form prescribed by the commissioner.***
  - (b) ***If there is no executed agency contract, the insurer shall also mail to the agent, within the same forty-five (45) day period specified in paragraph (a) of this subsection, a copy of the notice of appointment form filed with the commissioner.***
- (5) ***Within fifteen (15) days of receipt of the notice of appointment, the commissioner shall determine and notify the insurer whether the agent is eligible for appointment. If the agent's license is in good standing and no other grounds exist to deny the appointment, the commissioner shall approve the appointment.***
- (6) Subject to continuation by the insurer as provided in subsection ~~(4)~~~~(3)~~ of this section, each appointment shall remain in effect until the agent's license is revoked or otherwise terminated, unless the insurer earlier terminates the appointment as provided in KRS 304.9-280.
- ~~(7)~~~~(3)~~ Biennially, before January 31, the department shall distribute to each insurer a listing of the names and addresses of that insurer's agents whose appointment, or licenses in the case of limited licenses, were in effect during the proceeding calendar year and who were not terminated on or prior to December 31 of that calendar year. Any appointment or license not expressly terminated shall remain in effect as to the kinds of insurance or classifications thereof for which the respective agents are currently appointed, and subject to the fees specified under KRS 304.4-010. On or before March 31, each insurer shall submit the continuation of appointment fee, or license fee in the case of limited licenses, as specified in KRS 304.4-010, for each appointment not terminated on or prior to December 31 of the preceding calendar year. Any appointment or license not expressly terminated shall continue, unless otherwise terminated, canceled, suspended, or revoked by the department of insurance.

Section 22. KRS 304.9-280 is amended to read as follows:

- (1) Subject to the agent's contract rights, if any, an insurer may terminate an~~agency~~ appointment at any time. However, if any~~agency~~ appointment is not terminated on or prior to December 31, then on January 1 the fees designated shall be due for submission as provided in KRS 304.9-270.~~[-The insurer shall promptly give written notice of such termination and the effective date thereof to the commissioner and to the agent where reasonably possible. The commissioner may require of the insurer reasonable proof that the insurer has given notice to the agent where reasonably possible.]~~

- (2) *An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with a licensee shall notify the commissioner within thirty (30) days following the effective date of the termination, using a form prescribed by the commissioner, if the reason for termination is one (1) of the reasons set forth in Section 34 of this Act or if the insurer has knowledge the licensee was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in Section 34 of this Act. Upon the written request of the commissioner the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the licensee.*
- (3) *An insurer or authorized representative of the insurer that terminates the appointment of a licensee for any reason not set forth in subsection (2) of this section, shall notify the commissioner within thirty (30) days following the effective date of the termination, using a form prescribed by the commissioner. Upon written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination.*
- (4) *The insurer or the authorized representative of the insurer shall promptly notify the commissioner in a form acceptable to the commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the commissioner in accordance with subsection (2) of this section had the insurer known of its existence.*
- (5)
  - (a) *Within fifteen (15) days after making the notification required by subsection (3) of this section the insurer shall mail a copy of the form to the licensee at his or her last known address by first-class mail. Within fifteen (15) days after making the notification required by subsection (2) of this section, the insurer shall provide a copy of the form to the licensee at his or her last known address by certified mail, return receipt requested, postage prepaid, or by overnight delivery using a nationally recognized carrier.*
  - (b) *Within thirty (30) days after the licensee has received a copy of the form, the licensee may file written comments concerning the substance of the notification with the commissioner. The licensee shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the licensee as permitted under subsection (7)(c) of this section.*
- (6)
  - (a)
    - 1. *In the absence of actual malice, an insurer, the authorized representative of the insurer, a licensee, the commissioner, or their respective representatives, or employees, or an organization of which the commissioner is a member and that compiles the information and makes it available to other insurance commissioners, or regulatory or law enforcement agencies, shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective representatives or employees, as a result of:*
      - a. *Any statement or information required by or provided in accordance with this section;*
      - b. *Any information relating to any statement that may be requested in writing from an insurer or licensee by the commissioner; or*
      - c. *A statement by a terminating insurer or licensee to an insurer or licensee that is limited solely and exclusively to whether a termination for cause under subsection (2) of this section was reported to the commissioner.*
    - 2. *The propriety of any termination for cause under subsection (2) of this section shall be certified in writing by an officer or authorized representative of the insurer or licensee terminating the relationship.*
  - (b) *In any action brought against an individual, business entity, or organization that may have immunity under subsection (6)(a) of this section for making any statement required by this section or providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that subsection (6)(a) of this section does not apply because the individual, business entity, or organization making the statement, or providing the information did so with actual malice.*
  - (c) *Subsection (6)(a) or (6)(b) of this section shall not abrogate or modify any existing statutory or common law privileges or immunities.*

- (7) (a) 1. *Any document, material, or other information in the control or possession of the department that is furnished by an insurer, licensee, or an employee, or representative acting on behalf of the insurer or licensee, or obtained by the commissioner in an investigation in accordance with this section:*
- a. *Shall be confidential by law and privileged;*
  - b. *Shall not be subject to subpoena; or*
  - c. *Shall not be subject to discovery or admissible in evidence in any private civil action.*
- Notwithstanding subdivisions a., b., and c. of this subparagraph, any document, material, or other information that is furnished by an insurer, licensee, or an employee, or representative acting on behalf of the insurer or licensee, or obtained by the commissioner in an investigation in accordance with this section, that is used in a formal administrative proceeding or enforcement action in accordance with KRS Chapter 13B shall be subject to the Kentucky Open Records Act.*
2. *However, the commissioner is authorized to use the documents, materials, or other information referred to in subsection (7)(a)1. of this section in the furtherance of any regulatory or legal action brought to carry out the commissioner's duties.*
- (b) *Neither the commissioner nor any individual who received documents, materials, or other information while acting under the authority of the commissioner, shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to paragraph (a) of this subsection.*
- (c) *In order to assist in the performance of the commissioner's duties, the commissioner:*
- 1. *May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to paragraph (a) of this subsection, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates, or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or other information;*
  - 2. *May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, or information; and*
  - 3. *May enter into agreements governing sharing and use of information consistent with this subsection.*
- (d) *No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner or of sharing as authorized in this subsection.*
- (e) *The commissioner shall release only final, adjudicated actions including for cause terminations that are open to public inspection in accordance with the Kentucky Open Records Act, KRS 61.870 to 61.884, to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.*
- (f) *As part of the nonresident license certification process, the department shall release only final adjudicated actions on agents licensed according to this subtitle~~[Accompanying the notice of termination given the commissioner, the insurer shall file with him a statement of all the facts constituting the cause, if any, for termination. Any information, document, record, or statement so disclosed or furnished to the commissioner shall be deemed an absolutely privileged communication and shall not be admissible as evidence in any action or proceeding unless consented to in writing by the insurer.~~*

- ~~(3) An agent terminating the employment as solicitor of a licensed solicitor shall give like notice of the termination to the commissioner, and like information as to the reasons for the termination, with like status as privileged communication unless the privilege is waived in writing by the agent.~~

Section 23. KRS 304.9-290 is amended to read as follows:

Following termination of an ~~agency~~ appointment ~~of a general lines agent,~~ and subject to the terms of any agreement between the agent and the insurer, the agent may continue to service, and receive from the insurer commissions or other compensation relative to, business written by him *or her* for the insurer during the existence of the appointment, so long as the agent continues to be licensed as to the kinds of insurance involved.

Section 24. KRS 304.9-295 is amended to read as follows:

- (1) This section shall apply to *individuals* ~~resident persons~~ licensed as agents ~~or solicitors for the following kinds of insurance: life, health, property, casualty, or surety.~~
- (2) This section shall not apply to:
  - (a) ~~Persons holding licenses for which no examination is required by KRS 304.9-170 except that persons exempted from examination by KRS 304.9-170(1) and (2) shall be subject to this section;~~
  - (b) *Licensees* ~~Persons~~ holding limited *lines of authority* ~~or restricted~~ licenses, as exempted by the commissioner *in accordance with Section 19 of this Act*;
  - (b)(c) *Licensees* ~~Persons~~ not licensed for one (1) full year prior to the end of a continuing education biennium as described in subsection (3) of this section;
  - (c)(d) *Licensees* ~~Persons~~ holding nonresident licenses who have met the continuing education requirements of their *home* state ~~of domicile~~ and whose *home* state *gives credit to Kentucky resident agents on the same basis* ~~of domicile has a current continuing education reciprocal agreement with the commissioner~~; or
  - (d)(e) *Licensees* ~~Persons~~ maintaining their licenses for the sole purpose of receiving renewals or deferred commissions and providing the department with a supporting affidavit.
- (3) The licensees specified in subsection (1) of this section and not exempt under subsection (2) of this section who hold a license, shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, of which twelve (12) ~~shall must~~ be classroom hours, during each continuing education biennium. A continuing education biennium shall begin on July 1 and end on June 30 two (2) years later.
- (4) Only continuing education courses approved by the commissioner ~~shall may~~ be used to satisfy the continuing education requirement of subsection (3) of this section.
  - (a) The continuing education courses which meet the commissioner's standards for continuing education requirements are:
    1. Any part of the Life Underwriter Training Council life course curriculum;
    2. Any part of the Life Underwriter Training Council health course curriculum;
    3. Any part of the American College Chartered Life Underwriter diploma curriculum;
    4. Any part of the American Institute for Property and Liability Underwriters' chartered property and casualty underwriter profession designation program;
    5. Any part of the Insurance Institute of America's programs;
    6. Any part of the certified insurance counselor program;
    7. Any insurance related course taught at an accredited college or university, if ~~the such~~ course is approved by the commissioner;
    8. Any course of instruction or seminar developed or sponsored by any authorized insurer, recognized agent association, recognized insurance trade association, or any independent program of instruction, if approved by the commissioner;
    9. Any correspondence course approved by the commissioner; *and*

- 10. Any course in accordance with provisions of reciprocal agreements the commissioner enters with other states.**
- (b) The commissioner shall prescribe the number of hours of continuing education credit for each continuing education course approved ***in accordance with***~~in accordance with~~ ~~[pursuant to]~~ this subsection. ***Continuing education courses submitted in accordance with a reciprocal agreement shall be approved according to the provisions of the reciprocal agreement.***
  - (c) If a continuing education course requires successful completion of a written examination, no continuing education credit shall be given to ***licensees***~~persons~~ who do not successfully complete ~~the~~~~[such]~~ written examination.
  - (d) The fee for filing continuing education courses for approval by the commissioner shall be as specified in Subtitle 4 of KRS Chapter 304.
  - (e) ***For continuing education courses of reciprocal states, continuing education providers shall be approved in accordance with the provisions of the reciprocal agreements.***
  - (5) ***An individual***~~A person~~ teaching any approved continuing education course shall qualify for the same number of hours of continuing education credit as would be granted to a ***licensee***~~person~~ taking and satisfactorily completing ~~the~~~~[such]~~ course.
  - (6) Excess credit hours accumulated during any continuing education biennium may be carried forward. The commissioner may, by regulation, limit the number of hours carried forward.
  - (7) For good cause shown, the commissioner may grant an extension of time during which the continuing education requirement of subsection (3) of this section may be completed, but ~~the~~~~[such]~~ extension of time shall not exceed two (2) years. What constitutes good cause for ~~the~~~~[such]~~ extension of time rests within the discretion of the commissioner.
  - (8) Every ***licensee***~~person~~ subject to this section shall furnish to the commissioner written certification as to the continuing education courses satisfactorily completed by ~~the licensee~~~~[such person]~~. ~~The~~~~[Such]~~ certification shall be signed by or on behalf of the organization sponsoring the continuing education course. ~~The~~~~[Such]~~ certification shall be on a form prescribed by the commissioner.
  - (9) The license of any ***individual***~~person~~ failing to comply with the continuing education requirement of subsection (3) of this section and who has not been granted an extension of time to comply ***in accordance with***~~in accordance with~~ ~~[pursuant to]~~ subsection (7) of this section shall ***terminate and shall be***~~be canceled and~~ promptly surrendered to the commissioner without demand.
  - (10) The license of any ***individual***~~person~~ subject to the continuing education requirement shall be suspended or revoked, a civil penalty imposed~~[in lieu thereof]~~, or both, ***in accordance with***~~in accordance with~~ ~~[pursuant to]~~ KRS 304.9-440 if ***the individual***~~such person~~ submits to the commissioner a false or fraudulent certificate of compliance with the continuing education requirement.

Section 25. KRS 304.9-300 is amended to read as follows:

- (1) The commissioner may issue a temporary license ***for a period not to exceed one hundred eighty (180) days without requiring an examination or prelicensing course of study if the commissioner deems that a temporary license is necessary for the servicing of an insurance business***~~as agent to or with respect to an individual who demonstrates that he is qualified therefor only as to age, residence, trustworthiness, general education and financial responsibility without requiring such individual to successfully complete specific courses of instruction or take an examination,~~ in the following cases:
  - (a) To the surviving spouse or ***court-appointed personal representative***~~next of kin or to the administrator or executor, or the employee of such administrator or executor,~~ of a licensed agent ***who dies or becomes mentally or physically disabled, to allow adequate time for the:***
    - 1. ***Sale of the insurance business owned by the agent;***
    - 2. ***Recovery or return of the agent to the business; or***
    - 3. ***Training and licensing of new personnel to operate the agent's business***~~[becoming deceased].~~
  - (b)~~[To the spouse, next of kin, employee or legal guardian of a licensed agent disabled by sickness, injury, or insanity.~~

~~(e)}~~ To a member or employee of a **business entity**~~[firm, or officer or employee of a corporation,]~~ licensed as **an** agent, upon the death or disability of **the sole**~~[an]~~ individual designated in~~[or registered under]~~ the **business entity application or the** license~~[to exercise the powers thereof]~~.

~~(c)~~~~(d)}~~ To the designee of a licensed agent entering upon active service in the armed forces of the United States.

~~(d)~~~~(e)~~ To any agent appointed by an insurer issuing policies on the debit plan, if such agent actually collects and services a debit. The insurer and agent may assume that such license will be issued, effective as of the date of application, and the agent may continue on such debit until notified to the contrary by the commissioner.

~~(f)~~ To a full time ordinary life insurance agent appointed by the insurer under a training program filed with and approved by the commissioner, which program shall not be approved unless it includes the equivalent of forty (40) hours of classroom instruction in specific courses in the field of insurance as prescribed by the commissioner for the issuance of a permanent license. No such training program or temporary licensing privilege shall be granted or continued for such ordinary life agents for any insurer obtaining more than ten (10) such temporary licenses within any calendar year and which fails to qualify at least sixty five percent (65%) of its temporary licensees for a permanent license.

~~(g)}~~ In any other circumstance where the commissioner deems that the public interest will best be served by the issuance of **this**~~[such]~~ license.

(2) ***In addition to the restrictions on temporary licenses set forth in Section 26 of this Act, the commissioner may, by order, limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The commissioner may require the temporary licensee to have a suitable sponsor who is a licensed agent or insurer and who assumes responsibility for all acts of the temporary licensee, and may impose other similar requirements designed to protect insureds and the public. The commissioner may, by order, revoke a temporary license if the interests of insureds or the public are endangered. A temporary license shall not continue after the owner or the personal representative disposes of the business.***

(3) Application for a temporary license shall be filed with the commissioner in **the**~~[such]~~ form and containing **the**~~[such]~~ information as the commissioner may reasonably require, and be accompanied by the application fee as specified in KRS 304.4-010.

~~{(3)}~~ The temporary license shall be for a period of not over ninety (90) days, subject to extension by the commissioner in his discretion for one (1) additional period of not over ninety (90) days; except, that license issued as to an executor or administrator under paragraph (a) of subsection (1) of this section may be continued without payment of additional fee until the executor or administrator has disposed of the insurance business, but for not to exceed a period of eighteen (18) months. Temporary license issued to the spouse or next of kin under such paragraph (a) of subsection (1) of this section shall not be extended for an additional term after appointment and qualification of such an administrator or executor.

~~(4)~~ The fee paid for the temporary license may be applied upon the fee required for any permanent license issued to the licensee upon or prior to expiration of the temporary license and covering the same kinds of insurance.

Section 26. KRS 304.9-310 is amended to read as follows:

~~(1)~~ The commissioner shall not issue more than one (1) temporary license to or with respect to the same individual to be so licensed, within any twelve month period.

~~(2)}~~ The temporary license may cover only the same kinds of insurance for which the agent thereby being replaced was licensed.

~~(2)~~~~(3)}~~ The temporary licensee may represent under the license all insurers last represented by the replaced agent, and without the necessity of new appointments of the licensee; but the licensee shall not be appointed as to any additional insurer of additional kind of insurance under~~[such]~~ a temporary license. This provision shall not be deemed to prohibit termination of its appointment by any insurer.

~~(3)~~~~(4)}~~ A temporary license shall have the same license powers and duties as under a permanent license but shall not be obtained for the sole production of controlled business as defined in KRS 304.9-100, and no sale of insurance of any kind shall be made upon the licensee's own life or the lives of any relative by blood or marriage.

Section 27. KRS 304.9-370 is amended to read as follows:

- (1) Application for and acceptance of a license as a consultant, agent, **or** adjuster~~[-or solicitor]~~ by a nonresident of Kentucky shall thereby be deemed to constitute irrevocable appointment of the Secretary of State as the attorney of the licensee for the acceptance of service of process issued in this state in any action or proceeding against the licensee arising out of ~~the[such]~~ licensing or out of transactions under the license.
- (2) Service of process against any nonresident licensee may be made in any action by service upon the Secretary of State as provided in KRS 304.3-230.

Section 28. KRS 304.09-390 is amended to read as follows:

- (1) Every agent referred to in subsection (1) of KRS 304.9-120 shall have and maintain in this state a place of business accessible to the public, and wherein the licensee principally conducts transactions under his **or her** license. The address of ~~the[such]~~ place shall appear upon the license. Nothing in this section shall prohibit maintenance of such a place in the licensee's residence in this state.
- (2) The licenses of the licensee~~[-and those of solicitors employed by him,]~~ shall be conspicuously displayed in ~~the[such]~~ place of business in a part~~[-thereof]~~ customarily open to the public.
- (3) The agent shall keep at his place of business complete records of transactions under his license~~[-and those of his solicitors]~~. ~~The[Such]~~ record shall show, as to each insurance policy or contract placed~~[-or countersigned]~~ by or through the licensee, the names of the insurer and insured, the number and expiration date of, and premium payable as to, the policy or contract, and **any[such]** other information as the commissioner may reasonably require. The record shall be kept available for inspection by the commissioner, for a period of at least five (5) years after completion of the respective transactions.

~~[(4) This section shall not apply as to life and health insurance.]~~

Section 29. KRS 304.9-400 is amended to read as follows:

That portion of all premiums or moneys which an agent~~[-or solicitor]~~ collects from an insured and which is to be paid to an insurer, its agents, its managing general agents or his **or her** principal because of the assumption of liability through the issuance of policies or contracts for insurance, shall be held by the agent~~[-or solicitor]~~ in a fiduciary capacity and shall not be misappropriated or converted to his **or her** own use or illegally withheld by the agent~~[-or solicitor]~~.

Section 30. KRS 304.9-421 is amended to read as follows:

No agent~~[-solicitor,]~~ consultant, adjuster, or surplus lines broker shall directly or indirectly share his **or her** commission or other compensation received or to be received on account of a transaction under his **or her** license with any **individual or business entity**~~[-person]~~ not also licensed as agent~~[-solicitor,]~~ consultant, adjuster, or surplus lines broker under this subtitle as to the kinds of insurance involved in the transaction. This provision shall not affect personal use of ~~the[such]~~ commissions or compensation, payment of the regular salaries due employees of the agent, consultant, adjuster, or surplus lines broker, or distribution in the regular course of business of compensation and profits among members or stockholders of licensee **business entities**~~[-firms or corporations]~~.

Section 31. KRS 304.9-425 is amended to read as follows:

No insurer, **financial institution**,~~[-insurance]~~ agent, surplus lines broker,~~[-solicitor,]~~ adjuster, or consultant shall pay directly or indirectly, any commission, brokerage, or other valuable consideration to any **individual or business entity**~~[-person]~~ for services as an~~[-insurance]~~ agent, surplus lines broker,~~[-solicitor,]~~ adjuster, or consultant within this state, unless **the individual or business entity**~~[-such person]~~ held at the time ~~the[such]~~ services were performed a valid license for that line of insurance as required by the laws of this state for ~~the[such]~~ services; nor shall any **individual or business entity**~~[-person]~~, other than **an individual or business entity**~~[-a person]~~ duly licensed by this state as an~~[-insurance]~~ agent, surplus lines broker,~~[-solicitor,]~~ adjuster, or consultant at the time ~~the[such]~~ services were performed, accept any such commission, brokerage, or other valuable consideration. Provided, that this section shall not prevent payment or receipt of renewal or other deferred commissions to or by any **individual or business entity**~~[-person]~~ entitled~~[-thereto]~~ under this section.

Section 32. KRS 304.9-430 is amended to read as follows:

- (1) No **individual or business entity**~~[-person]~~ shall in this state act as or hold himself **or herself** out to be an adjuster unless then licensed by the Kentucky Department of Insurance as an adjuster. Application for license shall be made to the commissioner according to forms as prescribed and furnished by him **or her**. The commissioner shall issue the license as to **applicants**~~[-persons]~~ qualified~~[-therefor]~~ upon payment of the license



application fee stated in KRS 304.4-010~~[except that salaried employees of domestic insurers who are required to be licensed as adjusters shall not be required to pay the license fee].~~

- (2) To be licensed as an adjuster the applicant ~~shall~~~~[must be qualified therefor as follows]:~~
  - (a) ~~[Must,]~~ ~~Be~~~~[if]~~ an individual~~[be]~~ twenty-one (21) years or more of age.
  - (b) ~~[Must]~~ Be a resident of Kentucky, or resident of another state which will permit residents of Kentucky to act as adjusters in ~~the~~~~[such]~~ other state.
  - (c) ~~[Must]~~ Be ~~an~~~~[a full-time salaried]~~ employee of an insurer, a full time salaried employee of a licensed adjuster or a graduate of a recognized law school, or~~[must]~~ have~~[had]~~ experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent to make him *or her* reasonably competent to fulfill the responsibilities of an adjuster.
  - (d) ~~[Must]~~ Be trustworthy and of good reputation.
  - (e) ~~[Must]~~ Have and maintain an office accessible to the public, and keep therein the usual and customary records pertaining to transactions under the license. This provision shall not be deemed to prohibit maintenance of ~~the~~~~[such]~~ office in the office of an insurer, of the employer, or in the home of the licensee.
  - (f) ~~[Must]~~ Have successfully passed a written examination prescribed by the commissioner, except if the applicant has successfully passed a written examination in a state which permits residents of Kentucky to act as adjusters in ~~the~~~~[such]~~ other state.
- (3) A *business entity*~~[firm or corporation]~~, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the license powers is named in the license or registered with the commissioner under the license, and is qualified as for an individual license as adjuster. An additional full license fee shall be paid as to each individual in excess of one (1), so named in the license or so registered to exercise its powers.
- (4) Except, that no~~[such]~~ adjuster's license or qualifications shall be required as to any adjuster who is sent into this state on behalf of an insurer for the purpose of investigating or making adjustment of a particular loss under an insurance policy, or for the adjustment of a series of losses resulting from a catastrophe common to all~~[such]~~ losses.

Section 33. KRS 304.9-432 is amended to read as follows:

- (1) In the event that an applicant for an adjuster's license meets the qualification requirements of KRS 304.9-430 except that he *or she* has not had experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent to make him *or her* reasonably confident to fulfill the responsibilities as an adjuster, he *or she* shall not be required to take and successfully complete the prescribed written examination and may be issued a temporary license as an apprentice adjuster for a period not to exceed one *hundred eighty (180) days*~~[(1) year]~~.
- (2) ~~[Such]~~ A temporary license as an apprentice adjuster shall be subject to the following terms and conditions:
  - (a) *An individual*~~[A person]~~ holding a temporary license as apprentice adjuster shall have all of the privileges and obligations of an adjuster licensed under the insurance code;
  - (b) *An individual*~~[A person]~~ holding a temporary license as an apprentice adjuster shall at all times be a full-time salaried employee of an insurer or an adjuster and subject to training, direction, and control by a licensed adjuster acting in the same capacity as that *for* which the applicant applied~~[for]~~;
  - (c) A temporary license as apprentice adjuster shall be subject to suspension, revocation, or conditions *in accordance with*~~[pursuant to]~~ KRS 304.9-440; and
  - (d) *An individual*~~[A person]~~ may hold only one (1) temporary license as an apprentice adjuster.

Section 34. KRS 304.9-440 is amended to read as follows:

- (1) The commissioner may *place on probation*, suspend, or may impose conditions upon the continuance of a license for not more than twelve (12) months,~~[or may]~~ revoke, or refuse to *issue or renew*~~[continue]~~ any license issued under this subtitle or any surplus lines broker license, *or may levy a civil penalty in accordance with KRS 304.99-020, or any combination of actions for*~~[if, after notice to the licensee and to the insurer]~~

represented (as to an agent) or to the employer (as to a solicitor) and a hearing, the commissioner finds that as to the licensee] any one (1) or more of the following causes[~~exist~~]:

- (a) *Providing incorrect, misleading, incomplete, or materially untrue information in the license application*[~~Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner~~].
- (b) *Violating any insurance laws, or violating any administrative regulations, subpoena, or order of the commissioner or of another state's insurance commissioner*[~~Willful violation of or noncompliance with any applicable provision of this code, or willful violation of any lawful rule, regulation, or order of the commissioner~~].
- (c) Obtaining or attempting to obtain a[~~any such~~] license through misrepresentation or fraud.
- (d) *Improperly*[~~Misappropriation or conversion to his own use, or illegal~~] withholding, *misappropriating, or converting any*[~~of~~] moneys *or properties received in the course*[~~belonging to policyholders, insurers, beneficiaries, or others and received in the conduct~~] of *doing insurance* business[~~under the license~~].
- (e) *Intentionally misrepresenting*[~~Willful material misrepresentation of~~] the terms of *an*[~~any~~] actual or proposed insurance contract *or application for insurance*.
- (f) *Having been convicted of any*[~~Conviction, by final judgment, of a misdemeanor for which restitution is ordered in excess of three hundred dollars (\$300), or a~~] felony[~~involving dishonesty, breach of trust, or moral turpitude~~].
- (g) *Having admitted or been found to have committed any unfair insurance trade practice or insurance fraud*[~~In the conduct of his affairs under the license the licensee has used fraudulent, coercive, or dishonest practices, or has shown himself to be incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public~~].
- (h) *Using fraudulent, coercive, or dishonest practices; or demonstrating incompetence, untrustworthiness, or financial irresponsibility; or being a source of injury or loss to the public in the conduct of business in this state or elsewhere*[~~Surrendering or otherwise terminating any other license issued by this state or any other jurisdiction under threat of disciplinary action, denial or refusal of the issuance of or renewal of any other license issued by this state or any other jurisdiction, or revocation or suspension of any other license held by the licensee issued by this state or any other jurisdiction~~].
- (i) *Having any insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;*
- (j) *Surrendering or otherwise terminating any other license issued by this state or by any other jurisdiction, under threat of disciplinary action, denial, or refusal of the issuance of or renewal of any other license issued by this state or by any other jurisdiction; or revocation or suspension of any other license held by the licensee issued by this state or by any other jurisdiction;*
- (k) *Forging another's name to an application for insurance or to any document related to an insurance transaction;*
- (l) *Cheating, including improperly using notes or any other reference material to complete an examination for an insurance license;*
- (m) *Knowingly accepting insurance business from an individual who is not licensed, but who is required to be licensed under this subtitle;*
- (n) *Failing to comply with an administrative or court order imposing a child support obligation;*
- (o) *Failing to pay state income tax or to comply with any administrative or court order directing payment of state income tax;*
- (p) *Having been convicted of a misdemeanor for which restitution is ordered in excess of three hundred dollars (\$300), or of any misdemeanor involving dishonesty, breach of trust, or moral turpitude; or*
- (q) *Any other cause for which issuance of the license could have been refused, had it then existed and been known to the commissioner.*

- (2) The license of a *business entity*[~~firm or corporation~~] may be suspended, revoked, or refused [

~~(a) for any cause relating to such causes as relate to an individual designated in or registered under as to the license to exercise its powers; or~~

~~(b) if the commissioner finds that an individual licensee's violation was known or should have been known by one (1) or more of the partners, officers, or managers acting on behalf of the partnership firm or corporation and the such violation was not reported to the Department of Insurance nor corrective action taken thereon. The applicant or licensee may make written demand upon the commissioner in accordance with KRS 304.2-310 for a hearing before the commissioner to determine the reasonableness of the commissioner's action.~~

- (3) *The commissioner shall retain the authority to enforce the provisions and penalties of this chapter against any individual or business entity who is under investigation for or charged with a violation of this chapter, even if the individual's or business entity's license has been surrendered or has lapsed by operation of law.*

Section 35. KRS 304.9-450 is amended to read as follows:

- (1) Upon suspension or revocation of any such license the commissioner shall forthwith notify the licensee thereof either in person or by mail addressed to the licensee at his or her address last of record with the commissioner. Notice by mail shall be deemed effectuated when so mailed. The commissioner shall give like notice to the insurer represented by the agent, in the case of an agent's license, and to the employer in the case of a solicitor's license.

- ~~(2) Suspension or revocation of the license of an agent shall automatically suspend the licenses of all solicitors employed by him.~~

- ~~(3) The commissioner shall not again issue a license under this code to or as to any individual or business entity person whose license has been revoked, until after expiration of one (1) year and thereafter not until the individual or business entity such person again qualifies therefor in accordance with the applicable provisions of this code. An individual or business entity A person whose license has been revoked twice shall not again be eligible for any license under this code.~~

- ~~(3)(4) If the license of a business entity firm or corporation is so suspended or revoked, no member, of such firm, or officer, or director of the business entity such corporation, shall be licensed or be designated in or as to any license to exercise the powers thereof during the period of the such suspension or revocation, unless the commissioner determines upon substantial evidence that the such member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked.~~

- (4) *In the event that the action by the commissioner is to nonrenew or to deny an application for a license, the commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the commissioner in accordance with KRS 304.2-310.*

Section 36. KRS 304.9-455 is amended to read as follows:

- (1) Each person licensed under this subtitle shall notify the commissioner in writing immediately if his or her license to conduct insurance securities, real estate, auctioneer, investment, financial, or financial planning business of any kind in this state or elsewhere is surrendered or terminated under threat of disciplinary action, refused, suspended, revoked, or renewal of continuance denied.

- (2) *A licensee shall report to the commissioner any administrative action taken against the licensee in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.*

- (3) *Within thirty (30) days of service upon the licensee of any criminal complaint, information, or indictment in any jurisdiction, the licensee shall submit to the commissioner a copy of the initial complaint, indictment, or information filed. The licensee shall further submit copies of all relevant legal documents, including the order resulting from the hearing, any plea, agreement, judgment, or other relevant legal documents.*

SECTION 37. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

***The commissioner shall not assess a greater fee for an insurance license or related service to an individual or business entity not residing in this state, based solely on the fact that the individual or business entity does not reside in this state.***

Section 38. KRS 304.10-020 is amended to read as follows:

This Surplus Lines Law shall not apply to reinsurance, or to the following insurances when so placed by ~~licensed~~ agents or surplus lines brokers ***licensed in*** ~~off~~ this state:

- (1) Ocean marine and foreign trade insurances.
- (2) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state.
- (3) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.
- (4) Insurance of aircraft owned or operated by manufacturers of aircraft or of aircraft operated in commercial interstate flight or cargo of ~~such~~ aircraft or against liability other than workers' compensation and employer's liability arising out of the ownership, maintenance or use of ~~such~~ aircraft.

Section 39. KRS 304.10-070 is amended to read as follows:

- (1) A broker shall not place surplus lines insurance with an insurer that he ***or she*** knows, or in the exercise of reasonable diligence could know:
  - (a) Has a surplus in regard to ***policyholders*** ~~policyholder~~ of less than ~~six~~ ***three*** million dollars ~~(\$6,000,000);~~ ~~(\$3,000,000);~~
  - (b) ***Has not established satisfactory evidence of good repute and financial integrity;***
  - (c) Is unsound financially; ~~;~~ or ~~that~~
  - (d) Is ineligible under the Kentucky insurance code.
- (2) A broker may:
  - (a) Place insurance covering certificates of investment with an insurance company or guarantee fund which is financially sound and has capital funds and reserves in excess of fifteen million dollars (\$15,000,000); and
  - (b) Place insurance with a United States insurance exchange which the commissioner, in his ***or her*** discretion, may designate for use by surplus lines brokers licensed by the Commonwealth of Kentucky.
- (3) A broker shall not place insurance with an alien insurer that is not recognized by the National Association of Insurance Commissioners and does not maintain in the United States a trust fund for the benefit of United States policyholders of at least ~~five~~ ***one*** million ~~four~~ ***five*** hundred thousand dollars ~~(\$5,400,000)~~ ~~(\$1,500,000)~~.
- (4) A broker shall not place insurance with an insurer that has engaged in the insurance business less than three (3) years unless ~~the~~ ~~such~~ insurer has deposited with the ***commissioner*** ~~custodian of insurance securities~~ publicly-traded securities with a market value of at least ~~six~~ ***three*** hundred thousand dollars ~~(\$600,000)~~ ~~(\$300,000)~~.
- (5) This section shall not apply to surplus lines insurers eligible to do business in Kentucky as of July 15, 1982, except that the commissioner may revoke ~~such~~ eligibility, or may order ~~the~~ ~~such~~ insurer to comply with this section or may suspend the operation of the insurer in Kentucky.
- (6) ***The commissioner may declare that a surplus lines insurer is ineligible to transact business in Kentucky. The commissioner shall promptly mail notice of all declarations of ineligibility to each surplus lines broker if at any time the commissioner has reason to believe that a surplus lines insurer:***
  - (a) ***Is in unsound financial condition;***
  - (b) ***Has acted in an untrustworthy manner;***
  - (c) ***No longer meets the standards set forth in this subtitle;***
  - (d) ***Has willfully violated the laws of Kentucky; or***
  - (e) ***Does not conduct a proper claims practice.***

Section 40. KRS 304.10-110 is amended to read as follows:

- (1) As to a surplus lines risk which has been assumed by an unauthorized insurer ~~under~~~~[pursuant to]~~ this subtitle, and if the premium~~[thereon]~~ has been received by the surplus lines broker who placed ~~the~~~~[such]~~ insurance, in all questions~~[thereafter]~~ arising under the coverage as between the insurer and the insured the insurer shall be deemed to have received the premium due to it for ~~the~~~~[such]~~ coverage; and the insurer shall be liable to the insured as to losses covered by ~~the~~~~[such]~~ insurance and for unearned premiums which may become payable to the insured upon cancellation of ~~the~~~~[such]~~ insurance whether or not in fact the broker is indebted to the insurer with respect to ~~the~~~~[such]~~ insurance or for any other cause.
- (2) Each unauthorized insurer assuming a surplus lines risk under this subtitle shall be deemed~~[thereby]~~ to have subjected itself to the terms of this section.

Section 41. KRS 304.10-120 is amended to read as follows:

- (1) Any person while licensed in this state as ~~an~~~~[a resident general lines]~~ agent who:
  - (a) ***Is a resident of Kentucky;***
  - (b) Has been continuously licensed for at least three (3) years;
  - (c)~~(b)~~ Is deemed by the commissioner to be competent and trustworthy with respect to the handling of surplus lines; ***and***
  - (d)~~(c)~~ Represents at least three (3) insurers admitted to transact property or casualty insurance in Kentucky;~~and~~
  - ~~(d) — Maintains an office at a designated location in this state;~~
 may be licensed as a surplus lines broker.
- (2) Application for the license shall be made to the commissioner on forms as designated and furnished by the commissioner.
- (3) The license fee shall be as specified in KRS 304.4-010.
- (4) The license and licensee shall be subject to the applicable provisions of Subtitle 9 ***of this chapter***.
- (5) In order for a surplus lines broker's license to be renewed, the licensee ~~shall~~~~[must]~~ have at least five (5) current appointments with property or casualty insurers admitted to do business in Kentucky.
- (6) ***Notwithstanding subsection (1)(a) of this section, on or after July 1, 2002, an individual licensed as a surplus lines broker in the applicant's home state may be issued a nonresident surplus lines broker's license in Kentucky if the applicant's home state issues surplus lines broker licenses to Kentucky residents on the same basis.***

Section 42. KRS 304.10-130 is amended to read as follows:

- (1) The commissioner may suspend or revoke any surplus lines broker's license:
  - (a) If the broker fails to file his ***or her*** annual statement or to remit the tax as required by this subtitle; or
  - (b) If the broker fails~~[to maintain an office in this state, or]~~ to keep records, or to allow the commissioner to examine his ***or her*** records as required by this subtitle~~[, or if he removes his records from the state];~~ or
  - (c) If the broker knowingly or negligently places a surplus lines coverage in an insurer that is in unsound financial condition in violation of KRS 304.10-070; or
  - (d) For any other applicable cause for which ~~an~~~~[a general lines]~~ agent's license may be suspended or revoked.
- (2) The procedures provided by Subtitle 9 ***of this chapter*** for suspension or revocation of licenses shall apply to suspension or revocation of a surplus lines broker's license.
- (3) Upon suspending or revoking the broker's surplus lines license the commissioner shall also suspend or revoke all other licenses of or as to the same ~~individual~~~~[person]~~ under this code.

- (4) No broker whose license has been suspended or revoked shall again be so licensed until any fines or delinquent taxes ~~owed~~~~[owing by him]~~ have been paid, or, in case of revocation until after expiration of one (1) year from the date revocation became final.

Section 43. KRS 304.10-140 is amended to read as follows:

Prior to issuance of a license as a surplus lines broker, the applicant shall file with the commissioner, and ~~[thereafter]~~ for as long as the license remains in effect shall keep in force:

- (1) Evidence of financial responsibility in the sum of not less than **one million**~~[five hundred thousand]~~ dollars ~~(\$1,000,000)~~~~(\$500,000)~~ per occurrence, and the sum of **two**~~[one]~~ million~~[five hundred thousand]~~ dollars ~~(\$2,000,000)~~~~(\$1,500,000)~~ in the aggregate, for all~~[such]~~ occurrences within one (1) year, either in the form of an errors and omissions insurance policy issued by an authorized insurer, a bond issued by an authorized corporate surety, a deposit, or ~~a~~~~[any]~~ combination of **a bond issued by an authorized corporate surety and a deposit**~~[these evidences of financial responsibility]~~. ~~The~~~~[Such]~~ policy, bond, deposit, or combination **of a bond or deposit**~~[thereof]~~ shall not be terminated unless at least thirty (30) days' prior written notice is given to the licensee and the commissioner; and
- (2) A bond in favor of the State of Kentucky in the penal sum of **fifty**~~[twenty]~~ thousand dollars ~~(\$50,000)~~~~(\$20,000)~~, with an authorized corporate surety guaranteeing that he **or she** will conduct business under the license in accordance with the provisions of this subtitle and that he **or she** will promptly remit the taxes required by KRS 304.10-180. The aggregate liability of the surety for any and all claims on any~~[such]~~ bond shall in no event exceed the penal sum~~[thereof]~~. No~~[such]~~ bond shall be terminated unless not less than thirty (30) days prior written notice~~[thereof]~~ is given to the licensee and filed with the commissioner.

Section 44. KRS 304.10-160 is amended to read as follows:

- (1) Each broker shall keep in his **or her** office~~[in this state]~~ a full and true record of each surplus lines coverage procured by him **or her**, including a copy of each daily report, if any, a copy of each certificate of insurance issued by him **or her**, and~~[such]~~ of the following items as may be applicable:
  - (a) Amount of the insurance;
  - (b) Gross premium charged;
  - (c) Return premium paid, if any;
  - (d) Rate of premium charged upon the several items of property;
  - (e) Effective date of the contract, and the terms thereof;
  - (f) Name and address of each insurer on the direct risk and the proportion of the entire risk assumed by **the**~~[such]~~ insurer if less than the entire risk;
  - (g) Name and address of the insured;
  - (h) Brief general description of the property or risk insured and where located or to be performed; and
  - (i) Other information as may be required by the commissioner.
- (2) The record~~[shall not be removed from this state and]~~ shall be open to examination by the commissioner at all times within five (5) years after issuance of the coverage to which it relates.

Section 45. KRS 304.10-180 is amended to read as follows:

- (1) ~~[On or before the first day of April of each year]~~Each broker shall **pay the following taxes**~~[remit to the State Treasurer through the commissioner]~~:
  - (a) **On or before the first day of April each year**, a tax at the rate of three percent (3%) on the premiums, **assessments, fees, charges, or other consideration deemed part of the premium as defined in KRS 304.14-030**~~[exclusive of sums collected to cover federal and state taxes and examination fees]~~, on surplus lines insurance subject to tax transacted by him **or her** with unauthorized insurers during the preceding calendar year as shown by his **or her** annual statement filed with the commissioner. **The tax shall not be assessed on the premium surcharge tax, the local government premium tax, or any other state or federal tax. The tax shall be remitted to the commissioner.** When collected the tax shall be credited to the **insurance regulatory trust**~~[general]~~ fund, **as established by KRS 304.2-400**;

- (b) *The premium surcharge tax, to be remitted to the Kentucky Revenue Cabinet, in accordance with KRS 136.392; and*
- (c) *The local government premium tax, to be remitted to the appropriate city, county, or urban-county government taxing authority, in accordance with KRS 91A.080.*

- (2) If a surplus lines policy covers risks or exposures only partially in this state the tax so payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state.

Section 46. KRS 304.2-120 is amended to read as follows:

- (1) In general, orders and notices of the commissioner shall be issued in accordance with this chapter. Notices, recommended orders, and final orders issued as a result of an administrative hearing shall be issued in accordance with KRS Chapter 13B.
- (2) Orders and notices of the commissioner shall be effective only when in writing signed by *the commissioner*~~him~~ or by *the commissioner's*~~his~~ authority.
- (3) Every order of the commissioner shall state its effective date, and shall concisely state:
  - (a) Its intent or purpose;
  - (b) The grounds on which *it is* based;
  - (c) The provisions of this code *under*~~pursuant to~~ which action is~~so~~ taken or proposed to be taken; and
  - (d) All other matters required by law.
- (4) All persons holding licenses or certificates of authority from the commissioner shall maintain current residence, business, home office, and administrative addresses, as applicable, on file with the commissioner. *Licensees*~~These persons~~ shall *inform*~~notify~~ the commissioner in writing *in a format acceptable to the commissioner* ~~of~~*immediately upon* any change in addresses *or legal name within thirty (30) days of the change*. As a condition to holding a license or certificate of authority from the commissioner, persons holding licenses or certificate of authority are deemed to have consented to service of notices and orders of the commissioner at their addresses on file with the commissioner and any notice or order of the commissioner mailed or delivered to the address on file with the commissioner constitutes valid service of notice or order.

Section 47. KRS 189.285 is amended to read as follows:

- (1) A person shall not operate a motorcycle on a highway:
  - (a) Except when that person is in possession of a valid motorcycle operator's license; and
  - (b) Unless that person uses an approved eye-protective device, in the manner prescribed by the secretary of the Transportation Cabinet, at all times such vehicle is in motion; and
  - (c) Unless the motorcycle is equipped with a rear-view mirror.
- (2) A person shall not operate or ride as a passenger on a motorcycle:
  - (a) Except on a seat permanently attached to that vehicle and specifically designed to carry the operator or passenger in a safe manner; and
  - (b) Except when using a footrest permanently attached to that vehicle and specifically designed to carry that person in a safe manner.
- (3) The following persons shall be required to wear protective headgear, in the manner prescribed by the secretary of the Transportation Cabinet, at all times the motorcycles they are riding are in motion on a public highway:
  - (a) A person under the age of twenty-one (21) years who is operating a motorcycle or who is a passenger on a motorcycle or in a sidecar attachment;
  - (b) A person who possesses a motorcycle instruction permit and who is operating a motorcycle; *and*
  - (c) A person who has held a valid motorcycle operator's license, or combination motor vehicle-motorcycle operator's license, for less than one (1) year and who is operating a motorcycle~~;~~*and*
  - ~~(d) Any person who does not provide proof of health insurance to the county clerk when registering a motorcycle in accordance with KRS 186.865.~~

- (4) A motorcycle operator authorized to drive a motorcycle on an instruction permit shall not be authorized to carry passengers.
- (5) The secretary of the Transportation Cabinet shall by regulation fix minimum standards for approved protective headgear and for approved eye-protective devices, and prescribe the manner in which they shall be used. The secretary shall maintain and cause to be published a list of approved protective headgear and of approved eye-protective devices. The secretary may prescribe by regulation minimum standards for other protective devices and require the use of those devices.
- (6) As used in this chapter and KRS Chapter 186, "motorcycle" means any motor driven vehicle having a seat or saddle for the use of the operator and designed to travel on not more than three (3) wheels in contact with the ground, but excluding tractors and vehicles on which the operator and passengers ride in an enclosed cab and excluding a moped as defined in this section.
- (7) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step-through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour.

Section 48. The following KRS sections are repealed:

186.865 Motorcycle registration requirements -- Health insurance requirements.

304.4-015 Payment schedule for biennial fees.

304.9-050 "Solicitor" defined.

304.9-060 "Service representative" defined -- General requirements.

304.9-220 Multiple licensing, life agents.

304.9-380 Solicitors -- Special requirements.

304.9-434 Exemption from written examination.

304.9-455 Licensed person to notify commissioner of licensure disciplinary action.

**Approved April 7, 2000**

## **CHAPTER 394**

### **(HCR 44)**

A CONCURRENT RESOLUTION relating to the establishment of a task force to complete a study to identify barriers to quality end of life care relating to pain management, best practices, and strategies to improve quality of care.

WHEREAS, the purpose of this concurrent resolution is to establish a task force to assess the quality of end-of-life health care for all Kentuckians relating to pain management, and to make recommendations on how to improve health care to ensure that patients experience a peaceful, natural, and, as much as possible, pain-free end-of-life experience, while preserving the sanctity of human life. Nothing in this concurrent resolution shall be construed to authorize a study or to support physician or other health care provider-assisted suicide, euthanasia, or any other measures which might result in a premature end to any human life; and

WHEREAS, the National Task Force on End-of-Life Care in Managed Care reported that end-of-life care has been an intractable problem across the United States and contributions from many sectors of the American society will be needed to improve access to comprehensive, high-quality care, to strengthen accountability, and to develop payment methods; and

WHEREAS, a group of researchers completed a four (4) year Study to Understand Prognoses and Preferences for Outcomes and Risks of Treatments (SUPPORT) in five (5) teaching hospitals in the United States to improve end-of-life decision making and reduce the frequency of a mechanically supported, painful, and prolonged process of dying. The researchers found shortcomings in the care for seriously ill hospitalized patients including pain management and physician knowledge of the patient's desires regarding resuscitation; and



WHEREAS, some patients die in physical pain and discomfort, despite the technical capability to control most symptoms near the end of life; and

WHEREAS, physicians are often fearful of disciplinary actions for prescribing appropriate medications to promote comfort in patients who are dying; and

WHEREAS, consumers are unaware of their rights to make decisions about end of life care; and

WHEREAS, legal matters surrounding advance directives often complicate decision making for patients, families, and health care practitioners; and

WHEREAS, patients and families have the right to a seamless health care system that provides access to holistic care which includes care for the mind, body, and soul through both technical methods and supportive care; and

WHEREAS, reimbursement for care should support access to both technical and supportive care; and

WHEREAS, the curriculum for health care providers is limited in the amount of content related to palliative or end of life care; and

WHEREAS, the opportunities for medical students, residents, and other health care providers to participate in guided palliative care experiences need to be expanded;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. The Legislative Research Commission is directed to establish a twenty (20) member task force to complete a study to identify the barriers to quality end-of-life care and pain management, to identify strategies to improve access to quality end-of-life care that is based upon patients' and families' desires, to identify ways to strengthen accountability to determine whether quality care is being delivered, and to identify payment methods for delivering a seamless system of care. The Speaker of the House shall appoint two (2) members of the House of Representatives, and eight (8) at-large members to the task force. The President of the Senate shall appoint two (2) members of the Senate and eight (8) at-large members to the task force. A majority of the membership shall choose a chair to preside over the work of the task force. Of the sixteen (16) at-large members of the task force to be appointed by the Speaker of the House and the President of the Senate, at least one (1) member shall be appointed from a list of names submitted by Kentucky Right to Life, at least one (1) member shall be appointed from a list of names submitted by the Kentucky Catholic Conference, and at least one (1) member shall be appointed from a list of names submitted by the Family Foundation of Kentucky. The remaining at-large members of the task force shall include representatives from the following associations: the Kentucky Nurses Association, the Kentucky Medical Association, the Kentucky Hospital Association, the Kentucky Pharmacists Association, the Kentucky Association of Hospices, the Department for Public Health, the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists, the Office of Aging Services, and the Kentucky Association of Health Care Facilities.

Section 2. The task force shall submit a final report of its findings and recommendations to the Legislative Research Commission no later than September 1, 2001.

Section 3. Staff services to be utilized in completing the work of the task force are estimated to cost \$30,000. These staff services shall be provided from the regular Commission budget and are subject to the limitations and other research responsibilities of the Commission.

Section 4. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Section 5. Effective January 1, 2002, this concurrent resolution shall be void.

**Approved April 7, 2000**

**CHAPTER 395****(HJR 141)**

A JOINT RESOLUTION recommending that Kentucky's four-year public universities establish a Scouting and Civil Air Patrol Scholarship Program modeled after the successful Eagle Scout Scholarship Program at the University of Louisville.

WHEREAS, young men who earn the Eagle Scout rank in Boy Scouts of America and the Mitchell Award in the Civil Air Patrol, and young women who earn the Gold Award in the Girl Scouts of America, are recognized for outstanding performance and achievement in their communities; and

WHEREAS, these young men and women have demonstrated high principles of character, commitment to excellence, leadership, and service to their communities; and

WHEREAS, the importance of scouting programs is evident in many communities, and especially for African American males who often face tremendous obstacles, by providing support and structure for building character and developing potential of each young person; and

WHEREAS, the scholarships awarded to Eagle Scouts under the University of Louisville's Trustees Scholarship Program recognizes outstanding scholar scouts and cadets and should be replicated across the Commonwealth; and

WHEREAS, The Commonwealth of Kentucky needs to retain its brightest and most talented students in its public institutions;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. The General Assembly recommends that Kentucky's four-year public universities establish a Scouting and Civil Air Patrol Scholarship program modeled after the successful University of Louisville Scholarship program which rewards young people who have been awarded the Gold Award by the Girl Scouts or the Mitchell Award by the Civil Air Patrol, or who have achieved the rank of Eagle Scout in the Boy Scouts.

Section 2. A university may award a scholarship to a Girl Scout, Boy Scout, or Civil Air Patrol Cadet based on the following criteria that may include:

- (1) Kentucky residency;
- (2) A high ACT score;
- (3) A grade point average of at least 3.0 upon graduating from high school;
- (4) Active membership in a Girl Scout troop, a Boy Scout troop, Explorer post or venture unit, or a Civil Air Patrol squadron during and until graduation from high school; and
- (5) Financial need of the Girl Scout, Boy Scout or Civil Air Patrol Cadet.

Section 3. The university shall create other eligibility criteria of equal weight that will ensure the greatest number of African Americans awarded the Gold Award by the Girl Scouts or the Mitchell Award by the Civil Air Patrol, or who have achieved the rank of Eagle Scout in the Boy Scouts will have the greatest likelihood of being awarded a scholarship under this program. In determining the eligibility criteria, consideration shall be given to honors and awards received and to volunteer or leadership positions in school, civic, community, and religious organizations.

Section 4. One (1) year from the adoption date of this Resolution, the presidents of Kentucky's four-year public universities or their designees shall make a report to the Interim Joint Committee on Education on the progress made toward designating at least one academic scholarship for a high-achieving Eagle Scout Scholarship.

Section 5. The Clerk of the House of Representatives is directed to transmit a copy of this Resolution to the presidents of the Kentucky four-year public universities.

**Approved April 7, 2000**

## CHAPTER 396

## (HB 585)

AN ACT relating to the operation of a motor vehicle.

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

SECTION 1. A NEW SECTION OF KRS 186.400 TO 186.640 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 4 of this Act:*

- (1) *"Applicant" means any person applying for an instruction permit or an operator's license who must use a bioptic telescopic device in order to operate a motor vehicle;*
- (2) *"Binocular vision" means visual acuity that is 20/200 or better in both eyes, with or without corrective lenses;*
- (3) *"Bioptic telescopic device" means a two (2) focus optical system used to magnify distant objects by including a small telescope that is mounted in a spectacle lens in a manner to allow an unobstructed view of the horizontal visual field through a person's normal distance corrective lens;*
- (4) *"Certified driver training program" means a program that provides and coordinates comprehensive assessment and training of driving skills and responses that emphasizes the vision, hearing, psychological, perceptual, orientation, and mobility skills of an applicant and that is certified by the department;*
- (5) *"Combined visual acuity" means visual acuity attained by using both eyes together where a person has binocular vision;*
- (6) *"Corrective lenses" means eyeglasses, contact lenses, and intraocular lenses, but does not mean a bioptic telescopic device;*
- (7) *"Daytime driving restriction" means operation of a motor vehicle is restricted to the period of time from between thirty (30) minutes after sunrise and thirty (30) minutes before sunset. Under this restriction, driving during adverse weather conditions that significantly reduce the visibility of the roadway, other traffic, and traffic control devices shall be prohibited;*
- (8) *"Department" means the Department for the Blind;*
- (9) *"Monocular vision" means visual acuity that is 20/200 or better in only one (1) eye, with or without corrective lenses;*
- (10) *"Restricted out-of-state driver" means a person who has been issued, by another state, a valid operator's license with a restriction requiring the use of a bioptic telescopic device;*
- (11) *"Vision specialist" means a licensed ophthalmologist or optometrist;*
- (12) *"Visual acuity" means the measure of a person's visual acuity based on the Snellen visual acuity scale; and*
- (13) *"Visual field" means the area of physical space visible to the eye in a given fixed position.*

SECTION 2. A NEW SECTION OF KRS 186.400 TO 186.640 IS CREATED TO READ AS FOLLOWS:

- (1) *All persons applying for an initial operator's license or an initial instruction permit shall submit to a test of visual acuity and visual field at the time of application.*
- (2) *Persons whose visual acuity is 20/40 or better without corrective lenses shall not have a restriction placed on their driving privileges. Persons whose visual acuity is 20/40 or better with corrective lenses shall have their driving privileges restricted to mandate the use of the corrective lenses. If a person fails to meet a 20/40 visual acuity standard, the State Police shall refer the person to a vision specialist for examination.*
- (3) *A person referred to a vision specialist by the State Police under subsection (2) of this section whose visual acuity is 20/60 or better shall be eligible to test for an instruction permit or operator's license. If corrective lenses were prescribed by the vision specialist, the person's driving privileges shall be restricted to mandate the use of the corrective lenses.*
- (4) *Persons who meet the requirements of Section 3 of this Act and are issued operator's licenses under Section 4 of this Act shall have their driving privileges restricted to the use of a bioptic telescopic device.*

SECTION 3. A NEW SECTION OF KRS 186.400 TO 186.640 IS CREATED TO READ AS FOLLOWS:

- (1) *Applicants accepted to participate in a certified driver training program shall meet the following minimum vision requirements:*
  - (a) *A distance visual acuity of 20/200 or better, with corrective lenses, in the applicant's better eye;*
  - (b) *A visual field of at least one hundred twenty (120) degrees horizontally and eighty (80) degrees vertically in the same eye as used in paragraph (a) of this subsection;*
  - (c) *A distance visual acuity of 20/60 or better using a bioptic telescopic device; and*
  - (d) *No ocular diagnosis or prognosis that indicates a likelihood that significant deterioration of visual acuity or visual field to levels below the minimum standards outlined in this subsection will occur.*
- (2) *Upon acceptance into a certified driver training program, an applicant shall be given an examination to test his or her knowledge of the motor vehicle laws of the Commonwealth. This examination may be taken orally. Upon successful completion of this examination, the applicant shall be issued a temporary instruction permit, that shall be valid only when the applicant is accompanied by an employee of a certified driver training program. Temporary instruction permits issued under this section shall be valid for one (1) year from the date of issue.*
- (3) *An applicant who successfully completes a certified driver training program shall be reexamined by a vision specialist upon completion of the program. The examination shall certify that the applicant continues to meet the visual acuity and visual field standards set forth in subsection (1) of this section.*
- (4) *An applicant who successfully completes a certified driving training program and passes the visual reexamination required by subsection (3) of this section shall be eligible to take a comprehensive operator's license examination administered by the State Police. The operator's license examination shall include testing of the applicant's driving skills over a route specifically designed to test the applicant's competency using a bioptic telescopic device.*
- (5) *An applicant who is a restricted out-of-state driver establishing residence in Kentucky shall be required to take and pass a temporary instruction permit examination before being eligible to take the operator's license examination. An applicant who is a restricted out-of-state driver establishing residence in Kentucky shall not be required to complete a certified driver training program, but shall be required to take and pass the visual examination outlined in subsection (3) of this section before taking the operator's license examination.*
- (6) *If an applicant or restricted out-of-state driver fails the operator's license examination three (3) times, he or she shall not be eligible to retake the examination until successfully completing additional training from a certified driver training program and obtaining an affidavit from the program director recommending that the applicant or restricted out-of-state driver be allowed to retake the examination.*
- (7) *The Department for the Blind shall promulgate administrative regulations in accordance with KRS Chapter 13A to set standards for a certified driver training program and to otherwise carry out the provisions of this section.*

SECTION 4. A NEW SECTION OF KRS 186.400 TO 186.640 IS CREATED TO READ AS FOLLOWS:

- (1) *The circuit clerk shall issue, to an applicant who successfully passes the operator's license examination outlined in subsection (4) of Section 3 of this Act, an operator's license with the following restrictions:*
  - (a) *Required use of a bioptic telescopic device; and*
  - (b) *Restricted to daytime driving.*
- (2) *A restriction to daytime driving in accordance with subsection (1) of this section shall be removed if the licensed driver:*
  - (a) *Drives for thirty-six (36) months without any at-fault accidents and without any license suspensions;*
  - (b) *Successfully completes additional evaluation and training specifically designed for night driving from a certified driver training program; and*
  - (c) *Passes a comprehensive night driving examination.*

- (3) *An operator's license issued under Sections 3 and 4 of this Act shall be effective for one (1) year and shall expire on the last day of the birth month of the license holder. The license holder shall undergo a comprehensive visual examination by a vision specialist before a license can be renewed. If the vision specialist certifies that the conditions causing the visual impairment are stable, then the circuit clerk shall issue a renewal license. If the conditions causing the visual impairment are unstable or deteriorating, the license holder may be required to undergo additional testing as required by the department before a renewal license may be issued.*

Section 5. KRS 186.480 is amended to read as follows:

- (1) The State Police may examine every unlicensed applicant for an operator's license except as otherwise provided in this section. The examination shall be held in the county where the applicant resides unless:
- (a) The applicant is granted written permission by the circuit clerk of the county in which he resides to take the examination in another county, and the State Police agree to arrange for the examination in the other county; *or*
  - (b) *The applicant is tested using a bioptic telescopic device.*
- (2) The examination ~~shall~~*may* include a test of the applicant's eyesight *to ensure compliance with the visual acuity standards set forth in Section 2 of this Act. The examination shall also include a test of the applicant's*~~his~~ ability to read and understand highway signs regulating, warning and directing traffic, *the applicant's*~~his~~ knowledge of traffic laws and an actual demonstration of *the applicant's* ability to exercise ordinary and reasonable control in the operation of a motor vehicle. An applicant for a motorcycle operator's license shall be required to show his ability to operate a motorcycle, in addition to other requirements of this section. The provisions of this subsection shall not apply to an applicant who:
- (a) At the time of application, holds a valid operator's license from another state, provided that state affords a reciprocal exemption to a Kentucky resident; or
  - (b) Is a citizen of the Commonwealth who has been serving in the United States military and has allowed his operator's license to expire.
- ~~(3)~~~~(2)~~ Any person whose operator's license is denied, suspended, or revoked for cause shall apply for reinstatement at the termination of the period for which the license was denied, suspended, or revoked by submitting to the examination. The provisions of this subsection shall not apply to any person whose license was suspended for failure to meet the conditions described in KRS 186.411 when, within one (1) year of suspension, the driving privileges of such individuals are reinstated.

Section 6. This Act takes effect January 1, 2001.

**Approved April 10, 2000**

## **CHAPTER 397**

**(HB 911)**

AN ACT relating to excise taxes.

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

Section 1. KRS 138.344 is amended to read as follows:

- (1) Except as otherwise provided in KRS 138.220 to 138.500, any person who shall purchase gasoline or special fuel, on which the tax as imposed by KRS 138.220 has been paid, for the purpose of operating or propelling stationary engines or tractors for agricultural purposes, or who shall purchase special fuels, on which the tax as imposed by KRS 138.220 has been paid, for consumption in unlicensed vehicles or equipment for nonhighway purposes shall be reimbursed for the tax so paid on the gasoline or special fuel. No refund shall be authorized unless applications and all necessary information are filed with the cabinet on a calendar quarter or calendar year basis on forms and in the manner prescribed by it for refund of the tax paid on the fuel. In lieu of the tax refund procedure herein, the tax on special fuels~~for operating or propelling stationary engines or tractors for agricultural purposes~~ may be credited by the dealer to the purchaser as provided in KRS 138.358. The dealer and the purchases shall be subject to the same rules, conditions and responsibilities as provided in KRS

138.344 to 138.355. The tax shall be refunded with interest at the tax interest rate as defined in KRS 131.010(6).

- (2) The information to be required from the permit holder, by the cabinet, in order that the refund may be allowed, shall be as follows:
  - (a) Name and address of permit holder .... permit number .....
  - (b) Total number of gallons purchased .... and total purchase price ..... (Invoices to be attached to refund application.)
  - (c) Total number of gallons used on highways .....
  - (d) Total number of gallons on which refund is claimed ..... (Line b minus line c.)
  - (e) Other information as the cabinet may require to reasonably protect the revenues of the Commonwealth.

Section 2. KRS 138.358 is amended to read as follows:

- (1) Any special fuels dealer who delivers special fuels, on which the tax imposed by KRS 138.220 has been paid, into a tank having no dispensing outlet and used exclusively to heat a personal residence, shall be entitled to claim a credit against the tax due pursuant to KRS 138.220 equal to the tax paid on the fuel if the dealer obtains from the purchaser and retains in his files a signed and dated statement from the purchaser certifying that the fuel will be used exclusively to heat the personal residence to which it is delivered. No person so certifying shall use the special fuel for any other purpose. ~~Special fuel delivered into a tank having no dispensing outlet and used exclusively to heat a commercial building shall be subject to refund pursuant to KRS 138.351 to 138.355.~~ The Revenue Cabinet may require dealers claiming the credit authorized herein to submit information required by the cabinet to reasonably protect the revenues of the Commonwealth.
- (2) Any special fuels dealer who sells special fuels, on which the tax imposed by KRS 138.220 has been paid, exclusively for the purpose of operating or propelling stationary engines or tractors for agricultural purposes, shall be entitled to claim a credit against the tax due pursuant to KRS 138.220 equal to the tax paid on the fuel if the dealer obtains from the purchaser and retains in his files a signed and dated statement from the purchaser certifying that the fuel will be used exclusively for the purpose of operating or propelling stationary engines or tractors for agricultural purposes. No person so certifying shall use the special fuels for any other purpose. Sales made from a retail filling station do not qualify for the credit. The Revenue Cabinet may require dealers claiming the credit authorized herein to submit information required by the cabinet to reasonably protect the revenues of the Commonwealth.
- (3) Any special fuels dealer who delivers special fuels, on which the tax imposed by KRS 138.220 has been paid, into a nonhighway use storage tank of a resident nonprofit religious, charitable, or educational organization or state or local governmental agency which has qualified for exemption from Kentucky sales and use tax pursuant to KRS 139.470(7) or 139.495 shall be entitled to claim a credit against the tax due pursuant to KRS 138.220 equal to the tax paid on the fuel if the dealer obtains from the purchaser and retains in his files a signed and dated statement certifying the purchaser's sales and use tax purchase exemption authorization issued pursuant to KRS Chapter 139. No organization or agency so certifying shall use or allow the use of any nonhighway special fuel so acquired for any purpose other than fueling unlicensed vehicles or equipment for nonhighway purposes. The Revenue Cabinet may require dealers claiming the credit authorized herein to submit information required by the cabinet to reasonably protect the revenues of the Commonwealth.
- (4) *Any special fuels dealer who sells special fuels, on which the tax imposed by KRS 138.220 has been paid, which shall be used exclusively for consumption in unlicensed vehicles or equipment for nonhighway purposes, shall be entitled to claim a credit against the tax due pursuant to KRS 138.220 equal to the tax paid on the fuel if the dealer obtains from the purchaser and retains in his files a signed and dated statement from the purchaser certifying that the fuel will be used exclusively for nonhighway purposes. No person making the certification shall use the special fuels for any other purpose. Sales made from a retail filling station do not qualify for the credit. The Revenue Cabinet may require dealers claiming the credit authorized in this subsection to submit information required by the cabinet to reasonably protect the revenues of the Commonwealth. This credit shall not apply to special fuels taxes subject to a refund under KRS 138.445.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 138 IS CREATED TO READ AS FOLLOWS:

- (1) *No person shall sell or deliver nontaxable diesel fuel or diesel fuel contaminated with dye when the person knows or has reason to know that the fuel will be used in a motor vehicle on any public highway.*
- (2) *No person shall introduce nontaxable diesel fuel or diesel fuel contaminated with dye into the supply tank of any motor vehicle licensed for highway use.*
- (3) *No person shall use nontaxable diesel fuel contaminated with dye in any motor vehicle actually used on a public highway.*
- (4) *The prohibitions contained in this section shall not apply to:*
  - (a) *Persons operating motor vehicles that have received fuel into the fuel tank outside this state in a jurisdiction that permits introduction of nontaxable diesel fuel into the fuel supply tank of highway vehicles; and*
  - (b) *Uses of nontaxable fuel on the highway which are lawful under the Internal Revenue Code and regulations, including state and local government vehicles, and buses, unless otherwise prohibited by KRS Chapter 138.*
- (5) *The cabinet may assess a civil penalty as follows:*
  - (a) *For first offenses, one thousand dollars (\$1,000) or ten dollars (\$10) per gallon of nontaxable fuel involved, whichever is greater, against any person who violates this section. The capacity of the fuel tank shall be assumed to be the amount of fuel involved, unless a lesser amount can be adequately verified by the violator; and*
  - (b) *For subsequent offenses, the penalty shall be the amount determined in paragraph (a) of this subsection, multiplied by the number of separate violations by the violator.*

Section 4. KRS 138.210 is amended to read as follows:

As used in KRS 138.220 to 138.446, unless the context requires otherwise:

- (1) "Accountable loss" means loss or destruction of "received" gasoline or special fuel through wrecking of transportation conveyance, explosion, fire, flood or other casualty loss, or contaminated and returned to storage. The loss shall be reported within thirty (30) days after discovery of the loss to the cabinet in a manner and form prescribed by the cabinet, supported by proper evidence which in the sole judgment of the cabinet substantiates the alleged loss or contamination and which is confirmed in writing to the reporting dealer by the cabinet. The cabinet may make any investigation deemed necessary to establish the bona fide claim of the loss;
- (2) "Gasoline dealer" or "special fuels dealer" means any person who is:
  - (a) Regularly engaged in the business of refining, producing, distilling, manufacturing, blending, or compounding gasoline or special fuels in this state;
  - (b) Regularly importing gasoline or special fuel, upon which no tax has been paid, into this state for distribution in bulk to others;
  - (c) Distributing gasoline from bulk storage in this state;
  - (d) Regularly engaged in the business of distributing gasoline or special fuels from bulk storage facilities primarily to others in arms length transactions;
  - (e) In the case of gasoline, receiving or accepting delivery within this state of gasoline for resale within this state in amounts of not less than an average of one hundred thousand (100,000) gallons per month during any prior consecutive twelve (12) months' period, when in the opinion of the cabinet, the person has sufficient financial rating and reputation to justify the conclusion that he will pay all taxes and comply with all other obligations imposed upon a dealer; or
  - (f) Regularly exporting gasoline or special fuels;
- (3) "Cabinet" means the Revenue Cabinet;
- (4) (a) "Gasoline" means all liquid fuels, including liquids ordinarily, practically, and commercially usable in internal combustion engines for the generation of power, and all distillates of and condensates from petroleum, natural gas, coal, coal tar, vegetable ferments, and all other products so usable which are produced, blended, or compounded for the purpose of operating motor vehicles, showing a flash point of 110 degrees Fahrenheit or below, using the Elliott Closed Cup Test, or when tested in a manner

approved by the United States Bureau of Mines, are prima facie commercially usable in internal combustion engines. The term "gasoline" as used herein shall include casing head, absorption, natural gasoline, and condensates when used without blending as a motor fuel, sold for use in motors direct, or sold to those who blend for their own use, but shall not include: propane, butane, or other liquefied petroleum gases, kerosene, cleaner solvent, fuel oil, diesel fuel, crude oil or casing head, absorption, natural gasoline and condensates when sold to be blended or compounded with other less volatile liquids in the manufacture of commercial gasoline for motor fuel, industrial naphthas, rubber solvents, Stoddard solvent, mineral spirits, V.M. and P & naphthas, turpentine substitutes, pentane, hexane, heptane, octane, benzene, benzine, xylol, toluol, aromatic petroleum solvents, alcohol, and liquefied gases which would not exist as liquids at a temperature of sixty (60) degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute, unless the products are used wholly or in combination with gasoline as a motor fuel;

- (b) "Special fuels" means and includes all combustible gases,~~and~~ liquids, **and taxable diesel fuel** capable of being used for the generation of power in an internal combustion engine to propel vehicles of any kind upon the public highways, except that it does not include gasoline, aviation jet fuel, kerosene unless used wholly or in combination with special fuel as a motor fuel, **nontaxable diesel fuel exclusively used for nonhighway purposes in off-highway equipment and nonlicensed motor vehicles**, or liquefied petroleum gas as defined in KRS 234.100;
  - (c) **"Taxable diesel fuel" means any liquid other than gasoline that, without further processing or blending, is suitable for use as a fuel in a diesel powered highway vehicle. Taxable diesel fuel does not include unblended kerosene No. 5, and No. 6 fuel oil as described in ASTM specification D 396 or F-76 Fuel Naval Distillate MILL-F-166884;**
  - (d) **"Nontaxable diesel fuel" means diesel fuel that is required to be dyed under United States Environmental Protection Agency rules for high sulfur diesel fuel, or is dyed under the Internal Revenue Service rules for low sulfur fuel, or pursuant to any other requirements subsequently set by the United States Environmental Protection Agency or the Internal Revenue Service, and excludes fuel used in state or local government licensed vehicles;**
- (5) "Received" or "received gasoline" or "received special fuels" shall have the following meanings:
- (a) Gasoline and special fuels produced, manufactured, or compounded at any refinery in this state or acquired by any dealer and delivered into or stored in refinery, marine, or pipeline terminal storage facilities in this state shall be deemed to be received when it has been loaded for bulk delivery into tank cars or tank trucks consigned to destinations within this state. For the purpose of the proper administration of this chapter and to prevent the evasion of the tax and to enforce the duty of the dealer to collect the tax, it shall be presumed that all gasoline and special fuel loaded by any licensed dealer within this state into tank cars or tank trucks is consigned to destinations within this state, unless the contrary is established by the dealer, pursuant to rules and regulations prescribed by the cabinet; and
  - (b) Gasoline and special fuel acquired by any dealer in this state, and not delivered into refinery, marine, or pipeline terminal storage facilities, shall be deemed to be received when it has been placed into storage tanks or other containers for use or subject to withdrawal for use, delivery, sale, or other distribution. Dealers may sell gasoline or special fuel to licensed bonded dealers in this state in transport truckload, carload, or cargo lots, withdrawing it from refinery, marine, pipeline terminal, or bulk storage tanks, without paying the tax. In such instances, the licensed bonded dealer purchasing the gasoline or special fuel shall be deemed to have received such fuel at the time of withdrawal from the seller's storage facility and shall be responsible to the state for the payment of the tax thereon;
- (6) "Refinery" means any place where gasoline or special fuel is refined, manufactured, compounded, or otherwise prepared for use;
- (7) "Storage" means all gasoline and special fuel produced, refined, distilled, manufactured, blended, or compounded and stored at a refinery storage or delivered by boat at a marine terminal for storage, or delivered by pipeline at a pipeline terminal, delivery station, or tank farm for storage;
- (8) "Transporter" means any person who transports gasoline or special fuel on which the tax has not been paid or assumed;



- (9) "Bulk storage facility" means gasoline or special fuel storage facilities of not less than twenty thousand (20,000) gallons owned or operated at one (1) location by a single owner or operator for the purpose of storing gasoline or special fuel for resale or delivery to retail outlets or consumers;
- (10) "Average wholesale price" shall mean:
  - (a) The weighted average per gallon wholesale tank wagon price of gasoline, exclusive of the nine cents (\$0.09) per gallon federal tax in effect on January 1, 1984, any increase in the federal gasoline tax after July 1, 1984, and any fee on imported oil imposed by the Congress of the United States after July 1, 1986, as determined by the Revenue Cabinet from information furnished by licensed gasoline dealers or from information available through independent statistical surveys of gasoline prices. Dealers shall furnish within twenty (20) days following the end of the first month of each calendar quarter, the information regarding wholesale selling prices for the previous month required by the cabinet;
  - (b) Notwithstanding the provisions of paragraph (a) of this subsection, for purposes of the taxes levied in KRS 138.220, 138.660, and 234.320, in no case shall "average wholesale price" be deemed to be less than one dollar and eleven cents (\$1.11) per gallon, and in no case shall "average wholesale price" be deemed to be more than one dollar and fifty cents (\$1.50) per gallon on or before June 30, 1982. In fiscal year 1982-83, the "average wholesale price" shall not be deemed to increase more than ten percent (10%) over the "average wholesale price" at the close of fiscal year 1981-82; in each subsequent fiscal year the "average wholesale price" shall not be deemed to increase more than ten percent (10%) over the "average wholesale price" at the close of the previous fiscal year;
- (11) "Motor vehicle" means any vehicle, machine, or mechanical contrivance propelled by an internal combustion engine and licensed for operation and operated upon the public highways and any trailer or semitrailer attached to or having its front end supported by the motor vehicles;
- (12) "Public highways" means every way or place generally open to the use of the public as a matter or right for the purpose of vehicular travel, notwithstanding that they may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair, or reconstruction;
- (13) "Agricultural purposes" means purposes directly related to the production of agricultural commodities and the conducting of ordinary activities on the farm;
- (14) "Retail filling station" means any place accessible to general public vehicular traffic where gasoline or special fuel is or may be placed into the fuel supply tank of a licensed motor vehicle.

**Approved April 10, 2000**

## CHAPTER 398

(HB 939)

AN ACT relating to campaign finance.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 121 IS CREATED TO READ AS FOLLOWS:

- (1) ***The General Assembly finds and declares that:***
  - (a) ***The intent of disclosure of campaign finance information is to make that information about the role of money in politics accessible to the public;***
  - (b) ***The volume of campaign finance reports submitted each year to the state renders it virtually impossible, without the help of computer technology, to derive meaningful conclusions from the records;***
  - (c) ***Computer automation is a necessary and effective means of transmitting, organizing, storing, and retrieving vast amounts of data submitted by candidates in election campaigns; and***
  - (d) ***Although candidates are currently permitted to file campaign finance reports electronically if they so choose, very few candidates have chosen to do so, and therefore access to campaign finance data through electronic or on-line technology is limited.***
- (2) ***The General Assembly enacts this legislation to accomplish the following:***

- (a) *To improve the existing system of electronic reporting and extend its usage to more candidates;*
- (b) *To allow concerned persons easy, convenient, and timely access to campaign finance reports submitted to the state;*
- (c) *To ease the burden on candidates and committees of tabulating, filing, and maintaining public records of financial activity;*
- (d) *To strengthen both the disclosure and enforcement capabilities of the Registry of Election Finance;*
- (e) *To cooperate in the standardization of reporting formats among states so that interstate as well as intrastate sources of political money can be known;*
- (f) *To provide for a fully informed electorate; and*
- (g) *To help restore public trust in the governmental and electoral institutions of this state.*

Section 2. KRS 121.015 is amended to read as follows:

As used in this chapter:

- (1) "Registry" means the Kentucky Registry of Election Finance;
- (2) "Election" means any primary, runoff primary, regular, or special election to fill vacancies regardless of whether a candidate or slate of candidates is opposed or unopposed in an election. Each primary, runoff primary, regular, or special election shall be considered a separate election;
- (3) "Committee" includes the following:
  - (a) "Campaign committee," which means one (1) or more persons who receive contributions and make expenditures to support or oppose one (1) or more specific candidates or slates of candidates for nomination or election to any state, county, city, or district office, but does not include an entity established solely by a candidate which is managed solely by a candidate and a campaign treasurer and whose name is generic in nature, such as "Friends of (the candidate)," and does not reflect that other persons have structured themselves as a committee, designated officers of the committee, and assigned responsibilities and duties to each officer with the purpose of managing a campaign to support or oppose a candidate in an election;
  - (b) "Political issues committee," which means three (3) or more persons joining together to advocate or oppose a constitutional amendment or public question which appears on the ballot if that committee receives or expends money in excess of one thousand dollars (\$1,000);
  - (c) "Permanent committee," which means a group of individuals, including an association, committee or organization, other than a campaign committee, political issues committee, inaugural committee, or party executive committee, which is established as, or intended to be, a permanent organization having as a primary purpose expressly advocating the election or defeat of one (1) or more clearly identified candidates, slates of candidates, or political parties, which functions on a regular basis throughout the year;
  - (d) An executive committee of a political party; and
  - (e) "Inaugural committee," which means one (1) or more persons who receive contributions and make expenditures in support of inauguration activities for any candidate or slate of candidates elected to any state, county, city, or district office;
- (4) "Contributing organization" means a group which merely contributes to candidates, campaign committees, or executive committees from time to time from funds derived solely from within the group, and which does not solicit or receive funds from sources outside the group itself. However, any contributions made by the groups in excess of one hundred dollars (\$100) shall be reported to the registry;
- (5) "Testimonial affair" means an affair held in honor of a person who holds or who is or was a candidate for nomination or election to a political office in this state designed to raise funds for any purpose not charitable, religious, or educational;
- (6) "Contribution" means any:
  - (a) Payment, distribution, loan, deposit, or gift of money or other thing of value, to a candidate, his agent, a slate of candidates, its authorized agent, a committee, or contributing organization. As used in this

subsection, "loan" shall include a guarantee, endorsement, or other form of security where the risk of nonpayment rests with the surety, guarantor, or endorser, as well as with a committee, contributing organization, candidate, slate of candidates, or other primary obligor. No person shall become liable as surety, endorser, or guarantor for any sum in any one (1) election which, when combined with all other contributions the individual makes to a candidate, his agent, a slate of candidates, its agent, a committee, or a contributing organization, exceeds the contribution limits provided in KRS 121A.050 or KRS 121.150;

- (b) Payment by any person other than the candidate, his authorized treasurer, a slate of candidates, its authorized treasurer, a committee, or a contributing organization, of compensation for the personal services of another person which are rendered to a candidate, slate of candidates, committee, or contributing organization, or for inauguration activities;
  - (c) Goods, advertising, or services with a value of more than one hundred dollars (\$100) in the aggregate in any one (1) election which are furnished to a candidate, slate of candidates, committee, or contributing organization or for inauguration activities without charge, or at a rate which is less than the rate normally charged for the goods or services; or
  - (d) Payment by any person other than a candidate, his authorized treasurer, a slate of candidates, its authorized treasurer, a committee, or contributing organization for any goods or services with a value of more than one hundred dollars (\$100) in the aggregate in any one (1) election which are utilized by a candidate, slate of candidates, committee, or contributing organization, or for inauguration activities;
- (7) Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include:
- (a) Services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, committee, or contributing organization;
  - (b) A loan of money by any financial institution doing business in Kentucky made in accordance with applicable banking laws and regulations and in the ordinary course of business; or
  - (c) An independent expenditure by any individual or permanent committee;
- (8) "Candidate" means any person who has received contributions or made expenditures, has appointed a campaign treasurer, or has given his consent for any other person to receive contributions or make expenditures with a view to bringing about his nomination or election to public office, except federal office;
- (9) "Slate of candidates" means any two (2) persons who have filed a joint notification and declaration pursuant to KRS 118.127, received contributions or made expenditures, appointed a campaign treasurer, designated a campaign depository, or given their consent for any other person to receive contributions or make expenditures with a view to bringing about their nomination for election to the offices of Governor and Lieutenant Governor. Unless the context requires otherwise, any provision of law that applies to a candidate shall also apply to a slate of candidates;
- (10) "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists;
- (11) "Fundraiser" means an individual who directly solicits and secures contributions on behalf of a candidate or slate of candidates for a statewide-elected state office or an office in a jurisdiction with a population in excess of two hundred thousand (200,000) residents;~~and~~
- (12) "Independent expenditure" means the expenditure of money or other things of value for a communication which expressly advocates the election or defeat of a clearly identified candidate or slate of candidates, and which is made without any coordination, consultation, or cooperation with any candidate, slate of candidates, campaign committee, or any authorized person acting on behalf of any of them, and which is not made in concert with, or at the request or suggestion of any candidate, slate of candidates, campaign committee, or any authorized person acting on behalf of any of them;
- (13) *"Electronic reporting" means the use of technology, having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities, by which an individual or other entity submits, compiles, or transmits campaign finance reports to the registry, or by which the registry receives, stores, analyzes, or discloses the reports;*

- (14) *"Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures;*
- (15) *"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record;*
- (16) *"Filer" means any candidate, committee, or other individual or entity required to submit financial disclosure reports to the registry; and*
- (17) *"Filer-side software" means software provided to or used by the filer that enables transmittal of financial reports to the registry.*

Section 3. KRS 121.120 is amended to read as follows:

- (1) The registry may:
  - (a) Require by special or general orders, any person to submit, under oath, any written reports and answers to questions as the registry may prescribe;
  - (b) Administer oaths or affirmations;
  - (c) Require by subpoena, signed by the chairman, the attendance and testimony of witnesses and the production of all documentary evidence, excluding individual and business income tax records, relating to the execution of its duties;
  - (d) In any proceeding or investigation, to order testimony to be taken by deposition before any person who is designated by the registry and has the power to administer oaths and, in those instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (c);
  - (e) Initiate, through civil actions for injunctive, declaratory, or other appropriate relief, defend, or appeal any civil action in the name of the registry to enforce the provisions of this chapter through its legal counsel;
  - (f) Render advisory opinions under KRS 121.135;
  - (g) Promulgate administrative regulations necessary to carry out the provisions of this chapter;
  - (h) Conduct investigations and hearings expeditiously, to encourage voluntary compliance, and report apparent campaign finance law violations to the appropriate law enforcement authorities;
  - (i) Petition any court of competent jurisdiction to issue an order requiring compliance with an order or subpoena issued by the registry. Any failure to obey the order of the court may be punished by the court as contempt; and
  - (j) Conduct random audits of receipts and expenditures of committees which have filed registration papers with the registry pursuant to KRS 121.170.
- (2) No person shall be subject to civil liability to any person other than the registry or the Commonwealth for disclosing information at the request of the registry.
- (3) The registry may appoint a full-time executive director, legal counsel, and an accountant for auditing purposes, all of whom shall serve at the pleasure of the registry. The registry may also appoint such other employees as are necessary to carry out the purposes of this chapter. All requests for personnel appointments shall be forwarded by the registry directly to the secretary of the Personnel Cabinet and shall be subject to his review and certification only.
- (4) The registry shall adopt official forms and perform other duties necessary to implement the provisions of this chapter and KRS Chapter 121A. The registry shall not require the listing of a person's Social Security number on any form developed by the registry. Without limiting the generality of the foregoing, the registry shall:
  - (a) Develop prescribed forms for the making of the required reports;
  - (b) Prepare and publish a manual for all candidates, slates of candidates, and committees, describing the requirements of the law, including uniform methods of bookkeeping and reporting, requirements as to reporting dates, and the length of time that candidates, slates of candidates, and committees are required to keep any records pursuant to the provisions of this chapter and KRS Chapter 121A;

- (c) Develop a filing, coding, and cross-indexing system;
  - (d) Make each report filed available for public inspection and copying during regular office hours at the expense of any person requesting copies of them;
  - (e) Preserve all reports for at least six (6) years from the date of receipt. Duly certified reports shall be admissible as evidence in any court in the Commonwealth;
  - (f) Prepare and make available for public inspection a summary of all reports grouped according to candidates, slates of candidates, committees, contributing organizations, parties, and exploratory committees as defined in KRS 121A.010(9)(e) containing the total receipts and expenditures; and
    - 1. For each contribution made by a permanent committee of any amount to a candidate, slate of candidates, or exploratory committee, the date, name, and business address of the permanent committee, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;
    - 2. For each contribution in excess of one hundred dollars (\$100) made to a candidate or slate of candidates for a statewide-elected state office, to a campaign committee for a candidate or slate of candidates for a statewide-elected state office, or to an exploratory committee, the date, name, address, occupation, and employer of each contributor and the spouse of the contributor or, if the contributor or spouse of the contributor is self-employed, the name under which he is doing business, and the amount contributed by each contributor, listed alphabetically; and
    - 3. For each contribution in excess of one hundred dollars (\$100) made to any candidate or campaign committee other than those specified in subparagraph 2., the date, name, address, occupation, and employer of each other contributor or, if the contributor is self-employed, the name under which he is doing business, and the amount contributed by each contributor, listed alphabetically;
  - (g) Prepare and publish an annual report with cumulative compilations named in paragraph (f) of this subsection;
  - (h) Distribute upon request, for a nominal fee, copies of all summaries and reports;
  - (i) Determine whether the required reports have been filed and if so, whether they conform with the requirements of this chapter and KRS Chapter 121A; give notice to delinquents to correct or explain defections; issue an order, if appropriate, as provided in KRS 121.140; and make public the fact that a violation has occurred and the nature thereof;
  - (j) Conduct random audits of receipts and expenditures of candidates running for city, county, urban-county government, charter county government, and district offices. When the registry audits the records of any selected candidate, it shall also audit the records of all other candidates running for the same office in the selected city, county, urban-county government, charter county government, or district office;
  - (k) Conduct audits of receipts and expenditures of all candidates or slates of candidates running for statewide office;
  - (l) Require that candidates and slates of candidates shall maintain their records for a period of six (6) years from the date of the regular election in their respective political races;
  - (m) Initiate investigations and make investigations with respect to reports upon complaint by any person and initiate proceedings on its own motion;
  - (n) Forward to the Attorney General or the appropriate Commonwealth's or county attorney any violations of this chapter and KRS Chapter 121A which may become the subject of civil or criminal prosecution; and
  - (o) Direct and administer the provisions of KRS Chapter 121A.
- (5) All policy and enforcement decisions concerning the regulation of campaign finance shall be the ultimate responsibility of the registry. No appointed or elected state officeholder or any other person shall, directly or indirectly, attempt to secure or create privileges, exemptions, or advantages for himself or others in derogation of the public interest at large in a manner that seeks to leave any registry member or employee charged with the enforcement of the campaign finance laws no alternative but to comply with the wishes of the officeholder or

person. Registry members and employees shall be free of obligation or the appearance of obligation to any interest other than the fair and efficient enforcement of the campaign finance laws and administrative regulations. It shall not be considered a violation of this subsection for an officeholder or other person to seek remedies in a court of law to any policy or enforcement decision he considers to be an abridgement of his legal rights.

(6) *If adequate and appropriate agency funds are available, the registry shall:*

- (a) *Develop or acquire a system for electronic reporting for use by individuals and entities required to file campaign finance reports with the registry under this chapter or KRS Chapter 121A. The registry shall promulgate administrative regulations under KRS Chapter 13A which provide for a nonproprietary standardized format or formats, using industry standards, for the transmission of data required under this chapter or KRS Chapter 121A;*
- (b) *Accept test files from software vendors and persons wishing to file reports electronically for the purpose of determining whether the file format complies with the nonproprietary standardized format developed under paragraph (a) of this subsection and is compatible with the registry's system for receiving the data;*
- (c) *Make all paper or electronic reports filed with the registry pertaining to candidates for the General Assembly and statewide office available on the Internet free of charge, in an easily understood format that allows the public to browse, search, and download the data contained in the reports by each of the reporting categories required by this chapter or KRS Chapter 121A, including, but not limited to:*
  - 1. *The name of each candidate or committee;*
  - 2. *The office sought by each candidate;*
  - 3. *The name of each contributor;*
  - 4. *The address of each contributor;*
  - 5. *The employer or business occupation of each contributor, or if the contributor is a permanent committee, a description of the major business, social, or political interest represented by the permanent committee;*
  - 6. *The date of each contribution; and*
  - 7. *The amount of each contribution.*
- (d) *Make all data specified in paragraph (c) of this subsection available on the Internet no later than ten (10) business days after its receipt by the registry. If a contribution or expenditure report is filed late with the registry, that data shall be made available on the Internet within twenty-four (24) hours of the registry's receipt of the data;*
- (e) *Make filer-side software available free of charge to all individuals or entities subject to the reporting requirements of this chapter or KRS Chapter 121A;*
- (f) *Establish a training program on the electronic reporting program and make it available free of charge to all individuals and entities subject to the reporting requirements of this chapter or KRS Chapter 121A; and*
- (g) *Maintain all campaign finance data pertaining to legislative and statewide candidates on-line for twenty (20) years after the date the report containing the data is filed, and then archive the data in a secure format.*

(7) *In conjunction with the program of electronic reporting set out in subsection (6) of this section, the registry may:*

- (a) *Develop or acquire a computer system that provides for on-line Internet submission of the reports required by this chapter or KRS Chapter 121A utilizing security procedures to ensure the integrity of the data transmitted; and*
- (b) *Provide procedures for verifying electronic signatures placed upon reports under this chapter or KRS Chapter 121A.*

Section 4. KRS 121.150 is amended to read as follows:

- (1) No contribution shall be made or received, directly or indirectly, other than an independent expenditure, to support inauguration activities or to support or defeat a candidate, slate of candidates, constitutional amendment, or public question which will appear on the ballot in an election, except through the duly appointed campaign manager, or campaign treasurer of the candidate, slate of candidates, or registered committee. Any person making an independent expenditure, shall report these expenditures when the expenditures by that person exceed five hundred dollars (\$500) in the aggregate in any one (1) election, on a form provided *or using a format approved* by the registry and shall sign a statement on the form, under penalty of perjury, that the expenditure was an actual independent expenditure and that there was no prior communication with the campaign on whose behalf it was made.
- (2) Except as provided in KRS 121.180(10), the solicitation from and contributions by campaign committees, political issues committees, permanent committees, and party executive committees to any religious, charitable, civic, eleemosynary, or other causes or organizations established primarily for the public good is expressly prohibited; except that it shall not be construed as a violation of this section for a candidate to contribute to religious, civic, or charitable groups.
- (3) No candidate, slate of candidates, committee, or contributing organization, nor anyone acting on their behalf, shall accept any anonymous contribution in excess of fifty dollars (\$50), and all anonymous contributions in excess of fifty dollars (\$50) shall be returned to the donor, if the donor can be determined. If no donor is found, the contribution shall escheat to the state and be transferred to the election campaign fund established by KRS 121A.020. No candidate, slate of candidates, committee, or contributing organization, nor anyone acting on their behalf shall accept anonymous contributions in excess of one thousand dollars (\$1,000) in the aggregate in any one (1) election. Anonymous contributions in excess of one thousand dollars (\$1,000) in the aggregate which are received in any one (1) election shall escheat to the state and be transferred to the election campaign fund established by KRS 121A.020.
- (4) No candidate, committee, or contributing organization, nor anyone on their behalf, shall accept a cash contribution in excess of fifty dollars (\$50) in the aggregate from each contributor in any one (1) election. No candidate, committee, or contributing organization, nor anyone on their behalf, shall accept a cashier's check or money order in excess of the maximum cash contribution limit unless the instrument clearly identifies both the payor and the payee. A contribution made by cashier's check or money order which identifies both the payor and payee shall be treated as a contribution made by check for purposes of the contribution limits contained in this section. No person shall make a cash contribution in excess of fifty dollars (\$50) in the aggregate in any one (1) election to a candidate, committee, or contributing organization, nor anyone on their behalf.
- (5) No candidate, slate of candidates, committee, contributing organization, nor anyone on their behalf, shall accept any contribution in excess of one hundred dollars (\$100) from any person who shall not become eighteen (18) years of age on or before the day of the next general election.
- (6) No candidate, campaign committee, political issues committee, nor anyone acting on their behalf, shall accept a contribution of more than one thousand dollars (\$1,000) from any person, permanent committee, or contributing organization in any one (1) election; except that no candidate for school board, his campaign committee, nor anyone acting on their behalf shall accept a contribution of more than one hundred dollars (\$100) from any person or more than two hundred dollars (\$200) from any permanent committee or contributing organization in any one (1) election. No person, permanent committee, or contributing organization shall contribute more than one thousand dollars (\$1,000) to any one (1) candidate, campaign committee, political issues committee, nor anyone acting on their behalf, in any one (1) election; except that no person shall contribute more than one hundred dollars (\$100) and no permanent committee or contributing organization shall contribute more than two hundred dollars (\$200) to any one (1) school board candidate, his campaign committee, nor anyone acting on their behalf, in any one (1) election. Limits on contributions for slates of candidates for Governor and Lieutenant Governor which may be made or received in any one (1) election shall be governed by the provisions of KRS 121A.050.
- (7) Permanent committees or contributing organizations affiliated by bylaw structure or by registration, as determined by the Registry of Election Finance, shall be considered as one (1) committee for purposes of applying the contribution limits of subsection (6) of this section.
- (8) No permanent committee shall contribute funds to another permanent committee for the purpose of circumventing contribution limits of subsection (6) of this section.
- (9) No person shall contribute funds to a permanent committee, political issues committee, or contributing organization for the purpose of circumventing the contribution limits of subsection (6) of this section.

- (10) No person shall contribute more than one thousand five hundred dollars (\$1,500) to all permanent committees and contributing organizations in any one (1) year.
- (11) No person shall contribute more than two thousand five hundred dollars (\$2,500) to the state executive committee of a political party and its subdivisions and affiliates in any one (1) year. Contributions a person makes to a political party in excess of one thousand dollars (\$1,000) in any one (1) year shall be deposited in a separate account which the state executive committee maintains for the exclusive purpose of paying administrative costs incurred by the political party.
- (12) No person shall make a payment, distribution, loan, advance, deposit, or gift of money to another person to contribute to a candidate, committee, contributing organization, or anyone on their behalf. No candidate, committee, contributing organization, nor anyone on their behalf shall accept a contribution made by one (1) person who has received a payment, distribution, loan, advance, deposit, or gift of money from another person to contribute to a candidate, committee, contributing organization, or anyone on their behalf.
- (13) No candidates running as a slate for the offices of Governor and Lieutenant Governor shall make combined total personal loans to their committee in excess of fifty thousand dollars (\$50,000) in any one (1) election. No candidate for any other statewide elected state office shall lend to his committee any amount in excess of twenty-five thousand dollars (\$25,000) in any one (1) election. In campaigning for all other offices, no candidate shall lend to his committee more than ten thousand dollars (\$10,000) in any one (1) election.
- (14) Subject to the provisions of subsection (20) of this section, no candidate or slate of candidates for nomination to any state, county, city, or district office, nor their campaign committees, nor anyone on their behalf, shall solicit or accept contributions for primary election expenses after the date of the primary. No person other than the candidate or slate of candidates shall contribute for primary election expenses after the date of the primary.
- (15) Subject to the provisions of subsection (20) of this section, no slate of candidates for nomination for election to the offices of Governor and Lieutenant Governor, nor its campaign committees, nor anyone on their behalf, shall solicit or accept contributions for runoff primary election expenses after the date of the runoff primary. No person other than the slated candidates shall contribute for runoff primary election expenses after the date of the runoff primary.
- (16) Subject to the provisions of subsection (20) of this section, no candidate or slate of candidates for any state, county, city, or district office at a regular election, nor their campaign committees, nor anyone on their behalf, shall solicit or accept contributions for regular election expenses after the date of the regular election. No person other than the candidate or slate of candidates shall contribute for regular election expenses after the date of the regular election.
- (17) Subject to the provisions of subsection (20) of this section, no candidate or slate of candidates for nomination or election to any state, county, city, or district office, nor their campaign committees, nor anyone on their behalf, shall solicit or accept contributions for special election expenses after the date of the special election. No person other than the candidate or slate of candidates shall contribute for special election expenses after the date of the special election.
- (18) Nothing in subsections (14) to (17) of this section shall be deemed to prohibit a slate of candidates from receiving transfers from the election campaign fund established by KRS 121A.020 for which it is eligible for matches of qualifying contributions received prior to the date of the election but for which no transfer from the fund had been made prior to the date of the election.
- (19) The provisions of subsections (14) and (16) of this section shall apply only to those candidates in a primary or regular election which shall be conducted subsequent to January 1, 1989. The provisions of subsections (15) and (17) of this section shall apply only to those candidates or slates of candidates in a runoff primary or special election which shall be conducted subsequent to January 1, 1993.
- (20) A candidate, slate of candidates, or a campaign committee may solicit and accept contributions after the date of a primary election, runoff primary election, regular election, or special election to defray necessary expenses that arise after the date of the election associated with election contests, recounts, and recanvasses of a specific election, complaints regarding alleged campaign finance violations that are filed with the registry pertaining to a specific election, or other legal actions pertaining to a specific election to which a candidate, slate of candidates, or campaign committee is a party. Reports of contributions received and expenditures made after the date of the specific election shall be made in accordance with KRS 121.180.



- (21) No slate of candidates for Governor and Lieutenant Governor or their immediate families shall loan any money, service, or other thing of value to their campaign, and all moneys, services, or other things of value which are loaned shall be deemed a contribution, which may not be recovered by the slate of candidates, except to the extent of a combined total of fifty thousand dollars (\$50,000).
- (22) No candidate, slate of candidates, committee, except a political issues committee, or contributing organization, nor anyone on their behalf, shall knowingly accept a contribution from a corporation, directly or indirectly.
- (23) Nothing in this section shall be construed to restrict the ability of a corporation to administer its permanent committee insofar as its actions can be deemed not to influence an election as prohibited by KRS 121.025.
- (24) In addition to the prohibitions set forth in this section, no slate of candidates shall accept any contribution during the twenty-eight (28) days immediately preceding a primary or regular election except as provided in KRS 121A.030(5).
- (25) No candidate, slate of candidates, or committee, nor anyone on their behalf, shall solicit a contribution of money or services from a state employee, whether or not the employee is covered by the classified service provisions of KRS Chapter 18A. However, it shall not be a violation of this subsection for a state employee to receive a solicitation directed to him as a registered voter in an identified precinct as part of an overall plan to contact voters not identified as state employees.
- (26)
  - (a) A candidate for elective public office, except slates of candidates for Governor and Lieutenant Governor, shall not accept contributions from permanent committees which, in the aggregate, exceed fifty percent (50%) of the total contributions accepted by the candidate in any one (1) election or ten thousand dollars (\$10,000) in any one (1) election, whichever is the greater amount. The percentage of the total contributions or dollar amounts of contributions accepted by a candidate in an election that is accepted from permanent committees shall be calculated as of the day of each election. Funds in a candidate's campaign account which are carried forward from one (1) election to another shall not be considered in calculating the acceptable percentage or dollar amount of contributions which may be accepted from permanent committees for the election for which the funds are carried forward. A candidate may, without penalty, contribute funds to his campaign account not later than sixty (60) days following the election so as not to exceed the permitted percentage or dollar amount of contributions which may be accepted from permanent committees or the candidate may, not later than sixty (60) days after the end of the election, refund any excess permanent committee contributions on a pro rata basis to the permanent committees whose contributions are accepted after the aggregate limit has been reached.
  - (b) The provisions of paragraph (a) of this subsection regarding the receipt of aggregate contributions from permanent committees in any one (1) election shall also apply separately to the receipt of aggregate contributions from executive committees of any county, district, state, or federal political party in any one (1) election.
- (27) No candidate or slate of candidates for any office in this state shall accept a contribution, including an in-kind contribution, which is made from funds in a federal campaign account. No person shall make a contribution, including an in-kind contribution, from funds in a federal campaign account to any candidate or slate of candidates for any office in this state.

Section 5. KRS 121.180 is amended to read as follows:

- (1)
  - (a) Any candidate, slate of candidates, or political issues committee shall be exempt from filing any preelection finance reports required by subsection (3) of this section or KRS 121A.020(5), whichever is applicable, if the candidate, slate of candidates, or political issues committee chairman files a form prescribed and furnished by the registry stating that contributions will not be accepted or expended in excess of three thousand dollars (\$3,000) in any one (1) election to further the candidacy or to support or oppose a constitutional amendment or public question which will appear on the ballot. For a candidate for judicial office who desires to be exempt from filing preelection campaign finance reports as provided in this paragraph, the request for exemption shall be filed by the campaign treasurer of the candidate's campaign committee, but the candidate shall be personally liable for any violation if the campaign treasurer accepts contributions or makes expenditures in excess of the limit and shall be subject to the same penalties as a candidate as provided in subparagraph (1)1. or 2. of this subsection. A separate form shall be required for each primary, runoff primary, regular, or special election in which the candidate or slate of candidates participates or in which the public question appears on the ballot, unless the candidate, slate of candidates, or political issues committee chairman indicates on a request

for exemption that the request will be applicable to more than one (1) election. The form shall be filed with the same office with which a candidate or slate of candidates files nomination papers or, in the case of a political issues committee, with the registry.

- (b) Any candidate, slate of candidates, or political issues committee shall be exempt from filing any campaign finance reports required by subsections (3) and (4) of this section or KRS 121A.020(5), whichever is applicable, if the candidate, slate of candidates, or political issues committee chairman files a form prescribed and furnished by the registry stating that currently no contributions have been received and that contributions will not be accepted or expended in excess of one thousand dollars (\$1,000) in any one (1) election. For a candidate for judicial office who desires to be exempt from filing any campaign finance reports as provided in this paragraph, the request for exemption shall be filed by the campaign treasurer of the candidate's campaign committee, but the candidate shall be personally liable for any violation if the campaign treasurer accepts contributions or makes expenditures in excess of the limit and shall be subject to the same penalties as a candidate as provided in subparagraph (1)1. or 2. of this subsection. A separate form shall be required for each primary, runoff primary, regular, or special election in which the candidate or slate of candidates participates or in which the public question appears on the ballot, unless the candidate, slate of candidates, or political issues committee chairman indicates on a request for exemption that the request will be applicable to more than one (1) election. The form shall be filed with the same office with which a candidate or slate of candidates files nomination papers or, in the case of a political issues committee, with the registry.
- (c) For a primary election, a candidate or slate of candidates shall file a request for exemption not later than the deadline for filing nomination papers and, except as provided in subparagraph 2. of paragraph (d) of this subsection, shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the filing deadline. For a runoff primary election, a slate of candidates shall file its request for exemption not later than five (5) days after the date of the preceding primary election and shall be bound by its terms unless rescinded in writing not later than ten (10) days after the date of the preceding primary election. For a regular election, a candidate or slate of candidates shall file or rescind in writing a request for exemption not later than twenty-five (25) days after the date of the preceding primary election, or runoff primary, if one is held, except as provided in subparagraph 2. of paragraph (d) of this subsection. For a special election, a candidate or slate of candidates shall file a request for exemption not later than ten (10) days after the candidate or slate of candidates is nominated for a special election and shall be bound by its terms unless it is rescinded in writing not later than twenty-five (25) days after the date on which the nomination for a special election is made. A political issues committee chairman shall file a request for exemption not later than ten (10) days after the date on which the committee registers with the registry and shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the date on which the request for exemption is filed.
- (d)
  - 1. A candidate or slate of candidates that revokes a request for exemption in a timely manner may exercise the remaining option or may file all reports required of a candidate intending to raise or spend in excess of three thousand dollars (\$3,000) in an election. If a candidate or slate of candidates elects to exercise a different option, the candidate or slate of candidates shall file the appropriate form with the officer who received the filing papers of the candidate or slate of candidates not later than the deadline for filing a revocation.
  - 2. A candidate for any city or county office or for any school board office, who is exempted from some or all campaign finance reporting requirements pursuant to paragraph (a) or (b) of this subsection but who accepts contributions or makes expenditures in excess of the exempted amount in an election, shall file all applicable reports required for the remainder of that election, based upon the amount of contributions or expenditures the candidate accepts or receives in that election. The filing of applicable required reports by a candidate after the exempted amount is exceeded shall serve as notice to the registry that the initial exemption has been rescinded. No further notice to the registry shall be required and no penalty for exceeding the initial exempted amount shall be imposed against the candidate, except for failure to file applicable reports required after the exempted amount is exceeded.
- (e) Any candidate or slate of candidates that is subject to an August filing deadline and that intends to execute a request for exemption shall file the appropriate request for exemption not later than the filing deadline and, except as provided in subparagraph 2. of paragraph (d) of this subsection, shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the filing deadline. A

candidate or slate of candidates that is covered by this paragraph shall have the same reversion rights as those provided in subparagraph 1. of paragraph (d) of this subsection.

- (f) Any candidate or slate of candidates that will appear on the ballot in a regular election that has signed either request for exemption for that election may exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection if a candidate or slate of candidates that is subject to an August filing deadline subsequently files in opposition to the candidate or slate of candidates. Except as provided in subparagraph 2. of paragraph (d) of this subsection, a candidate or slate of candidates covered by this paragraph shall comply with the deadline for rescission provided in subparagraph 1. of paragraph (d) of this subsection.
- (g) Except as provided in subparagraph 2. of paragraph (d) of this subsection, any candidate or slate of candidates that has filed a request for exemption for a regular election that later is opposed by a person who has filed a declaration of intent to receive write-in votes may rescind the request for exemption and exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection.
- (h) Any candidate or slate of candidates that has filed a request for exemption may petition the registry to determine whether another person is campaigning as a write-in candidate prior to having filed a declaration of intent to receive write-in votes, and, if the registry determines upon a preponderance of the evidence that a person who may later be a write-in candidate is conducting a campaign, the candidate or slate of candidates, except as provided in subparagraph 2. of paragraph (d) of this subsection, may petition the registry to permit the candidate or slate of candidates to exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection.
- (i) If the opponent of a candidate or slate of candidates is replaced due to his withdrawal because of death, disability, or disqualification, the candidate or slate of candidates, except as provided in subparagraph 2. of paragraph (d) of this subsection, may exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection not later than fifteen (15) days after the party executive committee nominates a replacement for the withdrawn candidate or slate of candidates.
- (j) A person intending to be a write-in candidate for any office in a regular or special election may execute a request for exemption under paragraph (a) or (b) of this subsection and shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the filing deadline for the regular or special election. A person intending to be a write-in candidate who revokes a request for exemption in a timely manner may exercise the remaining exemption option or may file all reports required of a candidate intending to raise or spend in excess of three thousand dollars (\$3,000) in an election. Except as provided in subparagraph 2. of paragraph (d) of this subsection, a person intending to be a write-in candidate who elects to exercise a different exemption option shall file the appropriate form with the officer who received the initial request for exemption not later than fifteen (15) days after the filing deadline for the regular or special election.
- (k) Except as provided in subparagraph 2. of paragraph (d) of this subsection, the campaign committee of any candidate or slate of candidates that has filed a request for exemption or a political issues committee whose chairman has filed a request for exemption shall be bound by its terms unless it is rescinded in a timely manner and no new request for exemption has been executed.
- (l)
  - 1. Except as provided in subparagraph 2. of paragraph (d) of this subsection, any candidate, slate of candidates, or political issues committee that is exempt from filing campaign finance reports pursuant to paragraph (a), (b), (e), or (j) of this subsection that accepts contributions or makes expenditures, or whose campaign treasurer accepts contributions or makes expenditures, in excess of the applicable limit in any one (1) election without rescinding the request for exemption in a timely manner shall comply with all applicable reporting requirements and, in lieu of other penalties prescribed by law, pay a fine of not more than five hundred dollars (\$500) plus the amount by which the spending limit was exceeded.
  - 2. Except as provided in subparagraph 2. of paragraph (d) of this subsection, a candidate, slate of candidates, campaign committee, or political issues committee that is exempt from filing campaign finance reports pursuant to paragraph (a), (b), (e), or (j) of this subsection that knowingly accepts contributions or makes expenditures in excess of the applicable spending limit in any one (1) election without rescinding the request for exemption in a timely manner shall comply with all applicable reporting requirements and shall be guilty of a Class D felony.

- (2) (a) State and county executive committees shall make a full report, upon a prescribed form, to the registry, of all money, loans, or other things of value, received from any source, and expenditures authorized, incurred, or made, since the date of the last report, including:
1. For each contribution of any amount made by a permanent committee, the name and business address of the permanent committee, the date of the contribution, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;
  2. For other contributions in excess of one hundred dollars (\$100), the full name, address, age if less than the legal voting age, the date of the contribution, the amount of the contribution, and the employer and occupation of each contributor. If the contributor is self-employed, the name under which he is doing business shall be listed;
  3. The total amount of cash contributions received during the reporting period; and
  4. A complete statement of expenditures authorized, incurred, or made. The complete statement of expenditures shall include the name and address of each person to whom an expenditure is made in excess of twenty-five dollars (\$25), and the amount, date, and purpose of each expenditure.
- (b) This report shall be in the hands of the registry or postmarked within five (5) days after the thirtieth day following the primary, runoff primary if slates of candidates of that party participate, and regular elections. If an individual gives a reportable contribution to a state or county executive committee with the intention that the contribution or a portion of the contribution go to a candidate or slate of candidates, the name of the contributor and the sum shall be indicated on the committee report. The receipts and expenditures of funds remitted to each political party under KRS 141.071 to 141.073 shall be separately accounted for and reported to the registry in the manner required by KRS 121.230. The separate report may be made a separate section within the report required, by this subsection, to be in the hands of the registry or postmarked within five (5) days after the thirtieth day following each regular election.
- (3) (a) Except for candidates or slates of candidates, campaign committees, or political issues committees exempted from reporting requirements pursuant to subsection (1) of this section, each campaign treasurer of a candidate, slate of candidates, campaign committee, or political issues committee who accepts contributions or expends, expects to accept contributions or expend, or contracts to expend more than three thousand dollars (\$3,000) in any one (1) election, and each fundraiser who secures contributions in excess of three thousand dollars (\$3,000) in any one (1) election, shall make a full report~~[, upon a prescribed form,]~~ to the registry, ***on a form provided or using a format approved by the registry***, of all money, loans, or other things of value, received from any source, and expenditures authorized, incurred, and made, since the date of the last report, including:
1. For each contribution of any amount made by a permanent committee, the name and business address of the permanent committee, the date of the contribution, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;
  2. For each contribution in excess of one hundred dollars (\$100) made to a candidate or slate of candidates for a statewide-elected state office, or to a campaign committee for a candidate or slate of candidates for a statewide-elected state office, the date, name, address, occupation, and employer of each contributor and the spouse of the contributor or, if the contributor or spouse of the contributor is self-employed, the name under which he is doing business, and the amount contributed by each contributor; and
  3. For each contribution in excess of one hundred dollars (\$100) made to any candidate or campaign committee other than those specified in subparagraph 2. or a political issues committee, the full name, address, age if less than the legal voting age, the date of the contribution, the amount of the contribution, and the employer and occupation of each other contributor. If the contributor is self-employed, the name under which he is doing business shall be listed;
  4. The total amount of cash contributions received during the reporting period; and

5. A complete statement of all expenditures authorized, incurred, or made. The complete statement of expenditures shall include the name, address, and occupation of each person to whom an expenditure is made in excess of twenty-five dollars (\$25), and the amount, date, and purpose of each expenditure.
- (b) Reports of all candidates, campaign committees, political issues committees, and registered fundraisers shall be made as follows:
  1. Candidates as defined in KRS 121.015(8), campaign committees, political issues committees, and fundraisers which register in the year before the year an election in which the candidate or public question shall appear on the ballot, shall file financial reports with the registry at the end of the first calendar quarter after the person becomes a candidate or following registration of the committee or fundraiser, and each calendar quarter thereafter, ending with the last calendar quarter of that year. Candidates, committees, and registered fundraisers shall make all reports required by this section during the year in which the election takes place;
  2. All candidates, campaign committees, political issues committees, and registered fundraisers shall make reports on the thirty-second day preceding an election, including all previous contributions and expenditures;
  3. All candidates, campaign committees, political issues committees, and registered fundraisers shall make reports on the fifteenth day preceding the date of the election; and
  4. All reports to the registry shall be **received by** ~~in the hands of~~ the registry or postmarked within five (5) days after each filing deadline.
- (4) Except for candidates, slates of candidates, and political issues committees, exempted pursuant to subsection (1)(b) of this section, all candidates, regardless of funds received or expended, campaign committees, political issues committees, and registered fundraisers shall make post-election reports within thirty (30) days after the election.
- (5) In making the preceding reports, the total gross receipts from each of the following categories shall be listed: proceeds from the sale of tickets for events such as testimonial affairs, dinners, luncheons, rallies, and similar fundraising events, mass collections made at the events, and sales of items such as campaign pins, buttons, hats, ties, literature, and similar materials. When any individual purchase or the aggregate purchases of any item enumerated above from a candidate or slate of candidates for a statewide-elected state office or a campaign committee for a candidate or slate of candidates for a statewide-elected state office exceeds one hundred dollars (\$100), the purchaser shall be identified by name, address, age, if less than the legal voting age, occupation, and employer and the employer of the spouse of the purchaser or, if the purchaser or the spouse of the purchaser is self-employed, the name under which he is doing business, and the amount of the purchase. When any individual purchase or the aggregate purchases of any item enumerated above from any candidate or campaign committee other than a candidate or slate of candidates for a statewide-elected state office or campaign committee for a candidate or slate of candidates for a statewide-elected state office exceeds one hundred dollars (\$100), the purchaser shall be identified by name, address, age if less than the legal voting age, occupation, and employer, or if the purchaser is self-employed, the name under which he is doing business, and the amount of the purchase. The lists shall be maintained by the campaign treasurer, political issues committee treasurer, registered fundraiser, or other sponsor for inspection by the registry for six (6) years following the date of the election.
- (6) Each permanent committee, except a federally-registered out-of-state permanent committee, inaugural committee, or contributing organization shall make a full report~~[- upon a prescribed form,]~~ to the registry, **on a form provided or using a format approved by the registry**, of all money, loans, or other things of value, received by it from any source, and all expenditures authorized, incurred, or made, since the date of the last report, including:
  - (a) For each contribution of any amount made by a permanent committee, the name and business address of the permanent committee, the date of the contribution, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;
  - (b) For other contributions in excess of one hundred dollars (\$100), the full name, address, age if under the legal voting age, the date of the contribution, the amount of the contribution, and the employer and occupation of each contributor. If the contributor is self-employed, the name under which he is doing business shall be listed;

- (c) An aggregate amount of cash contributions, the amount contributed by each contributor, and the date of each contribution; and
  - (d) A complete statement of all expenditures authorized, incurred, or made, including independent expenditures. This report shall be made by a permanent committee, inaugural committee, or contributing organization to the registry on the last day of the first calendar quarter following the registration of the committee with the registry and on the last day of each succeeding calendar quarter until such time as the committee terminates. A contributing organization shall file a report of contributions received and expenditures ***on a form provided or using a format approved***~~made on forms prescribed~~ by the registry not later than the last day of each calendar quarter in which contributions are received or expenditures are made. All reports to the registry shall be postmarked or received not later than five (5) days after each filing deadline.
- (7) If the final statement of a candidate, campaign committee, or political issues committee shows an unexpended balance of contributions, continuing debts and obligations, or an expenditure deficit, the campaign treasurer shall file with the registry a supplemental statement of contributions and expenditures not more than thirty (30) days after the deadline for filing the final statement. Subsequent supplemental statements shall be filed annually, to be ***received by***~~in the hands of~~ the registry or postmarked not later than ten (10) days after November 1 of each year, until the account shows no unexpended balance, continuing debts and obligations, expenditures, or deficit, or until the year before the candidate seeks to appear on the ballot for the same office for which the funds in the campaign account were originally contributed, in which case the candidate shall file the supplemental annual report not later than ten (10) days after November 1 of that year or at the end of the first calendar quarter of that year after the candidate files his nomination papers for the next year's primary or regular election. All contributions shall be subject to KRS 121.150.
- (8) All reports filed under the provisions of this chapter shall be a matter of public record open to inspection by any member of the public immediately upon receipt of the report by the registry. A duplicate ***paper*** copy of each report filed ***either on paper or electronically*** with the registry shall be filed by the candidate, slate of candidates, or committee with the county clerk in the county in which the candidate or persons running as a slate of candidates reside at the same time. County clerks shall maintain these reports for public inspection for a period of one (1) year from the date the last report is required to be filed.
- (9) A candidate or slate of candidates is relieved of the duty personally to file reports and keep records of receipts and expenditures if the candidate or slate states in writing or on forms provided by the registry that:
- (a) Within five (5) business days after personally receiving any contributions, the candidate or slate of candidates shall surrender possession of the contributions to the treasurer of their principal campaign committee without expending any of the proceeds thereof. No contributions shall be commingled with the candidate's or slated candidates' personal funds or accounts. Contributions received by check, money order, or other written instrument shall be endorsed directly to the campaign committee and shall not be cashed or redeemed by the candidate;
  - (b) The candidate or slate of candidates shall not make any unreimbursed expenditure for the campaign, except that this paragraph does not preclude a candidate or slate from making an expenditure from personal funds to the designated principal campaign committee, which shall be reported by the committee as a contribution received; and
  - (c) The waiver shall continue in effect as long as the candidate or slate of candidates complies with the conditions under which it was granted.
- (10) No candidate, slate of candidates, campaign committee, political issues committee, or contributing organization shall use or permit the use of contributions or funds solicited or received for the person or in support of or opposition to a public issue which will appear on the ballot to further the candidacy of the person for a different public office, to support or oppose a different public issue, or to further the candidacy of any other person for public office; except that nothing in this subsection shall be deemed to prohibit a candidate or slate of candidates from using funds in the campaign account to purchase admission tickets for any fundraising event or testimonial affair for another candidate or slate of candidates if the amount of the purchase does not exceed one hundred dollars (\$100) per event or affair. Any funds or contributions solicited or received by or on behalf of a candidate, slate of candidates, or any committee, which has been organized in whole or in part to further any candidacy for the same person or to support or oppose the same public issue, shall be deemed to have been solicited or received for the current candidacy or for the election on the public issue if the funds or contributions are solicited or received at any time prior to the regular election for which the candidate, slate of

candidates, or public issue is on the ballot. Except as provided in KRS 121A.080(6), any unexpended balance of funds not otherwise obligated for the payment of expenses incurred to further a political issue or the candidacy of a person shall, in whole or in part, at the election of the candidate or committee, escheat to the State Treasury, be returned pro rata to all contributors, or, in the case of a partisan candidate, be transferred to the state or county executive committee of the political party of which the candidate is a member except that a candidate, committee, or an official may retain the funds to further the same public issue or to seek election to the same office or may donate the funds to any charitable, nonprofit, or educational institution recognized under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and any successor thereto.

- (11) (a) Any publisher of newspapers or magazines, owner or lessor of billboards, or any other person, company, corporation, or business organization offering its communications or advertising services for hire to the public who receives funds for the purchase of advertising services or material, shall file with the registry a copy of the material or communication purchased which supports or opposes any slate of candidates or committee; a copy of the receipt for the funds paid; the name and address of each purchaser; and the source of the funds for the purchase if different than the purchaser.
- (b) A radio or television station or network that receives funds for the purchase of advertising services or material that supports or opposes a slate of candidates or committee shall file with the registry a copy of the documentation of paid political campaign advertisements that is required to be maintained by the Federal Communications Commission, along with a cover letter from the manager of the station or network or the manager's designee.
- (c) All information required to be reported by paragraphs (a) and (b) of this subsection shall be in the hands of the registry or postmarked not later than the thirtieth day following the primary, runoff primary, and regular elections that are held subsequent to the date that the broadcasting or printing of the advertisement occurs.
- (d) The provisions of this subsection shall apply only to purchases of advertising services or material to support or oppose a slate of candidates for election to the offices of Governor and Lieutenant Governor.
- (e) Notwithstanding KRS 121.990 and KRS 121A.990, penalties for violation of this subsection shall be assessed in accordance with the provisions of KRS 121.140(2).
- (12) (a) *For the purposes of this subsection, "election cycle," as applied to contributions, expenditures, or loans to support or oppose a candidate for a particular office, means the period of time beginning January 1 following a regular election for the office and ending December 31 following the next regular election for that office.*
- (b) *For the purpose of this subsection, "election cycle," as applied to contributions, expenditures, or loans to support or oppose a constitutional amendment or public question which appears on the ballot, means the period of time beginning January 1 following a regular election for any state legislative office and ending December 31 following the next regular election for any state legislative office.*
- (c) *If adequate and appropriate agency funds are available to implement this subsection, beginning on January 1, 2002, the option of electronic reporting shall be made available by the registry for all of the following:*
  - 1. *Candidates for statewide office and slates of candidates that during the election cycle receive contributions or loans in the aggregate of twenty-five thousand dollars (\$25,000) or more, or at any time have a balance in a campaign account or accounts in the aggregate of twenty-five thousand dollars (\$25,000) or more;*
  - 2. *Candidates for the General Assembly that during the election cycle receive contributions or loans in the aggregate of twelve thousand five hundred dollars (\$12,500), or at any time have a balance in an aggregate of twelve thousand five hundred dollars (\$12,500) or more; and*
  - 3. *Campaign committees, political issues committees, permanent committees, registered fundraisers, contributing organizations, and individuals and entities making independent expenditures that during the election cycle receive contributions or loans in an aggregate of twenty-five thousand dollars (\$25,000) or more, make expenditures in an aggregate of twenty-*

*five thousand dollars (\$25,000) or more, or at any time have a balance in an aggregate of twenty-five thousand dollars (\$25,000) or more.*

- (13) *Filers specified in subsection (12) of this section shall also continue to file required campaign finance reports in paper format until the registry deems it is no longer necessary. The paper copy shall continue to be the official version for audit and other legal purposes.*
- (14) *Filers not required to file reports electronically, as set forth in this section, are strongly encouraged to do so voluntarily.*
- (15) *The date that an electronic or on-line report shall be deemed to have been filed with the registry shall be the date on which it is received by the registry.*
- (16) *All electronic or on-line filers shall affirm, under penalty of perjury, that the report filed with the registry is complete and accurate.*
- (17) *Filers who submit computer disks which are not readable, cannot be copied, or are not accompanied by any requisite paper copy shall be deemed to not be in compliance with the requirements set forth in this section.*
- (18) *No candidate is obligated to file any reports electronically.*

Approved April 10, 2000

## CHAPTER 399

(SB 70)

AN ACT proposing an amendment to Sections 201, 209, and 218 of the Constitution of Kentucky relating to abolition of the Railroad Commission.

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

Section 1. It is proposed that Section 201 of the Constitution of Kentucky be amended to read as follows:

No railroad, telegraph, telephone, bridge or common carrier company shall consolidate its capital stock, franchises or property, or pool its earnings, in whole or in part, with any other railroad, telegraph, telephone, bridge or common carrier company owning a parallel or competing line or structure, or acquire by purchase, lease or otherwise, any parallel or competing line or structure, or operate the same; nor shall any railroad company or other common carrier combine or make any contract with the owners of any vessel that leaves or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying: Provided, however, That telephone companies may acquire by purchase or lease, or otherwise, and operate, parallel or competing exchanges, lines and structures, and the property of other telephone companies, if the ~~Railroad Commission or such other~~ state ~~agency~~~~commission~~ as may have jurisdiction over such matters shall first consent thereto, and if, further, each municipality wherein such property or any part thereof is located shall also first consent thereto as to the property within its limits, but under any such acquisition and operation toll line connections with the property so acquired shall be continued and maintained under an agreement between the purchasing company and the toll line companies then furnishing such service, and in the event they are unable to agree as to the terms of such an agreement the ~~Railroad Commission or such other~~ state ~~agency~~~~commission~~ as may have jurisdiction over such matters, shall fix the term of such agreement.

Section 2. It is proposed that Section 218 of the Constitution of Kentucky be amended to read as follows:

It shall be unlawful for any person or corporation, owning or operating a railroad in this State, or any common carrier, to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of property of like kind, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier, or person or corporation, owning or operating a railroad in this State, to receive as great compensation for a shorter as for a longer distance: Provided, That upon application to the *state agency as may have jurisdiction over such matters*~~[Railroad Commission]~~, such common carrier, or person or corporation owning or operating a railroad in this State, may in special cases, after investigation by the *appropriate state agency*~~[commission]~~, be authorized to charge less for longer than for shorter distances for the transportation of passengers, or property; and the *appropriate state agency*~~[commission]~~ may, from time to time, prescribe the extent to which such common carrier, or person or corporation, owning or operating a railroad in this State, may be relieved from the operation of this section.



Section 3. It is proposed that the present Constitution of Kentucky be amended by repealing the following section.

209 Railroad Commission -- Election, term, and qualifications of Commissioners -- Commissioners' districts -  
- Powers and duties -- Removal -- Vacancies.

Section 4. It is further proposed as a part of this amendment and as a schedule of transitional provisions, for the purposes of this amendment, and any other provision of the Constitution of Kentucky notwithstanding, that:

- (1) Any Railroad Commissioner serving in office at the time of the ratification of this amendment shall continue in office until the expiration of his current term.
- (2) Upon the proposed amendment's approval by the voters of the Commonwealth, the statutory duties of the Railroad Commission shall continue in effect until the effective date of legislation enacted by the General Assembly to implement this amendment.

Section 5. This amendment shall be submitted to the voters of the Commonwealth for their ratification or rejection at the time and in the manner provided for under Sections 256 and 257 of the Constitution and under KRS 118.415.

**Governor's signature not required**

## CHAPTER 400

(SB 116)

AN ACT relating to victims of crime.

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

Section 1. KRS 196.280 is amended to read as follows:

- (1) (a) The Department of Corrections shall provide or contract with a private entity to provide to members of the public who have made a notification request, notification of the release of an incarcerated person from a *penitentiary, as defined in KRS 197.010*, juvenile detention facility, regional jail, or county jail. The *warden*, jailer, or chief administrator, or a person designated by the *warden*, jailer, or chief administrator, of a *penitentiary*, juvenile detention facility, regional jail, or county jail, shall make available to the Department of Corrections, or any private entity under contract with the Department of Corrections, the information necessary to implement this section in a timely manner *and before the release of any incarcerated person from the penitentiary, juvenile detention facility, regional jail, or county jail*. The Department of Corrections or the private entity under contract with the Department of Corrections shall be responsible for retrieving the information and notifying the requester in accordance with administrative regulations promulgated by the Department of Corrections.
- (b) *If an incarcerated person escapes from any penitentiary, juvenile detention facility, regional jail, or county jail, the warden, jailer, or chief administrator, or a person designated by the warden, jailer, or chief administrator, shall immediately provide the information necessary to implement this section.*
- (c) *If, upon a hearing, a court releases an incarcerated person and the incarcerated person does not return to the penitentiary, juvenile detention facility, regional jail, or county jail, the warden, jailer, or chief administrator, or a person designated by the warden, jailer, or chief administrator, shall provide the information necessary to implement this section as soon as practicable.*
- (2) The Department of Corrections shall promulgate administrative regulations for the implementation of this section.
- (3) Notwithstanding KRS 610.320 or 610.340, this section shall require the release of information relating to juveniles who have been charged with a felony offense pursuant to KRS Chapters 507, 508, 509, 510, or 515, or KRS 530.020, 530.064, or 531.310. The release of information shall be limited to the extent necessary to comply with the provisions of this section.

SECTION 2. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

*A civil action may be maintained under this section against any person who commits the conduct prohibited under KRS 508.140 or 508.150. A civil action may be maintained under this section whether or not the individual who is*

***alleged to have violated KRS 508.140 or 508.150 has been charged or convicted of the alleged crime. Liability under this section shall include the actual damages caused by the violation and may include punitive damages, court costs, and reasonable attorney's fees. An action under this section shall be brought within two (2) years of the last act of conduct in violation of this section.***

Section 3. KRS 431.064 is amended to read as follows:

- (1) In making a decision concerning pretrial release of a person who is arrested for a violation of KRS Chapters 508 or 510, or charged with a crime involving a violation of a protective order issued pursuant to KRS 403.740 or 403.750, the court or agency having authority to make a decision concerning pretrial release shall review the facts of the arrest and detention of the person and determine whether the person:
  - (a) Is a threat to the alleged victim or other family or household member; and
  - (b) Is reasonably likely to appear in court.
- (2) Before releasing a person arrested for or charged with a crime specified in subsection (1) of this section, the court shall make findings, on the record if possible, concerning the determination made in accordance with subsection (1), and may impose conditions of release or bail on the person to protect the alleged victim of domestic violence or abuse and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:
  - (a) An order enjoining the person from threatening to commit or committing acts of domestic violence or abuse against the alleged victim or other family or household member;
  - (b) An order prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly;
  - (c) An order directing the person to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be;
  - (d) An order prohibiting the person from using or possessing a firearm or other weapon specified by the court;
  - (e) An order prohibiting the person from possession or consumption of alcohol or controlled substances;
  - (f) Any other order required to protect the safety of the alleged victim and to ensure the appearance of the person in court; or
  - (g) Any combination of the orders set out in paragraphs (a) to (f).
- (3) If conditions of release are imposed, the court imposing the conditions on the arrested or charged person shall:
  - (a) Issue a written order for conditional release; and
  - (b) Immediately distribute a copy of the order to pretrial services.
- (4) The court shall provide a copy of the conditions to the arrested or charged person upon release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.
- (5) If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the court to review the conditions. Upon request, the court shall hold a prompt hearing to review the conditions.
- (6) The victim, as defined in KRS 421.500, of the defendant's alleged crime, or an individual designated by the victim in writing, shall be entitled to a free certified copy of the defendant's conditions of release, or modified conditions of release, upon request to the clerk of the court which issued the order releasing the defendant. The victim or the victim's designee may personally obtain the document at the clerk's office or may have it delivered by mail.
- (7) ***The circuit clerk, or the circuit clerk's designee, in cooperation with the court that issued the order releasing the defendant, shall cause the conditions of release to be entered into the computer system maintained by the clerk and the Administrative Office of the Courts within twenty-four (24) hours following its filing, excluding weekends and holidays. Any modification of the release conditions shall likewise be entered by the circuit clerk, or the circuit clerk's designee.***

- (8) *The information entered under this section shall be accessible to any agency designated by the Kentucky State Police as a terminal agency for the Law Information Network of Kentucky.*
- (9) *All orders issued under this section which require entry into the Law Information Network of Kentucky shall be entered on forms prescribed by the Administrative Office of the Courts. If the conditions of pre-trial release are contained in an order which is narrative in nature, the prescribed form shall be used in addition to the narrative order.*
- (10) Any person who violates any condition of an order issued pursuant to this section is guilty of a Class A misdemeanor.

Section 4. KRS 438.250 is amended to read as follows:

- (1) When a public servant, as defined in KRS 521.010, or victim of a crime is bitten by, suffers a puncture wound caused by, or is exposed to the blood or body fluids of a criminal defendant, inmate, parolee, or probationer or the blood or body fluids of a criminal defendant, inmate, parolee, or probationer have come into contact with the skin or unprotected clothing of a public servant during any incident in which the public servant and the criminal defendant, inmate, parolee, or probationer are involved, the criminal defendant, inmate, parolee, or probationer shall be ordered to submit to testing of the blood for human immunodeficiency virus (HIV), hepatitis A, B, and C, and tuberculosis.
- (2) The written results of the testing shall be made available to each public servant, ***victim of the crime***, criminal defendant, inmate, parolee, or probationer coming within the purview of subsection (1). However, the results shall not be public records and shall be disclosed to others only on a need-to-know basis. ***The victim of the crime shall receive written results as provided in KRS 510.320.***
- (3) If a criminal defendant, inmate, parolee, or probationer fails or refuses to be tested as ordered, he may be held in criminal contempt. A Circuit or District Judge shall compel the criminal defendant, inmate, parolee, or probationer to undergo the testing required herein if he fails or refuses to do so. Undergoing compulsory testing after a failure or refusal to be tested shall not relieve the criminal defendant, inmate, parolee, or probationer of the liability imposed by this subsection.
- (4) The costs of the testing shall be borne by the criminal defendant, inmate, parolee, or probationer unless he is determined unable to pay for the test by a court of competent jurisdiction for criminal defendants and probationers and by the Department of Corrections pursuant to their indigency standards for inmates and parolees, in which case the Commonwealth shall pay for the testing.
- (5) The provisions of subsections (1) to (4) of this section shall apply to juveniles falling within any category specified in subsections (1) to (4) of this section as well as to adults.

Section 5. KRS 510.320 is amended to read as follows:

- (1) For purposes of this section, "human immunodeficiency virus test" means a test of an individual for presence of human immunodeficiency virus, or for antibodies or antigens that result from human immunodeficiency virus infection, or for any other substance specifically indicating human immunodeficiency virus infection.
- (2) A defendant charged with an offense pursuant to this chapter which has sexual intercourse or deviate sexual intercourse as an element, or has sexual contact as an element when the circumstances of the case demonstrate a possibility of transmission of human immunodeficiency virus, shall upon initial court appearance on the charge, be informed by the judge of the availability of human immunodeficiency virus testing. The judge shall also notify the victim of the offense, or parent or guardian of the victim, that the defendant has been so notified.
- (3) When a defendant has been convicted of any offense in subsection (2) of this section, other provisions of law to the contrary notwithstanding, the sentencing court, regardless of any prior human immunodeficiency virus test, shall order the defendant to undergo a human immunodeficiency virus test, under the direction of the Cabinet for Health Services.
- (4)
  - (a) The result of any human immunodeficiency virus test conducted pursuant to this section shall not be a public record for purposes of KRS Chapter 61.
  - (b) The result of any human immunodeficiency virus test conducted pursuant to this section shall only be made available by the Cabinet for Health Services to the victim, or the parent or guardian of a victim who is a minor or is mentally retarded or mentally incapacitated, the defendant, the court issuing the order for testing, and to any other agency as directed pursuant to KRS Chapter 214.

- (c) *The Cabinet for Health Services shall immediately provide to the victim the results of any human immunodeficiency virus test conducted under this section.*
- (d) In addition, the Cabinet for Health Services shall provide to the Department of Corrections the result of any human immunodeficiency virus test conducted pursuant to this section which indicates that the defendant is infected with the human immunodeficiency virus. The Department of Corrections shall use this information solely for the purpose of providing medical treatment to the defendant while incarcerated in a state penitentiary or correctional institution or county jail.
- (5) If the human immunodeficiency virus test indicates the presence of human immunodeficiency virus infection, the Cabinet for Health Services shall provide counseling to the victim and the defendant regarding human immunodeficiency virus disease, and referral for appropriate health-care and support services.
- (6) The cost of testing under this section shall be paid by the defendant tested, unless the court has determined the defendant to be indigent.
- (7) Filing of a notice of appeal shall not automatically stay an order that the defendant submit to a human immunodeficiency virus test.

**Approved April 11, 2000**

## CHAPTER 401

(SB 263)

AN ACT relating to public safety.

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

Section 1. KRS 218A.050 is amended to read as follows:

Unless otherwise rescheduled by regulation of the Cabinet for Health Services, the controlled substances listed in this section are included in Schedule I:

- (1) Any material, compound, mixture, or preparation which contains any quantity of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, ~~or and~~ salts is possible within the specific chemical designation: Acetylmethadol; Allylprodine; Alphacetylmethadol; Alphameprodine; Alphamethadol; Benzethidine; Betacetylmethadol; Betameprodine; Betamethadol; Betaprodine; Clonitazene; Dextromoramide; Dextrorphan; Diampromide; Diethylthiambutene; Dimenoxadol; Dimepheptanol; Dimethylthiambutene; Dioxaphetyl butyrate; Dipipanone; Ethylmethylthiambutene; Etonitazene; Etoxadine; Furethidine; Hydroxypethidine; Ketobemidone; Levomoramide; Levophenacymorphan; Morpheridine; Noracymethadol; Norlevorphanol; Normethadone; Norpipanone; Phenadoxone; Phenampromide; Phenomorphan; Phenoperidine; Piritramide; Proheptazine; Properidine; Propiram; Racemoramide; Trimeperidine.
- (2) Any material, compound, mixture, or preparation which contains any quantity of the following opium derivatives, **including** their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, ~~or and~~ salts of isomers is possible within the specific chemical designation: Acetorphine; Acetyldihydrocodeine; Benzylmorphine; Codeine methylbromide; Codeine-N-Oxide; Cyprenorphine; Desomorphine; Dihydromorphine; Etorphine; Heroin; Hydromorphanol; Methyl-desorphine; Methyldihydromorphine; Morphine methylbromide; Morphine methylsulfonate; Morphine-N-Oxide; Myrophine; Nicocodeine; Nicomorphine; Normorphine; Pholcodine; Thebacon.
- (3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, ~~or and~~ salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: 3, 4-methylenedioxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; 3,4, 5-trimethoxyamphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 4-methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide; Marijuana; Mescaline; Peyote; N-ethyl-3-piperidyl benzilate; N-methyl-3-piperidyl benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; Hashish; Phencyclidine, 2 Methylamino-1-phenylpropan-1-one (including, but not limited to, Methcathinone, Cat, and Ephedrone).
- (4) *Any material, compound, mixture, or preparation which contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers,*

*unless specifically excepted, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation: gamma hydroxybutyric acid.*

Section 2. KRS 439.265 is amended to read as follows:

- (1) Subject to the provisions of KRS Chapter 439 and Chapters 500 to 534, any Circuit Court may, upon motion of the defendant made not earlier than thirty (30) days nor later than one hundred eighty (180) days after the defendant has been incarcerated in a county jail following his conviction and sentencing pending delivery to the institution to which he has been sentenced, or delivered to the keeper of the institution to which he has been sentenced, suspend the further execution of the sentence and place the defendant on probation upon terms the court determines. Time spent on any form of release following conviction shall not count toward time required under this section.
- (2) The court shall consider any motion filed in accordance with subsection (1) of this section within sixty (60) days of the filing date of that motion, and shall enter its ruling within ten (10) days after considering the motion. The defendant may, in the discretion of the trial court, have the right to a hearing on any motion he may file, or have filed for him, that would suspend further execution of sentence. Any court order granting or denying a motion to suspend further execution of sentence is not reviewable.
- (3)
  - (a) During the period in which the defendant may file a motion pursuant to this statute, the sentencing judge, within his or her discretion, may order that the defendant be held in a local detention facility that is not at or above maximum capacity until such time as the court rules on said motion. During this period of detention, and prior to the court's ruling on said motion, the court may require the defendant to participate in any approved community work program or other forms of work release. Persons held in the county jail pursuant to this subsection shall not be subject to transfer to a state correctional facility until the decision is made not to place the petitioner on shock probation.
  - (b) The provisions concerning community work programs or other forms of work release shall apply only to persons convicted of Class C or Class D felonies, and may be granted only after a hearing at which the Commonwealth's attorney has the opportunity to present arguments in favor or opposition thereto.
- (4) ***If the defendant is a violent offender as defined in Section 3 of this Act, the sentence shall not be probated under this section.***
- (5) If the defendant has been convicted of an offense under KRS~~[ 510.040, ]~~ 510.050, ~~[510.070, ]~~510.080, 530.020, 530.064, or 531.310, or criminal attempt to commit any of these offenses under KRS 506.010, the sentence shall not be suspended, in accordance with KRS 532.045.
- ~~(6)~~~~(5)~~ If the defendant has been convicted of an offense under KRS 510.060, 510.090, or 510.110, prior to considering the motion to suspend a sentence, the court shall order an evaluation of the defendant to be conducted by the sex offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services. The evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining whether to suspend the sentence. If the court suspends the sentence and places the defendant on probation, the provisions of KRS 532.045(3) to (7) shall apply.
- ~~(7)~~~~(6)~~ The authority granted in this section shall be exercised by the judge who imposed sentence on the defendant, unless he is unable to act and it appears that his inability to act should continue beyond the expiration of the term of the court. In such case, the judge who imposed sentence shall assign a judge to dispose of a motion filed under this section, or as prescribed by the rules and practices concerning the responsibility for disposition of criminal matters.
- ~~(8)~~~~(7)~~ The provisions of this section shall not apply where a sentence of death has been imposed.

Section 3. KRS 439.3401 is amended to read as follows:

- (1) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim or serious physical injury to a victim, or rape in the first degree or sodomy in the first degree of the victim. The court shall designate in its judgment if the victim suffered death or serious physical injury.
- (2) A violent offender who has been convicted of a capital offense and who has received a life sentence (and has not been sentenced to twenty-five (25) years without parole or imprisonment for life without benefit of

probation or parole), or a Class A felony and receives a life sentence, or to death and his sentence is commuted to a life sentence shall not be released on **probation or** parole until he has served at least twenty (20) years in the penitentiary. Violent offenders may have a greater minimum parole eligibility date than other offenders who receive longer sentences, including a sentence of life imprisonment.

- (3) A violent offender who has been convicted of a capital offense or Class A felony with a sentence of a term of years or Class B felony who is a violent offender shall not be released on **probation or** parole until he has served at least eighty-five percent (85%) of the sentence imposed.
- (4) A violent offender may not be awarded any credit on his sentence authorized by KRS 197.045(1), except the educational credit. A violent offender may, at the discretion of the commissioner, receive credit on his sentence authorized by KRS 197.045(3). In no event shall a violent offender be given credit on his sentence if the credit reduces the term of imprisonment to less than eighty-five percent (85%) of the sentence.
- (5) This section shall not apply to a person who has been determined by a court to have been a victim of domestic violence or abuse pursuant to KRS 533.060 with regard to the offenses involving the death of the victim or serious physical injury to the victim. The provisions of this subsection shall not extend to rape in the first degree or sodomy in the first degree by the defendant.
- (6) This section shall apply only to those persons who commit offenses after July 15, 1998.
- (7) For offenses committed prior to July 15, 1998, the version of this statute in effect immediately prior to that date shall continue to apply.

Section 4. KRS 510.010 is amended to read as follows:

The following definitions apply in this chapter unless the context otherwise requires:

- (1) "Deviate sexual intercourse" means any act of sexual gratification involving the sex organs of one person and the mouth or anus of another; **or penetration of the anus of one person by a foreign object manipulated by another person. "Deviate sexual intercourse" does not include penetration of the anus by a foreign object in the course of the performance of generally recognized health care practices;**
- (2) "Forcible compulsion" means physical force or threat of physical force, express or implied, which places a person in fear of immediate death, physical injury to self or another person, fear of the immediate kidnap of self or another person, or fear of any offense under this chapter. Physical resistance on the part of the victim shall not be necessary to meet this definition;
- (3) "Mental illness" means a diagnostic term that covers many clinical categories, typically including behavioral or psychological symptoms, or both, along with impairment of personal and social function, and specifically defined and clinically interpreted through reference to criteria contained in the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) and any subsequent revision thereto, of the American Psychiatric Association;
- (4) "Mentally retarded person" means a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, as defined in KRS Chapter 202B;
- (5) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct as a result of the influence of a controlled or intoxicating substance administered to him without his consent or as a result of any other act committed upon him without his consent;
- (6) "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act;
- (7) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party;
- (8) "Sexual intercourse" means sexual intercourse in its ordinary sense and includes penetration of the sex organs ~~or anus~~ of one person by a foreign object manipulated by another person. Sexual intercourse occurs upon any penetration, however slight; emission is not required. "Sexual intercourse" does not include penetration of the sex organ ~~or anus~~ by a foreign object in the course of the performance of generally recognized health care practices; and
- (9) "Foreign object" means anything used in commission of a sexual act other than the person of the actor.

Section 5. KRS 500.050 is amended to read as follows:

- (1) Except as otherwise expressly provided, the prosecution of a felony is not subject to a period of limitation and may be commenced at any time.
- (2) Except as otherwise expressly provided, the prosecution of an offense other than a felony must be commenced within one (1) year after it is committed.
- (3) For purposes of this section, an offense is committed either when every element occurs, or if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated.
- ~~[(4) No offense in KRS Chapter 510 involving deviate sexual intercourse or sexual intercourse by the other spouse shall be prosecuted unless formally reported to the police within one (1) year after the commission of the offense. The report shall be signed by the victim of the offense.]~~

SECTION 6. A NEW SECTION OF KRS CHAPTER 510 IS CREATED TO READ AS FOLLOWS:

***Unless a higher penalty is otherwise prescribed and notwithstanding any provision of this chapter to the contrary, a person who commits a third or subsequent misdemeanor offense under this chapter, except for violations of KRS 510.150, may be convicted of a Class D felony. If the Commonwealth desires to utilize the provisions of this section, the Commonwealth shall indict the defendant and the case shall be tried in the Circuit Court as a felony case. The jury, or judge if the trial is without a jury, may decline to assess a felony penalty in a case under this section and may convict the defendant of a misdemeanor.***

Section 7. KRS 532.040 is amended to read as follows:

When a person is convicted of an offense, other than a capital offense ***or having been designated a violent offender as defined in Section 3 of this Act***, the court, where authorized by KRS Chapter 533 and where not prohibited by other provisions of applicable law, may sentence such person to a period of probation or to a period of conditional discharge as provided in that chapter. A sentence to probation or conditional discharge shall be deemed a tentative one to the extent that it may be altered or revoked in accordance with KRS Chapter 533, but for purposes of appeal shall be deemed to be a final judgment of conviction. In any case where the court imposes a sentence of probation or conditional discharge, it may also impose a fine as authorized by KRS Chapter 534.

SECTION 8. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

***Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for a person who has been designated as a violent offender as defined in Section 3 of this Act, unless such probation is granted in accordance with Section 3 of this Act.***

Section 9. KRS 532.045 is amended to read as follows:

- (1) As used in this section:
  - (a) "Position of authority" means, but is not limited to, the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff, or volunteer who is an adult, adult athletic manager, adult coach, teacher, classified school employee, certified school employee, counselor, staff, or volunteer for either a residential treatment facility, a holding facility as defined in KRS 600.020, or a detention facility as defined in KRS 520.010(4), staff or volunteer with a youth services organization, religious leader, health care provider, or employer;
  - (b) "Position of special trust" means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor; and
  - (c) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or the victim, by any foreign object; oral copulation; or masturbation of either the minor or the offender.
- (2) Notwithstanding other provisions of applicable law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provision of this section be stricken for a person convicted of violating KRS~~510.040,~~ 510.050,~~510.070,~~ 510.080, 529.030 to 529.050, 529.070, 530.020, 531.310, 531.320, 531.370, or criminal attempt to commit any of these offenses under KRS 506.010, and, who meets one (1) or more of the following criteria:

- (a) A person who commits any of the offenses enumerated in this subsection against a minor by the use of force, violence, duress, menace, or threat of bodily harm;
- (b) A person who, in committing any of the offenses enumerated in this subsection, caused bodily injury to the minor;
- (c) A person convicted of any of the offenses enumerated in this subsection and who was a stranger to the minor or made friends with the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection, unless the defendant honestly and reasonably believed the minor was eighteen (18) years old or older;
- (d) A person who used a dangerous instrument or deadly weapon against a minor during the commission of any of the offenses enumerated in this subsection;
- (e) A person convicted of any of the offenses enumerated in this subsection and who has had a prior conviction of assaulting a minor, with intent to commit an act constituting any of the offenses enumerated in this subsection;
- (f) A person convicted of kidnapping a minor in violation of the Kentucky penal code and who kidnapped the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection;
- (g) A person who is convicted of committing any of the offenses enumerated in this subsection on more than one (1) minor at the same time or in the same course of conduct;
- (h) A person who in committing any of the offenses enumerated in this subsection has substantial sexual conduct with a minor under the age of fourteen (14) years; or
- (i) A person who occupies a position of special trust and commits an act of substantial sexual conduct.

Nothing in this section shall be construed to prohibit the additional period of three (3) years conditional discharge required by KRS 532.043.

- (3) If a person is not otherwise prohibited from obtaining probation or conditional discharge under subsection (2), the court may impose on the person a period of probation or conditional discharge. Probation or conditional discharge shall not be granted until the court is in receipt of an evaluation of the offender performed by the sex offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services. The court shall use the evaluation in determining the appropriateness of probation or conditional discharge.
- (4) If the court grants probation or conditional discharge, the offender shall be required, as a condition of probation or conditional discharge, to successfully complete a community-based sexual offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services.
- (5) The offender shall pay for any evaluation or treatment required pursuant to this section up to the offender's ability to pay but not more than the actual cost of the evaluation or treatment.
- (6) Failure to successfully complete the sexual offender treatment program constitutes grounds for the revocation of probation or conditional discharge.
- (7) All communications relative to the evaluation and treatment of a sexual offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings.
- (8) Before imposing sentence, the court shall advise the defendant or his counsel of the contents and conclusions of any evaluation performed pursuant to this section and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the evaluation. It shall not be necessary to disclose the sources of confidential information.
- (9) To the extent that this section conflicts with KRS 533.010, this section shall take precedence.

Section 10. KRS 439.510 is amended to read as follows:

All information obtained in the discharge of official duty by any probation or parole officer shall be privileged and shall not be received as evidence in any court. Such information shall not be disclosed directly or indirectly to any person other than the court, board, cabinet, or others entitled under KRS 439.250 to 439.560 to receive such information, unless otherwise ordered by such court, board or cabinet. Information shall be made available to sex



offender treatment programs operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services who request the information in the course of conducting an evaluation or treatment pursuant to KRS 439.265(6)~~[439.265(5)]~~, 532.045(3), or 532.050(4).

SECTION 11. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon receiving notice that a person barred from purchasing a firearm under 18 U.S.C. sec. 922(g)(8) has purchased or attempted to purchase a firearm, any agency with the responsibility of entering domestic violence records into the Law Information Network of Kentucky shall notify:*
  - (a) *The court in the jurisdiction where the domestic violence order was issued under KRS 403.750; and*
  - (b) *The law enforcement agencies, as designated by the Kentucky State Police, that have jurisdiction in the county where the domestic violence order was issued and in the county of the victim's residence if different from the county where the domestic violence order was issued.*
- (2) *The Kentucky State Police shall develop a protocol for providing notice to the required court and law enforcement agencies under subsection (1) of this section. Within the protocol, the Kentucky State Police shall designate which local law enforcement agencies are to receive notice in each county. A minimum of one (1) law enforcement agency shall be designated in each county.*
- (3) *When a designated law enforcement agency for the county where the domestic violence order was issued or where the victim resides receives notice under subsection (1)(b) of this section, that agency shall make reasonable efforts to ensure that the petitioner who obtained the domestic violence order is notified that the respondent has purchased or attempted to purchase a firearm.*
- (4) *Any person carrying out responsibilities under this section shall be immune from civil liability for good faith conduct in carrying out those responsibilities.*
- (5) *This section shall apply only to domestic violence orders issued, or reissued, on or after the effective date of this Act.*

Section 12. KRS 421.500 is amended to read as follows:

- (1) As used in KRS 421.500 to 421.575, "victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime classified as stalking, unlawful imprisonment, use of a minor in a sexual performance, unlawful transaction with a minor in the first degree, terroristic threatening, menacing, harassing communications, intimidating a witness, criminal homicide, robbery, rape, assault, sodomy, kidnapping, burglary in the first or second degree, sexual abuse, wanton endangerment, criminal abuse, or incest. If the victim is a minor or legally incapacitated, "victim" means a parent, guardian, custodian or court-appointed special advocate. If the victim is deceased and the relation is not the defendant, the following relations shall be designated as "victim" for the purpose of exercising those rights contained in KRS 421.500 to 421.575:
  - (a) The spouse;
  - (b) An adult child if paragraph (a) of this subsection does not apply;
  - (c) A parent if paragraphs (a) and (b) of this subsection do not apply;
  - (d) A sibling if paragraphs (a) through (c) of this subsection do not apply; and
  - (e) A grandparent if paragraphs (a) through (d) of this subsection do not apply.
- (2) If any court believes that the health, safety, or welfare of a victim who is a minor or is legally incapacitated would not otherwise adequately be protected, the court may appoint a special advocate to represent the interest of the victim and to exercise those rights provided for by KRS 421.500 to 421.575. Communication between the victim and the special advocate shall be privileged.
- (3) Law enforcement personnel shall ensure that victims receive information on available protective, emergency, social, and medical services upon initial contact with the victim and are given information on the following as soon as possible:
  - (a) Availability of crime victim compensation where applicable;
  - (b) Community based treatment programs;
  - (c) The criminal justice process as it involves the participation of the victim or witness;

- (d) The arrest of the accused; and
  - (e) How to register to be notified when a person has been released from prison, jail, a juvenile detention facility, or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A.
- (4) Law enforcement officers and attorneys for the Commonwealth shall provide information to victims and witnesses on how they may be protected from intimidation, harassment, and retaliation as defined in KRS 524.040, 524.045 or 524.055.
- (5) Attorneys for the Commonwealth shall make a reasonable effort to insure that:
- (a) All victims and witnesses who are required to attend criminal justice proceedings are notified promptly of any scheduling changes that affect their appearances;
  - (b) If victims so desire and if they provide the attorney for the Commonwealth with a current address and telephone number, they shall receive prompt notification, if possible, of judicial proceedings relating to their case, including, ***but not limited to***, the defendant's release on bond and any special conditions of release; of the charges against the defendant, the defendant's pleading to the charges, and the date set for the trial; of notification of changes in the custody of the defendant and changes in trial dates; of the verdict, the victim's right to make an impact statement for consideration by the court at the time of sentencing of the defendant, the date of sentencing, the victim's right to receive notice of any parole board hearing held for the defendant, and that the office of Attorney General will notify the victim if an appeal of the conviction is pursued by the defendant; ***and of a scheduled hearing for shock probation or for bail pending appeal and any orders resulting from that hearing***; and
  - (c) The victim knows how to register to be notified when a person has been released from a prison, jail, a juvenile detention facility, or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A;
  - (d) The victim receives information on available:
    - 1. Protective, emergency, social, and medical services;
    - 2. Crime victim compensation, where applicable;
    - 3. Restitution, where applicable;
    - 4. Assistance from a victim advocate; and
    - 5. Community-based treatment programs; and
  - (e) The victim of crime may, pursuant to KRS 15.247, receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts.
- (6) The victim shall be consulted by the attorney for the Commonwealth on the disposition of the case including dismissal, release of the defendant pending judicial proceedings, any conditions of release, a negotiated plea, and entry into a pretrial diversion program.
- (7) In prosecution for offenses listed in this section for the purpose of defining "victim," law enforcement agencies and attorneys for the Commonwealth shall promptly return a victim's property held for evidentiary purposes unless there is a compelling reason for retaining it. Photographs of such property shall be received by the court as competent evidence in accordance with the provisions of KRS 422.350.
- (8) A victim or witness who so requests shall be assisted by law enforcement agencies and attorneys for the Commonwealth in informing employers that the need for victim or witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work.
- (9) The Attorney General, where possible, shall provide technical assistance to law enforcement agencies and attorneys for the Commonwealth if such assistance is requested for establishing a victim assistance program.
- (10) If a defendant seeks appellate review of a conviction and the Commonwealth is represented by the Attorney General, the Attorney General shall make a reasonable effort to notify victims promptly of the appeal, the status of the case, and the decision of the appellate court.

Section 13. KRS 508.130 is amended to read as follows:

As used in KRS 508.130 to 508.150, unless the context requires otherwise:

- (1) (a) To "stalk" means to engage in an intentional course of conduct:
  1. Directed at a specific person or persons;
  2. Which seriously alarms, annoys, intimidates, or harasses the person or persons; and
  3. Which serves no legitimate purpose.
- (b) The course of conduct shall be that which would cause a reasonable person to suffer substantial mental distress.
- (2) "Course of conduct" means a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose. Constitutionally-protected activity is not included within the meaning of "course of conduct." If the defendant claims that he was engaged in constitutionally protected activity, the court shall determine the validity of that claim as a matter of law and, if found valid, shall exclude that activity from evidence.
- (3) **"Protective order" means:**
  - (a) ***An emergency protective order or domestic violence order issued under KRS 403.715 to 403.785;***
  - (b) ***A foreign protective order, as defined in KRS 403.7521(1);***
  - (c) ***An order issued under KRS 431.064; and***
  - (d) ***Any condition of a bond, conditional release, probation, parole, or pretrial diversion order designed to protect the victim from the offender.***

Section 14. KRS 508.140 is amended to read as follows:

- (1) A person is guilty of stalking in the first degree,
  - (a) When he intentionally:
    1. Stalks another person; and
    2. Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:
      - a. Sexual contact as defined in KRS 510.010;
      - b. Serious physical injury; or
      - c. Death; and
  - (b)
    1. A protective order ~~or other judicial order as provided for in KRS Chapter 403~~ has been issued by the court to protect the same victim or victims and the defendant has been served with the summons or order or has been given actual notice; or
    2. A criminal complaint is currently pending with a court, law enforcement agency, or prosecutor by the same victim or victims and the defendant has been served with a summons or warrant or has been given actual notice; or
    3. The defendant has been convicted of or pled guilty within the previous five (5) years to a felony or to a Class A misdemeanor~~, other than a violation of KRS 508.150,~~ against the same victim or victims; or
    4. The act or acts were committed while the defendant had a deadly weapon on or about his person.
- (2) Stalking in the first degree is a Class D felony.

Section 15. KRS 17.500 is amended to read as follows:

As used in KRS 17.500 to 17.540:

- (1) "Cabinet" means the Justice Cabinet.
- (2) (a) ***Except as provided in paragraph (b) of this subsection, "criminal offense against a victim who is a minor" means any of the following offenses if the victim is under the age of eighteen (18) at the time of the commission of the offense:***

1. *Kidnapping, as set forth in KRS 509.040, except by a parent;*
  2. *Unlawful confinement, as set forth in KRS 509.020, except by a parent;*
  3. *Sex crime;*
  4. *Promoting a sexual performance of a minor, as set forth in KRS 531.320;*
  5. *Promoting prostitution, as set forth in KRS 529.030, 529.040, and 529.050, when the defendant advances or profits from the prostitution of a person under the age of eighteen (18);*
  6. *Use of a minor in a sexual performance, as set forth in KRS 531.310;*
  7. *Sexual abuse, as set forth in KRS 510.120 and 510.130;*
  8. *Any attempt to commit any of the offenses described in subparagraphs 1. to 7. of this paragraph; and*
  9. *Solicitation to commit any of the offenses described in subparagraphs 1. to 7. of this paragraph.*
- (b) *Conduct which is criminal only because of the age of the victim shall not be considered a criminal offense against a victim who is a minor if the perpetrator was under the age of eighteen (18) at the time of the commission of the offense.*
- (3) "Law enforcement agency" means any lawfully-organized investigative agency, police unit, or police force of federal, state, county, city, metropolitan government, or a combination of these, responsible for the detection of crime and the enforcement of the general criminal federal or state laws.
- (4) *"Registrant" means:*
- (a) *Any person eighteen (18) years of age or older at the time of the offense or any youthful offender, as defined in KRS 600.020, who has committed:*
    1. *A sex crime; or*
    2. *A criminal offense against a victim who is a minor; or*
  - (b) *Any person required to register under subsection (6) or (7) of Section 16 of this Act; or*
  - (c) *Any sexually violent predator.*
- (5)~~(3)~~ *"Registrant~~[Sex offender]~~ information" means the name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, fingerprints, a photograph, aliases used, residence, ~~[vehicle registration data,~~ a brief description of the crime or crimes committed, and other information the cabinet determines, by administrative regulation, may be useful in the identification of registrants~~[sex offenders]~~.*
- (6)~~(4)~~ "Sex crime" means:
- (a) A felony offense defined in KRS Chapter 510, KRS 530.020, 530.064,~~[or]~~ 531.310, *or 531.320;*
  - (b) A felony attempt to commit a *felony offense specified in paragraph (a) of this subsection; or*
  - (c) *A federal felony offense, a felony offense subject to a court-martial of the United States Armed Forces, or a felony offense from another state or a territory where the felony offense is similar to a felony offense specified in paragraph (a) of this subsection*~~[sex crime, or similar offenses in another jurisdiction].~~
- (7) *"Sexually violent predator" means any person who has been subjected to involuntary civil commitment as a sexually violent predator, or a similar designation, under a state, territory, or federal statutory scheme.*
- Section 16. KRS 17.510 is amended to read as follows:
- (1) The cabinet shall develop and implement a~~[sex offender]~~ registration system *for registrants* which includes creating a new computerized information file to be accessed through the Law Information Network of Kentucky.
  - (2) *A registrant shall, on or before the date of*~~[Any person eighteen (18) years of age or older at the time of the offense or any youthful offender who has committed or attempted to commit a sex crime shall, within ten (10) days after]~~ his *or her* release by the court, the parole board,~~[or]~~ the cabinet, *or any detention facility,* register

with the appropriate local probation and parole office in the county in which he *or she intends to reside*~~[resides]~~. *The person in charge of the release shall facilitate the registration process.*

- (3) Any person required to register pursuant to subsection (2) of this section shall be informed of the duty to register~~[under this section]~~ by the court at the time of sentencing and by the official in charge of the place of confinement upon release. The court and the official shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register~~[under this section]~~ has been explained to the person. The court and the official in charge of the place of confinement shall require the releasee to complete the acknowledgment form and the court or the official shall retain the original completed form. The official shall then send the form to the Information Services Center, Kentucky State Police, Frankfort, Kentucky **40601**.
- (4) The court or the official shall order the person to:
  - (a) Register with the appropriate local probation and parole office; *and*
  - (b) ***Report to a local detention facility within forty-eight (48) hours. The facility shall obtain the person's fingerprints under KRS 441.046 and the person's photograph. The local detention facility shall send the fingerprints and the photograph to the Information Services Center, Kentucky State Police, Frankfort, Kentucky 40601.***
- (5)
  - (a) The appropriate probation and parole office shall send the ***registration form containing the registrant information as well as any special conditions imposed by the court or the Parole Board,***~~[form]~~ to the Information Services Center, Kentucky State Police, Frankfort, Kentucky **40601**.
  - (b) ***The Information Services Center, upon request by a state or local law enforcement agency, shall make available to that agency registrant information, including a person's fingerprints and photograph, where available, as well as any special conditions imposed by the court or the Parole Board.***
  - (c) ***Any employee of the Justice Cabinet who disseminates, or does not disseminate, registrant information in good faith compliance with the requirements of this subsection shall be immune from criminal and civil liability for the dissemination or lack thereof.***
- (6) Any person who has~~[pled guilty or]~~ been convicted in a court of another state *or territory*,~~[of]~~ a court of the United States, or a court martial of the United States Armed Forces off~~[the commission or attempt to commit]~~ a sex crime *or criminal offense against a victim who is a minor, or who has been committed as a sexually violent predator under the laws of another state, laws of a territory, or federal laws*, shall be informed at the time of his *or her* relocation to Kentucky of the duty to register under this section, ***and to comply with the requirements of subsection (4)(b) of this section***, by the interstate compact officer of the Department of Corrections or the Department of Juvenile Justice. The officer shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register under this section has been explained. The officer shall order the person to complete the registration form, ***and the officer shall facilitate the registration process***. The officer shall then send the form, ***including any special conditions imposed by the court or the Parole Board in the state of conviction*** to the Information Services Center, Kentucky State Police, Frankfort, Kentucky **40601**, ***and to the appropriate local probation and parole office in the county of the registrant's residence.***
- (7) If a person is required to register~~[as a sex offender]~~ under federal law or the laws of another state or territory, or if the person has been convicted of an offense under the laws of another state or territory that would require registration~~[under this section]~~ if committed in this Commonwealth, that person upon changing residence from the other state or territory of the United States to the Commonwealth or upon entering the Commonwealth for employment, to carry on a vocation, or as a student shall comply with the registration requirement of this section ***and the requirements of subsection (4)(b) of this section and shall register with the appropriate local probation and parole office in the county of employment, vocation, or schooling.*** As used in this subsection, "employment" or "carry on a vocation" includes employment that is full-time or part-time for a period exceeding fourteen (14) days or for an aggregate period of time exceeding thirty (30) days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. As used in this subsection, "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.

- (8) The registration form shall be a written statement signed by the person which shall include **registrant**~~[sex offender]~~ information.
- (9) For purposes of this section and KRS 17.550 to 17.991, a post office box number shall not be considered an address.
- (10) (a) If the residence address of any registrant changes, *but the registrant remains in the same county*, the person shall register, *on or before the date*~~[within ten (10) days]~~ of the change of address, with the appropriate local probation and parole office in the county *in which he or she resides*~~[of his new residence]~~.
- (b) 1. *If the registrant changes his or her residence to a new county, the person shall notify his or her current local probation and parole office of the new residence address on or before the date of the change of address.*
2. *The registrant shall also register with the appropriate local probation and parole office in the county of his or her new residence no later than five (5) days after the date of the change of address.*
- (c) 1. *As soon as a probation and parole office learns of the person's new address under paragraph (b)1. of this subsection, that probation and parole office shall notify the appropriate local probation and parole office in the county of the new address of the effective date of the new address.*
2. *As soon as a probation and parole office learns of the person's new address under paragraph (b)2. of this subsection, that office shall forward this information as set forth under subsection (5) of this section*~~[The appropriate local probation and parole office shall send this information to the Information Services Center, Kentucky State Police, Frankfort, Kentucky].~~
- (11) Any person required to register under this section who violates any of the provisions of this section is guilty of a Class **D felony**~~[A misdemeanor]~~.
- (12) Any person required to register under this section who knowingly provides false, misleading, or incomplete information is guilty of a Class **D felony**~~[A misdemeanor]~~.
- (13) (a) *The Justice Cabinet shall verify the addresses of individuals required to register under this section. Verification shall occur at least once every ninety (90) days for a person required to register under subsection (2) of Section 17 of this Act and at least once every calendar year for a person required to register under subsection (3) of Section 17 of this Act. If the Justice Cabinet determines that a person has moved without providing his or her new address to the appropriate local probation and parole office or offices as required under paragraphs (a) and (b) of subsection (10) of this section, the Justice Cabinet shall notify the appropriate local probation and parole office of the new address. The office shall then forward this information as set forth under subsection (5) of this section. The Justice Cabinet shall also notify the appropriate court, Parole Board, and appropriate corrections agency.*
- (b) *When the appropriate court, Parole Board, or appropriate corrections agency receives notice from the Justice Cabinet, or any other source, that a person has failed to comply with any of the registration requirements under this section, then the court, Parole Board, or corrections agency:*
1. *Shall consider revocation of the parole, probation, or conditional discharge of any person released under its authority; and*
2. *Shall notify the appropriate county attorney for prosecution*~~[appropriate court, parole authority, or corrections agency shall be immediately notified to consider revocation of the parole, probation, or conditional discharge of any person released under its authority who has failed to register within the prescribed time period as required by this section.]~~
- ~~(14) The statement required by subsection (6) of this section shall not be open to inspection by the public and may only be accessible to law enforcement agencies.~~
- ~~(15) Any person who disseminates, receives, or otherwise uses or attempts to use information in the registry database, knowing the dissemination, receipt, or use is for a purpose other than authorized by law, shall be guilty of a Class A misdemeanor.~~

Section 17. KRS 17.520 is amended to read as follows:

- (1) *A registrant, upon his or her release by the court, the Parole Board, the cabinet, or any detention facility, shall be required to register for a period of time under this section.*
- (2) (a) *Lifetime registration is required for:*
  1. *Any person who has been convicted of kidnapping, as set forth in KRS 509.040, when the victim is under the age of eighteen (18) at the time of the commission of the offense, except when the offense is committed by a parent;*
  2. *Any person who has been convicted of unlawful confinement, as set forth in KRS 509.020, when the victim is under the age of eighteen (18) at the time of the commission of the offense, except when the offense is committed by a parent;*
  3. *Any person convicted of a sex crime:*
    - a. *Who has one (1) or more prior convictions of a criminal offense against a victim who is a minor; or*
    - b. *Who has one (1) or more prior sex crime convictions;*
  4. *Any person who has been convicted of two (2) or more criminal offenses against a victim who is a minor;*
  5. *Any person who has been convicted of:*
    - a. *Rape in the first degree under KRS 510.040; or*
    - b. *Sodomy in the first degree under KRS 510.070; and*
  6. *Any sexually violent predator.*
- (3) *All other registrants are required to register for ten (10) years following discharge from confinement or ten (10) years following the maximum discharge date on probation, shock probation, conditional discharge, parole, or other form of early release, whichever period is greater.*
- (4) *If a person required to register under this section is reincarcerated for another offense or as the result of having violated the terms of probation, parole, or conditional discharge, the registration requirements are tolled during the reincarceration.*
- (5) *An offender who has pled guilty or been convicted in a court of another state or territory, in a court of the United States, or in a court-martial of the United States Armed Forces who is required to register in Kentucky shall be subject to registration in Kentucky based on the conviction in the foreign jurisdiction. The Justice Cabinet shall promulgate administrative regulations to carry out the provisions of this subsection.*
- (6) *The court shall designate the registration period as mandated by this section in its judgment and shall cause a copy of its judgment to be mailed to the Information Services Center, Kentucky State Police, Frankfort, Kentucky 40601.* ~~Persons classified as high risk sex offenders as provided by subsection (3) of KRS 17.550 shall remain registered for the lifetime of the offender, unless redesignated pursuant to KRS 17.578.~~
- ~~(2) Persons classified as low or moderate risk sex offenders shall remain registered for a period of ten (10) years following their discharge from confinement or ten (10) years following their maximum discharge date on probation, shock probation, conditional discharge, parole, or other form of early release, whichever period is greater.~~
- ~~(3) If a sex offender is reincarcerated for another offense or as the result of having violated the terms of probation, parole, or conditional discharge, the registration requirements are tolled during the subsequent incarceration.~~

Section 18. KRS 17.550 is amended to read as follows:

As used in KRS 17.550 to 17.991, the following definitions shall apply:

- (1) "The board" means the Sex Offender Risk Assessment Advisory Board created under KRS 17.554;
- (2) "Sex offender" means a person who has been convicted of a sex crime as defined in KRS 17.500 ~~who suffers from a mental or behavioral abnormality or personality disorder characterized by a pattern or repetitive, compulsive behavior that makes the offender a threat to public safety~~;

- (3) ~~"High risk sex offender" means a sex offender who meets the criteria established by the Sex Offender Risk Assessment Advisory Board that have been demonstrated to correlate with a high risk of recommitting a sex crime. This term means the same as a sexually violent predator as defined by 42 U.S.C. sec. 14071. A person determined to be a sexually violent predator in a federal jurisdiction or in another state will be classified as a high risk sex offender for the purpose of this section;~~
- (4) ~~"Moderate risk sex offender" means a sex offender who meets the criteria established by the Sex Offender Risk Assessment Advisory Board that have been demonstrated to correlate with a moderate risk of recommitting a sex crime;~~
- (5) ~~"Low risk sex offender" means a sex offender who meets the criteria established by the Sex Offender Risk Assessment Advisory Board that have been demonstrated to correlate with a low risk of recommitting a sex crime;~~
- (6) ~~"Mental or behavioral abnormality" means a congenital or acquired condition that affects the emotional or volitional capacity of a person in a manner that predisposes that individual to the commission of a sex crime;~~
- (7) ~~"Personality disorder" means a condition where a person exhibits personality traits which are inflexible and maladaptive and cause either significant functional impairment or subjective distress;~~
- (8) ~~"} "Approved{Certified} provider" means a mental health professional licensed or certified in Kentucky whose scope of practice includes providing mental health treatment services and who is approved by the Sex Offender Risk Assessment Advisory Board, under administrative regulations promulgated by the board, to provide comprehensive sex offender presentence evaluations or treatment to adults and youthful offenders, as defined in KRS 600.020{conduct sexual offender risk assessments pursuant to KRS 17.550 to 17.991, or presentence assessment pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, 439.267, and 532.045}; and~~
- (4)(9) "Victim" means victim as defined by KRS 421.500.

SECTION 19. A NEW SECTION OF KRS 17.550 TO 17.991 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky State Police shall establish a website available to the public. The website shall display:*
- (a) *The registrant information, except for information that identifies a victim, fingerprints, and Social Security numbers, obtained by the Information Services Center, Kentucky State Police, under Section 16 of this Act; and*
  - (b) *The sex offender information, except for information that identifies a victim, Social Security numbers, and vehicle registration data, obtained by the Information Services Center, Kentucky State Police, under KRS 17.510 prior to the effective date of this Act.*

*The website shall be updated every day except for Saturdays, Sundays, and state holidays.*

- (2) *The information pertaining to an individual shall be maintained on the website so long as that individual is registered in accordance with KRS 17.500 to 17.540.*
- (3) *The following language shall be prominently displayed on the website: "UNDER KRS 525.070 AND 525.080, USE OF INFORMATION OBTAINED FROM THIS WEBSITE TO HARASS A PERSON IDENTIFIED ON THIS WEBSITE IS A CRIMINAL OFFENSE PUNISHABLE BY UP TO NINETY (90) DAYS IN THE COUNTY JAIL. MORE SEVERE CRIMINAL PENALTIES APPLY FOR MORE SEVERE CRIMES COMMITTED AGAINST A PERSON IDENTIFIED ON THIS WEBSITE."*
- (4) (a) *Any Kentucky State Police employee who disseminates, or does not disseminate, registrant information or sex offender information in good faith compliance with the requirements of this section shall be immune from criminal and civil liability for the dissemination or lack thereof.*
- (b) *Any person, including an employee of a sheriff's office, acting in good faith in disseminating, or not disseminating, information previously disseminated by the Kentucky State Police shall be immune from criminal and civil liability for the dissemination or lack thereof.*
- (5) *The Justice Cabinet shall establish a toll-free telephone number for a person to call to learn the identity of the website created in this section and the location of public access to the website in the county where the person resides.*

Section 20. KRS 17.552 is amended to read as follows:



No person shall conduct *comprehensive sex offender presentence evaluations or treatment*~~[sexual offender risk assessments pursuant to KRS 17.550 to 17.991, or presentence assessments pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, 439.267, and 532.045,]~~ without first obtaining *approval*~~[a certification]~~ from the Sex Offender Risk Assessment Advisory Board.

Section 21. KRS 17.554 is amended to read as follows:

- (1) A Sex Offender Risk Assessment Advisory Board is hereby created. The board shall *approve*~~[certify]~~ providers who shall conduct *comprehensive sex*~~[sexual]~~ offender *presentence evaluations and treatment*~~[risk assessments pursuant to KRS 17.550 to 17.991, or presentence assessments pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, 439.267, and 532.045].~~
- (2) The board shall develop a *comprehensive sex offender presentence evaluation*~~[risk assessment procedure]~~ that shall be used by *approved*~~[certified]~~ providers in assessing the risk of recommitting a sex crime by a sex offender,~~[and]~~ the threat posed to public safety, *amenability to sex offender treatment, and the nature of the required sex offender treatment*. The *evaluation*~~[procedure]~~ shall be based upon, but not limited to the following factors:
  - (a) Criminal history;
  - (b) Nature of the offense;
  - (c) Conditions of release that minimize risk;
  - (d) Physical conditions that minimize risk;
  - (e) Psychological or psychiatric profiles;
  - (f) Recent behavior that indicates an increased risk of recommitting a sex crime;
  - (g) Recent threats or gestures against persons or expressions of an intent to commit additional offenses; and
  - (h) Review of the victim impact statement.

Section 22. KRS 17.558 is amended to read as follows:

- (1) The board may issue, refuse to issue, reissue, or renew a provider *approval*~~[certificate]~~, or may probate, suspend, or revoke the *approval*~~[certificate]~~ of a provider~~[who conducts sexual offender assessments]~~.
- (2) The board shall revoke the *approval*~~[certificate]~~ of a provider~~[who conducts sexual offender assessments]~~ while his *or her approval*~~[certification]~~ is suspended.

Section 23. KRS 17.560 is amended to read as follows:

- (1) Prior to the refusal to issue, renew, probate, suspend, or revoke the *approval*~~[certificate]~~ of a provider, the board shall conduct a hearing in accordance with the provisions of this chapter and KRS Chapter 13B.
  - (a) The hearing may be conducted by a hearing officer;
  - (b) The hearing officer may only issue a recommended order, and the recommended order shall be subject to review by a majority of the full board, which shall issue a final order.
- (2) The board may proceed against *an approved*~~[a certified]~~ provider on its own initiative, on the basis of either information contained in its own records, or information obtained through its informal investigation.
- (3) If a formal complaint verified by affidavit is filed with the board by a responsible citizen or organization containing allegations that if true would warrant action, the board may proceed against the *approved*~~[certified]~~ provider.
- (4) Any final order of the board may be appealed to the Franklin Circuit Court in accordance with KRS Chapter 13B.

Section 24. KRS 17.564 is amended to read as follows:

- (1) The board may promulgate all reasonable administrative regulations not inconsistent with this chapter that are necessary to carry into effect the purposes of KRS 17.550 to 17.991.
- (2) The board may promulgate administrative regulations requiring mandatory continuing education for *approved*~~[certified]~~ providers~~[to continue conducting sexual offender risk assessments pursuant to KRS~~

~~17.550 to 17.991, or presentence assessments pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, 439.267, and 532.045,] as a condition for obtaining their renewal **approvals**~~[certificates].~~~~

Section 25. KRS 17.566 is amended to read as follows:

Only persons **approved**~~[certified]~~ under KRS 17.550 to 17.991 may be known as **approved**~~[certified]~~ providers in the Commonwealth of Kentucky, or use any words or letters or assume any titles or description tending to convey the impression that they are **approved**~~[certified]~~ providers~~[ who conduct sexual offender risk assessments pursuant to KRS 17.550 to 17.991, or presentence assessments pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, 439.267, and 532.045].~~

Section 26. KRS 17.574 is amended to read as follows:

- (1) Any statutes to the contrary notwithstanding, all state or local detention or correctional facilities, hospitals, or institutions shall forward all relevant information pertaining to a sex offender to be discharged, paroled, or released to the **approved**~~[certified]~~ provider for review prior to the release or discharge for consideration in making recommendations to the sentencing court. The relevant information shall include but is not limited to:
  - (a) The institutional record;
  - (b) The medical record including all psychological records; and
  - (c) The treatment record.
- (2) All confidential records provided pursuant to this section shall remain confidential, unless otherwise ordered by a court or by another person duly authorized to release the information.

Section 27. KRS 17.576 is amended to read as follows:

Communications made in the course of **comprehensive sex offender presentence evaluations or treatment**~~[sexual offender risk assessments pursuant to KRS 17.550 to 17.991, or presentence assessments pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, 439.267, or 532.045]~~ to the **approved**~~[certified]~~ provider and any employee of the **approved**~~[certified]~~ provider who is assigned to assist in the assessments shall be privileged from disclosure in any civil or criminal proceeding, **other than to determine sentence**, unless the offender consents in writing to the disclosure or the communication is related to an ongoing criminal investigation. The sexual offender shall be informed in writing of the limits of the privilege created in this section.

Section 28. KRS 17.578 is amended to read as follows:

~~[(1)] A person **required to register under the provisions of Sections 16 and 17 of this Act shall be relieved of any further duty to register only upon reversal of the underlying conviction or upon a pardon** [designated a "high risk sex offender" and who is required to register for his lifetime pursuant to the provisions of this chapter may be relieved of any further duty to register upon the grant of a petition for relief by the sentencing court entered no earlier than ten (10) years after the date of discharge from probation, parole, or release from incarceration, whichever is most recent. If the petition is denied, the person may petition for relief from the high risk designation every five (5) years thereafter.~~

~~(2) Upon receipt of the petition for relief, the sentencing court shall request an updated assessment to a certified provider.~~

~~(3) The sentencing court shall conduct a second hearing as provided in KRS 17.570).~~

SECTION 29. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

***No registrant, as defined in Section 15 of this Act, who is placed on probation, parole, or any form of supervised release, shall reside within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, or licensed day care facility. The measurement shall be taken in a straight line from the nearest wall of the school to the nearest wall of the registrant's place of residence.***

SECTION 30. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

***The following shall be immune from suit for good faith conduct under KRS 17.500 to 17.540 and KRS 17.550 to 17.991:***

- (1) ***Law enforcement agencies including the Justice Cabinet;***

- (2) *Independent contractors acting under the direction of law enforcement agencies;*
- (3) *State and county officials;*
- (4) *Approved providers, as defined under Section 18 of this Act; and*
- (5) *Employees of any of the agencies, entities, and persons identified in subsections (1), (2), (3), and (4) of this section.*

Section 31. KRS 197.410 is amended to read as follows:

- (1) A person is considered to be a "sexual offender" as used in this chapter when he *or she has been adjudicated guilty of a sex crime, as defined in Section 15 of this Act, or any similar offense in another jurisdiction*~~;~~
  - (a) ~~Has been adjudicated guilty of any felony described in KRS Chapter 510; or~~
  - (b) ~~Has been adjudicated guilty of any other felony committed in conjunction with a misdemeanor described in KRS Chapter 510; or~~
  - (c) ~~Has been adjudicated guilty of any felony under KRS 506.010 when the crime attempted is a felony or misdemeanor described in KRS Chapter 510; or~~
  - (d) ~~Has been adjudicated guilty of a felony offense under KRS 530.020; or~~
  - (e) ~~Has been adjudicated guilty of a felony offense relating to sexual activity under KRS 530.064; or~~
  - (f) ~~Has been adjudicated guilty of a felony offense under KRS 531.310}.~~
- (2) A sexual offender becomes an "eligible sexual offender" when the sentencing court or department officials, or both, determine that the offender:
  - (a) Has demonstrated evidence of a mental, emotional, or behavioral disorder, but not active psychosis or mental retardation; and
  - (b) Is likely to benefit from the program.
- (3) "Department" is the Department of Corrections.

Section 32. KRS 197.440 is amended to read as follows:

Communications made in the application for or in the course of a sexual offender's diagnosis and treatment in the program between a sexual offender or member of the offender's family and any employee of the department who is assigned to work in the program, *or approved provider, as defined in Section 18 of this Act*, shall be privileged from disclosure in any civil or criminal proceeding, *other than proceedings to determine the sentence*, unless the offender consents in writing to the disclosure or the communication is related to an ongoing criminal investigation. The privilege created by this section shall not extend to disclosures made for the purpose of determining whether the offender should continue to participate in the program. The offender shall be informed in writing of the limits of the privilege created in this section.

Section 33. KRS 439.265 is amended to read as follows:

- (1) Subject to the provisions of KRS Chapter 439 and Chapters 500 to 534, any Circuit Court may, upon motion of the defendant made not earlier than thirty (30) days nor later than one hundred eighty (180) days after the defendant has been incarcerated in a county jail following his conviction and sentencing pending delivery to the institution to which he has been sentenced, or delivered to the keeper of the institution to which he has been sentenced, suspend the further execution of the sentence and place the defendant on probation upon terms the court determines. Time spent on any form of release following conviction shall not count toward time required under this section.
- (2) The court shall consider any motion filed in accordance with subsection (1) of this section within sixty (60) days of the filing date of that motion, and shall enter its ruling within ten (10) days after considering the motion. The defendant may, in the discretion of the trial court, have the right to a hearing on any motion he may file, or have filed for him, that would suspend further execution of sentence. Any court order granting or denying a motion to suspend further execution of sentence is not reviewable.
- (3) (a) During the period in which the defendant may file a motion pursuant to this statute, the sentencing judge, within his or her discretion, may order that the defendant be held in a local detention facility that is not at or above maximum capacity until such time as the court rules on said motion. During this

period of detention, and prior to the court's ruling on said motion, the court may require the defendant to participate in any approved community work program or other forms of work release. Persons held in the county jail pursuant to this subsection shall not be subject to transfer to a state correctional facility until the decision is made not to place the petitioner on shock probation.

- (b) The provisions concerning community work programs or other forms of work release shall apply only to persons convicted of Class C or Class D felonies, and may be granted only after a hearing at which the Commonwealth's attorney has the opportunity to present arguments in favor or opposition thereto.
- (4) If the defendant has been convicted of an offense under KRS 510.040, 510.050, 510.070, 510.080, 530.020, 530.064, or 531.310, or criminal attempt to commit any of these offenses under KRS 506.010, the sentence shall not be suspended, in accordance with KRS 532.045.
- (5) ***When a defendant has been convicted of a sex crime, as defined in Section 15 of this Act, the court shall order a comprehensive sex offender presentence evaluation, unless one has been provided within the past six (6) months, in which case the court may order an update of the comprehensive sex offender presentence evaluation.***~~[If the defendant has been convicted of an offense under KRS 510.060, 510.090, or 510.110, prior to considering the motion to suspend a sentence, the court shall order an evaluation]~~ of the defendant~~[to be]~~ conducted by the sex offender treatment program operated or approved by the Department of Corrections or the ***Sex Offender Risk Assessment Advisory Board***~~[Department for Mental Health and Mental Retardation Services]~~. The ***comprehensive sex offender presentence*** evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining whether to suspend the sentence. If the court suspends the sentence and places the defendant on probation, the provisions of KRS 532.045(3) to (7) shall apply.
- (6) The authority granted in this section shall be exercised by the judge who imposed sentence on the defendant, unless he is unable to act and it appears that his inability to act should continue beyond the expiration of the term of the court. In such case, the judge who imposed sentence shall assign a judge to dispose of a motion filed under this section, or as prescribed by the rules and practices concerning the responsibility for disposition of criminal matters.
- (7) The provisions of this section shall not apply where a sentence of death has been imposed.

Section 34. KRS 532.045 is amended to read as follows:

- (1) As used in this section:
  - (a) "Position of authority" means, but is not limited to, the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff, or volunteer who is an adult, adult athletic manager, adult coach, teacher, classified school employee, certified school employee, counselor, staff, or volunteer for either a residential treatment facility, a holding facility as defined in KRS 600.020, or a detention facility as defined in KRS 520.010(4), staff or volunteer with a youth services organization, religious leader, health care provider, or employer;
  - (b) "Position of special trust" means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor; and
  - (c) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or the victim, by any foreign object; oral copulation; or masturbation of either the minor or the offender.
- (2) Notwithstanding other provisions of applicable law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provision of this section be stricken for a person convicted of violating KRS 510.040, 510.050, 510.070, 510.080, 529.030 to 529.050, 529.070, 530.020, 531.310, 531.320, 531.370, or criminal attempt to commit any of these offenses under KRS 506.010, and, who meets one (1) or more of the following criteria:
  - (a) A person who commits any of the offenses enumerated in this subsection against a minor by the use of force, violence, duress, menace, or threat of bodily harm;
  - (b) A person who, in committing any of the offenses enumerated in this subsection, caused bodily injury to the minor;

- (c) A person convicted of any of the offenses enumerated in this subsection and who was a stranger to the minor or made friends with the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection, unless the defendant honestly and reasonably believed the minor was eighteen (18) years old or older;
- (d) A person who used a dangerous instrument or deadly weapon against a minor during the commission of any of the offenses enumerated in this subsection;
- (e) A person convicted of any of the offenses enumerated in this subsection and who has had a prior conviction of assaulting a minor, with intent to commit an act constituting any of the offenses enumerated in this subsection;
- (f) A person convicted of kidnapping a minor in violation of the Kentucky penal code and who kidnapped the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection;
- (g) A person who is convicted of committing any of the offenses enumerated in this subsection on more than one (1) minor at the same time or in the same course of conduct;
- (h) A person who in committing any of the offenses enumerated in this subsection has substantial sexual conduct with a minor under the age of fourteen (14) years; or
- (i) A person who occupies a position of special trust and commits an act of substantial sexual conduct.

Nothing in this section shall be construed to prohibit the additional period of three (3) years conditional discharge required by KRS 532.043.

- (3) If a person is not otherwise prohibited from obtaining probation or conditional discharge under subsection (2), the court may impose on the person a period of probation or conditional discharge. Probation or conditional discharge shall not be granted until the court is in receipt of *the comprehensive sex offender presentence* ~~an~~ evaluation of the offender performed by *an approved provider, as defined in Section 18 of this Act or the* ~~sex offender treatment program operated or approved by the~~ Department of Corrections ~~or the Department for Mental Health and Mental Retardation Services~~. The court shall use the *comprehensive sex offender presentence* evaluation in determining the appropriateness of probation or conditional discharge.
- (4) If the court grants probation or conditional discharge, the offender shall be required, as a condition of probation or conditional discharge, to successfully complete a community-based sexual offender treatment program operated or approved by the Department of Corrections or the *Sex Offender Risk Assessment Advisory Board* ~~Department for Mental Health and Mental Retardation Services~~.
- (5) The offender shall pay for any evaluation or treatment required pursuant to this section up to the offender's ability to pay but not more than the actual cost of the *comprehensive sex offender presentence* evaluation or treatment.
- (6) Failure to successfully complete the sexual offender treatment program constitutes grounds for the revocation of probation or conditional discharge.
- (7) *The comprehensive sex offender presentence evaluation and* all communications relative to the *comprehensive sex offender presentence* evaluation and treatment of a sexual offender shall fall under the provisions of KRS 197.440. *The comprehensive sex offender presentence evaluation shall be filed under seal* and shall not be made a part of the court record subject to review in appellate proceedings *and shall not be made available to the public*.
- (8) Before imposing sentence, the court shall advise the defendant or his counsel of the contents and conclusions of any *comprehensive sex offender presentence* evaluation performed pursuant to this section and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel *and the Commonwealth's attorney* a copy of the *comprehensive sex offender presentence* evaluation. It shall not be necessary to disclose the sources of confidential information.
- (9) To the extent that this section conflicts with KRS 533.010, this section shall take precedence.

Section 35. KRS 532.050 is amended to read as follows:

- (1) No court shall impose sentence for conviction of a felony, other than a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. The presentence investigation report shall not be waived; however, the completion of the presentence

investigation report may be delayed until after sentencing upon the written request of the defendant if the defendant is in custody and is ineligible for probation or conditional discharge.

- (2) The report shall be prepared and presented by a probation officer and shall include an analysis of the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, personal habits, and any other matters that the court directs to be included.
- (3) Before imposing sentence for a felony conviction, the court may order the defendant to submit to psychiatric observation and examination for a period not exceeding sixty (60) days. The defendant may be remanded for this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination.
- (4) If the defendant has been convicted of *a sex crime, as defined in Section 15 of this Act*~~[any felony offense under KRS Chapter 510, 530.020, 530.064, 531.310, any sexual offense under KRS 506.010 or 506.030, or any other felony offense committed in conjunction with a misdemeanor under KRS Chapter 510, the court shall]~~, prior to determining the sentence, *the court shall order a comprehensive sex offender presentence*~~[an]~~ evaluation of the defendant to be conducted by *an approved provider, as defined in Section 18 of this Act or the*~~[sexual offender treatment program operated or approved by the]~~ Department of Corrections~~[or the Department for Mental Health and Mental Retardation Services]~~. The *comprehensive sex offender presentence* evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment and shall be considered by the court in determining the appropriate sentence. A copy of the *comprehensive sex offender presentence* evaluation shall be furnished to the *court, the Commonwealth's attorney,*~~[Commonwealth]~~ and to *counsel for* the defendant. If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All communications relative to the *comprehensive sex offender presentence* evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings. The defendant shall pay for any *comprehensive sex offender presentence* evaluation or treatment required pursuant to this section up to the defendant's ability to pay but no more than the actual cost of the *comprehensive sex offender presentence* evaluation or treatment.
- (5) The presentence investigation report shall identify the counseling treatment, educational, and rehabilitation needs of the defendant and identify community-based and correctional-institutional-based programs and resources available to meet those needs or shall identify the lack of programs and resources to meet those needs.
- (6) Before imposing sentence, the court shall advise the defendant or his counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

Section 36. KRS 532.100 is amended to read as follows:

- (1) When an indeterminate term of imprisonment is imposed, the court shall commit the defendant to the custody of the Department of Corrections for the term of his sentence and until released in accordance with the law.
- (2) When a definite term of imprisonment is imposed, the court shall commit the defendant to the county or city correctional institution or to a regional correctional institution for the term of his sentence and until released in accordance with the law.
- (3) When a sentence of death is imposed, the court shall commit the defendant to the custody of the Department of Corrections with directions that the sentence be carried out according to law.
- (4) The provisions of KRS 500.080(5) notwithstanding, if a Class D felon is sentenced to an indeterminate term of imprisonment of five (5) years or less, he shall serve that term in a county jail in a county in which the fiscal court has agreed to house state prisoners; except that, when an indeterminate sentence of two (2) years or more is imposed on a Class D felon convicted of a sexual offense enumerated in KRS 197.410(1) *or a crime under subsection (11) or (12) of Section 16 of this Act*, the sentence shall be served in a state institution. Counties choosing not to comply with the provisions of this subsection shall be granted a waiver by the commissioner of the Department of Corrections.

- (5) The jailer of a county in which a Class D felon is incarcerated may request the commissioner of the Department of Corrections to incarcerate the felon in a state corrections institution if the jailer has reasons to believe that the felon is an escape risk, a danger to himself or other inmates, an extreme security risk, or needs protective custody beyond that which can be provided in a county jail. The commissioner of the Department of Corrections shall evaluate the request and transfer the inmate if he deems it necessary. If the commissioner refuses to accept the felon inmate, and the Circuit Judge of the county that has jurisdiction of the offense charged is of the opinion that the felon cannot be safely kept in a county jail, the Circuit Judge, with the consent of the Governor, may order the felon transferred to the custody of the Department of Corrections.
- (6) Class D felons serving their time in a local jail shall be considered state prisoners, and the Department of Corrections shall pay the jail in which the prisoner is incarcerated a per diem amount determined according to KRS 431.215(2). For other state prisoners and parole violator prisoners, the per diem payments shall also begin on the date prescribed in KRS 431.215(2).
- (7) State prisoners, excluding the Class D felons qualifying to serve time in county jails, shall be transferred to the state institution within forty-five (45) days of final sentencing.

Section 37. The provisions of Sections 15 to 30 of this Act shall apply to all persons who, after the effective date of this Act, are required under Section 16 of this Act to become registrants, as defined in Section 15 of this Act.

Section 38. The following KRS sections are repealed:

17.570 Order for sex offender risk assessment -- Cost -- Hearing -- Appeal -- Notice to sheriff upon release of sex offender.

17.572 Notification for high, moderate, and low risk sex offenders.

510.310 Evidence of violation inadmissible in child custody or visitation suit -- Exception.

Section 39. KRS 508.032 is amended to read as follows:

- (1) If ~~a person commits~~~~[an individual is found guilty or pleads guilty to]~~ a third or subsequent offense of assault in the fourth degree ~~under~~~~[pursuant to]~~ KRS 508.030 within five (5) years, and the relationship between the perpetrator and the victim in each of the offenses meets the definition of family member or member of an unmarried couple, as defined in KRS 403.720, ***then the person may be convicted of a Class D felony. If the Commonwealth desires to utilize the provisions of this section, the Commonwealth shall indict the defendant and the case shall be tried in the Circuit Court as a felony case. The jury, or judge if the trial is without a jury, may decline to assess a felony penalty in a case under this section and may convict the defendant of a misdemeanor***~~[the penalty shall be enhanced by one (1) degree above the penalty otherwise provided for the offense]~~. The victim in the second or subsequent offense is not required to be the same person who was assaulted in the prior offenses in order for the provisions of this section to apply.
- (2) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered by a court of competent jurisdiction.

Section 40. Whereas the federal government has mandated that the Commonwealth immediately enact public safety legislation contained in Sections 15 to 38 of this Act or lose federal funding, an emergency is declared to exist, and Sections 15 to 38 of this Act take effect upon this Act's passage and approval by the Governor or upon this Act otherwise becoming law.

**Approved April 11, 2000**

## CHAPTER 402

(SB 130)

AN ACT relating to volunteer fire department aid.

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

Section 1. KRS 95A.262 is amended to read as follows:

- (1) The Commission on Fire Protection Personnel Standards and Education shall, in cooperation with the Cabinet for Health Services, develop and implement a continuing program to inoculate every paid and volunteer firefighter in Kentucky against hepatitis B. The program shall be funded from revenues allocated to the

Firefighters Foundation Program fund pursuant to KRS 136.392 and 42.190. Any fire department which has inoculated its personnel during the period of July 1, 1991 to July 14, 1992, shall be reimbursed from these revenues for its costs incurred up to the amount allowed by the Cabinet for Human Resources for hepatitis B inoculations.

- (2) Except as provided in subsection (3) of this section and KRS 61.316, the Commission on Fire Protection Personnel Standards and Education shall allot on an annual basis a share of the funds accruing to and appropriated for volunteer fire department aid to volunteer fire departments in cities of all classes, fire protection districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083, and volunteer fire departments created as nonprofit corporations pursuant to KRS Chapter 273. The commission shall allot **eight thousand dollars (\$8,000)**~~six thousand five hundred dollars (\$6,500)~~ annually to each qualifying department, and beginning on July 1 of ~~2001~~~~1999~~, the commission shall allot **eight thousand two hundred fifty dollars (\$8,250)**~~seven thousand five hundred dollars (\$7,500)~~ annually to each qualifying department. Any qualifying department which fails to participate satisfactorily in the Kentucky fire incident reporting system as described in KRS 304.13-380 shall forfeit annually five hundred dollars (\$500) of its allotment. The commission shall recommend to the commissioner of the Department of Housing, Buildings and Construction the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A to define satisfactory participation in the Kentucky fire incident reporting system. Administrative regulations for determining qualifications shall be based on the number of both paid firefighters and volunteer firemen within a volunteer fire department, the amount of equipment, housing facilities available, and such other matters or standards as will best effect the purposes of the volunteer fire department aid law. A qualifying department shall include at least twelve (12) firefighters, a chief, and at least one (1) operational fire apparatus or one (1) on order. Fifty percent (50%) of the firefighters shall have completed at least one half (1/2) of one hundred fifty (150) training hours toward certification within the first six (6) months of the first year of the department's application for certification, and there shall be a plan to complete the one hundred fifty (150) training hours within the second year. These personnel, equipment, and training requirements shall not be made more stringent by the promulgation of administrative regulations. No allotment shall exceed the total value of the funds, equipment, lands, and buildings made available to the local fire units from any source whatever for the year in which the allotment is made. A portion of the funds provided for above may be used to purchase group or blanket health insurance and shall be used to purchase workers' compensation insurance, and the remaining funds shall be distributed as set forth in this section.
- (3) There shall be allotted two hundred thousand dollars (\$200,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund that shall be allocated each fiscal year of the biennium to the firefighters training center fund, which is hereby created and established, for the purposes of constructing new or upgrading existing training centers for firefighters. If any moneys in the training center fund remain uncommitted, unobligated, or unexpended at the close of the first fiscal year of the biennium, then such moneys shall be carried forward to the second fiscal year of the biennium, and shall be reallocated to and for the use of the training center fund, in addition to the second fiscal year's allocation of two hundred thousand dollars (\$200,000). Prior to funding any project pursuant to this subsection, a proposed project shall be approved by the Commission on Fire Protection Personnel Standards and Education as provided in subsection (4) of this section and shall comply with state laws applicable to capital construction projects.
- (4) Applications for funding low-interest loans and firefighters' training centers shall be submitted to the Commission on Fire Protection Personnel Standards and Education for their recommendation, approval, disapproval, or modification. The commission shall review applications periodically, and shall, subject to funds available, recommend which applications shall be funded and at what levels, together with any terms and conditions the commission deems necessary.
- (5) Any department or entity eligible for and receiving funding pursuant to this section shall have a minimum of fifty percent (50%) of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.
- (6) Upon the written request of any department, the Commission on Fire Protection Personnel Standards and Education shall make available a certified training program in a county of which such department is located.
- (7) The amount of reimbursement for any given year for costs incurred by the department for administering these funds, including, but not limited to the expenses and costs of commission operations, shall be determined by the commission and shall not exceed five percent (5%) of the total amount of moneys accruing to the Firefighters Foundation Program fund which are allotted for the purposes specified in this section during any fiscal year.



- (8) The commission shall withhold from the general distribution of funds under subsection (2) of this section an amount which it deems sufficient to reimburse volunteer fire departments for equipment lost or damaged beyond repair due to hazardous material incidents.
- (9) Moneys withheld pursuant to subsection (8) of this section shall be distributed only under the following terms and conditions:
- (a) A volunteer fire department has lost or damaged beyond repair items of personal protective clothing or equipment due to that equipment having been lost or damaged as a result of an incident in which a hazardous material (as defined in any state or federal statute or regulation) was the causative agent of the loss;
  - (b) The volunteer fire department has made application in writing to the commission for reimbursement in a manner approved by the commission and the loss and the circumstances thereof have been verified by the commission;
  - (c) The loss of or damage to the equipment has not been reimbursed by the person responsible for the hazardous materials incident or by any other person;
  - (d) The commission has determined that the volunteer fire department does not have the fiscal resources to replace the equipment;
  - (e) The commission has determined that the equipment sought to be replaced is immediately necessary to protect the lives of the volunteer firefighters of the fire department;
  - (f) The fire department has agreed in writing to subrogate all claims for and rights to reimbursement for the lost or damaged equipment to the Commonwealth to the extent that the Commonwealth provides reimbursement to the department; and
  - (g) The department has shown to the satisfaction of the commission that it has made reasonable attempts to secure reimbursement for its losses from the person responsible for the hazardous materials incident and has been unsuccessful in the effort.
- (10) If a volunteer fire department has met all of the requirements of subsection (9) of this section, the commission may authorize a reimbursement of equipment losses not exceeding ten thousand dollars (\$10,000) or the actual amount of the loss, whichever is less.
- (11) Moneys which have been withheld during any fiscal year which remain unexpended at the end of the fiscal year shall be distributed in the normal manner required by subsection (2) of this section during the following fiscal year.
- (12) No volunteer fire department may receive funding for equipment losses more than once during any fiscal year.
- (13) The commission shall make reasonable efforts to secure reimbursement from the responsible party for any moneys awarded to a fire department pursuant to this section.
- (14) There shall be allotted each year of the 1992-93 biennium one million dollars (\$1,000,000), and each year of the 1994-95, 1996-97, 1998-99, and 2000-01 bienniums one million dollars (\$1,000,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund for the purpose of creating a revolving low-interest loan fund, which shall thereafter be self-sufficient and derive its operating revenues from principal and interest payments. The commission, in accordance with the procedures in subsection (4) of this section, may make low-interest loans, and the interest thereon shall not exceed three percent (3%) annually or the amount needed to sustain operating expenses of the loan fund, whichever is less, to volunteer fire departments for the purposes of major equipment purchases and facility construction. Loans shall be made to departments which achieve the training standards necessary to qualify for volunteer fire department aid allotted pursuant to subsection (2) of this section, and which do not have other sources of funds at rates which are favorable given their financial resources. The proceeds of loan payments shall be returned to the loan fund for the purpose of providing future loans. If a department does not make scheduled loan payments, the commission may withhold any grants payable to the department pursuant to subsection (2) of this section until the department is current on its payments. Money in the low-interest loan fund shall be used only for the purposes specified in this subsection. Any funds remaining in the fund at the end of a fiscal year shall be carried forward to the next fiscal year for the purposes of the fund.

**CHAPTER 403****(HB 144)**

AN ACT relating to services for persons with mental retardation and other developmental disabilities, and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 210 IS CREATED TO READ AS FOLLOWS:

*The General Assembly of the Commonwealth of Kentucky hereby finds and declares that:*

- (1) Assistance and support to citizens of the Commonwealth with mental retardation and other developmental disabilities are necessary and appropriate roles of state government;*
- (2) The current system of services and supports to persons with mental retardation and other developmental disabilities suffers from a lack of program coordination, funding, controls on quality of care, and review and evaluation;*
- (3) As part of the review and evaluation, it is necessary to require:*
  - (a) Identification, development, and provision of services and supports for persons with mental retardation and other developmental disabilities using available institutional care as appropriate and integrated with community-based services designed to be inclusive, responsive to individual needs, and protective of the individual's legal rights to equal opportunity;*
  - (b) Review of current funding mechanisms to determine the best method to establish an array of community-based comprehensive services using facility-based outpatient services and supports that are available through public and private sectors including nonprofit and for-profit service providers that will allow persons with mental retardation and other developmental disabilities the opportunity to participate in community life. The review shall include consideration of the availability of residential alternatives, employment opportunities, and opportunities for participation in community-based social and recreational activities; and*
  - (c) Development of funding strategies to promote appropriate use of community-based services and supports that provide:*
    - 1. Flexibility for persons with mental retardation and other developmental disabilities;*
    - 2. Distribution of available funds among all interested service providers, including nonprofit and for-profit service providers, based on the needs of the person with mental retardation and other developmental disabilities; and*
    - 3. Efficiency and accountability to the general public;*
- (4) Sections 1 to 3 of this Act shall be construed to protect and to promote the continuing development and maintenance of the physical, mental, and social skills of persons with mental retardation and other developmental disabilities; and*
- (5) Sections 1 to 3 of this Act shall not be construed:*
  - (a) To alter any requirements or responsibilities that are mandated by any state or federal law;*
  - (b) To relieve any organizational unit or administrative body of its duties under state or federal law; or*
  - (c) To transfer among state organizations or administrative bodies any responsibilities, powers, or duties that are mandated by state or federal law.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 210 IS CREATED TO READ AS FOLLOWS:

- (1) There is created the Kentucky Commission on Services and Supports for Individuals with Mental Retardation and Other Developmental Disabilities. The commission shall consist of:*
  - (a) The secretary of the Cabinet for Health Services;*
  - (b) The secretary of the Cabinet for Families and Children;*

- (c) *The commissioner of the Department for Mental Health and Mental Retardation Services;*
- (d) *The commissioner of the Department for Medicaid Services;*
- (e) *The commissioner of the Department of Vocational Rehabilitation;*
- (f) *The director of the University Affiliated Program at the Interdisciplinary Human Development Institute of the University of Kentucky;*
- (g) *The director of the Developmental Disabilities Council;*
- (h) *Two (2) members of the House of Representatives, appointed by the Speaker of the House;*
- (i) *Two (2) members of the Senate, appointed by the Senate President; and*
- (j) *Public members, appointed by the Governor within ninety (90) days of the effective date of this Act, as follows:*
  - 1. *Three (3) family members, at least one (1) of whom shall be a member of a family with a child with mental retardation or other developmental disabilities, and one (1) of whom shall be a member of a family with an adult with mental retardation or other developmental disabilities;*
  - 2. *Three (3) persons with mental retardation or other developmental disabilities;*
  - 3. *Two (2) business leaders;*
  - 4. *Three (3) direct service providers representing the Kentucky Association of Regional Programs and the Kentucky Association of Residential Resources; and*
  - 5. *One (1) representative of a statewide advocacy group.*

*The six (6) appointments made under subparagraph 1. and subparagraph 2. of this paragraph shall be chosen to reflect representation from each of Kentucky's six (6) congressional districts.*

- (2) *The secretary of the Cabinet for Health Services shall serve as chair of the commission.*
- (3) *Members defined in paragraphs (a) to (h) of subsection (1) of this section shall serve during their terms of office. All public members appointed by the Governor shall serve a four (4) year term and may be reappointed.*
- (4) *All public members of the commission shall receive twenty-five dollars (\$25) per day for attending each meeting. All commission members shall be reimbursed for necessary travel and other expenses actually incurred in the discharge of duties of the commission.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 210 IS CREATED TO READ AS FOLLOWS:

- (1) *The commission created in Section 2 of this Act shall meet at least quarterly during the 2000-2001 biennium, at least biennially thereafter, or upon the call of the chair, the request of four (4) or more members, or the request of the Governor.*
- (2) *The commission shall serve in an advisory capacity to accomplish the following:*
  - (a) *Advise the Governor and the General Assembly concerning the needs of persons with mental retardation and other developmental disabilities;*
  - (b) *Develop a statewide strategy to increase access to community-based services and supports for persons with mental retardation and other developmental disabilities. The strategy shall include:*
    - 1. *Identification of funding needs and related fiscal impact; and*
    - 2. *Criteria that establishes priority for services for individuals approved for slots that consider timeliness and service needs;*
  - (c) *Assess the need and potential utilization of specialized outpatient clinics for medical, dental, and special therapeutic services for persons with mental retardation and other developmental disabilities;*
  - (d) *Evaluate the effectiveness of state agencies and public and private service providers, including nonprofit and for-profit service providers in:*
    - 1. *Dissemination of information and education;*

2. *Providing outcome oriented services; and*
3. *Efficiently utilizing available slots and resources, including blended funding streams;*
- (e) *Develop a recommended comprehensive ten (10) year plan for placement of qualified persons in the most integrated setting appropriate to their needs;*
- (f) *Recommend an effective quality assurance and consumer satisfaction monitoring program that includes recommendations as to the appropriate role of family members, persons with mental retardation and other developmental disabilities, and advocates in quality assurance efforts; and*
- (g) *Advise the Governor and the General Assembly on whether the recommendations should be implemented by administrative regulations or proposed legislation for the 2002 General Assembly.*
- (3) *Within six (6) months after the effective date of this Act, the secretary of the Cabinet for Health Services shall present the plan to the Governor and the members of the General Assembly.*
- (4) *The commission shall review the plan annually and shall submit annual updates no later than October 1 to the Governor and the Legislative Research Commission.*
- (5) *The commission shall cease to exist four (4) years after the effective date of this Act unless otherwise reauthorized by the General Assembly.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*
  - (a) *"Supports for Community Living waiver program" means funding from the Department for Medicaid Services to serve individuals with mental retardation or other developmental disabilities who qualify for intermediate care and choose to live in a community-based setting; and*
  - (b) *"Slots" means the dedication of provider or financial resources for services to persons with mental retardation or other developmental disabilities.*
- (2) *The Department for Medicaid Services shall develop and implement flexible reimbursement and payment strategies that reflect the individually determined needs for services and supports by persons with mental retardation and other developmental disabilities participating in the Supports for Community Living waiver program.*
- (3) *The Department for Medicaid Services shall allocate slots to the fourteen (14) community mental health regions based on percentage of total population.*
- (4) *The Department for Medicaid Services shall reallocate underutilized slots to address statewide needs and shall reallocate slots in emergency situations to address unmet needs for services and supports.*
- (5) *Within six (6) months after the effective date of this Act, the Department for Medicaid Services shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the requirements of this section.*

Section 5. KRS 347.010 is amended to read as follows:

The General Assembly of the Commonwealth of Kentucky hereby finds and declares that:

- (1) A **comprehensive and outcome-driven**~~complete, effective~~ system of services and **supports**~~care~~ provided to persons with developmental disabilities must be **designed**, coordinated, consistent, **and** monitored~~and designed~~ to meet the **self-determined** needs of those persons as well as to protect their legal and human rights;
- (2) The current system of services and **supports**~~care~~ for persons with developmental disabilities needs substantial improvement in order to provide an array of services **including person-driven community-based services and supports**~~which allows active treatment and habilitation~~;
- (3) It is necessary to require:
  - (a) The identification,~~and evaluation of, and the~~ development,~~and~~ provision, **and evaluation** of services and **supports**~~active treatment~~ for~~persons with developmental disabilities~~;
  - (b) **Inter and intra-agency planning, development, implementation, and evaluation of services and supports that are the most community inclusive, responsive to individual needs, and that assure legal and human rights for equal opportunity**~~Interagency development, coordinated planning and~~

~~implementation of active treatment and service programs which are the least restrictive and individually appropriate for persons with developmental disabilities, while safeguarding their legal and human rights];~~

- (c) ~~Development and provision of programs in the public and private sectors for the habilitation and active treatment of persons with developmental disabilities; and~~
- (d) Establishment of an array of *community-based* comprehensive services and *supports, provided by* ~~residential alternatives in the~~ public and private sectors ~~that~~ *to* allow persons with developmental disabilities the *right to participate in the life of the community, including residential alternatives, employment, and social and recreational activities* ~~[opportunity to live in the least restrictive, individually appropriate environment]; and~~
- (d) *Funding strategies that promote the development of community-based services and supports that demonstrate:*
  - 1. *Flexibility for the person with developmental disabilities;*
  - 2. *Distribution of available funds among all interested service providers based on the needs of the person with developmental disabilities; and*
  - 3. *Efficiency and accountability to the general public.*
- (4) The provisions of this chapter shall be construed to protect and promote the continuing development and maintenance of physical, mental, and social skills of persons with developmental disabilities; **and**
- (5) The provisions of this chapter shall not alter requirements and responsibilities mandated under any state or federal act, relieve any organizational unit or administrative body of its duties under ~~those~~ *said* acts, or transfer among state organizations or administrative bodies any responsibilities, powers, or duties mandated by ~~those~~ *said* acts.

Section 6. Whereas the current methods of providing access to community-based services and supports to persons with mental retardation and other developmental disabilities are inefficient and ineffective; and whereas there is a fundamental need for a comprehensive evaluation of the efforts of state agencies to provide needed services; and whereas there is a need to increase access to community-based services for persons with mental retardation and other developmental disabilities, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Approved April 14, 2000**

## CHAPTER 404

(HB 70)

AN ACT relating to civil rights.

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

Section 1. KRS 344.130 is amended to read as follows:

As used in this chapter, unless the context requires otherwise, ~~[-~~

~~—]~~ "place of public accommodation, resort, or amusement" includes any place, store, or other establishment, either licensed or unlicensed, which supplies goods or services to the general public or which solicits or accepts the patronage or trade of the general public or which is supported directly or indirectly by government funds, ~~[-]~~ except that:

- (1) A private club is not a "place of public accommodation, resort, or amusement" if its policies are determined by its members and its facilities or services are available only to its members and their bona fide guests; ~~[- and]~~
- (2) "Place of public accommodation, resort, or amusement" does not include a rooming or boarding house containing not more than one (1) room for rent or hire and which is within a building occupied by the proprietor as his residence; **and**

- (3) *"Place of public accommodation, resort, or amusement" does not include a religious organization and its activities and facilities if the application of KRS 344.120 would not be consistent with the religious tenets of the organization, subject to paragraphs (a), (b), and (c) of this subsection.*
- (a) *Any organization that teaches or advocates hatred based on race, color, or national origin shall not be considered a religious organization for the purposes of this subsection.*
- (b) *A religious organization that sponsors nonreligious activities that are operated and governed by the organization, and that are offered to the general public, shall not deny participation by an individual in those activities on the ground of disability, race, color, religion, or national origin.*
- (c) *A religious organization shall not, under any circumstances, discriminate in its activities or use of its facilities on the ground of disability, race, color, or national origin.*

Governor's veto overridden, April 14, 2000

## CHAPTER 405

### (HB 331)

AN ACT relating to the sale of confiscated firearms.

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

Section 1. KRS 95.435 is amended to read as follows:

- (1) The police department in cities of the second class, and urban-county government shall take charge of property, within their jurisdiction, alleged to be or suspected of being the proceeds of crime, property taken from the person of a prisoner, lost or abandoned property taken into the custody of any member of the police force or criminal court, and property taken from persons supposed to be insane, intoxicated or otherwise incapable of taking care of themselves. The officer or court having custody of such property shall as soon as practicable deliver it into the custody of the police department.
- (2) All such property shall be particularly described and registered by the police department in a book kept for that purpose, containing the name of the owner, if ascertained, the place where found, the name of the person from whom taken, with the general circumstances, the date of its receipt, the name of the officer recovering the property, the names of all claimants thereto, and any final disposition of the property. The police department shall advertise the property pursuant to KRS Chapter 424 for the information of the public as to the amount and disposition of the property.
- (3) If any property in the custody of the police department is desired as evidence in any criminal court, such property shall be delivered to any officer who presents an order to that effect from the court. Such property shall not be retained in the court but shall be returned to the police department.
- (4) All property except firearms that remains in the custody of the police department for three (3) months, without any lawful claimant thereto, may be sold at public auction in a suitable room designated for that purpose after having been advertised pursuant to KRS Chapter 424. The proceeds of such sales shall be paid into the police and firefighters' pension fund of said city or urban-county government. Firearms shall be **transferred to the Kentucky State Police within ninety (90) days of abandonment, confiscation, release of the weapon as evidence, or forfeiture by a court, whichever occurs later**~~disposed of as provided by KRS 500.090~~.

Section 2. KRS 500.090 is amended to read as follows:

- (1) All property which is subject to forfeiture under any section of the Kentucky Penal Code shall be disposed of in accordance with this section.
- (a) Property other than firearms which is forfeited under any section of this code may, upon order of the trial court, be destroyed by the sheriff of the county in which the conviction was obtained.
- (b) Property other than firearms which is forfeited under any section of this code may, upon order of the trial court, be sold at public auction. The expenses of keeping and selling such property and the amount of all valid recorded liens that are established by intervention as being bona fide shall be paid out of the proceeds of the sale. The balance shall be paid to:
1. The state, if the property was seized by an agency of the state or peace officer thereof;

2. The county, if the property was seized by the sheriff or an agency or peace officer of the county;
  3. The Department of Fish and Wildlife Resources, if the property was seized by a peace officer of the Department of Fish and Wildlife or was seized by any other officer for violation of KRS Chapter 150;
  4. The city, if the property was seized by the city or by an agency or peace officer thereof and the property was delivered to the city property clerk;
  5. The city (ninety percent (90%) of the proceeds) and the sheriff (ten percent (10%) of the proceeds), if the property was seized by the city or by an agency or peace officer thereof and the property was delivered to the sheriff or the county police; or
  6. The state, if the property was seized by any combination of agencies listed above.
- (c) Subject to the duty to return confiscated firearms *and ammunition* to innocent owners pursuant to this section, all firearms *and ammunition* confiscated by a state or local law enforcement agency, all firearms ordered forfeited by a court, and all abandoned firearms *and ammunition* coming into the custody of a state or local law enforcement agency and not retained for official use shall be *transferred to the Kentucky State Police for disposition as provided by KRS 16.220. The transfer shall occur not more than ninety (90) days after the abandonment of the firearm or ammunition to the law enforcement agency or not more than ninety (90) days after its confiscation, unless a court requires the firearm or ammunition for use as evidence, in which case it shall be transferred to the Kentucky State Police not more than ninety (90) days following the order of forfeiture by the court or after the court returns the firearm or ammunition from use as evidence*~~[sold at public auction to federally licensed firearms dealers holding a license appropriate for the type of firearms sold]~~. Prior to the sale of any firearm *or ammunition*, the law enforcement agency shall make a bona fide attempt to determine if the firearm *or ammunition* to be sold has been stolen or otherwise unlawfully obtained from an innocent owner and return the firearm *and ammunition* to its lawful innocent owner, unless that person is ineligible to purchase a firearm under federal law. This subsection relating to auction of firearms *and ammunition* shall not apply to firearms *and ammunition* auctioned by the Department of Fish and Wildlife that may be sold to individual purchasers residing in Kentucky who are eligible under federal law to purchase firearms *and ammunition* of the type auctioned.
- ~~(d) Proceeds from firearms sales shall be utilized by the law enforcement agency for the purchase of body armor meeting National Institute of Justice Standards for sworn officers of the law enforcement agency or for the purchase of firearms, ammunition, or range facilities, or a combination thereof, by the law enforcement agency. This subsection shall not apply to the Department of Fish and Wildlife.~~
- ~~(e)~~ If property which is forfeited under any section of this code is determined by the trial court to be worthless, encumbered with liens in excess of its value, or otherwise a burdensome asset, the court may abandon any interest in such property. Property which is abandoned pursuant to this section shall be returned to the lawful claimant upon payment of expenses for keeping the property.
- ~~(e)(f)~~ Property which is forfeited under any section of this code may, upon order of the trial court, be retained for official use in the following manner. Property which has been seized by an agency of the state may be retained for official state use. Property which has been seized by an agency of county, city, or urban-county government may be retained for official use by the government whose agency seized the property or for official state use. Property seized by any other unit of government may be retained only for official state use. The expenses for keeping and transferring such property shall be paid by the unit of government by which the property is retained.
- (2) Money which has been obtained or conferred in violation of any section of this code shall, upon conviction, be forfeited for the use of the state. This subsection shall not apply when, during the course of the proceeding in which the conviction is obtained, the person from whom said money was unlawfully acquired is identified.
  - (3) Property forfeited under any section of this code shall be disposed of in accordance with this section only after being advertised pursuant to KRS Chapter 424. This subsection shall not apply to property which is designed and suitable only for criminal use or to money forfeited under subsection (2) of this section.
  - (4) The trial court shall remit the forfeiture of property when the lawful claimant:
    - (a) Asserts his claim before disposition of the property pursuant to this section;

- (b) Establishes his legal interest in the property; and
  - (c) Establishes that the unlawful use of the property was without his knowledge and consent. Subsection (4) shall not apply to a lienholder of record when the trial court elects to dispose of the property pursuant to subsection (1)(b) of this section.
- (5) For purposes of this section, "lawful claimant" means owner or lienholder of record.
- (6) Before property which has had its identity obscured in violation of KRS 514.120 may be sold or retained for official use as provided in this section, the court shall cause a serial or other identifying number to be placed thereon and a record of the number assigned shall be placed in the court order authorizing the sale or retention of the property. This number shall be assigned, whenever applicable, in consultation with the Kentucky State Police and any other state or federal regulatory agency. The purchaser of the property shall be given a document stating that the property had been forfeited pursuant to law and that a number, shown on the document, has been assigned which shall be deemed as compliance of the owner with KRS 514.120. When property is returned to an owner pursuant to this section and its identity has been obscured by another person in violation of KRS 514.120, the court shall provide a document to the owner relieving him of liability for its continued possession. This document shall serve as evidence of compliance with KRS 514.120 by the owner or any person to whom he lawfully disposes of the property. This section shall not apply to any person after property has been sold or returned in compliance with this section who violates the provisions of KRS 514.120 with respect to that property.
- (7) Before forfeiture of any property under this section, it shall be the duty of the trial court to determine if a lawful owner or claimant to the property has been identified or is identifiable. If a lawful owner or claimant has been identified or is identifiable, the court shall notify the owner or claimant that the property is being held and specify a reasonable period of time during which the claim may be made or may, in lieu thereof, order the return of the property to the lawful owner or claimant. If the lawful owner or claimant does not assert his claim to the property after notification or if he renounces his claim to the property, the property shall be disposed of as provided in this section. It shall be the duty of all peace officers and other public officers or officials having knowledge of the lawful owner or claimant of property subject to forfeiture to report the same to the trial court before the act of forfeiture occurs.

Section 3. KRS 16.220 is amended to read as follows:

- (1) Subject to the duty to return confiscated firearms to innocent owners pursuant to KRS 500.090, all firearms confiscated by the Kentucky State Police and not retained for official use pursuant to KRS 500.090 shall be sold at public auction to federally licensed firearms dealers holding a license appropriate for the type of firearm sold. The Kentucky State Police shall transfer firearms that are to be sold to the Department of Finance, Division of Surplus Property, for sale. Proceeds of the sale shall be transferred to the account of the Department for Local Government for use as provided in subsection (3)~~[(2)]~~ of this section. Prior to the sale of any firearm, the Kentucky State Police shall make an attempt to determine if the firearm to be sold has been stolen or otherwise unlawfully obtained from an innocent owner and return the firearm to its lawful innocent owner, unless that person is ineligible to purchase a firearm under federal law.
- (2) ***The Kentucky State Police shall receive firearms and ammunition confiscated by or abandoned to every law enforcement agency in Kentucky. The Kentucky State Police shall dispose of the firearms received in the manner specified in subsection (1) of this section. However, firearms which are not retained for official use, returned to an innocent lawful owner, or transferred to another government agency or public museum shall be sold as provided in subsections (1) and (3) of this section.***
- (3) The proceeds of firearms sales shall be utilized by the Department for Local Government to provide grants to city, county, charter county, and urban-county police and sheriff's departments for the purchase of body armor for sworn peace officers of those departments. Body armor purchased by the department receiving grant funds shall meet or exceed the standards issued by the National Institute of Justice for body armor. No police or sheriff's department shall apply for a grant to replace existing body armor unless that body armor has been in actual use for a period of five (5) years or longer.
- (4) ***The Kentucky State Police may transfer a machine gun, short-barreled shotgun, short-barreled rifle, silencer, pistol with a shoulder stock, any other weapon, or destructive device as defined by the National Firearms Act which is subject to registration under the National Firearms Act, and is not properly registered in the national firearms transfer records for those types of weapons, to the Bureau of Alcohol, Tobacco, and Firearms of the United States Department of the Treasury, after a reasonable attempt has***



*been made to transfer the firearm to an eligible state or local law enforcement agency or to an eligible museum and no eligible recipient will take the firearm or weapon. National Firearms Act firearms and weapons which are properly registered and not returned to an innocent lawful owner or retained for official use as provided in this section shall be sold to properly licensed dealers under subsection (3) of this section.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 500 IS CREATED TO READ AS FOLLOWS:

*No court or law enforcement agency shall retain a firearm or ammunition for official use for the purpose of avoiding transfer of the firearm or ammunition to the Kentucky State Police under KRS 237.090, 500.090, or other statute to avoid its being sold pursuant to KRS 16.220.*

**Governor's veto overridden, April 14, 2000**

## CHAPTER 406

**(HB 856)**

AN ACT relating to administrative regulations.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

- (1) *Within five (5) working days of the filing of an ordinary administrative regulation that proposes to establish or increase fees, except those fees exempted by KRS 13A.100(3), an administrative body shall mail a notice containing the information required by subsection (2) of this section, to each state association, organization, or other body representing a person or entity affected by the administrative regulation.*
- (2) *The notice shall include the following information:*
  - (a) *The name of the administrative body that filed the proposed administrative regulation;*
  - (b) *A statement that the administrative body has promulgated an administrative regulation that establishes or increases fees;*
  - (c) *A summary of the administrative regulation that includes:*
    1. *The amount of each fee being established;*
    2. *The amount of any increases to any fees previously established; and*
    3. *The necessity for the establishment or increase in the fees;*
  - (d) *A statement that a person or entity may contact the administrative body for additional information;*
  - (e) *The time, date, and place of the scheduled public hearing; and*
  - (f) *The name, address, and telephone number of the contact person for the administrative body.*

Section 2. KRS 13A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Administrative body" means each state board, bureau, cabinet, commission, department, authority, officer, or other entity, except the General Assembly and the Court of Justice, authorized by law to promulgate administrative regulations.~~{;}~~
- (2) "Administrative regulation" means each statement of general applicability promulgated by an administrative body that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any administrative body. The term includes an existing administrative regulation, a new administrative regulation, an emergency administrative regulation, an administrative regulation in contemplation of a statute, the amendment or repeal of an existing administrative regulation, but does not include:
  - (a) Statements concerning only the internal management of an administrative body and not affecting private rights or procedures available to the public;~~{;or}~~
  - (b) Declaratory rulings;~~{;or}~~

- (c) Intradepartmental memoranda not in conflict with KRS 13A.130;~~{or}~~
  - (d) Statements relating to acquisition of property for highway purposes and statements relating to the construction or maintenance of highways; or
  - (e) Rules, regulations, and policies of the governing boards of institutions that make up the postsecondary education system defined in KRS 164.001 pertaining to students attending or applicants to the institutions, to faculty and staff of the respective institutions, or to the control and maintenance of land and buildings occupied by the respective institutions.~~{;}~~
- (3) "Adopted" means that an administrative regulation has become effective in accordance with the provisions of this chapter.~~{;}~~
  - (4) "Authorizing signature" means the signature of the head of the administrative body authorized by statute to promulgate administrative regulations.~~{;}~~
  - (5) "Commission" means the Legislative Research Commission.~~{;}~~
  - (6) "Economic impact" means a financial impact on:
    - (a) Commercial enterprises;
    - (b) Retail businesses;
    - (c) Service businesses;
    - (d) Industry;
    - (e) Consumers of a product or service; or
    - (f) Taxpayers.~~{;}~~
  - (7) "Effective" means that an administrative regulation has completed the legislative subcommittee review established by **Sections 16, 19, and 22 of this Act.**~~{KRS 13A.290 and 13A.330;}~~
  - (8) "Federal mandate" means any federal constitutional, legislative or executive law or order which requires or permits any administrative body to engage in regulatory activities which impose compliance standards, reporting requirements, recordkeeping, or similar responsibilities upon entities in the Commonwealth.~~{;}~~
  - (9) "Federal mandate comparison" means a written statement containing the information required by KRS 13A.245.~~{;}~~
  - (10) "Filed" means that an administrative regulation, or other document required to be filed by this chapter, has been submitted to the Commission in accordance with this chapter.~~{;}~~
  - (11) "Promulgate" means that an administrative body has approved an administrative regulation for filing with the Commission in accordance with the provisions of KRS Chapter 13A.~~{;}~~
  - (12) "Proposed administrative regulation~~{;}~~"~~{except as provided by KRS 13A.015(6);}~~ means an administrative regulation that an administrative body proposes to promulgate.~~{;}~~
  - (13) "Regulatory impact analysis" means a written statement containing the provisions required by KRS 13A.240.~~{;}~~
  - (14) "Statement of consideration" means that an administrative body must either accept suggestions or recommendations regarding an administrative regulation or issue a concise statement setting forth the reasons for not accepting suggestions or recommendations regarding an administrative regulation.~~{;}~~
  - (15) "Subcommittee" **means**~~{includes}~~ the Administrative Regulation Review Subcommittee, any other subcommittee of the Legislative Research Commission, **an interim joint committee**~~{a standing committee of the General Assembly;}~~, or a House and Senate standing committee.~~{meeting jointly; and}~~
  - (16) "Tiering" means the tailoring of regulatory requirements to fit the particular circumstances surrounding regulated entities.

Section 3. KRS 13A.017 is amended to read as follows:

- (1) If an administrative body cancels a **notice of intent**~~{notice of intent}~~ public hearing because it has not received a request for a **notice of intent**~~{notice of intent}~~ public hearing pursuant to subsection (3) of KRS 13A.015, the

administrative body shall immediately notify the regulations compiler in writing and by telephone that it has canceled the ***notice of intent***~~[notice of intent]~~ public hearing.

- (2) Following a public hearing on a proposed administrative regulation held pursuant to the provisions of KRS 13A.015, the administrative body shall give consideration to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing.
- (3) The administrative body shall file with the Commission within forty-five (45) days following the date the public hearing was scheduled, a statement:
  - (a) Identifying the persons who submitted written comments, or attended the public hearing;~~and~~
  - (b) Containing a summary of the:
    1. Comments received or made at the public hearing; and
    2. Its response to the comments; *and*
  - (c) ***In the same format as the statement of consideration required by subsection (4) of Section 15 of this Act.***
- (4) The administrative body shall provide a copy of the summary to any person who attended the public hearing and requested that a copy of the summary be provided.
- (5) The regulations compiler shall transmit a copy of the summary to a legislator upon request.
- (6) If the administrative body promulgates an administrative regulation that was the subject of a public hearing required under the provisions of this section and KRS 13A.015, the regulations compiler shall transmit a copy of the summary to a legislator upon request.
- ~~(7) The administrative body shall provide a copy of the summary to persons who attended the public hearing and requested that a copy of the summary be provided.~~
- ~~(8) If an administrative body determines that it will file an administrative regulation, it shall file the administrative regulation for which a notice of intent was filed within one hundred twenty (120) calendar days of the date on which the ***notice of intent***~~[notice of intent]~~ public hearing was scheduled. ~~[Except as provided by subsection (4) of this section,]~~ If an administrative regulation is not filed within one hundred twenty (120) calendar days of the date on which the ***notice of intent***~~[notice of intent]~~ public hearing was scheduled, the notice of intent shall expire.~~
- ~~(8)(9) If the administrative body determines that it will not file an ordinary administrative regulation for which a notice of intent was filed, it shall notify the regulations compiler of its determination, in writing, within one hundred twenty (120) calendar days of the date on which the ***notice of intent***~~[notice of intent]~~ public hearing was scheduled.~~
- ~~(10) (a) A notice of intent filed prior to July 15, 1996, for which an administrative regulation has not been filed, shall expire on July 15, 1998.~~
- ~~(b) Except as provided by paragraph (a) of this subsection, a notice of intent filed prior to July 15, 1998, for which an administrative regulation has not been filed, shall expire one hundred eighty (180) calendar days following the date on which the notice of intent public hearing was scheduled.]~~

Section 4. KRS 13A.030 is amended to read as follows:

- (1) The Administrative Regulation Review Subcommittee shall:
  - (a) Conduct a continuous study as to whether additional legislation or changes in legislation are needed based on various factors, including but not limited to, review of new, emergency, and existing administrative regulations, the lack of administrative regulations, and the needs of administrative bodies;
  - (b) Except as provided by KRS 158.6471 and 158.6472, review and comment upon administrative regulations submitted to it by the Commission;
  - (c) Make recommendations for changes in statutes, new statutes, repeal of statutes affecting administrative regulations or the ability of administrative bodies to promulgate them; and
  - (d) Conduct such other studies relating to administrative regulations as may be assigned by the Commission.

- (2) The subcommittee may make a nonbinding determination:
- (a) That an administrative regulation *is deficient because it*:
    1. Is wrongfully promulgated;
    2. Appears to be in conflict with an existing statute;
    3. Appears to have no statutory authority for its promulgation;
    4. Appears to impose stricter or more burdensome state requirements than required by the federal mandate, without reasonable justification;
    5. Fails to use tiering when tiering is applicable;
    6. Is in excess of the administrative body's authority; or
    7. Appears to be deficient in any other manner;
  - (b) That an administrative regulation is needed to implement an existing statute; *or*
  - (c) That an administrative regulation should be amended or repealed.
- (3) The subcommittee may require any administrative body to submit data and information as required by the subcommittee in the performance of its duties under this chapter, and no administrative body shall fail to provide the information or data required.

Section 5. KRS 13A.032 is amended to read as follows:

A finding of *deficiency made in accordance*~~[noncompliance]~~ with KRS 13A.030(2)(a) made by a subcommittee shall establish a prima facie case of legislative intent in any action or proceeding in this state in which the validity of an administrative regulation is at issue. Upon such finding, the Legislative Research Commission may institute legal proceedings in Franklin Circuit Court.

Section 6. KRS 13A.070 is amended to read as follows:

- (1) The Commission shall promulgate administrative regulations governing the manner and form in which administrative regulations shall be prepared, to the end that all administrative regulations shall be prepared in a uniform manner. The compiler shall refuse to accept for filing any administrative regulation that does not conform to KRS *Chapter 13A*~~[13A.220 to 13A.250]~~ and the administrative regulations *promulgated*~~[issued]~~ thereunder.
- (2) The Commission shall furnish advice and assistance to all administrative bodies in the preparation of their administrative regulations, and in revising, codifying, and editing existing or new administrative regulations.

Section 7. KRS 13A.190 is amended to read as follows:

- (1) An emergency administrative regulation is one that:
  - (a) Must be placed into effect immediately in order to:
    1. Meet an imminent threat to public health, safety, or welfare;~~[or]~~
    2. Prevent a loss of federal *or state* funds;~~[or]~~
    3. Meet a deadline for the promulgation of an administrative regulation that is established by state law, or federal law or regulation; or
    4. Protect human health and the environment; and
  - (b)
    1. Is temporary in nature and will expire as provided in this section; or
    2. Is temporary in nature and will be replaced by an ordinary administrative regulation as provided in this section.
- (2) Emergency administrative regulations shall become effective and shall be considered as adopted upon filing. Emergency administrative regulations shall be published in the next Administrative Register.
- (3) (a) Except as provided by paragraph (b) of this subsection, emergency administrative regulations shall expire one hundred seventy (170) days after the date of publication or when the same matter filed as an ordinary administrative regulation filed for review is adopted, whichever occurs first.

- (b) If an administrative body extends the public comment period as provided by KRS 13A.270(1), or extends the time for filing a statement of consideration as provided by KRS 13A.280(3), an emergency administrative regulation shall remain in effect for one hundred seventy (170) days after the date of publication plus the number of days extended under the provisions of KRS 13A.270(1) or 13A.280(3), as applicable.
- (4) An emergency administrative regulation shall not be renewed for a period of nine (9) months after it has been initially filed. No other emergency administrative regulation that is identical to or substantially the same as the previously-filed emergency administrative regulation shall be promulgated.
- (5) When an emergency administrative regulation governing the same subject matter governed by an emergency administrative regulation filed within the previous nine (9) months is filed, it shall contain a detailed explanation of the manner in which it differs from the previously filed emergency administrative regulation. The detailed explanation shall be included in the statement of emergency.
- (6) Each emergency administrative regulation shall contain a statement of:
  - (a) The nature of the emergency;
  - (b) The reasons why an ordinary administrative regulation is not sufficient;
  - (c) Whether or not the emergency administrative regulation will be replaced by an ordinary administrative regulation;
  - (d) If the emergency administrative regulation will not be replaced by an ordinary administrative regulation, the reasons therefor; and
  - (e) If applicable, the explanation required by subsection (5) of this section.
- (7) An administrative body shall attach the:
  - (a) Statement of emergency required by subsection (6) of this section to the front of the original and each copy of a proposed emergency administrative regulation; and
  - (b) Regulatory impact analysis, tiering statement, federal mandate comparison, fiscal note, summary of material incorporated by reference if applicable, and other forms or documents required by the provisions of this chapter to the back of the emergency administrative regulation.
- (8) If an emergency administrative regulation will not be replaced by an ordinary administrative regulation, the administrative body shall schedule a public hearing pursuant to KRS 13A.270(1). The public hearing information required by KRS 13A.270(2) shall be attached to the back of the emergency administrative regulation.
- (9) ***The statement of emergency shall have a two (2) inch top margin***~~[A space no smaller than four (4) inches wide by two (2) inches long in the upper right hand corner of the statement shall be left blank for the regulations compiler's stamp].~~ The number of the emergency administrative regulation shall be typed directly below the heading "Statement of Emergency." The number of the emergency administrative regulation shall be the same number as the ordinary administrative regulation followed by an "E."
- (10) Each executive department emergency administrative regulation shall be signed by the head of the administrative body and countersigned by the Governor prior to filing with the Commission. These signatures shall be on the statement of emergency attached to the front of the emergency administrative regulation.
- (11)
  - (a) If an ordinary administrative regulation that was filed to replace an emergency administrative regulation is withdrawn, the emergency administrative regulation shall expire on the date the ordinary administrative regulation is withdrawn.
  - (b) If an ordinary administrative regulation that was filed to replace an emergency administrative regulation is withdrawn, the administrative body shall inform the regulations compiler of the reasons for withdrawal in writing.
- (12)
  - (a) If an emergency administrative regulation, that was intended to be replaced by an ordinary administrative regulation, is withdrawn, the emergency administrative regulation shall expire on the date it is withdrawn.

- (b) If an emergency administrative regulation has been withdrawn, the ordinary administrative regulation that was filed with it shall not expire unless the administrative body informs the regulations compiler that the ordinary administrative regulation is also withdrawn.
  - (c) If an emergency administrative regulation is withdrawn, the administrative body shall inform the regulations compiler of the reasons for withdrawal in writing.
- (13) A subcommittee may review an emergency administrative regulation and may recommend to the Governor that the regulation be ~~withdrawn~~~~[revoked]~~.

Section 8. KRS 13A.220 is amended to read as follows:

All administrative regulations shall comply with the provisions of KRS 13A.222 and 13A.224.

- (1) An administrative body shall file with the regulations compiler:
  - (a) The original and five (5) copies of an administrative regulation; and
  - (b) At the same time the original and five (5) copies are filed, an electronic version, if available, of the administrative regulation and required attachments on a diskette or by e-mail in an electronic format approved by the regulations compiler.
- (2) The original and each copy of each administrative regulation shall be stapled in the top left corner. The original and the five (5) copies of each administrative regulation shall be grouped together.
- (3) An amendment to an administrative regulation shall not be made on a copy of the administrative regulation reproduced from the Kentucky Administrative Regulations Service or the Administrative Register. It shall be a typed original in the format specified in subsection (4) of this section.
- (4) The format of an administrative regulation shall be as follows:
  - (a) An administrative regulation shall be typewritten on white paper, size eight and one-half (8-1/2) by eleven (11) inches and shall be double-spaced. The first page shall have a two (2) inch top margin~~[-, and one (1) inch side and bottom margins]~~. Subsequent pages shall have one (1) inch top, bottom, and side margins. The administrative regulation shall be typed in a twelve (12) point font approved by the regulations compiler. The lines on each page shall be numbered~~[-, with twenty three (23) lines to a page]~~. Pages of an administrative regulation and documents attached to the administrative regulation shall be numbered sequentially. Page numbers shall be centered in the bottom margin of each page. Copies of the administrative regulation may be mechanically reproduced;
  - (b) The regulations compiler shall place a stamp indicating the date and time of receipt of the administrative regulation in the two (2) inch margin on the first page;
  - (c) The cabinet, department, and division of the administrative body shall be listed on separate double-spaced lines two (2) inches from the top in the upper left hand corner of the first page. This shall be followed on the next double-spaced line by *"(New Administrative Regulation)"*, *"(Amendment)"*~~[-or-]~~ *"(Amended After Hearing)"*, *or* *"(Repealer)"* whichever is applicable~~[-. If an administrative regulation is new, the notation shall read "(New Administrative Regulation)"]~~;
  - (d) The notation shall be followed by the number and title of the administrative regulation on the next double-spaced line. The promulgating administrative body shall contact the regulations compiler prior to filing to obtain an administrative regulation number for a new administrative regulation;
  - (e) On the next double-spaced line following the number and title of an administrative regulation, after the words "RELATES TO:," the administrative body shall list all statutes and other enactments, including any branch budget bills or executive orders, to which the administrative regulation relates or which shall be affected by the administrative regulation. After the words "STATUTORY AUTHORITY:" the administrative body shall list the specific statutes and other enactments, where applicable, authorizing the promulgation of the administrative regulation. Federal statutes and regulations shall be cited in the "RELATES TO:" and "STATUTORY AUTHORITY:" sections as provided by KRS 13A.2261, 13A.2264, 13A.2267; and
  - (f) Following the citations provided for in paragraph (e) of this subsection, and following the words "NECESSITY, FUNCTION, AND CONFORMITY:" the administrative body shall include a brief statement setting forth the necessity for promulgating the administrative regulation, a summary of the

functions intended to be implemented by the administrative regulation, and, if applicable, the statement required by KRS 13A.245(2)(b).

- (5) The numbering within the body of an administrative regulation shall be the responsibility of the promulgating body, subject to the authority of the regulations compiler to divide or renumber an administrative regulation. The following format shall be used by the administrative body in the numbering of each administrative regulation. Each section shall begin with the word "Section" followed by an arabic number, and titles of sections shall be initially capitalized. Subsections shall be designated by an arabic number in parentheses. Paragraphs shall be designated by lower case letters of the alphabet in parentheses, (e.g., (a), (b), (c), etc.). Subparagraphs shall be designated by an arabic number followed by a period, (e.g., 1., 2., etc.). ~~Clauses~~~~Sub-subparagraphs~~ shall be designated by lower case letters of the alphabet followed by a period, (e.g., a., b., c., etc.).
- (6) After the complete text of an administrative regulation, the administrative body shall include the following information:
  - (a) If the provisions of KRS 13A.120(3) are applicable, a statement that the official or the head of the administrative body has reviewed or approved the administrative regulation; the signature of such official or head; and the date on which such review or approval occurred;
  - (b) The authorizing signature of the administrative body promulgating the administrative regulation, and the date on which the administrative body approved the promulgation;
  - ~~(c) The signature of an attorney certifying that he has examined and approved the administrative regulation as to form;~~
  - ~~(d)~~ Information relating to public hearings as required by KRS 13A.160 and 13A.270; and
  - ~~(d)~~~~(e)~~ The name, position, address, telephone number, and facsimile number of the contact person of the administrative body. The contact person shall be the person authorized by the head of an administrative body to:
    1. Receive information relating to issues raised by the public or by a subcommittee prior to a public meeting of the subcommittee;
    2. Negotiate changes in language with a subcommittee in order to resolve such issues; and
    3. Answer questions relating to the administrative regulation.
- (7) The format for signatures required by paragraphs (a) **and (b)**~~to (e)~~ of subsection (6) of this section shall be as follows:
  - (a) The signature shall be placed on a signature line; and
  - (b) The name and title of the person signing shall be typed immediately beneath the signature line.

Section 9. KRS 13A.221 is amended to read as follows:

- (1) An administrative body shall divide the general subject matter of administrative regulations it promulgates into topics. A separate administrative regulation shall be promulgated for each topic.
- (2) An administrative body shall not incorporate all material relating to a general subject matter in one (1) administrative regulation. Material incorporated by reference shall be incorporated by reference in the administrative regulation governing the specific topic to which the material relates.
- (3) When an administrative regulation ~~adopted prior to July 15, 1988,~~ is amended, it shall be amended or repealed, whichever is applicable, to comply with the requirements of **KRS Chapter 13A**~~this section~~.

Section 10. KRS 13A.222 is amended to read as follows:

- (1) In a new administrative regulation, there shall be no underlining or bracketing.
- (2) In an amendment to an administrative regulation, the new words shall precede the deleted words. Exceptions may be permitted by the regulations compiler. The administrative body shall:
  - (a) Underline all new words; and
  - (b) Place the deleted words in brackets and strike through these words.

- (3) (a) An administrative regulation shall not be amended by reference to a section only. An amendment shall contain the full text of the administrative regulation being amended.
- (b) A section of an administrative regulation shall not be reserved for future use.
- (4) In drafting administrative regulations, the administrative body shall comply with the following:
- (a) The administrative body shall use plain and unambiguous words that are easily understood by laymen. The administrative body shall avoid ambiguous, indefinite, or superfluous words and phrases;
- (b) A duty, obligation, or prohibition shall be expressed by "shall" or "shall not." "Should," "could," or "must" shall not be used. The future tense shall not be expressed by the word "shall." A discretionary power shall be expressed by "may;"
- (c) The words "said," "aforesaid," "hereinabove," "hereinafter," "beforementioned," "whatsoever," or similar words of reference or emphasis shall not be used. Where an article may be used, the administrative body shall not use the word "such." It shall not use the expression "and/or" and shall not separate alternatives with a slash. It shall not use contractions. When a number of items are all mandatory, the word "and" shall be used. When all of a number of items are not mandatory, the word "or" shall be used;
- (d) Certain words are defined in the Kentucky Revised Statutes. Where applicable, these definitions shall be used. Definitions appearing in the Kentucky Revised Statutes shall not be duplicated in a proposed administrative regulation. A reference shall be made to the chapters and sections of the Kentucky Revised Statutes in which such definitions appear;
- (e) If definitions are used, they shall be placed in alphabetical order in the first section of an administrative regulation or in a separate administrative regulation. The section or administrative regulation shall be titled "Definitions." If definitions are placed in the first section of an administrative regulation, the definitions shall govern only the terms in that administrative regulation. If definitions are placed in a separate administrative regulation, that administrative regulation shall be the first administrative regulation of the specific chapter of the Kentucky Administrative Regulations Service to which the definitions apply. The title of the administrative regulation shall also contain the number of the chapter of the Kentucky Administrative Regulations Service to which the definitions apply. In the text of an administrative regulation, the word defined in the definitions section, rather than the definition, shall be used. Definitions shall be used only:
1. When a word is used in a sense other than its dictionary meaning, or is used in the sense of one of several dictionary meanings;
  2. To avoid repetition of a phrase; or
  3. To limit or extend the provisions of an administrative regulation;
- (f) If a word has the same meaning as a phrase, the word shall be used;
- (g) The present tense and the indicative mood shall be used. Conditions precedent shall be stated in the perfect tense if their happening is required to be completed;
- (h) The same arrangement and form of expression shall be used throughout an administrative regulation, unless the meaning requires variations;
- (i) "If" or "except" shall be used rather than "provided that" or "provided, however." "If" shall be used to express conditions, rather than the words "when" or "where;"
- (j) A word importing the masculine gender may extend to females. A word importing the singular number may extend to several persons or things;
- (k) An administrative body shall use the phrases specified in this subsection:

Do Not Use:

And/or

Any and all

Use:

"and" for a conjunctive

"or" for a disjunctive

either word



As provided in this

administrative regulation ----

At the time when

And the same hereby is is

Either directly or indirectly ----

Except where otherwise State specific  
provided exemption.

Final and conclusive final

Full force and effect force or effect

In the event that; In case if

Is authorized; Is empowered may

Is defined and shall be

construed to mean means

Is hereby required to shall

It shall be lawful may

Latin words Do not use unless medical or  
scientific terminology.

Null and void and of no effect void

Order and direct either word

Provision of law law

Until such time as until

Whenever if

- (l) 1. Unless the authority for an administrative regulation is an appropriation provision that is not codified in the Kentucky Revised Statutes, the specific chapter and section number of the Kentucky Revised Statutes authorizing the promulgation of an administrative regulation shall be cited.
2. a. If an act has not been codified in the Kentucky Revised Statutes at the time an administrative regulation is promulgated, or if the authority is any branch budget bill, the citation shall be as follows: "(year) Ky. Acts ch. (chapter number), sec. (section number)." When an act has been codified, the administrative body shall notify the regulations compiler of the proper citation in writing. Upon receipt of such written notice, the regulations compiler shall correct the citation.
- b. For acts of extraordinary sessions, the citation shall be as follows: "(year) (Extra. Sess.) Ky. Acts ch. (chapter number), sec. (section number)." If there is more than one (1) extraordinary session of the General Assembly in the year, the citation shall specify the specific extraordinary session, as follows: "(year) (2d Extra. Sess.) Ky. Acts ch. (chapter number), sec. (section number)."
3. When an act has been codified, the administrative body shall notify the regulations compiler of the proper citation of the Kentucky Revised Statutes in writing. Upon receipt of the written notice, the regulations compiler shall correct the citation.
4. a. If the statutory authority is an appropriation act, the citation shall be as follows: "(year) Ky. Acts ch. (chapter number), Part (part and subpart numbers)."
- b. If appropriate, the citation of an appropriation act shall include a citation to the appropriate part of the budget memorandum.

5. If the authority is an executive order, the citation shall be as follows: "EO (year executive order issued)-(number of executive order)."
- (m) If the statutory authority is a federal law, the citation shall be the:
  1. United States Code (U.S.C.), if it has been codified; or
  2. Public Law (Pub. L.) and official session laws, if it has not been codified.
- (n) 1. If the statutory authority is a federal regulation codified in the Code of Federal Regulations, the citation shall include the title, part, and section number, as follows: "(title number) C.F.R. (part and section number)."
2. a. If the statutory authority is a federal regulation that has not been codified in the Code of Federal Regulations, the citation shall be to the Federal Register, as follows: "(volume number) Fed. Reg. (page number) (effective date of the federal regulation) (section of Code of Federal Regulations in which it will be codified)."
- b. When the federal regulation is codified, the citation shall be amended to read as provided by subparagraph 1. of this paragraph.
3. a. If the statutory authority is a federal regulation that has been amended, and the amendment is not reflected in the current issue date of the volume of the Code of Federal Regulations in which the federal regulation is codified, the citation shall be to the Federal Register as follows: "(federal regulation that has been amended), (volume number) Fed. Reg. (page number) (effective date of the amendment)."
- b. When the amendment is codified in the appropriate volume of the Code of Federal Regulations, the citation shall be amended to read as provided by subparagraph 1. of this paragraph.
- (o) Citations of items in the "RELATES TO" paragraph of an administrative regulation shall comply with paragraphs (l), (m), and (n) of this subsection.
- (p) ***An administrative regulation may cite the popular name of a federal or state law if the popular name is accompanied by the citation required by this paragraph.***

Section 11. KRS 13A.2245 is amended to read as follows:

- (1) An administrative body may incorporate by reference a code or uniform standard if a federal or state statute requires:
  - (a) An administrative body to implement~~{,}~~ or ~~{(b)}~~ a regulated entity to comply with~~{,}~~ the provisions of that code or uniform standard; and
  - ~~(b){(c)}~~ Does not set forth the code or uniform standard, or a comprehensive scheme of regulation.
- (2) If a code or uniform standard is adopted with changes by the administrative body, the administrative body shall file with the regulations compiler a:
  - (a) Copy of the code or uniform standard;
  - (b) Summary listing the pages upon which changes have been made; and
  - (c) Detailed summary of the changes and their effect.

The summaries shall be attached to the back of the proposed administrative regulation.

- (3) If a federal regulation requires an administrative body to adopt, develop, or implement material of a scientific or technical nature that does not lend itself to the format requirements of KRS Chapter 13A, the administrative body may incorporate such material by reference in an administrative regulation as provided by KRS 13A.2251 and 13A.2255.

Section 12. KRS 13A.2251 is amended to read as follows:

- (1) An administrative body shall incorporate material by reference in the last section of an administrative regulation. This section shall include:
  - (a) The title and edition of the material incorporated by reference placed in quotation marks;

- (b) Information on how the material may be obtained; and
- (c) A statement that the material is available for public inspection and copying, subject to copyright law, at the main, regional, or branch offices of the administrative body, and the address and office hours of each.
- (2) The section incorporating material by reference shall be titled "Incorporation by Reference".
  - (a) If only one (1) item is incorporated by reference, the first subsection of the section incorporating material by reference shall contain the following statement: "(name and edition date of material incorporated) is incorporated by reference."
  - (b) If more than one (1) item is incorporated by reference, the first subsection of the section incorporating material by reference shall contain the following statement: "The following material is incorporated by reference: (a) (name and edition date of first item incorporated); and (b) (name and edition date of second item incorporated)."
  - (c) The second subsection of the section incorporating material by reference shall include the following statement: "This material may be inspected, copied, or obtained, *subject to applicable copyright law*, at (name of agency, full address), Monday through Friday, 8:00 a.m. to 4:30 p.m."
- (3) A summary of the incorporated material, in detail sufficient to identify the subject matter to which it pertains, shall be attached to an administrative regulation that incorporates material by reference. This summary shall include:
  - (a) Relevant programs, statutes, funds, rights, duties, and procedures affected by the material and the manner in which they are affected;
  - (b) A citation of the specific state or federal statutes or regulations authorizing or requiring the procedure or policy found in the material incorporated by reference; and
  - (c) The total number of pages incorporated by reference.
- (4)
  - (a) One (1) copy of the material incorporated by reference shall be filed with the regulations compiler when the administrative regulation is filed.
  - (b) Material incorporated by reference shall be placed in a binder. The administrative body shall *write*, stamp, or type, on the front binder cover and on the first page of the material incorporated by reference, the number of the administrative regulation to which material incorporated by reference pertains, the date on which it is filed, and the citation of each item that is included in the binder.
  - (c) If the same material is incorporated by reference in more than one (1) administrative regulation, an administrative body may file one (1) copy of the material in a binder. The numbers of the administrative regulations in which the material is incorporated by reference shall be *written*, stamped, or typed on the:
    - 1. Front binder cover; and
    - 2. First page of the material incorporated by reference.

Section 13. KRS 13A.2255 is amended to read as follows:

When an administrative regulation amends material that had been previously incorporated by reference, the amendment shall be accomplished by submission of:

- (1) An entire new document in which the amendments have been made but are not reflected in the manner specified in *subsection (2) of Section 10 of this Act* ~~KRS 13A.222~~;
- (2) A summary listing the pages upon which changes have been made, and a detailed summary of the changes and their effect. This summary shall be attached to the administrative regulation; and
- (3) The page or pages of the document in which changes have been made, with the changes accomplished in the manner specified in *subsection (2) of Section 10 of this Act* ~~KRS 13A.222~~.

Section 14. KRS 13A.240 is amended to read as follows:

- (1) Every administrative body shall prepare and submit to the Legislative Research Commission an original and five (5) duplicate copies of a regulatory impact analysis for every administrative regulation when it is filed with the Commission. The regulatory impact analysis shall include, but not be limited to, the following information:

(a) *A brief narrative summary of:*

1. *What the administrative regulation does;*
2. *The necessity of the administrative regulation;*
3. *How the administrative regulation conforms to the content of the authorizing statutes; and*
4. *How the administrative regulation currently assists or will assist in the effective administration of the statutes;*

~~[The type and number of individuals, businesses, organizations, and state and local governments affected by the administrative regulation; and]~~

(b) *If this is an amendment to an existing administrative regulation, a brief narrative summary of:*

1. *How the amendment will change the existing administrative regulation;*
2. *The necessity of the amendment to the administrative regulation;*
3. *How the amendment conforms to the content of the authorizing statutes; and*
4. *How the amendment to the administrative regulation will assist in the effective administration of the statutes;*

~~[The direct and indirect costs or savings, including, to the extent available from the public comments received, the:~~

1. ~~Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented; and~~
2. ~~Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented; and~~
3. ~~Compliance, reporting, and paperwork requirements of the administrative regulation on those affected for the first year following the implementation of the administrative regulation, and the continuing costs or savings for the second and subsequent years with any factors which might increase or decrease the cost of the administrative regulation, including the effect on competition being noted; and]~~

(c) *The type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation;*~~[The direct and indirect costs or savings and paperwork requirements to the promulgating administrative body for the administration and enforcement of the administrative regulation for the first year following the implementation of the administrative regulation, and the continuing costs or savings for the second year with any factors which might increase or decrease the cost of the administrative regulation being noted; and]~~

(d) *An assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment to an existing administrative regulation;*~~[An assessment of any anticipated effect on state and local revenues; and]~~

(e) *An estimate of how much it will cost to implement this administrative regulation, both initially and on a continuing basis;*~~[The source of the revenue to be used for the implementation and enforcement of the administrative regulation; and]~~

(f) *The source of the funding to be used for the implementation and enforcement of the administrative regulation;*~~[To the extent available from the public comments received, the economic impact of the administrative regulation on the geographical area in which the administrative regulation will be implemented, and on the state, including the effects of the economic activities arising from the administrative regulation; and]~~

(g) *An assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment to an existing administrative regulation;*~~[alternative methods for accomplishing the purpose of the administrative regulation and the reasons why they were rejected in favor of the administrative regulation]; and~~

(h) *A statement as to whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees*~~[An assessment of the expected benefits of the administrative regulation; and~~

~~(i) A statement:~~

- ~~1. Identifying the effects of the administrative regulation on the public health and environmental welfare of the geographical area in which the administrative regulation will be implemented and upon the state; and~~
- ~~2. Stating whether there would be a detrimental effect on the environment and public health if the administrative regulation is not implemented; and~~
- ~~3. If there would be a detrimental effect on the environment and public health, an explanation of the detrimental effect; and~~

~~(j) A written statement identifying any statute, rule, regulation, or governmental policy which the administrative regulation may be in conflict with, overlap, or duplicate; and a written statement for the necessity to promulgate the administrative regulation if conflict, overlapping, or duplication is found to exist. The administrative body shall also indicate whether or not any effort has been made to harmonize the administrative regulation with any statute, rule, regulation, or governmental policy with which it has been found to be in conflict].~~

- (2) The Legislative Research Commission shall review all regulatory impact analyses submitted by all administrative bodies, and prepare a written analysis thereof and of the administrative regulation. The Legislative Research Commission may require any administrative body to submit background data upon which the information required by subsection (1) is based, and an explanation of how the data was gathered.

Section 15. KRS 13A.280 is amended to read as follows:

- (1) Following the scheduled hearing date, the administrative body shall give consideration to all written and oral comments received by adjournment of the scheduled public hearing, or by the close of business on the scheduled public hearing date if the public hearing was not held.
- (2) The administrative body shall then file with the commission on or before 12 noon, eastern time, on the fifteenth day following the scheduled hearing date the statement of consideration relating to the administrative regulation.
- (3)
  - (a) Except as provided by paragraph (b) of this subsection, if the administrative regulation is amended as a result of the hearing or written or oral comments received, the administrative body shall forward the items specified in paragraph (c) of this subsection to the regulations compiler by noon on the fifteenth day following the hearing.
  - (b) If an administrative body has received a significant number of public comments, it may extend the time for filing the statement of consideration for up to thirty (30) days by notifying the Commission in writing on or before 12 noon of the fifteenth day following the public hearing. The administrative body shall file with the Commission on or before 12 noon, eastern time, no later than the forty-fifth day following the public hearing date the items specified in paragraph (c) of this subsection.
  - (c)
    1. The original and five (5) copies of the administrative regulation indicating any amendments in the original wording resulting from the hearing, or resulting from written or oral comments received at the hearing or otherwise;
    2. The original and five (5) copies of the statement of consideration as required by subsection (2) of this section, attached to the back of the original and each copy of the administrative regulation; and
    3. The regulatory impact analysis, tiering statement, federal mandate comparison, or fiscal note on local government. These documents shall reflect changes resulting from amendments made after the public hearing.
- (4) The format for the statement of consideration shall be as follows:
  - (a) The statement shall be typewritten on white paper, size eight and one-half (8-1/2) by eleven (11) inches. Copies of the statement may be mechanically reproduced;

- (b) ~~*The statement of consideration shall have a two (2) inch top margin*~~ ~~[A space no smaller than two (2) by three (3) inches in the upper right hand corner shall be left blank for the regulations compiler's stamp indicating the date and time of receipt of the statement];~~
  - (c) The heading of the statement shall consist of the words "STATEMENT OF CONSIDERATION RELATING TO" followed by the number of the administrative regulation that was the subject of the public hearing and the name of the promulgating administrative body. The heading shall be centered ~~{three (3) inches from the top of the first page}~~. This shall be followed by the words "Not Amended After Hearing" or "Amended After Hearing," whichever is applicable;
  - (d) If a hearing has been held the heading is to be followed by:
    - 1. A statement setting out the date, time and place of the hearing;
    - 2. A list of those attending the hearing *or who have submitted written comments* and the organization, agency, or other entity represented, if applicable; and
    - 3. The name and title of the representative of the promulgating administrative body;
  - (e) If a hearing has not been held, but written or oral comments have been received:
    - 1. A list of those who have submitted written or oral comments and the organization, agency, or other entity represented, if applicable; and
    - 2. The name and title of the representative of the promulgating administrative body responding to the written or oral comments;
  - (f) Following the general information, the promulgating administrative body shall summarize the written and oral comments received and the response of the promulgating administrative body. Each subject commented upon shall be summarized in a separate numbered paragraph. Each numbered paragraph shall contain two (2) subsections:
    - 1. Subsection (a) shall be labeled "Comment," shall identify the name of the person, and the organization represented if applicable, who made the comment, and shall contain a summary of the comment; and
    - 2. Subsection (b) shall be labeled "Response" and shall contain the response to the comment by the promulgating administrative body;
  - (g) Following the summary and comments, the promulgating administrative body shall summarize the statement and the action taken by the administrative body as a result of the public hearing;
  - (h) If the promulgating administrative body amends the administrative regulation after a public hearing at which there were no participants other than administrative body personnel, this fact shall be noted in the statement; and
  - (i) If administrative regulations were considered as a group at a public hearing, one (1) statement of consideration may include the group of administrative regulations. If a comment relates to one (1) or more of the administrative regulations in the group, the summary of the comment and response shall specify each administrative regulation to which it applies.
- (5) (a) If the administrative regulation is not amended as a result of the public hearing, or written or oral comments received, the administrative body shall file the original and five (5) copies of the statement of consideration as required by subsection (2) of this section with the regulations compiler by noon on the fifteenth day following the hearing.
  - (b) If the statement of consideration is not forwarded to the regulations compiler at least ten (10) working days prior to a meeting of the Administrative Regulation Review Subcommittee, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee.
  - (6) If the administrative regulation is amended pursuant to subsection (3) of this section the full text of the administrative regulation shall be published in the Administrative Register. The administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee after such publication.
  - (7) If requested, copies of the statement of consideration shall be made available by the promulgating administrative body to persons attending the hearing or submitting comments.

Section 16. KRS 13A.290 is amended to read as follows:

- (1) Except as provided by KRS 158.6471 and 158.6472, within forty-five (45) days after publication of an administrative regulation in "The Administrative Register," or within forty-five (45) days of the receipt of a statement of consideration, the Administrative Regulation Review Subcommittee shall meet to review the administrative regulation.
- (2) The meetings shall be open to the public.
- (3) Public notice of the time, date, and place of the Administrative Regulation Review Subcommittee meeting shall be given in the Administrative Register.
- (4) A representative of the administrative body promulgating the administrative regulation under consideration shall be present to explain the administrative regulation and to answer questions thereon. If a representative of the administrative body with authority to amend the administrative regulation is not present at the subcommittee meeting, the administrative regulation shall be deferred to the next regularly-scheduled meeting of the subcommittee.
- (5) Following the meeting and before the next regularly-scheduled meeting of the Commission, the Administrative Regulation Review Subcommittee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. The Administrative Regulation Review Subcommittee shall also forward to the Commission its findings, recommendations, or other comments it deems appropriate on an existing administrative regulation it has reviewed. One (1) copy thereof shall be sent to the promulgating agency. The Administrative Regulation Review Subcommittee's findings shall be published in the Administrative Register.
- (6) (a) After review by the Administrative Regulation Review Subcommittee, the Commission shall, at its next regularly-scheduled meeting, assign the matter to:
  1. A subcommittee of appropriate jurisdiction over the subject matter; *or*
  2. ***During a session of the General Assembly, the House of Representatives and Senate standing committees of appropriate jurisdiction over the subject matter.***
- (b) Upon notification of the assignment by the Commission, the legislative subcommittee to which the matter is assigned shall notify the regulations compiler:
  1. Of the date, time, and place of the meeting at which it will consider the matter; or
  2. That it will not meet to consider the matter.
- (7) Within thirty (30) days of the assignment, the subcommittee shall hold a public meeting during which the regulation shall be reviewed. If the thirtieth day of the assignment falls on a Saturday, Sunday, or holiday, the deadline for review shall be the workday following the Saturday, Sunday, or holiday. The subcommittee may also review an existing administrative regulation and make a determination as provided by KRS 13A.030(2) and (3). Notice of the time, date, and place of the meeting shall be placed in the legislative calendar.
- ~~(8) An administrative body shall comply with subsection (4) of this section.~~
- ~~(9) Except as provided in subsection (9) of this section, a~~ ***Except as provided in subsection (9) of this section, the*** subcommittee shall be empowered to make the same nonbinding determinations and to exercise the same authority as the Administrative Regulation Review Subcommittee ~~as provided in KRS 13A.030(2) and (3).~~
- (9) ***During a session of the General Assembly, standing committees of the Senate and House of Representatives shall agree in order to amend an administrative regulation or to find an administrative regulation deficient pursuant to KRS 13A.030(2) and (3) by:***
  - (a) *Meeting separately; or*
  - (b) *Meeting jointly. If the standing committees meet jointly, it shall require a majority vote of Senate members voting and a majority of House members voting in order to take action on the administrative regulation.*
- (10) (a) Upon adjournment of the meeting at which a legislative subcommittee has considered an administrative regulation pursuant to subsection (7) of this section, the subcommittee shall inform the regulations compiler of its findings, recommendations, or other action taken on the administrative regulation.

- (b) Following the meeting and before the next regularly-scheduled meeting of the Commission, the subcommittee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. One (1) copy thereof shall be sent to the promulgating agency. The subcommittee's findings shall be published in the Administrative Register.

Section 17. KRS 13A.300 is amended to read as follows:

- (1) The administrative body which has promulgated an administrative regulation may request at a meeting of a subcommittee that consideration of the administrative regulation be deferred by the subcommittee. Upon receipt of the request, the subcommittee may defer consideration of the administrative regulation.
- ~~(2) The deferring of an administrative regulation shall have the same effect as an action under KRS 13A.310.~~
- ~~(3)~~ A subcommittee may request that consideration of an administrative regulation be deferred by the promulgating administrative body. Upon receipt of the request, the promulgating administrative body may agree to defer consideration of the administrative regulation.
- ~~(3)(4)~~ Except as provided in subsections (1) **and** ~~(2)(3)~~ of this section, neither the promulgating administrative body, the Commission, nor a subcommittee shall defer any action which is required to be taken pursuant to this chapter.
- ~~(4)(5)~~ An administrative regulation that has been deferred shall be placed on the agenda of the next scheduled meeting of the subcommittee that is reviewing the administrative regulation. The subcommittee shall consider the administrative regulation as if it had met all other requirements of filing. Repromulgation shall not be required in such cases.

Section 18. KRS 13A.310 is amended to read as follows:

- (1) An administrative regulation, once adopted, cannot be withdrawn but shall be repealed if it is desired that it no longer be effective.
- (2) An administrative regulation, once adopted, cannot be suspended but shall be repealed if it is desired to suspend its effect.
- (3) (a) An administrative regulation shall be repealed only by the promulgation of an administrative regulation that:
  1. Is titled "Repeal of (state number of administrative regulation to be repealed)";~~and~~
  2. Contains the reasons for repeal in the "NECESSITY,~~AND~~ FUNCTION, **AND CONFORMITY**" paragraph;
  3. ***Includes in the body of the administrative regulation, a citation to the number and title of the administrative regulation or regulations being repealed; and***
  4. ***Meets the filing and formatting requirements of Section 8 of this Act.***
- (b) On the effective date of an administrative regulation that repeals an administrative regulation, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation from the Kentucky Administrative Regulations Service.
- (c) An administrative body may repeal more than one (1) administrative regulation in an administrative regulation promulgated pursuant to paragraph (a) of this subsection if the administrative regulations being repealed are contained in the same chapter of the Kentucky Administrative Regulations Service.
- (4) An ordinary administrative regulation may be withdrawn by the promulgating agency at any time prior to its adoption. An ordinary administrative regulation that has been found deficient may be withdrawn by the promulgating agency at any time prior to receipt by the regulations compiler of the determination of the Governor made pursuant to ***Section 19 or 22 of this Act***~~KRS 13A.330~~. If an ordinary administrative regulation is withdrawn, the administrative body shall inform the regulations compiler of the reasons for withdrawal in writing.
- (5) Once an ordinary administrative regulation is withdrawn it shall not be reinstated, except by repromulgation as a totally new matter.

Section 19. KRS 13A.330 is amended to read as follows:



*The provisions of this section shall apply to administrative regulations that are assigned pursuant to subsection (6)(a)1. of Section 16 of this Act.*

- (1) An administrative regulation that has not been found deficient by a legislative subcommittee shall be considered as adopted and shall become effective:
  - (a) Upon adjournment on the day a subcommittee meets to consider the administrative regulation pursuant to KRS 13A.290(7) if:
    1. The administrative regulation is on the agenda of the subcommittee meeting;
    2. A quorum of the subcommittee is present; and
    3. The subcommittee:
      - a. Considers the administrative regulation; or
      - b. Fails to consider the administrative regulation and fails to agree to defer its consideration of the administrative regulation; or
  - (b) If a subcommittee fails to meet within thirty (30) days of assignment of an administrative regulation as provided in KRS 13A.290(7), or does not place the administrative regulation on the agenda of a meeting held within thirty (30) days of the referral of the administrative regulation to it by the Commission, at the expiration of the thirty (30) day period.
- (2) If an administrative regulation has been found deficient by a legislative subcommittee, the legislative subcommittee shall transmit to the Governor:
  - (a) A copy of its finding of deficiency and other findings, recommendations, or comments it deems appropriate; and
  - (b) A request that the Governor determine whether the administrative regulation shall:
    1. Be withdrawn;
    2. Be withdrawn and amended to conform to the finding of deficiency; or
    3. Become effective pursuant to the provisions of this section notwithstanding the finding of deficiency.
- (3) If an administrative regulation has been found deficient by a legislative subcommittee, the legislative subcommittee shall transmit copies of its transmittal to the Governor to the regulations compiler.
- (4) The Governor shall transmit his determination to the Commission and the regulations compiler.
- (5) An administrative regulation that has been found deficient by a legislative subcommittee shall be considered as adopted and become effective after:
  - (a) *1.* The subcommittee of appropriate jurisdiction to which an administrative regulation was assigned pursuant to KRS 13A.290(6) has:
    - ~~a.1.1~~ *Considered*~~Reviewed~~ the administrative regulation;~~or~~
    - b. Failed to consider the administrative regulation and failed to agree to defer its consideration of the administrative regulation; or*
    - ~~c.1.2~~ Failed to meet within thirty (30) days of such assignment; and
  - ~~2.(b)~~ The regulations compiler has received the Governor's determination; that the administrative regulation shall become effective pursuant to the provisions of this section notwithstanding the finding of deficiency; or
  - ~~(b)(e)~~ The legislative subcommittee that found the administrative regulation deficient subsequently determines that the administrative regulation is not deficient, provided that this determination was made prior to receipt by the regulations compiler of the Governor's determination.

Section 20. KRS 13A.333 is amended to read as follows:

- (1) If an administrative regulation is found deficient by a legislative subcommittee under the provisions of KRS Chapter 13A during a regular session of the General Assembly, it shall expire on adjournment of that regular session of the General Assembly.
- (2) If an administrative regulation is found deficient by a legislative subcommittee under the provisions of KRS Chapter 13A during the interim between regular sessions of the General Assembly, it shall expire on adjournment of the next succeeding regular session of the General Assembly.
- (3) The provisions of this section shall apply to all administrative regulations found deficient~~[-, including those found deficient during the 1990 Regular Session of the General Assembly].~~
- (4) If deferral of an administrative regulation at the request of an administrative body would result in its adoption after adjournment of a regular session of the General Assembly, it shall expire on adjournment of that regular session of the General Assembly.
- (5)
  - (a) An administrative body may prepare legislation proposing the enactment of the provisions of an administrative regulation found deficient by a subcommittee.
  - (b) Prior to the convening of the General Assembly in regular session, it shall notify the regulations compiler in writing of its intent to prepare legislation.
  - (c) It shall submit such legislation to the Legislative Research Commission.
  - (d) The proposed legislation may be introduced by any member of the General Assembly.
- (6)
  - (a) An administrative body shall be prohibited from promulgating an administrative regulation that is identical to or substantially the same as an administrative regulation which has expired pursuant to subsections (1), (2), and (4) of this section. This prohibition shall be effective for a two (2) year period running from the date of expiration of the administrative regulation.
  - (b) An administrative regulation shall be determined to be identical to or substantially the same as an administrative regulation that expired if it is deficient in the same manner as the administrative regulation that expired because it was found deficient.
  - (c) An administrative regulation shall not be determined to be identical to or substantially the same as an administrative regulation that expired if:
    1. It contains the identical or substantially similar language or provisions that gave rise to the finding of deficiency of the expired administrative regulation; and
    2. The identical or substantially similar language or provisions that gave rise to the finding of deficiency of the expired administrative regulation are required by state law, or federal law or regulation, or court decision.

Section 21. KRS 13A.335 is amended to read as follows:

- (1) An administrative regulation found deficient by a subcommittee shall not expire if:
  - (a) A subsequent amendment of that administrative regulation is filed with the Commission by the administrative body;
  - (b) The subcommittee that found the administrative regulation deficient approves a motion that the subsequent amendment corrects such deficiency; and
  - (c) Any subcommittee that reviews the administrative regulation under the provisions of KRS Chapter 13A finds that the administrative regulation is not deficient.
- (2) An administrative regulation found deficient by the Administrative Regulation Review Subcommittee shall not expire if:
  - (a) The administrative regulation is amended to correct the deficiency at a meeting of the subcommittee to which it was assigned by the Commission;
  - (b) That subcommittee does not determine that the administrative regulation is deficient for any other reason; and
  - (c) The Administrative Regulation Review Subcommittee approves a motion that the deficiency has been corrected and that the administrative regulation should not expire.

- (3) An administrative regulation found deficient by a subcommittee shall not expire if the subcommittee:
  - (a) Reconsiders the administrative regulation and its finding of deficiency; and
  - (b) Approves a motion that the administrative regulation is not deficient.
- (4) (a) If an existing administrative regulation has been amended and found deficient by a subcommittee, it shall not expire if the:
  - 1. Administrative regulation was found deficient due to the amendment;
  - 2. Promulgating administrative body has withdrawn the proposed amendment of the existing administrative regulation; and
  - 3. Regulations compiler has not received the Governor's determination pursuant to **Section 19 or 22 of this Act**~~[KRS 13A.330]~~.
- (b) If an administrative regulation has been found deficient by a subcommittee, the regulations compiler shall add the following notice to the administrative regulation: "This administrative regulation shall expire on adjournment of the next regular session of the General Assembly." This notice shall be the last section of the administrative regulation.
- (c) If an administrative regulation has been found deficient by a subcommittee, subsequent amendments of that administrative regulation filed with the Commission shall contain the notice provided in paragraph (b)~~(a)~~ of this subsection.
- (d) If an administrative regulation that has been found deficient by a subcommittee has been amended and determined not to be deficient under the provisions of this section, the regulations compiler shall delete the notice required by paragraph (b)~~(a)~~ of this subsection.

SECTION 22. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

*The provisions of this section shall apply to administrative regulations that are assigned pursuant to subsection (6)(a)2. of Section 16 of this Act.*

- (1) *An administrative regulation that has not been found deficient by both standing committees shall be considered as adopted and shall become effective:*
  - (a) *Upon adjournment on the day the second standing committee meets to consider the administrative regulation pursuant to Section 16 of this Act if:*
    - 1. *The administrative regulation is on the agenda of the standing committee meeting;*
    - 2. *A quorum of the standing committee is present;*
    - 3. *The standing committee:*
      - a. *Considers the administrative regulation; or*
      - b. *Fails to consider the administrative regulation and fails to agree to defer its consideration of the administrative regulation; and*
    - 4. *Pursuant to subsection (9) of Section 16 of this Act, the decision of the standing committee to amend the administrative regulation is the same as the decision of the corresponding standing committee of the other chamber to amend the administrative regulation;*
  - (b) *Upon adjournment on the day the standing committee meeting jointly meets to consider the administrative regulation pursuant to Section 16 of this Act if:*
    - 1. *The administrative regulation is on the agenda of the joint standing committee meeting;*
    - 2. *A quorum of the joint standing committee is present;*
    - 3. *The joint standing committee meeting:*
      - a. *Considers the administrative regulation; or*
      - b. *Fails to consider the administrative regulation and fails to agree to defer its consideration of the administrative regulation; or*

- (c) *If a standing committee fails to meet within thirty (30) days of assignment of an administrative regulation as provided in Section 16 of this Act, or does not place the administrative regulation on the agenda of a meeting held within thirty (30) days of the referral of the administrative regulation to it by the Commission, at the expiration of the thirty (30) day period.*
- (2) *If an administrative regulation has been found deficient by both standing committees, or by the standing committees meeting jointly, the standing committees, or the standing committees meeting jointly shall transmit to the Governor:*
  - (a) *A copy of its finding of deficiency and other findings, recommendations, or comments it deems appropriate; and*
  - (b) *A request that the Governor determine whether the administrative regulation shall:*
    - 1. *Be withdrawn;*
    - 2. *Be withdrawn and amended to conform to the finding of deficiency; or*
    - 3. *Become effective pursuant to the provisions of this section notwithstanding the finding of deficiency.*
- (3) *If an administrative regulation has been found deficient by the standing committees or by the standing committees meeting jointly, the standing committees or standing committees meeting jointly shall transmit copies of its transmittal to the Governor to the regulations compiler.*
- (4) *The Governor shall transmit his determination to the Commission and the regulations compiler.*
- (5) *An administrative regulation that has been found deficient by the Administrative Regulation Review Subcommittee, the standing committees or by the standing committees meeting jointly shall be considered as adopted and become effective after:*
  - (a) 1. *The standing committees of appropriate jurisdiction to which an administrative regulation was assigned pursuant to Section 16 of this Act has:*
    - a. *Considered the administrative regulation;*
    - b. *Failed to consider the administrative regulation and failed to agree to defer its consideration of the administrative regulation; or*
    - c. *Failed to meet within thirty (30) days of such assignment; and*
  - 2. *The regulations compiler has received the Governor's determination that the administrative regulation shall become effective pursuant to the provisions of this section notwithstanding the finding of deficiency; or*
- (c) *The subcommittee, standing committees, or standing committees meeting jointly that found the administrative regulation deficient subsequently determines that the administrative regulation is not deficient, provided that this determination was made prior to receipt by the regulations compiler of the Governor's determination.*

Section 23. KRS 13A.015 is amended to read as follows:

- (1) Except as provided by subsection (6) of this section, prior to the promulgation of an administrative regulation, an administrative body shall, for each administrative regulation it intends to promulgate:
  - (a) File with the regulations compiler the original and five (5) copies, and, if available, an electronic version of a notice of its intent to promulgate an administrative regulation for publication in the administrative register; and
  - (b) Hold a public hearing and receive oral or written comments on the proposed administrative regulation as provided by this section.
- (2) Prior to filing a notice of intent to promulgate a new administrative regulation, an administrative body shall obtain from the regulations compiler a number for the new administrative regulation.
- (3) The notice of intent shall include:
  - (a) A statement that the administrative body intends to promulgate an administrative regulation;

- (b) The number and the specific subject matter of the proposed administrative regulation;
- (c) A statement that the administrative body will hold a public hearing if a public hearing is requested at least ten (10) calendar days prior to the date of the public hearing, in writing, by five (5) persons, or by an administrative body, or by an association having at least five (5) members, provided that a minimum of five (5) persons, or one (1) person representing an administrative body or association, agree to be present at the public hearing:
  - 1. No sooner than the twenty-first day nor later than the last workday of the month in which the notice of intent to promulgate is published in the Administrative Register;
  - 2. At which it will accept oral and written comments from any interested person;
- (d) The name, address, telephone number, and facsimile number to whom the written request for a public hearing and written comments shall be sent;
- (e) The date, time, and place of the public hearing;
- (f) The following information relating to the proposed administrative regulation:
  - 1. The statutory authority for the administrative regulation;
  - 2. A summary of the administrative regulation, including how an existing administrative regulation will be amended by the proposed administrative regulation, if applicable;
  - 3. A statement setting forth the necessity for promulgating the administrative regulation, and a summary of the functions intended to be implemented by the administrative regulation, and, if applicable, the statement required by KRS 13A.245(2)(b);
  - 4. A statement of the benefits expected from the administrative regulation; and
  - 5. How the administrative regulation will be implemented.
- (4) (a) An administrative body shall provide a form to be completed and filed by a person who wishes to be notified of the intent of the administrative body to promulgate an administrative regulation.
- (b) A copy of the notice of intent shall be mailed:
  - 1. To every person who has filed this form;
  - 2. On the date the notice is published in the Administrative Register.
- (5) (a) An administrative body shall file the original and five (5) copies of the notice of its intent to promulgate an administrative regulation with the regulations compiler.
- (b) The date a notice of intent to promulgate an administrative regulation is published in the Administrative Register shall be governed by the provisions of KRS 13A.050(3) and 13A.150.
- (c) A notice of intent shall be typewritten on white paper, size eight and one-half (8-1/2) by eleven (11) inches, and single-spaced. The first page shall have a two (2) inch top margin~~[-, and one (1) inch side and bottom margins]~~. Subsequent pages shall have one (1) inch top, bottom, and side margins. The notice of intent shall be typed in a twelve (12) point font approved by the regulations compiler.
- (6) (a) A notice of intent shall not be filed for an emergency administrative regulation that will not be replaced by an ordinary administrative regulation.
- (b) If an emergency administrative regulation will be replaced by an ordinary administrative regulation, the notice of intent for the ordinary administrative regulation shall be filed at the same time as the emergency administrative regulation that will be replaced.
- (7) If a notice of intent to promulgate an administrative regulation has been filed, a subsequent notice of intent on the same administrative regulation shall not be filed unless the first notice of intent has been withdrawn.

Section 24. KRS 13A.315 is amended to read as follows:

- (1) An administrative regulation shall be withdrawn and shall not be reviewed by a legislative subcommittee if:
  - (a) It has not been reviewed or approved by the official or administrative body with authority to review or approve;

- (b) An item is not filed on or before a deadline specified by this chapter; or
  - (c) The administrative body has failed to comply with the provisions of this chapter governing the filing of administrative regulations, public hearings, and the statement of consideration.
- (2) An administrative regulation which has not complied with all the provisions of this chapter and any regulations promulgated under this chapter shall be considered procedurally defective and void.
- (3) (a) An administrative regulation that has been found deficient by a subcommittee shall be withdrawn immediately by the promulgating administrative body if, pursuant to **Section 19 or 22 of this Act**~~[KRS 13A.330]~~, the Governor has determined that it shall be withdrawn.
- (b) The promulgating administrative body shall notify the regulations compiler in writing and by telephone that it is withdrawing an administrative regulation governed by the provisions of this subsection.
- (c) The written withdrawal of an administrative regulation governed by the provisions of this subsection shall be made in a letter to the regulations compiler in the following format: "Pursuant to **(subsection (2)(b) of Section 19 of this Act or subsection (2)(b) of Section 22 of this Act)**~~[KRS 13A.330(2)(b)]~~, the Governor has determined that (administrative regulation number and title) shall be (withdrawn, or withdrawn and amended to conform to the finding of deficiency, as applicable). The (name of promulgating administrative body) withdraws (administrative regulation number and title)."
- (d) An administrative regulation governed by the provisions of this subsection shall be considered withdrawn upon receipt by the regulations compiler of the written withdrawal.

Section 25. KRS 194A.050 is amended to read as follows:

- (1) The secretary shall formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.
- (2) The secretary shall utilize the Public Health Services Advisory Council to review and make recommendations on contemplated administrative regulations. No administrative regulations issued under the authority of the cabinet shall be filed with the Legislative Research Commission unless they are issued under the authority of the secretary, and the secretary shall not delegate that authority.~~[All administrative regulations prepared within the cabinet shall be attested as to form and legality by the Office of the General Counsel.]~~
- (3) Except as otherwise provided by law, the secretary shall have authority to establish by administrative regulation a schedule of reasonable fees, none of which shall exceed one hundred dollars (\$100), to cover the costs of annual inspections of efforts regarding compliance with program standards administered by the cabinet. All fees collected for inspections shall be deposited in the State Treasury and credited to a revolving fund account to be used for administration of those programs of the cabinet. The balance of the account shall lapse to the general fund at the end of each biennium. Fees shall not be charged for investigation of complaints.

**Governor's veto overridden, April 14, 2000**

## **CHAPTER 407**

### **(HB 936)**

AN ACT proposing an amendment to Sections 36 and 42 of the Constitution of Kentucky relating to legislative sessions.

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

Section 1. It is proposed that Section 36 of the Constitution of Kentucky be amended to read as follows:

- (1) The General Assembly, ***in odd-numbered years***, shall meet ***in regular session for a period not to exceed a total of thirty (30) legislative days divided as follows: The General Assembly shall convene for the first part of the session*** on the first Tuesday after the first Monday in January in odd-numbered years ~~for a period not to exceed ten~~

~~legislative days~~] for the purposes of electing legislative leaders, adopting rules of procedure, ~~and the~~ organizing ~~of~~ committees, **and introducing and considering legislation. The General Assembly shall then adjourn. The General Assembly shall convene for the second part of the session on the first Tuesday in February of that year. Any legislation introduced but not enacted in the first part of the session shall be carried over into the second part of the session. In any part of the session in an odd-numbered year, no bill raising revenue or appropriating funds shall become a law unless it shall be agreed to by three-fifths of all the members elected to each House.**

(2) The General Assembly shall then adjourn until the first Tuesday after the first Monday in January of the following even-numbered years, at which time the General Assembly shall convene in regular session.

(3) ~~All, and its~~ sessions shall be held at the seat of government, except in case of war, insurrection or pestilence, when it may, by proclamation of the Governor, assemble, for the time being, elsewhere.

Section 2. It is proposed that Section 42 of the Constitution of Kentucky be amended to read as follows:

The members of the General Assembly shall severally receive from the State Treasury compensation for their services: Provided, No change shall take effect during the session at which it is made; **nor shall a session occurring in odd-numbered years extend beyond March 30;** nor shall a session of the General Assembly **occurring in even-numbered years** continue beyond sixty legislative days, **nor shall it extend beyond April 15**~~exclusive of Sundays, legal holidays or any day on which neither House meets, except that no regular session shall extend beyond April 15 of even-numbered years~~; ~~these~~**but this** limitations as to length of sessions shall not apply to the Senate when sitting as a court of impeachment. A legislative day shall be construed to mean a calendar day, **exclusive of Sundays, legal holidays, or any day on which neither House meets.**

Section 3. This amendment shall be submitted to the voters of the Commonwealth for their ratification or rejection at the time and in the manner provided for under Sections 256 and 257 of the Constitution and under KRS 118.415.

**Governor's signature not required**

## CHAPTER 408

(SB 11)

AN ACT providing for the adoption of revised articles of the Uniform Commercial Code and making changes incidental thereto.

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

### SEGMENT A

#### REVISED ARTICLE 5

#### (LETTERS OF CREDIT)

SECTION 1. KRS 355.5-101 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

***This article may be cited as Uniform Commercial Code -- Letters of Credit.***

SECTION 2. KRS 355.5-102 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) ***In this article:***

- (a) ***"Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.***
- (b) ***"Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.***
- (c) ***"Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.***
- (d) ***"Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.***

- (e) *"Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.*
  - (f) *"Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion:*
    - 1. *Which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in subsection (5) of Section 8 of this Act; and*
    - 2. *Which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.*
  - (g) *"Good faith" means honesty in fact in the conduct or transaction concerned.*
  - (h) *"Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs:*
    - 1. *Upon payment;*
    - 2. *If the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or*
    - 3. *If the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.*
  - (i) *"Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.*
  - (j) *"Letter of credit" means a definite undertaking that satisfies the requirements of Section 4 of this Act by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.*
  - (k) *"Nominated person" means a person whom the issuer:*
    - 1. *Designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit; and*
    - 2. *Undertakes by agreement or custom and practice to reimburse.*
  - (l) *"Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.*
  - (m) *"Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.*
  - (n) *"Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.*
  - (o) *"Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.*
- (2) *Definitions in other articles in this chapter applying to this article and the sections in which they appear are:*
- |                                 |                                     |
|---------------------------------|-------------------------------------|
| <i>"Accept" or "Acceptance"</i> | <i>KRS 355.3-409;</i>               |
| <i>"Value"</i>                  | <i>KRS 355.3-303 and 355.4-211.</i> |
- (3) *Article 1 of this chapter contains certain additional general definitions and principles of construction and interpretation applicable throughout this article.*
- SECTION 3. KRS 355.5-103 IS REPEALED AND REENACTED TO READ AS FOLLOWS:
- (1) *This article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.*



- (2) *The statement of a rule in this article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this article.*
- (3) *With the exception of this subsection, subsections (1) and (4) of this section, subsection (1)(i) and (j) of Section 2 of this Act, subsection (4) of Section 6 of this Act, and subsection (4) of Section 14 of this Act, and to the extent prohibited in KRS 355.1-102(3) and subsection (4) of Section 17 of this Act, the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this article.*
- (4) *Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.*

SECTION 4. KRS 355.5-104 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

*A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated:*

- (1) *By a signature; or*
- (2) *In accordance with the agreement of the parties or the standard practice referred to in subsection (5) of Section 8 of this Act.*

SECTION 5. KRS 355.5-105 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

*Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation.*

SECTION 6. KRS 355.5-106 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.*
- (2) *After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.*
- (3) *If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one (1) year after its stated date of issuance or, if none is stated, after the date on which it is issued.*
- (4) *A letter of credit that states that it is perpetual expires five (5) years after its stated date of issuance, or if none is stated, after the date on which it is issued.*

SECTION 7. KRS 355.5-107 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.*
- (2) *A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.*
- (3) *A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.*
- (4) *A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection (3) of this section. The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to*

*the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.*

SECTION 8. KRS 355.5-108 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in Section 9 of this Act, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (5) of this section, appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in Section 13 of this Act and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.*
- (2) *An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:*
  - (a) *To honor;*
  - (b) *If the letter of credit provides for honor to be completed more than seven (7) business days after presentation, to accept a draft or incur a deferred obligation; or*
  - (c) *To give notice to the presenter of discrepancies in the presentation.*
- (3) *Except as otherwise provided in subsection (4) of this section, an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.*
- (4) *Failure to give the notice specified in subsection (2) of this section or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in subsection (1) of Section 9 of this Act or expiration of the letter of credit before presentation.*
- (5) *An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.*
- (6) *An issuer is not responsible for:*
  - (a) *The performance or nonperformance of the underlying contract, arrangement, or transaction;*
  - (b) *An act or omission of others; or*
  - (c) *Observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (5) of this section.*
- (7) *If an undertaking constituting a letter of credit under subsection (1)(j) of Section 2 of this Act contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.*
- (8) *An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.*
- (9) *An issuer that has honored a presentation as permitted or required by this article:*
  - (a) *Is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;*
  - (b) *Takes the documents free of claims of the beneficiary or presenter;*
  - (c) *Is precluded from asserting a right of recourse on a draft under KRS 355.3-414 and 355.3-415;*
  - (d) *Except as otherwise provided in Sections 10 and 17 of this Act, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and*
  - (e) *Is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.*

SECTION 9. KRS 355.5-109 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:*

- (a) *The issuer shall honor the presentation, if honor is demanded by:*
  - 1. *A nominated person who has given value in good faith and without notice of forgery or material fraud;*
  - 2. *A confirmer who has honored its confirmation in good faith;*
  - 3. *A holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person; or*
  - 4. *An assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and*
- (b) *The issuer, acting in good faith, may honor or dishonor the presentation in any other case.*
- (2) *If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:*
  - (a) *The relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;*
  - (b) *A beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;*
  - (c) *All of the conditions to entitle a person to the relief under the law of this Commonwealth have been met; and*
  - (d) *On the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection (1)(a) of this section.*

SECTION 10. KRS 355.5-110 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *If its presentation is honored, the beneficiary warrants:*
  - (a) *To the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in subsection (1) of Section 9 of this Act; and*
  - (b) *To the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.*
- (2) *The warranties in subsection (1) of this section are in addition to warranties arising under Articles 3, 4, 7, and 8 of this chapter because of the presentation or transfer of documents covered by any of those articles.*

SECTION 11. KRS 355.5-111 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.*
- (2) *If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.*
- (3) *If an adviser or nominated person other than a confirmer breaches an obligation under this article or an issuer breaches an obligation not covered in subsection (1) or (2) of this section, a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not*

*consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (1) and (2) of this section.*

- (4) An issuer, nominated person, or adviser who is found liable under subsection (1), (2), or (3) of this section shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.*
- (5) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this article.*
- (6) Damages that would otherwise be payable by a party for breach of an obligation under this article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.*

SECTION 12. KRS 355.5-112 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

*If a letter of credit is transferable, the issuer may refuse to recognize or carry out a transfer if:*

- (1) The transfer would violate applicable law; or*
- (2) The transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in subsection (5) of Section 8 of this Act or is otherwise reasonable under the circumstances.*

SECTION 13. KRS 355.5-113 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.*
- (2) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (5) of this section, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in subsection (5) of Section 8 of this Act or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.*
- (3) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.*
- (4) Honor of a purported successor's apparently complying presentation under subsection (1) or (2) of this section has the consequences specified in subsection (9) of Section 8 of this Act even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of Section 9 of this Act.*
- (5) An issuer whose rights of reimbursement are not covered by subsection (4) of this section or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (2) of this section.*
- (6) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.*

SECTION 14. KRS 355.5-114 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.*
- (2) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.*
- (3) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.*

- (4) *An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.*
- (5) *Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.*
- (6) *Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by Article 9 of this chapter or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by Article 9 of this chapter or other law.*

SECTION 15. KRS 355.5-115 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

*An action to enforce a right or obligation arising under this article must be commenced within one (1) year after the expiration date of the relevant letter of credit or one (1) year after the claim for relief accrues, whichever occurs later. A claim for relief accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.*

SECTION 16. KRS 355.5-116 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in Section 4 of this Act or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.*
- (2) *Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If:*
  - (a) *This article would govern the liability of an issuer, nominated person, or adviser under subsection (1) of this section;*
  - (b) *The relevant undertaking incorporates rules of custom or practice; and*
  - (c) *There is conflict between this article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in subsection (3) of Section 3 of this Act.*
- (3) *If there is conflict between this article and Article 3, 4, 4A, or 9 of this chapter, this article governs.*
- (4) *The forum for settling disputes arising out of an undertaking within this article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (1) of this section.*

SECTION 17. KRS 355.5-117 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.*
- (2) *An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection (1) of this section.*
- (3) *A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:*
  - (a) *The issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;*

- (b) *The beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and*
- (c) *The applicant to same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.*
- (4) *Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections (1) and (2) of this section do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection (3) of this section do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse.*

SECTION 18. A NEW SECTION OF ARTICLE 5 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.5-118:

- (1) *An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.*
- (2) *So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (1) of this section, the security interest continues and is subject to Article 9 of this chapter, but:*
  - (a) *A security agreement is not necessary to make the security interest enforceable under subsection (2)(c) of Section 33 of this Act;*
  - (b) *If the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and*
  - (c) *If the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document.*

#### SEGMENT B

#### CONFORMING AMENDMENTS

#### FOR REVISED ARTICLE 5

Section 19. KRS 355.1-105 is amended to read as follows:

- (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this ~~Commonwealth~~<sup>[state]</sup> and also to another state or nation the parties may agree that the law either of this ~~Commonwealth~~<sup>[state]</sup> or of such other state or nation shall govern their rights and duties. Failing such agreement this chapter applies to transactions bearing an appropriate relation to this ~~Commonwealth~~<sup>[state]</sup>.
- (2) Where one (1) of the following provisions of this chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of the laws rules) so specified:

Rights of creditors against sold goods. KRS 355.2-402.

Applicability of the article on leases. KRS 355.2A-105 and 355.2A-106.

Applicability of the article on bank deposits and collections. KRS 355.4-102.

Applicability of the article on investment securities. KRS 355.8-110.

*Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. Sections 41 to 47 of this Act*~~[Perfection provisions of the article on secured transactions. KRS 355.9-103].~~

Governing law in the article on funds transfers. KRS 355.4A-507.

*Letters of credit. Section 16 of this Act.*

Section 20. KRS 355.2-512 is amended to read as follows:

- (1) Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless
  - (a) the nonconformity appears without inspection; or
  - (b) despite tender of the required documents the circumstances would justify injunction against honor under ~~the provisions of~~ this chapter (*subsection (2) of Section 9 of this Act* ~~(KRS 355.5-114)~~).
- (2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

## SEGMENT C

## REVISED ARTICLE 9

## (SECURED TRANSACTIONS)

## PART 1

## GENERAL PROVISIONS

## SUBPART 1 SHORT TITLE, DEFINITIONS

## AND GENERAL CONCEPTS

SECTION 21. KRS 355.9-101 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

*This article may be cited as Uniform Commercial Code -- Secured Transactions.*

SECTION 22. KRS 355.9-102 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) *In this article:*

- (a) *“Accession” means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.*
- (b)
  1. *“Account,” except as used in “account for,” means a right to payment of a monetary obligation, whether or not earned by performance:*
    - a. *For property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;*
    - b. *For services rendered or to be rendered;*
    - c. *For a policy of insurance issued or to be issued;*
    - d. *For a secondary obligation incurred or to be incurred;*
    - e. *For energy provided or to be provided;*
    - f. *For the use or hire of a vessel under a charter or other contract;*
    - g. *Arising out of the use of a credit or charge card or information contained on or for use with the card; or*
    - h. *As winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state.*
  2. *The term includes health-care-insurance receivables.*
  3. *The term does not include:*
    - a. *Rights to payment evidenced by chattel paper or an instrument;*
    - b. *Commercial tort claims;*
    - c. *Deposit accounts;*
    - d. *Investment property;*
    - e. *Letter-of-credit rights or letters of credit; or*





2. *Records that evidence a right of payment arising out of the use of a credit or charge card or information contained on or for use with the card.*

*If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.*

- (l) *“Collateral” means the property subject to a security interest or agricultural lien. The term includes:*
  1. *Proceeds to which a security interest attaches;*
  2. *Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and*
  3. *Goods that are the subject of a consignment.*
- (m) *“Commercial tort claim” means a claim arising in tort with respect to which:*
  1. *The claimant is an organization; or*
  2. *The claimant is an individual and the claim:*
    - a. *Arose in the course of the claimant’s business or profession; and*
    - b. *Does not include damages arising out of personal injury to or the death of an individual.*
- (n) *“Commodity account” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.*
- (o) *“Commodity contract” means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:*
  1. *Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or*
  2. *Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.*
- (p) *“Commodity customer” means a person for which a commodity intermediary carries a commodity contract on its books.*
- (q) *“Commodity intermediary” means a person that:*
  1. *Is registered as a futures commission merchant under federal commodities law; or*
  2. *In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.*
- (r) *“Communicate” means:*
  1. *To send a written or other tangible record;*
  2. *To transmit a record by any means agreed upon by the persons sending and receiving the record; or*
  3. *In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.*
- (s) *“Consignee” means a merchant to which goods are delivered in a consignment.*
- (t) *“Consignment” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:*
  1. *The merchant:*
    - a. *Deals in goods of that kind under a name other than the name of the person making delivery;*
    - b. *Is not an auctioneer; and*
    - c. *Is not generally known by its creditors to be substantially engaged in selling the goods of others;*

2. *With respect to each delivery, the aggregate value of the goods is one thousand dollars (\$1,000) or more at the time of delivery;*
3. *The goods are not consumer goods immediately before delivery; and*
4. *The transaction does not create a security interest that secures an obligation.*
- (u) *“Consignor” means a person that delivers goods to a consignee in a consignment.*
- (v) *“Consumer debtor” means a debtor in a consumer transaction.*
- (w) *“Consumer goods” means goods that are used or bought for use primarily for personal, family, or household purposes.*
- (x) *“Consumer-goods transaction” means a consumer transaction in which:*
  1. *An individual incurs an obligation primarily for personal, family, or household purposes; and*
  2. *A security interest in consumer goods secures the obligation.*
- (y) *“Consumer obligor” means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.*
- (z) *“Consumer transaction” means a transaction in which:*
  1. *An individual incurs an obligation primarily for personal, family, or household purposes;*
  2. *A security interest secures the obligation; and*
  3. *The collateral is held or acquired primarily for personal, family, or household purposes.**The term includes consumer-goods transactions.*
- (aa) *“Continuation statement” means an amendment of a financing statement which:*
  1. *Identifies, by its file number, the initial financing statement to which it relates; and*
  2. *Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.*
- (ab) *“Debtor” means:*
  1. *A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;*
  2. *A seller of accounts, chattel paper, payment intangibles, or promissory notes; or*
  3. *A consignee.*
- (ac) *“Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.*
- (ad) *“Document” means a document of title or a receipt of the type described in KRS 355.7-201(2).*
- (ae) *“Electronic chattel paper” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.*
- (af) *“Encumbrance” means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.*
- (ag) *“Equipment” means goods other than inventory, farm products, or consumer goods.*
- (ah) *“Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:*
  1. *Crops grown, growing, or to be grown, including:*
    - a. *Crops produced on trees, vines, and bushes; and*
    - b. *Aquatic goods produced in aquacultural operations;*
  2. *Livestock, born or unborn, including aquatic goods produced in aquacultural operations;*
  3. *Supplies used or produced in a farming operation;*

4. *Products of crops or livestock in their unmanufactured states; or*
  5. *Equine interests, including, but not limited to, interests in horses, mares, yearlings, foals, weanlings, stallions, syndicated stallions, and stallion shares (including seasons and other rights in connection therewith), whether or not the debtor is engaged in farming operations and without regard to the use thereof. If goods are farm products, they are neither equipment nor inventory.*
- (ai) *“Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.*
- (aj) *“File number” means the number assigned to an initial financing statement pursuant to subsection (1) of Section 110 of this Act.*
- (ak) *“Filing office” means an office designated in Section 92 of this Act as the place to file a financing statement.*
- (al) *“Filing-office rule” means a rule adopted pursuant to Section 117 of this Act.*
- (am) *“Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.*
- (an) *“Fixture filing” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying subsections (1) and (2) of Section 93 of this Act. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.*
- (ao) *“Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.*
- (ap) *“General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.*
- (aq) *“Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.*
- (ar) *“Goods” means all things that are movable when a security interest attaches.*
1. *The term includes:*
    - a. *Fixtures;*
    - b. *Standing timber that is to be cut and removed under a conveyance or contract for sale;*
    - c. *The unborn young of animals;*
    - d. *Crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes; and*
    - e. *Manufactured homes.*
  2. *The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if:*
    - a. *The program is associated with the goods in such a manner that it customarily is considered part of the goods; or*
    - b. *By becoming the owner of the goods, a person acquires a right to use the program in connection with the goods.*
  3. *The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded.*
  4. *The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.*
- (as) *“Governmental unit” means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a State, or a foreign country. The term includes an*

*organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.*

- (at) *“Health-care-insurance receivable” means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.*
- (au) *“Instrument” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include:*
  - 1. *Investment property;*
  - 2. *Letters of credit; or*
  - 3. *Writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.*
- (av) *“Inventory” means goods, other than farm products, which:*
  - 1. *Are leased by a person as lessor;*
  - 2. *Are held by a person for sale or lease or to be furnished under a contract of service;*
  - 3. *Are furnished by a person under a contract of service; or*
  - 4. *Consist of raw materials, work in process, or materials used or consumed in a business.*
- (aw) *“Investment property” means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.*
- (ax) *“Jurisdiction of organization,” with respect to a registered organization, means the jurisdiction under whose law the organization is organized.*
- (ay) *“Letter-of-credit right” means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.*
- (az) *“Lien creditor” means:*
  - 1. *A creditor that has acquired a lien on the property involved by attachment, levy, or the like;*
  - 2. *An assignee for benefit of creditors from the time of assignment;*
  - 3. *A trustee in bankruptcy from the date of the filing of the petition; or*
  - 4. *A receiver in equity from the time of appointment.*
- (ba) *“Manufactured home” means a structure, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.*
- (bb) *“Manufactured-home transaction” means a secured transaction:*
  - 1. *That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or*
  - 2. *In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.*
- (bc) *“Mortgage” means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.*

(bd) *"New debtor" means a person that becomes bound as debtor under subsection (4) of Section 33 of this Act by a security agreement previously entered into by another person.*

(be) *"New value" means:*

1. *Money;*
2. *Money's worth in property, services, or new credit; or*
3. *Release by a transferee of an interest in property previously transferred to the transferee.*

*The term does not include an obligation substituted for another obligation.*

(bf) *"Noncash proceeds" means proceeds other than cash proceeds.*

(bg) *"Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:*

1. *Owes payment or other performance of the obligation;*
2. *Has provided property other than the collateral to secure payment or other performance of the obligation; or*
3. *Is otherwise accountable in whole or in part for payment or other performance of the obligation.*

*The term does not include issuers or nominated persons under a letter of credit.*

(bh) *"Original debtor," except as used in subsection (3) of Section 50 of this Act, means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under subsection (4) of Section 33 of this Act.*

(bi) *"Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.*

(bj) *"Person related to," with respect to an individual, means:*

1. *The spouse of the individual;*
2. *A brother, brother-in-law, sister, or sister-in-law of the individual;*
3. *An ancestor or lineal descendant of the individual or the individual's spouse; or*
4. *Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.*

(bk) *"Person related to," with respect to an organization, means:*

1. *A person directly or indirectly controlling, controlled by, or under common control with the organization;*
2. *An officer or director of, or a person performing similar functions with respect to, the organization;*
3. *An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph 1. of this paragraph;*
4. *The spouse of an individual described in subparagraph 1., 2., or 3. of this paragraph; or*
5. *An individual who is related by blood or marriage to an individual described in subparagraph 1., 2., 3., or 4. of this paragraph and shares the same home with the individual.*

(bl) *"Proceeds," except as used in subsection (2) of Section 127 of this Act, means the following property:*

1. *Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;*
2. *Whatever is collected on, or distributed on account of, collateral;*
3. *Rights arising out of collateral;*

4. *To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or*
  5. *To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.*
- (bm) *“Promissory note” means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.*
- (bn) *“Proposal” means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 138, 139, and 140 of this Act.*
- (bo) *“Public-finance transaction” means a secured transaction in connection with which:*
1. *Debt securities are issued;*
  2. *All or a portion of the securities issued have an initial stated maturity of at least twenty (20) years; and*
  3. *The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.*
- (bp) *“Pursuant to commitment,” with respect to an advance made or other value given by a secured party, means pursuant to the secured party’s obligation, whether or not a subsequent event of default or other event not within the secured party’s control has relieved or may relieve the secured party from its obligation.*
- (bq) *“Record,” except as used in “for record,” “of record,” “record or legal title,” and “record owner,” means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.*
- (br) *“Registered organization” means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.*
- (bs) *“Secondary obligor” means an obligor to the extent that:*
1. *The obligor’s obligation is secondary; or*
  2. *The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.*
- (bt) *“Secured party” means:*
1. *A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;*
  2. *A person that holds an agricultural lien;*
  3. *A consignor;*
  4. *A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;*
  5. *A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or*
  6. *A person that holds a security interest arising under KRS 355.2-401, 355.2-505, 355.2-711(3), 355.2A-508(5), 355.4-210, or 355.5-118.*
- (bu) *“Security agreement” means an agreement that creates or provides for a security interest.*
- (bv) *“Send,” in connection with a record or notification, means:*

1. *To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or*
  2. *To cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph 1. of this paragraph.*
- (bw) *“Software” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.*
- (bx) *“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.*
- (by) *“Supporting obligation” means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.*
- (bz) *“Tangible chattel paper” means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.*
- (ca) *“Termination statement” means an amendment of a financing statement which:*
1. *Identifies, by its file number, the initial financing statement to which it relates; and*
  2. *Indicates either that it is a termination statement or that the identified financing statement is no longer effective.*
- (cb) *“Transmitting utility” means a person primarily engaged in the business of:*
1. *Operating a railroad, subway, street railway, or trolley bus;*
  2. *Transmitting communications electrically, electromagnetically, or by light;*
  3. *Transmitting goods by pipeline or sewer; or*
  4. *Transmitting or producing and transmitting electricity, steam, gas, or water.*
- (2) *The following definitions in other articles apply to this article:*
- |  |                        |
|--|------------------------|
| <i>“Applicant”</i>   | <i>KRS 355.5-102.</i>  |
| <i>“Beneficiary”</i>   | <i>KRS 355.5-102.</i>  |
| <i>“Broker”</i>  | <i>KRS 355.8-102.</i>  |
| <i>“Certificated security”</i>   | <i>KRS 355.8-102.</i>  |
| <i>“Check”</i>   | <i>KRS 355.3-104.</i>  |
| <i>“Clearing corporation”</i>  | <i>KRS 355.8-102.</i>  |
| <i>“Contract for sale”</i>   | <i>KRS 355.2-106.</i>  |
| <i>“Customer”</i>  | <i>KRS 355.4-104.</i>  |
| <i>“Entitlement holder”</i>  | <i>KRS 355.8-102.</i>  |
| <i>“Financial asset”</i>   | <i>KRS 355.8-102.</i>  |
| <i>“Holder in due course”</i>  | <i>KRS 355.3-302.</i>  |
| <i>“Issuer” (with respect to a letter of<br/>credit or letter-of-credit right)</i> | <i>KRS 355.5-102.</i>  |
| <i>“Issuer” (with respect to a security)</i>                                       | <i>KRS 355.8-201.</i>  |
| <i>“Lease”</i>   | <i>KRS 355.2A-103.</i> |
| <i>“Lease agreement”</i>   | <i>KRS 355.2A-103.</i> |
| <i>“Lease contract”</i>  | <i>KRS 355.2A-103.</i> |

<i>“Leasehold interest”</i>	<i>KRS 355.2A-103.</i>
<i>“Lessee”</i>	<i>KRS 355.2A-103.</i>
<i>“Lessee in ordinary course of business”</i>	<i>KRS 355.2A-103.</i>
<i>“Lessor”</i>	<i>KRS 355.2A-103.</i>
<i>“Lessor’s residual interest”</i>	<i>KRS 355.2A-103.</i>
<i>“Letter of credit”</i>	<i>KRS 355.5-102.</i>
<i>“Merchant”</i>	<i>KRS 355.2-104.</i>
<i>“Negotiable instrument”</i>	<i>KRS 355.3-104.</i>
<i>“Nominated person”</i>	<i>KRS 355.5-102.</i>
<i>“Note”</i>	<i>KRS 355.3-104.</i>
<i>“Proceeds of a letter of credit”</i>	<i>KRS 355.5-114.</i>
<i>“Prove”</i>	<i>KRS 355.3-103.</i>
<i>“Sale”</i>	<i>KRS 355.2-106.</i>
<i>“Securities account”</i>	<i>KRS 355.8-501.</i>
<i>“Securities intermediary”</i>	<i>KRS 355.8-102.</i>
<i>“Security”</i>	<i>KRS 355.8-102.</i>
<i>“Security certificate”</i>	<i>KRS 355.8-102.</i>
<i>“Security entitlement”</i>	<i>KRS 355.8-102.</i>
<i>“Uncertificated security”</i>	<i>KRS 355.8-102.</i>

- (3) *Article 1 of this chapter contains general definitions and principles of construction and interpretation applicable throughout this article.*

SECTION 23. KRS 355.9-103 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *In this section:*
- (a) *“Purchase-money collateral” means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and*
  - (b) *“Purchase-money obligation” means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.*
- (2) *A security interest in goods is a purchase-money security interest:*
- (a) *To the extent that the goods are purchase-money collateral with respect to that security interest;*
  - (b) *If the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and*
  - (c) *Also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.*
- (3) *A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:*
- (a) *The debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and*
  - (b) *The debtor acquired its interest in the software for the principal purpose of using the software in the goods.*



- (4) *The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.*
- (5) *In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:*
  - (a) *In accordance with any reasonable method of application to which the parties agree;*
  - (b) *In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or*
  - (c) *In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:*
    - 1. *To obligations that are not secured; and*
    - 2. *If more than one (1) obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.*
- (6) *In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:*
  - (a) *The purchase-money collateral also secures an obligation that is not a purchase-money obligation;*
  - (b) *Collateral that is not purchase-money collateral also secures the purchase-money obligation; or*
  - (c) *The purchase-money obligation has been renewed, refinanced, consolidated, or restructured.*
- (7) *In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.*
- (8) *The limitation of the rules in subsections (5), (6), and (7) of this section to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.*

SECTION 24. KRS 355.9-104 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *A secured party has control of a deposit account if:*
  - (a) *The secured party is the bank with which the deposit account is maintained;*
  - (b) *The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or*
  - (c) *The secured party becomes the bank's customer with respect to the deposit account.*
- (2) *A secured party that has satisfied subsection (1) of this section has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.*

SECTION 25. KRS 355.9-105 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

*A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:*

- (1) *A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in subsections (4), (5), and (6) of this section, unalterable;*
- (2) *The authoritative copy identifies the secured party as the assignee of the record or records;*
- (3) *The authoritative copy is communicated to and maintained by the secured party or its designated custodian;*
- (4) *Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;*
- (5) *Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and*

- (6) *Any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.*

SECTION 26. KRS 355.9-106 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *A person has control of a certificated security, uncertificated security, or security entitlement as provided in Section 168 of this Act.*
- (2) *A secured party has control of a commodity contract if:*
- (a) *The secured party is the commodity intermediary with which the commodity contract is carried; or*
  - (b) *The commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.*
- (3) *A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.*

SECTION 27. KRS 355.9-107 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

*A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under subsection (3) of Section 14 of this Act or otherwise applicable law or practice.*

SECTION 28. KRS 355.9-108 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsections (3), (4), and (5) of this section, a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.*
- (2) *Except as otherwise provided in subsection (4) of this section, a description of collateral reasonably identifies the collateral if it identifies the collateral by:*
- (a) *Specific listing;*
  - (b) *Category;*
  - (c) *Except as otherwise provided in subsection (5) of this section, a type of collateral defined in this chapter;*
  - (d) *Quantity;*
  - (e) *Computational or allocational formula or procedure; or*
  - (f) *Except as otherwise provided in subsection (3) of this section, any other method, if the identity of the collateral is objectively determinable.*
- (3) *A description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import does not reasonably identify the collateral.*
- (4) *Except as otherwise provided in subsection (5) of this section, a description of a security entitlement, securities account, or commodity account is sufficient if it describes:*
- (a) *The collateral by those terms or as investment property; or*
  - (b) *The underlying financial asset or commodity contract.*
- (5) *A description only by type of collateral defined in this chapter is an insufficient description of:*
- (a) *A commercial tort claim; or*
  - (b) *In a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.*

## SUBPART 2. APPLICABILITY OF ARTICLE

SECTION 29. KRS 355.9-109 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsections (3) and (4) of this section, this article applies to:*
- (a) *A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;*

- (b) *An agricultural lien;*
- (c) *A sale of accounts, chattel paper, payment intangibles, or promissory notes;*
- (d) *A consignment;*
- (e) *A security interest arising under KRS 355.2-401, 355.2-505, 355.2-711(3), or 355.2A-508(5), as provided in Section 30 of this Act; and*
- (f) *A security interest arising under Section 18 of this Act or Section 165 of this Act.*
- (2) *The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.*
- (3) *This article does not apply to the extent that:*
  - (a) *A statute, regulation, or treaty of the United States preempts this article;*
  - (b) *Another statute of this Commonwealth expressly governs the creation, perfection, priority, or enforcement of a security interest created by this Commonwealth or a governmental unit of this Commonwealth;*
  - (c) *A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or*
  - (d) *The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under Section 14 of this Act.*
- (4) *This article does not apply to:*
  - (a) *A landlord's lien, other than an agricultural lien;*
  - (b) *A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 73 of this Act applies with respect to priority of the lien;*
  - (c) *An assignment of a claim for wages, salary, or other compensation of an employee, or for workers' compensation benefits payable to an individual;*
  - (d) *A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;*
  - (e) *An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;*
  - (f) *An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;*
  - (g) *An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;*
  - (h) *A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but Sections 55 and 62 of this Act apply with respect to proceeds and priorities in proceeds;*
  - (i) *An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;*
  - (j) *A right of recoupment or set-off, but:*
    - 1. *Section 80 of this Act applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and*
    - 2. *Section 86 of this Act applies with respect to defenses or claims of an account debtor;*
  - (k) *The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:*
    - 1. *Liens on real property in Sections 33 and 48 of this Act;*

2. *Fixtures in Section 74 of this Act;*
3. *Fixture filings in Sections 92, 93, 103, 107, and 110 of this Act; and*
4. *Security agreements covering personal and real property in Section 122 of this Act;*
- (l) *An assignment of a claim arising in tort, other than a commercial tort claim, but Sections 55 and 62 of this Act apply with respect to proceeds and priorities in proceeds;*
- (m) *An assignment of a deposit account in a consumer transaction, but Sections 55 and 62 of this Act apply with respect to proceeds and priorities in proceeds;*
- (n) *A claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. sec. 104(a)(1) or (2), as amended from time to time;*
- (o) *A claim or right to receive benefits under a special needs trust as described in 42 U.S.C. sec 1396p(d)(4), as amended from time to time; or*
- (p) *A right to receive money under a structured settlement as defined by KRS 454.430.*

SECTION 30. KRS 355.9-110 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

*A security interest arising under KRS 355.2-401, 355.2-505, 355.2-711(3), or 355.2A-508(5) is subject to this article. However, until the debtor obtains possession of the goods:*

- (1) *The security interest is enforceable, even if subsection (2)(c) of Section 33 of this Act has not been satisfied;*
- (2) *Filing is not required to perfect the security interest;*
- (3) *The rights of the secured party after default by the debtor are governed by Article 2 or 2A of this chapter; and*
- (4) *The security interest has priority over a conflicting security interest created by the debtor.*

## PART 2

### EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT

#### SUBPART 1. EFFECTIVENESS AND ATTACHMENT

SECTION 31. KRS 355.9-201 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in this chapter, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.*
- (2) *A transaction subject to this article is subject to any applicable rule of law, statute, or regulation that establishes a different rule for consumers.*
- (3) *In case of conflict between this article and a rule of law, statute, or regulation described in subsection (2) of this section, the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (2) of this section has only the effect the statute or regulation specifies.*
- (4) *This article does not:*
  - (a) *Validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (2) of this section; or*
  - (b) *Extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.*

SECTION 32. KRS 355.9-202 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

*Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.*

SECTION 33. KRS 355.9-203 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.*

- (2) *Except as otherwise provided in subsections (3) to (9) of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:*
- (a) *Value has been given;*
  - (b) *The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and*
  - (c) *One (1) of the following conditions is met:*
    - 1. *The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;*
    - 2. *The collateral is not a certificated security and is in the possession of the secured party under Section 53 of this Act pursuant to the debtor's security agreement;*
    - 3. *The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 170 of this Act pursuant to the debtor's security agreement; or*
    - 4. *The collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under Section 24, 25, 26, or 27 of this Act pursuant to the debtor's security agreement.*
- (3) *Subsection (2) of this section is subject to Section 165 of this Act on the security interest of a collecting bank, Section 18 of this Act on the security interest of a letter-of-credit issuer or nominated person, Section 30 of this Act on a security interest arising under Article 2 or 2A of this chapter, and Section 36 of this Act on security interests in investment property.*
- (4) *A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:*
- (a) *The security agreement becomes effective to create a security interest in the person's property; or*
  - (b) *The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.*
- (5) *If a new debtor becomes bound as debtor by a security agreement entered into by another person:*
- (a) *The agreement satisfies subsection (2)(c) of this section with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and*
  - (b) *Another agreement is not necessary to make a security interest in the property enforceable.*
- (6) *The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by Section 55 of this Act and is also attachment of a security interest in a supporting obligation for the collateral.*
- (7) *The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.*
- (8) *The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.*
- (9) *The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.*

SECTION 34. KRS 355.9-204 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (2) of this section, a security agreement may create or provide for a security interest in after-acquired collateral.*
- (2) *A security interest does not attach under a term constituting an after-acquired property clause to:*
- (a) *Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten (10) days after the secured party gives value; or*
  - (b) *A commercial tort claim.*

- (3) *A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.*

SECTION 35. KRS 355.9-205 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *A security interest is not invalid or fraudulent against creditors solely because:*
- (a) *The debtor has the right or ability to:*
    - 1. *Use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;*
    - 2. *Collect, compromise, enforce, or otherwise deal with collateral;*
    - 3. *Accept the return of collateral or make repossessions; or*
    - 4. *Use, commingle, or dispose of proceeds; or*
  - (b) *The secured party fails to require the debtor to account for proceeds or replace collateral.*
- (2) *This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.*

SECTION 36. KRS 355.9-206 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *A security interest in favor of a securities intermediary attaches to a person's security entitlement if:*
- (a) *The person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and*
  - (b) *The securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.*
- (2) *The security interest described in subsection (1) of this section secures the person's obligation to pay for the financial asset.*
- (3) *A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:*
- (a) *The security or other financial asset:*
    - 1. *In the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and*
    - 2. *Is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and*
  - (b) *The agreement calls for delivery against payment.*
- (4) *The security interest described in subsection (3) of this section secures the obligation to make payment for the delivery.*

## SUBPART 2. RIGHTS AND DUTIES

SECTION 37. KRS 355.9-207 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (4) of this section, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.*
- (2) *Except as otherwise provided in subsection (4) of this section, if a secured party has possession of collateral:*
- (a) *Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;*

- (b) *The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;*
- (c) *The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and*
- (d) *The secured party may use or operate the collateral:*
  - 1. *For the purpose of preserving the collateral or its value;*
  - 2. *As permitted by an order of a court having competent jurisdiction; or*
  - 3. *Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.*
- (3) *Except as otherwise provided in subsection (4) of this section, a secured party having possession of collateral or control of collateral under Section 24, 25, 26, or 27 of this Act:*
  - (a) *May hold as additional security any proceeds, except money or funds, received from the collateral;*
  - (b) *Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and*
  - (c) *May create a security interest in the collateral.*
- (4) *If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:*
  - (a) *Subsection (1) of this section does not apply unless the secured party is entitled under an agreement:*
    - 1. *To charge back uncollected collateral; or*
    - 2. *Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and*
  - (b) *Subsections (2) and (3) of this section do not apply.*

SECTION 38. KRS 355.9-208 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.*
- (2) *Within ten (10) days after receiving an authenticated demand by the debtor:*
  - (a) *A secured party having control of a deposit account under subsection (1)(b) of Section 24 of this Act shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;*
  - (b) *A secured party having control of a deposit account under subsection (1)(c) of Section 24 of this Act shall:*
    - 1. *Pay the debtor the balance on deposit in the deposit account; or*
    - 2. *Transfer the balance on deposit into a deposit account in the debtor's name;*
  - (c) *A secured party, other than a buyer, having control of electronic chattel paper under Section 25 of this Act shall:*
    - 1. *Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;*
    - 2. *If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and*
    - 3. *Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;*

- (d) *A secured party having control of investment property under subsection (4)(b) of Section 168 of this Act or subsection (2) of Section 26 of this Act shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and*
- (e) *A secured party having control of a letter-of-credit right under Section 27 of this Act shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.*

SECTION 39. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-209:

- (1) *Except as otherwise provided in subsection (3) of this section, this section applies if:*
  - (a) *There is no outstanding secured obligation; and*
  - (b) *The secured party is not committed to make advances, incur obligations, or otherwise give value.*
- (2) *Within ten (10) days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under subsection (1) of Section 88 of this Act an authenticated record that releases the account debtor from any further obligation to the secured party.*
- (3) *This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.*

SECTION 40. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-210:

- (1) *In this section:*
  - (a) *“Request” means a record of a type described in paragraph (b), (c), or (d) of this subsection.*
  - (b) *“Request for an accounting” means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.*
  - (c) *“Request regarding a list of collateral” means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.*
  - (d) *“Request regarding a statement of account” means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.*
- (2) *Subject to subsections (3), (4), (5), and (6) of this section, a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within fourteen (14) days after receipt:*
  - (a) *In the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and*
  - (b) *In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.*
- (3) *A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within fourteen (14) days after receipt.*
- (4) *A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within fourteen (14) days after receipt by sending to the debtor an authenticated record:*
  - (a) *Disclaiming any interest in the collateral; and*



- (b) *If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.*
- (5) *A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within fourteen (14) days after receipt by sending to the debtor an authenticated record:*
  - (a) *Disclaiming any interest in the obligations; and*
  - (b) *If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.*
- (6) *A debtor is entitled without charge to one (1) response to a request under this section during any six (6) month period. The secured party may require payment of a charge not exceeding twenty-five dollars (\$25) for each additional response.*

## PART 3

## PERFECTION AND PRIORITY

## SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY

## SECTION 41. KRS 355.9-301 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

*Except as otherwise provided in Sections 43 to 46 of this Act, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:*

- (1) *Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.*
- (2) *While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.*
- (3) *Except as otherwise provided in subsection (4) of this section, while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:*
  - (a) *Perfection of a security interest in the goods by filing a fixture filing;*
  - (b) *Perfection of a security interest in timber to be cut; and*
  - (c) *The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.*
- (4) *The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.*

## SECTION 42. KRS 355.9-302 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

*While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.*

## SECTION 43. KRS 355.9-303 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.*
- (2) *Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.*
- (3) *The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.*

## SECTION 44. KRS 355.9-304 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.*
- (2) *The following rules determine a bank's jurisdiction for purposes of this part of this article:*
  - (a) *If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part of this article, this article, or this chapter, that jurisdiction is the bank's jurisdiction.*
  - (b) *If paragraph (a) of this subsection does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.*
  - (c) *If neither paragraph (a) nor paragraph (b) of this subsection applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.*
  - (d) *If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.*
  - (e) *If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.*

SECTION 45. KRS 355.9-305 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (3) of this section, the following rules apply:*
  - (a) *While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.*
  - (b) *The local law of the issuer's jurisdiction as specified in subsection (4) of Section 169 of this Act governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.*
  - (c) *The local law of the securities intermediary's jurisdiction as specified in subsection (5) of Section 169 of this Act governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.*
  - (d) *The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.*
- (2) *The following rules determine a commodity intermediary's jurisdiction for purposes of this part of this article:*
  - (a) *If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part of this article, this article, or this chapter, that jurisdiction is the commodity intermediary's jurisdiction.*
  - (b) *If paragraph (a) of this subsection does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.*
  - (c) *If neither paragraph (a) nor paragraph (b) of this subsection applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.*
  - (d) *If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.*
  - (e) *If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.*

- (3) *The local law of the jurisdiction in which the debtor is located governs:*
- (a) *Perfection of a security interest in investment property by filing;*
  - (b) *Automatic perfection of a security interest in investment property created by a broker or securities intermediary; and*
  - (c) *Automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.*

SECTION 46. KRS 355.9-306 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *Subject to subsection (3) of this section, the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.*
- (2) *For purposes of this part of this article, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in Section 16 of this Act.*
- (3) *This section does not apply to a security interest that is perfected only under subsection (4) of Section 48 of this Act.*

SECTION 47. KRS 355.9-307 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *In this section, "place of business" means a place where a debtor conducts its affairs.*
- (2) *Except as otherwise provided in this section, the following rules determine a debtor's location:*
  - (a) *A debtor who is an individual is located at the individual's principal residence.*
  - (b) *A debtor that is an organization and has only one (1) place of business is located at its place of business.*
  - (c) *A debtor that is an organization and has more than one (1) place of business is located at its chief executive office.*
- (3) *Subsection (2) of this section applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (2) of this section does not apply, the debtor is located in the District of Columbia.*
- (4) *A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (2) and (3) of this section.*
- (5) *A registered organization that is organized under the law of a state is located in that state.*
- (6) *Except as otherwise provided in subsection (9) of this section, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:*
  - (a) *In the state that the law of the United States designates, if the law designates a state of location;*
  - (b) *In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location; or*
  - (c) *In the District of Columbia, if neither paragraph (a) nor paragraph (b) of this subsection applies.*
- (7) *A registered organization continues to be located in the jurisdiction specified by subsection (5) or (6) of this section notwithstanding:*
  - (a) *The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or*
  - (b) *The dissolution, winding up, or cancellation of the existence of the registered organization.*
- (8) *The United States is located in the District of Columbia.*

- (9) *A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one (1) state.*
- (10) *A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.*
- (11) *This section applies only for purposes of this part of this article.*

#### SUBPART 2. PERFECTION

SECTION 48. KRS 355.9-308 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in this section and Section 49 of this Act, a security interest is perfected if it has attached and all of the applicable requirements for perfection in Sections 50 to 56 of this Act have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.*
- (2) *An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in Section 50 of this Act have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.*
- (3) *A security interest or agricultural lien is perfected continuously if it is originally perfected by one (1) method under this article and is later perfected by another method under this article, without an intermediate period when it was unperfected.*
- (4) *Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.*
- (5) *Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.*
- (6) *Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.*
- (7) *Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.*

SECTION 49. KRS 355.9-309 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

*The following security interests are perfected when they attach:*

- (1) *A purchase-money security interest in consumer goods, except as otherwise provided in subsection (2) of Section 51 of this Act with respect to consumer goods that are subject to a statute or treaty described in subsection (1) of Section 51 of this Act;*
- (2) *An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;*
- (3) *A sale of a payment intangible;*
- (4) *A sale of a promissory note;*
- (5) *A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;*
- (6) *A security interest arising under KRS 355.2-401, 355.2-505, 355.2-711(3), or 355.2A-508(5), until the debtor obtains possession of the collateral;*
- (7) *A security interest of a collecting bank arising under Section 165 of this Act;*
- (8) *A security interest of an issuer or nominated person arising under Section 18 of this Act;*
- (9) *A security interest arising in the delivery of a financial asset under subsection (3) of Section 36 of this Act;*
- (10) *A security interest in investment property created by a broker or securities intermediary;*
- (11) *A security interest in a commodity contract or a commodity account created by a commodity intermediary;*

- (12) *An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and*
- (13) *A security interest created by an assignment of a beneficial interest in a decedent's estate.*

SECTION 50. KRS 355.9-310 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (2) of this section and subsection (2) of Section 52 of this Act, a financing statement must be filed to perfect all security interests and agricultural liens.*
- (2) *The filing of a financing statement is not necessary to perfect a security interest:*
  - (a) *That is perfected under subsection (4), (5), (6), or (7) of Section 48 of this Act;*
  - (b) *That is perfected under Section 49 of this Act when it attaches;*
  - (c) *In property subject to a statute, regulation, or treaty described in subsection (1) of Section 51 of this Act;*
  - (d) *In goods in possession of a bailee which is perfected under subsection (4)(a) or (b) of Section 52 of this Act;*
  - (e) *In certificated securities, documents, goods, or instruments which is perfected without filing or possession under subsection (5), (6), or (7) of Section 52 of this Act;*
  - (f) *In collateral in the secured party's possession under Section 53 of this Act;*
  - (g) *In a certificated security which is perfected by delivery of the security certificate to the secured party under Section 53 of this Act;*
  - (h) *In deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under Section 54 of this Act;*
  - (i) *In proceeds which is perfected under Section 55 of this Act; or*
  - (j) *That is perfected under Section 56 of this Act.*
- (3) *If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.*

SECTION 51. KRS 355.9-311 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (4) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:*
  - (a) *A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt subsection (1) of Section 50 of this Act;*
  - (b) *KRS Chapter 186A; or*
  - (c) *A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.*
- (2) *Compliance with the requirements of a statute, regulation, or treaty described in subsection (1) of this section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (4) of this section and Section 53 and subsections (4) and (5) of Section 56 of this Act for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (1) of this section may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.*
- (3) *Except as otherwise provided in subsection (4) of this section and subsections (4) and (5) of Section 56 of this Act, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (1) of this section are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.*

- (4) *During any period in which collateral subject to a statute specified in subsection (1)(b) of this section is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.*

SECTION 52. KRS 355.9-312 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.*
- (2) *Except as otherwise provided in subsections (3) and (4) of Section 55 of this Act for proceeds:*
- (a) *A security interest in a deposit account may be perfected only by control under Section 54 of this Act;*
- (b) *And except as otherwise provided in subsection (4) of Section 48 of this Act, a security interest in a letter-of-credit right may be perfected only by control under Section 54 of this Act; and*
- (c) *A security interest in money may be perfected only by the secured party's taking possession under Section 53 of this Act.*
- (3) *While goods are in the possession of a bailee that has issued a negotiable document covering the goods:*
- (a) *A security interest in the goods may be perfected by perfecting a security interest in the document; and*
- (b) *A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.*
- (4) *While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:*
- (a) *Issuance of a document in the name of the secured party;*
- (b) *The bailee's receipt of notification of the secured party's interest; or*
- (c) *Filing as to the goods.*
- (5) *A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of twenty (20) days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.*
- (6) *A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty (20) days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:*
- (a) *Ultimate sale or exchange; or*
- (b) *Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.*
- (7) *A perfected security interest in a certificated security or instrument remains perfected for twenty (20) days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:*
- (a) *Ultimate sale or exchange; or*
- (b) *Presentation, collection, enforcement, renewal, or registration of transfer.*
- (8) *After the twenty (20) day period specified in subsection (5), (6), or (7) of this section expires, perfection depends upon compliance with this article.*

SECTION 53. KRS 355.9-313 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (2) of this section, a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 170 of this Act.*

- (2) *With respect to goods covered by a certificate of title issued by this Commonwealth, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in subsection (4) of Section 56 of this section.*
- (3) *With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:*
  - (a) *The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or*
  - (b) *The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.*
- (4) *If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.*
- (5) *A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under Section 170 of this Act and remains perfected by delivery until the debtor obtains possession of the security certificate.*
- (6) *A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.*
- (7) *If a person acknowledges that it holds possession for the secured party's benefit:*
  - (a) *The acknowledgment is effective under subsection (3) of this section or subsection (1) of Section 170 of this Act, even if the acknowledgment violates the rights of a debtor; and*
  - (b) *Unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.*
- (8) *A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:*
  - (a) *To hold possession of the collateral for the secured party's benefit; or*
  - (b) *To redeliver the collateral to the secured party.*
- (9) *A secured party does not relinquish possession, even if a delivery under subsection (8) of this section violates the rights of a debtor. A person to which collateral is delivered under subsection (8) of this section does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.*

SECTION 54. KRS 355.9-314 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *A security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under Section 24, 25, 26, or 27 of this Act.*
- (2) *A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights is perfected by control under Section 24, 25, or 27 of this Act when the secured party obtains control and remains perfected by control only while the secured party retains control.*
- (3) *A security interest in investment property is perfected by control under Section 26 of this Act from the time the secured party obtains control and remains perfected by control until:*
  - (a) *The secured party does not have control; and*
  - (b) *One (1) of the following occurs:*
    - 1. *If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;*
    - 2. *If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or*

3. *If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.*

SECTION 55. KRS 355.9-315 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in this article and in KRS 355.2-403(2):*
  - (a) *A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and*
  - (b) *A security interest attaches to any identifiable proceeds of collateral.*
- (2) *Proceeds that are commingled with other property are identifiable proceeds:*
  - (a) *If the proceeds are goods, to the extent provided by Section 76 of this Act; and*
  - (b) *If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this article with respect to commingled property of the type involved.*
- (3) *A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.*
- (4) *A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:*
  - (a) *The following conditions are satisfied:*
    1. *A filed financing statement covers the original collateral;*
    2. *The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and*
    3. *The proceeds are not acquired with cash proceeds;*
  - (b) *The proceeds are identifiable cash proceeds; or*
  - (c) *The security interest in the proceeds is perfected other than under subsection (3) of this section when the security interest attaches to the proceeds or within twenty (20) days thereafter.*
- (5) *If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (4)(a) of this section becomes unperfected at the later of:*
  - (a) *When the effectiveness of the filed financing statement lapses under Section 106 of this Act or is terminated under Section 104 of this Act; or*
  - (b) *The twenty-first day after the security interest attaches to the proceeds.*

#### SUBPART 3. PRIORITY

SECTION 56. KRS 355.9-316 IS REPEALED AND REENACTED TO READ AS FOLLOWS::

- (1) *A security interest perfected pursuant to the law of the jurisdiction designated in subsection (1) of Section 41 of this Act or subsection (3) of Section 45 of this Act remains perfected until the earliest of:*
  - (a) *The time perfection would have ceased under the law of that jurisdiction;*
  - (b) *The expiration of four (4) months after a change of the debtor's location to another jurisdiction; or*
  - (c) *The expiration of one (1) year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.*
- (2) *If a security interest described in subsection (1) of this section becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.*
- (3) *A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:*



- (a) *The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;*
  - (b) *Thereafter the collateral is brought into another jurisdiction; and*
  - (c) *Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.*
- (4) *Except as otherwise provided in subsection (5) of this section, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this Commonwealth remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.*
- (5) *A security interest described in subsection (4) of this section becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under subsection (2) of Section 51 of this Act or Section 53 of this Act are not satisfied before the earlier of:*
- (a) *The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this Commonwealth; or*
  - (b) *The expiration of four (4) months after the goods had become so covered.*
- (6) *A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:*
- (a) *The time the security interest would have become unperfected under the law of that jurisdiction; or*
  - (b) *The expiration of four (4) months after a change of the applicable jurisdiction to another jurisdiction.*
- (7) *If a security interest described in subsection (6) of this section becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.*

SECTION 57. KRS 355.9-317 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *A security interest or agricultural lien is subordinate to the rights of:*
- (a) *A person entitled to priority under Section 62 of this Act; and*
  - (b) *Except as otherwise provided in subsection (5) of this section, a person that becomes a lien creditor before the earlier of the time:*
    - 1. *The security interest or agricultural lien is perfected; or*
    - 2. *One (1) of the conditions specified in subsection (2)(c) of Section 33 of this Act is met and a financing statement covering the collateral is filed.*
- (2) *Except as otherwise provided in subsection (5) of this section, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.*
- (3) *Except as otherwise provided in subsection (5) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.*
- (4) *A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.*

- (5) *Except as otherwise provided in Sections 60 and 61 of this Act, if a person files a financing statement with respect to a purchase-money security interest before or within twenty (20) days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.*

SECTION 58. KRS 355.9-318 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.*
- (2) *For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.*

SECTION 59. KRS 355.9-319 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (2) of this section, for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.*
- (2) *For purposes of determining the rights of a creditor of a consignee, law other than this article determines the rights and title of a consignee while goods are in the consignee's possession if, under this part of this article, a perfected security interest held by the consignor would have priority over the rights of the creditor.*

SECTION 60. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-320:

- (1) *Except as otherwise provided in subsection (5) of this section, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.*
- (2) *Except as otherwise provided in subsection (5) of this section, a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:*
- (a) *Without knowledge of the security interest;*
  - (b) *For value;*
  - (c) *Primarily for the buyer's personal, family, or household purposes; and*
  - (d) *Before the filing of a financing statement covering the goods.*
- (3) *To the extent that it affects the priority of a security interest over a buyer of goods under subsection (2) of this section, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by subsections (1) and (2) of Section 56 of this Act.*
- (4) *A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.*
- (5) *Subsections (1) and (2) of this section do not affect a security interest in goods in the possession of the secured party under Section 53 of this Act.*
- (6) *If any horse of a registered breed, the racing of which is regulated by KRS Chapter 230, or any interest in such a horse (including stallion shares and seasons), is subject to a lien or a security interest and that horse or interest is sold at public auction in the ordinary course of business by an organization engaged in the business of selling these horses or interests at public auction, a bona fide purchaser for value of the horse or interest takes title to the horse or interest free and clear of the lien or security interest, and the organization selling the horse or interest is not liable in any manner to the holder of the lien or security interest, except to the extent provided by the Federal Food Security Act, 7 U.S.C. sec. 1631. However, the lien or security interest attaches to the proceeds from the sale to the extent provided in subsection (1)(b) of Section 55 of this Act.*

SECTION 61. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-321:

- (1) *In this section, “licensee in ordinary course of business” means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor’s own usual or customary practices.*
- (2) *A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.*
- (3) *A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.*

SECTION 62. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-322:

- (1) *Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:*
  - (a) *Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.*
  - (b) *A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.*
  - (c) *The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.*
- (2) *For the purposes of subsection (1)(a) of this section:*
  - (a) *The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and*
  - (b) *The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.*
- (3) *Except as otherwise provided in subsection (6) of this section, a security interest in collateral which qualifies for priority over a conflicting security interest under Section 67, 68, 69, 70, or 71 of this Act also has priority over a conflicting security interest in:*
  - (a) *Any supporting obligation for the collateral; and*
  - (b) *Proceeds of the collateral if:*
    1. *The security interest in proceeds is perfected;*
    2. *The proceeds are cash proceeds or of the same type as the collateral; and*
    3. *In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.*
- (4) *Subject to subsection (5) of this section and except as otherwise provided in subsection (6) of this section, if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.*
- (5) *Subsection (4) of this section applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.*
- (6) *Subsections (1) to (5) of this section are subject to:*
  - (a) *Subsection (7) of this section and the other provisions of this part of this article;*

- (b) *Section 165 of this Act with respect to a security interest of a collecting bank;*
- (c) *Section 18 of this Act with respect to a security interest of an issuer or nominated person; and*
- (d) *Section 30 of this Act with respect to a security interest arising under Article 2 or 2A of this chapter.*
- (7) *A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.*

SECTION 63. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-323:

- (1) *Except as otherwise provided in subsection (3) of this section, for purposes of determining the priority of a perfected security interest under subsection (1)(a) of Section 62 of this Act, perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:*
  - (a) *Is made while the security interest is perfected only:*
    - 1. *Under Section 49 of this Act when it attaches; or*
    - 2. *Temporarily under subsection (5), (6), or (7) of Section 52 of this Act; and*
  - (b) *Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under Section 49 of this Act or subsection (5), (6), or (7) of Section 52 of this Act.*
- (2) *Except as otherwise provided in subsection (3) of this section, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than forty-five (45) days after the person becomes a lien creditor unless the advance is made:*
  - (a) *Without knowledge of the lien; or*
  - (b) *Pursuant to a commitment entered into without knowledge of the lien.*
- (3) *Subsections (1) and (2) of this section do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignee.*
- (4) *Except as otherwise provided in subsection (5) of this section, a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:*
  - (a) *The time the secured party acquires knowledge of the buyer's purchase; or*
  - (b) *Forty-five (45) days after the purchase.*
- (5) *Subsection (4) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the forty-five (45) day period.*
- (6) *Except as otherwise provided in subsection (7) of this section, a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:*
  - (a) *The time the secured party acquires knowledge of the lease; or*
  - (b) *Forty-five (45) days after the lease contract becomes enforceable.*
- (7) *Subsection (6) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five (45) day period.*

SECTION 64. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-324:

- (1) *Except as otherwise provided in subsection (7) of this section, a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in Section 67 of this Act, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty (20) days thereafter.*

- (2) *Subject to subsection (3) of this section and except as otherwise provided in subsection (7) of this section, a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in Section 70 of this Act, and, except as otherwise provided in Section 67 of this Act, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:*
- (a) *The purchase-money security interest is perfected when the debtor receives possession of the inventory;*
  - (b) *The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;*
  - (c) *The holder of the conflicting security interest receives the notification within five (5) years before the debtor receives possession of the inventory; and*
  - (d) *The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.*
- (3) *Subsections (2)(b) to (d) of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:*
- (a) *If the purchase-money security interest is perfected by filing, before the date of the filing; or*
  - (b) *If the purchase-money security interest is temporarily perfected without filing or possession under subsection (6) of Section 52 of this Act, before the beginning of the twenty (20) day period thereunder.*
- (4) *Subject to subsection (5) of this section and except as otherwise provided in subsection (7) of this section, a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in Section 67 of this Act, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:*
- (a) *The purchase-money security interest is perfected when the debtor receives possession of the livestock;*
  - (b) *The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;*
  - (c) *The holder of the conflicting security interest receives the notification within six (6) months before the debtor receives possession of the livestock; and*
  - (d) *The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.*
- (5) *Subsections (4)(b) to (d) of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:*
- (a) *If the purchase-money security interest is perfected by filing, before the date of the filing; or*
  - (b) *If the purchase-money security interest is temporarily perfected without filing or possession under subsection (6) of Section 52 of this Act, before the beginning of the twenty (20) day period thereunder.*
- (6) *Except as otherwise provided in subsection (7) of this section, a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in Section 67 of this Act, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.*
- (7) *If more than one security interest qualifies for priority in the same collateral under subsection (1), (2), (4), or (6) of this section:*

- (a) *A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and*
- (b) *In all other cases, subsection (1) of Section 62 of this Act applies to the qualifying security interests.*

SECTION 65. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-325:

- (1) *Except as otherwise provided in subsection (2) of this section, a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:*
  - (a) *The debtor acquired the collateral subject to the security interest created by the other person;*
  - (b) *The security interest created by the other person was perfected when the debtor acquired the collateral; and*
  - (c) *There is no period thereafter when the security interest is unperfected.*
- (2) *Subsection (1) of this section subordinates a security interest only if the security interest:*
  - (a) *Otherwise would have priority solely under subsection (1) of Section 62 of this Act or Section 64 of this Act; or*
  - (b) *Arose solely under KRS 355.2-711(3) or 355.2A-508(5).*

SECTION 66. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-326:

- (1) *Subject to subsection (2) of this section, a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under Section 99 of this Act in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under Section 99 of this Act.*
- (2) *The other provisions of this part of this article determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under Section 99 of this Act. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.*

SECTION 67. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-327:

*The following rules govern priority among conflicting security interests in the same deposit account:*

- (1) *A security interest held by a secured party having control of the deposit account under Section 24 of this Act has priority over a conflicting security interest held by a secured party that does not have control.*
- (2) *Except as otherwise provided in subsections (3) and (4) of this section, security interests perfected by control under Section 54 of this Act rank according to priority in time of obtaining control.*
- (3) *Except as otherwise provided in subsection (4) of this section, a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.*
- (4) *A security interest perfected by control under subsection (1)(c) of Section 24 of this Act has priority over a security interest held by the bank with which the deposit account is maintained.*

SECTION 68. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-328:

*The following rules govern priority among conflicting security interests in the same investment property:*

- (1) *A security interest held by a secured party having control of investment property under Section 26 of this Act has priority over a security interest held by a secured party that does not have control of the investment property.*
- (2) *Except as otherwise provided in subsections (3) and (4) of this section, conflicting security interests held by secured parties each of which has control under Section 26 of this Act rank according to priority in time of:*

- (a) *If the collateral is a security, obtaining control;*
  - (b) *If the collateral is a security entitlement carried in a securities account and:*
    - 1. *If the secured party obtained control under subsection (4)(a) of Section 168 of this Act, the secured party's becoming the person for which the securities account is maintained;*
    - 2. *If the secured party obtained control under subsection (4)(b) of Section 168 of this Act, the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or*
    - 3. *If the secured party obtained control through another person under subsection (4)(c) of Section 168 of this Act, the time on which priority would be based under this paragraph if the other person were the secured party; or*
  - (c) *If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in subsection (2)(b) of Section 26 of this Act with respect to commodity contracts carried or to be carried with the commodity intermediary.*
- (3) *A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.*
  - (4) *A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.*
  - (5) *A security interest in a certificated security in registered form which is perfected by taking delivery under subsection (1) of Section 53 of this Act and not by control under Section 54 of this Act has priority over a conflicting security interest perfected by a method other than control.*
  - (6) *Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under Section 26 of this Act rank equally.*
  - (7) *In all other cases, priority among conflicting security interests in investment property is governed by Sections 62 and 63 of this Act.*

SECTION 69. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-329:

*The following rules govern priority among conflicting security interests in the same letter-of-credit right:*

- (1) *A security interest held by a secured party having control of the letter-of-credit right under Section 27 of this Act has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.*
- (2) *Security interests perfected by control under Section 54 of this Act rank according to priority in time of obtaining control.*

SECTION 70. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-330:

- (1) *A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:*
  - (a) *In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 25 of this Act; and*
  - (b) *The chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.*
- (2) *A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 25 of this Act in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.*

- (3) *Except as otherwise provided in Section 67 of this Act, a purchaser having priority in chattel paper under subsection (1) or (2) of this section also has priority in proceeds of the chattel paper to the extent that:*
- (a) *Section 62 of this Act provides for priority in the proceeds; or*
  - (b) *The proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.*
- (4) *Except as otherwise provided in subsection (1) of Section 71 of this Act, a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.*
- (5) *For purposes of subsections (1) and (2) of this section, the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.*
- (6) *For purposes of subsections (2) and (4) of this section, if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.*

SECTION 71. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-331:

- (1) *This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, and 8 of this chapter.*
- (2) *This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Article 8 of this chapter.*
- (3) *Filing under this article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (1) and (2) of this section.*

SECTION 72. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-332:

- (1) *A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.*
- (2) *A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.*

SECTION 73. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-333:

- (1) *In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:*
  - (a) *Which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;*
  - (b) *Which is created by statute or rule of law in favor of the person; and*
  - (c) *Whose effectiveness depends on the person's possession of the goods.*
- (2) *A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.*

SECTION 74. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-334:

- (1) *A security interest under this article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this article in ordinary building materials incorporated into an improvement on land.*
- (2) *This article does not prevent creation of an encumbrance upon fixtures under real property law.*
- (3) *In cases not governed by subsections (4) to (8) of this section, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.*



- (4) *Except as otherwise provided in subsection (8) of this section, a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:*
- (a) *The security interest is a purchase-money security interest;*
  - (b) *The interest of the encumbrancer or owner arises before the goods become fixtures; and*
  - (c) *The security interest is perfected by a fixture filing before the goods become fixtures or within twenty (20) days thereafter.*
- (5) *A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:*
- (a) *The debtor has an interest of record in the real property or is in possession of the real property and the security interest:*
    - 1. *Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and*
    - 2. *Has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;*
  - (b) *Before the goods become fixtures, the security interest is perfected by any method permitted by this article and the fixtures are readily removable:*
    - 1. *Factory or office machines;*
    - 2. *Equipment that is not primarily used or leased for use in the operation of the real property; or*
    - 3. *Replacements of domestic appliances that are consumer goods;*
  - (c) *The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article; or*
  - (d) *The security interest is:*
    - 1. *Created in a manufactured home in a manufactured-home transaction; and*
    - 2. *Perfected pursuant to a statute described in subsection (1)(b) of Section 51 of this Act.*
- (6) *A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:*
- (a) *The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or*
  - (b) *The debtor has a right to remove the goods as against the encumbrancer or owner.*
- (7) *The priority of the security interest under subsection (6)(b) of this section continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.*
- (8) *A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (5) and (6) of this section, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.*
- (9) *A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.*

SECTION 75. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-335:

- (1) *A security interest may be created in an accession and continues in collateral that becomes an accession.*

- (2) *If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.*
- (3) *Except as otherwise provided in subsection (4) of this section, the other provisions of this part of this article determine the priority of a security interest in an accession.*
- (4) *A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under subsection (2) of Section 51 of this Act.*
- (5) *After default, subject to Part 6 of this article, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.*
- (6) *A secured party that removes an accession from other goods under subsection (5) of this section shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.*

SECTION 76. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-336:

- (1) *In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.*
- (2) *A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.*
- (3) *If collateral becomes commingled goods, a security interest attaches to the product or mass.*
- (4) *If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (3) of this section is perfected.*
- (5) *Except as otherwise provided in subsection (6) of this section, the other provisions of this part of this article determine the priority of a security interest that attaches to the product or mass under subsection (3) of this section.*
- (6) *If more than one (1) security interest attaches to the product or mass under subsection (3) of this section, the following rules determine priority:*
  - (a) *A security interest that is perfected under subsection (4) of this section has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.*
  - (b) *If more than one (1) security interest is perfected under subsection (4) of this section, the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.*

SECTION 77. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-337:

*If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this Commonwealth issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:*

- (1) *A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and*
- (2) *The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under subsection (2) of Section 51 of this Act, after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.*

SECTION 78. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-338:

*If a security interest or agricultural lien is perfected by a filed financing statement providing information described in subsection (2)(e) of Section 107 of this Act which is incorrect at the time the financing statement is filed:*

- (1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and*
- (2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.*

#### SUBPART 4. RIGHTS OF BANK

SECTION 79. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-339:

*This article does not preclude subordination by agreement by a person entitled to priority.*

SECTION 80. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-340:

- (1) Except as otherwise provided in subsection (3) of this section, a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.*
- (2) Except as otherwise provided in subsection (3) of this section, the application of this article to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.*
- (3) The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under subsection (1)(c) of Section 24 of this Act, if the set-off is based on a claim against the debtor.*

SECTION 81. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-341:

*Except as otherwise provided in subsection (3) of Section 80 of this Act, and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:*

- (1) The creation, attachment, or perfection of a security interest in the deposit account;*
- (2) The bank's knowledge of the security interest; or*
- (3) The bank's receipt of instructions from the secured party.*

SECTION 82. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-342:

*This article does not require a bank to enter into an agreement of the kind described in subsection (1)(b) of Section 24 of this Act, even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.*

#### PART 4

##### RIGHTS OF THIRD PARTIES

SECTION 83. KRS 355.9-401 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) Except as otherwise provided in subsection (2) of this section and Sections 88, 89, 90, and 91 of this Act, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this article.*
- (2) An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.*

SECTION 84. KRS 355.9-402 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

*The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.*

SECTION 85. KRS 355.9-403 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *In this section, "value" has the meaning provided in KRS 355. 3-303(1).*
- (2) *Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:*
  - (a) *For value;*
  - (b) *In good faith;*
  - (c) *Without notice of a claim of a property or possessory right to the property assigned; and*
  - (d) *Without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under KRS 355.3-305(1).*
- (3) *Subsection (2) of this section does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under KRS 355.3-305(2).*
- (4) *In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:*
  - (a) *The record has the same effect as if the record included such a statement; and*
  - (b) *The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.*
- (5) *This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.*
- (6) *Except as otherwise provided in subsection (4) of this section, this section does not displace law other than this article which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.*

SECTION 86. KRS 355.9-404 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (2) to (5) of this section, the rights of an assignee are subject to:*
  - (a) *All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and*
  - (b) *Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.*
- (2) *Subject to subsection (3) of this section and except as otherwise provided in subsection (4) of this section, the claim of an account debtor against an assignor may be asserted against an assignee under subsection (1) of this section only to reduce the amount the account debtor owes.*
- (3) *This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.*
- (4) *In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.*
- (5) *This section does not apply to an assignment of a health-care-insurance receivable.*

SECTION 87. KRS 355.9-405 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (2) to (4) of this section.*
- (2) *Subsection (1) of this section applies to the extent that:*
  - (a) *The right to payment or a part thereof under an assigned contract has not been fully earned by performance; or*
  - (b) *The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under subsection (1) of Section 88 of this Act.*
- (3) *This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.*
- (4) *This section does not apply to an assignment of a health-care-insurance receivable.*

SECTION 88. KRS 355.9-406 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *Subject to subsections (2) to (9) of this section, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.*
- (2) *Subject to subsection (8) of this section, notification is ineffective under subsection (1) of this section:*
  - (a) *If it does not reasonably identify the rights assigned;*
  - (b) *To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or*
  - (c) *At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:*
    1. *Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;*
    2. *A portion has been assigned to another assignee; or*
    3. *The account debtor knows that the assignment to that assignee is limited.*
- (3) *Subject to subsection (8) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (1) of this section.*
- (4) *Except as otherwise provided in subsection (5) of this section and Sections 89 and 162 of this Act, and subject to subsection (8) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:*
  - (a) *Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or*
  - (b) *Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.*
- (5) *Subsection (4) of this section does not apply to the sale of a payment intangible or promissory note.*

- (6) *Except as otherwise provided in Sections 89 and 162 of this Act and subject to subsections (8) and (9) of this section, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:*
- (a) *Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or*
  - (b) *Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.*
- (7) *Subject to subsection (8) of this section, an account debtor may not waive or vary its option under subsection (2)(c) of this section.*
- (8) *This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.*
- (9) *This section does not apply to an assignment of a health-care-insurance receivable.*

SECTION 89. KRS 355.9-407 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (2) of this section, a term in a lease agreement is ineffective to the extent that it:*
- (a) *Prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or*
  - (b) *Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.*
- (2) *Except as otherwise provided in subsection (7) of Section 162 of this Act, a term described in subsection (1)(b) of this section is effective to the extent that there is:*
- (a) *A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or*
  - (b) *A delegation of a material performance of either party to the lease contract in violation of the term.*
- (3) *The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of subsection (4) of Section 162 of this Act unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.*

SECTION 90. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-408:

- (1) *Except as otherwise provided in subsection (2) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:*
- (a) *Would impair the creation, attachment, or perfection of a security interest; or*
  - (b) *Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.*

- (2) *Subsection (1) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.*
- (3) *A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:*
  - (a) *Would impair the creation, attachment, or perfection of a security interest; or*
  - (b) *Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.*
- (4) *To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (3) of this section would be effective under law other than this article but is ineffective under subsection (1) or (3) of this section, the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:*
  - (a) *Is not enforceable against the person obligated on the promissory note or the account debtor;*
  - (b) *Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;*
  - (c) *Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;*
  - (d) *Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;*
  - (e) *Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and*
  - (f) *Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.*
- (5) *This section prevails over any inconsistent provisions of the following statutes and any administrative regulations based on those statutes: KRS 56.230(2), 138.320(3), 138.665(4), 138.720(5), 139.250, 154A.400(3), 190.047(1), 190.070(2)(c), 217B.535(2), 228.070(2), 230.300(9), 234.330(10), 243.630(2), 260.730(3), 260.815, 288.460(2), 292.320(2)(b), 294.036(3), 304.3-410(2)(f), 304.3-520(5), 333.080, 350.135(1), 365.430(27), and 368.070(2).*
- (6) *Subsection (3) of this section does not apply to the following statutes and to administrative regulations promulgated under the authority of those statutes: KRS 304.2-260, KRS 304.24-420, Subtitle 33 of KRS Chapter 304, and Subtitle 37 of KRS Chapter 304.*

SECTION 91. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-409:

- (1) *A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:*
  - (a) *Would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or*
  - (b) *Provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.*

- (2) *To the extent that a term in a letter of credit is ineffective under subsection (1) of this section but would be effective under law other than this article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:*
- (a) *Is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;*
  - (b) *Imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and*
  - (c) *Does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.*
- (3) *Subsection (1) of this section does not apply to the following statutes and to administrative regulations promulgated under the authority of those statutes: KRS 304.2-260, KRS 304.24-420, Subtitle 33 of KRS Chapter 304, and Subtitle 37 of KRS Chapter 304.*

## PART 5

## FILING

SUBPART 1. FILING OFFICE; CONTENTS AND  
EFFECTIVENESS OF FINANCING STATEMENT

SECTION 92. KRS 355.9-501 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (2) of this section, if the local law of this Commonwealth governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:*
- (a) *The office designated for the filing or recording of a record of a mortgage on the related real property, if:*
    - 1. *The collateral is as-extracted collateral or timber to be cut; or*
    - 2. *The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or*
  - (b) *The office of the Secretary of State, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.*
- (2) *The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the Secretary of State. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.*

SECTION 93. KRS 355.9-502 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *Subject to subsection (2) of this section, a financing statement is sufficient only if it:*
- (a) *Provides the name of the debtor;*
  - (b) *Provides the name of the secured party or a representative of the secured party; and*
  - (c) *Indicates the collateral covered by the financing statement.*
- (2) *Except as otherwise provided in subsection (2) of Section 92 of this Act, to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (1) of this section and also:*
- (a) *Indicate that it covers this type of collateral;*
  - (b) *Indicate that it is to be filed in the real property records;*
  - (c) *Provide a description of the real property to which the collateral is related; and*



- (d) *If the debtor does not have an interest of record in the real property, provide the name of a record owner.*
- (3) *A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:*
  - (a) *The record indicates the goods or accounts that it covers;*
  - (b) *The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;*
  - (c) *The record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and*
  - (d) *The record is recorded.*
- (4) *A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.*

SECTION 94. KRS 355.9-503 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *A financing statement sufficiently provides the name of the debtor:*
  - (a) *If the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;*
  - (b) *If the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;*
  - (c) *If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:*
    - 1. *Provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and*
    - 2. *Indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and*
  - (d) *In other cases:*
    - 1. *If the debtor has a name, only if it provides the individual or organizational name of the debtor; and*
    - 2. *If the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.*
- (2) *A financing statement that provides the name of the debtor in accordance with subsection (1) of this section is not rendered ineffective by the absence of:*
  - (a) *A trade name or other name of the debtor; or*
  - (b) *Unless required under subsection (1)(d)2. of this section, names of partners, members, associates, or other persons comprising the debtor.*
- (3) *A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.*
- (4) *Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.*
- (5) *A financing statement may provide the name of more than one (1) debtor and the name of more than one (1) secured party.*

SECTION 95. KRS 355.9-504 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

*A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:*

- (1) *A description of the collateral pursuant to Section 28 of this Act; or*

- (2) *An indication that the financing statement covers all assets or all personal property.*

SECTION 96. KRS 355.9-505 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in subsection (1) of Section 51 of this Act, using the terms "consignor," "consignee," "lessor," "lessee," "bailor," "bailee," "licensor," "licensee," "owner," "registered owner," "buyer," "seller," or words of similar import, instead of the terms "secured party" and "debtor."*
- (2) *This part of this article applies to the filing of a financing statement under subsection (1) of this section and, as appropriate, to compliance that is equivalent to filing a financing statement under subsection (2) of Section 51 of this Act, but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.*

SECTION 97. KRS 355.9-506 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *A financing statement substantially satisfying the requirements of this part of this article is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.*
- (2) *Except as otherwise provided in subsection (3) of this section, a financing statement that fails sufficiently to provide the name of the debtor in accordance with subsection (1) of Section 94 of this Act is seriously misleading.*
- (3) *If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with subsection (1) of Section 94 of this Act, the name provided does not make the financing statement seriously misleading.*
- (4) *For purposes of subsection (2) of Section 99 of this Act, the "debtor's correct name" in subsection (3) of this section means the correct name of the new debtor.*

SECTION 98. KRS 355.9-507 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.*
- (2) *Except as otherwise provided in subsection (3) of this section and Section 99 of this Act, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under Section 97 of this Act.*
- (3) *If a debtor so changes its name that a filed financing statement becomes seriously misleading under Section 97 of this Act:*
- (a) *The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four (4) months after, the change; and*
  - (b) *The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four (4) months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four (4) months after the change.*

SECTION 99. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-508:

- (1) *Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.*
- (2) *If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (1) of this section to be seriously misleading under Section 97 of this Act:*

- (a) *The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four (4) months after, the new debtor becomes bound under subsection (4) of Section 33 of this Act; and*
- (b) *The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four (4) months after the new debtor becomes bound under subsection (4) of Section 33 of this Act unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.*
- (3) *This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under subsection (1) of Section 98 of this Act.*

SECTION 100. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-509:

- (1) *A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:*
  - (a) *The debtor authorizes the filing in an authenticated record or pursuant to subsection (1) or (2) of this section; or*
  - (b) *The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.*
- (2) *By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:*
  - (a) *The collateral described in the security agreement; and*
  - (b) *Property that becomes collateral under subsection (1)(b) of Section 55 of this Act, whether or not the security agreement expressly covers proceeds.*
- (3) *By acquiring collateral in which a security interest or agricultural lien continues under subsection (1)(a) of Section 55 of this Act, a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under subsection (1)(b) of Section 55 of this Act.*
- (4) *A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:*
  - (a) *The secured party of record authorizes the filing; or*
  - (b) *The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by subsection (1) or (3) of Section 104 of this Act, the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.*
- (5) *If there is more than one (1) secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (4) of this section.*

SECTION 101. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-510:

- (1) *A filed record is effective only to the extent that it was filed by a person that may file it under Section 100 of this Act.*
- (2) *A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.*
- (3) *A continuation statement that is not filed within the six (6) month period prescribed by subsection (4) of Section 106 of this Act is ineffective.*

SECTION 102. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AT KRS 355.9-511:

- (1) *A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under subsection (1) of Section 105 of this Act, the*

*assignee named in the initial financing statement is the secured party of record with respect to the financing statement.*

- (2) *If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under subsection (2) of Section 105 of this Act, the assignee named in the amendment is a secured party of record.*
- (3) *A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.*

SECTION 103. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-512:

- (1) *Subject to Section 100 of this Act, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (5) of this section, otherwise amend the information provided in, a financing statement by filing an amendment that:*
  - (a) *Identifies, by its file number, the initial financing statement to which the amendment relates; and*
  - (b) *If the amendment relates to an initial financing statement filed in a filing office described in subsection (1)(a) of Section 92 of this Act, provides the information specified in subsection (2) of Section 93 of this Act.*
- (2) *Except as otherwise provided in Section 106 of this Act, the filing of an amendment does not extend the period of effectiveness of the financing statement.*
- (3) *A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.*
- (4) *A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.*
- (5) *An amendment is ineffective to the extent it:*
  - (a) *Purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or*
  - (b) *Purports to delete all secured parties of record and fails to provide the name of a new secured party of record.*

SECTION 104. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-513:

- (1) *A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:*
  - (a) *There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or*
  - (b) *The debtor did not authorize the filing of the initial financing statement.*
- (2) *To comply with subsection (1) of this section, a secured party shall cause the secured party of record to file the termination statement:*
  - (a) *Within one (1) month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or*
  - (b) *If earlier, within twenty (20) days after the secured party receives an authenticated demand from a debtor.*
- (3) *In cases not governed by subsection (1) of this section, within twenty (20) days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:*
  - (a) *Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered*

*by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;*

- (b) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;*
  - (c) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or*
  - (d) The debtor did not authorize the filing of the initial financing statement.*
- (4) Except as otherwise provided in Section 101 of this Act, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in Section 101 of this Act, for purposes of Sections 110(7), 113(1), and 114(3), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.*

SECTION 105. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-514:

- (1) Except as otherwise provided in subsection (3) of this section, an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.*
- (2) Except as otherwise provided in subsection (3) of this section, a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:*
  - (a) Identifies, by its file number, the initial financing statement to which it relates;*
  - (b) Provides the name of the assignor; and*
  - (c) Provides the name and mailing address of the assignee.*
- (3) An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under subsection (3) of Section 93 of this Act may be made only by an assignment of record of the mortgage in the manner provided by law of this Commonwealth other than this chapter.*

SECTION 106. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-515:

- (1) Except as otherwise provided in subsections (2), (5), (6), and (7) of this section, a filed financing statement is effective for a period of five (5) years after the date of filing.*
- (2) Except as otherwise provided in subsections (5), (6), and (7) of this section, an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of thirty (30) years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.*
- (3) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (4) of this section. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.*
- (4) A continuation statement may be filed only within six (6) months before the expiration of the five (5) year period specified in subsection (1) of this section or the thirty (30) year period specified in subsection (2) of this section, whichever is applicable.*
- (5) Except as otherwise provided in Section 101 of this Act, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five (5) years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five (5) year period, the financing statement lapses in the same manner as provided in subsection (3) of this section, unless, before the lapse, another continuation statement is filed pursuant to*

*subsection (4) of this section. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.*

- (6) *If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.*
- (7) *A record of a mortgage that is effective as a financing statement filed as a fixture filing under subsection (3) of Section 93 of this Act remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.*

SECTION 107. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-516:

- (1) *Except as otherwise provided in subsection (2) of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.*
- (2) *Filing does not occur with respect to a record that a filing office refuses to accept because:*
  - (a) *The record is not communicated by a method or medium of communication authorized by the filing office;*
  - (b) *An amount equal to or greater than the applicable filing fee is not tendered;*
  - (c) *The filing office is unable to index the record because:*
    - 1. *In the case of an initial financing statement, the record does not provide a name for the debtor;*
    - 2. *In the case of an amendment or correction statement, the record:*
      - a. *Does not identify the initial financing statement as required by Section 103 or 109 of this Act, as applicable; or*
      - b. *Identifies an initial financing statement whose effectiveness has lapsed under Section 106 of this Act;*
    - 3. *In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or*
    - 4. *In the case of a record filed in the filing office described in subsection (1)(a) of Section 92 of this Act, the record does not provide a sufficient description of the real property to which it relates;*
  - (d) *In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;*
  - (e) *In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:*
    - 1. *Provide a mailing address for the debtor;*
    - 2. *Indicate whether the debtor is an individual or an organization; or*
    - 3. *If the financing statement indicates that the debtor is an organization, provide:*
      - a. *A type of organization for the debtor;*
      - b. *A jurisdiction of organization for the debtor; or*
      - c. *An organizational identification number for the debtor or indicate that the debtor has none;*
  - (f) *In the case of an assignment reflected in an initial financing statement under subsection (1) of Section 105 of this Act or an amendment filed under subsection (2) of Section 105 of this Act, the record does not provide a name and mailing address for the assignee; or*

- (g) *In the case of a continuation statement, the record is not filed within the six (6) month period prescribed by subsection (4) of Section 106 of this Act.*
- (3) *For purposes of subsection (2) of this section:*
  - (a) *A record does not provide information if the filing office is unable to read or decipher the information; and*
  - (b) *A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by Section 103, 105, or 109 of this Act, is an initial financing statement.*
- (4) *A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (2) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.*

SECTION 108. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-517:

*The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.*

SECTION 109. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-518:

- (1) *A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.*
- (2) *A correction statement must:*
  - (a) *Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;*
  - (b) *Indicate that it is a correction statement; and*
  - (c) *Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.*
- (3) *The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.*

#### SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE

SECTION 110. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-519:

- (1) *For each record filed in a filing office, the filing office shall:*
  - (a) *Assign a unique number to the filed record;*
  - (b) *Create a record that bears the number assigned to the filed record and the date and time of filing;*
  - (c) *Maintain the filed record for public inspection; and*
  - (d) *Index the filed record in accordance with subsections (3), (4), and (5) of this subsection.*
- (2) *A file number must include a digit that:*
  - (a) *Is mathematically derived from or related to the other digits of the file number; and*
  - (b) *Aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.*
- (3) *Except as otherwise provided in subsections (4) and (5) of this section, the filing office shall:*
  - (a) *Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and*
  - (b) *Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.*

- (4) *If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index it:*
- (a) *Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and*
  - (b) *To the extent that the law of this Commonwealth provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.*
- (5) *If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under subsection (1) of Section 105 of this Act or an amendment filed under subsection (2) of Section 105 of this Act:*
- (a) *Under the name of the assignor as grantor; and*
  - (b) *To the extent that the law of this Commonwealth provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.*
- (6) *The filing office shall maintain a capability:*
- (a) *To retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and*
  - (b) *To associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.*
- (7) *The filing office may not remove a debtor's name from the index until one (1) year after the effectiveness of a financing statement naming the debtor lapses under Section 106 of this Act with respect to all secured parties of record.*
- (8) *The filing office shall perform the acts required by subsections (1) to (5) of this section at the time and in the manner prescribed by filing-office rule, but not later than two (2) business days after the filing office receives the record in question.*
- (9) *Subsection (2) of this section does not apply to a filing office described in subsection (1)(a) of Section 92 of this Act.*

SECTION 111. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-520:

- (1) *A filing office shall refuse to accept a record for filing for a reason set forth in subsection (2) of Section 107 of this Act and may refuse to accept a record for filing only for a reason set forth in subsection (2) of Section 107 of this Act.*
- (2) *If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but in no event more than two (2) business days after the filing office receives the record.*
- (3) *A filed financing statement satisfying subsections (1) and (2) of Section 93 of this Act is effective, even if the filing office is required to refuse to accept it for filing under subsection (1) of this section. However, Section 78 of this Act applies to a filed financing statement providing information described in subsection (2)(e) of Section 107 of this Act which is incorrect at the time the financing statement is filed.*
- (4) *If a record communicated to a filing office provides information that relates to more than one (1) debtor, this part of this article applies as to each debtor separately.*

SECTION 112. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-521:

- (1) *A filing office that accepts written records may not refuse to accept a written initial financing statement in the form and format set forth as Form UCC1 and Form UCC1Ad in the final official text of the 1999 revisions to Article 9 of the Uniform Commercial Code promulgated by The American Law Institute and the National Conference of Commissioners on Uniform State Laws, except for a reason set forth in subsection (2) of Section 107 of this Act.*



- (2) *A filing office that accepts written records may not refuse to accept a written record in the form and format set forth as Form UCC3 and Form UCC3Ad in the final official text of the 1999 revisions to Article 9 of the Uniform Commercial Code promulgated by The American Law Institute and the National Conference of Commissioners on Uniform State Laws, except for a reason set forth in subsection (2) of Section 107 of this Act.*

SECTION 113. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-522:

- (1) *The filing office shall maintain a record of the information provided in a filed financing statement for at least one (1) year after the effectiveness of the financing statement has lapsed under Section 106 of this Act with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.*
- (2) *Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (1) of this section.*

SECTION 114. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-523:

- (1) *If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to subsection (1)(a) of Section 110 of this Act and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:*
- (a) *Note upon the copy the number assigned to the record pursuant to subsection (1)(a) of Section 110 of this Act and the date and time of the filing of the record; and*
  - (b) *Send the copy to the person.*
- (2) *If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:*
- (a) *The information in the record;*
  - (b) *The number assigned to the record pursuant to subsection (1)(a) of Section 110 of this Act; and*
  - (c) *The date and time of the filing of the record.*
- (3) *The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:*
- (a) *Whether there is on file on a date and time specified by the filing office, but not a date earlier than three (3) business days before the filing office receives the request, any financing statement that:*
    - 1. *Designates a particular debtor;*
    - 2. *Has not lapsed under Section 106 of this Act with respect to all secured parties of record; and*
    - 3. *If the request so states, has lapsed under Section 106 of this Act and a record of which is maintained by the filing office under subsection (1) of Section 113 of this Act;*
  - (b) *The date and time of filing of each financing statement; and*
  - (c) *The information provided in each financing statement.*
- (4) *In complying with its duty under subsection (3) of this section, the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing its written certificate.*
- (5) *The filing office shall perform the acts required by subsections (1) to (4) of this section at the time and in the manner prescribed by filing-office rule, but not later than two (2) business days after the filing office receives the request.*
- (6) *At least weekly, the Secretary of State shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part of this article, in every medium from time to time available to the filing office.*

SECTION 115. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-524:

*Delay by the filing office beyond a time limit prescribed by this part of this article is excused if:*

- (1) The delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office; and*
- (2) The filing office exercises reasonable diligence under the circumstances.*

SECTION 116. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-525:

- (1) Except as otherwise provided in subsection (4) of this section, the fee for filing and indexing a record under this part of this article is:*
  - (a) Ten dollars (\$10) if the record is communicated in writing and consists of one (1) or two (2) pages;*
  - (b) Twenty dollars (\$20) if the record is communicated in writing and consists of more than two (2) pages; and*
  - (c) Five dollars (\$5) if the record is communicated by another medium authorized by filing-office rule.*
- (2) The number of names required to be indexed does not affect the amount of the fee in subsection (1) of this section.*
- (3) The fee for issuing a certificate showing whether there is on file any financing statement naming a particular debtor is five dollars (\$5).*
- (4) This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under subsection (3) of Section 93 of this Act. However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.*

SECTION 117. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-526:

- (1) The Secretary of State shall promulgate administrative regulations to implement this article as it relates to the Secretary of State. The filing-office administrative regulations must be:*
  - (a) Consistent with this article; and*
  - (b) Promulgated in accordance with KRS Chapter 13A.*
- (2) To keep the filing-office administrative regulations and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part of this article, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part of this article. The Secretary of State, so far as is consistent with the purposes, policies, and provisions of this article, in promulgating, amending, and repealing filing-office administrative regulations, shall:*
  - (a) Consult with filing offices in other jurisdictions that enact substantially this part of this article; and*
  - (b) Consult the most recent version of the model rules promulgated by the International Association of Corporate Administrators or any successor organization; and*
  - (c) Take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this part of this article.*

SECTION 118. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-527:

*The Secretary of State shall report annually on or before June 30 to the Governor and to the Legislative Research Commission on the operation of the filing office. The report must contain a statement of the extent to which:*

- (1) The filing-office administrative regulations are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this part of this article and the reasons for these variations; and*

- (2) *The filing-office administrative regulations are not in harmony with the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators, or any successor organization, and the reasons for these variations.*

## PART 6

## DEFAULT

## SUBPART 1. DEFAULT AND

## ENFORCEMENT OF SECURITY INTEREST

SECTION 119. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-601:

- (1) *After default, a secured party has the rights provided in this part of this article and, except as otherwise provided in Section 120 of this Act, those provided by agreement of the parties. A secured party:*
- (a) *May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and*
  - (b) *If the collateral is documents, may proceed either as to the documents or as to the goods they cover.*
- (2) *A secured party in possession of collateral or control of collateral under Section 24, 25, 26, or 27 of this Act has the rights and duties provided in Section 37 of this Act.*
- (3) *The rights under subsections (1) and (2) of this section are cumulative and may be exercised simultaneously.*
- (4) *Except as otherwise provided in subsection (7) of this section and Section 123 of this Act, after default, a debtor and an obligor have the rights provided in this part of this article and by agreement of the parties.*
- (5) *If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:*
- (a) *The date of perfection of the security interest or agricultural lien in the collateral;*
  - (b) *The date of filing a financing statement covering the collateral; or*
  - (c) *Any date specified in a statute under which the agricultural lien was created.*
- (6) *A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.*
- (7) *Except as otherwise provided in subsection (3) of Section 125 of this Act, this part of this article imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.*

SECTION 120. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-602:

*Except as otherwise provided in Section 142 of this Act, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:*

- (1) *Subsection (2)(d)3. of Section 37 of this Act, which deals with use and operation of the collateral by the secured party;*
- (2) *Section 40 of this Act, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;*
- (3) *Subsection (3) of Section 125 of this Act, which deals with collection and enforcement of collateral;*
- (4) *Subsection (1) of Section 126 of this Act and subsection (3) of Section 133 of this Act to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;*
- (5) *Subsection (1) of Section 126 of this Act and subsection (4) of Section 133 of this Act to the extent that they require accounting for or payment of surplus proceeds of collateral;*

- (6) *Section 127 of this Act to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;*
- (7) *Subsection (2) of Section 128 and Sections 129, 131, and 132 of this Act, which deal with disposition of collateral;*
- (8) *Subsection (6) of Section 133 of this Act, which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;*
- (9) *Section 134 of this Act, which deals with explanation of the calculation of a surplus or deficiency;*
- (10) *Sections 138, 139, and 140 of this Act, which deal with acceptance of collateral in satisfaction of obligation;*
- (11) *Section 141 of this Act, which deals with redemption of collateral;*
- (12) *Section 142 of this Act, which deals with permissible waivers; and*
- (13) *Sections 143 and 144 of this Act, which deal with the secured party's liability for failure to comply with this article.*

SECTION 121. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-603:

- (1) *The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in Section 120 of this Act if the standards are not manifestly unreasonable.*
- (2) *Subsection (1) of this section does not apply to the duty under Section 127 of this Act to refrain from breaching the peace.*

SECTION 122. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-604:

- (1) *If a security agreement covers both personal and real property, a secured party may proceed:*
  - (a) *Under this part of this article as to the personal property without prejudicing any rights with respect to the real property; or*
  - (b) *As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part of this article do not apply.*
- (2) *Subject to subsection (3) of this section, if a security agreement covers goods that are or become fixtures, a secured party may proceed:*
  - (a) *Under this part of this article; or*
  - (b) *In accordance with the rights with respect to real property, in which case the other provisions of this part of this article do not apply.*
- (3) *Subject to the other provisions of this part of this article, if a secured party holding a security interest in fixtures has priority over all owners and encumbrances of the real property, the secured party, after default, may remove the collateral from the real property.*
- (4) *A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.*

SECTION 123. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-605:

*A secured party does not owe a duty based on its status as secured party:*

- (1) *To a person that is a debtor or obligor, unless the secured party knows:*
  - (a) *That the person is a debtor or obligor;*
  - (b) *The identity of the person; and*

- (c) *How to communicate with the person; or*
- (2) *To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:*
  - (a) *That the person is a debtor; and*
  - (b) *The identity of the person.*

SECTION 124. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-606:

*For purposes of this part of this article, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.*

SECTION 125. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-607:

- (1) *If so agreed, and in any event after default, a secured party:*
  - (a) *May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;*
  - (b) *May take any proceeds to which the secured party is entitled under Section 55 of this Act;*
  - (c) *May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;*
  - (d) *If it holds a security interest in a deposit account perfected by control under subsection (1)(a) of Section 24 of this Act, may apply the balance of the deposit account to the obligation secured by the deposit account; and*
  - (e) *If it holds a security interest in a deposit account perfected by control under subsection (1)(b) or (c) of Section 24 of this Act, may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.*
- (2) *If necessary to enable a secured party to exercise under subsection (1)(c) of this section the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:*
  - (a) *A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and*
  - (b) *The secured party's sworn affidavit in recordable form stating that:*
    - 1. *A default has occurred; and*
    - 2. *The secured party is entitled to enforce the mortgage nonjudicially.*
- (3) *A secured party shall proceed in a commercially reasonable manner if the secured party:*
  - (a) *Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and*
  - (b) *Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.*
- (4) *A secured party may deduct from the collections made pursuant to subsection (3) of this section reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.*
- (5) *This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.*

SECTION 126. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-608:

- (1) *If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:*
- (a) *A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under Section 125 of this Act in the following order to:*
    - 1. *The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;*
    - 2. *The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and*
    - 3. *The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.*
  - (b) *If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (a)3. of this subsection.*
  - (c) *A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under Section 125 of this Act unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.*
  - (d) *A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.*
- (2) *If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.*

SECTION 127. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-609:

- (1) *After default, a secured party:*
- (a) *May take possession of the collateral; and*
  - (b) *Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under Section 128 of this Act.*
- (2) *A secured party may proceed under subsection (1) of this section:*
- (a) *Pursuant to judicial process; or*
  - (b) *Without judicial process, if it proceeds without breach of the peace.*
- (3) *If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.*

SECTION 128. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-610:

- (1) *After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.*
- (2) *Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one (1) or more contracts, as a unit or in parcels, and at any time and place and on any terms.*
- (3) *A secured party may purchase collateral:*
- (a) *At a public disposition; or*

- (b) *At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.*
- (4) *A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.*
- (5) *A secured party may disclaim or modify warranties under subsection (4) of this section:*
  - (a) *In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or*
  - (b) *By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.*
- (6) *A record is sufficient to disclaim warranties under subsection (5) of this section if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.*
- (7) *The acquisition of a repossession title by a secured party shall not be deemed a disposition of collateral under this section.*

SECTION 129. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-611:

- (1) *In this section, "notification date" means the earlier of the date on which:*
  - (a) *A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or*
  - (b) *The debtor and any secondary obligor waive the right to notification.*
- (2) *Except as otherwise provided in subsection (4) of this section, a secured party that disposes of collateral under Section 128 of this Act shall send to the persons specified in subsection (3) of this section a reasonable authenticated notification of disposition.*
- (3) *To comply with subsection (2) of this section, the secured party shall send an authenticated notification of disposition to:*
  - (a) *The debtor;*
  - (b) *Any secondary obligor; and*
  - (c) *If the collateral is other than consumer goods:*
    - 1. *Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;*
    - 2. *Any other secured party or lienholder that, ten (10) days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:*
      - a. *Identified the collateral;*
      - b. *Was indexed under the debtor's name as of that date; and*
      - c. *Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and*
    - 3. *Any other secured party that, ten (10) days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in subsection (1) of Section 51 of this Act.*
- (4) *Subsection (2) of this section does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.*
- (5) *A secured party complies with the requirement for notification prescribed by subsection (3)(c)2. of this section if:*

- (a) *Not later than twenty (20) days or earlier than thirty (30) days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (3)(c)2. of this section; and*
- (b) *Before the notification date, the secured party:*
  - 1. *Did not receive a response to the request for information; or*
  - 2. *Received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.*

SECTION 130. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-612:

- (1) *Except as otherwise provided in subsection (2) of this section, whether a notification is sent within a reasonable time is a question of fact.*
- (2) *In a transaction other than a consumer transaction, a notification of disposition sent after default and ten (10) days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.*

SECTION 131. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-613:

*Except in a consumer-goods transaction, the following rules apply:*

- (1) *The contents of a notification of disposition are sufficient if the notification:*
  - (a) *Describes the debtor and the secured party;*
  - (b) *Describes the collateral that is the subject of the intended disposition;*
  - (c) *States the method of intended disposition;*
  - (d) *States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and*
  - (e) *States the time and place of a public disposition or the time after which any other disposition is to be made.*
- (2) *Whether the contents of a notification that lacks any of the information specified in subsection (1) of this section are nevertheless sufficient is a question of fact.*
- (3) *The contents of a notification providing substantially the information specified in subsection (1) of this section are sufficient, even if the notification includes:*
  - (a) *Information not specified by that subsection; or*
  - (b) *Minor errors that are not seriously misleading.*
- (4) *A particular phrasing of the notification is not required.*
- (5) *The following form of notification and the form appearing in subsection (3) of Section 132 of this Act, when completed, each provides sufficient information:*

**"NOTIFICATION OF DISPOSITION OF COLLATERAL**

**To:** <Name of debtor, obligor, or other person to which the notification is sent>

**From:** <Name, address, and telephone number of secured party>

**Name of Debtor(s):** <Include only if debtor(s) are not an addressee>

<For a public disposition:>

*We will sell <or lease or license, as applicable> the <describe collateral> <to the highest qualified bidder> in public as follows:*

**Day and Date:** .....



*Time:* .....

*Place:* .....

*<For a private disposition:>*

*We will sell <or lease or license, as applicable> the <describe collateral> privately sometime after <day and date>.*

*You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell <or lease or license, as applicable> <for a charge of \$.....>. You may request an accounting by calling us at <telephone number>".*

SECTION 132. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-614:

*In a consumer-goods transaction, the following rules apply:*

*(1) A notification of disposition must provide the following information:*

- (a) The information specified in subsection (1) of Section 131 of this Act;*
- (b) A description of any liability for a deficiency of the person to which the notification is sent;*
- (c) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 141 of this Act is available; and*
- (d) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.*

*(2) A particular phrasing of the notification is not required.*

*(3) The following form of notification, when completed, provides sufficient information:*

*"<Name and address of secured party>*

*<Date>*

#### **NOTICE OF OUR PLAN TO SELL PROPERTY**

*<Name and address of any obligor who is also a debtor>*

*Subject: <Identification of Transaction>*

*We have your . . . . . <describe collateral>, because you broke promises in our agreement.*

*<For a public disposition:>*

*We will sell . . . . . <describe collateral> at public sale. A sale could include a lease or license. The sale will be held as follows:*

*Date:* .....

*Time:* .....

*Place:* .....

*You may attend the sale and bring bidders if you want.*

*<For a private disposition:>*

*We will sell . . . . . <describe collateral> at private sale sometime after . . . . . <date>. A sale could include a lease or license.*

*The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you . . . . . <will or will not, as applicable> still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.*

*You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at . . . . . <telephone number>.*

*If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at . . . . <telephone number> <or write us at . . . . <secured party's address>> and request a written explanation. <We will charge you \$. . . . for the explanation if we sent you another written explanation of the amount you owe us within the last six (6) months.>*

*If you need more information about the sale call us at . . . . <telephone number> <or write us at . . . . <secured party's address>>.*

*We are sending this notice to the following other people who have an interest in . . . . <describe collateral> or who owe money under your agreement:*

*<Names of all other debtors and obligors, if any>"*

- (4) A notification in the form of subsection (3) of this section is sufficient, even if additional information appears at the end of the form.*
- (5) A notification in the form of subsection (3) of this section is sufficient, even if it includes errors in information not required by subsection (1) of this section, unless the error is misleading with respect to rights arising under this article.*
- (6) If a notification under this section is not in the form of subsection (3) of this section, law other than this article determines the effect of including information not required by subsection (1) of this section.*

SECTION 133. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-615:

- (1) A secured party shall apply or pay over for application the cash proceeds of disposition under Section 128 of this Act in the following order to:*
  - (a) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;*
  - (b) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;*
  - (c) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:*
    - 1. The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and*
    - 2. In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and*
  - (d) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.*
- (2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (1)(c) of this section.*
- (3) A secured party need not apply or pay over for application noncash proceeds of disposition under Section 128 of this Act unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.*
- (4) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (1) of this section and permitted by subsection (3) of this section:*
  - (a) Unless subsection (1)(d) of this section requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and*
  - (b) The obligor is liable for any deficiency.*
- (5) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:*
  - (a) The debtor is not entitled to any surplus; and*

- (b) *The obligor is not liable for any deficiency.*
- (6) *The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part of this article to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:*
  - (a) *The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and*
  - (b) *The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.*
- (7) *A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:*
  - (a) *Takes the cash proceeds free of the security interest or other lien;*
  - (b) *Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and*
  - (c) *Is not obligated to account to or pay the holder of the security interest or other lien for any surplus.*

SECTION 134. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-616:

- (1) *In this section:*
  - (a) *“Explanation” means a writing that:*
    - 1. *States the amount of the surplus or deficiency;*
    - 2. *Provides an explanation in accordance with subsection (3) of this section of how the secured party calculated the surplus or deficiency;*
    - 3. *States, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and*
    - 4. *Provides a telephone number or mailing address from which additional information concerning the transaction is available.*
  - (b) *“Request” means a record:*
    - 1. *Authenticated by a debtor or consumer obligor;*
    - 2. *Requesting that the recipient provide an explanation; and*
    - 3. *Sent after disposition of the collateral under Section 128 of this Act.*
- (2) *In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 133 of this Act, the secured party shall:*
  - (a) *Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:*
    - 1. *Before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and*
    - 2. *Within fourteen (14) days after receipt of a request; or*
  - (b) *In the case of a consumer obligor who is liable for a deficiency, within fourteen (14) days after receipt of a request, send to the consumer obligor a record waiving the secured party’s right to a deficiency.*
- (3) *To comply with subsection (1)(a)2. of this section, a writing must provide the following information in the following order:*

- (a) *The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:*
  - 1. *If the secured party takes or receives possession of the collateral after default, not more than thirty-five (35) days before the secured party takes or receives possession; or*
  - 2. *If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five (35) days before the disposition;*
- (b) *The amount of proceeds of the disposition;*
- (c) *The aggregate amount of the obligations after deducting the amount of proceeds;*
- (d) *The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;*
- (e) *The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (a) of this subsection; and*
- (f) *The amount of the surplus or deficiency.*
- (4) *A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (1) of this section is sufficient, even if it includes minor errors that are not seriously misleading.*
- (5) *A debtor or consumer obligor is entitled without charge to one (1) response to a request under this section during any six (6) month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (2)(a) of this section. The secured party may require payment of a charge not exceeding twenty-five dollars (\$25) for each additional response.*

SECTION 135. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-617:

- (1) *A secured party's disposition of collateral after default:*
  - (a) *Transfers to a transferee for value all of the debtor's rights in the collateral;*
  - (b) *Discharges the security interest under which the disposition is made; and*
  - (c) *Discharges any subordinate security interest or other subordinate lien.*
- (2) *A transferee that acts in good faith takes free of the rights and interests described in subsection (1) of this section, even if the secured party fails to comply with this article or the requirements of any judicial proceeding.*
- (3) *If a transferee does not take free of the rights and interests described in subsection (1) of this section, the transferee takes the collateral subject to:*
  - (a) *The debtor's rights in the collateral;*
  - (b) *The security interest or agricultural lien under which the disposition is made; and*
  - (c) *Any other security interest or other lien.*

SECTION 136. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-618:

- (1) *A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:*
  - (a) *Receives an assignment of a secured obligation from the secured party;*
  - (b) *Receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or*
  - (c) *Is subrogated to the rights of a secured party with respect to collateral.*
- (2) *An assignment, transfer, or subrogation described in subsection (1) of this section:*

- (a) *Is not a disposition of collateral under Section 128 of this Act; and*
- (b) *Relieves the secured party of further duties under this article.*

SECTION 137. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-619:

- (1) *In this section, “transfer statement” means a record authenticated by a secured party stating:*
  - (a) *That the debtor has defaulted in connection with an obligation secured by specified collateral;*
  - (b) *That the secured party has exercised its post-default remedies with respect to the collateral;*
  - (c) *That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and*
  - (d) *The name and mailing address of the secured party, debtor, and transferee.*
- (2) *A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:*
  - (a) *Accept the transfer statement;*
  - (b) *Promptly amend its records to reflect the transfer; and*
  - (c) *If applicable, issue a new appropriate certificate of title in the name of the transferee.*
- (3) *A transfer of the record or legal title to collateral to a secured party under subsection (2) of this section or otherwise is not of itself a disposition of collateral under this article and does not of itself relieve the secured party of its duties under this article.*

SECTION 138. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-620:

- (1) *Except as otherwise provided in subsection (7) of this section, a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:*
  - (a) *The debtor consents to the acceptance under subsection (3) of this section;*
  - (b) *The secured party does not receive, within the time set forth in subsection (4) of this section, a notification of objection to the proposal authenticated by:*
    - 1. *A person to which the secured party was required to send a proposal under Section 139 of this Act; or*
    - 2. *Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;*
  - (c) *If the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and*
  - (d) *Subsection (5) of this section does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to Section 142 of this Act.*
- (2) *A purported or apparent acceptance of collateral under this section is ineffective unless:*
  - (a) *The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and*
  - (b) *The conditions of subsection (1) of this section are met.*
- (3) *For purposes of this section:*
  - (a) *A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and*
  - (b) *A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:*

1. *Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;*
  2. *In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and*
  3. *Does not receive a notification of objection authenticated by the debtor within twenty (20) days after the proposal is sent.*
- (4) *To be effective under subsection (1)(b) of this section, a notification of objection must be received by the secured party:*
- (a) *In the case of a person to which the proposal was sent pursuant to Section 139 of this Act, within twenty (20) days after notification was sent to that person; and*
  - (b) *In other cases:*
    1. *Within twenty (20) days after the last notification was sent pursuant to Section 139 of this Act; or*
    2. *If a notification was not sent, before the debtor consents to the acceptance under subsection (3) of this section.*
- (5) *A secured party that has taken possession of collateral shall dispose of the collateral pursuant to Section 128 of this Act within the time specified in subsection (6) of this section if:*
- (a) *Sixty percent (60%) of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or*
  - (b) *Sixty percent (60%) of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.*
- (6) *To comply with subsection (5) of this section, the secured party shall dispose of the collateral:*
- (a) *Within ninety (90) days after taking possession; or*
  - (b) *Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.*
- (7) *In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.*

SECTION 139. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS 355.9-621:

- (1) *A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:*
- (a) *Any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;*
  - (b) *Any other secured party or lienholder that, ten (10) days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:*
    1. *Identified the collateral;*
    2. *Was indexed under the debtor's name as of that date; and*
    3. *Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and*
  - (c) *Any other secured party that, ten (10) days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in subsection (1) of Section 51 of this Act.*
- (2) *A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (1) of this section.*

SECTION 140. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-622:

- (1) *A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:*
  - (a) *Discharges the obligation to the extent consented to by the debtor;*
  - (b) *Transfers to the secured party all of a debtor's rights in the collateral;*
  - (c) *Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and*
  - (d) *Terminates any other subordinate interest.*
- (2) *A subordinate interest is discharged or terminated under subsection (1) of this section, even if the secured party fails to comply with this article.*

SECTION 141. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-623:

- (1) *A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.*
- (2) *To redeem collateral, a person shall tender:*
  - (a) *Fulfillment of all obligations secured by the collateral; and*
  - (b) *The reasonable expenses and attorney's fees described in subsection (1)(a) of Section 133 of this Act.*
- (3) *A redemption may occur at any time before a secured party:*
  - (a) *Has collected collateral under Section 125 of this Act;*
  - (b) *Has disposed of collateral or entered into a contract for its disposition under Section 128 of this Act; or*
  - (c) *Has accepted collateral in full or partial satisfaction of the obligation it secures under Section 140 of this Act.*

SECTION 142. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-624:

- (1) *A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 129 of this Act only by an agreement to that effect entered into and authenticated after default.*
- (2) *A debtor may waive the right to require disposition of collateral under subsection (5) of Section 138 of this Act only by an agreement to that effect entered into and authenticated after default.*
- (3) *Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 141 of this Act only by an agreement to that effect entered into and authenticated after default.*

#### SUBPART 2. NONCOMPLIANCE WITH ARTICLE

SECTION 143. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-625:

- (1) *If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.*
- (2) *Subject to subsections (3), (4), and (6) of this section, a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.*
- (3) *Except as otherwise provided in Section 146 of this Act:*
  - (a) *A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (2) of this section for its loss; and*
  - (b) *If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part of this article may recover for that failure in any event*

*an amount not less than the credit service charge plus ten percent (10%) of the principal amount of the obligation or the time-price differential plus ten percent (10%) of the cash price.*

- (4) *A debtor whose deficiency is eliminated under Section 144 of this Act may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under Section 144 of this Act may not otherwise recover under subsection (2) of this section for noncompliance with the provisions of this part of this article relating to collection, enforcement, disposition, or acceptance.*
- (5) *In addition to any damages recoverable under subsection (2) of this section, the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars (\$500) in each case from a person that:*
  - (a) *Fails to comply with Section 38 of this Act;*
  - (b) *Fails to comply with Section 39 of this Act;*
  - (c) *Files a record that the person is not entitled to file under subsection (1) of Section 100 of this Act;*
  - (d) *Fails to cause the secured party of record to file or send a termination statement as required by subsection (1) or (3) of Section 104 of this Act;*
  - (e) *Fails to comply with subsection (2)(a) of Section 134 of this Act and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or*
  - (f) *Fails to comply with subsection (2)(b) of Section 134 of this Act.*
- (6) *A debtor or consumer obligor may recover damages under subsection (2) of this section and, in addition, five hundred dollars (\$500) in each case from a person that, without reasonable cause, fails to comply with a request under Section 40 of this Act. A recipient of a request under Section 40 of this Act which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.*
- (7) *If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Section 40 of this Act, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.*

SECTION 144. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-626:

- (1) *In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:*
  - (a) *A secured party need not prove compliance with the provisions of this part of this article relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.*
  - (b) *If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part of this article.*
  - (c) *Except as otherwise provided in Section 146 of this Act, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part of this article relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:*
    - 1. *The proceeds of the collection, enforcement, disposition, or acceptance; or*
    - 2. *The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part of this article relating to collection, enforcement, disposition, or acceptance.*
  - (d) *For purposes of paragraph (c)2. of this subsection, the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.*
  - (e) *If a deficiency or surplus is calculated under subsection (6) of Section 133 of this Act, the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly*



*below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.*

- (2) *The limitation of the rules in subsection (1) of this section to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.*

SECTION 145. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-627:

- (1) *The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.*
- (2) *A disposition of collateral is made in a commercially reasonable manner if the disposition is made:*
- (a) *In the usual manner on any recognized market;*
  - (b) *At the price current in any recognized market at the time of the disposition; or*
  - (c) *Otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.*
- (3) *A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:*
- (a) *In a judicial proceeding;*
  - (b) *By a bona fide creditors' committee;*
  - (c) *By a representative of creditors; or*
  - (d) *By an assignee for the benefit of creditors.*
- (4) *Approval under subsection (3) of this section need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.*

SECTION 146. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-628:

- (1) *Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:*
- (a) *The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and*
  - (b) *The secured party's failure to comply with this article does not affect the liability of the person for a deficiency.*
- (2) *A secured party is not liable because of its status as secured party:*
- (a) *To a person that is a debtor or obligor, unless the secured party knows:*
    - 1. *That the person is a debtor or obligor;*
    - 2. *The identity of the person; and*
    - 3. *How to communicate with the person; or*
  - (b) *To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:*
    - 1. *That the person is a debtor; and*
    - 2. *The identity of the person.*
- (3) *A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:*

- (a) *A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or*
- (b) *An obligor's representation concerning the purpose for which a secured obligation was incurred.*
- (4) *A secured party is not liable to any person under subsection (3)(b) of Section 143 of this Act for its failure to comply with Section 134 of this Act.*
- (5) *A secured party is not liable under subsection (3)(b) of Section 143 of this Act more than once with respect to any one (1) secured obligation.*

## PART 7

## TRANSITION

SECTION 147. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS 355.9-701:

*This article takes effect on July 1, 2001.*

SECTION 148. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-702:

- (1) *Except as otherwise provided in this part of this article, the revision of Article 9 in this Act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this Act takes effect.*
- (2) *Except as otherwise provided in subsection (3) of this section and Sections 149 to 155 of this Act:*
  - (a) *Transactions and liens that were not governed by the former Article 9 of this chapter, were validly entered into or created before the revision of Article 9 in this Act takes effect, and would be subject to the revision of Article 9 in this Act if they had been entered into or created after this Act takes effect, and the rights, duties, and interests flowing from those transactions and liens remain valid after this Act takes effect; and*
  - (b) *The transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by the revision of Article 9 in this Act or by the law that otherwise would apply if this Act had not taken effect.*
- (3) *The revision of Article 9 in this Act does not affect an action, case, or proceeding commenced before this Act takes effect.*

SECTION 149. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-703:

- (1) *A security interest that is enforceable immediately before this Act takes effect and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under the revision of Article 9 in this Act if, when this Act takes effect, the applicable requirements for enforceability and perfection under the revision of Article 9 in this Act are satisfied without further action.*
- (2) *Except as otherwise provided in Section 151 of this Act, if, immediately before this Act takes effect, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under the revision of Article 9 in this Act are not satisfied when this Act takes effect, the security interest:*
  - (a) *Is a perfected security interest for one (1) year after this Act takes effect;*
  - (b) *Remains enforceable thereafter only if the security interest becomes enforceable under Section 33 of this Act before the year expires; and*
  - (c) *Remains perfected thereafter only if the applicable requirements for perfection under the revision of Article 9 in this Act are satisfied before the year expires.*

SECTION 150. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-704:

*A security interest that is enforceable immediately before this Act takes effect but which would be subordinate to the rights of a person that becomes a lien creditor at that time:*

- (1) *Remains an enforceable security interest for one (1) year after this Act takes effect;*
- (2) *Remains enforceable thereafter if the security interest becomes enforceable under Section 33 of this Act when this Act takes effect or within one (1) year thereafter; and*
- (3) *Becomes perfected:*
  - (a) *Without further action, when this Act takes effect if the applicable requirements for perfection under the revision of Article 9 in this Act are satisfied before or at that time; or*
  - (b) *When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.*

SECTION 151. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-705:

- (1) *If action, other than the filing of a financing statement, is taken before this Act takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this Act takes effect, the action is effective to perfect a security interest that attaches under the revision of Article 9 in this Act within one (1) year after this Act takes effect. An attached security interest becomes unperfected one (1) year after this Act takes effect unless the security interest becomes a perfected security interest under the revision of Article 9 in this Act before the expiration of that period.*
- (2) *The filing of a financing statement before this Act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under the revision of Article 9 in this Act.*
- (3) *The revision of Article 9 in this Act does not render ineffective an effective financing statement that, before this Act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in the former KRS 355.9-103, or law determining the place of filing as provided in the former KRS 355.9-401. However, except as otherwise provided in subsections (4) and (5) of this section and Section 152 of this Act, the financing statement ceases to be effective at the earlier of:*
  - (a) *The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or*
  - (b) *June 30, 2006.*
- (4) *The filing of a continuation statement after this Act takes effect does not continue the effectiveness of the financing statement filed before this Act takes effect. However, upon the timely filing of a continuation statement after this Act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in Part 3 of this article, the effectiveness of a financing statement filed in the same office in that jurisdiction before this Act takes effect continues for the period provided by the law of that jurisdiction.*
- (5) *Subsection (3)(b) of this section applies to a financing statement that, before this Act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in the former KRS 355.9-103 only to the extent that Part 3 of this article provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.*
- (6) *A financing statement that includes a financing statement filed before this Act takes effect and a continuation statement filed after this Act takes effect is effective only to the extent that it satisfies the requirements of Part 5 of this article for an initial financing statement.*

SECTION 152. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-706:

- (1) *The filing of an initial financing statement in the office specified in Section 92 of this Act continues the effectiveness of a financing statement filed before this Act takes effect if:*
  - (a) *The filing of an initial financing statement in that office would be effective to perfect a security interest under the revision of Article 9 in this Act;*
  - (b) *The pre-effective-date financing statement was filed in an office in another state or another office in this Commonwealth; and*

- (c) *The initial financing statement satisfies subsection (3) of this section.*
- (2) *The filing of an initial financing statement under subsection (1) of this section continues the effectiveness of the pre-effective-date financing statement:*
  - (a) *If the initial financing statement is filed before this Act takes effect, for the period provided in the former KRS 355.9-403 with respect to a financing statement; and*
  - (b) *If the initial financing statement is filed after this Act takes effect, for the period provided in Section 106 of this Act with respect to an initial financing statement.*
- (3) *To be effective for purposes of subsection (1) of this section, an initial financing statement must:*
  - (a) *Satisfy the requirements of Part 5 of this article for an initial financing statement;*
  - (b) *Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and*
  - (c) *Indicate that the pre-effective-date financing statement remains effective.*
- (4) *When a secured party files an initial financing statement with the Secretary of State under subsection (1) of this section or under Section 153 of this Act, the secured party may send a copy of the initial financing statement to the county clerk of the county in which the pre-effective-date financing statement was filed, and, additionally, may send to the county clerk copies of any continuation statement subsequently filed with the Secretary of State that relates to an initial financing statement filed under subsection (1) of this section or under Section 153 of this Act. The secured party's election not to send a copy of an initial financing statement or a continuation statement to the county clerk does not affect in any way the perfection of the secured party's security interest. The county clerk shall append to the pre-effective-date financing statement the copy of any initial financing statement or continuation statement received from a secured party and shall retain the entire file as required by Section 156 of this Act.*

SECTION 153. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-707:

- (1) *In this section, "pre-effective-date financing statement" means a financing statement filed before the effective date of this Act.*
- (2) *After the effective date of this Act, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Part 3 of this Article. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.*
- (3) *Except as otherwise provided in subsection (4) of this section, if the law of this Commonwealth governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after the effective date of this Act only if:*
  - (a) *The pre-effective-date financing statement and an amendment are filed in the office specified in Section 92 of this Act;*
  - (b) *An amendment is filed in the office specified in Section 92 of this Act concurrently with, or after the filing in that office of, an initial financing statement that satisfies subsection (3) of Section 152 of this Act; or*
  - (c) *An initial financing statement that provides the information as amended and satisfies subsection (3) of Section 152 of this Act is filed in the office specified in Section 92 of this Act.*
- (4) *If the law of this Commonwealth governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under subsections (4) and (6) of Section 151 of this Act or Section 152 of this Act.*
- (5) *Whether or not the law of this Commonwealth governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this Commonwealth may be terminated after the effective date of this Act by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies subsection (3) of Section 152 of this*

*Act has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 of this Article as the office in which to file a financing statement.*

SECTION 154. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-708:

*A person may file an initial financing statement or a continuation statement under this part of this article if:*

- (1) The secured party of record authorizes the filing; and*
- (2) The filing is necessary under this part of this article:*
  - (a) To continue the effectiveness of a financing statement filed before this Act takes effect; or*
  - (b) To perfect or continue the perfection of a security interest.*

SECTION 155. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-709:

- (1) The revision of Article 9 in this Act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this Act takes effect, the former Article 9 of this chapter determines priority.*
- (2) For purposes of subsection (1) of Section 62 of this Act, the priority of a security interest that becomes enforceable under Section 33 of this Act dates from the time this Act takes effect if the security interest is perfected under the revision of Article 9 in this Act by the filing of a financing statement before this Act takes effect which would not have been effective to perfect the security interest under the former Article 9 of this chapter. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.*

SECTION 156. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.9-710:

- (1) A county clerk who receives a statement tendered by a secured party under Part 4 of the former Article 9, prior to the effective date of this Act, that has not been filed or indexed on the effective date of this Act, shall file and index the statement as soon as practicable.*
- (2) Every county clerk shall append to the pre-effective-date financing statement the copies of any initial financing statement or continuation statement received from a secured party under subsection (4) of Section 152 of this Act.*
- (3) The county clerk shall maintain all records filed under Part 4 of the former Article 9 and subsection (2) of this section until the later of:*
  - (a) One (1) year after the lapse of the initial financing statement;*
  - (b) July 1, 2008; or*
  - (c) Such other record-retention requirement as may be applicable under other Kentucky law or administrative regulations.*
- (4) The county clerk shall respond to requests for information with respect to records maintained under this Article in accordance with subsections (3) and (4) of Section 114 of this Act and may charge the fee for issuing certificates authorized in Section 116 of this Act.*
- (5) When Internet access is available through the AVIS system or its successor, every county clerk shall provide a means within his or her office by which the Secretary of State's filing system for this Article can be searched and through which electronic filings under this Article can be made with the Secretary of State. This subsection shall not be construed to require a secured party to file through the means provided by a county clerk. The county clerk shall neither be required to conduct a search of the Secretary of State's filing system nor to issue a certificate as to the contents of the system.*

#### SEGMENT D

#### CONFORMING AMENDMENTS FOR REVISED ARTICLE 9

Section 157. KRS 355.1-201 is amended to read as follows:

Subject to additional definitions contained in the subsequent articles of this chapter which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in this chapter:

- (1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.
- (2) "Aggrieved party" means a party entitled to resort to a remedy.
- (3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter (KRS 355.1-205 and 355.2-208). Whether an agreement has legal consequences is determined by the provisions of this chapter, if applicable; otherwise by the law of contracts (KRS 355.1-103). (Compare "Contract.")
- (4) "Bank" means any person engaged in the business of banking.
- (5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.
- (6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.
- (7) "Branch" includes a separately incorporated foreign branch of a bank.
- (8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.
- (9) "Buyer in ordinary course of business" means a person *that buys goods*~~who~~ in good faith,~~and~~ without knowledge that the sale *violates*~~to him is in violation of~~ the ~~ownership~~ rights ~~or security interest~~ of *another person*~~a third party~~ in the goods, *and*~~buys~~ in *the* ordinary course from a person, *other than a pawnbroker*, in the business of selling goods of that kind~~but does not include a pawnbroker~~. *A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person*~~All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons~~ in the business of selling goods of that kind. *A buyer in ordinary course of business*~~"Buying"~~ may *buy*~~be~~ for cash,~~or~~ by exchange of other property or on secured or unsecured credit, and *may acquire*~~includes receiving~~ goods or documents of title under a preexisting contract for sale~~but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt~~. *Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 of this chapter may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.*
- (10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.
- (11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this chapter and any other applicable rules of law. (Compare "Agreement.")
- (12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.
- (13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.
- (14) "Delivery" with respect to instruments, documents of title, chattel paper or certificated securities means voluntary transfer of possession.
- (15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated

as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

- (16) "Fault" means wrongful act, omission or breach.
- (17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this chapter to the extent that under a particular agreement or document unlike units are treated as equivalents.
- (18) "Genuine" means free of forgery or counterfeiting.
- (19) "Good faith" means honesty in fact in the conduct or transaction concerned.
- (20) "Holder" with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.
- (21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.
- (22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.
- (23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.
- (24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two (2) or more nations.
- (25) A person has "notice" of a fact when
  - (a) He has actual knowledge of it; or
  - (b) He has received a notice or notification of it; or
  - (c) From all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this chapter.

- (26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when
  - (a) It comes to his attention; or
  - (b) It is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.
- (27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

- (28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.
- (29) "Party," as distinct from "third party," means a person who has engaged in a transaction or made an agreement within this chapter.
- (30) "Person" includes an individual or an organization (See KRS 355.1-102).
- (31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.
- (32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, **security interest**, issue or reissue, gift or any other voluntary transaction creating an interest in property.
- (33) "Purchaser" means a person who takes by purchase.
- (34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to tribunal.
- (35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.
- (36) "Rights" includes remedies.
- (37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation.~~[The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (KRS 355.2-401) is limited in effect to a reservation of a "security interest."]~~ The term also includes any interest of a **consignor and a** buyer of accounts,~~[or]~~ chattel paper, **a payment intangible, or a promissory note in a transaction that**~~[which]~~ is subject to Article 9 of this chapter. The special property interest of a buyer of goods on identification of those goods to a contract for sale under KRS 355.2-401 is not a "security interest," but a buyer may also acquire a "security interest" by complying with Article 9 of this chapter. **Except as otherwise provided in KRS 355.2-505, the right of a seller or lessor of goods under Article 2 or 2A of this chapter to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Article 9 of this chapter. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (KRS 355.2-401) is limited in effect to a reservation of a "security interest."**~~[Unless a consignment is intended as security, reservation of title thereunder is not a "security interest", but a consignment in any event is subject to the provisions on consignment sales (KRS 355.2-326).]~~

Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee; and

- (a) The original term of the lease is equal to or greater than the remaining economic life of the goods;
- (b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
- (c) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or
- (d) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

- (a) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;
- (b) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;
- (c) The lessee has an option to renew the lease or to become the owner of the goods;



- (d) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or
- (e) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection (37):

- (x) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;
  - (y) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and
  - (z) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.
- (38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.
  - (39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.
  - (40) "Surety" includes guarantor.
  - (41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.
  - (42) "Term" means that portion of an agreement which relates to a particular matter.
  - (43) "Unauthorized" signature means one made without actual, implied, or apparent authority and includes a forgery.
  - (44) "Value," except as otherwise provided with respect to negotiable instruments and bank collections (KRS 355.3-303, 355.4-210, and 355.4-211) a person gives "value" for rights if he acquires them
    - (a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or
    - (b) As security for or in total or partial satisfaction of a pre-existing claim; or
    - (c) By accepting delivery pursuant to a pre-existing contract for purchase; or
    - (d) Generally, in return for any consideration sufficient to support a simple contract.
  - (45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.
  - (46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

Section 158. KRS 355.2-103 is amended to read as follows:

- (1) In this article unless the context otherwise requires
  - (a) "Buyer" means a person who buys or contracts to buy goods.
  - (b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

- (c) "Receipt" of goods means taking physical possession of them.
- (d) "Seller" means a person who sells or contracts to sell goods.
- (2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:
  - "Acceptance." KRS 355.2-606.
  - "Banker's credit." KRS 355.2-325.
  - "Between merchants." KRS 355.2-104.
  - "Cancellation." KRS 355.2-106 (4).
  - "Commercial unit." KRS 355.2-105.
  - "Confirmed credit." KRS 355.2-325.
  - "Conforming to contract." KRS 355.2-106.
  - "Contract for sale." KRS 355.2-106.
  - "Cover." KRS 355.2-712.
  - "Entrusting." KRS 355.2-403.
  - "Financing agency." KRS 355.2-104.
  - "Future goods." KRS 355.2-105.
  - "Goods." KRS 355.2-105.
  - "Identification." KRS 355.2-501.
  - "Installment contract." KRS 355.2-612.
  - "Letter of credit." KRS 355.2-325.
  - "Lot." KRS 355.2-105.
  - "Merchant." KRS 355.2-104.
  - "Overseas." KRS 355.2-323.
  - "Person in position of seller." KRS 355.2-707.
  - "Present sale." KRS 355.2-106.
  - "Sale." KRS 355.2-106.
  - "Sale on approval." KRS 355.2-326.
  - "Sale or return." KRS 355.2-326.
  - "Termination." KRS 355.2-106.
- (3) The following definitions in other articles apply to this article:
  - "Check." KRS 355.3-104.
  - "Consignee." KRS 355.7-102.
  - "Consignor." KRS 355.7-102.
  - "Consumer goods." *Section 22 of this Act* ~~KRS 355.9-109~~.
  - "Dishonor." KRS ~~355.3-502~~ ~~355.3-507~~.
  - "Draft." KRS 355.3-104.
- (4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.  
 Section 159. KRS 355.2-210 is amended to read as follows:

- (1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.
- (2) ***Except as otherwise provided in Section 88 of this Act***, unless otherwise agreed, all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.
- (3) ***The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection (2) of this section unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but:***
  - (a) ***The seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer; and***
  - (b) ***A court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.***
- (4) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.
- ~~(5)~~~~(4)~~ An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.
- ~~(6)~~~~(5)~~ The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (KRS 355.2-609).

Section 160. KRS 355.2-326 is amended to read as follows:

- (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is
  - (a) a "sale on approval" if the goods are delivered primarily for use, and
  - (b) a "sale or return" if the goods are delivered primarily for resale.
- (2) ~~Except as provided in subsection (3),~~ Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.
- ~~(3)~~ ~~Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum." However, this subsection is not applicable if the person making delivery~~
  - ~~(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or~~
  - ~~(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or~~
  - ~~(c) complies with the filing provisions of the article on secured transactions (Article 9).~~

- (4)} Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this article (KRS 355.2-201) and as contradicting the sale aspect of the contract within the provisions of this article on parol or extrinsic evidence (KRS 355.2-202).

Section 161. KRS 355.2-502 is amended to read as follows:

- (1) Subject to ~~subsections~~~~[subsection]~~ (2) **and (3) of this section** and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:
  - (a) ***In the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by contract; or***
  - (b) ***In all cases,*** the seller becomes insolvent within ten (10) days after receipt of the first installment on their price.
- (2) ***The buyer's right to recover the goods under subsection (1)(a) of this section vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.***
- (3) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

Section 162. KRS 355.2-716 is amended to read as follows:

- (1) Specific performance may be decreed where the goods are unique or in other proper circumstances.
- (2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.
- (3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. ***In the case of goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.***

Section 163. KRS 355.2A-103 is amended to read as follows:

- (1) In this article unless the context otherwise requires:
  - (a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
  - (b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.
  - (c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.
  - (d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.
  - (e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose.
  - (f) "Fault" means wrongful act, omission, breach, or default.
  - (g) "Finance lease" means a lease with respect to which:

1. The lessor does not select, manufacture, or supply the goods;
  2. The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and
  3. One of the following occurs:
    - a. The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;
    - b. The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;
    - c. The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or
    - d. If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.
- (h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (KRS 355.2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.
- (i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.
- (j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.
- (k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.
- (l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.
- (m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.
- (n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.
- (o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a

pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

- (p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.
  - (q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.
  - (r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.
  - (s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.
  - (t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.
  - (u) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.
  - (v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.
  - (w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.
  - (x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.
  - (y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.
  - (z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.
- (2) Other definitions applying to this article and the sections in which they appear are:
- "Accessions." KRS 355.2A-310(1).
  - "Construction mortgage." KRS 355.2A-309(1)(d).
  - "Encumbrance." KRS 355.2A-309(1)(e).
  - "Fixtures." KRS 355.2A-309(1)(a).
  - "Fixture filing." KRS 355.2A-309(1)(b).
  - "Purchase money lease." KRS 355.2A-309(1)(c).
- (3) The following definitions in other articles apply to this article:
- "Account." **Subsection (1)(b) of Section 22 of this Act**~~[KRS 355.9-106]~~.
  - "Between merchants." KRS 355.2-104(3).
  - "Buyer." KRS 355.2-103(1)(a).
  - "Chattel paper." **Subsection (1)(k) of Section 22 of this Act**~~[KRS 355.9-105(1)(b)]~~.
  - "Consumer goods." **Subsection (1)(w) of Section 22 of this Act**~~[KRS 355.9-109(1)]~~.
  - "Document." **Subsection (1)(ad) of Section 22 of this Act**~~[KRS 355.9-105(1)(f)]~~.
  - "Entrusting." KRS 355.2-403(3).
  - "General *intangible*." **Subsection (1)(ap) of Section 22 of this Act**~~[intangibles." KRS 355.9-106]~~.
  - "Good faith." KRS 355.2-103(1)(b).
  - "Instrument." **Subsection (1)(au) of Section 22 of this Act**~~[KRS 355.9-105(1)(j)]~~.

"Merchant." KRS 355.2-104(1).

"Mortgage." *Subsection (1)(bc) of Section 22 of this Act*~~[KRS 355.9-105(1)(k)]~~.

"Pursuant to commitment." *Subsection (1)(bp) of Section 22 of this Act*~~[KRS 355.9-105(1)(l)]~~.

"Receipt." KRS 355.2-103(1)(c).

"Sale." KRS 355.2-106(1).

"Sale on approval." KRS 355.2-326.

"Sale or return." KRS 355.2-326.

"Seller." KRS 355.2-103(1)(d).

- (4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Section 164. KRS 355.2A-303 is amended to read as follows:

- (1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9, Secured Transactions, by reason of *subsection (1)(c) of Section 29 of this Act*~~[KRS 355.9-102(1)(b)]~~.
- (2) Except as provided in *subsection*~~[subsections]~~ (3) *of this section* and *Section 89 of this Act*~~[(4)]~~, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation, or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in *subsection (4) of this section*~~[(5)]~~, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.
- ~~(3) [A provision in a lease agreement which (i) prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in (i) the lessor's interest under the lease contract or (ii) the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the lessee within the purview of subsection (5) unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.]~~
- ~~(4) [A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (5).~~
- ~~(4) [(5)]~~ Subject to *subsection*~~[subsections]~~ (3) *of this section* and *Section 89 of this Act*~~[(4)]~~:
  - (a) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in KRS 355.2A-501(2);
  - (b) If paragraph (a) is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

~~(5)(6)~~ A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

~~(6)(7)~~ Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

~~(7)(8)~~ In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

Section 165. KRS 355.2A-307 is amended to read as follows:

- (1) Except as otherwise provided in KRS 355.2A-306, a creditor of a lessee takes subject to the lease contract.
- (2) Except as otherwise provided in ~~subsection~~~~(subsections) (3) and (4)~~ of this section and in KRS 355.2A-306 and 355.2A-308, a creditor of a lessor takes subject to the lease contract unless:
  - ~~(a) — the creditor holds a lien that attached to the goods before the lease contract became enforceable;~~
  - ~~(b) — The creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or~~
  - ~~(c) — The creditor holds a security interest in the goods which was perfected (KRS 355.9-303) before the lease contract became enforceable.~~
- (3) ***Except as otherwise provided in Sections 57, 61, and 63 of this Act, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor***~~[A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (KRS 355.9-303) and the lessee knows of its existence.]~~
- ~~(4) — A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than forty five (45) days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty five (45) day period.]~~

Section 166. KRS 355.2A-309 is amended to read as follows:

- (1) In this section:
  - (a) Goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;
  - (b) A "fixture filing" is the filing, in the office where a ***record of a*** mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of ***subsections (1) and (2) of Section 93 of this Act***~~[KRS 355.9-402(5)]~~;
  - (c) A lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;
  - (d) A mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and
  - (e) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.
- (2) Under this article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this article of ordinary building materials incorporated into an improvement on land.
- (3) This article does not prevent creation of a lease of fixtures pursuant to real estate law.
- (4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:



- (a) The lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within ten (10) days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or
  - (b) The interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.
- (5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:
- (a) The fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or
  - (b) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or
  - (c) The encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or
  - (d) The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.
- (6) Notwithstanding subsection (4)(a) but otherwise subject to subsections (4) and (5), the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.
- (7) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.
- (8) If the interest of a lessor of fixtures including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may:
- (a) On default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this article; or
  - (b) If necessary to enforce other rights and remedies of the lessor or lessee under this article;
- remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.
- (9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the article on secured transactions (Article 9).

Section 167. KRS 355.4-210 is amended to read as follows:

- (1) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:
  - (a) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

- (b) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or
  - (c) If it makes an advance on or against the item.
- (2) If credit given for several items received at one (1) time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.
- (3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9 of this chapter, but:
- (a) No security agreement is necessary to make the security interest enforceable (*subsection (2)(c)1. of Section 33 of this Act*)(~~KRS 355.9-203(1)(a)~~); and
  - (b) No filing is required to perfect the security interest; and
  - (c) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

Section 168. KRS 355.7-503 is amended to read as follows:

- (1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither
- (a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this article (KRS 355.7-403) or with power of disposition under this chapter (KRS 355.2-403 and *Section 60 of this Act*)(~~355.9-307~~) or other statute or rule of law; nor
  - (b) acquiesced in the procurement by the bailor or his nominee of any document of title.
- (2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under KRS 355.7-504 to the same extent as the rights of the issuer or a transferee from the issuer.
- (3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with part 4 of this article pursuant to its own bill of lading discharges the carrier's obligation to deliver.

Section 169. KRS 355.8-103 is amended to read as follows:

- (1) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.
- (2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.
- (3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.
- (4) A writing that is a security certificate is governed by this article and not by Article 3 of this chapter, even though it also meets the requirements of that article. However, a negotiable instrument governed by Article 3 of this chapter is a financial asset if it is held in a securities account.
- (5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.
- (6) A commodity contract, as defined in *subsection (1)(o) of Section 22 of this Act*(~~KRS 355.9-115~~), is not a security or a financial asset.

Section 170. KRS 355.8-106 is amended to read as follows:

- (1) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.
- (2) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:
  - (a) The certificate is indorsed to the purchaser or in blank by an effective indorsement; or
  - (b) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.
- (3) A purchaser has "control" of an uncertificated security if:
  - (a) The uncertificated security is delivered to the purchaser; or
  - (b) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.
- (4) A purchaser has "control" of a security entitlement if:
  - (a) The purchaser becomes the entitlement holder;~~or~~
  - (b) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; **or**
  - (c) ***Another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.***
- (5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.
- (6) A purchaser who has satisfied the requirements of subsection (3)~~(b)~~ or (4)~~(b)~~ of this section has control, even if the registered owner in the case of subsection (3)~~(b)~~ of this section or the entitlement holder in the case of subsection (4)~~(b)~~ of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.
- (7) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (3)(b) or (4)(b) of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

Section 171. KRS 355.8-110 is amended to read as follows:

- (1) The local law of the issuer's jurisdiction, as specified in subsection (4) of this section, governs:
  - (a) The validity of a security;
  - (b) The rights and duties of the issuer with respect to registration of transfer;
  - (c) The effectiveness of registration of transfer by the issuer;
  - (d) Whether the issuer owes any duties to an adverse claimant to a security; and
  - (e) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.
- (2) The local law of the securities intermediary's jurisdiction, as specified in subsection (5) of this section, governs:
  - (a) Acquisition of a security entitlement from the securities intermediary;
  - (b) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

- (c) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and
  - (d) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.
- (3) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.
- (4) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this **Commonwealth**~~[State]~~ may specify the law of another jurisdiction as the law governing the matters specified in subsection (1)(b) to (e) of this section.
- (5) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:
- (a) If an agreement between the securities intermediary and its entitlement holder ***governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part of this article, this article, or Article 9 of this chapter***~~[specifies that it is governed by the law of a particular jurisdiction]~~, that jurisdiction is the securities intermediary's jurisdiction.
  - (b) If ***paragraph (a) of this subsection does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.***
  - (c) ***If neither paragraph (a) nor paragraph (b) applies and an agreement between the securities intermediary and its entitlement holder governing the securities account***~~[does not specify the governing law as provided in paragraph (a) of this subsection, but]~~ ***expressly provides***~~[specifies]~~ that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.
  - ~~(d)[(e)]~~ If ***none of the preceding paragraphs of this subsection applies***~~[an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (a) or (b) of this subsection]~~, the securities intermediary's jurisdiction is the jurisdiction in which~~[is located]~~ the office identified in an account statement as the office serving the entitlement holder's account ***is located***.
  - ~~(e)[(d)]~~ If ***none of the preceding paragraphs of this subsection applies***~~[an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (a) or (b) of this subsection and an account statement does not identify an office serving the entitlement holder's account as provided in paragraph (c) of this subsection]~~, the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary ***is located***.
- (6) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

Section 172. KRS 355.8-301 is amended to read as follows:

- (1) Delivery of a certificated security to a purchaser occurs when:
- (a) The purchaser acquires possession of the security certificate;
  - (b) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or
  - (c) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and ***is***:
    - 1. ***Registered in the name of the purchaser;***

- 2. ***Payable to the order of the purchaser; or***
- 3. ~~[has been]~~ Specially indorsed to the purchaser by an effective indorsement ***and has not been indorsed to the securities intermediary or in blank.***

(2) Delivery of an uncertificated security to a purchaser occurs when:

- (a) The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or
- (b) Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

Section 173. KRS 355.8-302 is amended to read as follows:

- (1) Except as otherwise provided in subsections (2) and (3) of this section, ***a purchaser***~~[upon delivery]~~ of a certificated or uncertificated security~~[to a purchaser, the purchaser]~~ acquires all rights in the security that the transferor had or had power to transfer.
- (2) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.
- (3) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

Section 174. KRS 355.8-510 is amended to read as follows:

- (1) ***In a case not covered by the priority rules in Article 9 of this chapter or the rules stated in subsection (3) of this section,*** an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.
- (2) If an adverse claim could not have been asserted against an entitlement holder under KRS 355.8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.
- (3) In a case not covered by the priority rules in Article 9 of this chapter, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. ***Except as otherwise provided in subsection (4) of this section,*** purchasers who have control rank ***according to priority in time of:***
  - (a) ***The purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under subsection (4)(a) of Section 170 of this Act;***
  - (b) ***The securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under subsection (4)(b) of Section 170 of this Act; or***
  - (c) ***If the purchaser obtained control through another person under subsection (4)(c) of Section 170 of this Act, the time on which priority would be based under this subsection if the other person were the secured party.***
- (4) ~~[equally, except that]~~ A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

Section 175. KRS 6.787 is amended to read as follows:

- (1) The statement of financial interests required by KRS 6.781 shall be filed on a form prescribed by the commission. The commission shall provide copies of the form without charge to any person required to file.
- (2) The statement shall include the following information for the preceding calendar year:
  - (a) Name, business address, business telephone number, and home address of the filer;
  - (b) Title of the filer's public position or office sought;

- (c) Any other occupations of filer and spouse;
  - (d) Positions held by the filer or his spouse in any business, partnership, corporation for profit, or corporation not for profit from which the filer receives compensation, and the name of that business, partnership, or corporation;
  - (e) Names and addresses of all businesses, investments, or securities in which the filer, his spouse, or children has or had at any time during the preceding year an interest of ten thousand dollars (\$10,000) at fair market value or five percent (5%) ownership interest or more;
  - (f) Sources of gross income of the filer and his spouse, information concerning the source, and the form of the income;
  - (g) All positions of a fiduciary nature in a business;
  - (h) A designation as commercial, residential, or rural, and the location of all real property, other than the filer's primary residence, in which there is an interest of ten thousand dollars (\$10,000) or more held by the filer, his spouse, or children;
  - (i) Sources of gifts of money or property with a retail value of more than two hundred dollars (\$200) to the filer or the filer's immediate family, except those from a member of the filer's family;
  - (j) The name of any creditor owed more than ten thousand dollars (\$10,000), except debts arising from the purchase of consumer goods. As used in this paragraph, the term "consumer goods" has the same meaning as in **Section 22 of this Act**~~[KRS 355.9-109]~~;
  - (k) The name of any legislative agent who is:
    - 1. A member of the filer's immediate family;
    - 2. A partner of the filer, or a partner of a member of the filer's immediate family;
    - 3. An officer or director of the filer's employer;
    - 4. An employer of the filer or an employer of a member of the filer's immediate family; or
    - 5. A business associate of the filer or a business associate of a member of the filer's immediate family;
  - (l) The names of any of the filer's clients who are legislative agents or employers; and
  - (m) An answer to the question, "If you have held a professional license during the filing period, has a properly licensed partner of yours engaged in the practice of cases or other matters which you are prohibited from practicing under KRS 6.744?" If the filer responds affirmatively, he shall also list the names of the clients represented and list the agencies before which the partner made an appearance. These lists shall be separate and need not identify which client was represented before a specific agency.
- (3) Paragraphs (a) to (j) of subsection (2) of this section shall not require disclosure of specific dollar amounts. Paragraph (f) shall not require the disclosure of the names of clients or customers of business entities listed as sources of income.

Section 176. KRS 64.012 is amended to read as follows:

The county clerk shall receive for the following services the following fees:

Recording deed of trust or assignment for the benefit of creditors,	
provided the entire thereof does not exceed three (3) pages .....	\$8.00
Exceeding three (3) pages, for each page .....	2.00
Copy and certification of same when ordered .....	5.00
Each bond required to be taken or prepared by the clerk .....	3.00
Copy of any bond when ordered .....	2.00
Recording a bond, each bond .....	8.00
Receiving the acknowledgment or proof of any deed, mortgage, or	

agreement, power of attorney, or other written instrument required by law to be done and certifying same .....	2.00
Taking the acknowledgment or proof of a deed of real estate, certifying and recording the same and recording his own certificate, provided the entire record thereof does not exceed three (3) pages .....	8.00
Exceeding three (3) pages, for each page .....	2.00
Certified copy of deed .....	5.00
Recording a mortgage of real estate, certificates, and all services connected with the same, provided the entire record thereof does not exceed three (3) pages .....	8.00
Exceeding three (3) pages, for each page .....	2.00
Certified copy of real estate mortgage .....	5.00
Recording deed of assignment of real estate mortgage .....	8.00
Noting release of any lien, mortgage, or redemption other than a deed of release .....	3.00
Receiving the acknowledgment, recording, and certifying each deed of release of a mortgage or lien under KRS 382.360 .....	8.00
Each additional marginal notation relating to same instrument .....	3.00
Making a record for the establishment of a city, recording the plan or plat thereof, and all other services incident .....	8.00
Recording survey of a city, or any part thereof, or any addition to or extensions of the boundary of a city .....	8.00
Every order concerning the establishment, changing, closing, or discontinuing of roads, to be paid out of the county levy when the road is established, changed, closed, or discontinued, and by the applicant when it is not .....	2.00
Administering an oath and certificate thereof .....	2.00
Issuing license for which no other fee is fixed by law .....	5.00
Marriage license, bond, certificate and recording .....	24.00
For filing and indexing an original or continuation financing statement, <del>and noting the security interest on the required receipt</del> <del>for one (1) motor vehicle</del> .....	8.00
<b><i>For noting a security interest on a certificate of title under KRS Chapter 186A .....</i></b>	<b><i>12.00</i></b>
For filing and indexing an assignment of a financing statement .....	8.00
For filing and noting a statement of release of collateral under a financing statement .....	5.00
<del>Issuance of a certification as provided in KRS 355.9-407 .....</del>	<del>5.00</del>

<del>Certified copy of financing statement or statement of assignment</del>	
<del>as provided in KRS 355.9-407.....</del>	<del>5.00</del>
Recording real estate options, provided the entire record thereof	
does not exceed three (3) pages .....	8.00
Exceeding three (3) pages, for each page .....	2.00
Recording power of attorney or revocation of power of attorney,	
provided the entire record thereof does not exceed three (3) pages .....	8.00
Exceeding three (3) pages, for each page .....	2.00
Recording plats, maps and surveys, not exceeding 24 inches	
by 36 inches, per page .....	15.00
Recording all leases which are recordable by law, provided the	
entire record thereof does not exceed three (3) pages .....	8.00
Exceeding three (3) pages, for each page .....	2.00
Marginal notation to same instrument .....	3.00
Filing or recording of certification of intention to operate a	
business under an assumed name .....	8.00
Filing a lien on a delinquent motor vehicle or trailer bill .....	8.00
Releasing a lien on a delinquent motor vehicle or trailer bill .....	2.00
Filing or recording of mechanic's and artisan's liens	
under KRS Chapter 376 .....	8.00
Filing or recording of notice of lien issued	
by the Internal Revenue Service .....	8.00
Filing or recording of notice of lien discharges issued	
by the Internal Revenue Service .....	8.00
Filing or recording of lis pendens notice concerning proceedings in	
bankruptcy and other lis pendens notices, provided the entire	
record thereof does not exceed three (3) pages .....	8.00
Exceeding three (3) pages, for each page .....	2.00
Filing or recording United States liens, provided the entire record	
per lien does not exceed three (3) pages .....	8.00
Exceeding three (3) pages, for each page .....	2.00
Filing or recording release of a United States lien, provided the entire	
record per lien does not exceed three (3) pages .....	8.00
Exceeding three (3) pages, for each page .....	2.00
Filing or recording state tax or other state liens, other than liens on	
delinquent motor vehicles or trailers .....	5.00
Filing release of a state tax or other state lien, other than a lien	
on a delinquent motor vehicle or trailer .....	5.00



Filing notification and declaration and petition of candidates for Commonwealth's attorney, District Court, and Circuit Court .....	200.00
Filing notification and declaration and petition of candidates for office in cities of the fifth or sixth class and candidates for county and independent boards of education .....	20.00
Filing notification and declaration and petition of candidates for boards of soil and water conservation districts .....	20.00
Filing notification and declaration and petition of candidates for other offices .....	50.00
Filing declaration of intent to be a write-in candidate for office other than municipal office in a city of the fifth or sixth class .....	50.00
Filing declaration of intent to be a write-in candidate for municipal office in a city of the fifth or sixth class .....	20.00
Recording wills or other probate documents under KRS 394.300 .....	8.00
Registration of licenses for professional persons required to register with the county clerk .....	8.00
Recording and issuing articles, statements, or reports of corporations pursuant to KRS Chapters 271B, 272 and 273, including articles of incorporation, amendment, restatement of incorporation, merger, consolidation, or dissolution and statements of establishment of a series of shares, cancellation of a series of shares, reduction of capital, intent to dissolve, revocation of voluntary dissolution, or any other statement or report of a foreign or domestic corporation, provided the entire record thereof does not exceed three (3) pages .....	8.00
Exceeding three (3) pages, for each page .....	2.00
Miscellaneous recordings for which no specific fee is set, provided the entire record thereof does not exceed three (3) pages (except military discharges) .....	8.00
Exceeding three (3) pages, each additional page .....	2.00
Filing miscellaneous documents for which no specific fee is set, provided the entire record thereof does not exceed three (3) pages .....	8.00
Exceeding three (3) pages, each additional page .....	2.00
Filing petitions other than nominating petitions, provided the petition does not exceed three (3) pages .....	8.00
Exceeding three (3) pages, each additional page, except that the total fee for filing a petition other than a nominating petition	

shall not exceed \$50.00.....	2.00
Filing certification required by KRS 65.070(1)(a) .....	5.00
Certification of franchise tax assessment .....	5.00

Section 177. KRS 142.010 is amended to read as follows:

- (1) The following taxes shall be paid:
  - (a) A tax of three dollars and fifty cents (\$3.50) on each marriage license;
  - (b) A tax of three dollars (\$3) on each power of attorney to convey real or personal property;
  - (c) A tax of three dollars (\$3) on each mortgage, financing statement, or security agreement *and on each notation of a security interest on a certificate of title under Section 179 of this Act*;
  - (d) A tax of three dollars (\$3) on each conveyance of real property; and
  - (e) A tax of three dollars (\$3) on each lien or conveyance of coal, oil, gas, or other mineral right or privilege.
- (2) The tax imposed by this section shall be collected by each county clerk as a prerequisite to the issuance of a marriage license or the original filing of an instrument subject to the tax. Subsequent assignment of the original instrument shall not be cause for additional taxation under this section. This section shall not be construed to require any tax upon a deed of release of a lien retained in a deed or mortgage.
- (3) Taxes imposed under this section shall be reported and paid to the Revenue Cabinet by each county clerk within ten (10) days following the end of the calendar month in which instruments subject to tax are filed or marriage licenses issued. Each remittance shall be accompanied by a summary report on a form prescribed by the cabinet.
- (4) Any county clerk who violates any of the provisions of this section shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180. In every case, any tax not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6) from the date due until the date of payment.

Section 178. KRS 186.045 is amended to read as follows:

- ~~(1) Whenever a perfected security interest is assigned, the assignor shall immediately give a statement of assignment to the assignee and at the same time deliver another copy of the statement to the debtor. The assignee shall, within thirty (30) days thereafter, present a copy of the statement of assignment to the county clerk in whose office the security interest was noted on the certificate of title. Upon receipt of the assignment, the county clerk shall mark the same as provided in subsection (2) of KRS 355.9 405 and attach it to the title lien statement. The county clerk shall enter the assignment of the perfected security interest into the automated vehicle information system. For this service the county clerk shall collect a fee pursuant to KRS 64.012.~~
- ~~(2)~~ Whenever a security interest has been discharged, other than by proceedings under *Part 6 of Article 9 of KRS Chapter 355*~~[KRS 355.9 501 to 355.9 507]~~ or similar proceedings, the secured party shall~~[, within ten (10) days thereafter,]~~ deliver a termination statement in the manner required by *Section 104 of this Act*~~[KRS 355.9 404]~~ to the county clerk of the county in which the title lien statement was submitted. The secured party shall also deliver a copy of the termination statement to the debtor or the debtor's transferee. For failure to file the termination statement within the allowable time, the secured party shall be subject to the penalty provided in KRS 186.990(1). Within five (5) days after the receipt of such documents, the county clerk shall note the filing in the index, in language prescribed by the cabinet, that the termination statement has been filed. Upon presentation of the owner's title showing such security interest to the county clerk where the termination statement was submitted, and with the copy of the termination statement submitted by the secured party, the clerk shall discharge the security interest by noting on such title that the termination statement has been filed and place the seal of the county clerk thereon. The clerk shall return the owner's title to the owner. The county clerk shall then file the termination statement in the place from which the title lien statement was removed. Termination statements must be retained in the clerk's files for a period of two (2) years subsequent to the date of filing such statement, at which time they may be destroyed. The fee for these services are included in the provisions of KRS 186A.190.
- ~~(2)~~~~(3)~~ Upon presentation of the owner's title showing such security interest to the county clerk of a county where the termination statement was not delivered, the county clerk of that county shall access the automated system to determine whether a record of termination of the security interest has been entered into the

automated system by the county clerk where the termination statement was delivered by the secured party as provided in KRS 186A.210. If such record of termination has been entered into the automated system, the county clerk of the county where the termination statement was not delivered, shall note the discharge of the security interest on the certificate of title by noting that the termination statement has been delivered, the county where it was delivered, and placing the seal of the county clerk thereon and may rely on the automated system to do so. If such record of termination has not been entered into the automated system, in no case shall the county clerk of the county other than where the termination statement was delivered, make any notation upon the certificate of title that the security interest has been discharged or that a termination statement has been delivered to the county where the title lien statement was submitted.

- (3)~~(4)~~ Whenever any secured party repossesses a vehicle titled in this *Commonwealth*~~[state]~~, for which a security interest is in existence at the time of repossession, and disposes of such vehicle pursuant to the provisions of KRS Chapter 355, he must present, within fifteen (15) days after such disposition, an affidavit in form prescribed by the department and a termination statement or proof that such termination statement has been filed. The new owner shall pay all applicable fees for titling and transferring the vehicle to the county clerk. Upon receipt of such documents, the county clerk who issued the lien shall then omit from the title he makes application for any information relating to the security interest under which the vehicle was repossessed or any security interest subordinate thereto. However, any security interest, as shown by such title which is superior to the one under which the vehicle was repossessed, must be shown on the title issued by the clerk unless the prior secured party has discharged such security interest in such clerk's office or proof of termination is submitted in case such prior security interest was discharged in another clerk's office.
- (4)~~(5)~~ Whenever any vehicle brought into this *Commonwealth*~~[state]~~ is required to be titled in this *Commonwealth*~~[state]~~ and such vehicle is then subject to a security interest in another state as shown by the out-of-state documents presented to the clerk, the county clerk is prohibited from processing the application for title on the vehicle unless the owner obtains from the secured party a financing statement or title lien statement and presents same to the clerk along with the fees required in KRS 186A.190. The clerk shall note the out-of-state security interest on the certificate of title. This provision does not apply to vehicles required to be registered in Kentucky under forced registration provisions under KRS 186.145.
- (5)~~(6)~~ The fees provided for in this section are in addition to any state fee provided for by law.
- (6)~~(7)~~ Any person violating any provision of this section or any person refusing to surrender a certificate of title registration and ownership or transfer certificate upon request of any person entitled thereto, is subject to the penalties provided in subsection (1) of KRS 186.990.
- (7)~~(8)~~ The county clerk is prohibited from noting any security interest on a certificate of title on any vehicle subject to the provisions of KRS Chapter 186A if a certificate of title therefor is presented to him which has all the spaces provided thereon for noting security interests fully exhausted. The owner must see to it that a discharge is noted on the certificate of title for each security interest and then a duplicate title as provided for in KRS 186A.180 must be obtained from the clerk by the owner of the vehicle.
- (8)~~(9)~~ Security interests in vehicles sold to or owned by residents of other states must be perfected in the state of such nonresident and repossession of the vehicle must be taken pursuant to the laws of such state, unless the vehicle is principally operated in Kentucky and is properly titled herein under KRS Chapter 186A and the security interest is authorized to be noted on the certificate of title by the county clerk under KRS Chapter 186A.

Section 179. KRS 186A.190 is amended to read as follows:

- (1) Except as provided in subsection (4) of this section, the perfection and discharge of a security interest in any property for which has been issued a Kentucky certificate of title shall be by notation on the certificate of title. The notation of the security interest on the certificate of title shall be in accordance with this chapter and *shall remain effective from the date on which the security interest is noted on the certificate of title for a period of seven (7) years, or, in the case of a manufactured home, for a period of fourteen (14) years, or until discharged under this chapter and KRS Chapter 186. The filing of a continuation statement within the six (6) months preceding the expiration of the initial period of a notation's effectiveness extends the expiration date for seven (7) additional years.*~~The perfection of an assignment of a security interest which has been noted on the certificate of title shall be in accordance with the provisions of KRS 186.045(1).~~
- (2) Except as provided in subsection (4) of this section, the notation of security interests relating to property required to be titled in Kentucky through the county clerk shall be done in the office of the county clerk of the

county in which the debtor resides. If the debtor is other than a natural person, the *following* provisions ~~of KRS 355.9-401(5)(b) to (k) shall~~ govern the determination of the county of the debtor's residence:

- (a) *A partnership shall be deemed a resident of the county in which its principal place of business in this state is located. If the debtor does not have a place of business in this state, then the debtor shall be deemed a nonresident for purposes of filing in this state;*
- (b) *A limited partnership organized under KRS Chapter 362 shall be deemed a resident of the county in which its office is located, as set forth in its certificate of limited partnership or most recent amendment thereto filed pursuant to KRS Chapter 362. If such office is not located in this state, the debtor shall be deemed a nonresident for purposes of filing in this state;*
- (c) *A limited partnership not organized under the laws of this state and authorized to do business in this state under KRS Chapter 362 shall be deemed a resident of the county in which the office of its process agent is located, as set forth in the designation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky;*
- (d) *A corporation organized under KRS Chapter 271B, 273, or 274 or a limited liability company organized under KRS Chapter 275 shall be deemed a resident of the county in which its registered office is located, as set forth in its most recent corporate filing with the Secretary of State which officially designates its current registered office;*
- (e) *A corporation not organized under the laws of this state, but authorized to transact or do business in this state under KRS Chapter 271B, 273, or 274, or a limited liability company not organized under the laws of this state, but authorized to transact business in this state under KRS Chapter 275, shall be deemed a resident of the county in which its registered office is located, as set forth in its most recent filing with the Secretary of State which officially designates its current registered office;*
- (f) *A cooperative corporation or association organized under KRS Chapter 272 shall be deemed a resident of the county in which its principal business is transacted, as set forth in its articles of incorporation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky;*
- (g) *A cooperative corporation organized under KRS Chapter 279 shall be deemed a resident of the county in which its principal office is located, as set forth in its articles of incorporation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky;*
- (h) *A business trust organized under KRS Chapter 386 shall be deemed a resident of the county in which its principal place of business is located, as evidenced by the recordation of its declaration of trust in that county pursuant to KRS Chapter 386;*
- (i) *A credit union organized under KRS Chapter 290 shall be deemed a resident of the county in which its principal place of business is located, as set forth in its articles of incorporation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky; and*
- (j) *Any other organization (defined in Section 157 of this Act) shall be deemed a resident of the county in which its principal place of business in this state is located, except that any limited partnership or corporation not organized under the laws of this state and not authorized to transact or do business in this state shall be deemed a nonresident for purposes of filing in this state. If the organization does not have a place of business in this state, then it shall be deemed a nonresident for purposes of filing in this state.*

If the debtor does not reside in the Commonwealth, the notation of the security interest shall be done in the office of the county clerk in which the property is principally situated or operated. Notwithstanding the existence of any filed financing statement under the provisions of KRS Chapter 355 relating to any property registered or titled in Kentucky, the sole means of perfecting and discharging a security interest in property for which a certificate of title is required by this chapter is by notation on such property's certificate of title. In other respects the security interest is governed by the provisions of KRS Chapter 355.

- (3) Except as provided in subsection (4) of this section, before ownership of property subject to a lien evidenced by notation on the certificate of title may be transferred, the transferor shall obtain the release of the prior liens in his name against the property being transferred. Once a security interest has been noted on the owner's title, no subsequent title may be issued by any county clerk free of such notation unless the owner's title is presented to the clerk and it has been noted thereon, that the security interest has been discharged. If this requirement is

met, information relating to any security interest shown on the title as having been discharged may be omitted from the title to be issued by the clerk.

- (4) Notwithstanding subsections (1), (2), and (3) of this section, a county clerk shall, following inspection of the vehicle by the sheriff, to determine that the vehicle has not been stolen, issue a new title to a vehicle, clear of all prior liens, to a person after he provides to the county clerk an affidavit devised by the Transportation Cabinet and completed by the person. In the affidavit, the person shall attest that:
  - (a) He possesses the vehicle;
  - (b) A debt on the vehicle was owed him for more than thirty (30) days before he provided the notices required by paragraphs (c) and (d) of this subsection;
  - (c) More than fourteen (14) days before presenting the affidavit to the county clerk, the person attempted to notify the owner of the vehicle and all known lienholders, including those noted on the title, by certified mail, return receipt requested, of his name, address, and telephone number as well as his intention to obtain a new title, clear of all prior liens, unless the owner or a lienholder objected in writing;
  - (d) More than fourteen (14) days before presenting the affidavit to the county clerk, the person had published a legal notice stating his intention to obtain title to the vehicle. The legal notice appeared at least twice in a seven (7) day period in a newspaper published, and with a statewide circulation, in Kentucky. The legal notice stated:
    1. The person's name, address, and telephone number;
    2. The owner's name;
    3. The names of all known lienholders, including those noted on the title;
    4. The vehicle's make, model, and year; and
    5. The person's intention to obtain title to the vehicle unless the owner or a lienholder objects in writing within fourteen (14) days after the last publication of the legal notice; and
  - (e) Neither the owner nor a lienholder has objected in writing to the person's right to obtain title to the vehicle.
- (5) No more than two (2) active security interests may be noted upon a certificate of title.
- (6) In noting a security interest upon a certificate of title, the county clerk shall ensure that the certificate of title bears the lienholder's name, mailing address and zip code, the date the lien was noted, the notation number, and the county in which the security interest was noted. The clerk shall obtain the information required by this subsection for notation upon the certificate of title from the title lien statement described in KRS 186A.195 to be provided to the county clerk by the secured party.
- (7) ~~In lieu of any and all fees prescribed by statute and~~ For all the costs incurred in the notation and discharge of a security interest on the certificate of title, the county clerk shall receive **the fee prescribed by Section 176 of this Act** ~~ten dollars and fifty cents (\$10.50) of which seven dollars and fifty cents (\$7.50) shall be retained by the clerk and three dollars (\$3) transmitted to the State Treasurer~~. The fee prescribed by this subsection shall be paid at the time of submittal of the title lien statement described in KRS 186A.195.
- (8) A copy of the application, certified by the county clerk, indicating the lien will be noted on the certificate of title shall be forwarded to the lienholder.

Section 180. KRS 186A.193 is amended to read as follows:

The title lien statement, provided for in KRS 186A.195, shall be developed by January 1, 1987 by the Transportation Cabinet, in cooperation with county clerks, financial institutions and auto dealers. The Transportation Cabinet shall ensure that the title lien statement is in a similar form and contains the same information as that provided for in **subsection (1) of Section 93 of this Act** ~~KRS 355.9-402~~ and, where applicable, include the year, make, ~~motor number~~ and identification number of **the titled property** ~~a motor vehicle~~.

Section 181. KRS 186A.195 is amended to read as follows:

- (1) As used in this chapter, a title lien statement is a document to be submitted by the secured party to the county clerk. Upon submission of the title lien statement, the county clerk shall use the information contained therein to note the security interest on the certificate of title. The county clerk may make title lien statements available

to the general public. However, public availability of such statements is not necessary or effective to perfect a security interest in property required to be registered or titled in accordance with this chapter.

- (2) If a title lien statement and the required fees accompany the application for first title of any property in the name of an owner, the county clerk shall enter the information required by KRS 186A.190(6) into the automated system so as to produce a certificate of title in Frankfort bearing in addition to any other required information, the information designated by KRS 186A.190(6). The clerk shall thereby produce, in accordance with design of the automated system, a certificate of registration, if required.
- (3) If a title lien statement and the required fees are not received at the time of application for first title of any property in the name of the owner due to owner's residency in another county, or if the form prescribed by KRS 186A.060 indicates a pending lien but the title lien statement does not accompany the application for title, the county clerk shall enter into the Automated Vehicle Information System (AVIS) the name and address of the lienholder and the county where the lien is to be noted or that a lien is pending. The clerk shall indicate a title is not to be issued until the lien has been noted and fees, according to KRS 186A.190, paid in the county of the owner's residence or in thirty (30) days. The county clerk shall then issue the registration. The county clerk in the county of the owner's residence shall, after receiving the title lien statement and fees contained in KRS 186A.190, enter into the Automated Vehicle Information System (AVIS) the date of lien notation and the notation number, thus enabling the system to produce the title in Frankfort.
- (4) Should a certificate of title be issued after the thirty (30) day period has expired without the notation of a security interest thereon, or should there be no provision made for a lien to be noted in the county of residence of the debtor within thirty (30) days and the title issued within that time, the secured party shall request from the debtor, and the debtor shall submit to the secured party, the certificate of title. The secured party shall submit the certificate of title along with the title lien statement to the county clerk of the county of the debtor's residence. The county clerk shall then enter the information required by KRS 186A.190(6) into the Automated Vehicle Information System (AVIS) and note on the certificate of title in the appropriate section the information described in that section. Following the notation of the appropriate information on the certificate of title, the county clerk shall return the title to the debtor.
- (5) The security interest noted on the certificate of title shall be deemed perfected at the time the security interest attaches (KRS 355.9-203) if the secured party tenders the required fees and submits a properly completed title lien statement and application for first title or, in the case of property previously titled in the name of its debtor, the certificate of title to the appropriate county clerk within **twenty (20)**~~ten (10)~~ days of attachment. Otherwise, the security interest shall be deemed perfected at the time that such fees are tendered and such documents are submitted to the appropriate county clerk.

Section 182. KRS 186A.200 is amended to read as follows:

- (1) With respect to a vehicle previously titled in the name of its debtor, the secured party shall, within **twenty (20)**~~fifteen (15)~~ days after execution of the security agreement, obtain the current certificate of title in the name of the debtor, with no more than one (1) prior lien indicated thereon, and present to the county clerk the certificate of title, which the secured party shall have the right to obtain from the debtor, together with the title lien statement and the required fees in KRS 186A.190 to the county clerk.
- (2) For failure to present both the title and title lien statement within the time prescribed by subsection (1) of this section, the secured party shall pay a penalty of two dollars (\$2) to the county clerk as a prerequisite for noting the security interest on the title.
- (3) The county clerk shall enter the information required by KRS 186A.190(6) into the automated system.
- (4) The county clerk shall record upon the title in the appropriate section the information designated by KRS 186A.190(6).

Section 183. KRS 382.200 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, each county clerk shall make and keep an alphabetical cross-index of all conveyances recorded in his office, and when a mortgage or deed of trust, or any other conveyance, lease or contract is lodged in his office for record, he shall, at once and before attending to any other business, place the names of the parties to the instrument upon the cross-index in his office, and shall within six (6) days thereafter record the instrument.
- (2) Chattel mortgages, financing statements or security agreements shall be filed and recorded in the manner set out in **Section 110 of this Act**~~KRS 355.9-403~~.

SECTION 184. A NEW SECTION OF KRS CHAPTER 413 IS CREATED TO READ AS FOLLOWS:

*Before a party possessing a security interest or lien against an equine interest that has been sold without the debt to the party being discharged may bring an action against the purchaser or selling agent of the equine interest, the secured party shall pursue a remedy against the debtor to the point where a judgment is rendered on the merits or the suit is dismissed with prejudice.*

Section 185. KRS 425.011 is amended to read as follows:

- (1) Upon filing of the complaint or at any time prior to judgment, in an action to recover the possession of specific personal property, the plaintiff may apply pursuant to this chapter for a writ of possession by filing a written motion for the writ with the court in which the action is brought.
- (2) The motion shall be executed under oath and shall include all of the following:
  - (a) A showing of the basis of the plaintiff's claim and that the plaintiff is entitled to possession of the property claimed. If the basis of the plaintiff's claim is a written instrument, a copy of the instrument shall be attached.
  - (b) A showing that the property is wrongfully detained by the defendant, of the manner in which the defendant came into possession of the property, and, according to the best knowledge, information, and belief of the plaintiff the reason for the detention.
  - (c) A particular description of the property and a statement of its value. A description of property sufficient under *Section 28 of this Act* ~~KRS 355.9-110~~ shall meet the requirement of this section. The statement of value may be as to the worth of the property as a whole.
  - (d) A statement, according to the best knowledge, information and belief of the plaintiff, of the location of the property and if the property, or some part of it, is within a private place which may have to be entered to take possession a showing that there is probable cause to believe that such property is located there. Although such showing may be based on information and belief the judicial officer at the hearing herein provided must be presented with facts sufficient to show that the information and the informant are credible and reliable.
  - (e) A statement that the property has not been taken for a tax assessment, or fine, pursuant to a statute; or seized under an execution against the property of the plaintiff; or if so seized, that it is by statute exempt from such seizure.
- (3) The requirements of subsection (2) of this section may be satisfied by one (1) or more affidavits filed with the application.

#### SEGMENT E

#### NONCODIFIED MATERIAL

Section 186. The following KRS sections are repealed:

- 186A.196 Validity of existing lien.
- 186A.197 Issuance of certificate of title noting existing liens.
- 355.9-112 Where collateral is not owned by debtor.
- 355.9-113 Security interest arising under article on sales or article on leases.
- 355.9-114 Consignment.
- 355.9-115 Investment property.
- 355.9-116 Security interest arising in purchase or delivery of financial asset.
- 355.11-102 Use of terminology.
- 355.11-103 Transition to new code -- General rule.
- 355.11-104 Transition provision on change of requirement of filing.
- 355.11-105 Transition provision on change of place of filing.
- 355.11-106 Required refilings.

355.11-107 Transition provisions as to priorities.

355.11-108 Presumption that rule of law continues unchanged.

Section 187. The following KRS section is repealed:

355.9-401A Filing of financing statement and related documents with Secretary of State.

Section 188. Sections 1 to 18 of this Act applies to a letter of credit that is issued on or after the effective date of Sections 1 to 18 of this Act. Sections 1 to 18 of this Act do not apply to a transaction, event, obligation, or duty arising out of or associated with a letter of credit that was issued before the effective date of Sections 1 to 18 of this Act.

Section 189. A transaction arising out of or associated with a letter of credit that was issued before the effective date of Sections 1 to 18 of this Act and the rights, obligations, and interests flowing from that transaction are governed by any statute or other law amended or repealed by this Act as if repeal or amendment had not occurred and may be terminated, completed, consummated, or enforced under that statute or other law.

Section 190. The amendment to KRS 186A.190(1) contained in Section 179 of this Act shall be retroactive in nature and apply to notations on certificates of titles already in existence on the effective date of Sections 21 to 156 of this Act. The effectiveness of those existing notations that would otherwise expire on the effective date of Sections 21 to 156 of this Act, or within the first six months following that date, is hereby extended until six months after the effective date of Sections 21 to 156 of this Act. For these notations, the filing of a continuation statement within the first six months following the effective date of Sections 21 to 156 of this Act shall operate to extend the expiration date of the notation for seven (7) additional years from the date that the notation would have expired under KRS 186A.190(1), as amended in Section 179 of this Act.

Section 191. Sections 1 to 186, 188, 189, and 190 of this Act become effective on July 1, 2001.

**Approved April 21, 2000**

## **CHAPTER 409**

### **(SB 21)**

AN ACT relating to the Petroleum Storage Tank Environmental Assurance Fund.

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

Section 1. KRS 224.60-140 is amended to read as follows:

- (1) There is hereby created the petroleum storage tank environmental assurance fund. The fund shall be maintained as a separate and distinct interest-bearing account. All of the following amounts shall be deposited in the fund:
  - (a) Any interest earned upon money deposited in the fund;
  - (b) Money appropriated by the General Assembly for deposit in the fund;
  - (c) Any money recovered by the fund pursuant to this section; and
  - (d) Any money collected in the form of penalties levied pursuant to KRS 224.60-155.
- (2) Money in the fund may be used by the office for the following purposes:
  - (a) To reimburse petroleum storage tank owners or operators for the costs, expenses, and other obligations incurred for corrective action as the result of a release into the environment from a petroleum storage tank. Reimbursement shall be limited to only those costs, expenses, and other obligations incurred to comply with corrective action requirements established by the cabinet. Additional costs related to compliance with a local program operating under KRS 224.60-105(4) shall be neither reimbursable by the fund nor imposed on the owner or operator. Reimbursement shall not include the costs related to the removal, or actions incidental to the removal, of a tank system except as authorized under KRS 224.60-130(2)(j);
  - (b) For payment of or reimbursement for third-party claims for bodily injury and property damage which are asserted against a petroleum storage tank owner or operator as a result of a release into the environment from a petroleum storage tank;



- (c) To pay the reasonable costs incurred by the office in administering the fund;
  - (d) Payment to the cabinet of the costs of implementing the tank registration required by KRS 224.60-142; and
  - (e) To operate the small operators' assistance account pursuant to KRS 224.60-130(2)(d), the small operators' tank removal account pursuant to KRS 224.60-130(2)(j), to perform or contract for the performance of financial audits conducted under KRS 224.60-130(2)(k), and to employ sufficient assurance fund auditors to carry out the provisions of KRS 224.60-130 and to set forth their duties.
- (3) The use of the fund shall not exceed one million dollars (\$1,000,000) per occurrence for corrective action and one million dollars (\$1,000,000) per occurrence for compensating third parties for bodily injury and property damage.
  - (4) Money in the fund may be used by the cabinet for costs incurred by the cabinet for corrective action taken pursuant to KRS 224.60-135(2) and (4).
  - (5) The fund shall be used to guarantee payment of reasonable costs and expenses to a contractor performing corrective action under contract with a petroleum storage tank owner or operator subject to entry level amounts payable by the petroleum storage tank owner or operator. Money in the fund shall be obligated to secure the guarantee.
  - (6) A petroleum storage tank owner or operator may apply to the office for reimbursement from the fund of costs to perform corrective action, except that the petroleum storage tank owner or operator shall be responsible for and shall not be reimbursed for an amount equal to the entry level into the fund as set pursuant to administrative regulation of the office.
  - (7) The office or its designated agent shall issue all decisions made on claims filed pursuant to this section in writing, with notification to all appropriate parties, within ninety (90) days after submission of the claim, unless all parties to the claim agree in writing to an extension of time.
  - (8) Except as provided in subsection (9), any costs incurred and payable from the fund for corrective action taken pursuant to KRS 224.60-135(2) shall be recovered by the office from the petroleum storage tank owner or operator which released the petroleum or petroleum products into the environment.
  - (9) The liability of a petroleum storage tank owner or operator subject to a cost recovery under this section shall not exceed an amount equal to the entry level into the fund, the office's cost incurred in the cost recovery, and any penalties applied in accordance with KRS 224.60-155. This amount shall include any expenditures made by the petroleum storage tank owner or operator for the release into the environment from the petroleum storage tank that is the subject of the cost of recovery.
  - (10) The amount of costs determined pursuant to subsections (8) and (18) of this section shall be recoverable in a civil action. This subsection does not deprive a party of any defense the party may have.
  - (11) Money recovered by the office pursuant to this section shall be deposited in the fund.
  - (12) Upon motion and sufficient showing by any party, the court shall join to the action any person who may be liable for costs or expenditures recoverable pursuant to this section.
  - (13)
    - (a) Any party found liable for any costs or expenditures recoverable under this section who establishes that only a portion of those costs or expenditures are attributable to their actions, shall pay only for that portion.
    - (b) If the trier of fact finds the evidence insufficient to establish each party's portion of costs or expenditures pursuant to subsection (12) of this section, the court shall apportion those costs or expenditures, to the extent practicable according to equitable principles among the defendants.
    - (c) The fund shall pay any portion of the judgment in excess of the aggregate amount of costs or expenditures apportioned under paragraphs (a) and (b) of this subsection.
  - (14)
    - (a) No indemnification, hold harmless, conveyance, or similar agreement shall be effective to transfer any liability for costs recoverable under this section. This subsection shall not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs under KRS 224.60-105 to 224.60-160.

- (b) The entry of judgment against any party to the action shall not bar any future action by the fund against any other person who is later discovered to be potentially liable for costs paid from the fund.
  - (c) Payment of any claim by the fund pursuant to KRS 224.60-105 to 224.60-160 shall be subject to the state acquiring by subrogation the rights of the claimant to recover those costs of corrective action for which it has compensated the claimant from the person responsible or liable for the release.
- (15) This section shall not be construed as authorizing recovery for costs of corrective action resulting from any release authorized or permitted pursuant to state or federal law.
- (16) The cabinet shall attempt, to the maximum extent practicable, to secure or obtain funds that may be available for corrective actions under federal laws. However, nothing in this subsection shall prevent the cabinet from expending any funds available under KRS 224.60-105 to 224.60-160 if such federal funds are determined to be unavailable.
- (17) The fund shall not be used for corrective action, reimbursement, or third-party liability resulting from releases from petroleum storage tanks used exclusively for storage of fuel used in the operation of a commercial ship or vessel oil tanks used exclusively for storage of fuel used for the purposes of powering locomotives.
- (18) (a) *Any person filing a claim for reimbursement from the office shall, prior to filing the claim for reimbursement, ensure full payment of the claims of all vendors and subcontractors who have performed work or supplied materials related to corrective action at an underground storage tank facility, where labor or materials supplied by a vendor or subcontractor form a basis for at least part of the claim for reimbursement.*
- (b) *A vendor or subcontractor may waive, in writing, his right to receive full payment before the person files the claim for reimbursement. Any vendor or subcontractor who waives, in writing, his right to full payment shall also waive, in writing, his right to take legal recourse against the office and the underground storage tank facility owner or operator for nonpayment from a prime contractor for work performed or materials supplied to the prime contractor during corrective action at an underground storage tank facility. Any vendor or subcontractor who waives, in writing, his right to full payment prior to the filing of the claim for reimbursement shall acknowledge in the written waiver that their, their heirs, successors, and assigns sole recourse for the nonpayment of work performed or materials supplied to a prime contractor during corrective action at an underground storage tank facility is to proceed against the prime contractor for whom they performed the work or supplied materials. Any vendor or subcontractor who waives, in writing, his right to full payment prior to the filing of the claim for reimbursement shall release and discharge any liens filed as a result of work performed or materials provided at the underground storage tank facility. Subcontractor and vendor waivers must be made on standard forms furnished by the office. Their signatures must be notarized.*
- (c) *Unless the provisions of paragraph (b) of this subsection apply, any person filing a claim for reimbursement from the office shall certify, by affidavit, on standard forms furnished by the office, that all vendors and subcontractors who have performed work or supplied materials related to corrective action at an underground storage tank facility, where labor and materials supplied by a vendor or subcontractor form a basis for at least part of the claim for reimbursement, have been paid in full as of the date of submission of the claim for reimbursement. A single affidavit may be made for each claim for reimbursement, provided, however, that the representations made in the affidavit shall be applied to each vendor or subcontractor individually, and, where false, shall be treated, as to each vendor or subcontractor, as a separate violation for the purpose of applying any criminal statute.*
- (d) *Any person with responsibility for administering the office who believes, or has information, that an affidavit submitted pursuant to this subsection contains false or misleading information, or any person with responsibility for administering the office who believes or has information that an application for financial assistance or a claim for reimbursement contains false or misleading information, shall provide that information to the Commonwealth Attorney whose jurisdiction includes the county where the majority of the subject underground storage tank facility is located. That person may additionally provide the information to any other interested prosecutor with jurisdiction to prosecute crimes pertaining to an application for financial assistance or the claim for reimbursement.*

- (19) Any person who knowingly makes a false statement, representation, or certification in an application for reimbursement from the fund, or in any supporting documentation attached thereto, shall be responsible for and shall not be reimbursed for any amounts incurred based upon the false statement, representation, or certification. Any costs incurred and paid from the fund which are based on a false statement, representation, or certification in an application for reimbursement from the fund, or in any supporting documentation attached thereto, shall be recovered by the fund administrators from the person who asserted the false statement, representation, or certification.

Section 2. KRS 224.60-142 is amended to read as follows:

To be eligible to participate in the fund, the owner of any petroleum storage tank containing motor fuels currently existing, or removed from the ground after January 1, 1974, shall register the petroleum storage tank containing motor fuels with the cabinet prior to applying to the fund, and shall register the petroleum storage tank containing motor fuels by July 15, 2002~~[2000]~~.

**Approved April 21, 2000**

## CHAPTER 410

(SB 36)

AN ACT relating to theft by deception.

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

Section 1. KRS 514.040 is amended to read as follows:

- (1) A person is guilty of theft by deception when the person obtains property or services of another by deception with intent to deprive the person thereof. A person deceives when the person intentionally:
  - (a) Creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind;
  - (b) Prevents another from acquiring information which would affect judgment of a transaction;
  - (c) Fails to correct a false impression which the deceiver previously created or reinforced or which the deceiver knows to be influencing another to whom the person stands in a fiduciary or confidential relationship;
  - (d) Fails to disclose a known lien, adverse claim, or other legal impediment to the enjoyment of property which the person transfers or encumbers in consideration for the property obtained, whether the impediment is or is not valid or is or is not a matter of official record; or
  - (e) Issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee.
- (2) The term "deceive" does not, however, include falsity as to matters having no pecuniary significance or puffing by statements unlikely to deceive ordinary persons in the group addressed.
- (3) Deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise.
- (4) For purposes of subsection (1) of this section, a maker of a check or similar sight order for the payment of money is presumed to know that the check or order, other than a postdated check or order, would not be paid, if:
  - (a) The maker had no account with the drawee at the time the check or order was issued; **or**
  - (b) Payment was refused by the drawee for lack of funds, upon presentation within thirty (30) days after issue, and the maker failed to make good within ten (10) days after receiving notice of that refusal. A maker makes good on a check or similar sight order for the payment of money by paying to the holder the face amount of the instrument, together with any **merchant's posted reasonable bad check handling fee not to exceed twenty-five dollars (\$25) and any fee**~~to be~~ imposed pursuant to subsection (5)~~[(4)(e)]~~ of this section.~~[-or-]~~

- (5)~~(6)~~ If a county attorney issues notice to a maker that a drawee has refused to honor an instrument due to a lack of funds as described in subsection (4)(b) of this section, the county attorney may charge a fee to the maker of **twenty-five dollars (\$25)**~~ten dollars (\$10)~~, if the instrument is paid. Money paid to the county attorney pursuant to this section shall be used only for payment of county attorney office operating expenses. Excess fees held by the county attorney on June 30 of each year shall be turned over to the county treasurer before the end of the next fiscal year for use by the fiscal court of the county.
- (6)~~(5)~~ A person is guilty of theft by deception when the person issues a check or similar sight order in payment of all or any part of any tax payable to the Commonwealth knowing that it will not be honored by the drawee.
- (7)~~(6)~~ A person is guilty of theft by deception when the person issues a check or similar sight order in payment of all or any part of a child support obligation knowing that it will not be honored by the drawee.
- (8)~~(7)~~ Theft by deception is a Class A misdemeanor unless the value of the property, service, or the amount of the check or sight order referred to in subsection ~~(5) or~~ (6) **or** (7) of this section is three hundred dollars (\$300) or more, in which case it is a Class D felony.

Approved April 21, 2000

## CHAPTER 411

(SB 39)

AN ACT relating to the sale of alcoholic beverages.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 242 IS CREATED TO READ AS FOLLOWS:

- (1) *To promote economic development and tourism in a county containing a city that has, in whole or in part, voted to discontinue prohibition, with the exception of a territory that has discontinued prohibition in accordance with KRS 242.1292, a local option election for the limited sale of alcoholic beverages may be held in any precinct containing a nine (9) or an eighteen (18) hole golf course that meets United States Golf Association criteria as a regulation golf course, notwithstanding any other provisions of the Kentucky Revised Statutes.*
- (2) *A local option election for the limited sale of alcoholic beverages held under subsection (1) shall be conducted in the same manner specified in KRS 242.020 to 242.120, except that the form of the proposition to be voted upon shall be "Are you in favor of the sale of alcoholic beverages by the drink at (name of golf course) in the (name of precinct)?"*
- (3) *Upon approval of the proposition, the Department of Alcoholic Beverage Control may issue a license to the golf course for the sale of alcoholic beverages by the drink as provided in KRS 243.030 and KRS 243.040.*
- (4) *No alcoholic beverage license shall be issued to any applicant within the precinct except the nine (9) or the eighteen (18) hole regulation golf course named in the proposition.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 242 IS CREATED TO READ AS FOLLOWS:

- (1) *The Department of Alcoholic Beverage Control shall not issue a license to an applicant authorized to apply for a license to sell alcoholic beverages by the drink under Section 1 of this Act unless the applicant and the golf course, if different from the applicant, agree to voluntarily comply with the provisions of KRS Chapter 344, whether or not the applicant and the golf course would otherwise be covered by the provisions of KRS Chapter 344.*
- (2) *The department shall revoke or suspend any license issued under Section 1 of this Act if the department or the Kentucky Commission on Human Rights makes a finding that the applicant or the golf course, if different from the applicant, has violated a requirement specified in this section.*

Approved April 21, 2000

## CHAPTER 412

(SB 44)

AN ACT relating to liens.

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

Section 1. KRS 382.365 is amended to read as follows:

- (1) A holder of a lien on real property, including a lien provided for in KRS 376.010, shall release the lien in the county clerk's office where the lien is recorded within thirty (30) days from the date of satisfaction.
- (2) A proceeding may be filed by any owner of real property or any party acquiring an interest in the real property in District Court or Circuit Court against a lienholder that violates subsection (1) of this section. A proceeding filed under this section shall be given precedence over other matters pending before the court.
- (3) Upon proof to the court of the lien being satisfied, the court shall enter a judgment releasing the lien. The judgment ~~shall~~<sup>may</sup> be with costs including a reasonable attorney's fee. ***If the court finds that the lienholder received written notice of its failure to release and lacked good cause for not releasing the lien,*** the lienholder ~~shall~~<sup>may</sup> be liable to the owner of the real property in the amount of one hundred dollars (\$100) per day for each day, ***beginning on the fifteenth day after receipt of the written notice, of the violation for which good cause did not exist***~~that the lienholder fails to release a lien after the entry of a judgment by the court~~.
- (4) A lienholder that ***continues to fail***~~violates subsection (1) of this section~~ may be liable to the owner of the real property for one hundred dollars (\$100). A lienholder that fails to release a satisfied real estate lien, ***without good cause***, within forty-five (45) days from the date of ***written notice shall***~~satisfaction may~~ be liable to the owner of the real property for an additional four hundred dollars (\$400) ***per day for each day for which good cause did not exist after the forty-fifth day from the date of written notice***, for a total of five hundred dollars (\$500) ***per day for each day for which good cause did not exist after the forty-fifth day from the date of written notice***. The lienholder ~~shall~~<sup>may</sup> also be liable for any actual expense including a reasonable attorney's fee incurred by the owner in securing the release of real property by such violation.
- (5) The former holder of a lien on real property shall send by regular mail a copy of the lien release to the property owner at his last known address within seven (7) days of the release. A former lienholder that violates this subsection shall be liable to the owner of the real property for fifty dollars (\$50) and any actual expense incurred by the owner in obtaining documentation of the lien release.
- (6) For the purposes of this section, "date of satisfaction" means that date of receipt by a holder of a lien on real property of a sum of money in the form of a certified check, cashier's check, wired transferred funds, or other form of payment satisfactory to the lienholder that is sufficient to pay the principal, interest, and other costs owing on the obligation that is secured by the lien on the property.
- (7) The provisions of this section shall not apply when a lienholder is deceased and the estate of the lienholder has not been settled.
- (8) ***The state licensing agency, if applicable, or any holder of a lien on real property shall be notified of the disposition of any actions brought under this section against the lienholder.***
- (9) ***The provisions of this Act shall be held and construed as ancillary and supplemental to any other remedy provided by law.***

Approved April 21, 2000

## CHAPTER 413

(SB 51)

AN ACT relating to osteopathy.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 12 IS CREATED TO READ AS FOLLOWS:

*Any reference in an executive order to "medical doctor," "M.D.," or "physician" shall be deemed to include a doctor of osteopathy or D.O., unless either of those terms is specifically excluded.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

*Any reference in an administrative regulation to "medical doctor," "M.D.," or "physician" shall be deemed to include a doctor of osteopathy or D.O., unless any of those terms is specifically excluded.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

*Notwithstanding any other provision of law, no health facility licensed in the Commonwealth shall discriminate with respect to employment, staff, privileges, or the provision of professional services against a physician licensed to practice medicine on the basis of whether the physician holds a medical doctor (M.D.) or doctor of osteopathy (D.O.) degree.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 17A IS CREATED TO READ AS FOLLOWS:

*Notwithstanding any other provision of law, no health benefit plan shall discriminate with respect to employment, staff, privileges, or the provision of professional services against a physician licensed to practice medicine on the basis of whether the physician holds a medical doctor (M.D.) or doctor of osteopathy (D.O.) degree.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 446 IS CREATED TO READ AS FOLLOWS:

- (1) *Any reference in the Kentucky Revised Statutes to "medical doctor," "M.D.," or "physician" shall be deemed to include a doctor of osteopathy or D.O., unless any of those terms is specifically excluded.*
- (2) *Any reference in the Kentucky Revised Statutes to the American Board of Medical Specialties shall include the Bureau of Osteopathic Specialties, unless either of those terms is specifically excluded.*

Section 6. KRS 311.530 is amended to read as follows:

There is hereby created in state government an independent board to be known as the State Board of Medical Licensure which shall exercise all medical and osteopathic licensure functions heretofore exercised by the State Board of Health. The offices of the board shall be maintained at such place as is designated by the board. The board shall consist of **fifteen (15)**~~thirteen (13)~~ members, including the commissioner of public health, the dean of the University of Kentucky College of Medicine, the dean of the University of Louisville School of Medicine, **the dean of the Pikeville College School of Osteopathic Medicine**, and **eleven (11)**~~ten (10)~~ members appointed by the Governor. One (1) member shall be a licensed osteopathic physician and shall be appointed from a list of three (3) names submitted by the Kentucky Osteopathic Association. Seven (7) members shall be licensed medical physicians and shall be appointed from a list of three (3) names submitted for each position by the Kentucky Medical Association. **Three (3)**~~Two (2)~~ members shall be citizens at large who are representatives of any recognized consumer advocacy groups with an interest in the delivery of health care and are not associated with or financially interested in the practice or business regulated.

Section 7. This Act may be cited as the Osteopathic and Allopathic Healthcare Nondiscrimination Act of 2000.

**Approved April 21, 2000**

## **CHAPTER 414**

**(SB 52)**

AN ACT relating to parents who have abandoned a child.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 391 IS CREATED TO READ AS FOLLOWS:

- (1) *A parent who has willfully abandoned the care and maintenance of his or her child shall not have a right to intestate succession in any part of the estate and shall not have a right to administer the estate of the child, unless:*
  - (a) *The abandoning parent had resumed the care and maintenance at least one (1) year prior to the death of the child and had continued the care and maintenance until the child's death; or*

- (b) The parent had been deprived of the custody of his or her child under an order of a court of competent jurisdiction and the parent had substantially complied with all orders of the court requiring contribution to the support of the child.*
- (2) Any part of a decedent child's estate prevented from passing to a parent, under the provisions of subsection (1) of this section, shall pass through intestate succession as if that parent has failed to survive the decedent child.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

*A parent who has willfully abandoned the care and maintenance of his or her child shall not have a right to maintain a wrongful death action for that child and shall not have a right otherwise to recover for the wrongful death of that child, unless:*

- (1) The abandoning parent had resumed the care and maintenance at least one (1) year prior to the death of the child and had continued the care and maintenance until the child's death; or*
- (2) The parent had been deprived of the custody of his or her child under an order of a court of competent jurisdiction and the parent had substantially complied with all orders of the court requiring contribution to the support of the child.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 391 IS CREATED TO READ AS FOLLOWS:

*Section 1 of this Act may be cited as Mandy Jo's Law.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

*Section 2 of this Act may be cited as Mandy Jo's Law.*

**Approved April 21, 2000**

## **CHAPTER 415**

**(SB 57)**

AN ACT relating to boiler and pressure vessel safety.

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

Section 1. KRS 236.060 is amended to read as follows:

- (1) KRS 236.005 to 236.150 shall not apply to boilers or pressure vessels or related piping under federal control.*
- (2) KRS 236.005 to 236.150 shall not apply to the following boilers or related piping:*
  - (a) Boilers or pressure vessels located on farms and used solely for agricultural purposes;*
  - (b) Boilers or pressure vessels located at any oil refineries;*
  - (c) Boilers or pressure vessels located at any utility operating under a certificate issued pursuant to KRS 278.020, if the boilers or pressure vessels are inspected by a special boiler inspector under the provisions of KRS 236.110, except that the inspection interval provided for in KRS 236.110 shall be extended to eighteen (18) months;*
  - (d) Steam or vapor boilers used for heating purposes carrying a pressure of not more than fifteen (15) pounds per square inch gauge, and which are located in private residences or in apartment houses of less than six (6) families;*
  - (e) Hot water heating boilers carrying a pressure of not more than thirty (30) pounds per square inch gauge which are located in private residences or in apartment houses of less than six (6) families or hot water supply boilers which are located in private residences or in apartment houses of less than six (6) families;*
  - (f) Any unfired pressure vessels used as containers for liquefied petroleum gases and subject to the jurisdiction of the Department of Housing, Buildings and Construction under KRS Chapter 234;*
  - (g) Pressure vessels used for transportation of compressed gases if constructed and operated in compliance with specifications and regulations of another state or federal authority;*

- (h) Pressure vessels containing air located on vehicles operating under the regulations of another state or federal authority;
  - (i) Pressure vessels operating at a maximum pressure of fifteen (15) PSI or less;
  - (j) Single wall pressure vessels having an inside diameter of six (6) inches;
  - (k) Pressure vessels with a nominal water containing capacity of one hundred twenty (120) gallons or less, to be used for domestic supply purposes, for containing water under pressure, including those containing air, the compression of which serves only as a cushion;
  - (l) Pressure vessels containing water heated by steam or other indirect means when none of the following are exceeded:
    - 1. Heat input of two hundred thousand (200,000) BTU/Hr.;
    - 2. Water temperature of two hundred ten (210) degrees Fahrenheit;
    - 3. Water storage capacity of one hundred twenty (120) gallons;
  - (m) Coil type hot water boilers without a steam space and where no steam is generated within the confines of the unit but where water flashes into steam when released to atmospheric pressure by the operation of a manually operated nozzle, unless one (1) of the following is exceeded:
    - 1. Three quarter (3/4) inch inside diameter tubing or pipe size with no drum or header attached;
    - 2. Six (6) gallon water containing capacity;
    - 3. Three hundred fifty (350) degrees Fahrenheit water temperature;
  - (n) Water heaters which are directly fired with oil, gas, or electricity, when none of the following limitations are exceeded:
    - 1. Heat input of two hundred thousand (200,000) BTU/Hr.;
    - 2. A water temperature of two hundred ten (210) degrees Fahrenheit;
    - 3. A water containing capacity of one hundred twenty (120) gallons;
  - (o) Pressure vessels which may be classified as:
    - 1. Pressure containers which are integral parts of components of rotating or reciprocating mechanical devices such as pumps, compressors, turbines, generators, engines, and hydraulic or pneumatic cylinders where the primary design considerations or stresses are derived from the functional requirements of the device; or
    - 2. Structures whose primary function is the transport of fluids from one location to another within a system of which it is an integral part, that is, piping system.
- (3) ***The fees required by KRS 236.130 and 236.120(1) shall not apply to standard and miniature antique and hobby boiler-operated tractors and equipment used solely for exhibition, if the boiler uses a fifty (50) pounds per square inch or less gauge***~~steam boilers on farm tractors or steam engines which are used only in parades or other public events and on which there shall be no passengers other than the operators~~.

**Approved April 21, 2000**

## CHAPTER 416

(SB 62)

AN ACT relating to the hiring of sheriffs' deputies.

WHEREAS, it is the intent of the General Assembly to provide as much flexibility in the hiring process and subsequent employment of law enforcement personnel so the citizens of the Commonwealth of Kentucky may enjoy an improved quality of life afforded them by the provision of fewer restrictions on the hiring of law enforcement personnel; and

WHEREAS, with the advent of better roads, vehicles, and electronic communications devices, the issue of proximity of the residences of law enforcement personnel relative to the area in which they serve is diminished;



NOW, THEREFORE,

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

Section 1. KRS 61.300 is amended to read as follows:

No person shall serve as a deputy sheriff, deputy constable, patrol or other nonelective peace officer, or deputy peace officer, unless:

- (1) He is a citizen of the United States and is twenty-one (21) years of age or over;
- (2) If a deputy constable, he has resided in the county wherein he is appointed to serve for a period of at least two (2) years;~~and~~
- (3) If a deputy sheriff, he ***shall be a resident of the Commonwealth of Kentucky. A sheriff may require his or her deputies to reside in the county in which they serve***~~agrees to reside in the county wherein he is appointed within ninety (90) days of his appointment, and to continue his residence therein during the term of his appointment~~. Any deputy sheriff appointed pursuant to this section who has not been a resident of the county ***in which he serves*** for a period of at least two (2) years shall not be an active participant in any labor dispute and shall immediately forfeit his position if he violates this provision;
- ~~(4)~~~~(3)~~ He has never been convicted of a crime involving moral turpitude;
- ~~(5)~~~~(4)~~ He has not within a period of two (2) years hired himself out, performed any service, or received any compensation from any private source for acting, as a privately paid detective, policeman, guard, peace officer, or otherwise as an active participant in any labor dispute, or conducted the business of a private detective agency or of any agency supplying private detectives, private policemen, or private guards, or advertised or solicited any such business in connection with any labor dispute; and
- ~~(6)~~~~(5)~~ He has complied with the provisions of KRS 15.333.

Section 2. KRS 350.052 is amended to read as follows:

- (1) Any officer appointed by the secretary pursuant to KRS 350.035(2) shall be empowered to arrest, without a warrant, any person detected by him to be violating the provisions of this chapter which constitute criminal offenses.
- (2) Any officer appointed by the secretary pursuant to KRS 350.035(2) shall have the authority to use physical force, which he believes necessary, in accomplishing any lawful arrest for a criminal offense; however, deadly physical force may be used only when the officer is authorized to make an arrest, the arrest is for a felony involving the threatened use of physical force likely to cause death or serious physical injury, and the officer believes that the person to be arrested is likely to endanger human life unless arrested without delay.
- (3) Any officer appointed by the secretary pursuant to KRS 350.035(2) shall meet the qualifications set forth in KRS 61.300(1), ~~(4)~~~~(3)~~ and ~~(5)~~~~(4)~~ and shall prior to appointment:
  - (a) Successfully complete not fewer than eighty (80) hours of training in a program provided by the Department of Criminal Justice Training, Justice Cabinet, and dealing comprehensively with the subjects of criminal law and the law of arrest, search and seizure; and
  - (b) Demonstrate in written and practical examinations approved by the Department of Criminal Justice Training, Justice Cabinet, knowledge of and proficiency in firearms safety, range firing, the moral and legal aspects of firearms use, and first aid.

**Approved April 21, 2000**

## CHAPTER 417

**(SB 69)**

AN ACT relating to the Railroad Commission.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 174 IS CREATED TO READ AS FOLLOWS:

***The Transportation Cabinet shall have the responsibility of regulating railroads within the Commonwealth. The cabinet shall delegate the Office of Intermodal Programs to carry out the provisions of this section. The secretary may employ such personnel as necessary to perform the duties, functions, and responsibilities associated with the regulation of railroads. The office shall have all the powers previously vested in the Kentucky Railroad Commission. The cabinet shall promulgate administrative regulations under KRS Chapter 13A to carry out the provisions of this section.***

Section 2. KRS 174.020 is amended to read as follows:

- (1) The Transportation Cabinet in addition to the departments set forth in KRS 174.015 shall consist of the following organizational units:
  - (a) Office of the Secretary of Transportation comprised of the secretary of transportation, a deputy secretary for administration, a deputy secretary for legal affairs, and the Office of Environmental Affairs created by paragraph (g)~~(h)~~ of this subsection;
  - ~~(b) — Railroad Commission, attached to the Office of the Secretary for administrative purposes;~~
  - ~~(c)~~ Office of Public Affairs, headed by an executive director who shall serve as media spokesperson and shall be responsible for all matters relating to public relations and information;
  - ~~(c)~~~~(d)~~ Office of General Counsel, headed by an executive director responsible for general office administration, and the general counsel who provides legal services for the cabinet;
  - ~~(d)~~~~(e)~~ Office of Personnel Management, headed by an executive director who shall be responsible for the implementation of programs and practices for the recruitment, utilization, and management of cabinet personnel;
  - ~~(e)~~~~(f)~~ Office of Minority Affairs, headed by an executive director who shall be responsible for the development and implementation of programs and procedures for assisting minorities in employment and contractual relations with the cabinet;
  - ~~(f)~~~~(g)~~ Kentucky Airport Zoning Commission established by KRS 183.861, which shall be attached to the Division of Aeronautics;
  - ~~(g)~~~~(h)~~ Office of Environmental Affairs, headed by an executive director who shall oversee all Transportation Cabinet environmental issues, activities, and programs; developing and implementing policies; and procedures. The position of executive director is a policy-making position under the provisions of KRS 18A.175. The Office of Environmental Affairs may direct the Transportation Cabinet's environmental activities, associated personnel, and facilities when necessary to assure compliance with environmental laws and regulations; and
  - ~~(h)~~~~(i)~~ Office of Policy and Budget, headed by an executive director who shall be responsible for administering the budget functions of the Transportation Cabinet.
- (2) The executive directors of the Offices of Public Affairs, General Counsel, Personnel Management, Minority Affairs, Environmental Affairs, and Policy and Budget shall be appointed by the secretary with the approval of the Governor pursuant to KRS 12.050. The positions of director in the Division of Fleet Management, Division of Professional Services, and Division of Environmental Analysis are policy-making positions pursuant to KRS 18A.175.

Section 3. KRS 11A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Business" means any corporation, limited liability corporation, partnership, limited liability partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit;
- (2) "Commission" means the Executive Branch Ethics Commission;
- (3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;
- (4) "Family" means spouse and children, as well as a person who is related to a public servant as any of the following, whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law,

mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister;

- (5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received;
- (6) "Income" means any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of compensation or any combination thereof;
- (7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the Kentucky Board of Education, the State Board for Adult and Technical Education, the Council on Postsecondary Education, and any person who holds a personal service contract to perform on a full-time basis for a period of time not less than six (6) months a function of any position listed in this subsection;
- (8) "Official duty" means any responsibility imposed on a public servant by virtue of his position in the state service;
- (9) "Public servant" means:
  - (a) The Governor;
  - (b) The Lieutenant Governor;
  - (c) The Secretary of State;
  - (d) The Attorney General;
  - (e) The Treasurer;
  - (f) The Commissioner of Agriculture;
  - (g) The Auditor of Public Accounts; *and*
  - ~~(h) Each Railroad Commissioner; and~~
  - ~~(i)~~ All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;
- (10) "Agency" means every state office, cabinet, department, board, commission, public corporation, or authority in the executive branch of state government. A public servant is employed by the agency by which his appointing authority is employed, unless his agency is attached to the appointing authority's agency for administrative purposes only, or unless the agency's characteristics are of a separate independent nature distinct from the appointing authority and it is considered an agency on its own, such as an independent department;
- (11) "Lobbyist" means any person employed as a legislative agent as defined in KRS 6.611(22) or any person employed as an executive agency lobbyist as defined in KRS 11A.201(8);
- (12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes, opposes, or acts;
- (13) "Candidate" means those persons who have officially filed candidacy papers or who have been nominated by their political party pursuant to KRS 118.105, 118.115, 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to ~~(g)(h)~~ of this section;
- (14) "Does business with" or "doing business with" means contracting, entering into an agreement, leasing, or otherwise exchanging services or goods with a state agency in return for payment by the state, including accepting a grant, but not including accepting a state entitlement fund disbursement;
- (15) "Public agency" means any governmental entity;
- (16) "Appointing authority" means the agency head or any person whom he has authorized by law to act on behalf of the agency with respect to employee appointments; and

- (17) "Represent" means to attend an agency proceeding, write a letter, or communicate with an employee of an agency on behalf of someone else.

Section 4. KRS 11A.040 is amended to read as follows:

- (1) ~~A[No]~~ public servant, in order to further his own economic interests, or those of any other person, shall **not** knowingly disclose or use confidential information acquired in the course of his official duties.
- (2) ~~A[No]~~ public servant shall **not** knowingly receive, directly or indirectly, any interest or profit arising from the use or loan of public funds in his hands or to be raised through any state agency.
- (3) ~~A[No]~~ public servant shall **not** knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business or regulatory action with himself, or with any business in which he or a member of his family has any interest greater than five percent (5%) of the total value thereof.
- (4) ~~A[No]~~ public servant shall **not** knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:
  - (a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or
  - (b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or
  - (c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises; or
  - (d) Purchases from a state agency that are available on the same terms to the general public or that are made at public auction.
- (5) ~~A[No]~~ public servant shall **not** knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.
- (6) ~~A[No]~~ former officer or public servant listed in KRS 11A.010(9)(a) to (g)~~(h)~~ shall **not**, within six (6) months of termination of his employment, knowingly by himself or through any business in which he owns or controls an interest of at least five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he was employed. This provision shall not apply to a contract, purchase, or good faith negotiation made under KRS Chapter 416 relating to eminent domain or to agreements that may directly or indirectly involve public funds disbursed through entitlement programs. This provision shall not apply to purchases from a state agency that are available on the same terms to the general public or that are made at public auction.
- (7) ~~A[No]~~ present or former officer or public servant listed in KRS 11A.010(9)(a) to (g)~~(h)~~ shall **not**, within six (6) months following termination of his office or employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with, or is regulated by, the state in matters in which he was directly involved during the last thirty-six (36) months of his tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he was involved prior to taking office or beginning his term of employment, or for which he received, prior to his state employment, a professional degree or license, provided that, for a period of six (6) months, he personally refrains from working on any matter in which he was directly involved during the last thirty-six (36) months of his tenure in state government. This subsection shall not prohibit the performance of ministerial functions including, but not limited to, filing tax returns, filing applications for permits or licenses, or filing incorporation papers, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs.
- (8) A former public servant shall not act as a lobbyist or lobbyist's principal in matters in which he was directly involved during the last thirty-six (36) months of his tenure for a period of one (1) year after the latter of:
  - (a) The date of leaving office or termination of employment; or
  - (b) The date the term of office expires to which the public servant was elected.

- (9) A former public servant shall not represent a person or business before a state agency in a matter in which the former public servant was directly involved during the last thirty-six (36) months of his tenure, for a period of one (1) year after the latter of:
- (a) The date of leaving office or termination of employment; or
  - (b) The date the term of office expires to which the public servant was elected.
- (10) Without the approval of his appointing authority, ~~a~~~~no~~ public servant shall **not** accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds.
- (a) The appointing authority shall review administrative regulations established under KRS Chapter 11A when deciding whether to approve outside employment for a public servant.
  - (b) The appointing authority shall not approve outside employment for a public servant if the public servant is involved in decision-making or recommendations concerning the person or business from which the public servant seeks outside employment or compensation.
  - (c) The appointing authority, if applicable, shall file quarterly with the Executive Branch Ethics Commission a list of all employees who have been approved for outside employment along with the name of the outside employer of each.
- (11) The prohibitions imposed by subsection (5) or (10) of this section shall not apply to Professional Golfers' Association class A members who teach golf lessons and receive a fee or lesson charge at golf courses owned and operated by the Kentucky Department of Parks. Instruction provided by an employee of the Commonwealth shall only be given while the employee is on his or her own personal time. The commissioner of the Department of Parks shall promulgate administrative regulations to establish guidelines for the process by which Professional Golfers' Association class A members are approved to teach golf lessons at Kentucky Department of Parks-owned golf courses. The exception granted by this subsection is in recognition of the benefits that will accrue to the Kentucky Department of Parks due to increased participation at state-owned golf courses.

Section 5. KRS 11A.050 is amended to read as follows:

- (1) Each officer, each public servant listed in KRS 11A.010(9)(a) to ~~(g)(4)~~, and each candidate shall file a statement of financial disclosure with the commission, as follows:
- (a) Each officer and each public servant listed in KRS 11A.010(9)(a) to ~~(g)(4)~~ who occupies his position during any portion of a calendar year shall file the statement for that entire calendar year on or before April 15 of the following year, whether or not he remains an officer or public servant as listed in KRS 11A.010(9)(a) to ~~(g)(4)~~.
  - (b) A candidate shall file the statement reflecting the previous calendar year with the commission no later than February 15.
- (2) The statement of financial disclosure shall be filed on a form prescribed by the commission. The commission shall provide copies of the form upon request without charge.
- (3) The statement shall include the following information for the preceding calendar year:
- (a) Name and entire residential and business address of filer;
  - (b) Title of position or office whereby filing is required;
  - (c) Any other occupations of filer and spouse;
  - (d) Positions held by the filer or his spouse in any business, partnership, or corporation for profit;
  - (e) Names and addresses of all businesses in which the filer, his spouse, or dependent children has or had an interest of ten thousand dollars (\$10,000) at fair market value or five percent (5%) ownership interest or more;
  - (f) Sources of gross income of the filer or his spouse, as well as information concerning the nature of the business, and the form of the income;
  - (g) Sources of retainers received by the filer or his spouse;

- (h) Any representation or intervention for compensation by the filer or his spouse for any person before policy-making entities in state government;
- (i) All positions of a fiduciary nature in a business;
- (j) Information regarding any real property in which there is an interest of ten thousand dollars (\$10,000) or more held by the filer, his spouse, or dependent children;
- (k) Sources of gifts of money or property with a retail value of more than two hundred dollars (\$200) to the filer, his spouse, or dependent children, except those from spouse, parents, or grandparents; and
- (l) Identity of creditors owed more than ten thousand dollars (\$10,000), except debts arising from the purchase of consumer goods.

Paragraphs (a) to (l) of this subsection shall not require disclosure of specific dollar amounts or of privileged information.

Section 6. KRS 11A.201 is amended to read as follows:

As used in KRS 11A.201 to 11A.246 and KRS 11A.990:

- (1) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;
- (2) (a) "Expenditure" means any of the following that is made to, or for the benefit of an elected executive official, the secretary of a cabinet listed in KRS 12.250, an executive agency official, or a member of the staff of any of the officials listed in this paragraph:
  - 1. A payment, distribution, loan, advance, deposit, reimbursement, or gift of money, real estate, or anything of value, including, but not limited to, food and beverages, entertainment, lodging, transportation, or honoraria;
  - 2. A contract, promise, or agreement to make an expenditure; or
  - 3. The purchase, sale, or gift of services or any other thing of value.
- (b) "Expenditure" does not include a contribution, gift, or grant to a foundation or other charitable organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code. "Expenditure" does not include the purchase, sale, or gift of services or any other thing of value that is available to the general public on the same terms as it is available to the persons listed in this subsection. "Expenditure" does not include a payment, contribution, gift, purchase, or any other thing of value that is made to or on behalf of any elected executive official, the secretary of a cabinet listed in KRS 12.250, an executive agency official, or any member of the staff of any of the officials listed in this paragraph who works for a state agency for which the executive agency lobbyist is not registered to influence;
- (3) "Employer" means any person who engages an executive agency lobbyist;
- (4) "Engage" means to make any arrangement, and "engagement" means arrangement, whereby an individual is employed or retained for compensation to act for or on behalf of an employer to influence executive agency decisions or to conduct any executive agency lobbying activity;
- (5) (a) "Financial transaction" means a transaction or activity that is conducted or undertaken for profit and arises from the joint ownership, or the ownership, or part ownership in common of any real or personal property or any commercial or business enterprise of whatever form or nature between the following:
  - 1. An executive agency lobbyist, his employer, a real party in interest, or a member of the immediate family of the executive agency lobbyist, his employer, or a real party in interest; and
  - 2. Any elected executive official, the secretary of a cabinet listed in KRS 12.250, an executive agency official, or any member of the staff of any of the officials listed in this subparagraph.
- (b) "Financial transaction" does not include any transaction or activity described in paragraph (a) of this subsection if it is available to the general public on the same terms;
- (6) "Executive agency" means the office of an elected executive official, a cabinet listed in KRS 12.250, or any other state agency, department, board, or commission controlled or directed by an elected executive official or otherwise subject to his authority. "Executive agency" does not include any court or the General Assembly;

- (7) "Executive agency decision" means a decision of an executive agency regarding the expenditure of funds of the state or of an executive agency with respect to the award of a contract, grant, lease, or other financial arrangement under which those funds are distributed or allocated;
- (8) (a) "Executive agency lobbyist" means any person engaged to influence executive agency decisions or to conduct executive agency lobbying activity as one (1) of his main purposes on a substantial basis.
- (b) "Executive agency lobbyist" does not include an elected or appointed officer or employee of a federal or state agency, state college, state university, or political subdivision who attempts to influence or affect executive agency decisions in his fiduciary capacity as a representative of his agency, college, university, or political subdivision;
- (9) (a) "Executive agency lobbying activity" means contacts made to promote, oppose, or otherwise influence the outcome of an executive agency decision by direct communication with an elected executive official, the secretary of any cabinet listed in KRS 12.250, any executive agency official, or a member of the staff of any one of the officials listed in this paragraph.
- (b) "Executive agency lobbying activity" does not include any of the following:
  - 1. The action of any person having a direct interest in executive agency decisions, if the person acting under Section 1 of the Kentucky Constitution, assembles together with other persons for their common good, petitions any person listed in paragraph (a) of this subsection for the redress of grievances or other proper purposes;
  - 2. Contacts made for the sole purpose of gathering information contained in a public record; or
  - 3. Appearances before public meetings of executive agencies;
- (10) "Executive agency official" means an officer or employee of an executive agency whose principal duties are to formulate policy or to participate directly or indirectly in the preparation, review, or award of contracts, grants, leases, or other financial arrangements with an executive agency;
- (11) "Aggrieved party" means a party entitled to resort to a remedy;
- (12) "Elected executive official" means the Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, **and** Commissioner of Agriculture~~[-, and Railroad Commissioners];~~
- (13) "Person" means an individual, proprietorship, firm, partnership, limited liability partnership, joint venture, joint stock company, syndicate, business, trust, estate, company, corporation, limited liability corporation, association, club, committee, organization, or group of persons acting in concert;
- (14) "Staff" means any employee of the office of the Governor, or a cabinet listed in KRS 12.250, whose official duties are to formulate policy and who exercises administrative or supervisory authority, or who authorizes the expenditure of state funds;
- (15) "Real party in interest" means the person or entity on whose behalf an executive agency lobbyist is acting, if that person or entity is not the employer of the executive agency lobbyist; and
- (16) "Substantial basis" means contacts which are intended to influence a decision that involves one or more disbursements of state funds in an amount of at least five thousand dollars (\$5,000) per year.

Section 7. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

- 1. The Governor.

2. Lieutenant Governor.
3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.
  - (c) Registry of Election Finance.
4. Department of Law.
  - (a) Attorney General.
5. Department of the Treasury.
  - (a) Treasurer.
6. Department of Agriculture.
  - (a) Commissioner of Agriculture.
  - (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
- ~~9. Railroad Commission.~~

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
  - (a) Department of State Police.
  - (b) Department of Criminal Justice Training.
  - (c) Department of Corrections.
  - (d) Department of Juvenile Justice.
  - (e) Office of the Secretary.
  - (f) Offices of the Deputy Secretaries.
  - (g) Office of General Counsel.
  - (h) Division of Kentucky State Medical Examiners Office.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
  - (a) Department of Education.
    - (1) Kentucky Board of Education.
    - (2) Education Professional Standards Board.
  - (b) Department for Libraries and Archives.
  - (c) Kentucky Arts Council.
  - (d) Kentucky Educational Television.
  - (e) Kentucky Historical Society.
  - (f) Kentucky Teachers' Retirement System Board of Trustees.
  - (g) Kentucky Center for the Arts.



- (h) Kentucky Craft Marketing Program.
  - (i) Kentucky Commission on the Deaf and Hard of Hearing.
  - (j) Governor's Scholars Program.
  - (k) Governor's School for the Arts.
  - (l) Operations and Development Office.
  - (m) Kentucky Heritage Council.
  - (n) Kentucky African-American Heritage Commission.
  - (o) Board of Directors for the Center for School Safety.
3. Natural Resources and Environmental Protection Cabinet:
- (a) Environmental Quality Commission.
  - (b) Kentucky Nature Preserves Commission.
  - (c) Department for Environmental Protection.
  - (d) Department for Natural Resources.
  - (e) Department for Surface Mining Reclamation and Enforcement.
  - (f) Office of Legal Services.
  - (g) Office of Information Services.
4. Transportation Cabinet:
- (a) Department of Highways.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Administrative Services.
  - (d) Department of Fiscal Management.
  - (e) Department of Rural and Municipal Aid.
  - (f) Office of General Counsel.
  - (g) Office of Public Affairs.
  - (h) Office of Personnel Management.
  - (i) Office of Minority Affairs.
  - (j) Office of Environmental Affairs.
  - (k) Office of Policy and Budget.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
  - (b) Department of Job Development.
  - (c) Department of Financial Incentives.
  - (d) Department of Community Development.
  - (e) Tobacco Research Board.
  - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.
  - (b) Department of Insurance.

- (c) Department of Housing, Buildings and Construction.
  - (d) Department of Financial Institutions.
  - (e) Department of Mines and Minerals.
  - (f) Department of Public Advocacy.
  - (g) Department of Alcoholic Beverage Control.
  - (h) Kentucky Racing Commission.
  - (i) Board of Claims.
  - (j) Crime Victims Compensation Board.
  - (k) Kentucky Board of Tax Appeals.
  - (l) Backside Improvement Commission.
  - (m) Office of Petroleum Storage Tank Environmental Assurance Fund.
7. Cabinet for Families and Children:
- (a) Department for Social Insurance.
  - (b) Department for Social Services.
  - (c) Public Assistance Appeals Board.
  - (d) Office of the Secretary.
  - (e) Office of the General Counsel.
  - (f) Office of Program Support.
  - (g) Office of Family Resource and Youth Services Centers.
  - (h) Office of Technology Services.
  - (i) Office of the Ombudsman.
  - (j) Office of Aging Services.
8. Cabinet for Health Services.
- (a) Department for Public Health.
  - (b) Department for Medicaid Services.
  - (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission on Children with Special Health Care Needs.
  - (e) Office of Certificate of Need.
  - (f) Office of the Secretary.
  - (g) Office of the General Counsel.
  - (h) Office of Program Support.
  - (i) Office of the Inspector General.
9. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
  - (b) Office of Management and Budget.
  - (c) Office of Financial Management and Economic Analysis.
  - (d) Office of the Controller.
  - (e) Department for Administration.

- (f) Department of Facilities Management.
  - (g) Department of Information Systems.
  - (h) State Property and Buildings Commission.
  - (i) Kentucky Pollution Abatement Authority.
  - (j) Kentucky Savings Bond Authority.
  - (k) Deferred Compensation Systems.
  - (l) Office of Equal Employment Opportunity Contract Compliance.
  - (m) Office of Capital Plaza Operations.
  - (n) County Officials Compensation Board.
  - (o) Kentucky Employees Retirement Systems.
  - (p) Commonwealth Credit Union.
  - (q) State Investment Commission.
  - (r) Kentucky Housing Corporation.
  - (s) Governmental Services Center.
  - (t) Kentucky Local Correctional Facilities Construction Authority.
  - (u) Kentucky Turnpike Authority.
  - (v) Historic Properties Advisory Commission.
  - (w) Kentucky Kare Health Insurance Authority.
10. Labor Cabinet:
- (a) Department of Workplace Standards.
  - (b) Department of Workers' Claims.
  - (c) Kentucky Labor-Management Advisory Council.
  - (d) Occupational Safety and Health Standards Board.
  - (e) Prevailing Wage Review Board.
  - (f) Workers' Compensation Board.
  - (g) Kentucky Employees Insurance Association.
  - (h) Apprenticeship and Training Council.
  - (i) State Labor Relations Board.
  - (j) Kentucky Occupational Safety and Health Review Commission.
  - (k) Office of Administrative Services.
  - (l) Office of Labor-Management Relations and Mediation.
  - (m) Office of General Counsel.
  - (n) Workers' Compensation Funding Commission.
  - (o) Employers Mutual Insurance Authority.
11. Revenue Cabinet:
- (a) Department of Property Valuation.
  - (b) Department of Tax Administration.
  - (c) Office of Financial and Administrative Services.

- (d) Department of Law.
- (e) Department of Information Technology.
- (f) Office of Taxpayer Ombudsman.
- 12. Tourism Development Cabinet:
  - (a) Department of Travel.
  - (b) Department of Parks.
  - (c) Department of Fish and Wildlife Resources.
  - (d) Kentucky Horse Park Commission.
  - (e) State Fair Board.
  - (f) Office of Administrative Services.
  - (g) Office of General Counsel.
- 13. Cabinet for Workforce Development:
  - (a) Department for Adult Education and Literacy.
  - (b) Department for Technical Education.
  - (c) Department of Vocational Rehabilitation.
  - (d) Department for the Blind.
  - (e) Department for Employment Services.
  - (f) State Board for Adult and Technical Education.
  - (g) Governor's Council on Vocational Education.
  - (h) The State Board for Proprietary Education.
  - (i) The Foundation for Adult Education.
  - (j) The Kentucky Job Training Coordinating Council.
  - (k) Office of General Counsel.
  - (l) Office of Communication Services.
  - (m) Office of Development and Industry Relations.
  - (n) Office of Workforce Analysis and Research.
  - (o) Office for Administrative Services.
  - (p) Office for Policy and Budget.
  - (q) Office of Personnel Services.
  - (r) Unemployment Insurance Commission.
- 14. Personnel Cabinet:
  - (a) Office of Administrative and Legal Services.
  - (b) Department for Personnel Administration.
  - (c) Department for Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.
  - (e) Kentucky Kare.
  - (f) Division of Performance Management.
  - (g) Division of Employee Records.

- (h) Division of Staffing Services.
- (i) Division of Classification and Compensation.
- (j) Division of Employee Benefits.
- (k) Division of Communications and Recognition.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Council on Postsecondary Education.
  - (a) Kentucky Commission on Community Volunteerism and Service.
- 3. Department for Local Government.
- 4. Kentucky Commission on Human Rights.
- 5. Kentucky Commission on Women.
- 6. Department of Veterans' Affairs.
- 7. Kentucky Commission on Military Affairs.
- 8. Office of the Chief Information Officer.

Section 8. KRS 15.105 is amended to read as follows:

- (1) The Attorney General, with the approval of the head of the cabinet~~[-or the commission]~~ involved shall appoint assistant attorneys general for the Transportation Cabinet, the Finance and Administration Cabinet, **and** the Revenue Cabinet~~[-, and for the Railroad Commission]~~.
- (2) The assistant attorneys general and additional attorneys provided for in subsection (1) of this section shall each be a person admitted to the practice of law by the Supreme Court of this Commonwealth and shall qualify by taking the oath of office. They shall be paid out of the appropriation or other funds of the respective agency to which they are assigned.

Section 9. KRS 82.400 is amended to read as follows:

- (1) If any person desires to offer for dedication by recorded plat any public way or easement within the city limits, he shall file with the city legislative body a map or plat of the territory bounded, intersected, or immediately adjacent to the proposed public way or easement, showing the proposed name, nature, and dimensions of the public way or easement offered for dedication. If the city legislative body decides the proposed dedication would be beneficial to the public interest and suitable for the immediate or future acceptance of the city, it shall approve the map or plat, and the mayor shall subscribe a certificate of approval on the map and acknowledge the execution thereof before any public officer authorized to take acknowledgments of deeds. The map or plat may then be recorded in the office of the county clerk.
- (2) Except as provided for by ordinance in a city of the first class or in a county containing a city of the first class, subdivision regulations which have been adopted as provided in KRS Chapter 100, and where streets or public ways as dedicated on the final subdivision plat have been constructed, inspected, and approved in accordance with the subdivision regulations, then the procedure for filing the map or plat with the city legislative body as required in subsection (1) of this section shall be waived, and the dedicated street or public way shall automatically be deemed beneficial to the public interest and shall be, by operation of law, automatically accepted for maintenance by the city forty-five (45) days after inspection and final approval, and shall be a public way for all purposes, KRS Chapter 83A, regarding a city's adoption of ordinances notwithstanding.
- (3) When any property has been opened to the unrestricted use of the general public for five (5) consecutive years, it shall be conclusively presumed to have been dedicated to the city as a public way or easement, subject to acceptance by the city. The city may, at any time after the expiration of five (5) years from the time the property is opened to the public, pass an ordinance declaring it so dedicated, and accepting the dedication, whereupon it shall be a public way or easement of the city for all purposes. The lack of an actual dedication to the city, or of a record title on the part of the city, shall be no defense against the collection of any tax that may be levied against property abutting thereon for the payment of the cost of any improvement constructed thereon by order of the city. Nothing herein shall be construed to require the expiration of five (5) years to raise a presumption of dedication in any case where, under any rule of law in force in this state, a dedication would be

presumed in less than five (5) years. Provided, however, that ~~no~~ property of a **railroad company** ~~carrier by rail, as defined in KRS 276.010(3),~~ shall **not** be presumed to be dedicated as a public way or easement under this section or any other rule of law in force in this state unless the **company** ~~carrier~~ consents to said dedication in writing.

- (4) Any person who shall lodge for record in the county clerk's office, and any county clerk or deputy who shall receive for record or permit to be lodged for record, any plat, map, deed, or other instrument contrary to the provisions of this section, shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) for each offense.

Section 10. KRS 247.232 is amended to read as follows:

As used in KRS 247.234 and 247.236:

- (1) "Amusement ride" means any mechanized device or combination of devices which carry passengers along, around, or over a fixed or restricted course for the purpose of giving its passengers amusement, pleasure, thrills, or excitement. "Amusement ride" does not include coin-operated amusement devices that carry no more than two (2) persons and devices regulated by the Federal Aviation Administration, the **Kentucky Transportation Cabinet**, ~~the~~ ~~state and~~ federal railroad commission, and vessels under the jurisdiction of the United States Coast Guard or the Kentucky Department of Fish and Wildlife Resources;
- (2) "Amusement attraction" means any building or structure around, over, or through which people may walk, climb, slide, jump, or move that provides amusement, pleasure, thrills, or excitement. "Amusement attraction" does not include tractor pulls, auto or motorcycle events, horse shows, rodeos and other animal shows, games and concessions, nonmechanical playground equipment, such as swings, slides, seesaws, climbers, trampolines, rider-propelled merry-go-rounds, stationary spring-mounted animal devices, and physical fitness equipment, unless designated by regulation of the Commissioner;
- (3) "Carnival" means an enterprise offering amusement or entertainment to the public by means of one (1) or more amusement rides and attractions;
- (4) "Fair" means an enterprise principally devoted to the exhibition of products of agriculture, science, or industry in conjunction with the operation of one (1) or more amusement rides or attractions;
- (5) "Owner" means any person who owns an amusement ride or attraction or, in the event that the amusement ride or attraction is leased, the lessee; and
- (6) "Commissioner" means the Commissioner of Kentucky Department of Agriculture or his authorized representative.

Section 11. KRS 277.070 is amended to read as follows:

- (1) Every railroad company proceeding to construct its road in or through any county shall file and have recorded at its expense, in the office of the county clerk of that county, a map of the route showing the center and the width of the proposed road. If, after the map is filed and recorded, the location or the proposed route is changed, a map showing the change, and the center and width thereof, shall be filed and recorded at the expense of the company in the office of the county clerk of the county in which the change is made.
- (2) If the proposed route indicated by the map crosses the line of any other railroad, the company filing the map shall, before commencing the construction of the road near the point of crossing, notify the **Kentucky Transportation Cabinet**. ~~The cabinet shall notify~~ ~~Railroad Commission, which shall give notice to~~ the company whose road it is proposed to cross, and to the company proposing to cross it, that if any objection is made to the crossing the **cabinet** ~~commission~~ will meet, at a stated time and place, to consider the question of approving the crossing. The **cabinet** ~~commission~~ may determine the manner in which the crossing shall be made in order to protect against accidents.

Section 12. KRS 277.170 is amended to read as follows:

**If the Kentucky Transportation Cabinet determines it is in** ~~Whenever, in the opinion of the Railroad Commission,~~ the public interest ~~for~~ ~~requires that~~ a gate be erected or maintained or a flagman stationed at any highway crossing within one mile of the corporate limits of any city, the **cabinet** ~~commission~~ shall give the superintendent or manager of the railroad written notice that a gate or flagman is required. If a gate is required, the notice shall prescribe the time within which the gate shall be erected, ~~and~~ the character of gate required, and shall designate the hours during which a man shall be kept in charge of the gate. If a flagman is required, the notice shall designate the hours during which he shall be kept at the crossing. The railroad company shall comply with the provisions of the notice. The

~~cabinet~~~~[Railroad Commission]~~ may authorize the discontinuance of the gate or flagman whenever, in its judgment, the public interest no longer requires it.

Section 13. KRS 277.240 is amended to read as follows:

- (1) ~~A~~~~[No]~~ bridge or passway constructed over any railroad, except in cities having power under their charters to regulate the height of ~~such~~ bridges or passways, shall **not** be at a less height than twenty-two (22) feet above the track of the road, unless by the written authority of the **Kentucky Transportation Cabinet**~~[Railroad Commission]~~.
- (2) Whenever there is, over any railroad track, a bridge, tunnel or other obstruction at a height of less than seven (7) feet above the roof of the freight cars used or hauled on that railroad, the officers of the railroad shall erect and keep in repair at or near the bridge, tunnel or obstruction, and on each side thereof, a rod or beam placed across the track at such height and at such distance from the bridge, tunnel or obstruction as the ~~cabinet~~~~[Railroad Commission]~~ directs, and from the rod or beam shall be suspended straps, ropes, or cords of such length as the ~~cabinet~~~~[commission]~~ determines, and not greater than six (6) inches apart, for a width of eight (8) feet, directly over the track.

Section 14. KRS 277.300 is amended to read as follows:

If any accident on a railroad is attended with loss of life, the company operating the road on which the accident occurred shall notify the **Kentucky Transportation Cabinet**~~[Railroad Commission]~~ within five (5) days after the accident occurred and shall furnish the ~~cabinet~~~~[commission]~~ all information requested by it concerning the cause of the accident.

Section 15. KRS 277.990 is amended to read as follows:

- (1)~~Any corporation that possesses, controls, maintains or operates any railroad or part thereof in this state in violation of the provisions of subsection (1) of KRS 277.020 shall be fined not less than one thousand dollars (\$1,000) for each offense, and any officer, agent or employee of such a corporation who assists the corporation in such a violation shall be fined not less than one hundred dollars (\$100) for each offense. Each day or part thereof that the corporation possesses, controls, maintains or operates the railroad or part thereof, and each day or part thereof that the officer, agent or employee assists therein, shall constitute a separate offense.~~
- (2)~~Any railroad company that violates or permits any of its agents or employees to violate any of the provisions of KRS 277.110, subsection (1) of 277.160, 277.170, 277.180, 277.210, 277.230 or 277.300 shall, in addition to subjecting itself to any damages that may be caused by such violation, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense, to be recovered in the Franklin Circuit Court or in the circuit court of any county through which the railroad operates a line of road.~~
- (2)~~(3)~~ Any person who violates any of the provisions of subsection (2) of KRS 277.160 shall be fined not less than five dollars (\$5) nor more than one hundred dollars (\$100) for each offense.
- (3)~~(4)~~ Any railroad company that violates, or permits any of its agents or employees to violate, any of the provisions of KRS 277.190, shall, in addition to subjecting itself to liability for any damage caused thereby, be fined not less than ten dollars (\$10) nor more than fifty dollars (\$50) for each offense. Prosecutions under this subsection shall not be commenced after six (6) months from the commission of the offense charged in the prosecution.
- (4)~~(5)~~ Any person who violates any of the provisions of KRS 277.250 shall be fined fifty dollars (\$50) or imprisoned for thirty (30) days, or both.
- (5)~~(6)~~ Any owner or operator of a railroad running through or within this state as a common carrier of persons or property or both, for compensation, who either operates for its employees, or who furnishes to its employees for their transportation to or from the place or places where they are required to labor, a rail track motor car that has not been fully equipped as required by KRS 277.245, shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense and each day or part of a day it operates or furnishes each of such rail track motor cars not so equipped as provided in KRS 277.245 to its employees for operation to or from the place or places where they are required to work shall constitute a separate offense.
- (6)~~(7)~~ Any railroad company that violates the provisions of KRS 277.200 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) for each offense. If a grade crossing or drawbridge is obstructed by two (2) or more trains stopping and standing thereon in succession without allowing

accumulated highway or water traffic to pass, the obstruction by each such successive train shall constitute a separate offense.

Section 16. KRS 506.120 is amended to read as follows:

- (1) ~~A [No]~~ person, with the purpose to establish or maintain a criminal syndicate or to facilitate any of its activities, shall **not** do any of the following:
  - (a) Organize or participate in organizing a criminal syndicate or any of its activities;
  - (b) Provide material aid to a criminal syndicate or any of its activities, whether such aid is in the form of money or other property, or credit;
  - (c) Manage, supervise, or direct any of the activities of a criminal syndicate, at any level of responsibility;
  - (d) Knowingly furnish legal, accounting, or other managerial services to a criminal syndicate;
  - (e) Commit, or conspire or attempt to commit, or act as an accomplice in the commission of, any offense of a type in which a criminal syndicate engages on a continuing basis;
  - (f) Commit, or conspire or attempt to commit or act as an accomplice in the commission of, any offense of violence;
  - (g) Commit, or conspire or attempt to commit, or act as an accomplice in the commission of bribery in violation of KRS Chapters 518 or 521, or KRS 119.205, 121.025, 121.055, 524.070, 156.465, 45A.340, 63.090, 6.080, 18A.145, or 244.600.
- (2) Whoever violates this section is guilty of engaging in organized crime, which shall be a Class B felony.
- (3) As used in this section "criminal syndicate" means five (5) or more persons collaborating to promote or engage in any of the following on a continuing basis:
  - (a) Extortion or coercion in violation of KRS 514.080~~, 276.280, 276.310,~~ or 521.020;
  - (b) Engaging in, promoting, or permitting prostitution in violation of KRS Chapter 529;
  - (c) Any theft offense as defined in KRS Chapter 514;
  - (d) Any gambling offense as defined in KRS 411.090, KRS Chapter 528, or Section 226 of the Constitution;
  - (e) Illegal trafficking in controlled substances as prohibited by KRS Chapter 218A, in intoxicating or spirituous liquor as defined in KRS Chapters 242 or 244, or in destructive devices or booby traps as defined in KRS Chapter 237;
  - (f) Lending at usurious interest, and enforcing repayment by illegal means in violation of KRS Chapter 360.

Section 17. The following KRS sections are repealed:

- 15.145 Assistant attorney general for Railroad Commission.
- 276.010 Definitions.
- 276.020 Service and facilities of common carriers to be adequate -- Rates and practices to be just and reasonable.
- 276.030 Railroad Commission to enforce laws relating to common carriers.
- 276.040 Organization of Railroad Commission -- Quorum.
- 276.050 Districts from which railroad commissioners to be elected.
- 276.060 Office of Railroad Commission -- Employees -- Salaries -- Transportation.
- 276.070 Appointments or gifts not to be solicited or accepted by, or offered to, railroad commissioner.
- 276.080 Fees for copies of records of commission.
- 276.090 Annual reports by railroads and express companies to Railroad Commission.
- 276.100 Power of Railroad Commission to secure evidence.
- 276.110 Public disclosure of information obtained by Railroad Commission.



- 276.120 Annual report of Railroad Commission to Governor.
- 276.130 Express companies and carriers by rail to publish, file and display rate schedules.
- 276.140 Written statement of rate to be given on request.
- 276.150 Deviation from rate schedule prohibited -- Special contract rates permitted.
- 276.160 Notice of change of rate schedules.
- 276.170 Hearing on proposed change in rate, classification, regulation or practice.
- 276.180 Powers of Railroad Commission as to rates, classifications, regulations and practices of express companies and carriers by water.
- 276.190 Interstate freight rates, duties of Railroad Commission concerning.
- 276.200 Joint rates and traffic agreements -- Regulations as to more than one rate, regulation or practice.
- 276.210 Rate control arrangements between carriers by water and other carriers prohibited -- One not to own interest in other.
- 276.220 Demurrage charges.
- 276.230 Long and short hauls.
- 276.240 Transportation of passengers free or at reduced rates forbidden -- Exceptions.
- 276.250 Record of passenger transportation given free or at reduced rates -- Report to Attorney General.
- 276.260 Transportation of property free or at reduced rates by express company or carrier by water forbidden -- Exceptions.
- 276.270 Transportation of persons for purpose of intimidating public officers forbidden.
- 276.280 Extortion.
- 276.290 Unjust discrimination.
- 276.300 Undue or unreasonable preference.
- 276.310 Hearings and orders as to extortion.
- 276.320 Hearings and orders as to unjust discrimination or undue or unreasonable preference.
- 276.330 Railroad Commission may hear complaints concerning common carriers or act on own motion.
- 276.340 Form of complaints -- Conduct of hearings.
- 276.350 Revocation or modification of orders of Railroad Commission.
- 276.360 Evidentiary effect of award of damages.
- 276.370 Enforcement of award or order -- Appeal.
- 276.375 Judicial review of orders of Railroad Commission.
- 276.380 Sheriff to serve summonses and orders of Railroad Commission.
- 276.390 Common carrier statutes are in addition to other laws.
- 276.400 Two railroads using same line to furnish facilities for traffic without discrimination.
- 276.410 Railroad Commission may notify railroad to make repairs or improvements.
- 276.420 Railroads to furnish accommodations for freight and passengers -- Checking of baggage.
- 276.430 Waiting rooms -- Ticket offices -- Notice of delay of train -- Announcement of stations and route.
- 276.450 Transportation of explosives by carriers -- Rules of Railroad Commission governing.
- 276.460 Unclaimed freight, express or baggage, how sold.
- 276.470 Transportation companies to issue bills of lading -- Liability for loss of or damage to freight.

- 276.480 Abandonment of passenger service.
- 276.490 Obstructing or interfering with Railroad Commission.
- 276.500 Limitation of prosecutions and actions.
- 276.510 Venue of prosecutions and actions.
- 276.550 Agreements with Federal Railroad Administration -- Approval.
- 276.990 Penalties.
- 277.020 Foreign railroad companies must incorporate in Kentucky and accept Constitution -- Effect of organization and filing prior to July 1, 1946.
- 277.030 Continuation of limited railroad grants and franchises.
- 277.100 Purchase or sale of railroad property and franchises -- Subscription to stock in other railroads.
- 277.120 Borrowing by railroad company -- Mortgages -- Bonds.
- 277.130 Plan for reorganization of insolvent railroad company.
- 277.140 Judicial approval of plan and acceptance by creditors.
- 277.150 Sale of property where no plan proposed -- Reorganization by purchasers.
- 280.160 Reorganization of insolvent companies operating bridges across boundary streams.
- 424.310 Railroad Commission hearings.

Section 18. Sections 1 to 17 of this Act shall take effect December 1, 2000, if a constitutional amendment proposing to abolish the Kentucky Railroad Commission is enacted by the 2000 General Assembly and approved by the voters in the November 2000 general election. Otherwise, Sections 1 to 17 of this Act shall be void.

**Approved April 21, 2000**

## **CHAPTER 418**

### **(SB 76)**

AN ACT relating to school-based decision making councils.

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

Section 1. KRS 160.345 is amended to read as follows:

(1) For the purpose of this section:

- (a) "Minority" means American Indian; Alaskan native; African-American; Hispanic, including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin; Pacific islander; or other ethnic group underrepresented in the school.
- (b) "School" means an elementary or secondary educational institution that is under the administrative control of a principal or head teacher and is not a program or part of another school. The term "school" does not include district-operated schools that are:
  - 1. Exclusively vocational-technical, special education, or preschool programs;
  - 2. Instructional programs operated in institutions or schools outside of the district; or
  - 3. Alternative schools designed to provide services to at-risk populations with unique needs.
- (c) "Teacher" means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers.
- (d) "Parent" means:
  - 1. A parent, stepparent, or foster parent of a student; or
  - 2. A person who has legal custody of a student pursuant to a court order and with whom the student resides.

- (2) By January 1, 1991, each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy may include a requirement that each school council make an annual report at a public meeting of the board describing the school's progress in meeting the educational goals set forth in KRS 158.6451 and district goals established by the board. The policy shall also address and comply with the following:
- (a) Except as provided in paragraph (b)2. of this subsection, each participating school shall form a school council composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. ***A parent representative on the council shall not be an employee or a relative of an employee of the school in which that parent serves, nor shall the parent representative be an employee or a relative of an employee in the district administrative offices. A parent representative***~~The teacher representatives shall be Kentucky residents. The parent representatives on the council shall not be employees of the district or employees' relatives, nor~~ shall ~~not~~***be a local board member or a board member's***~~his~~ spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees.
  - (b)
    1. The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. The parent representatives shall be elected for one (1) year terms. The parent members shall be elected by the parents of students preregistered to attend the school during the term of office in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. A school council, once elected, may adopt a policy setting different terms of office for parent and teacher members subsequently elected~~but the terms shall not exceed two (2) years nor be consecutive~~. The principal or head teacher shall be the chair of the school council.
    2. School councils in schools having eight percent (8%) or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member. If the council formed under paragraph (a) of this subsection does not have a minority member, the principal, in a timely manner, shall be responsible for carrying out the following:
      - a. Organizing a special election to elect an additional member. The principal shall call for nominations and shall notify the parents of the students of the date, time, and location of the election to elect a minority parent to the council by ballot; and
      - b. Allowing the teachers in the building to select one (1) minority teacher to serve as a teacher member on the council. If there are no minority teachers who are members of the faculty, an additional teacher member shall be elected by a majority of all teachers. Term limitations shall not apply for a minority teacher member who is the only minority on faculty.
  - (c)
    1. The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.
    2. If a school council establishes committees, it shall adopt a policy to facilitate the participation of interested persons, including, but not limited to, classified employees and parents. The policy shall include the number of committees, their jurisdiction, composition, and the process for membership selection.
  - (d) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy.
  - (e) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply.

- (f) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals.
  - (g) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council.
  - (h) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council, ***consistent with subparagraph (2)(i)(10) of this section***. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. The superintendent shall provide additional applicants upon request when qualified applicants are available.
  - (i) The school council shall adopt a policy to be implemented by the principal in the following additional areas:
    1. Determination of curriculum, including needs assessment and curriculum development;
    2. Assignment of all instructional and noninstructional staff time;
    3. Assignment of students to classes and programs within the school;
    4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;
    5. Determination of use of school space during the school day;
    6. Planning and resolution of issues regarding instructional practices;
    7. Selection and implementation of discipline and classroom management techniques as a part of a comprehensive school safety plan, including responsibilities of the student, parent, teacher, counselor, and principal;
    8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision;~~{and}~~
    9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal; ***and***
    10. ***Procedures to assist the council with consultation in the selection of personnel by the principal, including but not limited to, meetings, timelines, interviews, review of written applications, and review of references. Procedures shall address situations in which members of the council are not available for consultation.***
- (3) The policy adopted by the local board to implement school-based decision making shall also address the following:
- (a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;
  - (b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;
  - (c) School improvement plans, including the form and function of strategic planning and its relationship to district planning, as well as the school safety plan and requests for funding from the Center for School Safety under KRS 158.446;
  - (d) Professional development plans developed pursuant to KRS 156.095;

- (e) Parent, citizen, and community participation including the relationship of the council with other groups;
  - (f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;
  - (g) Requirements for waiver of district policies;
  - (h) Requirements for record keeping by the school council; and
  - (i) A process for appealing a decision made by a school council.
- (4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.
- (5) After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision making shall do so. By June 30, 1991, each local board shall submit to the chief state school officer the name of at least one (1) school which shall implement school-based decision making the following school year. The board shall select a school in which two-thirds (2/3) of the faculty vote to implement school-based decision making. If no school in the district votes to implement school-based decision making, the local board shall designate one (1) school of its choice. All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon favorable vote of a majority of the faculty at the school and a majority of at least twenty-five (25) voting parents of students enrolled in the school, a school ~~meeting its goal performing above its threshold level requirement~~ as determined by the Department of Education pursuant to KRS 158.6455 may apply to the Kentucky Board of Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. The voting by the parents on the matter of exemption from implementing school-based decision making shall be in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.
- (6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making. School council members elected for the first time shall complete a minimum of six (6) clock hours of training in the process of school-based decision making, and school council members who have served on a school council at least one (1) year shall complete a minimum of three (3) clock hours of training in the process of school-based decision making. School council training required under this subsection shall be conducted by trainers endorsed by the Department of Education, and school council members shall complete the required training no later than thirty (30) days after the beginning of the service year for which they are elected to serve. ***By November 1 of each year, the principal through the local superintendent shall forward to the Department of Education the names and addresses of each council member and verify that the required training has been completed.*** School council members elected to fill a vacancy shall complete the applicable training within thirty (30) days of their election.
- (7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making including, but not limited to, a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the chief state school officer and the Kentucky Board of Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.
- (8) The Kentucky Board of Education, upon recommendation of the chief state school officer, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council. Included in the school council formula shall be an allocation for professional development that is at least sixty-five percent (65%) of the district's per pupil state allocation for professional development for each student in average daily attendance in the school. The school council shall plan professional development with the district's coordinator and other school councils. Small schools shall be encouraged to work with other school councils to maximize professional development opportunities.

- (9) (a) No board member, superintendent of schools, district employee, or member of a school council shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (i) of subsection (2) of this section.
- (b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the Kentucky Board of Education.
- (c) The Kentucky Board of Education shall conduct a hearing in accordance with KRS Chapter 13B for complaints referred by the Office of Education Accountability.
- (d) If the state board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent, a member of a school council, or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.

**Approved April 21, 2000**

## CHAPTER 419

(SB 91)

AN ACT relating to instructional materials.

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

Section 1. KRS 156.400 is amended to read as follows:

- (1) The chief state school officer shall arrange the elementary, ***middle***, and ***high***~~secondary~~ school subjects included in the state courses of study as prescribed by the Kentucky Board of Education into six (6) adoption groups.
- (2) Contracts for each of the six (6) adoption groups shall be for a period of six (6) years and shall be executed on a staggered basis, with one (1) group being up for adoption each year. The six (6) adoption groups shall be ***arranged by similarity of content to the extent possible, while being*** arranged as nearly equal in number and purchase cost as possible. Subjects with rapidly changing or highly technical content may be considered more frequently than once during a six (6) year cycle.
- (3) The chief state school officer may delay the purchase of books due to insufficient funds, but any purchases of books shall be in accordance with KRS Chapter 156.

Section 2. KRS 156.405 is amended to read as follows:

- (1) The purpose of the State Textbook Commission is to provide a ***recommended*** list of current and high quality textbooks ***and instructional materials*** to local school districts ~~that, which~~ complement the educational program in Kentucky schools; ***to provide a consumer guide to schools to aid with the selection of materials;***~~;~~ and to provide for public participation in the ***evaluation***~~adoption~~ process.
- (2) The State Textbook Commission shall consist of the chief state school officer and ***ten (10)***~~eleven (11)~~ appointive members. The ***ten (10)***~~eleven (11)~~ members shall be appointed by the Kentucky Board of Education upon the recommendation of the chief state school officer for terms of four (4) years with two (2) appointments each year, except that every fourth year there shall be ***four (4)***~~five (5)~~ appointments. No member shall be eligible to serve more than two (2) full terms consecutively. All vacancies that occur on the State Textbook Commission shall be filled in like manner for the remainder of the unexpired terms. The ***Department of Education and the*** State Textbook Commission shall receive assistance in the textbook ***evaluation***~~selection~~ process from professionals and lay citizens who will ~~serve on a contractual basis and~~ be referred to in this chapter as the "textbook reviewers."
- (3) The State Textbook Commission shall:
  - (a) Select and direct the activities of the textbook reviewers who develop selection criteria and review textbooks and programs;

- (b) Develop selection criteria and evaluation forms with the help of the textbook reviewers *and Kentucky Department of Education staff* to be used in the state level ~~review~~~~[selection]~~ process;
  - (c) Approve the evaluative criteria and forms used by the commission and textbook reviewers;
  - (d) Review the textbook reviewers' evaluations, and textbooks or programs as it deems necessary, in order to select from them a *recommended* list of high quality ~~materials~~~~[books]~~;
  - (e) *Provide notice of and the opportunity for public inspection of textbooks and programs offered for adoption and use in the public schools;*
  - (f) *Conduct a public hearing for the purpose of receiving public comment concerning textbooks and programs under consideration;*
  - (g) Select, ~~recommend~~~~[approve]~~, and publish a list of high quality textbooks *and programs; and*
  - (h) *Publish a consumer guide and distribute it to Kentucky public schools.*
- (4) The textbook reviewers shall be comprised of twelve (12) individuals for the area or areas being considered for adoption. The textbook reviewers shall be approved by the State Textbook Commission based on the recommendation of the chief state school officer.
- (5) The textbook reviewers shall:
- (a) Develop and submit to the commission subject specific evaluative criteria to be used in reviewing textbooks *and programs*;
  - (b) Review textbooks and programs to determine those of high quality, using evaluative criteria and forms approved by the commission;
  - (c) Submit to the commission reviews and evaluative forms regarding reviewed textbooks and programs;~~and,~~
  - (d) Attend meetings and training sessions as requested by the commission and the Department of Education; *and*
  - (e) *Ensure that textbooks are free from factual error.*
- (6) (a) 1. Eight (8) of the appointive members of the State Textbook Commission shall have had not less than five (5) ~~years~~~~[years]~~ teaching or supervising experience in the public schools of Kentucky and ~~shall~~~~[must]~~ have had at the time of their appointment at least four (4) years of college training in a recognized institution of higher education.
2. Five (5) members of the commission shall be classroom teachers actively employed in the public schools of Kentucky as teachers in subject field or fields for which the commission will select books.
3. Two (2) members shall be principals, supervisors, or superintendents of public schools or public school systems.
4. One (1) member shall be a member of the faculty of a public institution of higher education engaged in teacher *preparation*~~[education]~~. ~~One (1) member shall be the executive director of the Kentucky Educational Publishers Association or any other legitimate trade association of textbook publishers recognized by the Kentucky Board of Education, but shall not represent any particular publisher. This member shall have no vote but may otherwise participate in the business of the commission].~~
5. Two (2) members shall be lay citizens, *one (1) of whom shall have a child enrolled in a public school at the time of appointment.*
- (b) In recommending the members of the State Textbook Commission the chief state school officer shall give due regard to representation from rural and urban areas and *from the*~~[both]~~ elementary, *middle* and *high*~~[secondary]~~ levels when ~~the~~~~[both]~~ educational levels are included in the subject field or fields for which adoptions are to be made~~. The lay citizens shall have children in the public elementary or secondary schools at the time of appointment].~~

- (7) Textbook reviewers shall have the following qualifications: Six (6) of the textbook reviewers shall be instructional supervisors and classroom teachers in various and appropriate grade levels primary through grade twelve (12), with experience and training in the subject areas to be reviewed. One (1) reviewer shall have expertise and training in learning theory as applied to the classroom situation. One (1) reviewer shall be a current or former university faculty member with expertise in the content area of the textbooks to be reviewed. One (1) reviewer shall have experience and training in readability and formatting of textbooks. Three (3) reviewers shall be parents, ***two (2) of whom shall have a child***~~[of children]~~ currently enrolled in public schools in Kentucky.
- (8) Members of the State Textbook Commission~~[, except the trade association member,]~~ shall receive fifty (\$50) dollars per day and reimbursement for their actual expenses while attending commission meetings. Textbook reviewers shall receive remuneration based on the amount of textbooks and programs to be reviewed and criteria to be developed as determined by the chief state school officer. Textbook reviewers~~[shall be hired through a personal service contract and remuneration]~~ shall ***be paid one hundred dollars (\$100) per day, not to exceed one thousand dollars (\$1,000)***~~[not exceed a maximum of seven hundred and fifty (\$750) dollars]~~ annually. Textbook reviewers shall also receive reimbursement for actual expenses while attending reviewer or commission meetings.
- (9) The meetings of the State Textbook Commission shall be open to the public and shall be held at least once every quarter and notice of such meeting shall be given in accordance with KRS 424.110 to 424.210.
- (10) Not later than May 1 each year the chief state school officer shall call the State Textbook Commission into session. The members of the State Textbook Commission shall elect one (1) of its voting members as chairman and shall adopt administrative regulations for the procedure of the commission. The chief state school officer shall be the secretary of the commission.

Section 3. KRS 156.407 is amended to read as follows:

- (1) The chief state school officer shall, not later than February 1 of each year in which an adoption is to be made, solicit applications for filling twelve (12) positions~~[in each subject area]~~ for textbook reviewers.~~[;]~~
- (2) Solicitation shall be statewide ***for all appointments*** and include specifications which ensure candidates have professional expertise in the subject areas to be reviewed ***if appropriate for the appointment.***~~[for are parents of children currently enrolled in public schools in Kentucky;]~~
- (3) The State Textbook Commission, at its first yearly meeting, shall select textbook reviewers based on a list of qualified applicants prepared by the chief state school officer and giving consideration to ***the***~~[his]~~ recommendations as specified in KRS 156.405.~~[;]~~
- ~~(4)[~~ The contracts for the textbook reviewers shall extend until the review of textbooks for a given year is completed, but no later than October 15.~~]~~
- ~~(5)[~~ The Department of Education's curriculum and instruction specialists shall serve as staff to the commission and reviewers. The staff shall:
  - (a) Orient and train the commission and reviewers regarding departmental policy and ***review***~~[selection]~~ procedures;
  - (b) Make available existing standards and criteria for textbook ***evaluation***~~[selection]~~; and
  - (c) Provide supplies and sample textbooks for the review process.
- ~~(5)[(6)]~~ The textbook reviewers shall develop subject specific criteria for textbook review and evaluation in the following textbook areas:
  - (a) Subject content, including its relationship to the ***academic expectations***~~[valued outcomes]~~;
  - (b) Audience;
  - (c) Format;
  - (d) Readability;~~[and]~~
  - (e) ***Accuracy; and***
  - (f) Ancillary materials.



- (6) On or before July 15, the State Textbook Commission shall develop general criteria, review and approve subject specific criteria, and provide the standard criteria and evaluation forms to be used by the commission and textbook reviewers.
- (7) Based upon approval of the standard criteria and evaluation forms, the textbook reviewers shall review textbooks and programs. The committee shall submit evaluation forms ~~for rating~~ each textbook or program reviewed in each of the five (5) areas, set forth in subsection (5)~~((6))~~ of this section, with comments related to strengths and weaknesses in each area.
- (8) The State Textbook Commission shall review the work of the textbook reviewers and based on this review and any of its own reviews of textbooks or programs, *establish a*~~[select books for the]~~ state multiple list of *recommended* textbooks *and programs. The list of recommended textbooks and programs shall be free of factual error.* Copies of all evaluation forms submitted by the textbook reviewers shall be made available to commission members and maintained on file within the Department of Education for the cycle length of the books. For those *materials*~~[textbooks]~~ placed on the state multiple list of *recommended* textbooks *and programs, the Department of Education shall publish a consumer guide that includes* summary results of the evaluations *and any factual error identified in the textbooks, and shall distribute it to all public schools in the state*~~[shall be provided to the local school districts]~~.

Section 4. KRS 156.410 is amended to read as follows:

- (1) The chief state school officer shall prepare minimum manufacturing standards, delineate content specifications, in accordance with the curriculum requirements of the program of studies for Kentucky schools: grades K-12,~~[construct score cards]~~ and formulate other criteria for use in the *evaluation*~~[selection and adoption]~~ of textbooks *and programs* in Kentucky. Criteria shall require that *all materials be suitable for use with a*~~[textbooks include the significance of the]~~ diverse *population and be free of social, ethnic, racial, religious, age, gender, and geographic bias*~~[ethnic contributors to society]~~.
- (2) It shall be the duty of the chief state school officer to prepare all necessary forms for use in the *evaluation*~~[selection and adoption]~~ of textbooks *and programs*, such as advertising for textbook bids; forms for bids, bonds, and contracts; and other forms.
- (3) The Kentucky Board of Education, upon the recommendation of the chief state school officer, shall have authority to prescribe:
  - (a) Administrative regulations pertaining to all textbook samples for use on the state and local levels; and
  - (b) Shall have authority to *promulgate*~~[prescribe]~~ administrative regulations relating to the agents and representatives of textbooks *and programs*, as to the ~~number participating and the~~ methods and procedures for use in~~[textbook]~~ adoptions on the state and local levels.
- (4) The chief state school officer, on or before May 1 prior to any adoption year, shall properly advertise the subjects for which textbook adoptions will be made and notify the different publishers of the textbooks. The publishers, on or before July 15, of any adoption year, shall file with the chief state school officer textbook samples, filing fees, textbook bids and bonds, and other specified information relative to the books that they desire to offer for adoption.
- (5) The chief state school officer shall:
  - (a) Review the bid information submitted by the publishers;
  - (b) Verify that the bid complies with the specifications; and
  - (c) Prepare a list of textbooks *and programs*, for consideration by the State Textbook Commission indicating those in compliance with the standards and specifications and those not in compliance, detailing areas of noncompliance.

Section 5. KRS 156.415 is amended to read as follows:

Before textbooks *and programs* offered for adoption and use in public schools of Kentucky may be lawfully *recommended*~~[approved]~~ and listed by the State Textbook Commission or purchased by any board of education, the person, firm, or corporation offering the *materials*~~[books]~~ for adoption and use shall file with the chief state school officer:

- (1) Copies of all textbooks **and programs** that the person, firm, or corporation desires to offer for adoption and use, with a sworn statement of the list price **and** ~~the lowest wholesale price, and the lowest exchange price, if required by the State Textbook Commission,~~ at which each of the ~~titles~~ **books** is sold in any adopting unit;
- (2) A statement that all the ~~titles~~ **books** offered for sale, adoption, **and** use, ~~and exchange~~ do comply with the standards and specifications for textbooks designated by the chief state school officer as regards paper, binding, printing, illustrations, subject matter, and other items included in the standards and specifications;
- (3) Copies of any revision or special editions of the textbooks **and programs** filed, with a statement describing in detail each point of difference from the regular edition filed, and the list price **and** ~~the lowest wholesale price, and the lowest exchange price~~ at which the revision or special edition is sold anywhere in the United States;
- (4) A fee of five dollars (\$5) for each book filed except when a series of books is filed, in which case the fee shall be five dollars (\$5) for the first book and one dollar (\$1) for each additional book in the series. The fee provided by this subsection shall be paid at each and every adoption period;
- (5) A bond running to the Commonwealth of Kentucky, executed by a surety company authorized to do business in this state, in a sum not less than two thousand dollars (\$2,000) nor more than ten thousand dollars (\$10,000), to be determined by the chief state school officer; **and**
- (6) ***An affidavit certifying any textbook the publisher or manufacturer offers in the state to be free of factual error at the time the publisher or manufacturer executes a contract.***

Section 6. KRS 156.433 is amended to read as follows:

- (1) The Kentucky Board of Education, upon recommendation of the chief state school officer, shall promulgate an administrative regulation identifying instructional materials eligible for purchase with state textbook funds. The regulation shall identify instructional materials which are subject to review before being **recommended** ~~approved~~ for use, establish a procedure for the review, and a process for adding an instructional material to the **recommended** ~~approved~~ list. The Department of Education may pay instructional materials reviewers an amount not to exceed **one thousand** ~~seven hundred fifty~~ dollars **(\$1,000)** ~~(\$750)~~ annually per reviewer for their services using funds from the appropriation for state textbooks.
- (2) The Department of Education shall establish a list of **recommended** ~~all approved~~ instructional materials for the use of school personnel.

Section 7. KRS 156.435 is amended to read as follows:

- (1) The State Textbook Commission shall, not later than September 20 of any year in which an adoption is to be made, select, **recommend** ~~approve~~, and publish a list of books or programs in each subject and grade, taking into account the needs of the various types of students ~~, indicating the student functioning level for which the textbook or program is appropriate.~~
- (2) The State Textbook Commission shall have the authority to reject any book which:
  - (a) Contains subversive material or information that is offered for listing or adoption. If the commission finds on the multiple list any book which contains subversive material or information, provided the publisher of the book has been given written notice by the secretary of the commission not less than thirty (30) days prior to the meeting, the textbook commission shall have authority to remove the book from the state multiple list;
  - (b) Is in noncompliance with standards and specifications set forth in KRS 156.410; or
  - (c) Is not of high quality in terms of the content provided, the audience addressed, the format used, the readability of material or the ancillary materials provided the teacher and students.
- (3) The State Textbook Commission shall have the authority to **solicit additions for** ~~add books to~~ the state list when the list does not contain books **or materials** for subjects added to the state courses of study.
- (4) The chief state school officer shall make and execute contracts for the **recommended textbooks and programs** ~~selected books~~ with the publishers on or before **May** ~~January~~ 1 following the **establishment of the state multiple list of recommended titles** ~~approval of the books~~ selected by the commission. Except as described in KRS 156.400, all contracts shall run for six (6) years.

- (5) The chief state school officer shall prepare a multiple list of **recommended textbooks**~~[the selected books]~~ or programs and publish the list **along with a consumer guide** and **distribute the documents**~~[send a copy]~~ to the superintendents of each county and independent school district in Kentucky on or before **November**~~[October]~~ 15 of each adoption year.

Section 8. KRS 156.437 is amended to read as follows:

The Kentucky Board of Education, upon the recommendation of the chief state school officer, shall have the authority to prescribe administrative regulations for the **recommended** listing by the State Textbook Commission, adoption by local adoption units, and the purchase of subject programs for the pupils in the public schools.

Section 9. KRS 156.439 is amended to read as follows:

- (1) The Kentucky Board of Education shall promulgate by administrative regulations the method for calculating and distributing a district's textbook and instructional materials allocation. The district's allocation shall be used by schools to purchase:
- (a) Textbooks **and programs** from the state **recommended**~~[adoption]~~ list;
  - (b) Textbooks **and programs** not on the state's **recommended**~~[approved]~~ list, if **notification**~~[evidence]~~ is submitted **to the Department of Education** that the **material**~~[textbook]~~ meets the selection criteria of the State Textbook Commission in KRS 156.405(3)(b),~~[and]~~ the subject specific criteria of the textbook reviewers pursuant to KRS 156.407(5) **and compliance with the required publisher specifications**~~[(6)]~~;
  - (c) Instructional materials, with an approved plan pursuant to subsection (2) of this section; or
  - (d) Any combination of the above.
- (2) The district shall identify all purchases made with the textbook and instructional materials allocation and shall keep on file a plan developed by each school, in accordance with administrative regulations promulgated by the Kentucky Board of Education, for providing the necessary textbooks and instructional materials for all grades, and subject areas, including the replacement of books and materials during the six (6) year adoption period. A school may carry forward to the next school year any part of its textbook and instructional materials allocation which has been distributed to the district. If a local board does not approve a school council's plan, the council may appeal to the commissioner and an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 10. KRS 156.440 is amended to read as follows:

- ~~[(1) Textbook.]~~ Publishers, upon the request of the superintendents of the county and independent school districts, shall furnish to the local boards of education the requested sample copies of their **materials**~~[books]~~ that were selected and placed on the state multiple list of **recommended** textbooks by the State Textbook Commission.
- ~~[(2) Unless otherwise provided by the General Assembly in a budget bill, the board of education of each county and independent school district shall, upon the recommendation of its superintendent and not later than April 15 of any adoption year, select from the state multiple list books or programs for each subject and grade which may be selected for use as a basal text in its school system for a period of six (6) years, and any extensions thereof.~~
- ~~[(3) After the local board of education has adopted the basal textbooks which may be used in the district, and not later than April 20, the superintendent of schools shall send to the chief state school officer a complete list of books adopted properly certified by the chairman and secretary of the board of education.]~~

Section 11. KRS 156.445 is amended to read as follows:

- (1) No textbook **or program** shall be used in any public school in Kentucky as a basal **title**~~[textbook]~~ unless it has been **recommended**~~[approved]~~ and listed on the state multiple list~~[of textbooks]~~ by the State Textbook Commission or unless a school **and** district has **met the notification requirements under**~~[applied for and received a waiver of this requirement from the Kentucky Board of Education pursuant to]~~ subsection (2) of this section. Any changes of textbooks made by the State Textbook Commission shall not become effective until grades and classes of the respective county and independent school districts have completed work for which the adopted book then in use was originally intended. Nothing in this section shall apply to the supplementary books that are needed from time to time.

- (2) ~~A [local school board or] school council, or if none exists, the principal, may notify, through the superintendent, [apply to] the State Textbook Commission that it plans [Kentucky Board of Education] to adopt a basal textbook or program that [which] is not on the recommended [multiple] list, by submitting evidence that the title [textbook] it has chosen meets the selection criteria of the State Textbook Commission in KRS 156.405(3)(b), [and] the subject specific criteria of the textbook reviewers pursuant to KRS 156.407(5) and complies with the required publisher specifications [(6)].~~
- (3) In approving text materials for private and parochial schools for the purpose of KRS 156.160(3) ~~the [such]~~ text materials shall be approved if they are comprehensive and appropriate to the grade level in question notwithstanding the fact that they may contain elements of religious philosophy.

Section 12. KRS 156.470 is amended to read as follows:

A copy of *all recommended titles* ~~[each textbook]~~ listed by the State Textbook Commission shall remain in ~~an [the]~~ office *specified by* ~~[of]~~ the chief state school officer as an official sample for the period of the adoption. ~~After the adoption period such samples shall be sold by the Kentucky Board of Education.~~

Section 13. KRS 156.476 is amended to read as follows:

- (1) The Kentucky Board of Education, upon the recommendation of the chief state school officer, shall select suitable textbooks *and programs in an appropriate format*, which include braille textbooks, and other materials *available* ~~[printed]~~ in clear type of eighteen (18) to twenty-four (24) points in the different subject areas for children with impaired vision who are attending the public schools of the Commonwealth of Kentucky in grades kindergarten through twelve (12). These *books* ~~[textbooks]~~ and materials shall not be subject to the official ~~[textbook]~~ bids, filing fees, ~~[textbook]~~ sampling, and the stipulated list prices, lowest wholesale prices, ~~[exchange prices,]~~ and the standards and specifications required for the *books and materials* ~~[textbooks]~~ approved and listed by the State Textbook Commission for regular use by the pupils attending the public schools of the State of Kentucky. The Kentucky Board of Education, upon the recommendation of the chief state school officer, may *promulgate an* ~~[prescribe]~~ administrative *regulation* ~~[regulations for]~~ determining the pupils eligible for the books *and materials*, the number of books *and types of materials* to be purchased, and the general administration of the program. The chief state school officer, subject to the approval of the Kentucky Board of Education, may purchase these books *and materials* and distribute them without cost to the pupils with impaired vision attending the public schools of the state. All *books and programs* ~~[textbooks]~~ purchased under this section for the pupils with impaired vision are the property of the state.
- (2) The Department of Education shall require any publisher of a textbook *or program* adopted for use in the public schools of the Commonwealth to furnish the American Printing House for the Blind with computer diskettes or tapes of those *print materials* ~~[books]~~ either in the American Standard Code for Information Interchange, (ASCII), or in any other format, *either electronic or print*, which can be readily translated into braille *or large print* ~~[by the American Printing House for the Blind]~~.

Section 14. KRS 157.100 is amended to read as follows:

*The Commonwealth of Kentucky shall provide funds for textbooks, programs, and other instructional materials that shall be distributed under an administrative regulation promulgated by the Kentucky Board of Education* ~~[chief state school officer, subject to the approval of the Kentucky Board of Education, shall purchase textbooks from the publishers whose books have been adopted by the State Textbook Commission and may purchase from any publisher other related media not approved by the State Textbook Commission and distribute them]~~ without cost to pupils attending grades kindergarten through twelve (12) of the public schools of the state, in the manner and upon the conditions set out in KRS 157.110 and 157.180.

Section 15. KRS 157.145 is amended to read as follows:

- ~~[(1)]~~ The chief state school officer shall each year cause textbooks *that* ~~[which]~~ have not been made obsolete by new adoptions and *that* ~~[which, in his discretion,]~~ are in need of, and have valid content justifying rebinding, to be rebound *by entering into a contract with a bindery who will perform services for districts within the Commonwealth of Kentucky at a state contract price* ~~[upon request of the local districts.]~~
- ~~[(2)]~~ ~~When the chief state school officer has received requests for rebinding, he shall prepare necessary forms to be mailed to the bindery under contract with the Commonwealth of Kentucky. Instructions for pick up and delivery are to be given to the bindery and local district by the chief state school officer.~~

- ~~(3) Upon receipt of invoices from the bindery, the chief state school officer shall cause departmental purchase order forms to be prepared and mailed to the superintendent. The departmental purchase order form shall be checked against books rebound and returned to the Department of Education authorizing payment of the invoice.~~

Section 16. KRS 157.150 is amended to read as follows:

All textbooks purchased under the provisions of KRS 157.100 ~~shall be~~<sup>are</sup> the property of the state. Each superintendent ~~shall be~~<sup>is</sup> making requisition for the books ~~is~~ custodian of the books in ~~the~~<sup>his</sup> district. ~~The superintendent~~<sup>He</sup> shall issue the books to the various schools in ~~the~~<sup>his</sup> district according to ~~an administrative regulation promulgated~~<sup>rules and regulations formulated by the chief state school officer and approved</sup> by the Kentucky Board of Education.

Section 17. KRS 157.160 is amended to read as follows:

The chief state school officer, subject to the approval of the Kentucky Board of Education, shall ***promulgate an administrative regulation***~~[make rules and regulations]~~ for the disposal of textbooks ***and programs*** ~~that~~<sup>which</sup> will no longer be used for instruction. Each superintendent may make obsolete ***books and materials***~~[textbooks]~~ available to the residents of his district. He may publicize in the newspaper the availability of the books ***and materials*** and the procedure for obtaining them in accordance with this section. Any funds accruing from the sale of the books ***and materials*** shall be paid into the local district's account.

Section 18. KRS 157.170 is amended to read as follows:

The chief state school officer, subject to the approval of the Kentucky Board of Education, shall ***promulgate an administrative regulation***~~[make rules and regulations]~~ governing the sale of ***books and materials***~~[textbooks]~~ by superintendents to pupils, parents, or guardians of pupils attending the public schools of the state who desire to hold ***books and materials***~~[textbooks]~~ as their own property. Superintendents shall not sell ***books and materials***~~[textbooks]~~ to private or sectarian schools. Books ***and materials*** sold under this section shall be sold at the retail contract price. Funds accruing from the sales shall be paid into the local district's account.

Section 19. KRS 157.190 is amended to read as follows:

***The Kentucky Department of Education shall cooperate with the Kentucky Educational Collaborative for State Agency Children to distribute funds for textbooks, programs, and instructional materials for use by children placed in facilities and programs operated or contracted by the Department of Juvenile Justice or the Cabinet for Families and Children's residential, day treatment, clinical, and group home programs.***

- ~~{(1) The chief state school officer, subject to the approval of the Kentucky Board of Education, shall provide basally adopted textbooks without cost to all children between the ages of six (6) and eighteen (18) who are confined in any state correctional institution in this state and who are regularly enrolled in classes of elementary and secondary grades. The textbooks shall be provided upon requisitions made by the person or persons in charge of the correctional institution.~~
- ~~(2) The chief state school officer may have an investigation made, at any time, to determine the need for the number and kinds of books requisitioned and to determine if the books are being properly maintained. If he finds anything improper about the requisitioning and use of the books, he shall report it to the Kentucky Board of Education.~~
- ~~(3) The books provided pursuant to this section shall be paid for out of the appropriations for the purchase of free textbooks for pupils attending public schools.~~

Section 20. The following KRS sections are repealed:

- 156.450 Distribution of books -- Agents.
- 156.455 Purchase of books from pupil moving from district.
- 157.120 Requisitions for books -- Shipments -- Invoices.
- 157.130 Regulations governing textbooks.

**Approved April 21, 2000**

**CHAPTER 420****(SB 107)**

AN ACT relating to venue.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 452 IS CREATED TO READ AS FOLLOWS:

*In civil actions, when the judge of the court in which the case was filed determines that the court lacks venue to try the case due to an improper venue, the judge, upon motion of a party, shall transfer the case to the court with the proper venue.*

**Approved April 21, 2000**

**CHAPTER 421****(SB 111)**

AN ACT relating to disclosure requirements for nursing facilities.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

- (1)
  - (a) *Any long-term care facility as defined in KRS 216.535 or long-term care facility constructed under KRS 216B.071 that claims to provide special care for persons with a medical diagnosis of Alzheimer's disease or other related disorders shall maintain a written and current manual that contains the information specified in subsection (2) of this section. This manual shall be maintained in the office of the facility's director and shall be made available for inspection upon request of any person. The facility shall make a copy of any program or service information contained in the manual for a person who requests information about programs or services, at no cost to the person making the request.*
  - (b) *Any advertisement of the facility shall contain the following statement: "Written information relating to this facility's services and policies is available upon request."*
  - (c) *The facility shall post a statement in its entrance or lobby as follows: "Written information relating to this facility's services and policies is available upon request."*
- (2) *The facility shall maintain and update written information on the following:*
  - (a) *The long-term care facility's mission or philosophy statement concerning the needs of residents with Alzheimer's disease or related disorders;*
  - (b) *The process and criteria the long-term care facility uses to determine placement into services for persons with Alzheimer's disease or related disorders;*
  - (c) *The process and criteria the long-term care facility uses to transfer or discharge persons from special services for Alzheimer's or related disorders;*
  - (d) *The supervision provided for residents with a medical diagnosis of Alzheimer's disease or related disorders;*
  - (e) *The family's role in care;*
  - (f) *The process for assessing, planning, implementing, and evaluating the plan of care for persons with Alzheimer's disease or related disorders;*
  - (g) *A description of any special care services for persons with Alzheimer's disease or other related disorders; and*
  - (h) *Any costs associated with specialized services for Alzheimer's disease or related disorders.*

**Approved April 21, 2000**

**CHAPTER 422****(SB 128)**

AN ACT relating to medical treatment of mentally ill persons.

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

Section 1. KRS 202A.161 is amended to read as follows:

Any person admitted to a hospital pursuant to the provisions of this chapter shall be initially examined by an authorized staff physician of the hospital *or, with permission of the facility's governing body and in accordance with the applicable provisions of the facility's medical staff bylaws, policies, and procedures, a physician assistant as defined in KRS 311.550, or an advanced registered nurse practitioner licensed under KRS Chapter 314* as soon as practicable but not later than thirty-six (36) hours (excluding weekends and holidays) and a report entered into the medical record not later than forty-eight (48) hours (excluding weekends and holidays) after his admission.

SECTION 2. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

- (1) *A physician assistant, credentialed under KRS Chapter 311, when those duties and responsibilities are within the scope of training received in an approved program and within the scope of the supervising physician's practice, or an advanced registered nurse practitioner licensed under KRS Chapter 314, may:*
  - (a) *Perform a history and physical examination for a patient admitted to an acute care or psychiatric hospital licensed under this chapter; and*
  - (b) *Order and review continuation of restraints and seclusion as a health care practitioner in accordance with 42 C.F.R. 482.13.*
- (2) *A history and physical examination shall be performed no more than seven (7) days before or twenty-four (24) hours after a patient is admitted to an acute care or psychiatric hospital licensed under this chapter.*
- (3) *The history and physical examination that has been performed in compliance with subsection (2) of this section is transferable to another licensed level of care within the same hospital.*
- (4) *The Cabinet for Health Services shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish the content of the history and physical examination required by subsection (2) of this section performed in an acute or psychiatric hospital that shall be used by the licensing entity.*

**Approved April 21, 2000**

**CHAPTER 423****(SB 139)**

AN ACT relating to the use, sale, and distribution of tobacco products.

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

Section 1. KRS 438.305 is amended to read as follows:

As used in KRS 438.305 to 438.340, unless the context requires otherwise:

- (1) ~~"Department" means the Department of Agriculture;~~
- ~~(2)~~ "Manufacturer" means any person who manufactures or produces tobacco products within or without this Commonwealth;
- ~~(2)~~~~(3)~~ "Nonresident wholesaler" means any person who purchases cigarettes or other tobacco products directly from the manufacturer and maintains a permanent location or locations outside this state at which Kentucky cigarette tax evidence is attached or from which Kentucky cigarette tax is reported and paid;
- ~~(3)~~~~(4)~~ "Proof of age" means a driver's license or other documentary or written evidence that the individual is eighteen (18) years of age or older;
- ~~(4)~~~~(5)~~ "Resident wholesaler" means any person who purchases at least seventy-five percent (75%) of all cigarettes or other tobacco products purchased by that person directly from the cigarette manufacturer on

which the cigarette tax provided for in KRS 138.130 to 138.205 is unpaid, and who maintains an established place of business in this state at which the person attaches cigarette tax evidence or receives untaxed cigarettes;

~~(5)(6)}~~ "Sample" means a tobacco product distributed to members of the general public at no cost;

~~(6)(7)}~~ "Subjobber" means any person who purchases tobacco products, on which the Kentucky cigarette tax has been paid, from a wholesaler licensed pursuant to KRS 138.195, and makes them available to a retail establishment for resale.

Section 2. KRS 438.310 is amended to read as follows:

- (1) No person shall sell or cause to be sold any tobacco product at retail to any person under the age of eighteen (18), or solicit any person under the age of eighteen (18) to purchase any tobacco product at retail.
- (2) Any person who sells tobacco products at retail shall cause to be posted in a conspicuous place in his establishment a notice stating that it is illegal to sell tobacco products to persons under age eighteen (18).
- (3) Any person selling tobacco products shall require proof of age from a prospective buyer or recipient if the person has reason to believe that the prospective buyer or recipient is under the age of eighteen (18).
- (4) A person who violates subsection (1) or (2) of this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for a first violation and a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) for any subsequent violation. The fine shall be administered by the Department *of Alcoholic Beverage Control* using a civil enforcement procedure.

Section 3. KRS 438.311 is amended to read as follows:

- (1) Except for the provisions of KRS 438.330, it shall be unlawful for a person who has not attained the age of eighteen (18) years to purchase or accept receipt of or to attempt to purchase or accept receipt of a tobacco product, or to present or offer to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product. It shall not be unlawful for such a person to accept receipt of a tobacco product from a family member, or from an employer when required in the performance of the person's duties.
- (2) Violation of this section shall be punishable by a fine of fifty dollars (\$50) and twenty (20) hours of community service work for a first offense within a one (1) year period, and a fine of two hundred dollars (\$200) and forty (40) hours of community service work for a second or subsequent offense within a one (1) year period.
- (3) This offense shall be deemed a status offense and shall be under the jurisdiction of the juvenile session of the District Court.
- (4) All peace officers with general law enforcement authority and employees of the Department *of Alcoholic Beverage Control* may issue a uniform citation, but not make an arrest or take a child into custody, for a violation of this section. If a child fails to appear in court in response to a uniform citation issued pursuant to the section, the court may compel the attendance of the defendant in the manner specified by law.

Section 4. KRS 438.313 is amended to read as follows:

- (1) No wholesaler, retailer, or manufacturer of cigarettes or tobacco products may distribute cigarettes or tobacco products, including samples thereof, free of charge or otherwise, to any person under the age of eighteen (18).
- (2) Any person who distributes cigarettes or tobacco products, including samples thereof, free of charge or otherwise shall require proof of age from a prospective buyer or recipient if the person has reason to believe that the prospective purchaser or recipient is under the age of eighteen (18).
- (3) Any person who violates the provisions of this section shall be fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500) for each offense. The fine shall be administered by the Department *of Alcoholic Beverage Control* using a civil enforcement procedure for persons eighteen (18) years of age or older. For persons under the age of eighteen (18) years, the offense shall be deemed a status offense and shall be under the jurisdiction of the juvenile session of the District Court.
- (4) All peace officers with general law enforcement authority and employees of the Department *of Alcoholic Beverage Control* may issue a uniform citation, but may not make an arrest, or take a child into custody, for a violation of this section. If a child fails to appear in court in response to a uniform citation issued pursuant to this section, the court may compel the attendance of the defendant in the manner specified by law.

Section 5. KRS 438.315 is amended to read as follows:



- (1) The sale of tobacco products dispensed through a vending machine is prohibited to any person under the age of eighteen (18) years.
- (2) The purchase of tobacco products dispensed through a vending machine is prohibited to any person under the age of eighteen (18) years.
- (3) Except for vending machines located in factories or vending machines located in bars or taverns to which minors are not permitted access, beginning one (1) year after July 15, 1994, any vending machine from which tobacco products are dispensed shall be located in the line of sight of the cashier for the retail establishment.
- (4) Any owner of a retail establishment violating this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation. The fine shall be administered by the Department *of Alcoholic Beverage Control* using a civil enforcement procedure for persons eighteen (18) years of age or older. For persons under the age of eighteen (18) years, the offense shall be deemed a status offense and shall be under the jurisdiction of the juvenile session of the District Court.
- (5) All peace officers with general law enforcement authority and employees of the Department *of Alcoholic Beverage Control* may issue a uniform citation, but may not make an arrest, or take a child into custody, for a violation of this section. If a child fails to appear in court in response to a uniform citation issued pursuant to this section, the court may compel the attendance of the defendant in the manner specified by law.

Section 6. KRS 438.317 is amended to read as follows:

- (1) No person shall sell or cause to be sold at retail cigarettes packaged in units of fewer than twenty (20) cigarettes.
- (2) No resident wholesaler, nonresident wholesaler, or subjobber shall make available to a retail establishment cigarettes packaged for retail sale in units of less than twenty (20) cigarettes.
- (3) Any person violating subsection (1) of this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Any person violating subsection (2) of this section shall be fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500). These penalties shall be enforced by the Department *of Alcoholic Beverage Control* through civil enforcement procedures.

Section 7. KRS 438.320 is amended to read as follows:

Each resident wholesaler, nonresident wholesaler, or subjobber making tobacco products available to a retail establishment for sale or distribution shall report the name and address of the owner of the retail establishment to the Department *of Alcoholic Beverage Control* in a manner specified by administrative regulations promulgated pursuant to KRS Chapter 13A.

Section 8. KRS 438.325 is amended to read as follows:

- (1) Each owner of a retail establishment selling or distributing tobacco products shall notify each individual employed in the retail establishment as a retail sales clerk that the sale of tobacco products to any person under the age of eighteen (18) years and the purchase of tobacco products by any person under the age of eighteen (18) years are prohibited.
- (2) Each owner of a retail establishment selling or distributing tobacco products shall notify each individual employed in the retail establishment as a retail sales clerk that proof of age is required from a prospective buyer or recipient if the person has reason to believe that the prospective purchaser or recipient is under the age of eighteen (18).
- (3) The notice to employees that is required in subsection (1) of this section shall be provided before the person commences work as a retail sales clerk, or, in the case of a person employed as a retail sales clerk on July 15, 1994, within thirty (30) days of that date. The employee shall signify receipt of the notice required by this section by signing a form that states as follows:

"I understand that under the law of the Commonwealth of Kentucky it is illegal to sell or distribute tobacco products to persons under the age of eighteen (18) years and that it is illegal for persons under the age of eighteen (18) years to purchase tobacco products."

- (4) The owner of the retail establishment shall maintain the signed notice that is required pursuant to subsection (3) of this section in a place and in a manner so as to be easily accessible to any ~~department~~ employee *of the Department of Alcoholic Beverage Control or the Department of Agriculture* conducting an inspection of the

retail establishment for the purpose of monitoring compliance in limiting the sale or distribution of tobacco products to persons under the age of eighteen (18) as provided in KRS 438.305 to 438.340.

- (5) Any owner of the retail establishment violating subsections (1) to (4) of this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation. The fine shall be administered by the Department *of Alcoholic Beverage Control* in a civil enforcement procedure.

SECTION 9. A NEW SECTION OF KRS 438.305 TO 438.340 IS CREATED TO READ AS FOLLOWS:

- (1) *Except for violations of the provisions of Sections 3, 4, and 5 of this Act by a juvenile, which shall be under the jurisdiction of the juvenile session of the District Court, the Department of Alcoholic Beverage Control shall carry out the enforcement provisions of KRS 438.305 to 438.340.*
- (2) *The Department of Alcoholic Beverage Control shall be entitled to the revenue produced by one-twentieth of one cent (\$0.0005) of the three-cent (\$0.03) per pack revenue collected by the Revenue Cabinet from the state excise tax on the sale of cigarettes as imposed by KRS 138.140 to be deposited in a trust and agency account created in the State Treasury, and to keep fifty percent (50%) of any fines collected under KRS 438.305 to 438.340 to offset the costs of enforcement of KRS 438.305 to 438.340.*
- (3) *The Department of Alcoholic Beverage Control shall be responsible for maintaining statistics for compilation of required reports to be submitted to the United States Department of Health and Human Services.*
- (4) *The Department of Alcoholic Beverage Control shall devise a plan and time frame for enforcement to determine by random inspection if the percentage of retailers or distributors making illegal sales to minors does or does not exceed federal guidelines preventing tobacco sales to minors.*

Section 10. KRS 438.330 is amended to read as follows:

- (1) The Department *of Alcoholic Beverage Control and the Department of Agriculture* shall carry out annually-conducted random, unannounced inspections of retail establishments where tobacco products are sold or distributed for the purpose of enforcing the provisions of KRS 438.305 to 438.340. The inspections shall be conducted to the extent necessary to assure that the Commonwealth remains in compliance with Public Law 102-321 and applicable federal regulations. The ~~departments~~*department* shall also ensure that targeted inspections are conducted at those retail establishments where, and at those times when, persons under the age of eighteen (18) years are most likely to purchase tobacco products. Persons under the age of eighteen (18) years may be used to test compliance with the provisions of KRS 438.305 to 438.340 only if the testing is conducted under the direct supervision of the Department *of Alcoholic Beverage Control*, sheriff, or chief of police, or their employees, and written parental consent has been obtained. The Department *of Alcoholic Beverage Control* shall prepare annually, for submission by the Governor to the Secretary of the United States Department of Health and Human Services, the report required by Section 1926 of Subpart 1 of Part B of Title XIX of the Federal Public Health Service Act.
- (2) The Department of *Alcoholic Beverage Control*~~[Agriculture]~~ shall develop and implement the survey sampling methodologies to carry out the inspections as described in this section.

Section 11. KRS 438.335 is amended to read as follows:

~~[Except for the provisions of KRS 438.311 and for the provisions of KRS 438.311 and 438.315, if committed by juveniles, which shall be under the jurisdiction of the juvenile session of the District Court, ]~~The Department of Agriculture shall *carry out the provisions of*~~[enforce]~~ KRS 438.305 to 438.340 *as they relate to educating the public and sellers of tobacco products about provisions and penalties of KRS 438.305 to 438.340.* The Department of *Agriculture* shall be entitled to the revenue produced by *one-twentieth*~~[one-tenth]~~ of one cent (*\$0.0005*)~~[( \$0.001 )]~~ of the three-cent (\$0.03) per pack revenue collected by the Revenue Cabinet from the state excise tax on the sale of cigarettes as imposed by KRS 138.140 and *to keep fifty*~~[one hundred]~~ percent (*50%*)~~[(100%)]~~ of any fines collected under KRS 438.305 to 438.340 to offset the costs of *these education efforts*~~[enforcement of KRS 438.305 to 438.340]~~.

Section 12. KRS 438.340 is amended to read as follows:

The *Department of Alcoholic Beverage Control and the Department of Agriculture* ~~are~~*is* authorized to promulgate administrative regulations pursuant to KRS Chapter 13A as necessary to implement and carry out the provisions of KRS 438.305 to 438.340.

**CHAPTER 424****(SB 159)**

AN ACT relating to coroners.

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

Section 1. KRS 64.185 is amended to read as follows:

- (1) Coroners shall receive out of the county or urban-county treasury, whichever is appropriate, the monthly compensation the fiscal court of each county shall fix, subject to the following minimums:

	County Population	Monthly Minimum Compensation
(a)	10,000 or less	\$ 200
(b)	10,001 to 20,000	300
(c)	20,001 to 40,000	350
(d)	40,001 to 60,000	400
(e)	60,001 to 100,000	450
(f)	100,001 to 150,000	800
(g)	150,001 or more	1,000

Coroners who hold a current certificate of continuing education, issued jointly by the Department of Criminal Justice Training, Justice Cabinet, and the Division of Kentucky State Medical Examiners Office, Justice Cabinet, shall be paid the following minimum monthly compensation set forth in this subsection in recognition of the training:

	County Population	Monthly Minimum Compensation
(a)	10,000 or less	\$ <del>400</del> <del>[300]</del>
(b)	10,001 to 20,000	<del>500</del> <del>[400]</del>
(c)	20,001 to 40,000	<del>650</del> <del>[550]</del>
(d)	40,001 to 60,000	<del>750</del> <del>[650]</del>
(e)	60,001 to 100,000	<del>850</del> <del>[750]</del>
(f)	100,001 to 150,000	<del>1,100</del> <del>[1,000]</del>
(g)	150,001 or more	<del>1,300</del> <del>[1,200]</del>

- (2) Deputy coroners, who hold a current certificate of continuing education, as described in subsection (1) of this section, shall receive out of the county or urban-county treasury, whichever is appropriate, the monthly compensation the fiscal court of each county shall fix, subject to the following minimums:

	County Population	Monthly Minimum Compensation
(a)	10,000 or less	<del>\$200</del> <del>[100]</del>
(b)	10,001 to 20,000	<del>250</del> <del>[150]</del>
(c)	20,001 to 40,000	<del>275</del> <del>[175]</del>
(d)	40,001 to 60,000	<del>300</del> <del>[200]</del>
(e)	60,001 to 100,000	<del>400</del> <del>[300]</del>

- (f) 100,001 to 150,000 ~~900~~~~[800]~~
- (g) 150,001 or more ~~1,100~~~~[1,000]~~
- (3) *The fiscal court of any county, urban-county, or charter county government, may compensate coroners and deputy coroners an additional amount of up to three hundred dollars (\$300) per month as an expense allowance.*
- (4) The initial course of continuing education required under subsection (1) of this section shall consist of a basic training course prescribed by the Justice Cabinet. Annually thereafter the coroner shall attend and successfully complete at least eighteen (18) hours of approved training in order to be compensated in accordance with subsection (1) of this section.
- ~~(5)~~~~(4)~~ If a deputy coroner assumes the office of coroner after receiving the training stipulated in this section, the deputy coroner shall be compensated in accordance with the compensation schedule set forth in subsection (1) of this section.
- ~~(6)~~~~(5)~~ The number of deputy coroners in a county shall not exceed one (1) for each twenty-five thousand (25,000) inhabitants, or fraction thereof, according to the most recent federal census, but every coroner may, subject to fiscal court approval, appoint two (2) deputy coroners, regardless of population.

**Approved April 21, 2000**

## CHAPTER 425

(SB 163)

AN ACT relating to cities and counties.

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

Section 1. KRS 68.197 is amended to read as follows:

- (1) The fiscal court of each county having a population of thirty thousand (30,000) or more may by ~~ordinance~~~~[order or resolution]~~ impose license fees on franchises, provide for licensing any business, trade, occupation, or profession, and the using, holding, or exhibiting of any animal, article, or other thing. License fees on such business, trade, occupation, or profession for revenue purposes, except those of the common schools, may be imposed at a percentage rate not to exceed one percent (1%) of:
  - (a) Salaries, wages, commissions, and other compensation earned by persons within the county for work done and services performed or rendered in the county;
  - (b) The net profits of self-employed individuals, partnerships, professional associations, or joint ventures resulting from trades, professions, occupations, businesses, or activities conducted in the county; and
  - (c) The net profits of corporations resulting from trades, professions, occupations, businesses, or activities conducted in the county.

In order to reduce administrative costs and minimize paperwork for employers, employees, and businesses, the fiscal court may provide:

- 1. For an annual fixed amount license fee which a person may elect to pay in lieu of reporting and paying the percentage rate as provided in this subsection on salaries, wages, commissions, and other compensation earned within the county for work done and services performed or rendered in the county; and
- 2. For an annual fixed amount license fee which an individual, partnership, professional association, joint venture, or corporation may elect to pay in lieu of reporting and paying the percentage rate as provided in this subsection on net profits of businesses, trades, professions, or occupations from activities conducted in the county.

Licenses imposed for regulatory purposes are not subject to such limitations as to form and amount. No public service company that pays an ad valorem tax is required to pay a license tax, and no license tax shall be imposed upon or collected from any insurance company except as provided in KRS 91A.080, bank, trust company, combined bank and trust company, combined trust, banking, and title business in this state, or any

savings and loan association whether state or federally chartered, or in other cases where the county is prohibited by law from imposing a license tax.

- (2) No license fee shall be imposed or collected on income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training, or on income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections.
- (3) Persons who pay a county license fee pursuant to this section and who also pay a license fee to a city contained in the county may, upon agreement between the county and the city, credit their city license fee against their county license fee.
- (4) The provisions of subsection (3) of this section notwithstanding, effective with license fees imposed under the provisions of subsection (1) of this section on or after July 15, 1986, persons who pay a county license fee and a license fee to a city contained in the county shall be allowed to credit their city license fee against their county license fee.
- (5) ***On the effective date of this Act, the provisions of subsection (4) of this section notwithstanding, city license fees not credited against county license fees, enacted under this section or KRS 67.083, as of January 1, 2000, shall not be credited against county license fees. However, this exception shall not apply to county license fees enacted for the first time, or increased, on or after January 1, 2000. This provision shall expire July 15, 2002, unless otherwise extended by the General Assembly.***
- (6) ***A county that enacted an occupational license fee under the authority of KRS 67.083 shall not be required to reduce its occupational tax rate when it is determined that the population of the county exceeds thirty thousand (30,000).***

Section 2. KRS 91A.080 is amended to read as follows:

- (1) The legislative body of each city, county, or urban-county government which elects to impose and collect license fees or taxes upon insurance companies for the privilege of engaging in the business of insurance may enact or change its license fee or rate of tax to be effective July 1 of each year on a prospective basis only and shall file with the commissioner of insurance at least one hundred (100) days prior to the effective date, a copy of all ordinances and amendments which impose any such license fee or tax. No less than eighty-five (85) days prior to the effective date, the commissioner of insurance shall promptly notify each insurance company engaged in the business of insurance in the Commonwealth of those cities, county, or urban-county governments which have elected to impose the license fees or taxes and the current amount of the license fee or rate of tax.
- (2) Any license fee or tax imposed by a city, county, or urban-county government upon an insurance company with respect to life insurance policies, may be based upon the first year's premiums, and if so based, shall be applied to the amount of the premiums actually collected within each calendar quarter upon the lives of persons residing within the corporate limits of the city, county, or urban-county government.
- (3) Any license fee or tax imposed by a city, county, or urban-county government upon any insurance company with respect to any policy which is not a life insurance policy shall be based upon the premiums actually collected by the company within each calendar quarter on risks located within the corporate limits of the city, county, or urban-county government on those classes of business which the company is authorized to transact, less all premiums returned to policyholders. In determining the amount of license fee or tax to be collected and to be paid to the city, county, or urban-county government, the insurance company shall use the tax rate effective on the first day of the policy term. When an insurance company collects a premium as a result of a change in the policy during the policy term, the tax rate used shall be the rate in effect on the effective date of the policy change. With respect to premiums returned to policyholders, the license fee or tax shall be returned by the insurance company to the policyholder pro rata on the unexpired amount of the premium at the same rate at which it was collected and shall be taken as a credit by the insurance company on its next quarterly report to the city, county, or urban-county government. Any license fee or tax imposed upon premium receipts shall not include premiums received for insuring employers against liability for personal injuries to their employees, or the death of their employees, caused thereby, under the provisions of the Workers' Compensation Act.
- (4) The Department of Insurance shall, by administrative regulation, provide for a reasonable collection fee to be retained by the insurance company or its agent as compensation for collecting the tax, except that the collection fee shall not be more than fifteen percent (15%) of the fee or tax collected and remitted to the city, county or

urban-county government or two percent (2%) of the premiums subject to the tax, whichever is less. To facilitate computation, collection, and remittance of the fee or tax and collection fee provided in this section, the fees or taxes set out in subsection (1), (2), or (3) of this section, together with the collection fee in this section, may be rounded off to the nearest dollar amount.

- (5) Pursuant to KRS 304.3-270, if any other state retaliates against any Kentucky domiciliary insurer because of the requirements of this section, the commissioner of insurance shall impose an equal tax upon the premiums written in this state by insurers domiciled in the other state.
- (6) Accounting and reporting procedures for collection and reporting of the fees or taxes and the collection fee herein provided shall be determined by administrative regulations promulgated by the Department of Insurance.
- (7) Upon written request of the legislative body of any city, county, or urban-county government, at the expense of the requesting city, county, or urban-county government, which shall be paid in advance by the city, county, or urban-county government to the Department of Insurance, the Department of Insurance shall examine, or cause to be examined by contract with qualified auditors, the books or records of the insurance companies or agents subject to the fee or tax to determine whether the fee or tax is being properly collected and remitted, and the findings of the examination shall be reported to the city, county, or urban-county government. Willful failure to properly collect and remit the fee or tax imposed by a city, county, or urban-county government pursuant to the authority granted by this section shall constitute grounds for the revocation of the license issued to an insurance company or agent under the provisions of KRS Chapter 304.
- (8) The license fees or taxes provided for by subsections (2) and (3) of this section shall be due thirty (30) days after the end of each calendar quarter. Annually, by March 31, each insurer shall furnish each city, county, or urban-county government, to which the tax or fee is remitted, with a breakdown of all collections in the preceding calendar year for the following categories of insurance:
  - (a) Casualty;
  - (b) Automobile;
  - (c) Inland marine;
  - (d) Fire and allied perils;
  - (e) Health; and
  - (f) Life.
- (9) Any license fee or tax not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6) from the date due until paid. Such interest payable to the city, county, or urban-county government is separate of penalties provided for in subsection (7) of this section. No city, county, or urban-county government may impose any penalties other than those provided for in this subsection.
- (10) No license fee or tax imposed under this section shall apply to premiums received on policies of group health insurance provided for state employees under KRS 18A.225 and KRS 42.800 to 42.825.
- (11) No county may impose the tax authorized by this section upon the premiums received on policies issued to public service companies which pay ad valorem taxes.
- (12)
  - (a) Insurance companies which pay license fees or taxes pursuant to this section shall credit city license fees or taxes against the same license fees or taxes levied by the county, when the license fees or taxes are levied by the county on or after July 13, 1990.
  - (b) ***If a county imposed and collected the license fee or tax authorized by this section before July 1, 2000, then insurance companies that pay license fees or taxes under this section shall not credit against the county license fee or tax that portion of a city license fee or tax that becomes effective for the first time on or after July 1, 2000, or is increased effective on or after July 1, 2000. The provisions of this paragraph shall expire on June 30, 2002, unless extended by the General Assembly.***

Section 3. Whereas the General Assembly finds:

- (1) The economic prosperity and overall quality of life of the Commonwealth's citizens are intertwined with and dependent upon the financial stability and well-being of the Commonwealth's cities and counties; and

- (2) The cities and counties of the Commonwealth of Kentucky are finding it increasingly difficult to raise the tax revenue necessary to fund expanding service needs, maintain or replace aging infrastructure, and address the many other local problems that place demands on financial resources, and that the cities and counties of the Commonwealth of Kentucky are increasingly involved in conflicts over such issues as service responsibility, tax base allocation, annexation, and land use planning; and
- (3) It is clear that the problems confronting the cities and counties of the Commonwealth of Kentucky require the immediate attention of state and local leaders, the Advisory Committee on City and County Relations is hereby established.

Section 4. (1) The Advisory Committee's membership shall include:

- (a) Two (2) members of the Senate appointed by the President of the Senate;
- (b) Two (2) members of the House of Representatives appointed by the Speaker of the House of Representatives;
- (c) The secretary of the Revenue Cabinet, or the secretary's designee;
- (d) The commissioner of the Department for Local Government, or the commissioner's designee;
- (e) Six (6) city officials appointed by the governing body of the Kentucky League of Cities;
- (f) Two (2) county officials appointed by the governing body of the Kentucky Association of Counties;
- (g) Two (2) county judge/executives appointed by the governing body of the Kentucky County Judge/Executive Association; and
- (h) Two (2) county magistrates appointed by the governing body of the Kentucky County Magistrates Association.

- (2) The chair and co-chair shall be appointed by the Legislative Research Commission.
- (3) The appointments in paragraphs (e) to (h) of subsection (1) of this section shall be subject to the approval of the Legislative Research Commission.
- (4) (a) The Advisory Committee on City and County Relations shall examine the issues and problems facing the Commonwealth's cities and counties. These issues and problems include, but are not limited to:
  - 1. Overlapping, inefficient service delivery;
  - 2. Identification of the principal beneficiaries of local government services;
  - 3. Allocation of taxing authority; and
  - 4. Identification of various city and county tax bases.
- (b) The Advisory Committee on City and County Relations may make specific recommendations concerning, but not limited to, the following:
  - 1. Recommendations for allocating future service responsibilities between cities and counties; and
  - 2. Recommendations regarding the allocation of taxing authority between cities and counties, based on assigned service responsibilities.

Section 5. The Advisory Committee on City and County Relations, established under Sections 3 and 4 of this Act, shall report its findings to the Legislative Research Commission no later than August 1, 2001.

Section 6. Provisions of Sections 3 and 4 of this Act to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified in Section 4 of this Act to an interim joint committee or subcommittee thereof, and to designate a study completion date.

**Approved April 21, 2000**

**CHAPTER 426****(SB 167)**

AN ACT relating to criminal records.

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

Section 1. KRS 431.076 is amended to read as follows:

- (1) A person who has been charged with a criminal offense and who has been found not guilty of the offense, or against whom charges have been dismissed with prejudice, and not in exchange for a guilty plea to another offense, may make a motion, in the District or Circuit Court in which the charges were filed, to expunge all records including, but not limited to, arrest records, fingerprints, photographs, index references, or other data, whether in documentary or electronic form, relating to the arrest, charge, or other matters arising out of the arrest or charge.
- (2) The expungement motion shall be filed no sooner than sixty (60) days following the order of acquittal or dismissal by the court.
- (3) Following the filing of the motion, the court may set a date for a hearing. If the court does so, it shall notify the county or Commonwealth's attorney, as appropriate, of an opportunity for a response to the expungement motion. ***In addition, if the criminal charge relates to the abuse or neglect of a child, the court shall also notify the Office of General Counsel of the Cabinet for Families and Children of an opportunity for a response to the expungement motion. The counsel for the Cabinet for Families and Children shall respond to the expungement motion, within twenty (20) days of receipt of the notice, which period of time shall not be extended by the court, if the Cabinet for Families and Children has custody of records reflecting that the person charged with the criminal offense has been determined by the cabinet or by a court under KRS Chapter 620 to be a substantiated perpetrator of child abuse or neglect. If the cabinet fails to respond to the expungement motion or if the cabinet fails to prevail, the order of expungement shall extend to the cabinet's records. If the cabinet prevails, the order of expungement shall not extend to the cabinet's records.***
- (4) If the court finds that there are no current charges or proceedings pending relating to the matter for which the expungement is sought, the court may grant the motion and order the sealing of all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records. The court shall order the sealing on a form provided by the Administrative Office of the Courts. Every agency, with records relating to the arrest, charge, or other matters arising out of the arrest or charge, that is ordered to seal records, shall certify to the court within sixty (60) days of the entry of the expungement order, that the required sealing action has been completed. All orders enforcing the expungement procedure shall also be sealed.
- (5) After the expungement, the proceedings in the matter shall be deemed never to have occurred. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.
- (6) Inspection of the expunged records may thereafter be permitted by the court only upon a motion by the person who is the subject of the records and only to those persons named in the motion.
- (7) This section shall be retroactive.

**Approved April 21, 2000**

**CHAPTER 427****(SB 195)**

AN ACT relating to insurance.

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

Section 1. KRS 304.38-030 is amended to read as follows:

As used in this subtitle, unless the context otherwise requires:



- (1) "Commissioner" means the commissioner of insurance.
- (2) "Enrollee" means a person who has been enrolled in a health maintenance organization.
- (3) **"Full service health maintenance organization" means a health maintenance organization that is authorized to provide all health care services.**
- (4) "Evidence of coverage" means any certificate, agreement, ~~contract~~, **or other document** issued to an enrollee stating the health care services to which ~~the enrollee~~ **he** is entitled. **All coverages described in an evidence of coverage issued by a health maintenance organization are deemed to be "health benefit plans" to the extent defined in KRS 304.17A-005 unless exempted by the commissioner.**
- (5)~~(4)~~ "Health care services" means any services included in the furnishing to any individual of medical, optometric or dental care, or hospitalization or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services and goods for the purpose of preventing, alleviating, curing, or healing human illness, physical disability or injury.
- (6) **"Health discount plan" means:**
  - (a) **A person who provides, for a fee, a list of participating providers who will give the health discount plan's enrollees a specified discount from the provider's regular fees without recourse to the health discount plan;**
  - (b) **A provider, or provider organization that contracts with individuals or groups to provide a specific, predetermined set of routine services to the individual or group over the term of the contract in exchange for a fixed uniform fee paid by the enrollee without recourse to the health discount plan; or**
  - (c) **A combination of paragraphs (a) and (b) of this subsection.**
- (7)~~(5)~~ "Health maintenance organization" means any person who undertakes to provide, directly or through arrangements with others, health care services to individuals ~~voluntarily~~ enrolled with such an organization on a per capita or a predetermined, fixed prepayment basis. **Unless specifically stated, "health maintenance organization" shall include full service health maintenance organization, and single service organization.**
- (8)~~(6)~~ "Person" includes, but is not limited to, any individual, partnership, association, trust, or corporation.
- (9)~~(7)~~ "Provider" means **a person or group of persons licensed to practice medicine, osteopathy, dentistry, podiatry, optometry, or another health profession in a state or licensed to act as a hospital or another health care facility** ~~partnership, corporation, association, or other legal entity which has entered into a services arrangement (or arrangements) with persons who are licensed to practice medicine, osteopathy, dentistry, podiatry, optometry, or other health profession in a state and a majority of whom are licensed to practice medicine or osteopathy.~~
- (10) **"Single service organization" means a health maintenance organization that is authorized to provide only one (1) type of health care service, including dental, mental health, optometry, podiatry, vision, or some other single health service. Single service organizations holding a certificate of authority according to this subtitle shall be subject to the provisions of KRS 304.17A-270, 304.17A-505, 304.17A-525, 304.17A-530, 304.17A-590, and 304.17A-545(4).**

Section 2. KRS 304.38-035 is amended to read as follows:

No person shall in this state be, act as, or hold himself out as a health maintenance organization unless he holds a certificate of authority **as a full service health maintenance organization, or a single service organization** from the commissioner. **Health discount plans shall not be required to hold a certificate of authority as a health maintenance organization but shall be required to hold a certificate of filing as defined in Section 8 of this Act.**

Section 3. KRS 304.38-040 is amended to read as follows:

- (1) A corporation, **limited liability corporation**, or partnership may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this subtitle.
- (2) Health maintenance organizations which are corporations may be organized by applying the provisions of KRS Chapter 271B, if for profit, and KRS Chapter 273, if for nonstock, nonprofit, to the extent that the same are not inconsistent with the express provisions of this subtitle.

- (3) Each application for a certificate of authority shall be submitted to the commissioner upon a form prescribed by him and shall set forth or be accompanied by:
- (a) Evidence that the applicant has been issued a certificate of need in accordance with the provisions of KRS Chapter 216B, **or evidence that no certificate of need is required by KRS Chapter 216B**;
  - (b) Articles of incorporation or partnership agreement in ~~quadruplicate~~<sup>triplicate</sup> originals acknowledged and verified by the applicant, such as the articles of incorporation, articles of association, partnership agreement, or other applicable documents;
  - (c) The initial bylaws of the organization in triplicate (or any other similar documents);
  - (d) A statement which shall include describing the health maintenance organization:
    - 1. The **health services to be offered**~~proposed method of marketing~~;
    - 2. The **financial risks to be assumed**~~initial geographic area to be served~~;
    - 3. **The initial geographic area to be served**~~;~~<sup>;</sup>~~A financial program setting forth a three (3) year projection of such operation; and~~
    - 4. **Pro forma financial projections for the first three (3) years of operations including the assumptions the projections are based upon**~~The sources of working capital and funding~~;
    - 5. **The sources of working capital and funding**;
    - 6. **A description of the persons to be covered by the health maintenance organization**;
    - 7. **Any proposed reinsurance arrangements**;
    - 8. **Any proposed management, administrative, or cost-sharing arrangements; and**
    - 9. **A description of the health maintenance organization's proposed method of marketing**;
  - (e) The names, addresses, and positions of the initial board of directors, board of trustees, or other governing body responsible for the conduct of the affairs of the applicant;
  - (f) Any proposed **evidence of coverage**~~contracts or agreements~~ to be issued by the applicant to **individuals, enrollees, groups, or other contract holders**~~;~~
    - 1. ~~Enrollees; and~~
    - 2. ~~Any employers, unions, or any other groups~~; and
  - (g) Evidence of financial responsibility as provided in KRS 304.38-060 **or Section 13 of this Act**.

Section 4. KRS 304.38-060 is amended to read as follows:

Upon receipt of an application for issuance of a certificate of authority, the commissioner shall issue or deny the same. Issuance of a certificate of authority shall be granted only if the commissioner finds that the applicant has complied with KRS 304.38-040, has paid the application fee and the commissioner is satisfied that the following conditions are met:

- (1) The persons responsible for the conduct of the affairs of the application are competent, trustworthy, and possess good reputations;
- (2) The health maintenance organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may consider:
  - (a) The financial soundness of the health maintenance organization's arrangements for health care services and the schedule of charges used in connection therewith;
  - (b) The adequacy of working capital;
  - (c) Any agreement with an insurer, a government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the health maintenance organization **or its inability to meet its financial obligations**;

- (d) ***Examples of any ~~agreements~~[agreement] with providers for the provision of health care services by provider type; and***
- (e) ***Compliance with KRS 304.38-070 if the applicant is applying for a full service health maintenance organization certificate of authority; or compliance with Section 13 of this Act if the applicant is applying for single service organization certificate of authority, as a guarantee that the obligations will be duly performed.***

Section 5. KRS 304.38-200 is amended to read as follows:

Health maintenance organizations shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:

- (1) Subtitle 1 -- Scope -- General Definitions and Provisions;
- (2) Subtitle 2 -- Insurance Commissioner;
- (3) Subtitle 3 -- Authorization of Insurers and General Requirements;
- (4) Subtitle 4 -- Fees and Taxes;
- (5) Subtitle 5 -- Kinds of Insurance -- Limits of Risk -- Reinsurance;
- (6) Subtitle 6 -- Assets and Liabilities;
- (7) Subtitle 7 -- Investments;
- (8) Subtitle 8 -- Administration of Deposits;
- (9) ***Subtitle 9 -- Agents, Consultants, Solicitors, and Adjusters;***
- (10) Subtitle 12 -- Trade Practices and Frauds;
- (11)~~(10)~~ Subtitle 14 -- ***The Insurance Contract***~~[KRS 304.14-500 to 304.14-560];~~
- (12) ***Subtitle 17 -- Health Insurance Contracts;***
- (13)~~(11)~~ Subtitle 17A -- Health Benefit Plans;
- (14) ***Subtitle 18 -- Group and Blanket Health Insurance;***
- (15) ***Subtitle 24 -- Domestic Stock and Mutual Insurers;***
- (16)~~(12)~~ Subtitle 25 -- Continuity of Management;
- (17) ***Subtitle 26 -- Insider Trading of Equity Securities;***
- (18)~~(13)~~ Subtitle 33 -- Insurers Rehabilitation and Liquidation;
- (19)~~(14)~~ Subtitle 37 -- Insurance Holding Company Systems; and
- (20)~~(15)~~ Subtitle 99 -- Penalties.

SECTION 6. A NEW SECTION OF SUBTITLE 43 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) ***All prepaid dental plans that are not health discount plans as defined in Section 1 of this Act holding a certificate of authority according to this subtitle shall be deemed to be converted to a single service organization, and upon the next renewal of their certificate of authority shall be issued a certificate of authority to act as a single service organization if they meet the requirements for continuance of their prepaid dental plan certificate of authority. No certificate of authority to act as a prepaid dental plan shall be issued or renewed after July 15, 2000.***
- (2) ***A prepaid dental plan holding a certificate of authority immediately prior to July 15, 2000, that is converted to a single service organization according to subsection (1) of this section shall not be required to meet the net worth requirements of Section 13 of this Act until it has accumulated net worth equal to or in excess of the net worth requirement in Section 13 of this Act or July 15, 2003, whichever is earlier. Until the former prepaid dental plan meets the requirements of Section 13 of this Act, it shall maintain at least a net worth equal to its net worth on June 1, 2000, and shall comply with any risk-based capital requirements in administrative regulations promulgated by the commissioner.***

- (3) *All prepaid dental plans that are health discount plans as defined in Section 1 of this Act holding a certificate of authority according to this subtitle shall be deemed to be converted to health discount plans, and upon the next renewal of their certificates of authority shall be issued certificates of filing to act as health discount plans.*

SECTION 7. A NEW SECTION OF SUBTITLE 38 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*Each certificate of authority issued to a health maintenance organization shall designate the type of services the health maintenance organization is authorized to provide, whether full service, or single service. A certificate of authority issued to a single service organization shall designate what type of health services the single service organization is authorized to provide.*

SECTION 8. A NEW SECTION OF SUBTITLE 38 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *No person shall in this state be, act as, or hold himself out as a health discount plan unless he holds a certificate of filing from the commissioner.*
- (2) *A proposed health discount plan shall file with the commissioner an application for a certificate of filing accompanied by a nonrefundable filing fee of five dollars (\$5). Each application for a certificate of filing shall be submitted to the commissioner upon a form prescribed by him and shall set forth or be accompanied by:*
- (a) *The plan's name, location of its principal office, date of organization, and name and address of each officer and directory;*
  - (b) *A copy of the articles of incorporation, bylaws, or any other organization document of the plan;*
  - (c) *A copy of any evidences of coverage and marketing materials to be used; and*
  - (d) *The address where books and records of the group will be maintained at all times.*
- (3) *Upon receipt of an application for issuance of a certificate of filing, the commissioner shall issue or deny the certificate of filing. Issuance of a certificate of filing shall be granted only if the commissioner finds that the applicant has complied with subsection (2) of this section, has paid the application fee, and the commissioner is satisfied that the health discount plans marketing materials and evidences of coverage comply with Section 9 of this Act.*
- (4) *A certificate of filing shall remain in effect until terminated at the request of the health discount plan or until suspended or revoked by the commissioner according to Section 10 of this Act. The commissioner shall not grant the request of the health discount plan to terminate its certificate of filing unless the plan has filed with the commissioner a statement describing what arrangements have been made to pay obligations of the plan.*

SECTION 9. A NEW SECTION OF SUBTITLE 38 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A health discount plan doing business in Kentucky shall include the following language on each of its policies, applications, or claim forms provided to Kentucky residents: "This contract is not an insurance policy and is not protected by the Kentucky Life and Health Guaranty Association."*
- (2) *No health discount plan shall disseminate any advertisement, policy, document, information, statement, or thing that misrepresents or is otherwise misleading in regard to the plan's nature, finances, operation, contracts, coverages, terms, or any other aspect of the plan.*

SECTION 10. A NEW SECTION OF SUBTITLE 38 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The commissioner may suspend or revoke any certificate of filing issued to a health discount plan under this subtitle if he finds that any of the following conditions exist:*
- (a) *The health discount plan is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under this subtitle, unless amendments to the submissions have been filed with and approved by the commissioner;*

- (b) *The health discount plan, or any person at its direction, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;*
  - (c) *The health discount plan has engaged in any unfair or deceptive practices under its certificate of filing; or*
  - (d) *The health discount plan has failed to correct a violation of this subtitle within a reasonable time period established by the commissioner.*
- (2) *A certificate of filing shall be suspended or revoked only after a hearing according to KRS Chapter 13B.*
  - (3) *When a certificate of filing of a health discount plan is suspended, the plan shall not, during the period of suspension, enroll any new participants and shall not engage in any advertising or solicitation.*
  - (4) *If the certificate of filing of a health discount plan is revoked, the plan shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of the organization. It shall engage in no further advertising or solicitation. The commissioner may, by written order, permit further operation of the plan as he may find to be in the best interest of participants, to the end that the participants will be afforded the greatest practical opportunity to obtain coverage elsewhere. If the commissioner permits further operation, the health discount plan shall continue to collect the fee required of participants.*

Section 11. KRS 304.38-185 is amended to read as follows:

In his discretion, the commissioner may include health maintenance organizations *or designated types of health maintenance organizations* doing business pursuant to this subtitle in coordination of benefits guidelines prescribed pursuant to KRS 304.18-085.

Section 12. KRS 304.38-191 is amended to read as follows:

Any group policy, group plan or group contract issued, delivered or renewed by a health maintenance organization shall include conversion and continuation rights for certificate holders equal to that provided in KRS 304.18-110 subject to the minimum benefits specified in KRS 304.18-120. *This section shall not apply to single service organizations.*

SECTION 13. A NEW SECTION OF SUBTITLE 38 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*In order to qualify for authority to act as a single service organization, a corporation shall have a net worth of at least five hundred thousand dollars (\$500,000) when first so authorized. Thereafter, the single service organization shall maintain a net worth of at least one hundred twenty-five thousand dollars (\$125,000) and shall comply at all times with the risk-based capital requirements established in administrative regulations promulgated by the commissioner.*

Section 14. KRS 304.38-073 is amended to read as follows:

Each *full service* health maintenance organization shall furnish to the commissioner a deposit of cash or securities approved by the commissioner in an amount not less than five hundred thousand dollars (\$500,000) so that the obligations to the enrollees shall be performed. *Each single service organization shall furnish to the commissioner a deposit of cash or securities approved by the commissioner, in an amount not less than fifty thousand dollars (\$50,000) to ensure that the obligations to the enrollees shall be performed. A health maintenance organization may be required to furnish an additional deposit if the commissioner determines, after a hearing, that an additional deposit is necessary for the protection of the health maintenance organization's enrollees.*

Approved April 21, 2000

## CHAPTER 428

(SB 198)

AN ACT relating to marriage licenses

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

Section 1. KRS 402.100 is amended to read as follows:

Each county clerk shall use the form prescribed by the Department for Libraries and Archives when issuing a marriage license. This form shall provide for the entering of all of the information required in this section, and may also provide for the entering of additional information prescribed by the Department for Libraries and Archives. The form shall consist of:

- (1) A marriage license which provides for the entering of:
  - (a) An authorization statement of the county clerk issuing the license for any person~~[-licensed]~~ or religious society authorized to perform marriage ceremonies to unite in marriage the persons named;
  - (b) Vital information for each party, including the full name, date of birth, place of birth, race, condition (single, widowed, or divorced), number of previous marriages, occupation, current residence, relationship to the other party, full names of parents, ***and the Social Security number of each party if that party has a Social Security number***; and
  - (c) The date and place the license is issued, and the signature of the county clerk or deputy clerk issuing the license.
- (2) A marriage certificate which provides for the entering of:
  - (a) A statement by the person performing the marriage ceremony or the clerk of the religious society authorized to solemnize the marriage ceremony that the ceremony was performed. The statement shall include the name and title of the person performing the ceremony or the name of the religious society solemnizing the marriage, the names of persons married, the date and place of the marriage, and the names of two (2) witnesses;
  - (b) A statement by the person performing the marriage ceremony of his legal qualification under this chapter to perform the ceremony, such statement to include the name of the county or city where his license to perform marriage ceremonies was issued or, in the case of religious societies authorized by KRS 402.050(c) to solemnize marriages, the name of the city or county where the religious society is incorporated. The provisions of this paragraph shall not be construed to require the clerk of a religious society to be present at the marriage so long as the witnesses of the society are present;
  - (c) A dated signature of the person performing the ceremony; and
  - (d) A signed statement by the county clerk or a deputy county clerk of the county in which the marriage license was issued that the marriage certificate was recorded. The statement shall indicate the name of the county and the date the marriage certificate was recorded.
- (3) A certificate to be delivered by the person performing the marriage ceremony or the clerk of the religious society performing the marriage ceremony to the parties married. This certificate shall provide for the entering of:
  - (a) A statement by the person performing the marriage ceremony or the clerk of the religious society performing the marriage ceremony that the ceremony was performed. The statement shall include the name and title of the person performing the ceremony, or the name of the religious society performing the ceremony, the names of persons married, the date and place of the marriage, the names of two (2) witnesses, and the following information as recorded on the license authorizing the marriage: the date the license was issued, the name of the county clerk under whose authority the license was issued, and the county in which the license was issued; and
  - (b) A dated signature of the person performing the ceremony or the clerk of the religious society performing the ceremony.
- (4) ***Any Social Security number recorded on the marriage license shall be stored by the county clerk with a nonidentifying numeric, and the nonidentifying numeric shall be recorded on the marriage license form. The Social Security number shall not be available for public release except for use by the Cabinet for Families and Children in efforts to enforce child support.***

Approved April 21, 2000

## CHAPTER 429

(SB 217)

AN ACT relating to county government.

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

Section 1. KRS 64.840 is amended to read as follows:

- (1) Except for taxes collected on behalf of the state for which standard receipt forms had been supplied by the state prior to 1974, all county officials shall, upon the receipt of any fine, forfeiture, **tax**, or fee, prepare a receipt that meets the specifications of the state local finance officer, ***if the fine, forfeiture, tax, or fee is paid:***
  - (a) ***In cash;***
  - (b) ***By a party appearing in person to pay; or***
  - (c) ***By check, credit card, or debit card account received through the mail, if the party includes an addressed, postage-paid return envelope and a request for receipt.***
- (2) One (1) copy of the receipt shall be given to the person paying the fine, forfeiture, **tax**, or fee and one (1) copy shall be retained by the official for his own records. ***One (1) copy of the receipt shall be retained by the official to be placed with the daily bank deposit.***
- (3) ***A county government may, but shall not be required to, accept payment of any fine, forfeiture, tax, or fee by debit or credit card account. If an individual chooses to pay a fine, forfeiture, tax, or fee by debit or credit card account, the county government shall recover the transaction fee charged by the issuer of the account as part of and in addition to the original amount of the fine, forfeiture, tax, or fee.***

SECTION 2. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) ***A fiscal court in a county with a county-wide fire protection district formed under KRS Chapter 75 that has entered into an interlocal agreement to provide fire service to the largest city in the county may, through the adoption of an ordinance in accordance with KRS 67.075 and 67.077, merge the boards of the following special districts that are wholly contained within the county:***
  - (a) ***Ambulance districts created under KRS 108.080 to 108.180;***
  - (b) ***Fire protection districts created under KRS 75.010 to 75.260; and***
  - (c) ***Local rescue squad districts created under KRS Chapter 39F.***
- (2) ***Once the fiscal court has merged any of the boards listed in paragraphs (a) to (c) of subsection (1) of this section, no additional special districts listed in paragraphs (a) to (c) of subsection (1) of this section shall be permitted to be created whose board of directors and taxing authority are not transferred to the emergency services board, and no boundary of a district shall exceed the boundary of the county that the emergency services district represents.***
- (3) ***An emergency services board's jurisdiction shall encompass the boundaries of the special districts whose boards and taxing authority it is replacing.***
- (4) ***An emergency services board shall have the powers that constitute a taxing district within the meaning of Section 157 of the Constitution of Kentucky.***
- (5) ***If an emergency services board chooses to levy the tax allowed in Section 7 of this Act, a certified copy of the ordinance levying the tax shall be filed with the county clerk who shall add the levy to the tax bills of the county. For taxing purposes, the effective date of the tax levy shall be January 1 of the year following the certification of the creation of the emergency services board.***
- (6) ***An emergency services board may be dissolved or the boundaries of the districts it represents may be altered if the procedures under KRS 65.164 to 65.176 are followed. If the emergency services board is dissolved, then the boards of the special districts of which it assumed the board duties shall be reappointed according to statute within thirty (30) days of the emergency services board's dissolution, and the original taxing protocol applicable to the specific special district shall apply. Each special district shall assume that portion of the debt attributable to its service. Any unattributable debt shall be assumed by the fiscal court.***

## SECTION 3. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *Two (2) or more fiscal courts of which one (1) county shall have a county-wide fire protection district formed under KRS Chapter 75 that has entered into an interlocal agreement to provide fire service to the largest city in the county may, through the adoption of concurrent ordinances in accordance with KRS 67.075 and 67.077, merge the boards of the following special districts that are wholly contained within their counties:*
  - (a) *Ambulance districts created under KRS 108.080 to 108.180;*
  - (b) *Fire protection districts created under KRS 75.010 to 75.260; and*
  - (c) *Local rescue squad districts created under KRS Chapter 39F.*
- (2) *Once the fiscal courts have merged any of the boards listed in paragraphs (a) to (c) of subsection (1) of this section, no additional special districts listed in paragraphs (a) to (c) of subsection (1) of this section shall be permitted to be created in any of the member counties whose administration and taxing authority are not transferred to the emergency services board, and no boundary of a district shall exceed the boundaries of the counties that the multicounty emergency services district represents.*
- (3) *A multicounty emergency services board's jurisdiction shall encompass the boundaries of the special districts within the member counties whose boards and taxing authority it is replacing.*
- (4) *A multicounty emergency services board shall have the powers that constitute a taxing district within the meaning of Section 157 of the Constitution of Kentucky.*
- (5) *If a multicounty emergency services board chooses to levy the tax allowed in Section 7 of this Act, a certified copy of the ordinance levying the tax shall be filed with the county clerk of each member county who shall add the levy to the tax bills of the county. For taxing purposes, the effective date of the tax levy shall be January 1 of the year following the certification of the creation of the emergency services board.*
- (6) *A multicounty emergency services board may be dissolved or the boundaries altered if the procedures under KRS 65.164 to 65.176 are followed. If the emergency services board is dissolved, then the boards of the special districts of which it assumed the board duties shall be reappointed according to statute within thirty (30) days of the emergency services board's dissolution, and the original taxing protocol applicable to the specific special district shall apply. Each special district shall assume that portion of the debt attributable to its service. Any unattributable debt shall be assumed equally by each fiscal court formerly participating in the multicounty emergency services board.*

## SECTION 4. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

*The emergency services board shall be a corporate public body and a political subdivision of the Commonwealth. It may prosecute and defend suits, hire necessary employees, and perform all acts necessary to carry on the work of providing fire fighting, emergency ambulance, and rescue squad services to the community.*

## SECTION 5. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *The affairs of the emergency services board composed of one (1) county shall be controlled and managed by a board of directors appointed by the county judge/executive with the approval of the fiscal court.*
- (2) *The county judge/executive shall appoint:*
  - (a) *One (1) member from each magisterial district of the county; and*
  - (b) *One (1) additional member from the county at large.*
- (3) (a) *If the board is composed of a number evenly divisible by four (4):*
  1. *One-fourth (1/4) of the board members' initial terms shall be one (1) year;*
  2. *One-fourth (1/4) of the board members' initial terms shall be two (2) years;*
  3. *One-fourth (1/4) of the board members' initial terms shall be three (3) years; and*
  4. *One-fourth (1/4) of the board members' initial terms shall be four (4) years.*
  - (b) *If the board is composed of a number unevenly divisible by four (4), then the county judge/executive shall appoint the remainder for a term of four (4) years.*
- (4) *After the initial appointment, terms of the board members shall be for four (4) years.*



- (5) *Board members may be reappointed, and they may succeed themselves.*
- (6) *Each board member shall reside in the county.*
- (7) *A majority of the membership of the board shall constitute a quorum.*
- (8) *A member of the board of directors may be removed from office as provided in KRS 65.007.*
- (9) *The county judge/executive shall serve as an ex officio member of the board.*
- (10) *No elected official shall serve as a member of the board.*
- (11) *The board shall be appointed within thirty (30) days after the creation of the emergency services board.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *The affairs of the emergency services board composed of more than one (1) county shall be controlled and managed by a board of directors consisting of no more than eleven (11) members, with the number of members to be determined jointly by the county judges/executive of the member counties.*
- (2) *The county judge/executive of each member county shall be entitled to appoint a proportionate share of the board relative to the population of the county according to the most recent federal census estimates of the year in which appointments are to be made with the approval of their respective fiscal courts. With the exception of the expiration of the initial appointment at the creation of the emergency services board, each year an appointment term expires the county judges/executive shall determine which county judge/executive, according to the adjusted population count, shall be allowed to make an additional appointment with the approval of his or her fiscal court. Each member county shall be allowed at least one (1) appointee. In no instance shall the emergency services board encompass more than eleven (11) counties.*
- (3)
  - (a) *One-fourth (1/4) of the board members' initial terms shall be one (1) year;*
  - (b) *One-fourth (1/4) of the board members' initial terms shall be two (2) years;*
  - (c) *One-fourth (1/4) of the board members' initial terms shall be three (3) years; and*
  - (d) *One-fourth (1/4) of the board members' initial terms shall be four (4) years.*
- (4) *After the initial appointment, terms of the board members shall be for four (4) years.*
- (5) *Board members may be reappointed, and they may succeed themselves.*
- (6) *Each board member shall reside in the county he or she represents.*
- (7) *A majority of the membership of the board shall constitute a quorum.*
- (8) *A member of the board of directors may be removed from office as provided in KRS 65.007.*
- (9) *The county judge/executive of each county shall serve as an ex officio member of the board.*
- (10) *No elected official shall serve as a member of the board.*
- (11) *The board shall be appointed within thirty (30) days after the creation of the emergency services board.*
- (12) *Vacancies in unexpired terms shall be filled by the appointing authority for the remainder of the unexpired term. No reapportionment, in accordance with the provisions of subsection (2) of this section, shall be executed in the instance of a vacancy in an unexpired term.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1)
  - (a) *In order to ensure the delivery of adequate services to the community or communities, the emergency services board may levy an ad valorem tax not to exceed ten cents (\$0.10) per one hundred dollars (\$100) of the assessed valuation of all property in the district. The emergency services board ad valorem tax shall be collected by the sheriff of each member county in the same manner as county ad valorem taxes. The sheriff shall be entitled to a fee of four percent (4%) of the amount of the tax collected; and*
  - (b) *The emergency services board may, in addition to the ad valorem tax in paragraph (a) of this section, charge fees necessary to further defray the costs of its operation.*
- (2) *Tax and license fee revenues derived from this section shall be used only for the services described in Section 2 or 3 of this Act.*

- (3) *The assets and liabilities of the special districts under the jurisdiction of the emergency services board shall be maintained separately, but shall be managed by the emergency services board.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

*The emergency services board may contract with private and public entities to provide fire, ambulance, and emergency squad services.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *Once an emergency services board assumes control over fire, ambulance, or emergency squad districts, a fiscal court, or fiscal courts through an interlocal agreement, may opt to provide fire, ambulance, and emergency squad services directly or through an agency of county government. If that is the case, a dedicated ad valorem tax for the provision of fire, ambulance, and emergency squad services exclusive of all other taxes may be levied by the county or counties. The provisions of the ad valorem tax of Section 7 of this Act shall apply.*
- (2) *The initial levy of the ad valorem tax for the provision of funding to the emergency services board under this section shall not be subject to the recall provisions of KRS 68.245 or 132.023, whichever is applicable. Subsequent changes to the amount shall be subject to the provisions of KRS 68.245 or 132.023, whichever is applicable.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

*In counties where ambulance districts created under the provisions of KRS 108.080 to 108.180; fire protection districts created under the provisions of KRS 75.010 to 75.260; or local rescue squad districts created under the provisions of KRS Chapter 39F exist and have enacted an ad valorem tax, the emergency services board may leave those ad valorem tax levies in place. The emergency services board may levy its permitted funding mechanisms in addition to these existing taxes, but the aggregate of the existing tax levied by the original district or districts, and the tax levied by the emergency services board shall not exceed the limits prescribed in Section 7 of this Act.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

*If a fiscal court chooses to create an emergency services board, the provisions of Sections 2 to 11 of this Act shall supersede the structure of the boards of directors and the taxing privileges under KRS 108.080 to 108.180, KRS 75.010 to 75.260, and KRS Chapter 39F. The remaining provisions of KRS 108.080 to 108.180, KRS 75.010 to 75.260, and KRS Chapter 39F, applicable to the operation of the fire department, ambulance service, or emergency squad, shall remain in effect.*

Section 12. KRS 65.164 is amended to read as follows:

As used in KRS 65.166 to 65.176, the word "district" shall mean any board, commission or special district created pursuant to the following statutes: *Sections 2 to 11 of this Act*, KRS 75.010 to 75.260; KRS 104.450 to 104.680; KRS 108.010 to 108.070; KRS 184.010 to 184.300; KRS 220.010 to 220.613; KRS 266.010 to 266.990; KRS 267.010 to 267.990; KRS 268.010 to 268.990; or KRS 269.100 to 269.270.

**Approved April 21, 2000**

## **CHAPTER 430**

**(SB 218)**

AN ACT relating to child support.

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

Section 1. KRS 154A.060 is amended to read as follows:

- (1) The corporation shall conduct and administer lottery games which will result in maximization of revenues to the Commonwealth of Kentucky while at the same time provide entertainment to its citizens. It shall be the duty of the corporation, its employees, and the members of the board to provide for the effective operation of lottery games which insure the integrity of the lottery and maintain the dignity of the Commonwealth and the general welfare of its citizens. The corporation, in pursuit of the attainment of the objectives and the purposes of this chapter, may:
- (a) Sue and be sued in its corporate name;

- (b) Adopt a corporate seal and a symbol;
  - (c) Hold copyrights, trademarks, and service marks, and enforce its rights with respect thereto;
  - (d) Appoint agents upon which process may be served;
  - (e) Enter into written agreements with one (1) or more other states for the operation, marketing, and promotion of a joint lottery or joint lottery games;
  - (f) Acquire real property and make improvements thereon. These acquisitions shall be reported to the Capital Projects and Bond Oversight Committee for its review and determination in accordance with KRS 45.750 to 45.810; and
  - (g) Make, execute, and effectuate any and all agreements or contracts including:
    1. Contracts for the purchase of such goods and services as are necessary for the operation and promotion of the state lottery. Proposed purchases of major items of equipment estimated to cost one hundred thousand dollars (\$100,000) or more and proposed purchases of items of equipment where the estimated contract price for all the items of equipment taken together is four hundred thousand dollars (\$400,000) or more shall be reported to the Capital Projects and Bond Oversight Committee for its review and determination in accordance with the provisions of KRS 45.750 to 45.810. A contract shall not be artificially divided to cause an estimated contract price to fall below the four hundred thousand dollar (\$400,000) threshold. Contracts for personal service shall be reviewed in accordance with KRS 45A.690 to 45A.725.
    2. Contracts to incur debt in its own name and enter into financing agreements with the Commonwealth, its own agencies, or with a commercial bank, excluding the authority to issue bonds.
- (2) The corporation shall:
- (a) Supervise and administer the lottery in accordance with the provisions of this chapter and the administrative regulations adopted by the board;
  - (b) Submit monthly and annual reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives containing financial statements which include, but are not limited to, disclosure of gross revenues, expenses, and net proceeds for the period;
  - (c) Adopt by administrative regulation a system of continuous internal audits;
  - (d) Maintain weekly or more frequent records of lottery transactions, including distribution of tickets to lottery retailers, revenues received, claims for prizes, prizes paid, and all other financial transactions of the corporation;
  - (e) Adopt by administrative regulation a code of ethics for officers and employees of the corporation to carry out the standards of conduct established by the provisions of this chapter;~~and~~
  - (f) Include capital projects, as defined in KRS 45.750(1)(f), which exceed the thresholds set forth in KRS 154A.060(1)(g)1. in the budget unit request submitted by the corporation to the Finance and Administration Cabinet pursuant to KRS 48.050. In the budget unit request submitted by the corporation, a contingency item for acquisition of the on-line central system, all related equipment, and any other equipment owned by vendors of the corporation relating to computer-generated lottery games from the corporation's vendors shall be stated separately from all other equipment. Further, if the identification of specific projects requiring the acquisition of equipment in the nature of computer systems, communications equipment and related peripheral devices, and operating system software cannot be ascertained with absolute certainty at the time the corporation is required to submit its budget unit request, the corporation shall be entitled to submit a general request for the equipment without individually identifying specific projects, together with a maximum amount to be allocated for the equipment, in the budget unit request; **and**
  - (g) ***The Kentucky Lottery Corporation and the Cabinet for Families and Children shall develop a system to allow the Kentucky Lottery Corporation to receive a list of delinquent child support obligors from the Cabinet for Families and Children on a monthly basis. The Kentucky Lottery Corporation shall withhold delinquent amounts from prizes of winners that appear on the list. This system shall be timely and shall not create an unavoidable delay in the payment of a lottery prize..***

SECTION 2. A NEW SECTION OF KRS 205.712 TO 205.800 IS CREATED TO READ AS FOLLOWS:

*All forms, child support orders, wage withholding orders, or orders amending an existing child support order, entered in any case in Circuit Court, District Court, or family court that require entry into the state case registry under subsection (3) of Section 5 of this Act shall be entered on forms adopted by the Administrative Office of the Courts after consultation with the Cabinet for Families and Children. If the provisions of a child support order are contained in an order that is narrative in nature, the adopted forms shall be used in addition to the narrative order.*

SECTION 3. A NEW SECTION OF KRS 205.712 TO 205.800 IS CREATED TO READ AS FOLLOWS:

*The Cabinet for Families and Children and the Revenue Cabinet shall work together to develop a system of information sharing for the effective and efficient collection of child support payments. Any requirement included in KRS Chapter 131, 205, 403, or 405 or any other law for either cabinet for the confidentiality of individual personal and financial records shall not be violated in the process of this coordination.*

SECTION 4. A NEW SECTION OF KRS 205.712 TO 205.800 IS CREATED TO READ AS FOLLOWS:

*The cabinet shall, to the extent federal funding is available, establish a statewide program to help low-income, noncustodial parents find and keep employment. The goal of the program shall be to reduce welfare payments by helping participants become financially responsible for their children. The cabinet shall involve local social service providers and state and local government agencies, and may provide incentives to employers who hire program participants. The program shall also encourage noncustodial parents to be actively involved in their children's lives. Noncustodial parents may be required to enroll in the program by court order.*

Section 5. KRS 205.712 is amended to read as follows:

- (1) The Division of Child Support Enforcement is established in the Cabinet for Families and Children.
- (2) The duties of the Division of Child Support Enforcement, or its designee, shall include:
  - (a) Serve as state agency authorized to administer Part D of Title IV of the Social Security Act, 42 U.S.C. secs. 651 to 669;
  - (b) Serve as the information agency as provided in the Uniform Interstate Family Support Act, KRS Chapter 407;
  - (c) Serve as collector of all court-ordered or administratively ordered child support payments pursuant to Part D of Title IV of the Social Security Act;
  - (d) Serve as the agent for enforcement of international child support obligations, and respond to requests from foreign reciprocating countries;
  - (e) Establish and enforce an obligation upon receipt of a completed, notarized voluntary acknowledgment-of-paternity form;
  - (f) Enforce Kentucky child support laws, including collection of court-ordered or administratively ordered child support arrearages and prosecution of persons who fail to pay child support;
  - (g) Publicize the availability of services and encourage the use of these services for establishing paternity and child support;
  - (h) Pay the cost of genetic testing to establish paternity, subject to recoupment from the alleged father, when paternity is administratively or judicially determined; and obtain additional testing when an original test is contested, upon request and advance payment by the contestant;
  - (i) Establish child support obligations and seek modification of judicially or administratively established child support obligations in accordance with the child support guidelines of the Commonwealth of Kentucky as provided under KRS 403.212;
  - (j) Administratively establish child support orders which shall have the same force and effect of law;
  - (k) Issue an administrative subpoena to secure public and private records of utility and cable companies and asset and liability information from financial institutions for the establishment, modification, or enforcement of a child support obligation;
  - (l) Impose a penalty for failure to comply with an administrative subpoena;

- (m) Provide notices, copies of proceedings, and determinations of support amounts to any parties or individuals who are applying for or receiving Title IV-D services, or who are parties to cases in which Title IV-D services are being provided;
  - (n) Issue interstate administrative subpoenas to any individual or entity for financial or other information or documents which are needed to establish, modify, or enforce a child support obligation pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. secs. 651 et seq. An administrative subpoena lawfully issued in another state to an individual or entity residing in this state shall be honored and enforced in the Circuit Court where the individual or entity resides; and
  - (o) May promulgate administrative regulations to implement this section and adopt forms or implement other requirements of federal law relating to interstate administrative subpoenas.
- (3) Effective September 30, 1999, the cabinet shall establish a system to receive and process all child support payments. The system shall include existing computer systems to record the payments. The automated system shall include a state case registry that contains records with respect to each case in which services are being provided by the cabinet and each child support order established or modified in the state on or after October 1, 1998.
  - (4) The cabinet shall establish and operate a state disbursement unit for the collection, disbursement, and recording of payments under support orders for all Title IV-D cases and for all cases initially issued in the state on or after January 1, 1994, in which a wage withholding has been court-ordered or administratively ordered, pursuant to Part D of Title IV of the Social Security Act. Establishment of the state unit may include the designation and continuation of existing local collection units to aid efficient and effective collection, disbursement, and recording of child support payments.
  - (5) After the establishment of the disbursement unit child support collection system, the cabinet or its designee shall serve as collector of all court-ordered or administratively ordered child support payments pursuant to Part D of Title IV of the Social Security Act.
  - (6) Where establishment of paternity and enforcement and collection of child support is by law the responsibility of local officials, the cabinet shall refer cases to the appropriate official for such action. The cabinet may enter into cooperative arrangements with appropriate courts and law enforcement officials to assist the cabinet in administering the program of child support recovery, including the entering into of financial arrangements with such courts and officials as provided for under the provisions of federal law and regulations. The local county attorney shall be considered the designee of the cabinet for purposes of administering the program of child support recovery within a county, subject to the option of the county attorney to decline such designation. Nothing in this section shall prevent the secretary from taking such action, with prior written notice, as appropriate if the terms and conditions of the cooperative agreement are not met. When a cooperative agreement with a contracting official is canceled for good cause, the cabinet may not offer that cooperative agreement to that official during the official's tenure.
  - (7) Where the local county attorney, friend of the court, domestic relations agent, or other designee of the cabinet has been contracted for the purpose of administering child support enforcement pursuant to Title IV-D of the Social Security Act, the contracting official shall be deemed to be representing the cabinet and as such does not have an attorney-client relationship with the applicant who has requested services pursuant to Title IV-D of the Social Security Act nor with any dependent on behalf of the individuals for whom services are sought.
  - (8) The cabinet shall determine the name of each obligor who owes an arrearage of at least five thousand dollars (\$5,000). After notification to the obligor owing an arrearage amount of five thousand dollars (\$5,000), the cabinet shall transmit to the United States secretary of health and human services the certified names of the individuals and supporting documentation for the denial, revocation, or limitation of the obligor's passport. The cabinet shall notify the identified obligor of the determination and the consequences and provide an opportunity to contest the determination.
  - (9) The cabinet shall determine the name of an obligor owing an arrearage and shall indefinitely deny, suspend, or revoke a license or certification that has been issued if the person has a child support arrearage that equals or exceeds the amount that would be owed after *six (6) months* ~~one (1) year~~ of nonpayment or fails, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings as provided by 42 U.S.C. sec. 666(a)(16).

- (10) The cabinet shall forward the name of the individual to a board of licensure or board of certification for the notification of the denial, revocation, or suspension of a driver's license, professional license or certification, occupational license or certification, recreational license, or sporting license.
- (11) The denial or suspension shall remain in effect until the child support arrearage has been eliminated or payments on the child support arrearage are being made in accordance with a court or administrative order, the person complies with the subpoena or warrant relating to paternity or child support proceedings, or the appeal of the denial or suspension is upheld and the license is reinstated.
- (12) Except for cases administered by the cabinet under 42 U.S.C. secs. 651 et seq. which shall be afforded the appeal process set forth by KRS 405.450(3), an individual who has a license or certification denied, revoked, or suspended shall have the right to appeal to the licensing or certifying board.
- (13) A dispute hearing shall be conducted by the cabinet in accordance with KRS 405.450. The only basis for a dispute hearing shall be a mistake in fact.
- (14) The cabinet shall in its discretion enter into agreements with financial institutions doing business in the Commonwealth to develop and operate, in coordination with the financial institutions, a data match system. The financial institution shall be required to provide identifying information for each obligated parent who maintains an account at the institution and owes an arrearage, and who shall be identified by the cabinet. Assets held by the institutions on behalf of any obligated parent who is subject to a child support lien pursuant to KRS 205.745 shall be encumbered or surrendered in response to a notice of lien or levy issued by the cabinet. The cabinet may pay a reasonable fee to a financial institution for conducting the data match, not to exceed the actual cost. The financial institution shall not be liable for encumbering or surrendering any assets held by the financial institution in response to a notice of lien or levy issued by the cabinet or for any other action taken in good faith to comply with the requirements of this subsection.
- (15) The cabinet may issue both intrastate and interstate administrative subpoenas to any individual or entity for financial or other information or documents that are needed to establish, modify, or enforce a child support obligation pursuant to Title IV-D of the Social Security Act, 42 U.S.C. secs. 651 et seq. An administrative subpoena lawfully issued in another state to an individual or entity in this state shall be honored and enforced in the Circuit Court of the county in which the individual or entity resides.
- (16) *The Cabinet for Families and Children shall forward to the Office of the Attorney General a list of names of delinquent obligors, and in cooperation with the Office of the Attorney General, shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement Section 16 of this Act.*
- (17) *The cabinet shall compare a quarterly report provided by the Finance and Administration Cabinet of all tort claims made against the state by individuals with the child support database to match individuals who have a child support arrearage and may receive a settlement from the state.*
- (18) *The cabinet shall prepare and distribute to the cabinet's designee for the administration of the child support program information on child support collections and enforcement. The information shall include a description of how child support obligations are:*
  - (a) *Established;*
  - (b) *Modified;*
  - (c) *Enforced;*
  - (d) *Collected; and*
  - (e) *Distributed.*
- (19) *The cabinet's designee for the administration of the child support program shall distribute, when appropriate, the following:*
  - (a) *Information on child support collections and enforcement; and*
  - (b) *Job listings posted by employment services.*

Section 6. KRS 205.745 is amended to read as follows:

- (1) A child support lien or levy in favor of the cabinet shall be enforceable against all real and personal property of the obligor if he has failed to make child support payment in an amount equal to support payable for one (1) month and the child support has been assigned to the cabinet. In accordance with subsection (4) of this section,

the lien or levy shall have first priority over any other lien assigned by any other agency, association, or corporation.

- (2) The cabinet shall file a notice of lien or levy with the county clerk of any county or counties in which the obligor has interest in property and the notice shall be recorded in the same manner as notices of lis pendens. The recordation shall constitute notice of both the original amount of child support due and all subsequent amounts due by the same obligor. Upon request, an authorized agent of the cabinet shall disclose the specific amount of liability to any interested party legally entitled to the information. The notice, when so filed, shall be conclusive to all persons of the lien or levy on the property having legal situs in that county. The lien or levy shall commence as to property of the obligor located in the Commonwealth at the time the notice is filed and shall continue until the original amount of child support due and any subsequent amounts, including interest, penalties, or fees, are fully paid. The lien or levy shall attach to all interest in real and personal property in the Commonwealth, then owned or subsequently acquired by the obligor. The clerk shall be entitled to a fee pursuant to KRS Chapter 64.
- (3) The cabinet may force the sale of the property of the parent subject to the lien or levy for the payment of assigned child support, and distribute the proceeds in accordance with 42 U.S.C. secs. 651 et seq.
- (4) The cabinet's lien or levy shall be superior to any mortgage or encumbrance created after the notice of lien or levy is recorded. The cabinet shall give full faith and credit to child support liens or levies created in other states without requirement of judicial notice or proceedings prior to enforcement, but the liens or levies shall subordinate to any child support lien or levy of the cabinet that relates to the same obligor and property.
- (5) The cabinet shall not enforce the lien by foreclosure action on a principal residence of an obligor if to do so would deprive a minor child of the obligor of a homestead, unless the failure to enforce the lien by foreclosure would result in the loss of the home of the minor child of the custodial parent.
- (6) In the event another lienholder initiates a foreclosure action against the property of the obligor, the cabinet may protect its interest in the property by filing an answer counterclaim and cross-claim and participate in the proceeds of any sale of the property as its interests may appear.
- (7) The cabinet shall notify the obligor of the filing of its claim of lien or levy and the opportunity to contest and appeal the action in accordance with the requirements of KRS Chapter 13B.
- (8) Liens or levies resulting from actions provided by this section shall be inapplicable to an account maintained at a financial institution that is or may be subject to the data match system established by KRS 205.774, and is subordinate to any prior lien, levy, or security interest perfected by a financial institution or other legitimate lien or levy holder.
- (9) ***The cabinet may, after application to and approval of the Circuit Court, enforce the lien by the immobilization with vehicle boots of a vehicle registered in the obligor's name. The cabinet shall establish procedures for vehicle booting by the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. The procedures shall require that the following conditions are verified before a vehicle is immobilized with a vehicle boot:***
  - (a) *There is an arrearage that equals or exceeds six (6) months without payment;*
  - (b) *The obligor has failed, after receiving appropriate notice, to comply with subpoenas or warrants relating to child support proceedings;*
  - (c) *A lien has been filed in the county where the vehicle is kept;*
  - (d) *The Department of Vehicle Regulation shows that the vehicle identification number for the vehicle to be booted is registered in the obligor's name;*
  - (e) *The vehicle to be booted is solely owned by the obligor, co-owned by the obligor and current spouse, or owned by a business in which the obligor is the sole proprietor;*
  - (f) *A notice of intent has been sent to the obligor, unless there is reason to believe that the obligor will leave town or hide the vehicle;*
  - (g) *The obligor does not contact the cabinet within ten (10) days of notice to negotiate a settlement; and*
  - (h) *A target date is set for booting.*

***The administrative regulations shall also require that the cabinet send a cancellation notice to the obligor and the sheriff if a decision is made to terminate the booting of a vehicle. Once a vehicle has been booted, the cabinet shall attempt to reach a payment agreement with the obligor including terms for the release of the vehicle. If an agreement is not reached with the obligor, the cabinet may proceed with the sale of the vehicle. If the cabinet sells a vehicle, the cabinet shall notify the Department of Vehicle Regulation to issue clear title to the new owner of the vehicle.***

Section 7. KRS 205.755 is amended to read as follows:

- (1) Any payments of support made on behalf of a needy dependent child who is receiving public assistance shall be deposited by the cabinet in a manner prescribed by the secretary which is consistent with state and federal law and regulations. Distribution of any payments so made shall be made in a manner prescribed by the secretary which is consistent with state and federal law and regulations.
- (2) ***The cabinet may establish a system to receive and process all child support payments using automated payment options including, but not limited to, telephone and personal computer payment methods.***

SECTION 8. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

***Before distribution of the funds, a list of individuals or entities that are awarded tobacco settlement moneys from the tobacco settlement agreement fund under KRS 248.654, or related state or federal legislation, shall be forwarded by the cabinet, agency, corporation, authority, or other entity responsible for the distribution of the moneys to all designees of the Cabinet for Families and Children for the administration of the child support program.***

Section 9. KRS 403.212 is amended to read as follows:

- (1) The following provisions and child support table shall be the child support guidelines established for the Commonwealth of Kentucky.
- (2) For the purposes of the child support guidelines:
  - (a) "Income" means actual gross income of the parent if employed to full capacity or potential income if unemployed or underemployed.
  - (b) "Gross income" includes income from any source, except as excluded in this subsection, and includes but is not limited to income from salaries, wages, retirement and pension funds, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, Supplemental Security Income (SSI), gifts, prizes, and alimony or maintenance received. Specifically excluded are benefits received from means-tested public assistance programs, including but not limited to public assistance as defined under Title IV-A of the Federal Social Security Act, and food stamps.
  - (c) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Straight-line depreciation, using Internal Revenue Service (IRS) guidelines, shall be the only allowable method of calculating depreciation expense in determining gross income. Specifically excluded from ordinary and necessary expenses for purposes of this guideline shall be investment tax credits or any other business expenses inappropriate for determining gross income for purposes of calculating child support. Income and expenses from self-employment or operation of a business shall be carefully reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. In most cases, this amount will differ from a determination of business income for tax purposes. Expense reimbursement or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business or personal use of business property or payments of expenses by a business, shall be counted as income if they are significant and reduce personal living expenses such as a company or business car, free housing, reimbursed meals, or club dues.
  - (d) If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income, except that a determination of potential income shall not be made for a parent who is physically or mentally incapacitated or is caring for a very young child, age three (3) or younger, for whom the parents owe a joint legal responsibility. Potential income shall be determined based upon employment potential and probable earnings level based on the obligor's or obligee's recent



work history, occupational qualifications, and prevailing job opportunities and earnings levels in the community. A court may find a parent to be voluntarily unemployed or underemployed without finding that the parent intended to avoid or reduce the child support obligation.

- (e) "Imputed child support obligation" means the amount of child support the parent would be required to pay from application of the child support guidelines.
- (f) Income statements of the parents shall be verified by documentation of both current and past income. Suitable documentation shall include, but shall not be limited to, income tax returns, paystubs, employer statements, or receipts and expenses if self-employed.
- (g) "Combined **monthly** adjusted parental gross income" means the combined **monthly** gross incomes of both parents, less any of the following payments made by the parent:

1. ~~1. The cost of health insurance coverage for the child;~~

~~2.~~ 2. The amount of pre-existing orders for current maintenance for prior spouses to the extent payment is actually made and the amount of current maintenance, if any, ordered paid in the proceeding before the court;

~~2.3.~~ 3. The amount of pre-existing orders of current child support for prior-born children to the extent payment is actually made under those orders; and

~~3.4.~~ 4. A deduction for the support to the extent payment is made, if a parent is legally responsible for and is actually providing support for other prior-born children who are not the subject of a particular proceeding. If the prior-born children reside with that parent, an "imputed child support obligation" shall be allowed in the amount which would result from application of the guidelines for the support of the prior-born children.

(h) ***"Split custody arrangement" means a situation where each parent is the residential custodian for one (1) or more children for whom the parents share a joint legal responsibility.***

- (3) The child support obligation set forth in the child support guidelines table shall be divided between the parents in proportion to their **combined monthly** adjusted **parental** gross income.
- (4) The child support obligation shall be the appropriate amount for the number of children in the table for whom the parents share a joint legal responsibility. The minimum amount of child support shall be sixty dollars (\$60) per month.
- (5) The court may use its judicial discretion in determining child support in circumstances where combined adjusted parental gross income exceeds the uppermost levels of the guideline table.
- (6) ***The child support obligation in a split custody arrangement shall be calculated in the following manner:***
  - (a) ***Two (2) separate child support obligation worksheets shall be prepared, one (1) for each household, using the number of children born of the relationship in each separate household, rather than the total number of children born of the relationship.***
  - (b) ***The nonresidential custodian with the greater monthly obligation amount shall pay the difference between the obligation amounts, as determined by the worksheets, to the other parent.***
- (7) The child support guidelines table is as follows:

COMBINED MONTHLY ADJUSTED PARENTAL GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE	FOUR	FIVE	SIX OR MORE
\$ 0	\$ 60	\$ 60	\$ 60	\$ 60	\$ 60	\$ 60
100	60	60	60	60	60	60
200	70	70	70	70	70	70
300	80	80	80	80	80	80

400	90	90	90	90	90	90
500	100	105	110	115	120	125
600	120	125	130	135	140	145
700	140	156	161	166	171	176
800	160	203	208	213	218	223
900	180	261	266	271	276	281
1,000	195	303	325	330	335	340
1,100	212	324	384	389	394	399
1,200	229	346	433	446	451	456
1,300	246	367	460	504	510	515
1,400	262	392	491	554	576	582
1,500	277	417	522	588	642	650
1,600	293	437	548	618	674	717
1,700	308	458	574	647	706	755
1,800	322	478	599	675	736	788
1,900	336	495	620	699	763	816
2,000	350	512	642	723	789	844
2,100	364	529	663	747	815	872
2,200	376	546	684	771	841	900
2,300	389	563	706	795	868	928
2,400	401	580	727	819	894	956
2,500	413	597	749	843	920	984
2,600	424	614	770	867	946	1,012
2,700	435	630	790	889	970	1,038
2,800	445	646	809	911	994	1,064
2,900	455	662	829	934	1,019	1,090
3,000	465	677	849	956	1,043	1,116
3,100	475	693	868	978	1,067	1,142
3,200	485	709	888	1,001	1,092	1,168
3,300	495	725	908	1,023	1,116	1,194
3,400	506	741	928	1,045	1,140	1,220
3,500	516	757	947	1,067	1,164	1,246
3,600	526	773	967	1,090	1,189	1,272
3,700	536	790	988	1,113	1,215	1,299
3,800	548	808	1,011	1,139	1,243	1,329
3,900	559	826	1,033	1,164	1,270	1,359
4,000	571	844	1,056	1,190	1,298	1,388
4,100	580	862	1,078	1,215	1,326	1,418

4,200	592	880	1,101	1,240	1,353	1,448
4,300	603	898	1,123	1,266	1,381	1,477
4,400	615	916	1,146	1,291	1,409	1,507
4,500	626	933	1,161	1,316	1,435	1,535
4,600	636	949	1,181	1,338	1,459	1,561
4,700	647	964	1,200	1,360	1,483	1,586
4,800	657	980	1,220	1,381	1,507	1,612
4,900	667	995	1,239	1,403	1,531	1,637
5,000	676	1,010	1,257	1,424	1,554	1,661
5,100	686	1,025	1,275	1,444	1,576	1,685
5,200	695	1,039	1,294	1,465	1,599	1,709
5,300	705	1,054	1,312	1,486	1,621	1,733
5,400	714	1,069	1,330	1,506	1,644	1,757
5,500	724	1,083	1,348	1,527	1,666	1,781
5,600	733	1,098	1,367	1,548	1,689	1,805
5,700	743	1,113	1,385	1,568	1,712	1,829
5,800	753	1,127	1,403	1,589	1,734	1,853
5,900	762	1,142	1,421	1,610	1,757	1,877
6,000	772	1,157	1,440	1,630	1,779	1,901
6,100	781	1,171	1,458	1,651	1,802	1,926
6,200	791	1,186	1,476	1,672	1,824	1,950
6,300	800	1,198	1,498	1,690	1,844	1,970
6,400	808	1,209	1,511	1,705	1,860	1,988
6,500	816	1,219	1,524	1,720	1,876	2,005
6,600	823	1,230	1,538	1,735	1,893	2,023
6,700	830	1,240	1,551	1,750	1,909	2,040
6,800	837	1,251	1,564	1,764	1,925	2,058
6,900	844	1,261	1,577	1,779	1,942	2,075
7,000	851	1,272	1,591	1,794	1,958	2,093
7,100	858	1,282	1,604	1,809	1,975	2,110
7,200	865	1,293	1,617	1,824	1,991	2,127
7,300	872	1,303	1,630	1,839	2,007	2,145
7,400	879	1,313	1,644	1,854	2,024	2,162
7,500	885	1,324	1,657	1,869	2,040	2,179
7,600	891	1,333	1,668	1,881	2,053	2,194
7,700	896	1,342	1,679	1,893	2,066	2,208
7,800	901	1,350	1,691	1,905	2,079	2,223
7,900	907	1,359	1,702	1,917	2,093	2,238

8,000	912	1,368	1,713	1,929	2,106	2,252
8,100	917	1,377	1,724	1,941	2,119	2,267
8,200	922	1,386	1,736	1,953	2,133	2,281
8,300	928	1,395	1,747	1,965	2,146	2,296
8,400	933	1,404	1,758	1,977	2,159	2,311
8,500	938	1,413	1,769	1,989	2,173	2,325
8,600	944	1,421	1,780	2,002	2,186	2,340
8,700	949	1,430	1,792	2,014	2,199	2,354
8,800	954	1,437	1,800	2,024	2,210	2,366
8,900	958	1,444	1,809	2,033	2,220	2,376
9,000	962	1,450	1,817	2,042	2,230	2,387
9,100	966	1,457	1,825	2,052	2,241	2,398
9,200	971	1,463	1,833	2,061	2,251	2,408
9,300	975	1,470	1,842	2,070	2,261	2,419
9,400	979	1,476	1,850	2,079	2,271	2,430
9,500	983	1,483	1,858	2,089	2,281	2,440
9,600	988	1,489	1,866	2,098	2,291	2,451
9,700	992	1,496	1,874	2,107	2,301	2,461
9,800	996	1,502	1,883	2,117	2,311	2,472
9,900	1,000	1,508	1,891	2,126	2,321	2,483
10,000	1,005	1,515	1,899	2,165	2,331	2,493
10,400	1,022	1,541	1,932	2,202	2,372	2,536
10,500	1,027	1,548	1,940	2,212	2,382	2,546
10,600	1,032	1,554	1,948	2,221	2,392	2,557
10,700	1,036	1,561	1,956	2,230	2,402	2,567
10,800	1,040	1,567	1,965	2,240	2,412	2,578
10,900	1,044	1,573	1,973	2,249	2,422	2,589
11,000	1,049	1,580	1,981	2,258	2,432	2,599
11,100	1,053	1,587	1,989	2,268	2,443	2,610
11,200	1,058	1,593	1,997	2,277	2,453	2,620
11,300	1,062	1,600	2,005	2,286	2,463	2,631
11,400	1,066	1,606	2,013	2,295	2,473	2,642
11,500	1,070	1,613	2,021	2,305	2,483	2,652
11,600	1,075	1,619	2,029	2,314	2,493	2,663
11,700	1,079	1,626	2,037	2,323	2,503	2,673
11,800	1,084	1,633	2,046	2,333	2,513	2,684
11,900	1,088	1,639	2,054	2,342	2,523	2,695
12,000	1,093	1,646	2,062	2,351	2,533	2,705

12,100	1,097	1,653	2,070	2,361	2,544	2,716
12,200	1,102	1,659	2,078	2,370	2,554	2,726
12,300	1,106	1,666	2,086	2,379	2,564	2,737
12,400	1,110	1,672	2,094	2,388	2,574	2,748
12,500	1,114	1,679	2,102	2,398	2,584	2,758
12,600	1,119	1,685	2,110	2,407	2,594	2,769
12,700	1,123	1,692	2,118	2,416	2,604	2,779
12,800	1,128	1,699	2,127	2,426	2,614	2,790
12,900	1,132	1,705	2,135	2,435	2,624	2,801
13,000	1,137	1,712	2,143	2,444	2,634	2,811
13,100	1,141	1,719	2,151	2,454	2,645	2,822
13,200	1,146	1,725	2,159	2,463	2,665	2,832
13,300	1,150	1,732	2,167	2,472	2,665	2,843
13,400	1,154	1,738	2,175	2,481	2,675	2,854
13,500	1,158	1,745	2,183	2,491	2,685	2,864
13,600	1,163	1,751	2,191	2,500	2,695	2,875
13,700	1,167	1,758	2,199	2,509	2,705	2,885
13,800	1,172	1,765	2,208	2,519	2,715	2,896
13,900	1,176	1,771	2,216	2,528	2,725	2,907
14,000	1,181	1,778	2,224	2,537	2,735	2,917
14,100	1,185	1,785	2,232	2,547	2,746	2,928
14,200	1,190	1,791	2,240	2,556	2,756	2,938
14,300	1,194	1,798	2,248	2,565	2,766	2,949
14,400	1,198	1,804	2,256	2,574	2,776	2,960
14,500	1,202	1,811	2,264	2,584	2,786	2,970
14,600	1,207	1,817	2,272	2,593	2,796	2,981
14,700	1,211	1,824	2,280	2,602	2,806	2,991
14,800	1,216	1,831	2,289	2,612	2,816	3,002
14,900	1,220	1,837	2,297	2,621	2,826	3,013
15,000	1,225	1,844	2,305	2,630	2,836	3,023

Section 10. KRS 403.213 is amended to read as follows:

- (1) The Kentucky child support guidelines may be used by the parent, custodian, or agency substantially contributing to the support of the child as the basis for periodic updates of child support obligations and for modification of child support orders for health care. The provisions of any decree respecting child support may be modified only as to installments accruing subsequent to the filing of the motion for modification and only upon a showing of a material change in circumstances that is substantial and continuing.
- (2) Application of the Kentucky child support guidelines to the circumstances of the parties at the time of the filing of a motion or petition for modification of the child support order which results in equal to or greater than a fifteen percent (15%) change in the amount of support due per month shall be rebuttably presumed to be a material change in circumstances. Application which results in less than a fifteen percent (15%) change in the amount of support due per month shall be rebuttably presumed not to be a material change in circumstances. For the one (1) year period immediately following enactment of this statute, the presumption of material

change shall be a twenty-five percent (25%) change in the amount of child support due rather than the fifteen percent (15%) stated above.

- (3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child shall be terminated by emancipation of the child unless the child is a high school student when he reaches the age of eighteen (18). In cases where the child becomes emancipated because of age, but not due to marriage, while still a high school student, the court-ordered support shall continue while the child is a high school student, but not beyond completion of the school year during which the child reaches the age of nineteen (19) years. Provisions for the support of the child shall not be terminated by the death of a parent obligated to support the child. If a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances. ***Emancipation of the child shall not terminate the obligation of child support arrearages that accrued while the child was an unemancipated minor.***
- (4) The child support guidelines table shall be reviewed at least once every four (4) years by a commission consisting of the following persons:
  - (a) The secretary of the Cabinet for Families and Children or a supervisory staff person designated by him;
  - (b) Two (2) members of the Kentucky Bar Association who have at least six (6) consecutive years' experience and are presently practicing domestic relations cases, one (1) member from a metropolitan or large urban area and one (1) member from a less populated area;
  - (c) Two (2) Circuit Judges appointed by the Chief Justice of the Kentucky Supreme Court, one (1) from a metropolitan or large urban area, and one (1) from a less populated area;
  - (d) One (1) District Judge appointed by the Chief Justice of the Kentucky Supreme Court;
  - (e) Two (2) county attorneys appointed by the president of the County Attorneys Association, one (1) from a metropolitan or large urban area and one (1) from a less populated area; and
  - (f) The Attorney General or his designee, who shall be an attorney from his office.
- (5) The commission shall make a recommendation to the Kentucky General Assembly to ensure that the child support guidelines table results in a determination of appropriate child support amounts.

SECTION 11. A NEW SECTION OF KRS 405.405 TO 405.520 IS CREATED TO READ AS FOLLOWS:

- (1) ***The Cabinet for Families and Children's designee under KRS 205.712(6) for the administration of child support may compile a list of the names of persons under its jurisdiction who have a child support arrearage that equals or exceeds six (6) months without payment, or fails, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings as provided by 42 U.S.C. sec. 666(a)(16). The cabinet may furnish this list to the newspaper of general circulation in that county for publication.***
- (2) ***The Division of Child Support Enforcement in the Cabinet for Families and Children shall determine uniform standards for publication. The cabinet is authorized to promulgate the necessary administrative regulations under KRS Chapter 13A to implement the provisions of this section.***
- (3) ***For purposes of this section, "newspaper of general circulation" means a publication bearing a title or name, regularly issued at least as frequently as once a week for a definite price, having a second-class mailing privilege, being not less than four (4) pages, published continuously during the immediately preceding one (1) year period, which is published for the dissemination of news of general interest, and is circulated generally in the political subdivision in which it is published and in which notice is to be given. In any county where a publication fully complying with this definition does not exist, the Cabinet for Families and Children may publish this list in the publication utilized by the Circuit Court Clerk of the county for publication of other legal notices in the county. A newspaper that is not engaged in the distribution of news of general interest to the public, but that is primarily engaged in the distribution of news of interest to a particular group of citizens, is not a newspaper of general circulation.***

SECTION 12. A NEW SECTION OF KRS 405.405 TO 405.520 IS CREATED TO READ AS FOLLOWS:

***The Kentucky Lottery Corporation and the Cabinet for Families and Children shall develop a system to allow the Kentucky Lottery Corporation to receive a list of delinquent child support obligors from the Cabinet for Families and Children on a monthly basis. The Kentucky Lottery Corporation shall withhold delinquent amounts from***

*prizes of winners that appear on the list. This system shall be timely and shall not create an unavoidable delay in the payment of a lottery prize.*

Section 13. KRS 405.430 is amended to read as follows:

- (1) When a parent presents himself to the cabinet for the voluntary establishment of paternity and clear evidence of parentage is not present, the cabinet shall pay when administratively ordered the cost of genetic testing to establish paternity, subject to recoupment from the alleged father when paternity is established.
- (2) The cabinet shall obtain additional testing in any case if an original test is contested, upon request and advance payment by the contestant.
- (3) In a contested paternity case, the child, the mother, and the putative father shall submit to genetic testing upon a request of any of the parties, unless the person or guardian of the person who is requested to submit to genetic testing shows good cause, taking into account the best interests of the child, why the genetic tests cannot be performed. The request shall be supported by a sworn statement of the party, requesting that the test be performed, which shall include the information required by 42 U.S.C. sec. 666(a)(5)(B)(i) or (ii).
- (4) When a parent who fails to support a child is not obligated to provide child support by court order, the cabinet may administratively establish a child support obligation based upon a voluntary acknowledgment of paternity as set forth in KRS Chapter 406, the parent's minimum monthly child support obligation and proportionate share of child care costs incurred due to employment or job search of either parent, or incurred while receiving elementary or secondary education, or higher education or vocational training which will lead to employment. The monthly child support obligation shall be determined pursuant to the Kentucky child support guidelines set forth in KRS 403.212. The actual cost of child care shall be reasonable and shall be allocated between the parents in the same proportion as each parent's gross income, as determined under the guidelines, bears to the total family gross income.
- (5) The cabinet shall recognize a voluntary acknowledgment of paternity as a basis for seeking a support order, irrespective of the alleged father's willingness to consent to a support order.
- (6) When in the best interest of the child, the cabinet may review and adjust a parent's child support obligation or child care obligation as established by the cabinet, upon a request of the cabinet when an assignment has been made, or upon either parent's petition if the amount of the child support awarded under the order differs from the amount that would be awarded in accordance with KRS 403.212. The cabinet shall notify parents at least once every three (3) years of the right to a review.
- (7) In establishing or modifying a parent's monthly child support obligation, the cabinet may use automated methods to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the adjustment to eligible orders in accordance with KRS 403.212. The cabinet shall utilize information, including financial records, about the parent and child which it has good reason to believe is reliable and may require the parents to provide income verification.
- (8) In cases in which past-due support is owed for a child receiving public assistance under Title IV-A of the Federal Social Security Act, the cabinet shall issue an administrative order, or seek a judicial order, requiring the obligated parent to participate in work activities, *or educational or vocational training activities for at least twenty (20) hours per week*, unless the parent is incapacitated as defined by 42 U.S.C. sec. 607.
- (9) The cabinet may disclose financial records only for the purpose of establishing, modifying, or enforcing a child support obligation of an individual. A financial institution shall not be liable to any individual for disclosing any financial record of the individual to the cabinet attempting to establish, modify, or enforce a child support obligation.
- (10) The cabinet may issue both intrastate and interstate administrative subpoenas to any individual or entity for financial or other information or documents which are needed to establish, modify, or enforce a child support obligation pursuant to Title IV-D of the Social Security Act, 42 U.S.C. secs. 651 et seq. An administrative subpoena lawfully issued in another state to an individual or entity residing in this state shall be honored and enforced in the Circuit Court of the county in which the individual or entity resides.
- (11) In any case where a person or entity fails to respond to a subpoena within the specified time frame, the cabinet shall impose a penalty.

- (12) No person shall knowingly make, present, or cause to be made or presented to an employee or officer of the cabinet any false, fictitious, or fraudulent statement, representation, or entry in any application, report, document, or financial record used in determining child support or child care obligations.
- (13) If a person knowingly or by reason of negligence discloses a financial record of an individual, that individual may pursue civil action for damages in a federal District Court or appropriate state court. No liability shall arise with respect to any disclosure which results from a good faith, but erroneous, interpretation. In any civil action brought for reason of negligence of disclosure of financial records, upon finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to:
- (a) The sum of the greater of one thousand dollars (\$1,000) for each act of unauthorized disclosure of financial records; or
  - (b) The sum of the actual damages sustained by the plaintiff resulting from the unauthorized disclosure; plus
  - (c) If willful disclosure or disclosure was a result of gross negligence, punitive damages, plus the costs, including attorney fees, of the action.
- (14) ***The cabinet shall issue an administrative order or seek a judicial order requiring a parent with a delinquent child support obligation, as defined by administrative regulation promulgated under Section 16 of this Act, to participate in the program described in Section 4 of this Act to help low-income, noncustodial parents find and keep employment unless the parent is incapacitated as defined by 42 U.S.C. sec. 607.***

Section 14. KRS 405.470 is amended to read as follows:

- (1) The secretary may collect delinquent child support by issuing an order to withhold and deliver earnings or property of any kind, real and personal, ***including booting of vehicle in accordance with administrative regulations promulgated under Section 6 of this Act***, which the secretary has reason to believe are due, owing or belonging to the parent.
- (2) Fifty percent (50%) of the disposable earnings against which a support debt is asserted shall be exempt and may be delivered to the obligor. The only other exemptions allowed shall be those provided in KRS 427.060.
- (3) The order shall continue to operate until the child support debt is paid in full and shall take priority over all other debts and creditors of such debtor.

Section 15. KRS 403.160 is amended to read as follows:

- (1) In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.
- (2)
  - (a) In a proceeding for dissolution of marriage, legal separation, or child support, either party, with notice to the opposing party, may move for temporary child support. The motion shall be accompanied by an affidavit setting forth the number of children of the marriage and the information required to calculate the combined adjusted parental gross income set forth in KRS 403.212(2)(~~h~~)(~~g~~), and the Social Security numbers of all parties subject to the motion. The court shall, within fourteen (14) days from the filing of said motion, order an amount of temporary child support based upon the child support guidelines as provided by law, and the ordered child support shall be retroactive to the date of the filing of the motion unless otherwise ordered by the court.
  - (b) Upon a showing of good cause, either party may move the court to enter an order for temporary child support without written or oral notice to the adverse party. After reviewing the affidavit required by paragraph (a) of this subsection, the court may issue a temporary child support order based upon the child support guidelines. The order shall provide that the order becomes effective seven (7) days following service of the order and movant's affidavit upon the adverse party unless the adverse party, within the seven (7) day period, files a motion for a hearing before the court. The motion for hearing shall be accompanied by the affidavit required by paragraph (a) of this subsection. Pending the hearing, the adverse party shall pay child support in an amount based upon the guidelines and the adverse party's affidavit. The child support order entered following the hearing shall be retroactive to the date of the filing of the motion for temporary support unless otherwise ordered by the court.



- (3) As part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction or restraining order pursuant to the Rules of Civil Procedure.
- (4) If the court or agent of the court is made aware that there is reasonable evidence of domestic violence or child abuse, the court shall determine whether disclosure to any other person of the information could be harmful to the parent or child, and if the court determines that disclosure to any person could be harmful, the court and its agents shall not make the disclosure.
- (5) On the basis of the showing made and in conformity with KRS 403.200, the court may issue a temporary injunction or restraining order and an order for temporary maintenance in amounts and on terms just and proper in the circumstances.
- (6) A temporary order or temporary injunction:
  - (a) Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;
  - (b) May be revoked or modified before final decree on a showing of the facts necessary to revocation or modification under the circumstances; and
  - (c) Terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

SECTION 16. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

- (1) ***The Office of the Attorney General shall receive from the Cabinet for Families and Children a list of names of delinquent obligors as defined in administrative regulations promulgated under this section.***
- (2) ***The Office of the Attorney General in cooperation with the Cabinet for Families and Children shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section.***
- (3) ***The Office of the Attorney General shall:***
  - (a) ***Publish and update the list on an appropriate agency internet site; and***
  - (b) ***Distribute to all designees of the cabinet for the administration of the child support program, a "most wanted" poster that includes names, and photos if available, of delinquent obligors whose whereabouts are unknown or unverified, or who if known, refuse to meet their child support obligations. The poster shall be posted locally by the designee of the cabinet for the administration of the child support program in public locations.***

Section 17. KRS 44.030 is amended to read as follows:

- (1) No money shall be paid to any person on a claim against the state in his own right, or as an assignee of another, when he or his assignor is indebted to the state. The claim, to the extent it is allowed, shall be credited to the account of the person so indebted, and if there is any balance due him after settling the whole demand of the state such balance shall be paid to him.
- (2) ***The Finance and Administration Cabinet shall provide the Cabinet for Families and Children with a quarterly report of all tort claims made against the state by individuals that the Cabinet for Families and Children shall compare with the child support database to match individuals who have a child support arrearage and may receive a settlement from the state.***

Section 18. KRS 403.211 is amended to read as follows:

- (1) An action to establish or enforce child support may be initiated by the parent, custodian, or agency substantially contributing to the support of the child. The action may be brought in the county in which the child resides or where the defendant resides.
- (2) At the time of initial establishment of a child support order, whether temporary or permanent, or in any proceeding to modify a support order, the child support guidelines in KRS 403.212 shall serve as a rebuttable presumption for the establishment or modification of the amount of child support. Courts may deviate from the guidelines where their application would be unjust or inappropriate. Any deviation shall be accompanied by a written finding or specific finding on the record by the court, specifying the reason for the deviation.

- (3) A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption and allow for an appropriate adjustment of the guideline award if based upon one (1) or more of the following criteria:
- (a) A child's extraordinary medical or dental needs;
  - (b) A child's extraordinary educational, job training, or special needs;
  - (c) Either parent's own extraordinary needs, such as medical expenses;
  - (d) The independent financial resources, if any, of the child or children;
  - (e) Combined **monthly adjusted parental gross** ~~parental~~ income in excess of the Kentucky child support guidelines;
  - (f) The parents of the child, having demonstrated knowledge of the amount of child support established by the Kentucky child support guidelines, have agreed to child support different from the guideline amount. However, no such agreement shall be the basis of any deviation if public assistance is being paid on behalf of a child under the provisions of Part D of Title IV of the Federal Social Security Act; and
  - (g) Any similar factor of an extraordinary nature specifically identified by the court which would make application of the guidelines inappropriate.
- (4) "Extraordinary" as used in this section shall be determined by the court in its discretion.
- (5) When a party has defaulted or the court is otherwise presented with insufficient evidence to determine gross income, the court shall order child support based upon the needs of the child or the previous standard of living of the child, whichever is greater. An order entered by default or due to insufficient evidence to determine gross income may be modified upward and arrearages awarded from the date of the original order if evidence of gross income is presented within two (2) years which would have established a higher amount of child support pursuant to the child support guidelines set forth in KRS 403.212.
- (6) The court shall allocate between the parents, in proportion to their **combined monthly** adjusted **parental** gross income, reasonable and necessary child care costs incurred due to employment, job search, or education leading to employment, in addition to the amount ordered under the child support guidelines.
- (7) (a) *If health care insurance coverage is reasonable and available at the time the request for coverage is made, the court shall allocate between the parents, in proportion to their combined monthly adjusted parental gross income, the cost of health care insurance coverage for the child, in addition to the support ordered under the child support guidelines.*
- (b) *A parent, who has one hundred percent (100%) of the combined monthly adjusted parental gross income, shall be entitled to a reduction in gross income of the entire amount of premiums incurred and paid.*
- (c) The court shall order the cost of health care of the child to be paid by either or both parents of the child regardless of who has physical custody. The court order shall include:
- 1. A judicial directive designating which parent shall have financial responsibility for providing health care for the dependent child, which shall include, but not be limited to, insurance coverage, payments of necessary health care deductibles or copayments; and
  - 2. A statement providing that if the designated parent's health care coverage provides for covered services for dependent children beyond the age of majority, then any unmarried children up to twenty-five (25) years of age who are full-time students enrolled in and attending an accredited educational institution and who are primarily dependent on the insured parent for maintenance and support shall be covered.
- ~~(d)(b)~~ If health care insurance coverage is not reasonable and available at the time the request for the coverage is made, the court order shall provide for health care insurance coverage at the time it becomes reasonable and available.
- (8) The cost of extraordinary medical expenses shall be allocated between the parties in proportion to their **combined monthly** adjusted **parental** gross incomes. "Extraordinary medical expenses" means uninsured expenses in excess of one hundred dollars (\$100) per child per calendar year. "Extraordinary medical expenses" includes, but is not limited to, the costs that are reasonably necessary for medical, surgical, dental,

orthodontal, optometric, nursing, and hospital services; for professional counseling or psychiatric therapy for diagnosed medical disorders; and for drugs and medical supplies, appliances, laboratory, diagnostic, and therapeutic services.

- (9) The court order shall include the Social Security numbers of all parties subject to a support order.
- (10) In any case administered by the Cabinet for Families and Children, if the parent ordered to provide health care coverage is enrolled through an insurer but fails to enroll the child under family coverage, the other parent or the Cabinet for Families and Children may, upon application, enroll the child.
- (11) In any case administered by the cabinet, information received or transmitted shall not be published or be open for public inspection, including reasonable evidence of domestic violence or child abuse if the disclosure of the information could be harmful to the custodial parent or the child of the parent. Necessary information and records may be furnished as specified by KRS 205.175.
- (12) In the case in which a noncustodial parent provides health care coverage, and changes employment, and the new employer provides health care coverage, the Cabinet for Families and Children shall transfer notice of the provision for coverage for the child to the employer, which shall operate to enroll this child in the noncustodial parent's health plan, unless the noncustodial parent contests the notice as specified by KRS Chapter 13B.
- (13) Notwithstanding any other provision of this section, any wage or income shall not be exempt from attachment or assignment for the payment of current child support or owed or to-be-owed child support.
- (14) *A payment of money received by a child as a result of a parental disability shall be credited against the child support obligation of the parent. A payment shall not be counted as income to either parent when calculating a child support arrearage owed by the parent that accrued subsequent to the date of the parental disability, but shall not be applied to an arrearage that accrued prior to the date of disability. The date of disability shall be as determined by the paying agency.*

Section 19. Sections 1 to 17 of this Act may be cited as the Kentucky's Kids Come First Act of 2000.

**Approved April 21, 2000**

## CHAPTER 431

(SB 223)

AN ACT relating to crimes and punishments.

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

Section 1. KRS 506.140 is amended to read as follows:

- (1) A person is guilty of criminal gang recruitment when he solicits or entices another person to join a **criminal** gang, or intimidates or threatens another person because the other person:
  - (a) Refuses to join a criminal gang;
  - (b) Has withdrawn or is attempting to withdraw from a criminal gang; or
  - (c) Refuses to submit to a demand made by a criminal gang.
- (2) *As used in this chapter:*
  - (a) *"Criminal gang" means any alliance, network, or conspiracy, in law or in fact, of five (5) or more persons with an established hierarchy that, through its membership or through the action of any member, engages in a continuing pattern of criminal activity. "Criminal gang" shall not include fraternal organizations, unions, corporations, associations, or similar entities, unless organized for the primary purpose of engaging in criminal activity.*
  - (b) *"Continuing pattern of criminal activity" means a conviction by any member or members of a criminal gang for the commission, attempt, or solicitation of two (2) or more felony offenses, the commission of two (2) or more violent misdemeanor offenses, or a combination of at least one (1) of these felony offenses and one (1) of these violent misdemeanor offenses, on separate occasions within a two (2) year period for the purpose of furthering gang activity.*

(c) *"Violent misdemeanor offense" means KRS 508.030, 508.050, 508.070, 508.080, 508.120, 508.150, 509.030, and 509.080.*

- (3) Criminal gang recruitment is a Class A misdemeanor for the first offense and a Class D felony for a second or subsequent offense.

Section 2. KRS 506.150 is amended to read as follows:

- (1) *To establish the existence of a "criminal gang" as defined in Section 1 of this Act, any competent evidence that is probative of the existence of or membership in a criminal gang shall be admissible, including the following:*

- (a) *Self-proclamation;*
- (b) *A common name, insignia, flag, or means of recognition;*
- (c) *Common identifying hand or body signs, signals, or code;*
- (d) *A common identifying mode, style, or color of dress;*
- (e) *An identifying tattoo or body marking;*
- (f) *Membership, age, or other qualifications;*
- (g) *Creed of belief;*
- (h) *An organizational or command structure, overt or covert;*
- (i) *A de facto claim of territory or jurisdiction;*
- (j) *An initiation ritual;*
- (k) *A concentration or specialty; or*
- (l) *A method of operation or criminal enterprise.*

- (2) It is no defense to prosecution under KRS~~[-506.130 or]~~ 506.140 that:

- (a) One (1) or more members of the gang are not criminally responsible for the offense;
- (b) One (1) or more members of the gang have been acquitted, have not been prosecuted or convicted, have been convicted of a different offense, or are under prosecution;
- (c) A person has been charged with, acquitted, or convicted of any offense under KRS~~[-506.130 or]~~ 506.140;
- (d) The participants may not know each other's identity;
- (e) The membership in the criminal gang may change from time to time; or
- (f) The participants may stand in a wholesaler-retailer or other arm's length arrangement in the conduct of illicit distribution or other operations.

- (3)~~(2)~~ Once the initial combination of five (5) or more persons is formed, the number or identity of persons remaining in the gang is immaterial as long as four (4) or more persons in the gang, excluding the defendant, are involved in a continuing *pattern of criminal activity as defined in Section 1 of this Act*~~[course of conduct]~~ constituting a violation of KRS~~[-506.130 or]~~ 506.140.

Section 3. The following KRS section is repealed:

506.130 Engaging in furtherance of criminal gang activity -- Enhancement of penalty.

**Approved April 21, 2000**

## **CHAPTER 432**

**(SB 227)**

AN ACT relating to acquired immunodeficiency syndrome.

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

Section 1. KRS 199.520 is amended to read as follows:

- (1) After hearing the case, the court shall enter a judgment of adoption, if it finds that the facts stated in the petition were established; that all legal requirements, including jurisdiction, relating to the adoption have been complied with; that the petitioners are of good moral character, of reputable standing in the community and of ability to properly maintain and educate the child; and that the best interest of the child will be promoted by the adoption and that the child is suitable for adoption. In the judgment, the name of the child shall be changed to conform with the prayer of the petition. The judgment and all orders required to be entered and recorded in the order book, including the caption, shall contain only the names of the petitioners and the proposed adopted name of the child, without any reference to its former name or the names of its birth parents.
- (2) Upon entry of the judgment of adoption, from and after the date of the filing of the petition, the child shall be deemed the child of petitioners and shall be considered for purposes of inheritance and succession and for all other legal considerations, the natural child of the parents adopting it the same as if born of their bodies. Upon granting an adoption, all legal relationship between the adopted child and the biological parents shall be terminated except the relationship of a biological parent who is the spouse of an adoptive parent.
- (3) The clerk of the court shall notify the cabinet of any action of the court with respect to entering a judgment granting an adoption, the amendment of an adoption, or the denial or dismissal of a petition for adoption.
- (4)
  - (a) The health history of biological parents and blood relatives of the adopted person, in writing, on a standardized form, provided by the cabinet, if known, shall be given by the cabinet or child-placing agency which has the information to the adoptive parents and to the Circuit Court not later than the date of finalization of the adoption proceedings. ***This information shall include the results of any tests for HIV or hepatitis A, B, and C;*** and
  - (b) The information provided for in paragraph (a) of this subsection, if known, shall, upon the request in person or in writing of the adult adopted person be made available in writing to that person. The information shall not be made available if it is of a nature that would tend to identify the biological parents of the adopted person except as provided in KRS 199.570 and 199.572.

Section 2. KRS 211.180 is amended to read as follows:

- (1) The cabinet shall enforce the administrative regulations promulgated by the secretary of the Cabinet for Health Services for the regulation and control of the matters set out below and shall formulate, promote, establish, and execute policies, plans, and programs relating to all matters of public health, including but not limited to the following matters:
  - (a) Detection, prevention, and control of communicable diseases, chronic and degenerative diseases, dental diseases and abnormalities, occupational diseases and health hazards peculiar to industry, home accidents and health hazards, animal diseases which are transmissible to man, and other diseases and health hazards that may be controlled;
  - (b) The adoption of regulations specifying the information required in and a minimum time period for reporting a sexually transmitted disease. In adopting the regulations the cabinet shall consider the need for information, protection for the privacy and confidentiality of the patient, and the practical ability of persons and laboratories to report in a reasonable fashion. The cabinet shall require reporting of physician-diagnosed cases of acquired immunodeficiency syndrome based upon diagnostic criteria from the Centers for Disease Control ***and Prevention*** of the United States Public Health Service. ***No later than October 1, 2000,*** the cabinet shall require reporting of cases of human immunodeficiency virus infection by ***reporting of a unique code and other relevant data as requested by the Centers for Disease Control and Prevention and as further specified in Section 4 of this Act***~~[July 1, 1990, but shall be prohibited from requiring the reporting of or collection of names and addresses. However, a code may be used, so long as in and of itself, it would not identify the patient].~~ Nothing in this section shall be construed to prohibit the cabinet from identifying infected patients when and if an effective cure for human immunodeficiency virus infection or any immunosuppression caused by human immunodeficiency virus is found or a treatment which would render a person noninfectious is found, for the purposes of offering or making the cure or treatment known to the patient.
  - (c) The control of insects, rodents, and other vectors of disease; the safe handling of food and food products; the safety of cosmetics; the control of narcotics, barbiturates, and other drugs as provided by law; the sanitation of schools, industrial establishments, and other public and semipublic buildings; the sanitation of state and county fairs and other similar public gatherings; the sanitation of public and

semipublic recreational areas; the sanitation of public rest rooms, trailer courts, hotels, tourist courts, and other establishments furnishing public sleeping accommodations; the review, approval, or disapproval of plans for construction, modification, or extension of equipment related to food-handling in food-handling establishments; the licensure of hospitals; and the control of such other factors, not assigned by law to another agency, as may be necessary to insure a safe and sanitary environment;

- (d) The construction, installation, and alteration of any on-site sewage disposal system, except for a system with a surface discharge;
  - (e) Protection and improvement of the health of expectant mothers, infants, preschool, and school-age children;
  - (f) The practice of midwifery, including the issuance of permits to and supervision of women who practice midwifery; and
  - (g) Protection and improvement of the health of the people through better nutrition.
- (2) The secretary shall have authority to establish by regulation a schedule of reasonable fees, not to exceed twenty dollars (\$20) per inspector hour plus travel costs pursuant to state regulations for travel reimbursement, to cover the costs of inspections of manufacturers, retailers, and distributors of consumer products as defined in the Federal Consumer Product Safety Act, 15 U.S.C. secs. 2051 et seq.; 86 Stat. 1207 et seq. or amendments thereto, and of youth camps for the purpose of determining compliance with the provisions of this section and the regulations adopted by the secretary pursuant thereto. Fees collected by the secretary shall be deposited in the State Treasury and credited to a revolving fund account for the purpose of carrying out the provisions of this section. The balance of the account shall lapse to the general fund at the end of each biennium.
- (3) Any administrative hearing conducted under authority of this section shall be conducted in accordance with KRS Chapter 13B.

SECTION 3. A NEW SECTION OF KRS CHAPTER 214 IS CREATED TO READ AS FOLLOWS:

- (1) *The Cabinet for Health Services may create, to the extent permitted by available staffing and funding, an HIV and AIDS Advisory Council to consist of no more than twenty-five (25) members, for the purpose of advising the cabinet on the formulation of HIV and AIDS policy. Membership on the committee shall be drawn from the following:*
- (a) *The commissioner of the Department of Public Health;*
  - (b) *The commissioner of the Department of Medicaid Services;*
  - (c) *Representatives of other state agencies or boards that provide services to clients of HIV or AIDS services or that provide education to professionals who come into contact with HIV or AIDS clients, as designated by the Governor;*
  - (d) *Physicians representing different geographic regions of the state;*
  - (e) *HIV or AIDS clients; and*
  - (f) *Representatives of community-based organizations from different geographic regions of the state.*
- To the extent possible, membership of the council shall reflect the epidemiology of the HIV/AIDS epidemic.*
- (2) *The members designated under paragraphs (a) to (c) of subsection (1) of this section shall serve for the duration of service in their offices, subject to removal for cause by the Governor. These members shall not be paid for attending council meetings, but may receive reimbursement of expenses.*
- (3) *The members serving under paragraphs (d) to (f) of subsection (1) of this section shall be appointed by the cabinet from lists submitted by the appropriate licensing entities of the profession involved, by the cabinet, and by community-based organizations. These members shall serve for a term of four (4) years and may be reappointed, but the members shall not serve for more than two (2) consecutive terms.*
- (4) *The chair of the council shall be elected from the membership serving under paragraphs (d) to (f) of subsection (1) of this section.*
- (5) *The functions of the council shall include, but shall not be limited to:*
- (a) *Reporting its findings to the cabinet and monitoring the responsiveness of the cabinet to insure that the council's recommendations are being followed;*

- (b) *Exploring the feasibility, design, cost, and necessary funding for centers of excellence to deliver comprehensive, coordinated medical and related care to all people with HIV or AIDS in the Commonwealth based on national clinical guidelines and practice standards. Coordinated medical care shall include, but not be limited to access to:*
  - 1. *AIDS primary care;*
  - 2. *Drug therapy;*
  - 3. *Specialists' care, including psychiatric and other mental health providers;*
  - 4. *Case management services;*
  - 5. *Dental care;*
  - 6. *Chemical dependency treatment; and*
  - 7. *Basic needs, including but not limited to, housing and food;*
- (c) *Assessing resources and gaps in services provided for persons with HIV or AIDS;*
- (d) *Subdividing into necessary subcommittees. One (1) subcommittee may be formed that will consist solely of persons living with HIV or AIDS. This subcommittee shall make those recommendations as it deems necessary to the council, including recommendations on effective peer-based prevention programs; and*
- (e) *Reporting its findings and recommendations to the General Assembly and the Interim Joint Committee on Health and Welfare by September 1, 2001, and by September 1 of each year thereafter.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 214 IS CREATED TO READ AS FOLLOWS:

- (1) *The Cabinet for Health Services shall establish a system for reporting, by the use of a unique code, of all persons who test positive for the human immunodeficiency virus (HIV) infection. The reporting shall include the data including, but not limited to, CD4 count and viral load, and other information that are necessary to comply with the confidentiality and reporting requirements of the most recent edition of the Centers for Disease Control and Prevention's (CDC) Guidelines for National Human Immunodeficiency Virus Case Surveillance. As recommended by the CDC, anonymous testing shall remain as an alternative. If less restrictive data identifying requirements are identified by the CDC, the cabinet shall evaluate the new requirements for implementation.*
- (2) *The reporting system established under subsection (1) of this section shall:*
  - (a) *Use a unique code that consists of any combination of initials, the last four (4) numbers of the Social Security number, birth date, or other information to be determined by the cabinet;*
  - (b) *Attempt to identify all modes of HIV transmission, unusual clinical or virologic manifestations, and other cases of public health importance;*
  - (c) *Require collection of the unique code and data from all private and public sources of HIV-related testing and care services; and*
  - (d) *Use reporting methods that match the CDC's standards for completeness, timeliness, and accuracy, and follow up, as necessary, with the health care provider making the report to verify completeness, timeliness, and accuracy.*
- (3) *Authorized surveillance staff designated by the cabinet shall:*
  - (a) *Match the information from the reporting system to other public health databases, wherever possible, to limit duplication and to better quantify the extent of HIV infection in the Commonwealth;*
  - (b) *Conduct a biennial assessment of the HIV and AIDS reporting systems, insure that the assessment is available for review by the public and any state or federal agency, and forward a copy of the assessment to the Legislative Research Commission and the Interim Joint Committee on Health and Welfare;*
  - (c) *Document the security policies and procedures and insure their availability for review by the public or any state or federal agency;*

- (d) *Minimize storage and retention of unnecessary paper or electronic reports and insure that related policies are consistent with CDC technical guidelines;*
  - (e) *Assure that electronic transfer of data is protected by encryption during transfer;*
  - (f) *Provide that records be stored in a physically secluded area and protected by coded passwords and computer encryption;*
  - (g) *Restrict access to data a minimum number of authorized surveillance staff who are designated by a responsible authorizing official, who have been trained in confidentiality procedures, and who are aware of penalties for unauthorized disclosure of surveillance information;*
  - (h) *Require that any other public health program that receives data has appropriate security and confidentiality protections and penalties;*
  - (i) *Restrict use of data, from which identifying information has been removed, to cabinet-approved research, and require all persons with this use to sign confidentiality statements;*
  - (j) *Prohibit release of any unique codes or any other identifying information that may have been received in a report to any person or organization, whether public or private, except in compliance with federal law or consultations with other state surveillance programs and reporting sources. Under no circumstances shall a unique code or any identifying information be reported to the CDC; and*
  - (k) *Immediately investigate any report of breach of reporting, surveillance, or confidentiality policy, report the breach to the CDC, develop recommendations for improvements in security measure, and take appropriate disciplinary action for any documented breach.*
- (4) *The cabinet shall require any physician or medical laboratory that receives a report of a positive test for the human immunodeficiency virus to report that information by reference to the unique code in accordance with the procedure for establishing the unique code established by the cabinet in an administrative regulation. The physician and medical laboratory shall maintain a log with the name of the patient who tested positive and the unique identifier assigned.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 214 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall:*
- (a) *Conduct a review of any guidelines for HIV or acquired immunodeficiency syndrome (AIDS) care coordination to insure:*
    - 1. *Consistency;*
    - 2. *Comprehensive in service; and*
    - 3. *That access to health care and sustaining individuals infected with HIV/AIDS in primary HIV-related medical care is the top priority for care coordinators;*
  - (b) *Conduct objective peer reviews, as necessary, of each care coordination agency to insure that care coordinators are in compliance with the care coordination guidelines;*
  - (c) *Conduct outcome evaluations, as necessary and as permitted by funding limitations, to measure the quality and impact of the care coordinator delivery system;*
  - (d) *Review the need for additional care coordinators to assure that client caseloads are manageable and, to the extent that funds are available, strive for a maximum client caseload of forty (40) to fifty (50) clients per care coordinator. If, after this review, the cabinet finds the need for additional staff, it may develop a plan and request funding for the hiring of additional care coordinators in the geographic areas of greatest need;*
  - (e) *Review eligibility criteria for persons who wish to receive treatment medications through the Kentucky AIDS Drug Assistance Program to insure that these funds are the funds of last resort;*
  - (f) *Review the data collected under Section 4 of this Act to determine whether allocated resources are sufficiently distributed to meet the geographic distribution of reported HIV and AIDS cases;*
  - (g) *Work with other agencies, departments, and cabinets to advise on their development of educational HIV and AIDS programs that are mandated by law;*



- (h) Urge access to Spanish-speaking interpreters to provide prevention, treatment, and service efforts where needed in the Commonwealth;*
  - (i) Provide for consistent and comprehensive HIV and AIDS counseling and testing education in all public health departments as needed;*
  - (j) Require collaboration between HIV prevention educators and HIV care coordinators with the goal of reducing the further transmission of HIV by those already infected; and*
  - (k) Encourage community-based organizations to develop an outreach program designed to foster active partnerships with willing faith-based communities. These partnerships may be used to educate community members about illegal drug use, the value of harm reduction programs, and HIV and AIDS prevention and services.*
- (2) Authorized surveillance staff designated by the cabinet shall review all known cases of newborns with perinatal exposure to HIV infection or with HIV infection.*
- (3) Any pharmacy or clinic that provides HIV or AIDS-related medications through the Kentucky AIDS Drug Assistance Program or any other state assistance program shall:*
- (a) Be encouraged to provide pharmacological consultation reimbursement with written documentation. Documentation may include date of interview, assessment of timely drug refills, side effects, problems, remediation, outcomes noted, and the pharmacist's HIV specialized physician; and*
  - (b) Be encouraged to seek HIV pharmacological certification in addition to already recommended continuing education training on HIV and AIDS.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 214 IS CREATED TO READ AS FOLLOWS:

***The cabinet may make available information about grant opportunities to nonprofit clinics in the Commonwealth that are established to provide treatment in a multidisciplinary team approach for patients with HIV and AIDS.***

Section 7. KRS 214.181 is amended to read as follows:

- (1) The General Assembly finds that the use of tests designed to reveal a condition indicative of human immunodeficiency virus (HIV) infection can be a valuable tool in protecting the public health. The General Assembly finds that despite current scientific knowledge that zidovudine (AZT) prolongs the lives of acquired immunodeficiency syndrome victims, and may also be effective when introduced in the early stages of human immunodeficiency virus infection, many members of the public are deterred from seeking testing because they misunderstand the nature of the test or fear that test results will be disclosed without their consent. The General Assembly finds that the public health will be served by facilitating informed, voluntary, and confidential use of tests designed to detect human immunodeficiency virus infection.*
- (2) A person who has signed a general consent form for the performance of medical procedures and tests is not required to also sign or be presented with a specific consent form relating to medical procedures or tests to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any other causative agent of acquired immunodeficiency syndrome that will be performed on the person during the time in which the general consent form is in effect. However, a general consent form shall instruct the patient that, as part of the medical procedures or tests, the patient may be tested for human immunodeficiency virus infection, hepatitis, or any other blood-borne infectious disease if a doctor orders the test for diagnostic purposes. Except as otherwise provided in subsection (5)(c) of this section, the results of a test or procedure to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any probable causative agent of acquired immunodeficiency syndrome performed under the authorization of a general consent form shall be used only for diagnostic or other purposes directly related to medical treatment.*
- (3) In any emergency situation where informed consent of the patient cannot reasonably be obtained before providing health-care services, there is no requirement that a health-care provider obtain a previous informed consent.*
- (4) The physician who orders the test pursuant to subsections (1) and (2) of this section, or the attending physician, shall be responsible for informing the patient of the results of the test if the test results are positive for human immunodeficiency virus infection. If the tests are positive, the physician shall also be responsible for either:*

- (a) Providing information and counseling to the patient concerning his infection or diagnosis and the known medical implications of such status or condition; or
  - (b) Referring the patient to another appropriate professional or health-care facility for the information and counseling.
- (5) (a) No person in this state shall perform a test designed to identify the human immunodeficiency virus, or its antigen or antibody, without first obtaining the informed consent of the person upon whom the test is being performed, except as specified in subsections (2) and (3) of this section.
- (b) No test result shall be determined as positive, and no positive test result shall be revealed to any person, without corroborating or confirmatory tests being conducted.
- (c) No person~~[-]~~ who has obtained or has knowledge of a test result pursuant to this section~~[-]~~ shall disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to the following persons:
1. The subject of the test or the subject's legally authorized representative;
  2. Any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;
  3. A physician, nurse, or other health-care personnel who has a legitimate need to know the test result in order to provide for his protection and to provide for the patient's health and welfare;
  4. Health-care providers consulting between themselves or with health-care facilities to determine diagnosis and treatment;
  5. The cabinet, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by state law;
  6. A health facility or health-care provider which procures, processes, distributes, or uses:
    - a. A human body part from a deceased person, with respect to medical information regarding that person; or
    - b. Semen provided prior to the effective date of this section for the purpose of artificial insemination;
  7. Health facility staff committees, for the purposes of conducting program monitoring, program evaluation, or service reviews;
  8. Authorized medical or epidemiological researchers who shall not further disclose any identifying characteristics or information;
  9. A person allowed access by a court order ~~that~~~~[-which]~~ is issued in compliance with the following provisions:
    - a. No court of this state shall issue an order to permit access to a test for human immunodeficiency virus performed in a medical or public health setting to any person not authorized by this section or by KRS 214.420. A court may order an individual to be tested for human immunodeficiency virus only if the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for testing and disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters blood, organ, and semen donation and future human-immunodeficiency-virus-related testing or which may lead to discrimination. This paragraph shall not apply to blood bank donor records;
    - b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially, in documents not filed with the court;
    - c. Before granting any order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he *or she* is not already a party;

- d. Court proceedings as to disclosure of test results shall be conducted in camera, unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice;
- e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

No person to whom the results of a test have been disclosed shall disclose the test results to another person except as authorized by this subsection. When disclosure is made pursuant to this subsection, it shall be accompanied by a statement in writing ~~that~~<sup>which</sup> includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied by oral notice and followed by a written notice within ten (10) days.

- (6) (a) The Cabinet for Health Services shall establish a network of voluntary human immunodeficiency virus testing programs in every county in the state. These programs shall be conducted in each public health department established under the provisions of KRS Chapter 212. Additional programs may be contracted to other private providers to the extent that finances permit and local circumstances dictate;
- (b) Each public health department shall have the ability to provide counseling and testing for the human immunodeficiency virus to each patient who receives services and shall offer the testing on a voluntary basis to each patient who requests the test;
- (c) Each public health department shall provide a program of counseling and testing for human immunodeficiency virus infection, on an anonymous or confidential basis, dependent on the patient's desire. ***If the testing is performed on an anonymous basis, only the statistical information relating to a positive test for human immunodeficiency virus infection shall be reported to the cabinet. If the testing is performed on a confidential basis, the unique code and other information specified under Section 4 of this Act shall be reported to the cabinet.*** The cabinet shall continue to provide for anonymous testing and counseling;
- (d) The result of a serologic test conducted under the auspices of the cabinet shall not be used to determine if a person may be insured for disability, health, or life insurance or to screen or determine suitability for, or to discharge a person from, employment. Any person who violates the provisions of this subsection shall be guilty of a Class A misdemeanor.
- (7) No public health department and no other private or public facility established for the primary purpose of conducting a testing program for acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus status without first registering with the cabinet, complying with all other applicable provisions of state law, and meeting the following requirements:
  - (a) The program shall be directed by a person who has completed an educational course approved by the cabinet in the counseling of persons with acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus infection;
  - (b) The program shall have all medical care supervised by a physician licensed under the provisions of KRS Chapter 311;
  - (c) The program shall have all laboratory procedures performed in a laboratory licensed under the provisions of KRS Chapter 333;
  - (d) Informed consent shall be required prior to testing. Informed consent shall be preceded by an explanation of the test, including its purpose, potential uses, and limitations and the meaning of its results;
  - (e) The program, unless it is a blood donor center, shall provide pretest counseling on the meaning of a test for human immunodeficiency virus, including medical indications for the test; the possibility of false positive or false negative results; the potential need for confirmatory testing; the potential social,

medical, and economic consequences of a positive test result; and the need to eliminate high-risk behavior;

- (f) The program shall provide supplemental corroborative testing on all positive test results before the results of any positive test is provided to the patient;
  - (g) The program shall provide post-test counseling, in person, on the meaning of the test results; the possible need for additional testing; the social, medical, and economic consequences of a positive test result; and the need to eliminate behavior which might spread the disease to others;
  - (h) Each person providing post-test counseling to a patient with a positive test result shall receive specialized training, to be specified by regulation of the cabinet, about the special needs of persons with positive results, including recognition of possible suicidal behavior, and shall refer the patient for further health and social services as appropriate;
  - (i) When services are provided for a charge during pretest counseling, testing, supplemental testing, and post-test counseling, the program shall provide a complete list of all charges to the patient and the cabinet;
  - (j) Nothing in this subsection shall be construed to require a facility licensed under KRS Chapter 333 or a person licensed under the provisions of KRS Chapters 311, 312, or 313 to register with the cabinet if he *or she* does not advertise or hold himself out to the public as conducting testing programs for human immunodeficiency virus infection or specializing in such testing.
- (8) Any violation of this section by a licensed health-care provider shall be a ground for disciplinary action contained in the professional's respective licensing chapter.
  - (9) Except as provided in subsection (6)(d) of this section, insurers and others participating in activities related to the insurance application and underwriting process shall be exempt from this section.
  - (10) The cabinet shall develop program standards consistent with the provisions of this section for counseling and testing persons for the human immunodeficiency virus.

Section 8. KRS 214.625 is amended to read as follows:

- (1) The General Assembly finds that the use of tests designed to reveal a condition indicative of human immunodeficiency virus (HIV) infection can be a valuable tool in protecting the public health. The General Assembly finds that despite current scientific knowledge that zidovudine (AZT) prolongs the lives of acquired immunodeficiency syndrome victims, and may also be effective when introduced in the early stages of human immunodeficiency virus infection, many members of the public are deterred from seeking testing because they misunderstand the nature of the test or fear that test results will be disclosed without their consent. The General Assembly finds that the public health will be served by facilitating informed, voluntary, and confidential use of tests designed to detect human immunodeficiency virus infection.
- (2) A person who has signed a general consent form for the performance of medical procedures and tests ~~is~~ is not required to also sign or be presented with a specific consent form relating to medical procedures or tests to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any other causative agent of acquired immunodeficiency syndrome that will be performed on the person during the time in which the general consent form is in effect. However, a general consent form shall instruct the patient that, as part of the medical procedures or tests, the patient may be tested for human immunodeficiency virus infection, hepatitis, or any other blood-borne infectious disease if a doctor orders the test for diagnostic purposes. Except as otherwise provided in subsection (5)(c) of this section, the results of a test or procedure to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any probable causative agent of acquired immunodeficiency syndrome performed under the authorization of a general consent form shall be used only for diagnostic or other purposes directly related to medical treatment.
- (3) In any emergency situation where informed consent of the patient cannot reasonably be obtained before providing health-care services, there is no requirement that a health-care provider obtain a previous informed consent.
- (4) The physician who orders the test pursuant to subsections (1) and (2) of this section, or the attending physician, shall be responsible for informing the patient of the results of the test if the test results are positive for human immunodeficiency virus infection. If the tests are positive, the physician shall also be responsible for either:

- (a) Providing information and counseling to the patient concerning his infection or diagnosis and the known medical implications of such status or condition; or
  - (b) Referring the patient to another appropriate professional or health-care facility for the information and counseling.
- (5) (a) No person in this state shall perform a test designed to identify the human immunodeficiency virus, or its antigen or antibody, without first obtaining the informed consent of the person upon whom the test is being performed, except as specified in subsections (2) and (3) of this section.
- (b) No test result shall be determined as positive, and no positive test result shall be revealed to any person, without corroborating or confirmatory tests being conducted.
- (c) No person~~[-]~~ who has obtained or has knowledge of a test result pursuant to this section~~[-]~~ shall disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to the following persons:
- 1. The subject of the test or the subject's legally authorized representative;
  - 2. Any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;
  - 3. A physician, nurse, or other health-care personnel who has a legitimate need to know the test result in order to provide for his protection and to provide for the patient's health and welfare;
  - 4. Health-care providers consulting between themselves or with health-care facilities to determine diagnosis and treatment;
  - 5. The cabinet, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by state law;
  - 6. A health facility or health-care provider which procures, processes, distributes, or uses:
    - a. A human body part from a deceased person, with respect to medical information regarding that person; or
    - b. Semen provided prior to July 13, 1990, for the purpose of artificial insemination;
  - 7. Health facility staff committees, for the purposes of conducting program monitoring, program evaluation, or service reviews;
  - 8. Authorized medical or epidemiological researchers who shall not further disclose any identifying characteristics or information;
  - 9. A parent, foster parent, or legal guardian of a minor; a crime victim; or a person specified in KRS 438.250;
  - 10. A person allowed access by a court order which is issued in compliance with the following provisions:
    - a. No court of this state shall issue an order to permit access to a test for human immunodeficiency virus performed in a medical or public health setting to any person not authorized by this section or by KRS 214.420. A court may order an individual to be tested for human immunodeficiency virus only if the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for testing and disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters blood, organ, and semen donation and future human immunodeficiency virus-related testing or which may lead to discrimination. This paragraph shall not apply to blood bank donor records;
    - b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially, in documents not filed with the court;

- c. Before granting any order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he is not already a party;
- d. Court proceedings as to disclosure of test results shall be conducted in camera, unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice;
- e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

No person to whom the results of a test have been disclosed shall disclose the test results to another person except as authorized by this subsection. When disclosure is made pursuant to this subsection, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied by oral notice and followed by a written notice within ten (10) days.

- (6) (a) The Cabinet for Health Services shall establish a network of voluntary human immunodeficiency virus testing programs in every county in the state. These programs shall be conducted in each public health department established under the provisions of KRS Chapter 211. Additional programs may be contracted to other private providers to the extent that finances permit and local circumstances dictate;
- (b) Each public health department shall have the ability to provide counseling and testing for the human immunodeficiency virus to each patient who receives services and shall offer the testing on a voluntary basis to each patient who requests the test;
- (c) Each public health department shall provide a program of counseling and testing for human immunodeficiency virus infection, on an anonymous or confidential basis, dependent on the patient's desire. *If the testing is performed on an anonymous basis, only the statistical information relating to a positive test for human immunodeficiency virus infection shall be reported to the cabinet. If the testing is performed on a confidential basis, the unique code and other information specified in Section 4 of this Act shall be reported to the cabinet.* The cabinet shall continue to provide for anonymous testing and counseling;
- (d) The result of a serologic test conducted under the auspices of the cabinet shall not be used to determine if a person may be insured for disability, health, or life insurance or to screen or determine suitability for, or to discharge a person from, employment. Any person who violates the provisions of this subsection shall be guilty of a Class A misdemeanor.
- (7) No public health department and no other person in this state shall conduct or hold themselves out to the public as conducting a testing program for acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus status without first registering with the cabinet, complying with all other applicable provisions of state law, and meeting the following requirements:
  - (a) The program shall be directed by a person who has completed an educational course approved by the cabinet in the counseling of persons with acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus infection;
  - (b) The program shall have all medical care supervised by a physician licensed under the provisions of KRS Chapter 311;
  - (c) The program shall have all laboratory procedures performed in a laboratory licensed under the provisions of KRS Chapter 333;
  - (d) Informed consent shall be required prior to testing. Informed consent shall be preceded by an explanation of the test, including its purpose, potential uses, and limitations and the meaning of its results;

- (e) The program, unless it is a blood donor center, shall provide pretest counseling on the meaning of a test for human immunodeficiency virus, including medical indications for the test; the possibility of false positive or false negative results; the potential need for confirmatory testing; the potential social, medical, and economic consequences of a positive test result; and the need to eliminate high-risk behavior;
  - (f) The program shall provide supplemental corroborative testing on all positive test results before the results of any positive test is provided to the patient;
  - (g) The program shall provide post-test counseling, in person, on the meaning of the test results; the possible need for additional testing; the social, medical, and economic consequences of a positive test result; and the need to eliminate behavior which might spread the disease to others;
  - (h) Each person providing post-test counseling to a patient with a positive test result shall receive specialized training, to be specified by regulation of the cabinet, about the special needs of persons with positive results, including recognition of possible suicidal behavior, and shall refer the patient for further health and social services as appropriate;
  - (i) When services are provided for a charge during pretest counseling, testing, supplemental testing, and post-test counseling, the program shall provide a complete list of all charges to the patient and the cabinet;
  - (j) Nothing in this subsection shall be construed to require a facility licensed under KRS Chapter 333 or a person licensed under the provisions of KRS Chapters 311, 312, or 313 to register with the cabinet if he **or she** does not advertise or hold himself **or herself** out to the public as conducting testing programs for human immunodeficiency virus infection or specializing in such testing.
- (8) Any violation of this section by a licensed health-care provider shall be a ground for disciplinary action contained in the professional's respective licensing chapter.
  - (9) Except as provided in subsection (6)(d) of this section and KRS 304.12-013, insurers and others participating in activities related to the insurance application and underwriting process shall be exempt from this section.
  - (10) The cabinet shall develop program standards consistent with the provisions of this section for counseling and testing persons for the human immunodeficiency virus.

Section 9. KRS 222.421 is amended to read as follows:

- (1) Any person may request treatment from a physician or alcohol and other drug abuse program licensed or approved by the Cabinet for Health Services to provide alcohol and other drug abuse treatment services. ***Persons infected with HIV, hepatitis B, or hepatitis C shall have priority access to any licensed treatment services.***
- (2) Every alcohol and other drug abuse program that provides intervention or treatment services to a person with an alcohol and other drug abuse problem or prevention programming to any persons in the community shall, upon request of the Cabinet for Health Services, make a statistical report to the secretary, in a form and manner the secretary shall prescribe, of persons provided prevention, intervention, and treatment services during a specified period of time. The name or address of any person to whom prevention, intervention, or treatment services were provided shall not be reported. The secretary of the Cabinet for Health Services shall provide compilations of the statistical information to other appropriate agencies upon request.

Section 10. KRS 311.282 is amended to read as follows:

- (1) A physician licensed pursuant to KRS Chapter 311 shall not be civilly or criminally liable for the disclosure of otherwise confidential information under the following circumstances:
  - (a) If a patient of the physician has tested positive for human immunodeficiency virus discloses to the physician the identity of a spouse or sexual partner with whom the patient has cohabitated for more than one (1) year; and
  - (b) The physician recommends the patient notify the spouse or sexual partner of the positive test and refrain from engaging in sexual activity in a manner likely to transmit the virus and the patient refuses;~~and~~
  - (c) If, pursuant to a perceived civil duty or the ethical guidelines of the profession, the physician reasonably and in good faith advises the spouse of the patient or sexual partner with whom the patient has

cohabitated for more than one (1) year of the positive test and facts concerning the transmission of the virus; **and**

(d) ***The physician reports information about HIV status to the Cabinet for Health Services pursuant to administrative regulations promulgated by the cabinet.***

- (2) Notwithstanding the foregoing, a physician licensed pursuant to KRS Chapter 311 shall not be civilly or criminally liable for failure to disclose information relating to a positive test result for human immunodeficiency virus of a patient to a spouse.

Section 11. KRS 438.250 is amended to read as follows:

- (1) When a public servant, as defined in KRS 521.010, ***a health care professional who is licensed or certified under the laws of the Commonwealth, an employee of the health care professional, an employee of a health care facility that is licensed under the laws of the Commonwealth,*** or victim of a crime is bitten by, suffers a puncture wound caused by, or is exposed to the blood or body fluids of a criminal defendant, inmate, parolee, or probationer or the blood or body fluids of a criminal defendant, inmate, parolee, or probationer have come into contact with the skin or unprotected clothing of a public servant during any incident in which the public servant and the criminal defendant, inmate, parolee, or probationer are involved, the criminal defendant, inmate, parolee, or probationer shall be ordered to submit to testing of the blood for human immunodeficiency virus (HIV), hepatitis A, B, and C, and tuberculosis.
- (2) The written results of the testing shall be made available to each public servant, criminal defendant, inmate, parolee, or probationer coming within the purview of subsection (1). However, the results shall not be public records and shall be disclosed to others only on a need-to-know basis.
- (3) If a criminal defendant, inmate, parolee, or probationer fails or refuses to be tested as ordered, he may be held in criminal contempt. A Circuit or District Judge shall compel the criminal defendant, inmate, parolee, or probationer to undergo the testing required herein if he fails or refuses to do so. Undergoing compulsory testing after a failure or refusal to be tested shall not relieve the criminal defendant, inmate, parolee, or probationer of the liability imposed by this subsection.
- (4) The costs of the testing shall be borne by the criminal defendant, inmate, parolee, or probationer unless he is determined unable to pay for the test by a court of competent jurisdiction for criminal defendants and probationers and by the Department of Corrections pursuant to their indigency standards for inmates and parolees, in which case the Commonwealth shall pay for the testing.
- (5) The provisions of subsections (1) to (4) of this section shall apply to juveniles falling within any category specified in subsections (1) to (4) of this section as well as to adults.

**Approved April 21, 2000**

## **CHAPTER 433**

**(SB 229)**

AN ACT relating to school safety.

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

Section 1. KRS 158.163 is amended to read as follows:

The board of each local school district, and the governing body of each private and parochial school or school district, shall establish an earthquake ***and tornado*** emergency procedure system in every public or private school building in its jurisdiction having a capacity of fifty (50) or more students, or having more than one (1) classroom. The earthquake ***and tornado*** emergency procedure system shall include, but not be limited to, all of the following:

- (1) A school building disaster plan, ready for implementation at any time, for maintaining the safety and care of students and staffs. ***A drop procedure and safe area evacuation practice shall be held at least twice during each school year.***
- (2) A drop procedure. As used in this section, "drop procedure" means an activity by which each student and staff member takes cover under a table or desk, dropping to his or her knees, with the head protected by the arms, and the back to the windows. ~~A drop procedure practice shall be held at least twice during each school year.~~



- (3) *A safe area. As used in this section, "safe area" means a designated space including an enclosed area with no windows, a basement or the lowest floor using the interior hallway or rooms, or taking shelter under sturdy furniture.*
- (4) Protective measures to be taken before, during, and following an earthquake *or tornado*.
- (5) ~~(4)~~ A program to ensure that the students and the certificated and classified staff are aware of, and properly trained in, the earthquake *and tornado* emergency procedure system.

**Approved April 21, 2000**

## CHAPTER 434

(SB 245)

AN ACT relating to insurance.

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

SECTION 1. SUBTITLE 49 OF KRS CHAPTER 304 IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 23 of this Act, unless the context requires otherwise:*

- (1) *"Affiliated company" means any company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.*
- (2) *"Captive insurer" means any pure captive insurer, consortium captive insurer, sponsored captive insurer, or industrial insured captive insurer formed or issued a certificate of authority under the provisions of Sections 1 to 23 of this Act. For purposes of Sections 1 to 23 of this Act, a branch captive insurer shall be a pure captive insurer with respect to operations in Kentucky, unless otherwise permitted by the commissioner.*
- (3) *"Consortium" means any legal association of individuals, corporations, partnerships, or associations that has been in continuous existence for at least one (1) year, the member organizations of which collectively, or which does itself:*
  - (a) *Own, control, or hold with power to vote all of the outstanding voting securities of a consortium captive insurer incorporated as a stock insurer; or*
  - (b) *Have complete voting control over a consortium captive insurer incorporated as a mutual insurer; or*
  - (c) *The member organizations of which collectively constitute all of the subscribers of a consortium captive insurer formed as a reciprocal insurer.*
- (4) *"Consortium captive insurer" means any company that insures risks of the member organizations of the consortium and their affiliated companies.*
- (5) *"Excess workers' compensation insurance" means, in the case of an employer that has insured or self-insured its workers' compensation risks in accordance with applicable state or federal law, insurance in excess of a specified per incident or aggregate limit established by the commissioner.*
- (6) *"Industrial insured" means an insured as defined in KRS 304.11-020(1).*
- (7) *"Industrial insured captive insurer" means any company that insures risks of the industrial insureds that comprise the industrial insured group, and their affiliated companies.*
- (8) *"Industrial insured group" means any group that meets either of the following criteria:*
  - (a) *Any group of industrial insureds that collectively:*
    - 1. *Own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurer incorporated as a stock insurer;*
    - 2. *Have complete voting control over an industrial insured captive insurer incorporated as a mutual insurer; or*

3. *Constitute all of the subscribers of an industrial insured captive insurer formed as a reciprocal insurer; or*
- (b) *Any group which is created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. § 3901 et seq., as amended, as a corporation or other limited liability association.*
- (9) *"Member organization" means any individual, corporation, partnership, or association that belongs to a consortium.*
- (10) *"Parent" means a corporation, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent (50%) of the outstanding voting securities of a pure captive insurer.*
- (11) *"Pure captive insurer" means any company that insures risks of its parent and affiliated companies or controlled unaffiliated business.*
- (12) *"Controlled unaffiliated business" means any company:*
- (a) *That is not in the corporate system of a parent and affiliated companies;*
- (b) *That has an existing contractual relationship with a parent or affiliated company; and*
- (c) *Whose risks are managed by a pure captive insurer in accordance with Section 17 of this Act.*
- (13) *"Foreign captive insurer" means any insurer formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of any state other than Kentucky which imposes statutory or regulatory standards in a form acceptable to the commissioner on companies transacting the business of insurance in that jurisdiction. Under Sections 1 to 23 of this Act, captive insurers formed under the laws of any jurisdiction other than a state of the United States shall be treated as a foreign captive insurer unless the context requires otherwise.*
- (14) *"Branch business" means any insurance business transacted by a branch captive insurer in Kentucky.*
- (15) *"Branch captive insurer" means any foreign captive insurer issued a certificate of authority by the commissioner to transact the business of insurance in Kentucky through a business unit with a principal place of business in Kentucky.*
- (16) *"Branch operations" means any business operations of a branch captive insurer in Kentucky.*
- (17) *"Participant" means an entity as defined in Section 21 of this Act, and any affiliates thereof, that are insured by a sponsored captive insurer, where the losses of the participant are limited through a participant contract to the assets of a protected cell.*
- (18) *"Participant contract" means a contract by which a sponsored captive insurer insures the risks of a participant and limits the losses of the participant to the assets of a protected cell.*
- (19) *"Protected cell" means a separate account established and maintained by a sponsored captive insurer for one (1) participant.*
- (20) *"Reciprocal insurer" means an insurer engaging in reciprocal insurance as defined by KRS 304.27-010.*
- (21) *"Sponsor" means any entity that meets the requirements of Section 20 of this Act and is approved by the commissioner to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurer.*
- (22) *"Sponsored captive insurer" means any captive insurer:*
- (a) *In which the minimum capital and surplus required by applicable law is provided by one or more sponsors;*
- (b) *That is formed or issued a certificate of authority under the provisions of this subtitle;*
- (c) *That insures the risks of separate participants through contract; and*
- (d) *That segregates each participant's liability through one (1) or more protected cells.*

SECTION 2. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Any captive insurer, when permitted by its articles of incorporation, charter, or other organizational document, may apply to the commissioner for a certificate of authority to engage in any and all kinds of insurance defined in Subtitle 5 of this chapter; provided, however, that:*
  - (a) *No pure captive insurer may insure any risks other than those of its parent and affiliated companies or controlled unaffiliated business;*
  - (b) *No consortium captive insurer may insure any risks other than those of the member organizations of its consortium, and their affiliated companies;*
  - (c) *No industrial insured captive insurer may insure any risks other than those of the industrial insureds that comprise the industrial insured group, and their affiliated companies;*
  - (d) *No captive insurer may provide personal motor vehicle or homeowner's insurance coverage or any component thereof;*
  - (e) *No captive insurer may accept or cede reinsurance except as provided in Section 11 of this Act;*
  - (f) *Any captive insurer may provide excess workers' compensation insurance to its parent and affiliated companies, unless prohibited by the laws of the state having jurisdiction over the transaction. Any captive insurer may reinsure workers' compensation of a qualified self-insured plan of its parent and affiliated companies;*
  - (g) *Any captive insurer which insures risks described in KRS 304.5-020 and KRS 304.5-040 shall comply with all applicable state laws;*
  - (h) *No branch captive insurer may write any business in Kentucky except insurance or reinsurance of the employee benefit business of its parent and affiliated companies which is subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended; and*
  - (i) *No sponsored captive insurer may insure any risks other than those of its participants.*
- (2) *No captive insurer shall do any insurance business in Kentucky unless:*
  - (a) *It first obtains from the commissioner a certificate of authority authorizing it to do insurance business in Kentucky;*
  - (b) *Its board of directors, or in the case of a reciprocal insurer, its subscribers' advisory committee, holds at least one meeting each year in Kentucky; and*
  - (c) *It maintains its principal place of business in Kentucky, or in the case of a branch captive insurer, maintains the principal place of business for its branch operations in Kentucky.*
- (3) *Before receiving a certificate of authority, a captive insurer formed as a corporation shall file with the commissioner a certified copy of its charter and bylaws, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the commissioner;*
- (4) *Before receiving a certificate of authority, a captive insurer formed as a reciprocal insurer shall:*
  - (a) *File with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the commissioner; and*
  - (b) *Submit to the commissioner a sample of the coverages, deductibles, coverage limits, and rates, together with any additional information required by the commissioner. In the event of any subsequent material change in any item in the samples, the reciprocal captive insurer shall submit to the commissioner for approval an appropriate revision. The reciprocal captive insurer shall not offer any coverage until the forms are approved by the commissioner. The reciprocal captive insurer shall not use any initial rate until it is approved by the commissioner and shall inform the commissioner of any material change in rates within thirty (30) days of the adoption of the change.*
- (5) *In addition to the information required by subsections (3) or (4) of this section, each applicant captive insurer shall file with the commissioner evidence of the following:*
  - (a) *The amount and liquidity of its assets relative to the risks to be assumed;*

- (b) *The adequacy of the expertise, experience, and character of the person or persons who will manage it;*
  - (c) *The overall soundness of its plan of operation;*
  - (d) *The adequacy of the loss prevention programs of its parent, member organizations, or industrial insureds as applicable; and*
  - (e) *Any other factors deemed relevant by the commissioner in ascertaining whether the proposed captive insurer will be able to meet its policy obligations.*
- (6) *In addition to the information required by subsections (3), (4), and (5) of this section, each applicant-sponsored captive insurer shall file with the commissioner the following:*
- (a) *A business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner and how it will report the experience to the commissioner;*
  - (b) *A statement acknowledging that all financial records of the sponsored captive insurer, including records pertaining to any protected cells, shall be made available for inspection or examination by the commissioner;*
  - (c) *All contracts or sample contracts between the sponsored captive insurer and any participants; and*
  - (d) *Evidence that expenses shall be allocated to each protected cell in a fair and equitable manner.*
- (7) *Information submitted under this section shall be confidential by law and privileged but may be used, received, and shared in accordance with Subtitle 2 of this chapter.*
- (8) *Each captive insurer shall pay to the commissioner a nonrefundable fee as stated in KRS 304.4-010 for examining, investigating, and processing its application for certificate of authority. The commissioner is authorized to retain legal, financial, and examination services from outside the department to assist in examining and investigating the applicant, the reasonable cost of which may be charged against the applicant. In addition, each captive insurer shall pay a certificate of authority fee for the year of registration and a renewal fee for each year thereafter.*

SECTION 3. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*Each captive insurer shall be named in accordance with KRS 304.3-100.*

SECTION 4. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *No captive insurer shall be issued a certificate of authority unless it shall possess and thereafter maintain unimpaired paid-in capital and surplus of:*
- (a) *In the case of a pure captive insurer, not less than two hundred fifty thousand dollars (\$250,000);*
  - (b) *In the case of an consortium captive insurer, not less than seven hundred fifty thousand dollars (\$750,000);*
  - (c) *In the case of an industrial insured captive insurer, not less than five hundred thousand dollars (\$500,000); and*
  - (d) *In the case of a sponsored captive insurer, not less than one million dollars (\$1,000,000).*
- (2) *Notwithstanding the requirements of subsection (1) of this section, no captive insurer organized as a reciprocal insurer under Sections 1 to 23 of this Act shall be issued a certificate of authority unless it shall possess and thereafter maintain free surplus of one million dollars (\$1,000,000).*
- (3) *The commissioner may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business transacted.*
- (4) *Capital and surplus may be in the form of cash or an irrevocable letter of credit issued by a bank approved by the commissioner and chartered by the Commonwealth of Kentucky or a member bank of the Federal Reserve System.*

- (5) *In the case of a branch captive insurer, as security for the payment of liabilities attributable to the branch operations, the commissioner shall require that a separate trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed, by the branch captive insurer through its branch operations. The amount of this security may be no less than the capital and surplus required in this section and the reserves on the insurance policies or the reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums with regard to business written through the branch operations; provided, however, the commissioner may permit a branch captive insurer that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount so long as the security remains posted with the reinsurer. If the form of security selected is a letter of credit, the letter of credit must be established by, or issued or confirmed by, a bank chartered in Kentucky or a member bank of the Federal Reserve System.*

SECTION 5. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*No captive insurer may pay a dividend out of, or other distribution with respect to, capital or surplus, in excess of the limitations set forth in KRS 304.24-320 and KRS 304.24-330, without the prior approval of the commissioner. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the commissioner.*

SECTION 6. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A pure captive insurer or a sponsored captive insurer shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.*
- (2) *A consortium captive insurer or an industrial insured captive insurer may be:*
  - (a) *Incorporated as a stock insurer with its capital divided into shares and held by the stockholders; or*
  - (b) *Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its consortium; or*
  - (c) *Organized as a reciprocal insurer in accordance with Subtitle 27 of this chapter.*
- (3) *A captive insurer incorporated or organized in Kentucky shall have not less than three (3) incorporators or two (2) organizers.*
- (4) *In the case of a captive insurer, the commissioner shall find, in order to issue a certificate of authority, that the establishment and maintenance of the proposed captive insurer will promote the general good of the state. In arriving at such a finding, the commissioner shall consider:*
  - (a) *The character, reputation, financial standing, and purposes of the incorporators or organizers;*
  - (b) *The character, reputation, financial responsibility, insurance experience, and business qualifications of the persons responsible for the conduct of the captive insurer's affairs; and*
  - (c) *Any other aspects the commissioner deems advisable.*
- (5) *The capital stock of a captive insurer incorporated as a stock insurer may be authorized with no par value.*
- (6) *Captive insurance companies formed as corporations under the provisions of Sections 1 to 23 of this Act shall have the privileges and be subject to the provisions of KRS Chapter 271B as well as the applicable provisions contained in Sections 1 to 23 of this Act. If there is a conflict between the provisions of KRS Chapter 271B and the provisions of this chapter, the latter shall control. The provisions of this chapter, pertaining to mergers, consolidations, conversions, mutualizations and redomestications, shall apply in determining the procedures to be followed by captive insurance companies in carrying out any of the transactions described therein, except that:*
  - (a) *The commissioner may, upon request of an insurer party to a merger authorized under this subsection, waive the requirement of KRS 304.24-390(4); and*
  - (b) *The commissioner may waive or modify the requirements for public notice and hearing in accordance with rules which the commissioner may adopt addressing categories of transactions. If a*

*notice of public hearing is required, but no one requests a hearing, then the commissioner may cancel the hearing.*

- (7) Captive insurance companies formed as reciprocal insurers under the provisions of Sections 1 to 23 of this Act shall have the privileges and be subject to the provisions of Subtitle 27 of this chapter in addition to the applicable provisions of this subtitle. In the event of a conflict between the provisions of Subtitle 27 of this chapter and the provisions of this subtitle, the latter shall control. To the extent a reciprocal insurer is made subject to other provisions of this subtitle pursuant to Subtitle 27 of this chapter, those provisions shall not be applicable to a reciprocal insurer formed under Sections 1 to 23 of this Act unless the provisions are expressly made applicable to captive insurance companies under Sections 1 to 23 of this Act.*
- (8) In addition to the provisions of subsection (7) of this section, captive insurance companies organized as reciprocal insurers that are industrial insured groups as defined in this subtitle shall have the privileges and be subject to the provisions of Subtitle 45 of this chapter, in addition to the applicable provisions of this subtitle.*
- (9) The articles of incorporation or bylaws of a captive insurer formed as a corporation may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors.*
- (10) The subscribers' agreement or other organizing document of a captive insurer formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of no fewer than one-third of the number of its members.*

SECTION 7. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) Captive insurance companies shall not be required to make any annual report except as provided in Sections 1 to 23 of this Act.*
- (2) On or before March 1 of each year, each captive insurer shall submit to the commissioner a report of its financial condition, verified by oath of two (2) of its executive officers. Each captive insurer shall report using generally accepted accounting principles, unless the commissioner approves the use of statutory accounting principles, with any useful or necessary modifications or adaptations thereof required or approved or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner. Except as otherwise provided, each consortium captive insurer and each industrial insured captive insurer insuring the risks of an industrial insured group defined in subsection (8)(b) of Section 1 of this Act shall file its report in the form of and as required by KRS 304.2-205. The commissioner shall by administrative regulation propose the forms in which pure captive insurance companies and industrial insured captive insurance companies insuring the risks of an industrial insured group defined in subsection (8)(a) of Section 1 of this Act shall report.*
- (3) Any pure captive insurer or an industrial insured captive insurer insuring the risks of industrial insured groups as defined in subsection (8)(a) of Section 1 of this Act may make written application for filing the required report on a fiscal year-end. If an alternative reporting date is granted, the annual report is due sixty (60) days after the fiscal year-end;*
- (4) Sixty (60) days after the fiscal year-end, a branch captive insurer shall file with the commissioner a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the foreign captive insurer is formed, verified by oath of two (2) of its executive officers. If the commissioner is satisfied that the annual report filed by the foreign captive insurer in its domiciliary jurisdiction provides adequate information concerning the financial condition of the foreign captive insurer, the commissioner may waive the requirement for completion of the captive annual statement for business written in the foreign jurisdiction.*

SECTION 8. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) Any insurer holding a certificate of authority issued under this subtitle shall be subject to provisions of KRS 304.2-210 to KRS 304.2-300 and provisions of Subtitle 2 of this chapter for determining market conduct and business practices. However, the commissioner upon application, in his discretion, may extend the period between examinations, provided the captive insurer is subject to a comprehensive annual audit*

*during that period, of a scope satisfactory to the commissioner, by independent auditors approved by the commissioner.*

- (2) *The examination for a branch captive insurer shall be of branch business and branch operations only, as long as the branch captive insurer provides annually to the commissioner a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurer is formed, and demonstrates to the commissioner's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of that jurisdiction.*
- (3) *As a condition for issuance of a certificate of authority to a branch captive insurer, the foreign captive insurer shall grant authority to the commissioner for examination of the affairs of the foreign captive insurer in the jurisdiction in which the foreign captive insurer is formed.*

SECTION 9. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*Insurers holding a certificate of authority issued under this subtitle shall be subject to the provisions of Subtitles 2 and 3 of this chapter to the extent applicable and not in conflict with the expressed provisions of this subtitle.*

SECTION 10. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A consortium captive insurer, sponsored captive insurer, and an industrial insured captive insurer insuring the risks of an industrial insured group defined in subsection (8)(b) of Section 1 of this Act shall comply with the investment requirements contained in Subtitle 7 of this chapter. Notwithstanding any other provision of this chapter, the commissioner may approve the use of alternative reliable methods of valuation and rating.*
- (2) *No pure captive insurer or industrial insured captive insurer insuring the risks of an industrial insured group as defined in subsection (8)(a) of Section 1 of this Act shall be subject to any restrictions on allowable investments whatever, including those limitations contained in Subtitle 7 of this chapter; provided, however, that the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of any such company.*
- (3) *Only a pure captive insurer may make loans to its parent company or affiliates. No loans to a parent company or any affiliate shall be permitted without prior written approval of the commissioner and shall be evidenced by a note in a form approved by the commissioner.*
- (4) *All captive insurers are subject to KRS 304.37-030 regarding material transactions.*

SECTION 11. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Any captive insurer may provide reinsurance, as provided in KRS 304.5-130, KRS 304.5-140, and KRS 304.5-150, on risks ceded by any other insurer.*
- (2) *Any captive insurer may take credit for reserves on risks or portions of risks ceded to reinsurers complying with the provisions of KRS 304.5-140. A captive insurer shall not take credit for reserves on risks or portions of risks ceded to a reinsurer if the reinsurer is not in compliance with KRS 304.5-140.*
- (3) *For all purposes of Sections 1 to 23 of this Act, insurance by a captive insurer of any workers' compensation qualified self-insured plan of its parent and affiliates shall be deemed to be reinsurance.*

SECTION 12. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*No captive insurer shall be required to join a rating organization.*

SECTION 13. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*No captive insurer, including a captive insurer organized as a reciprocal insurer under Sections 1 to 23 of this Act, shall be permitted to join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in Kentucky, nor shall any such captive insurer, or its insured, or its parent or any affiliated company, or any member organization of its consortium, or in the case of a captive insurer organized as a reciprocal insurer, any subscriber thereof, receive any benefit from any such plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of such captive insurer.*

SECTION 14. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*The commissioner may establish and from time to time amend administrative regulations relating to captive insurance companies that are necessary to enable the commissioner to carry out the provisions of Sections 1 to 23 of this Act.*

SECTION 15. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*No provisions of this chapter, other than those contained in Sections 1 to 22 of this Act or contained in specific references contained in Sections 1 to 23 of this Act, shall apply to captive insurance companies.*

SECTION 16. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in this section, the terms and conditions set forth in Subtitle 33 of this chapter, pertaining to insurance supervision, rehabilitation and liquidation, shall apply in full to captive insurance companies formed or issued a certificate of authority under this subtitle.*
- (2) *In the case of a sponsored captive insurer:*
  - (a) *The assets of a protected cell may not be used to pay any expenses or claims other than those attributable to the protected cell; and*
  - (b) *Its capital and surplus shall at all times be available to pay any expenses of or claims against the sponsored captive insurer.*
- (3) *Stock or mutual captive insurers may voluntarily dissolve in accordance with KRS 304.24-430.*
- (4) *Reciprocal captive insurers may voluntarily dissolve in accordance with the provisions of Subtitle 27 of this chapter.*

SECTION 17. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*The commissioner shall promulgate administrative regulations establishing standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurer.*

SECTION 18. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A consortium captive insurer or industrial insured group formed as a stock or mutual corporation may be converted to or merged with and into a reciprocal insurer in accordance with a plan therefor and the provisions of this section.*
- (2) *Any plan for such conversion or merger shall be fair and equitable to the shareholders, in the case of a stock insurer, or the policyholders, in the case of a mutual insurer.*
- (3) *In the case of a conversion authorized under subsection (1) of this section:*
  - (a) *The conversion shall be accomplished under any reasonable plan and procedure approved by the commissioner, but the commissioner shall not approve any plan of conversion unless the plan:*
    1. *Satisfies the provisions of subsection (2) of this section;*
    2. *Provides for a hearing, of which notice has been given to the insurer, its directors, officers, and stockholders, in the case of a stock insurer, or policyholders, in the case of a mutual insurer, all of whom shall have the right to appear at the hearing, except that the commissioner may waive or modify the requirements for the hearing, provided that if a notice of hearing is required, but no hearing is requested, the commissioner may cancel the hearing;*
    3. *Provides for the conversion of existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer, proportionate to stockholder or policyholder interests in the stock or mutual insurer; and*
    4. *Is approved:*



- a. *In the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;*
  - b. *In the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;*
- (b) *The commissioner shall approve the plan of conversion if the commissioner finds that the conversion will promote the general good of the state in conformity with those standards set forth in subsection (4) of Section 6 of this Act;*
- (c) *If the commissioner approves the plan, the commissioner shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue an amended certificate of authority to the company's attorney-in-fact;*
- (d) *Upon the issuance of an amended certificate of authority of a reciprocal insurer by the commissioner, the conversion shall be effective; and*
- (e) *Upon the effectiveness of the conversion, the corporate existence of the converting insurer shall cease and the resulting reciprocal insurer shall notify the Secretary of State of the conversion.*
- (4) *A merger authorized under subsection (1) of this section shall be accomplished substantially in accordance with the procedures set forth in KRS 304.24-390, except that, solely for purposes of the merger:*
  - (a) *The plan of merger shall satisfy the provisions of subsection (2) of this section;*
  - (b) *The subscribers' advisory committee of a reciprocal insurer shall be equivalent to the board of directors of a stock or mutual insurer;*
  - (c) *The subscribers of a reciprocal insurer shall be the equivalent of the policyholders of a mutual insurer;*
  - (d) *If a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties shall be deemed the president or secretary of the committee;*
  - (e) *The commissioner may, upon request of an insurer party to a merger authorized under subsection (1) of this section, waive the requirement of KRS 304.24-390(4);*
  - (f) *The commissioner shall approve the articles of merger if the commissioner finds that the merger will promote the general good of the state in conformity with those standards set forth in subsection (4) of Section 6 of this Act. If the commissioner approves the articles of merger, the commissioner shall indorse his or her approval thereon and the surviving insurer shall present and file them with the Secretary of State;*
  - (g) *Notwithstanding Section 4 of this Act, the commissioner may permit the formation, without surplus, of a captive insurer organized as a reciprocal insurer, into which an existing captive insurer may be merged for the purpose of facilitating a transaction under this section; however, there shall be no more than one (1) authorized insurer surviving the merger; and*
  - (h) *An alien insurer may be a party to a merger authorized under subsection (1) of this section, provided, that the requirements for a merger between a domestic and a foreign insurer under KRS 304.24-390 shall apply to a merger between a domestic and an alien insurer under this subsection. The alien insurer shall be treated as a foreign insurer under KRS 304.24-390 and the other jurisdictions shall be the equivalent of a state for purposes of KRS 304.24-390.*

SECTION 19. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *One (1) or more sponsors may form a sponsored captive insurer under Sections 1 to 23 of this Act.*
- (2) *A sponsored captive insurer formed or issued a certificate of authority under the provisions of Sections 1 to 23 of this Act may establish and maintain one (1) or more protected cells to insure risks of one (1) or more participants, subject to the following conditions:*
  - (a) *The shareholders of a sponsored captive insurer shall be limited to its participants and sponsors;*

- (b) *Each protected cell shall be accounted for separately on the books and records of the sponsored captive insurer to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends, or other distributions to participants, and any other factors provided in the participant contract or required by the commissioner;*
- (c) *The assets of a protected cell shall not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurer may conduct;*
- (d) *No sale, exchange, or other transfer of assets may be made by the sponsored captive insurer between or among any of its protected cells without the consent of the protected cells;*
- (e) *No sale, exchange, transfer of assets, dividend, or distribution may be made from a protected cell to a sponsor or participant without the commissioner's approval and, in no event, shall such approval be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell;*
- (f) *Each sponsored captive insurer shall annually file with the commissioner those financial reports required by the commissioner, which shall include, without limitation, accounting statements detailing the financial experience of each protected cell;*
- (g) *Each sponsored captive insurer shall notify the commissioner, in writing, within ten (10) business days of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations; and*
- (h) *No participant contract shall take effect without the commissioner's prior written approval, and the addition of each new protected cell and withdrawal of any participant of any existing protected cell shall constitute a change in the business plan requiring the commissioner's prior written approval.*

SECTION 20. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*A sponsor of a sponsored captive insurer shall be an insurer licensed under the laws of any state, a reinsurer authorized or approved under the laws of any state, or a captive insurer formed or issued a certificate of authority under Sections 1 to 23 of this Act. A risk retention group shall not be either a sponsor or a participant of a sponsored captive insurer.*

SECTION 21. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Associations, corporations, limited liability companies, partnerships, trusts and other business entities may be participants in any sponsored captive insurer formed or issued a certificate of authority under Sections 1 to 23 of this Act.*
- (2) *A sponsor may be a participant in a sponsored captive insurer.*
- (3) *A participant need not be a shareholder of the sponsored captive insurer or any affiliate thereof.*
- (4) *A participant shall insure only its own risks through a sponsored captive insurer.*

SECTION 22. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Every captive insurer holding a certificate of authority under Sections 1 to 23 of this Act shall return to the Revenue Cabinet a statement under oath of all premium receipts on business written by the captive insurer during the preceding year and shall pay, on or before March 1 in each year, a tax at the rate of four-tenths of one percent (0.4%) on the first 20 million dollars (\$20,000,000), and three-tenths of one percent (0.3%) on the next 20 million dollars (\$20,000,000), and two-tenths of one percent (0.2%) on the next 20 million dollars (\$20,000,000), and seventy-five thousandths of one percent (0.075%) on each dollar thereafter on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurer during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.*
- (2) *Every captive insurer holding a certificate of authority under Sections 1 to 23 of this Act shall return to the Revenue Cabinet a statement under oath of all assumed reinsurance premium receipts during the preceding year and shall pay, on or before March 1 in each year, a tax at the rate of two hundred twenty-five*

*thousandths of one percent (0.225%) on the first 20 million dollars (\$20,000,000) of assumed reinsurance premium, and one hundred fifty thousandths of one percent (0.150%) on the next 20 million dollars (\$20,000,000), and fifty thousandths of one percent (0.050%) on the next 20 million dollars (\$20,000,000), and twenty-five thousandths of one percent (0.025%) of each dollar thereafter. However, no reinsurance tax applies to premiums for risks or portions of risks which are subject to taxation on a direct basis pursuant to subsection (1) of this section. No reinsurance premium tax shall be payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer, and if the intent of the parties to the transaction is to renew or maintain the business with the captive insurer.*

- (3) *If the aggregate taxes to be paid by a captive insurer calculated under subsections (1) and (2) of this section amount to less than five thousand dollars (\$5,000) in any year, the captive insurer shall pay a tax of five thousand dollars (\$5,000) for such year.*
- (4) *Two (2) or more captive insurance companies under common ownership and control shall be taxed as though they were a single captive insurer.*
- (5) *For the purposes of this section, common ownership and control shall mean:*
  - (a) *In the case of stock corporations, the direct or indirect ownership of eighty percent (80%) or more of the outstanding voting stock of two (2) or more corporations by the same shareholder or shareholders; and*
  - (b) *In the case of mutual corporations, the direct or indirect ownership of eighty percent (80%) or more of the surplus and the voting power of two (2) or more corporations by the same member or members.*
- (6) *In the case of a branch captive insurer, the tax provided for in this section shall apply only to the branch business of the company.*
- (7) *The tax provided for in this section shall constitute all taxes collectible under the laws of Kentucky from any captive insurer, and the taxes imposed under this section shall be in lieu of all excise, license, occupational, or other taxes imposed by the state, county, city, or other taxing district except as provided in KRS 136.320 (6) and (7).*
- (8) *The Kentucky Revenue Cabinet shall annually distribute ten percent (10%) of the premium tax revenues collected pursuant to this section to the Department of Insurance for the regulation of captive insurance companies under Sections 1 to 23 of this Act.*

SECTION 23. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*This subtitle shall not apply to any foreign captive insurer lawfully transacting the business of insurance in Kentucky prior to the effective date of Sections 1 to 23 of this Act, unless the foreign captive insurer petitions the commissioner requesting that this subtitle be applicable to the foreign captive insurer.*

Approved April 21, 2000

## CHAPTER 435

(SB 247)

AN ACT relating to alcoholic beverages.

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

Section 1. KRS 241.010 is amended to read as follows:

As used in this chapter *and in KRS Chapters 242 and 243*, unless the context requires otherwise:

- (1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl or spirit of wine, from whatever source or by whatever process it is produced.
- (2) "Alcoholic beverage" means every liquid or solid, whether patented or not, containing alcohol in an amount in excess of more than one percent (1%) of alcohol by volume, which is fit for beverage purposes. It includes

every spurious or imitation liquor sold as, or under any name commonly used for, alcoholic beverages, whether containing any alcohol or not. It does not include the following products~~[- if they are unfit for use for beverage purposes]:~~:

- (a) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, National Formulary, or the American Institute of Homeopathy;
  - (b) Patented, patent, and proprietary medicines;
  - (c) Toilet, medicinal, and antiseptic preparations and solutions;
  - (d) Flavoring extracts and syrups;
  - (e) Denatured alcohol or denatured rum;
  - (f) Vinegar and preserved sweet cider;
  - (g) Wine for sacramental purposes;
  - (h) Alcohol unfit for beverage purposes that is to be sold for legitimate external use; and
  - (i) Malt beverages, containing not more than three and two-tenths percent (3.2%) of alcohol by weight, in territory that has voted to allow the sale thereof.
- (3) "Board" means the State Alcoholic Beverage Control Board created by KRS 241.030.
  - (4) "Bottle" means any container which is used for holding alcoholic beverages for the use and sale of alcoholic beverages at retail.
  - (5) "Brewer" means any person who manufactures malt beverages or owns, occupies, carries on, works, or conducts any brewery, either by himself or by his agent.
  - (6) "Brewery" means any place or premises where malt beverages are manufactured for sale, and includes all offices, granaries, mash rooms, cooling rooms, vaults, yards, and storerooms connected with the premises; or where any part of the process of the manufacture of malt beverages is carried on; or where any apparatus connected with manufacture is kept or used; or where any of the products of brewing or fermentation are stored or kept.
  - (7) "Building containing licensed premises" means the licensed premises themselves and includes the land, tract of land, or parking lot in which the premises are contained, and any part of any building connected by direct access or by an entrance which is under the ownership or control of the licensee by lease holdings or ownership.
  - (8) "Cabinet" means the Revenue Cabinet unless the context requires otherwise.
  - (9) "Charitable organization" means a nonprofit entity recognized as exempt from federal taxation under section 501(c) of the Internal Revenue Code (26 U.S.C. sec. 501(c)) or any organization having been established and continuously operating within the Commonwealth of Kentucky for charitable purposes for three (3) years and which expends at least sixty percent (60%) of its gross revenue exclusively for religious, educational, literary, civic, fraternal, or patriotic purposes.
  - (10) "Cider" means any fermented fruit-based beverage containing more than one-tenth of one percent (0.1%) alcohol by volume and includes hard cider and perry cider.
  - (11) "City administrator" means city alcoholic beverage control administrator.
  - (12) "Commissioner" means the commissioner of alcoholic beverage control.
  - (13) "Convention center" means any facility which, in its usual and customary business, provides seating for a minimum of one thousand (1,000) people and offers convention facilities and related services for seminars, training and educational purposes, trade association meetings, conventions, or civic and community events or for plays, theatrical productions, or cultural exhibitions.
  - (14) "Convicted" and "conviction" means a finding of guilt resulting from a plea of guilty, the decision of a court, or the finding of a jury, irrespective of a pronouncement of judgment or the suspension of the judgment.
  - (15) "County administrator" means county alcoholic beverage control administrator.
  - (16) "Department" means the Department of Alcoholic Beverage Control.

- (17) "Distilled spirits" or "spirits" means any product capable of being consumed by a human being which contains alcohol in excess of the amount permitted by KRS Chapter 242 obtained by distilling, mixed with water or other substances in solution, except wine, hard cider, and malt beverages.
- (18) "Distiller" means any person who is engaged in the business of manufacturing distilled spirits at any distillery in the state and is registered in the Office of the Collector of Internal Revenue for the United States at Louisville, Kentucky.
- (19) "Distillery" means any place or premises where distilled spirits are manufactured for sale, and which are registered in the office of any collector of internal revenue for the United States. It includes any United States government bonded warehouse.
- (20) "Distributor" means any person who distributes malt beverages for the purpose of being sold at retail.
- (21) "Dry territory" means a county, city, district, or precinct in which a majority of voters have voted in favor of prohibition.
- (22) "Farm winery" means a winery located on a Kentucky farm with a producing vineyard, orchard, or similar growing area, manufacturing and bottling wines in an amount not to exceed twenty-five thousand (25,000) gallons per year.
- (23) "Election" means:
  - (a) An election held for the purpose of taking the sense of the people as to the application or discontinuance of alcoholic beverage sales under KRS Chapter 242; or
  - (b) Any other election not pertaining to alcohol.
- (24) "Field representative" means any employee or agent of the department who is regularly employed and whose primary function is to travel from place to place for the purpose of visiting taxpayers, and any employee or agent of the department who is assigned, temporarily or permanently, by the commissioner to duty outside the main office of the department at Frankfort, in connection with the administration of alcoholic beverage statutes.
- (25) "License" means any license issued pursuant to KRS 243.020 to 243.670.
- (26) "Licensee" means any person to whom a license has been issued, pursuant to KRS 243.020 to 243.670.
- (27) "Malt beverage" means any fermented undistilled alcoholic beverage of any name or description, manufactured from malt wholly or in part, or from any substitute for malt, and having an alcoholic content greater than that permitted under subsection (2)(i) of this section.
- (28) "Manufacture" means distill, rectify, brew, bottle, and operate a winery.
- (29) "Manufacturer" means a vintner, distiller, rectifier, or brewer, and any other person engaged in the production or bottling of alcoholic beverages.
- (30) "Premises" means the land and building in and upon which any business regulated by alcoholic beverage statutes is operated or carried on. "Premises" shall not include as a single unit two (2) or more separate businesses of one (1) owner on the same lot or tract of land, in the same or in different buildings if physical and permanent separation of the premises is maintained, excluding employee access by keyed entry and emergency exits equipped with crash bars, and each has a separate public entrance accessible directly from the sidewalk or parking lot. Any licensee holding an alcoholic beverage license on July 15, 1998 shall not, by reason of this subsection, be ineligible to continue to hold his or her license or obtain a renewal, of the license.
- (31) "Prohibition" means the application of KRS 242.190 to 242.430 to a territory.
- (32) "Rectifier" means any person who rectifies, purifies, or refines distilled spirits or wine by any process other than as provided for on distillery premises, and every person who, without rectifying, purifying, or refining distilled spirits by mixing alcoholic beverages with any materials, manufactures any imitations of or compounds liquors for sale under the name of whiskey, brandy, gin, rum, wine, spirits, cordials, bitters, or any other name.
- (33) "Repackaging" means the placing of alcoholic beverages in any retail container irrespective of the material from which the container is made.
- (34) "Restaurant" means a facility where the usual and customary business is the serving of meals to consumers and that has a bona fide kitchen facility.

- (35) "Retail container" means any bottle, can, barrel, or other container which, without a separable intermediate container, holds alcoholic beverages and is suitable and destined for sale to a retail outlet, whether it is suitable for delivery to the consumer or not.
- (36) "Retail outlet" means retailer, hotel, motel, restaurant, railroad dining car, club, and any facility where alcoholic beverages are sold directly to the consumers.
- (37) "Retail sale" means any sale where delivery is made in Kentucky to any consumers.
- (38) "Retailer" means any person who sells at retail any alcoholic beverage for the sale of which a license is required.
- (39) "Sale" means any transfer, exchange, or barter for consideration, and includes all sales made by any person, whether principal, proprietor, agent, servant, or employee, of any alcoholic beverage.
- (40) "Secretary" means the secretary of the Kentucky Revenue Cabinet.
- (41) "Sell" includes solicit or receive an order for, keep or expose for sale, keep with intent to sell, and the delivery of any alcoholic beverage.
- (42) "Small winery" means a winery producing wines from grapes, other fruit, or honey produced in Kentucky, unless exempt under KRS 243.155(2), in an amount not to exceed fifty thousand (50,000) gallons in one (1) year.
- (43) "Souvenir package" means a special package of Kentucky straight bourbon whiskey available for retail sale at a licensed Kentucky distillery where the whiskey was produced or bottled that is available from a licensed retailer.
- (44) "State administrator" means the administrator of the Distilled Spirits Unit or the administrator of the Malt Beverage Unit, or both, as the context requires.
- (45) "Vehicle" means any device or animal used to carry, convey, transport, or otherwise move alcoholic beverages or any products, equipment, or appurtenances used to manufacture, bottle, or sell these beverages.
- (46) "Vintner" means any person who owns, occupies, carries on, works, conducts, or operates any winery, either by himself or by his agent, except persons who manufacture wine for sacramental purposes exclusively.
- (47) "Warehouse" means any place in which alcoholic beverages are housed or stored.
- (48) "Wholesale sale" means a sale to any person for the purpose of resale.
- (49) "Wholesaler" means any person who distributes alcoholic beverages for the purpose of being sold at retail, but it shall not include a subsidiary of a manufacturer or cooperative of a retail outlet.
- (50) "Wine" means the product of the normal alcoholic fermentation of the juices of fruits, with the usual processes of manufacture and normal additions, and includes champagne and sparkling and fortified wine of an alcoholic content not to exceed twenty-four percent (24%) by volume. It includes cider, hard cider, and perry cider and also includes preparations or mixtures vended in retail containers if these preparations or mixtures contain not more than fifteen percent (15%) of alcohol by volume. It includes ciders, perry, or sake having an alcohol content greater than that permitted under subsection (2)(i) of this section.
- (51) "Winery" means any place or premises in which wine is manufactured from any fruit, or brandies are distilled as a by-product of wine or other fruit, or cordials are compounded. It includes a winery for the manufacture of wine in any state or county other than Kentucky, if the out-of-state winery has and maintains a branch factory, office, or storeroom within this state and receives wine within this state consigned to a United States government bonded winery, warehouse, or storeroom located within this state.

Section 2. KRS 241.200 is amended to read as follows:

Appeals from the orders of each city administrator may be taken to the board by filing with the board within thirty (30) days a certified copy of the orders of the city administrator. Matters at issue shall be heard by the board as upon an original proceeding. Appeals from orders of the city administrator shall be governed by KRS **Chapter 13B**~~[243.550 to 243.590]~~.

Section 3. KRS 241.260 is amended to read as follows:

Appeals from the orders of each urban-county administrator may be taken to the board by filing with the board within thirty (30) days a certified copy of the orders of the urban-county administrator. Matters at issue shall be heard by the

board as upon an original proceeding. Appeals from orders of the urban-county administrator shall be governed by KRS *Chapter 13B* ~~[243.550 to 243.590]~~.

SECTION 4. A NEW SECTION OF KRS CHAPTER 242 IS CREATED TO READ AS FOLLOWS:

*As used in this chapter, unless the context otherwise requires, the words and terms defined in KRS 241.010 have the meaning given to them in KRS 241.010.*

Section 5. KRS 242.1297 is amended to read as follows:

Notwithstanding any law to the contrary, a precinct located in a city of the third class where the entire city is wet territory, may have an election to take the sense of the voters of the precinct on the application of KRS 242.220 to 242.430 in the precinct. The election shall be held in the precinct in the manner prescribed in KRS ~~242.020~~ ~~[242.010]~~ to 242.040 and KRS 242.060 to 242.120. The election shall not be deemed to be an election in the "same territory" within the meaning of KRS 242.030(5); however, no election shall be held in the same precinct more often than once every five (5) years. The question shall be presented to the voters in conformance with the requirements of KRS 242.050 except that the form of the proposition shall be "Are you in favor of the sale of alcoholic beverages in (official name and designation of precinct)?"

Section 6. KRS 242.240 is amended to read as follows:

A person shall not sell or give any of the articles listed in KRS ~~241.010(2)(a) to (e) and 241.010(h)~~ ~~[242.010(2)(a) to (h)]~~ as not within the definition of alcoholic beverages, knowing that, or under such circumstances that, the seller or giver might reasonably deduce that the purchaser or person to whom the article is given intends to use it for beverage purposes.

SECTION 7. A NEW SECTION OF KRS CHAPTER 243 IS CREATED TO READ AS FOLLOWS:

*As used in this chapter, unless the context otherwise requires, the words and terms defined in KRS 241.010 have the meaning given to them in KRS 241.010.*

Section 8. KRS 243.030 is amended to read as follows:

The following kinds of distilled spirits and wine licenses may be issued by the administrator of the distilled spirits unit, the fees for which shall be:

- |     |  |            |
|-----|--|------------|
| (1) | Distiller's license, per annum .....   | \$2,500.00 |
| (2) | Rectifier's license, per annum .....   | \$2,500.00 |
| (3) | Blender's license, per annum .....   | \$2,500.00 |
| (4) | Vintner's license, per annum .....   | \$1,000.00 |
| (5) | Small winery license, per annum .....  | \$100.00   |
|     | (a) Small winery off-premises retail license, per annum .....  | \$25.00    |
| (6) | Wholesaler's license, per annum .....  | \$2,000.00 |
| (7) | Retail package license, per annum:   |            |
|     | (a) In counties containing cities of the first class .....   | \$800.00   |
|     | (b) In counties containing cities of the second class .....  | \$700.00   |
|     | (c) In counties containing cities of the third class .....   | \$600.00   |
|     | (d) In counties containing cities of the fourth class .....  | \$500.00   |
|     | (e) In all other counties .....  | \$400.00   |
| (8) | Retail drink license, motel drink license, restaurant drink license, or supplemental bar license, per annum: |            |
|     | (a) In counties containing cities of the first class .....   | \$1,000.00 |
|     | (b) In counties containing cities of the second class .....  | \$700.00   |
|     | (c) In counties containing cities of the third class .....   | \$600.00   |
|     | (d) In counties containing cities of the fourth class .....  | \$500.00   |

(e) *The fee for each of the first five (5) supplemental bar licenses shall be the same as the fee for the drink license. There shall be no charge for each supplemental license issued in excess of five (5) to the same licensee at the same premises.*

(9)	Transporter's license, per annum .....	\$100.00
(10)	Dining car license, per annum .....	\$100.00
(11)	Special nonbeverage alcohol vendor's license, per annum .....	\$50.00
(12)	Special industrial alcohol license, per annum .....	\$50.00
(13)	Special nonindustrial alcohol license, per annum .....	\$50.00
(14)	Special agent's or solicitor's license, per annum .....	\$25.00
(15)	Special storage or warehouse license and bottling house storage license, per annum .....	\$500.00
(16)	Special temporary liquor license, per event .....	\$100.00
(17)	Special private club license, per annum .....	\$300.00

*The fee for each special private club license shall be the fee set out in this subsection; however, there shall be no charge for each special private club license issued in excess of six (6) that is issued to the same licensee at the same premises.*

(18)	Special Sunday retail drink license, per annum .....	\$500.00
(19)	Nonresident, special agent or solicitor's license, per annum .....	\$100.00
(20)	Transport permit, nonresident license, per annum .....	\$100.00
(21)	Through transporter's license, per annum .....	\$100.00
(22)	Freight forwarder's license, per annum .....	\$100.00
(23)	Restaurant wine license, per annum .....	\$500.00
(24)	Farm winery license, per annum .....	\$100.00
(a)	Farm winery, off-premises retail outlet license, per annum .....	\$25.00
(25)	Special temporary wine license, per event .....	\$50.00
(26)	Caterer's license, per annum .....	\$800.00
(27)	Souvenir retail liquor license, per annum .....	\$500.00
(28)	Special temporary distilled spirits and wine auction license, per event .....	\$100.00
(29)	Airport drink license, per annum .....	\$1,000.00
(30)	Convention center or convention hotel complex license, per annum .....	\$5,000.00
(31)	Extended hours <del>+</del> supplemental license, per annum .....	\$2,000.00
(32)	Horse race track license, per annum .....	\$2,000.00
(33)	Air or rail system license, per annum .....	\$2,000.00
(34)	Riverboat license, per annum .....	\$1,000.00
(35)	Bottling house license, per annum .....	\$1,000.00
(36)	Hotel in-room license, per annum .....	\$200.00
(37)	Bonded warehouse license, per annum .....	\$1,000.00
(38)	Air transporter liquor license, per annum .....	\$500.00



- (39) Replacement or duplicate license ..... \$25.00
- (40) Other special licenses the board finds necessary for the proper regulation and control of the traffic in distilled spirits and wine and provides for by administrative regulation. In fixing the amount of license taxes that are required to be fixed by the board, it shall have regard for the value of the privilege granted.

A nonrefundable application fee of fifty dollars (\$50) shall be charged to process each new application under this section, except for subsections (5), (9), (11), (12), (13), (14), (16), (19), (20), (21), (22), (24), (25), (28), and (39). The application fee shall be applied to the licensing fee if the ~~license~~~~[application]~~ is issued; **otherwise it** ~~and~~ shall be retained by the department ~~if the license is denied~~.

Section 9. KRS 243.040 is amended to read as follows:

The following kinds of malt beverage licenses may be issued by the administrator of the malt beverages unit, the fees for which shall be:

- (1) Brewer's license, per annum ..... \$2,500.00
- (2) Microbrewery license, per annum ..... \$500.00
- (3) Distributor's license, per annum ..... \$500.00
- (4) Malt beverage retail license, per annum:
- (a) New applicants ..... \$200.00
- (b) Renewals ..... \$150.00
- (5) Dining car license, per annum ..... \$200.00
- (6) Transporter's license, per annum ..... \$100.00
- (7) Special temporary license, per ~~event~~~~[month or part of month]~~ ..... \$50.00
- (8) Special off-premises retail storage license, per annum ..... \$100.00
- (9) Distributor's storage, per annum ..... \$250.00
- (10) Special beer transporter's license, per annum ..... \$100.00
- (11) Brew-on-premises license, per annum ..... \$500.00
- (12) Out-of-state brewer license, per annum ..... \$1,500.00
- (13) Malt beverage warehouse license, per annum ..... \$1,000.00
- (14) Replacement or duplicate license, per annum ..... \$25.00
- (15) Other special licenses as the state board finds to be necessary for the administration of KRS Chapters 241, 243, and 244 and for the proper regulation and control of the trafficking in malt beverages, as provided for by administrative regulations promulgated by the state board.

Applicants for special licenses provided for under the authority granted in subsection (15) may be exempt from so much of the provisions of subsection (1)(f) of KRS 243.100 set out in administrative regulations promulgated by the board. A nonrefundable application fee of fifty dollars (\$50) shall be charged to process each new application for a license under this section except for subsections (6), (7), (10), and (14). The application fee shall be applied to the licensing fee ~~if~~~~when~~ the ~~license~~~~[application]~~ is issued, or **otherwise the fee shall be** retained by the department ~~if the license is denied~~.

Section 10. KRS 243.050 is amended to read as follows:

- (1) The department may issue a railroad system license to a railroad company upon the payment of the required fee. This license tax shall be in lieu of all license and excise taxes which would otherwise be due by the holder in connection with the retailing of alcoholic beverages.
- (2) The department may issue a commercial airlines system license to a commercial airlines system or charter flight system upon the payment of the required fee. This license fee shall be in lieu of all license and excise taxes which would otherwise be due by the holder in connection with the retailing of alcoholic beverages and the license may be renewed annually. The license shall authorize the licensee to sell distilled spirits and wine by the drink and by miniature bottle, and malt beverages, upon regularly-scheduled or charter flights of the

licensee, in and out of the State of Kentucky. The license shall authorize the licensee to store alcoholic beverages for retail sale at a location or locations, if operating from more than one airport in Kentucky, as designated on the license application.

- (3) The department may issue a transporter's license to a commercial airline system, a charter flight system, or a commercial cargo system, upon the payment of the required fee. This license may be renewed annually. The license shall authorize the licensee to transport distilled spirits and wine and malt beverages, into and out of the State of Kentucky, upon regularly-scheduled or charter flights of the licensee. The license shall authorize, for the purpose of transportation, the storage of alcoholic beverages at a location or locations, if operating from more than one airport in Kentucky, as designated on the license application. This license shall authorize an airline to transport if both the consignor and consignee in each case are authorized by the laws of the states of their residence to sell, purchase, ship, or receive the alcoholic beverages.
- (4) The department may issue a convention center or convention hotel complex license for the retail sale of distilled spirits, wine, and malt beverages for consumption on the premises to a convention center or hotel having seating capacity of one thousand (1,000) or more persons. The license shall cover all alcoholic beverage sales on the premises, except that a separate hotel in-room service license *shall be* required, where applicable. ~~An applicant for the license shall meet the qualifications of KRS 243.055, and an~~ extended supplement license under subsection (5) of this section may *also* be issued *where applicable*. The convention center or convention hotel complex license shall be a nonquota license and shall not be transferable to other premises. The provisions of this subsection shall not apply to convention center licenses or the renewal thereof, other than those in a city of the first class or a county containing a city of the first class, if the original license was issued prior to July 15, 1998.
- (5) Where it is determined by the department to be in the best interest of promoting tourism, conventions, and the economic development of Kentucky or any part thereof, the department may issue a supplemental license for the retail sale of alcoholic beverages by the drink at convention centers, at horse race tracks licensed to conduct a race meeting under KRS Chapter 230, and at commercial airports through which more than five hundred thousand (500,000) passengers arrive or depart annually. Upon application by the holder of a retail alcoholic beverage license at a convention center, convention hotel complex, horse race track, or commercial airport as provided above, the department may establish the days when the supplemental license will be valid at the specific location, including Sundays after 1 p.m. The supplemental license fee shall be established, and shall be in addition to all other licenses and fees due by the holder in connection with the retailing of alcoholic beverages. The department may, by administrative regulation or special conditions of the supplemental permit, establish such restrictions on the use of the license as will insure that it will be primarily for the benefit of the convention business, the horse racing industry, and passengers at large commercial airports.

Section 11. KRS 243.070 is amended to read as follows:

The city legislative body of any city in which traffic in alcoholic beverages is not prohibited under KRS Chapter 242 may impose license fees for the privilege of manufacturing and trafficking in alcoholic beverages. ***Only those licenses set out in this section shall be issued, and the fee for each shall not exceed the specified amount.*** ~~The licenses may only be issued by the city administrator, and the fee shall not exceed the following:~~

- (1) Distilled spirit licenses as set forth in KRS 243.030:
  - (a) Distiller's license, per annum ..... \$500.00
  - (b) Rectifier's license, per annum ..... \$3,000.00
  - (c) Blender's license, per annum ..... \$3,000.00
  - (d) Wholesaler's distilled spirits and wine license, per annum ..... \$3,000.00
  - (e) Distilled spirits and wine retail package license, per annum:
    1. In counties containing cities of the first class ..... \$1,200.00
    2. In counties containing cities of the second class ..... \$1,000.00
    3. In counties containing cities of the third class ..... \$800.00
    4. In counties containing cities of the fourth class ..... \$600.00
    5. In all other counties ..... \$400.00

- (2) Distilled spirits and wine retail drink license, motel drink license, airport drink license, restaurant drink license, or supplemental bar license, per annum:
  - (a) In counties containing cities of the first class ..... \$1,600.00
  - (b) In counties containing cities of the second class ..... \$1,000.00
  - (c) In counties containing cities of the third class ..... \$800.00
  - (d) In counties containing cities of the fourth class ..... \$600.00
- (3) Distilled spirits and wine special temporary liquor license, per event:
  - (a) In counties containing cities of the first class ..... \$266.66
  - (b) In counties containing cities of the second class ..... \$166.66
  - (c) In counties containing cities of the third class ..... \$133.33
  - (d) In counties containing cities of the fourth class ..... \$100.00
- (4) Special temporary wine license, per event ..... \$50.00
- (5) Distilled spirits and wine special temporary auction  
license, per event ..... \$200.00
- (6) Special private club license, per annum ..... \$300.00
- (7) Distilled spirits and wine special Sunday retail drink  
license, per annum ..... \$300.00
- (8) Extended hours supplemental license, per annum ..... \$2,000.00
- (9) Nonresident special agent or solicitor's license, per annum ..... \$40.00
- (10) Restaurant wine license, per annum:
  - (a) New applicants ..... \$600.00
  - (b) Applicants for renewal ..... \$400.00
- (11) Caterer's license, per annum ..... \$800.00
- (12) Riverboat license, per annum ..... \$1,200.00
- (13) Horse race track license, per annum ..... \$2,000.00
- (14) Convention center or convention hotel complex  
license, per annum ..... \$2,000.00
- (15) Bottling house distilled spirits license or wine  
storage license, per annum ..... \$1,000.00
- (16) Souvenir retail liquor license, per annum ..... \$1,000.00
- (17) Malt beverage licenses as follows:
  - (a) Brewer's license, per annum ..... \$500.00
  - (b) Microbrewery license, per annum ..... \$500.00
  - (c) Malt beverage distributor's license, per annum ..... \$400.00
  - (d) Retail malt beverage license, per annum ..... \$200.00
  - (e) Special temporary retail malt beverage license, per event ..... \$25.00
  - (f) Malt beverage brew-on-premises license, per annum ..... \$100.00

Section 12. KRS 243.360 is amended to read as follows:

- (1) Any person, corporation, partnership, or any other entity, except an applicant for the same license for the same premises, or an applicant for ***an out-of-state brewer's license, supplemental bar license, extended hours supplemental license***, a special agent or solicitor's license, a bonded warehouse license, a freight forwarding license, a storage warehouse license, an industrial alcohol license, a nonindustrial alcohol license, a storage warehouse license, a nonbeverage ~~alcohol~~ license, a vendor license, a transporter's license, a Sunday license, or a temporary drink license shall, before applying for a license under KRS 243.030 and 243.040, advertise by publication under KRS 424.130(1)(b) his or her intention to apply for a license.
- (2) The notice shall conform in all material respects to the following requirements:
  - (a) The notice shall state: the name and address of the applicant if the applicant is an individual, the name and address of each partner and the name of the business and its address if the applicant is a partnership, and the name and address of each principal officer and director and the name and business address of the corporation if the applicant is a corporation;
  - (b) The notice shall specifically state the location of the premises for which the license is sought and the type of license being requested; and
  - (c) The notice shall state the date the application will be filed and shall contain the following statement: "Any person, association, corporation, or body politic may protest the granting of the license by writing the Department of Alcoholic Beverages, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601, within thirty (30) days of the date of legal publication."
- (3) ~~[A license shall not be issued until the thirty (30) day period in which a protest is permissible has expired.]~~ Any protest received after the thirty (30) day period has expired shall not be considered a valid legal protest by the board.

Section 13. KRS 243.430 is amended to read as follows:

- (1) The state administrator may reject any application for a license issued under KRS 243.030 and 243.040 if the application is incomplete or the correct fee has not been remitted with the application. In rejecting an application, the state administrator shall provide a written statement of the deficiencies contained in the application.
- (2) A license ***shall not be issued until the thirty (30) day period in which a protest is permissible has expired.*** Any license for which public notice under KRS 243.360 is required ***may conditionally*** ~~[shall not]~~ be issued in less than thirty (30) days from the date the application is ***received if the premises has previously operated under the same type of license within the last twelve (12) months*** ~~[substantially complete, except the renewal of the license may be issued upon receipt of all necessary information by the state administrator with jurisdiction over the license]~~. All remaining licenses provided for in KRS 243.030 ***or Section 9 of this Act*** shall be issued when, in the sound discretion of the ~~[distilled spirits]~~ administrator, all of the information necessary has been obtained.

Section 14. KRS 243.540 is amended to read as follows:

- (1) ***The provisions of this section shall apply to any licensee who is unable to continue in business at the license premises because of an act of God; a casualty; an acquisition by a federal, state, city, or other governmental agency under the power of eminent domain granted to the government or agency; a voluntary or involuntary acquisition by any private corporation through the corporation's power of eminent domain; a loss of lease because the landlord fails to renew an existing lease; court action; or other verifiable business reason*** ~~[If a license issued under KRS 243.020 to 243.670 is revoked, voluntarily surrendered, or subject to disposition by a court, or is not renewed by the licensee, or if an act of God requires the relocation or closure of the licensee's business, the licensee's inventory shall be disposed of in accordance with the requirements set out in this section].~~
- (2) If a license issued by the department has been revoked, the former licensee may, under the supervision of the state administrator, dispose of and transfer his or her stock to another licensee if the disposition is completed within ninety (90) days and the licensee is a distiller, rectifier, vintner, or brewer. The disposition shall be completed within thirty (30) days if the licensee is a wholesaler or distributor or within twenty (20) days if the licensee is a retailer.
- (3) ~~[[~~ A retail licensee in good standing with the department ***who voluntarily ceases to operate his or her business for any reason other than revocation by the board or a court order shall dispose of all alcoholic beverage***

*inventory within thirty (30) days of the event.*~~§~~ The following requirements shall apply to the disposition of the licensee's inventory:

- (a) If the premises is still open to the public and the licensee has not yet surrendered the license, the licensee shall sell alcoholic beverages only to the public and shall not sell below costs;
  - (b) If a licensee has terminated his or her business and has surrendered his or her license to the department, he or she shall submit a written request for approval from the state administrator within ten (10) days in advance of the sale to dispose of the licensee's remaining inventory. The request shall identify the retailer who is purchasing the inventory, the proposed date of the sale, and the quantity, types, and brands of alcohol to be sold; and
  - (c) If a licensee has more than one (1) licensed retail premises and closes one (1) or more retail premises and seeks to transfer his or her inventory to another licensed retail premises he or she owns, he or she shall submit a request in writing to the state administrator at least ten (10) days before the inventory is transferred. The request shall identify the premises to which the alcohol is being transferred, the proposed date of the transfer, and the quantity, types, and brands of alcohol to be sold.
- (4) If a retail licensee files for bankruptcy or is directed by a court to dispose of inventory to satisfy a lien or judgment, the inventory may be sold only to a retail alcoholic beverage licensee. The bankrupt licensee or the licensee subject to the court order shall notify the department of the sale and shall attach a copy of the court order or the judgment directing the sale and a list of the quantity, types, and brands of alcohol to be sold. Any licensee who purchases the inventory shall notify the department within five (5) days after the transfer of the specific inventory sold.

Section 15. KRS 244.090 is amended to read as follows:

- (1) A person holding any license under KRS 243.020 to 243.670 shall not knowingly employ in connection with his or her business any person who:
  - (a) Has been convicted of any felony within the last two (2) years. The provisions of this paragraph shall apply to any new applicant for a license issued under this chapter after July 15, 1998, but shall not apply to renewals of licenses that were originally issued prior to July 15, 1998, or supplemental licenses related to an original license if the original license was issued prior to July 15, 1998;
  - (b) Has been twice convicted of any misdemeanor or offense directly or indirectly attributable to the use of intoxicating liquors within the last two (2) years;
  - (c) Is under the age of twenty (20) years, unless the person is employed:
    - 1. In a bottling house or room of a licensed distiller, vintner, brewer, or rectifier;
    - 2. In an office of a wholesaler or manufacturer that is maintained in a building separate from the warehouses or factory or as provided in KRS 244.087; or
    - 3. In any of the following establishments, if the employment is in a capacity that does not involve the sale or serving of alcoholic beverages:
      - a. A restaurant that derives at least fifty percent (50%) of its gross sales from the sale of food for consumption on the licensed premises; or
      - b. Any other establishment with alcoholic beverage sales not exceeding fifty percent (50%) of its gross sales.
  - (d) Within two (2) years prior to the date of his employment, has had any license issued under KRS 243.020 to 243.670 or under any other act or ordinance relating to the regulation of the manufacture, sale, or transportation of alcoholic beverages revoked for cause.
- (2) ***The provisions of paragraphs (a) and (b) of subsection (1) of this section shall not apply if the employee's duties do not involve the sale, service, delivery, or traffic in alcoholic beverages at the licensed premises.***
- (3) Violation of this section shall subject both employer and employee to penalties provided in this chapter and shall be cause for revocation of license.

Section 16. KRS 244.350 is amended to read as follows:

No retailer of distilled spirits or wine by the package shall ~~accept orders for distilled spirits and wine by telephone or by mail, nor shall he~~ deliver or advertise the delivery of distilled spirits and wine.

Section 17. KRS 242.185 is amended to read as follows:

- (1) This section shall apply to any city of the fourth class or county containing a city of the fourth class in which prohibition is not in effect, notwithstanding any other provisions of this chapter relating to the sales of alcoholic beverages by the drink for consumption on the premises.
- (2) Upon a determination by the legislative body that an economic hardship exists within the city or county and that the sale of alcoholic beverages by the drink could aid economic growth, the legislative body may enact a comprehensive, regulatory ordinance covering the licensing and operation of hotels, motels, inns or restaurants for the sale of alcoholic beverages by the drink for consumption on the premises.
- (3) Licenses shall only be issued to hotels, motels, or inns containing not less than fifty (50) sleeping units and having dining facilities for not less than one hundred (100) persons or bona fide restaurants open to the general public having dining facilities for not less than one hundred (100) persons.
- (4) The city or county legislative body may provide for the issuance of any licenses permitted by KRS 243.070, or the issuance of any other reasonable administrative regulations as may be necessary for the enforcement or administration of this section, provided that any regulation adopted shall conform to the requirements of KRS 241.190.
- (5) Notwithstanding any limitations imposed on the city's or county's taxing or licensing power by KRS 243.070, the city or county may by ordinance impose a regulatory license fee upon the gross receipts of each establishment located therein and licensed to sell alcoholic beverages by the drink for consumption on the premises. The regulatory license fee may be levied annually at a rate as shall be reasonably estimated to fully reimburse the city or county for the estimated costs for any additional policing, regulatory or administrative related expenses. ~~The [Such]~~ regulatory license fee shall be in addition to any other taxes, fees, or licenses permitted by law, but a credit against ~~the [such]~~ fee shall be allowed in an amount equal to any licenses or fees imposed by the city or county pursuant to KRS 243.070.
- (6) *In order to promote economic development and tourism, other provisions of the Kentucky Revised Statutes notwithstanding, a city or county in which prohibition is in effect may, by petition in accordance with KRS 242.020, hold a local option election on the sale of alcoholic beverages by the drink at restaurants and dining facilities which seat a minimum of one hundred (100) persons and derive a minimum of seventy percent (70%) of their gross receipts from the sale of food. The election shall be held in accordance with KRS 242.030(1), (2), and (5), 242.040, and 242.060 to 242.120, and the proposition on the ballot shall state "Are you in favor of the sale of alcoholic beverages by the drink in (name of city or county) at restaurants and dining facilities with a seating capacity of at least one hundred (100) persons and which derive at least seventy percent (70%) of their gross receipts from the sale of food?". If the majority of the votes in an election held pursuant to this subsection are "Yes", licenses may be issued to qualified restaurants and dining facilities and the licensees may be regulated and taxed in accordance with subsections (4) and (5) of this section.*

Section 18. KRS 243.075 is amended to read as follows:

Notwithstanding the provisions of KRS 243.070, in any city of the third or fourth class in which the discontinuance of prohibition is effective by virtue of a local option election held in the manner prescribed in KRS Chapter 242 and in the case of fourth class cities, KRS 242.127 to 242.129, the governing body of the city **and the governing body of the county containing the city** is authorized to impose a regulatory license fee upon the gross receipts of each establishment therein licensed to sell alcoholic beverages. The regulatory license fee may be levied at the beginning of each ~~city~~ budget period at ~~a [such]~~ percentage rate as shall be reasonably estimated to fully reimburse the **local government [city]** for the estimated costs of any additional policing, regulatory or administrative expenses related to the sale of alcoholic beverages in the city **and county**. The regulatory license fee shall be in addition to any other taxes, fees or licenses permitted by law, **except:**

- (1) ~~but~~ A credit against **a regulatory license [such]** fee **in a city** shall be allowed in an amount equal to any licenses or fees imposed by the city pursuant to KRS 243.070; **and**
- (2) *In a county in which the city and county both levy a regulatory license fee, the county license fee shall only be applicable outside the jurisdictional boundaries of those cities which levy a license fee.*

Section 19. KRS 244.290 is amended to read as follows:

- (1) A premises that is licensed to sell distilled spirits or wine at retail shall not be permitted to remain open during the hours the polls are open on any regular or primary election day unless the licensee provides a separate locked department in which all stock of distilled spirits and wine are kept during the hours the polls are open.
- (2) In any county containing a city of the first or second class in which the sale of distilled spirits and wine by the drink is permitted under KRS Chapter 242, an election on the question of permitting the sale of distilled spirits and wine by the drink on Sunday may be held as provided in KRS Chapter 242.
- (3) Except as provided in KRS 243.050, a premise for which there has been granted a license for the sale of distilled spirits or wine at retail shall not remain open for any purposes between midnight and 6 a.m. or at any time during the twenty-four (24) hours of a Sunday, unless:
  - (a) The licensee provides a separate locked department in which all stocks of distilled spirits and wine are kept during those times; or
  - (b) The legislative body of a city of the first, second, third, or fourth class, or the fiscal court of a county containing a city of the first, second, third, or fourth class, has otherwise established the hours and times in which distilled spirits and wine may be sold within its jurisdictional boundaries.
- (4) In any county containing a city of the first, ~~or~~ second, **or third** class or any city located therein in which the sale of distilled spirits and wine is permitted under KRS Chapter 242, the legislative body of the city or county may, by ordinance, permit the sale of distilled spirits and wine by the drink on Sunday from 1 p.m. until the designated closing hour of that locality at hotels, motels, or restaurants which:
  - (a) Have dining facilities with a minimum seating capacity of one hundred (100) people at tables; and
  - (b) Receive at least fifty percent (50%) or more of their gross annual income from the dining facilities from the sale of food.
- (5) In any county containing a city of the first class or in any city located therein in which the sale of distilled spirits and wine is permitted under KRS Chapter 242, the distilled spirits administrator may issue a license to holders of a distilled spirits and wine retail drink quota license or a special private club license which permits the sale of distilled spirits and wine by the drink on Sunday from 1 p.m. until the prevailing time for that locality.
- (6) Any city of the fourth class or county containing a city of the fourth class which has enacted a comprehensive, regulatory ordinance relating to the licensing and operation of hotels, motels, inns, or restaurants for the sale of alcoholic beverages by the drink under KRS 242.185(1), may also regulate and provide for the limited sale of distilled spirits and wine by the drink on Sundays if:
  - (a) The limited Sunday drink licenses are issued only to those hotels, motels, inns, or restaurants authorized to sell alcoholic beverages by the drink under KRS 242.185(3); and
  - (b) The holders of distilled spirits and wine retail drink licenses have applied to the state administrator and meet all other legal requirements for obtaining a limited Sunday liquor by the drink license.

**Approved April 21, 2000**

## CHAPTER 436

(SB 279)

AN ACT relating to health insurance.

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

SECTION 1. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

***As used in Sections 1 to 17, Section 18, and Section 19 of this Act:***

- (1) ***"Adjudicate" means an insurer pays, contests, or denies a clean claim;***
- (2) ***"Claims payment time frame" means the time period prescribed under Section 2 of this Act following receipt of a clean claim from a provider at the address published by the insurer, whether it is the address of***

*the insurer or a delegated claims processor, within which an insurer is required to pay, contest, or deny a health care claim;*

- (3) *"Clean claim" means a properly completed billing instrument, paper or electronic, that does not involve coordination of benefits for third-party liability, preexisting condition investigations, or subrogation.*
  - (a) *A clean claim from an institutional provider shall consist of:*
    1. *The UB-92 data set or its successor submitted on the designated paper or electronic formats as adopted by the NUBC;*
    2. *Entries stated as mandatory by the NUBC; and*
    3. *Any state-designated data requirements determined and approved by the Kentucky State Uniform Billing Committee and included in the UB-92 billing manual effective at the time of service;*
  - (b) *A clean claim for dentists shall consist of the form and data set approved by the American Dental Association;*
  - (c) *A clean claim for all other providers shall consist of the HCFA 1500 data set or its successor submitted on the designated paper or electronic format as adopted by the National Uniform Claims Committee; and*
  - (d) *A clean claim for pharmacists shall consist of a universal claim form and data set approved by the National Council on Prescription Drug Programs.*
- (4) *"Commissioner" means the commissioner of the Department of Insurance;*
- (5) *"Covered person" means a person on whose behalf an insurer offering a health benefit plan is obligated to pay benefits or provide services;*
- (6) *"Department" means the Department of Insurance;*
- (7) *"Electronic" or "electronically" means electronic mail, computerized files, communications, or transmittals by way of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;*
- (8) *"Health benefit plan" has the same meaning as provided in KRS 304.17A-005;*
- (9) *"Health care provider" or "provider" has the same meaning provided in KRS 304.17A-005 and, for the purposes of Sections 1 to 17, 18 and 19 of this Act only, shall include physical therapists licensed under KRS Chapter 327. Nothing contained in Sections 1 to 17, 18 and 19 of this Act shall be construed to include physical therapists as a health care provider or provider under KRS 304.17A-005;*
- (10) *"Health claim attachment" means additional information from a covered person's medical record to the basic claim form required by the insurer;*
- (11) *"Institutional provider" means a health care facility licensed under KRS 216B;*
- (12) *"Insurer" has the same meaning provided in KRS 304.17A-005;*
- (13) *"Kentucky Uniform Billing Committee (KUBC)" means the committee of health care providers, governmental payors, and commercial insurers established as a local arm of NUBC to implement the bill requirements of the NUBC and to prescribe any additional billing requirements unique to Kentucky insurers;*
- (14) *"National Uniform Billing Committee (NUBC)" means the national committee of health care providers, governmental payors, and commercial insurers that develops the national uniform billing requirements for institutional providers as referenced in accordance with the Federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Chapter 6A, Subchapter XXV, sec. 300gg et seq.;*
- (15) *"Retrospective review" means utilization review that is conducted after health care services have been provided to a covered person; and*
- (16) *"Utilization review" has the same meaning as provided in KRS 211.461.*

SECTION 2. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:



- (1) *Except for claims involving organ transplants, each insurer shall reimburse a provider for a clean claim or send a written or an electronic notice denying or contesting the claim within thirty (30) calendar days from the date that the claim is received by the insurer or any entity that administers or processes claims on behalf of the insurer. Clean claims involving organ transplants shall be paid, denied, or contested within sixty (60) calendar days from the date that the claim is received by the insurer or any entity that administers or processes claims on behalf of the insurers.*
- (2) *Within the applicable claims payment time frame, an insurer shall:*
  - (a) *Pay the total amount of the claim in accordance with any contract between the insurer and the provider;*
  - (b) *Pay the portion of the claim that is not in dispute and notify the provider, in writing or electronically, the reasons the remaining portion of the claim will not be paid; or*
  - (c) *Notify the provider, in writing or electronically, of the reasons no part of the claim will be paid.*

SECTION 3. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1)
  - (a) *Within forty-eight (48) hours of receiving an original or corrected claim submitted electronically, an insurer, its agent, or designee shall acknowledge the date of receipt of the claim by an electronic transmission to the provider, its billing agent, or designee that submitted the claim; and*
  - (b) *Within twenty (20) calendar days of receipt of an original or corrected claim submitted by mail or other nonelectronic means, an insurer shall acknowledge the date of receipt of the claim.*
    1. *For claims containing all necessary information and having no errors, the insurer shall make available confirmation of receipt of the claim to the provider, billing agent, or designee that submitted the claim. Acknowledgment may be in writing or the insurer may list the claim and the date it was received on a file that can be accessed electronically by the provider; and*
    2. *Claims that contain errors or lack necessary information shall be acknowledged by an electronic transmission or in writing to the provider, billing agent, or designee that submitted the claim.*
- (2) *An insurer shall notify the provider, in writing or electronically, at the time that receipt of a claim is acknowledged, of all information that is missing or in error which preclude it from being a clean claim.*
- (3) *When an insurer has notified a provider that a claim contains errors, upon receipt of a corrected claim, the insurer shall pay the corrected claim within the applicable claims payment time frame for a clean claim established in Section 2 of this Act.*
- (4) *By January 1, 2001, an insurer shall have in place a mechanism to inform providers of the status of a claim either through:*
  - (a) *Notation on the remittance; or*
  - (b) *By allowing providers to check claim status electronically at any time following submission of the claim to the insurer.*

SECTION 4. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *An insurer may delay payment by contesting a clean claim only in the following instances:*
  - (a) *The insurer has information that another insurer is primarily responsible for the claim;*
  - (b) *The insurer will conduct a retrospective review of the services identified on the claim;*
  - (c) *The insurer has information that the claim was submitted fraudulently; or*
  - (d) *The covered person's or group's premium has not been paid.*
- (2) *An insurer shall pay any uncontested portion of a claim and provide written or electronic notification to the provider of the contested amount within the applicable claims payment time frame established in Section 2 of this Act.*

- (3) (a) *If an insurer routinely requires a provider to submit attachments to the claim containing additional medical information summarizing the diagnosis, the treatment, or services rendered to the covered person before the claim will be paid, the insurer shall identify the specific routinely required information in its provider manual or other document that sets forth the procedure for filing claims with the insurer. The insurer shall provide sixty (60) days' advance written notice of modifications to the provider manual that materially change the type or content of the attachments to be submitted;*
- (b) *If a provider submits a clean claim with the required attachments as specified in the provider manual or other document that sets forth the procedure for filing claims with the insurer, the insurer shall pay or deny the claim within the required claims payment time frame established in Section 2 of this Act; and*
- (c) *If an insurer conducts a retrospective review of a claim and requires an attachment not specified in the provider manual or other document that sets forth the procedure for filing claims, the insurer shall:*
1. *Notify the provider, in writing or electronically within the claims payment time frame established in Section 2 of this Act, of the service that will be retrospectively reviewed and the specific information needed from the provider regarding the insurer's review of a claim;*
  2. *Complete the retrospective review within twenty (20) business days of the insurer's receipt of the medical information described in this subsection; and*
  3. *Add interest to the amount of the claim to be paid at a rate of twelve percent (12%) per annum, or at a rate in accordance with Section 16 of this Act accruing from the thirty-first day after the claim was received by the insurer through the date upon which the claim is paid.*
- (4) (a) *If a claim or portion thereof is contested by an insurer on the basis that the insurer has not received information reasonably necessary to determine insurer liability for the claim or portion thereof, the insurer shall, within the applicable claims payment time frame established in Section 2 of this Act, provide written or electronic notice to the provider, covered person, or insurer, as appropriate, with an itemization of all new, never-before-provided information that is needed; and*
- (b) *The insurer shall pay or deny the claims within thirty (30) calendar days of receiving the additional information described in paragraph (a) of this subsection.*

SECTION 5. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *An insurer shall not require a provider to appeal errors in payment where the insurer has not paid the claim according to the contracted rate. Miscalculations in payments made by the insurer shall be corrected and paid within thirty (30) calendar days upon the insurer's receipt of documentation from the provider verifying the error.*
- (2) *An insurer shall not be required to correct a payment error to a provider if the provider's request for a payment correction is filed more than twenty-four (24) months after the date that the provider received payment for the claim from the insurer.*
- (3) (a) *Except in cases of fraud, an insurer may only retroactively deny reimbursement to a provider during the twenty-four (24) month period after the date that the insurer paid the claim submitted by the provider;*
- (b) *An insurer that retroactively denies reimbursement to a provider under this section shall give the provider a written or electronic statement specifying the basis for the retroactive denial;*
- (c) *If the retroactive denial of reimbursement results from coordination of benefits, the written statement shall specify the name and address of the entity acknowledging responsibility for payment of the denied claim; and*
- (d) *If an insurer retroactively denies reimbursement for services as a result of coordination of benefits with another insurer, the provider shall have twelve (12) months from the date that the provider received notice of the denial, unless the insurer that retroactively denied reimbursement permits a longer period, to submit a claim for reimbursement for the service to the insurer, the medical assistance program, or the Medicare program responsible for payment.*

SECTION 6. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *In contracts with providers or in the provider manual or other document that sets forth the procedures for filing claims, an insurer shall disclose to providers:*
  - (a) *The mailing or electronic address where claims should be sent for processing;*
  - (b) *The phone number a provider may call to have questions and concerns regarding claims addressed;*
  - (c) *Any entity to which the insurer has delegated claim payment functions; and*
  - (d) *The address of any separate claims processing centers for specific types of services.*
- (2) *An insurer shall provide, no less than thirty (30) calendar days, prior written notice of any changes in the information required in subsection (1) of this section, to its contracted providers.*

SECTION 7. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*If an insurer determines that payment was made for services rendered to an individual who was not eligible for coverage, or that payment was made for services not covered by a covered person's health benefit plan, the insurer shall give written notice to the provider and:*

- (1) *Request a refund from the provider; or*
- (2) *Make a recoupment of the overpayment from the provider in accordance with Section 8 of this Act.*

SECTION 8. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*If an insurer chooses to collect an overpayment made to a provider through a recoupment against future provider payments, the insurer shall, within twenty-four (24) months from the date that the insurer paid the claim, give the provider written documentation that specifies:*

- (1) *The amount of the recoupment;*
- (2) *The covered person's name to whom the recoupment applies;*
- (3) *Patient identification number; and*
- (4) *Date of service.*

SECTION 9. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *No insurer or any other person providing or administering a health benefit plan shall deny or reduce payment for a service, procedure, treatment, drug, or device covered under the covered person's health benefit plan if:*
  - (a) *The covered person's provider, during normal business hours, contacts the insurer or the insurer's designee or agent on the day the covered person is expected to be discharged to request review of the covered person's continued hospitalization and the insurer, designee, or agent fails to provide a utilization review decision within twenty-four (24) hours of the request and prior to the time upon which any previous authorization will expire; or*
  - (b) *The covered person's provider makes at least three (3) documented attempts during a four (4) consecutive hour period to contact the insurer, designee, or agent during normal business hours to request review of a continued hospital stay; preauthorization of treatment for a covered person who is already hospitalized; retrospective review of an emergency hospital admission where the covered person remains hospitalized at the time the review requested is made; and the insurer, designee, or private review agent fails to be accessible via a toll free telephone line for forty (40) hours per week during normal business hours.*
- (2) *The insurer's liability to pay for the covered person's hospitalization under the circumstances set forth in subsection (1) of this section shall extend until the insurer, designee, or private review agent issues a utilization review decision on a request for review of the matters addressed under subsection (1)(b) of this section.*

- (3) *The insurer's liability to pay under this section shall be conditioned on:*
- (a) *The provider establishing verifiable documentation of the contact with, and subsequent failure of the insurer, designee, or agent to make the utilization review decision as set forth in subsection (1)(a) of this section; or*
  - (b) *The provider establishing verifiable documentation of the attempt to make contact with the insurer, designee or agent as addressed in subsection (1)(b) of this section.*
- (4) *In either instance, the contact, or attempts to contact, as set forth in this section, shall be made by the means required by the insurer, designee, or agent for requesting utilization review.*
- (5) *This section applies only when the request for review concerns covered health benefits and it shall not supersede any limitations or exclusions in the covered person's health benefit plan. This section shall not apply if, in requesting a review, the provider does not furnish the information requested by the insurer or agent to make a utilization review decision, or if actions by the provider impede an insurer's or private review agent's ability to issue a utilization review decision.*

SECTION 10. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Beginning on January 1, 2001, upon issuance, delivery, or renewal of a health benefit plan in Kentucky, an insurer shall:*
- (a) *Clearly indicate on each covered person's identification card the mailing address where a claim for payment shall be sent; and*
  - (b) *Issue new identification cards or an appropriate sticker to covered persons no later than thirty (30) calendar days following the effective date of any change in the address of the insurer, its agent, designee, or other entity that processes claims for the insurer.*
- (2) *Identification cards for covered persons shall identify whether the covered person has health maintenance organization (HMO), point of service (POS), preferred provider organization (PPO), or indemnity fee for service (FFS) coverage.*

SECTION 11. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *In order to improve the efficiency and effectiveness of the health care system through administrative simplification of billing requirements, the commissioner shall prescribe through the promulgation of administrative regulations, standardized health claim attachments to be used by all insurers requiring additional medical information to process health care claims. The Kentucky State Uniform Billing Committee shall make recommendations to the commissioner on the standardization of attachments.*
- (2) *Any administrative regulations that prescribe standardized health claim attachments shall be updated to conform with federal standards following the release of national requirements for transactions and data elements in accordance with the Federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Chapter 6A, Subchapter XXV, sec. 300gg et seq.*

SECTION 12. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *No later than ninety (90) days following the effective date of this Act, the department shall promulgate administrative regulations requiring all insurers to report information, according to timetables prescribed by the department but no less than annually, on prompt payment of claims that shall include the following:*
- (a) *Percentage of clean claims paid within the claims payment time frame;*
  - (b) *Percentage of clean claims paid after the claims payment time frame and the number of days for hospitals, physicians, and all other providers, excluding pharmacies, within which the claims were finally adjudicated, reporting them in thirty-one (31) to sixty (60) day, sixty-one (61) to ninety (90) day, and more than ninety (90) day intervals; and*
  - (c) *Amount of interest paid.*

- (2) *The department shall, as part of the market conduct survey of each insurer, audit the insurer to determine compliance with Sections 1 to 17 and Section 18 of this Act. Findings shall be made available to the public upon request.*
- (3) *The commissioner shall annually present to the Interim Joint Committee on Banking and Insurance and to the Governor, a report on the payment practices of insurers and compliance with the provisions of Sections 1 to 17, Section 18, and Section 19 of this Act and the commissioner's enforcement activities, including the number of complaints received and those acted upon by the department.*

SECTION 13. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*Sections 1 to 17, Section 18, and Section 19 of this Act apply to any entity an insurer contracts with to perform claims processing functions.*

SECTION 14. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*Upon enactment, all health care claims incurred after the effective date of this Act, and contractual agreements between insurers and providers regarding the payment of health care claims entered into after the effective date of this Act, shall conform to Sections 1 to 17, Section 18, and Section 19 of this Act. An insurer shall not request or require a provider to pursue any other course of action regarding the payment of health care claims outside of the provisions set forth in Sections 1 to 17, Section 18, and Section 19 of this Act.*

SECTION 15. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A provision identifying the products and markets applicable to any discount as provided in the contract shall be required of all contracts with a:*
  - (a) *Provider or an organization of providers; or*
  - (b) *Preferred provider organization that has a network of preferred providers and the organization has contracted with the health care preferred provider.*
- (2) *An insurer or entity shall not reimburse on a discounted fee basis unless the disclosure is provided in the contract with:*
  - (a) *A provider or organization of providers; or*
  - (b) *An organization that has a network of preferred providers and the insurance entity has the written consent of the healthcare preferred providers.*
- (3) *An insurer or entity under contract with the insurer who violates this section commits an unfair claims settlement practice violation under Subtitle 12 of KRS Chapter 304, and is also subject to administrative penalties under Subtitle 99 of KRS Chapter 304.*

SECTION 16. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *An insurer that fails to pay, deny, or settle a clean claim in accordance with Sections 1 to 17, Section 18, and Section 19 of this Act shall pay interest according to the following schedule on the amount of the claim that remains unpaid:*
  - (a) *For claims that are paid between thirty-one (31) and sixty (60) days from the date that the claim was received by the insurer or any entity that administers or processes claims on behalf of the insurer, interest at a rate of twelve percent (12%) per annum shall accrue from the date payment was due under Section 2 of this Act;*
  - (b) *For claims that are paid between sixty-one (61) days and ninety (90) days from the date that the claim was received by the insurer or any entity that administers or processes claims on behalf of the insurer, interest at a rate of eighteen percent (18%) per annum shall accrue from the date payment was due under Section 2 of this Act; and*
  - (c) *For claims that are paid more than ninety (90) days from the date that the claim was received by the insurer or any entity that administers or processes claims on behalf of the insurer, interest at a rate*

*of twenty-one percent (21%) per annum shall accrue from the date that payment was due under Section 2 of this Act.*

- (2) *When paying a claim after the time required by Section 2 of this Act, the insurer shall add the interest payable to the amount of the unpaid claim without the necessity for any claim for that interest to be made by the provider filing the original claim. The interest obligation otherwise imposed by this section shall not apply if the failure to pay, deny, or settle a claim is due to, or results from, in whole or in part, acts or events beyond the control of the insurer, including but not limited to, acts of God, natural disasters, epidemics, strikes or other labor disruptions, war, civil disturbance, riot, or complete or partial disruptions of facilities.*

SECTION 17. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *In addition to any other penalty or remedy authorized by law, the department may assess the following fines for noncompliance with Sections 1 to 17, Section 18, and Section 19 of this Act:*
- (a) *A fine of one thousand dollars (\$1,000) per day or ten percent (10%) of the unpaid claim amount, whichever is greater, for each day that a clean claim remains unpaid in violation of Sections 1 to 17, Section 18, and Section 19 of this Act.*
  - (b) *Except for the late payment of claims under subsection (2) of this section, a fine of up to ten thousand dollars (\$10,000) where the commissioner determines that an insurer has willfully and knowingly violated Sections 1 to 17, Section 18, and Section 19 of this Act or has a pattern of repeated violations of Sections 1 to 17, Section 18, and Section 19 of this Act.*
- (2) *For purposes of paragraph (a) of subsection (1) of this section, an insurer is in compliance when ninety-five percent (95%) of the clean claims paid during each calendar quarter, excluding pharmaceutical claims, were paid within thirty (30) days and the total dollar amount paid within thirty (30) days, excluding the amount paid for pharmaceutical claims, equaled at least ninety percent (90%) of the total dollar amount paid for clean claims during that calendar quarter.*

Section 18. KRS 304.14-135 is amended to read as follows:

- (1) The commissioner shall prescribe *the following* uniform health insurance claim forms which shall be used by all insurers transacting health insurance in this state and by all state agencies that require health insurance claim forms for their records *as the sole instrument for reimbursement*:
- (a) *The uniform health insurance claim form for an institutional provider shall consist of the UB-92 data set or its successor submitted on the designated paper or electronic format as adopted by the National Uniform Billing Committee;*
  - (b) *The uniform health insurance claim form for a dentist shall consist of a data set and form approved by the American Dental Association;*
  - (c) *The uniform health insurance claim form for all other health care providers shall consist of the HCFA 1500 data set or its successor submitted on the designated paper or electronic format as adopted by the National Uniform Claims Committee; and*
  - (d) *A clean claim for pharmacists shall consist of a universal claim form or data set approved by the National Council on Prescription Drug Program.*
- (2) *An insurer shall not require a provider to:*
- (a) *Use a claim form that is different than the uniform claim form for the provider type as set out in subsection (1) of this section;*
  - (b) *Modify the uniform claims form or its content; or*
  - (c) *Submit additional claims forms.*

Section 19. KRS 205.593 is amended to read as follows:

- (1) In enrolling an individual or making any payments for benefits to the individual or on the individual's behalf, health insurers are prohibited from taking into account that the individual is eligible for or is provided medical assistance.

- (2) *Sections 1 to 17, Section 18, and Section 19 of this Act apply to any provider partnership, health maintenance organization, or other managed care organization under contract with the Department for Medicaid Services to manage care and process health care claims for services delivered to Medicaid recipients covered under Medicaid managed care.*

Approved April 21, 2000

## CHAPTER 437

(SB 280)

AN ACT relating to the Office of Education Accountability.

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

Section 1. KRS 7.410 is amended to read as follows:

- (1) It is the intent of the General Assembly to provide an efficient system of common schools which shall be operated without waste, duplication, mismanagement, and political influence. The system of schools shall have the goal of providing all students with at least the seven (7) capacities referred to in KRS 158.645.
- (2)
  - (a) An Office of Education Accountability is hereby created and shall be under the direction of the Legislative Research Commission ***and shall be advised and monitored by the Education Assessment and Accountability Review Subcommittee.***
  - (b) The Office of Education Accountability shall be administered by a deputy director appointed by the Legislative Research Commission upon recommendation of the director of the Legislative Research Commission. The deputy director shall have the qualifications set by the Commission. The salary of the deputy director shall be set by the Commission. The Commission shall have exclusive jurisdiction over the employment of personnel necessary to carry out the provisions of this section. The deputy director shall be subject to the direction of and report to the director of the Legislative Research Commission.
  - (c) The Office of Education Accountability shall have the following duties and responsibilities:
    1. Monitor the education system and implementation of the provisions of the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476, including actions taken ***and reports issued*** by the Kentucky Board of Education, the Education Professional Standards Board, the chief state school officer, the Department of Education, local school districts, and vocational and higher education as affected by the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476.
    2. Establish a Division of School Finance which shall conduct an ongoing review of the finance system. The review shall include an analysis of the level of equity achieved by the funding system and whether adequate funds are available to all school districts; a review of the weights of various education program components, which are to be developed by the Department of Education no later than October 1, 1991. The division shall develop recommendations for the base per pupil funding for the support education excellence in Kentucky program and a statewide salary schedule. It shall conduct studies of other finance issues identified as needing further study, including a review of the transportation formula required in KRS 157.360. The division shall submit an annual report of its activities, findings, and recommendations to the ***Education Assessment and Accountability Review Subcommittee. Upon approval of the subcommittee, the annual report shall be forwarded to the*** Governor, the Legislative Research Commission, and the Kentucky Board of Education no later than October 1 each year.
    3. Verify the accuracy of reports of school, district, and state performance by conducting, ~~contracting for, or~~ requesting, ***or upon approval of the Legislative Research Commission contracting for*** periodic program and fiscal audits as necessary. ***Upon and under the direction of the Education Assessment and Accountability Review Subcommittee, the Office of Education Accountability shall monitor and verify the accuracy of reports of the Department of Education and the Kentucky Board of Education, including but not limited to the annual fiscal conditions of grants, categorical programs, and other educational initiatives set forth by the General Assembly*** ~~[may request an audit from the State Committee for School District Audits as established in KRS 156.265].~~

4. Investigate allegations of wrongdoing of any person or agency, including, but not limited to, waste, duplication, mismanagement, political influence, and illegal activity at the state, regional, or school district level which have not been resolved or satisfactorily explained by the local superintendent, local board of education, the chief state school officer, or the Kentucky Board of Education, and make recommendations for *legislative* action to the *Education Assessment and Accountability Review Subcommittee*. *Upon approval of the subcommittee, recommendations for legislative action shall be forwarded to the* Legislative Research Commission. *The Office of Education Accountability shall submit to the subcommittee, for each of its regular meetings, a report that summarizes investigative activity initiated pursuant to this subparagraph. The subcommittee may consider each report as it determines and in its discretion. Each report, and the consideration thereof by the subcommittee, shall be exempt from the open records and open meetings requirements contained in KRS Chapter 61.*
  5. *Under the direction of the Education Assessment and Accountability Review Subcommittee, conduct studies, ~~and~~ analyze, verify and validate the state assessment program through other external indicators of academic progress including, but not limited to American College Test scores, Scholastic Assessment Test scores, National Assessment of Educational Progress scores, Preliminary Scholastic Assessment Test scores, Advanced Placement Program participation, standardized test scores, college remediation rates, retention and attendance rates, dropout rates and additional* available data on the efficiency of the system of schools and whether progress is being made toward attaining the goal of providing students with the seven (7) capacities as required by KRS 158.645.
  6. Make periodic reports to the *Education Assessment and Accountability Review Subcommittee as directed by the subcommittee. Upon approval of the subcommittee, the reports shall be forwarded to the* Legislative Research Commission~~[as directed by the Commission]~~.
  7. *Make periodic reports to the Legislative Research Commission as may be directed by the Commission.*
  8. Prepare an annual report on the implementation of the provisions of the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476, including recommendations for improvement which shall be submitted to the *Education Assessment and Accountability Review Subcommittee. Upon approval of the subcommittee, the annual report shall be submitted to the* Governor, the Legislative Research Commission, and the Kentucky Board of Education.
- (d) The Office of Education Accountability shall have access to all public records and information on oath as provided in KRS 7.110. The office shall also have access to otherwise confidential records, meetings, and hearings regarding local school district personnel matters. However, the office shall not disclose any information contained in or derived from the records, meetings, and hearings that would enable the discovery of the specific identification of any individual who is the focus or subject of the personnel matter.
  - (e) In compliance with KRS 48.800, 48.950, and 48.955, the Finance and Administration Cabinet and the Governor's Office for Policy and Management shall provide to the Office of Education Accountability access to all information and records, other than preliminary work papers, relating to allotment of funds, whether by usual allotment or by other means, to the Department of Education, local school districts, and to other recipients of funds for educational purposes.
  - (f) Any state agency receiving a complaint or information which if accurate may identify a violation of the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476, shall notify the office of the complaint or information.
  - (g) The Office of Education Accountability may contract for services as approved by the Legislative Research Commission pursuant to KRS 7.090(7).
- (3) The provisions of KRS 61.878 or any other statute, including Acts of the 1992 Regular Session of the General Assembly to the contrary notwithstanding, the testimony of investigators, work products, and records of the Office of Education Accountability relating to duties and responsibilities under subsection (2) of this section shall be privileged and confidential during the course of an ongoing investigation or until authorized, released, or otherwise made public by the Office of Education Accountability and shall not be subject to discovery, disclosure, or production upon the order or subpoena of a court or other agency with subpoena power.



Section 2. KRS 158.647 is amended to read as follows:

- (1) A permanent subcommittee of the Legislative Research Commission to be known as the Education Assessment and Accountability Review Subcommittee is hereby created. The subcommittee shall be composed of eight (8) members, no more than five (5) of whom shall be members of the same political party. The Legislative Research Commission shall appoint from the membership of the General Assembly, the members of the subcommittee for terms of two (2) years, and the members so appointed shall elect one (1) of their number to serve as chair. Any vacancy that may occur in the membership of the subcommittee shall be filled by the Legislative Research Commission at its next regularly scheduled meeting after the occurrence of the vacancy.
- (2) The subcommittee shall review administrative regulations and advise the Kentucky Board of Education concerning the implementation of the state system of assessment and accountability, established in KRS 158.6453, 158.6455, and 158.782.
- (3) *The subcommittee shall advise and monitor the Office of Education Accountability in the performance of its duties according to the provisions of Section 1 of this Act.*
- (4) The subcommittee shall meet at a time and place as the chair may determine. The members of the subcommittee shall be compensated for attending meetings as provided in KRS 7.090.
- (5)~~(4)~~ Any professional, clerical, or other employees required by the subcommittee shall be provided in accordance with the provisions of KRS 7.090.

Approved April 21, 2000

## CHAPTER 438

(SB 288)

AN ACT relating to state group health insurance, and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 18A IS CREATED TO READ AS FOLLOWS:

- (1) *To facilitate the need for comprehensive and efficient planning, implementation, and administration of a state employee health insurance program, the Kentucky Group Health Insurance Board is created. The board shall be attached to the Personnel Cabinet for administrative purposes only. The board shall consist of seven (7) members as follows:*
  - (a) *The secretary of the Finance and Administration Cabinet;*
  - (b) *The secretary of the Personnel Cabinet;*
  - (c) *The state budget director;*
  - (d) *The commissioner of education;*
  - (e) *The chair of the Advisory Committee of State Health Insurance Subscribers;*
  - (f) *The commissioner of insurance, ex officio; and*
  - (g) *The Auditor of Public Accounts, ex officio.*
- (2) *The members of the board shall elect from among its members a chair and a vice-chair.*
- (3) *Regular meetings of the board shall be held at least once every month at a place, day, and time determined by the board. Special meetings of the board shall be held when needed as determined by the chair. If four (4) or more members of the board request in writing that the chair call a special meeting, the chair shall call a special meeting. The meetings shall operate in accordance with the provisions of the Open Meetings Law under KRS 61.805 to 61.850.*
- (4) *Members of the board shall receive reimbursement for necessary expenses for attendance at official board meetings or public hearings.*
- (5) *The Kentucky Group Health Insurance Board shall:*

- (a) *Engage in analyses and research to identify the factors and parameters that affect the state group health insurance program;*
- (b) *Develop and transmit, by October 1 of each year beginning October 1, 2001, to the Governor, the General Assembly, and the Chief Justice of the Supreme Court, policy recommendations regarding benefit options and management of the state group health insurance program; and*
- (c) *Provide in the first report, due by October 1, 2001, the following:*
  - 1. *Analysis and discussion of methods used by all other states to provide health insurance benefits to their state group;*
  - 2. *Analysis and discussion of the cost, enrollment, claims, and utilization data for calendar year 2000 on the Kentucky state group;*
  - 3. *Recommendations including, but not limited to, appropriate structures for the state contribution rate which shall include recommendations on increasing the state contribution to provide support for dependent coverage, possible methods to mitigate adverse selection, competitive plan designs by type and benefit options, the feasibility of a state self-insurance plan, and strategies for evaluating third-party administrators and vendors.*

Section 2. KRS 18A.225 is amended to read as follows:

- (1) (a) The term "health maintenance organization" for the purposes of this section means a health maintenance organization as defined in KRS 304.38-030 or as a nonprofit hospital, medical-surgical, dental, and health service corporation, which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board or its successor agency and issued a certificate of authority by the Department of Insurance as a health maintenance organization or as a nonprofit hospital, medical-surgical, dental, and health service corporation and which is qualified under the requirements of the United States Department of Health, Education and Welfare except as provided in subsection (2) of this section; and
- (b) The term "state employee" for purposes of this section shall include a person, including an elected public official, who is regularly employed by any department, board, agency, branch of state government, or any municipal, urban-county, charter county, or county government, whose legislative body has opted to participate in the state health insurance program pursuant to KRS 79.080 and who is a contributing member to any one (1) of the retirement systems administered by the state ~~and including any federally funded time limited employee~~. It shall also include a person who must fulfill the requirements established by the Kentucky Board of Education for eligibility and a person who is a present or future recipient of a retirement allowance from any of the Kentucky Retirement Systems who either satisfies the requirements of KRS 61.559 or who is board authorized under KRS 61.702(1), including a beneficiary of a retired employee as defined in KRS 61.542 who is receiving a retirement allowance from any of the Kentucky Retirement Systems and includes members of the Legislators' Retirement Plan as provided in KRS 18A.2287. It shall also include a person who is a present or future recipient of a retirement allowance from the Teachers' Retirement System of Kentucky who either satisfies the requirements of KRS 161.525, 161.620, and 161.675 or who is board certified, including a beneficiary of a retired member who is receiving a retirement allowance from the Teachers' Retirement System of Kentucky, ***except that a member who is receiving a retirement allowance from the Teachers' Retirement System and who is age sixty-five (65) or older shall not be included.***
- (2) (a) The secretary of the Finance and Administration Cabinet, upon the recommendation of the secretary of the Personnel Cabinet, shall procure, in compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090, from one (1) or more health ~~hospitalization, medical, major medical, and dental~~ insurance companies or from one (1) or more health maintenance organizations authorized to do business in this state, a policy or policies of group health ~~care hospitalization, medical, and major medical insurance or health maintenance organization~~ coverage ***including, but not limited to, indemnity, health maintenance organization (HMO), preferred provider organization (PPO), point of service (POS), and exclusive provider organization (EPO) benefit plans*** encompassing all or any class or classes of state employees. Health insurance coverage provided to state employees under this section shall, at a minimum, contain the same benefits as provided under Kentucky Kare Standard as of January 1, 1994. All state employees and other persons for whom the ~~health care insurance or health maintenance organization~~ coverage is provided or made available shall annually be given an option to elect ***health***

*care coverage through a self-funded plan offered by the state or, if a self-funded plan is not available, from a list of coverage options determined by the competitive bid process under the provisions of KRS 45A.080, 45A.085, and 45A.090 and made available during annual open enrollment*~~[standard insurance coverage, coverage by a health maintenance organization, or health insurance described in KRS 42.800 to 42.825; if a qualified health maintenance organization is not engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside, the state employees may annually be given the option to elect either standard insurance coverage or coverage by a health maintenance organization which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board or its successor agency and issued a certificate of authority by the Department of Insurance as a health maintenance organization or as a nonprofit hospital, medical surgical, dental, and health service corporation and which is engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside].~~

- (b) The policy or policies shall be approved by the commissioner of insurance and may contain the provisions he approves, whether or not otherwise permitted by the insurance laws.
- (c) *Any carrier bidding to offer health care coverage to members of the state group shall agree to provide coverage to all members of the state group, including both active employees and retirees within the county or counties specified in its bid. Furthermore, any carrier bidding to offer health care coverage to members of the state group shall also agree to rate all such members of the state group as a single entity, except for those retirees whose former employers insure their active employees outside the state health insurance program.*
- (d) *Any carrier bidding to offer health care coverage to any member of the state group shall agree to provide enrollment, claims, and utilization data to the Commonwealth in a format specified by the Personnel Cabinet with the understanding that the data shall be owned by the Commonwealth; to provide data in an electronic form and within a time frame specified by the Personnel Cabinet; and, to be subject to penalties for noncompliance of data reporting requirements as specified by the Personnel Cabinet. The Personnel Cabinet shall take strict precautions to protect the confidentiality of each individual member; however, confidentiality assertions shall not relieve a carrier from the requirement of providing stipulated data to the Commonwealth.*
- (e) *The Personnel Cabinet shall develop the necessary techniques and capabilities for timely analysis of data received from carriers and, to the extent possible, provide in the request-for-proposal specifics relating to data requirements, electronic reporting, and penalties for noncompliance. The Commonwealth shall own the enrollment, claims, and utilization data provided by each carrier and shall develop methods to protect the confidentiality of the individual. The Personnel Cabinet shall provide to the General Assembly in June of each year an analysis of enrollment, claims, utilization data of all carriers for the prior plan year ending December 31, and on the financial stability of the program. The report shall include, but not be limited to, loss ratios, methods of risk adjustment, measurements of carrier quality of service, prescription coverage and cost management, paid dependent coverage, and statutorily required mandates. If state self-insurance was available as a carrier option, the report also shall provide a detailed financial analysis of the self-insurance fund including, but not limited to, loss ratios, reserves, and reinsurance agreements.*
- (f) *If any agency participating in the state employee health insurance program for its active members terminates participation in the state employee health insurance program for its active members and there is a state appropriation for the employer's contribution for active employees' health insurance coverage, neither the agency nor the employees shall receive the state-funded contribution after termination from the state employee health insurance program.*
- (g) *Any funds in flexible spending accounts that remain after all reimbursements have been processed shall be transferred to the credit of the state health insurance plan's appropriation account.*

~~[It is intended that standard insurance, health maintenance organization coverage, or health insurance described in KRS 42.800 to 42.825 may be made available for state employees, except that the procuring of each is permissive.]~~

- (3) The secretary of the Finance and Administration Cabinet, upon the recommendation of the secretary of the Personnel Cabinet, may procure from one (1) or more dental insurance companies,~~[one (1) or more health maintenance organizations,]~~ one (1) or more nonprofit hospital, medical-surgical, dental, and health service

corporations organized under Subtitle 32 of KRS Chapter 304, ~~the health insurance agency described in KRS 42.800 to 42.825,~~ or one (1) or more prepaid dental plan organizations organized under Subtitle 43 of KRS Chapter 304, a policy or policies of group dental insurance or prepaid dental plan coverage encompassing all or any class or classes of state employees. All state employees for whom the dental insurance or prepaid dental plan coverage is provided shall annually be given an option to elect either standard dental insurance coverage ~~health maintenance organization coverage,~~ or coverage by a prepaid dental plan. The policy or policies shall be approved by the commissioner of insurance and may contain the provisions he approves, whether or not otherwise permitted by the insurance laws. It is intended that either dental insurance or prepaid dental plan coverage may be made available for state employees, except that the procuring of each is permissive.

- (4) The premiums may be paid by the policyholder:
  - (a) Wholly from funds contributed by the insured employee, by payroll deduction or otherwise;
  - (b) Wholly from funds contributed by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government; or
  - (c) Partly from each, except that any premium due for health *care* ~~health maintenance organization~~ coverage or ~~prepaid~~ dental ~~plan~~ coverage, *if any, in excess of* ~~over~~ the premium amount contributed by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government for any other *health care* ~~insurance~~ coverage shall be paid by the employee.
- (5) If an employee moves his place of residence or employment out of the service area of a *managed health care plan* ~~health maintenance organization~~ or of a prepaid dental plan ~~organization~~, under which he has elected coverage, into either the service area of another *managed health care plan* ~~health maintenance organization~~ or prepaid dental plan ~~organization~~ or into an area of the state not within a *managed health care plan* ~~health maintenance organization~~ service area or prepaid dental plan service area, the employee shall be given an option, at the time of the move or transfer, to *change his or her coverage to another health care plan or dental plan* ~~elect coverage either by the health maintenance organization or prepaid dental plan organization into which service area he moves or is transferred or to elect standard insurance coverage offered by the employer or coverage under KRS 42.800 to 42.825~~.
- (6) No payment of premium by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government shall constitute compensation to an insured employee for the purposes of any statute fixing or limiting the compensation of such an employee. Any premium or other expense incurred by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government shall be considered a proper cost of administration.
- (7) The policy or policies may contain the provisions with respect to the class or classes of employees covered, amounts of insurance or coverage for designated classes or groups of employees, policy options, terms of eligibility, continuation of insurance or coverage after retirement, and other provisions the commissioner of insurance may approve.
- (8) The policy or policies shall contain the provision that employees or retired employees shall be allowed to change health *care plans* ~~insurance carriers~~ during the reopening period without any limitation for pre-existing conditions if the employee has met the pre-existing condition limitation upon initial employment or reemployment with the group.
- (9) The secretary of the Finance and Administration Cabinet is authorized to perform all acts necessary or advisable for the purpose of contracting for and maintaining *health care coverage and dental coverage* ~~insurance, prepaid dental plan organization coverage, and health maintenance organization coverage~~ under the provisions of this section.
- (10) Group rates under ~~the insurance or health maintenance organization coverage acquired under~~ this section shall be made available to the disabled child of a state employee regardless of the child's age if the entire premium for the disabled child's coverage is paid by the state employee. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.
- (11) The health *care* ~~insurance~~ contract or contracts for state employees shall be entered into for a period of not less than *one (1) year* ~~two (2) years, except the contract awarded October 1, 1984, shall be awarded for the period between October 1, 1984, and June 30, 1986~~.
- (12) The secretary shall appoint *twenty-eight (28)* ~~twenty-four (24)~~ persons to an Advisory Committee of State Health Insurance Subscribers to advise the secretary or his designee regarding the state health insurance

program for state employees. The secretary shall appoint, from a list of names submitted by appointing authorities, members representing school districts from each of the seven (7) Supreme Court districts, members representing state government from each of the seven (7) Supreme Court districts, two (2) members representing retirees under age sixty-five (65), one (1) member representing local health departments, ***two (2) members representing the Kentucky Teachers' Retirement System***, and three (3) members at large. The secretary shall also appoint two (2) members from a list of five (5) names submitted by the Kentucky Education Association, ~~and~~ two (2) members from a list of five (5) names submitted by the largest state employee organization of nonschool state employees, ***and two (2) members from a list of names consisting of five (5) names submitted by each state employee organization that has two thousand (2000) or more members on state payroll deduction***. The advisory committee shall be appointed in ~~January~~***November*** of each year and shall meet quarterly.

- (13) Notwithstanding any other provision of law to the contrary, the policy or policies provided to state employees pursuant to this section shall not provide coverage for obtaining or performing an abortion, nor shall any state funds be used for the purpose of obtaining or performing an abortion on behalf of state employees or their dependents.
- (14) ***Interruption of an established treatment regime with maintenance drugs shall be grounds for an insured to appeal a formulary change through the established appeal procedures approved by the Personnel Cabinet, if the physician supervising the treatment certifies that the change is not in the best interests of the patient.***

Section 3. KRS 161.158 is amended to read as follows:

- (1) (a) Each district board of education may form its employees into a group or groups or recognize existing groups for the purpose of obtaining the advantages of group life, disability, medical, and dental insurance, or any group insurance plans to aid its employees ***including the state employee health insurance group as described in Section 2 of this Act***, as long as the employees continue to be employed by the board of education. Medical and dental group insurance plans obtained under authority of this section may include insurance benefits for the families of the insured group or groups of employees. Any district board of education may pay all or part of the premium on the policies, and may deduct from the salaries of the employees that part of the premium which is to be paid by them and may contract with the insurer to provide the above benefits. As permitted in KRS 160.280(5), board members shall be eligible to participate in any group medical or dental insurance provided by the district for employees.
- (b) ***If a district board of education participates in the state employee health insurance program, as described in Section 2 of this Act, for its active employees and terminates participation and there is a state appropriation approved by the General Assembly for the employer's contribution for active employees' health insurance coverage, neither the board of education nor the employees shall receive the state-funded contribution after termination from the state employee health insurance program.***
- (2) Each district board of education shall adopt policies or regulations which will provide for deductions from salaries of its employees or groups of employees whenever a request is presented to the board by said employees or groups thereof. The deductions shall be made from salaries earned in at least eight (8) different pay periods, and shall be remitted to the appropriate organization or association as specified by the employees within thirty (30) days following the deduction provided the district has received appropriate invoices or necessary documentation. The deductions may be made for, but are not limited to, membership dues, tax-sheltered annuities, and group insurance premiums. With the exception of membership dues, the board shall not be required to make more than one (1) remittance of amounts deducted during a pay period for a separate type of deduction. Health insurance, life insurance, and tax-sheltered annuities shall be interpreted as separate types of deductions. When amounts have been correctly deducted and remitted by the board, the board shall bear no further responsibility or liability for subsequent transaction.
- (3) Payments and deductions made by the board of education under the authority of this section are presumed to be for services rendered and for the benefit of the common schools, and the payments and deductions shall not affect the eligibility of any school system to participate in the public school funding program as established in KRS Chapter 157.

Section 4. KRS 161.675 is amended to read as follows:

- (1) (a) The board of trustees shall enter into contracts with insurance carriers or other health care providers for the purpose of providing a program of hospital and medical insurance coverage to members who are age

sixty-five (65) or older and retired for service. ***Members who are sixty-five (65) or older and retired for service shall not be eligible to participate in the state employee health insurance program as described in Section 2 of this Act.***

- (b) The board of trustees may enter into contracts with insurance carriers or other health providers for the purpose of providing a broad program of hospital and medical insurance coverage to members below age sixty-five (65) who are retired for service or disability and to the surviving spouse of deceased members who are eligible to receive the member's retirement benefits as provided in KRS 161.525.
  - (c) The board of trustees may offer, on a cost basis, coverage of spouses and dependents not eligible for regular coverage.
- (2) The coverage provided shall be as set forth in the contracts and the administrative regulations of the board of trustees. The board of trustees may change the levels of coverage to meet the changing needs of the annuitants and when necessary to contain the expenses of the insurance program within the funds available to finance the insurance program. The contracts and administrative regulations shall provide for, but not be limited to, hospital room and board, surgical procedures, doctors' care in the hospital, and miscellaneous hospital costs. A retiree whose effective date of retirement is July 1, 1974, and thereafter, must have a minimum of five (5) years creditable Kentucky service in the Teachers' Retirement System or of combined service in the Kentucky Employees Retirement System, of which at least two (2) years was creditable service under KRS 161.510 and 161.607(2), to qualify for the coverage. The board of trustees shall offer coverage to the disabled child of a retired member regardless of the disabled child's age if the retired member pays the entire premium for the disabled child's coverage. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.
  - (3) The board of trustees is empowered to require the annuitant and the annuitant's spouse to pay a premium charge to assist in the financing of the hospital and medical insurance program. The board of trustees is empowered to pay the expenses for insurance coverage from the medical insurance fund, from the premium charges received from the annuitants and the spouses, and from funds that may be appropriated or allocated by statute. The board may provide insurance coverage by making payment to insurance carriers including health insurance plans that are available to active and retired state employees and active teachers, institutions, and individuals for services performed, or the board of trustees may elect to provide insurance on a "self-insurance" basis or a combination of these provisions.
  - (4) Contracts negotiated may include the provision that a stated amount of hospital cost or period of hospitalization shall incur no obligation on the part of the insurance carrier or the retirement system.
  - (5) The board of trustees is empowered to promulgate administrative regulations to assure efficient operation of the hospital and medical insurance program.
  - (6) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the insurance fund shall not constitute taxable income to an insured recipient.

Section 5. KRS 79.080 is amended to read as follows:

- (1) The term "health maintenance organization" for the purposes of this section, means a health maintenance organization as defined in KRS 304.38-030, which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board and issued a certificate of authority by the Department of Insurance as a health maintenance organization and which is qualified under the requirements of the United States Department of Health, Education and Welfare, except as provided in subsection (4) of this section.
- (2) Cities of all classes, counties and urban-county governments and the agencies of cities, counties, charter county, and urban-county governments are authorized to establish and operate plans for the payment of retirement, disability, health maintenance organization coverage, or hospitalization benefits to their employees and elected officers, and health maintenance organization coverage or hospitalization benefits to the immediate families of their employees and elected officers. The plan may require employees to pay a percentage of their salaries into a fund from which coverage or benefits are paid, or the city, county, charter county, urban-county government, or agency may pay out of its own funds the entire cost of the coverage or benefits. A plan may include a combination of contributions by employees and elected officers and by the city, county, charter county, urban-county government, or agency into a fund from which coverage or benefits are paid, or it may take any form desired by the city, county, charter county, urban-county government, or agency. Each city,

county, charter county, urban-county government, or agency may make rules and regulations and do all other things necessary in the establishment and operation of the plan.

- (3) Cities of all classes, counties, charter counties, urban-county governments, the agencies of cities, counties, charter counties, and urban-county governments, and all other political subdivisions of the state may provide disability, hospitalization, or other health or medical care coverage to their officers and employees, including their elected officers, through independent or cooperative self-insurance programs and may cooperatively purchase the coverages.
- (4) Any city, county, charter county, or urban-county government which is a contributing member to any one (1) of the retirement systems administered by the state may participate in the state health insurance coverage program for state employees as defined in KRS 18A.225 to 18A.229. Should any city, county, charter county, or urban-county government opt at any time to participate in the state health insurance coverage program, it shall do so for a minimum of three (3) consecutive years. If after the three (3)-year participation period, the city, county, charter county, or urban-county government chooses to terminate participation in the state health insurance coverage program, it will be excluded from further participation for a period of three (3) consecutive years. ***If a city, county, charter county, or urban-county government, or one (1) of its agencies, terminates participation of its active employees in the state health insurance coverage program and there is a state appropriation for the employer's contribution for active employees' health insurance coverage, neither the unit of government, or its agency, nor the employees shall receive the state-funded contribution after termination from the state employee health insurance program.*** The three (3)-year participation and exclusion cycles shall take effect each time a city, county, charter county, or urban-county government changes its participation status.
- (5) Any city, county, charter county, urban-county government, or other political subdivision of the state which employs more than twenty-five (25) persons and which provides hospitalization benefits or health maintenance organization coverage to its employees and elected officers, shall annually give its employees an option to elect either standard hospitalization benefits or membership in a qualified health maintenance organization which is engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside; except that if any city, county, charter county, urban-county government, or agencies of any city, county, charter county, urban-county government, or any other political subdivision of the state which does not have a qualified health maintenance organization engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside, the city, county, charter county, urban-county government, or agencies of the city, county, charter county, urban-county government, or any other political subdivision of the state may annually give its employees an option to elect either standard hospitalization benefits or membership in a health maintenance organization which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board and issued a certificate of authority by the Department of Insurance as a health maintenance organization and which is engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside. Any premium due for health maintenance organization coverage over the amount contributed by the city, county, charter county, urban-county government, or other political subdivision of the state which employs more than twenty-five (25) persons, for any other hospitalization benefit shall be paid by the employee.
- (6) If an employee moves his place of residence or employment out of the service area of a health maintenance organization, under which he has elected coverage, into either the service area of another health maintenance organization or into an area of the state not within a health maintenance organization service area, the employee shall be given an option, at the time of the move or transfer, to elect coverage either by the health maintenance organization into which service area he moves or is transferred or to elect standard hospitalization coverage offered by the employer.
- (7) Any plan adopted shall provide that any officer or member of a paid fire or police department who has completed five (5) years or more as a member of the department, but who is unable to perform his duties by reason of heart disease or any disease of the lungs or respiratory tract, is presumed to have contracted his disease while on active duty as a result of strain or the inhalation of noxious fumes, poison or gases, and shall be retired by the pension board under terms of the pension system of which he is a member, if member passed an entrance physical examination and was found to be in good health as required.
- (8) The term "agency" as used herein shall include boards appointed to operate waterworks, electric plants, hospitals, airports, housing projects, golf courses, parks, health departments, or any other public project.

- (9) After August 1, 1988, except as permitted by KRS 65.156, no new retirement plan shall be created pursuant to this section, and cities which were covered by this section on or prior to August 1, 1988, shall participate in the County Employees Retirement System effective August 1, 1988. Any city, county, charter county, urban-county, or agency thereof which provided a retirement plan for its employees, pursuant to this section, on or prior to August 1, 1988, shall place employees hired after August 1, 1988, in the County Employees Retirement System. The city, county, charter county, urban-county, or agency thereof shall offer employees hired on or prior to August 1, 1988, membership in the County Employees Retirement System under the alternate participation plan as described in KRS 78.530(3), but such employees may elect to retain coverage under this section.

Section 6. KRS 18A.227 is amended to read as follows:

- (1) For purposes of this section, the following definitions shall apply:
- (a) "Cafeteria plan" shall mean a flexible benefits plan which meets the requirements of Section 125 of the federal Internal Revenue Code;
  - (b) "Employee" shall mean a person, including an elected public official, who is regularly employed by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government, and who is a contributing member to any one (1) of the retirement systems administered by the state~~[-, and including a federally funded time limited employee];~~
  - (c) "Cabinet" shall mean the Personnel Cabinet;
  - (d) "Change in family status" shall have the same meaning as used in Section 125 of the Internal Revenue Code and regulations promulgated thereunder; and
  - (e) "Salary reduction contribution" means all employer contributions that are excludable from gross income under the Internal Revenue Code.
- (2) As part of the employee benefits provided to state employees under this chapter, the cabinet may develop and make available to eligible employees a flexible benefits plan which meets the requirements for treatment as a cafeteria plan under Section 125 of the Internal Revenue Code. The plan shall be in writing and shall be available on an equal basis to all eligible employees within each county.
- (3) Options available under the plan may include, but are not limited *to*:
- (a) Health ~~insurance~~~~care~~ coverage;
  - (b) **Managed health care**~~[Health maintenance organization]~~ coverage;
  - (c) Catastrophic illness coverage;
  - (d) Dental insurance;
  - (e) Term life insurance-accidental, death, or dismemberment;
  - (f) Vision insurance;
  - (g) Long term disability insurance;
  - (h) Long term medical care; and
  - (i) Any other benefits which may be offered under the provisions of the Internal Revenue Code and which the cabinet determines to be in the best interests of state employees.
- (4) ***Any employee who is eligible for and elects to participate in the state health insurance program as a retiree, or the spouse of a retiree, under any one of the Kentucky Retirement Systems shall not be eligible to receive the state health insurance contribution toward health care coverage as a result of employment under KRS Chapter 16, KRS Chapter 18A, or KRS Chapter 151B.***
- (5) Any employee who desires to participate in options offered under the plan, may direct that any options elected shall be funded through payroll deduction. The election shall be made in writing; and once an option is chosen, it shall not be changed until the end of the period for which election is made unless the employee experiences a change in family status, ***other change of status, or special enrollment rights under the federal Health Insurance Portability and Accountability Act of 1996*** which necessitates a revision of his benefit election.



~~(6)(5)~~ Any employee contributions required toward the purchase of the selected options shall be made by a salary reduction contribution, to the extent the benefits would be considered to be tax-free under Chapter 1 of the Internal Revenue Code, and by after-tax salary deduction where the elected option is not tax-free.

Section 7. Whereas it is necessary to implement the provisions of this Act as soon as practicable in order to complete data analysis in conjunction with the state health insurance contract cycle, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 21, 2000

## CHAPTER 439

### (SB 305)

AN ACT relating to critical access hospitals, and declaring an emergency.

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

Section 1. KRS 216.380 is amended to read as follows:

- (1) The licensure category of critical access hospital is hereby created for existing licensed acute-care hospitals which qualify under this section for that status.
- (2) It shall be unlawful to operate or maintain a critical access hospital without first obtaining a license from the Cabinet for Health Services. An acute-care hospital converting to a critical access hospital shall not require a certificate of need. A certificate of need shall not be required for services provided on a contractual basis in a critical access hospital.
- (3) ***Except as provided in subsection (4) of this section***, only a hospital licensed as a general acute-care hospital may be relicensed as a critical access hospital ~~if all of the following criteria are met~~:
  - (a) The hospital is ***located in a county in a rural area that is***:
    1. Located more than a thirty-five (35) mile drive, ***or where the terrain is mountainous or only secondary roads are available is located more than a fifteen (15) mile drive***, from another hospital or other health facility; ***or***
    2. ~~Where the terrain is mountainous or only secondary roads are available, the hospital is located more than a fifteen (15) mile drive; or~~
    3. ~~The hospital is~~ Certified by the secretary as a necessary provider of health care services to area residents;
  - ~~(b) The hospital is a nonprofit or public hospital;~~
  - ~~(c) For the purposes of paragraph (a) of this subsection, a hospital shall be considered to be located in a rural area if the hospital is not in a county which is part of a standard metropolitan statistical area, the hospital is located in a rural census tract of a metropolitan statistical area as determined under the most recent modification of the Goldsmith Modification, or is designated by the state as a rural provider. The secretary shall designate a hospital as a rural provider if the hospital is not located in a county which has the largest county population of a standard metropolitan statistical area;~~
  - ~~(d) Except as provided in paragraph (d)(e) of this subsection, the hospital provides not more than fifteen (15) acute care inpatient beds for providing inpatient care for a period that does not exceed, as determined on an annual, average basis, ninety-six (96) hours unless:~~
    1. ~~Patient transfer to another hospital is precluded because of inclement weather or other emergency conditions; or~~
    2. ~~A peer review organization or an equivalent entity has waived the ninety-six (96) hour restriction on a case-by-case basis;~~
  - ~~(e) If the hospital is operating swing beds under which the hospital's inpatient hospital facilities are used for the provision of extended care services, the hospital may be designated as a critical access hospital so long as the total number of beds that may be used at any time for furnishing of either extended care services or acute inpatient services does not exceed twenty-five (25) beds and the number~~

of beds used at any time for acute inpatient services does not exceed fifteen (15) beds. For the purposes of this section, any bed of a unit of the hospital that is licensed as a nursing facility at the time the hospital applies to the state for designation as a critical care access hospital shall not be counted.

- (4) ***The secretary for health services may designate a facility as a critical access hospital if the facility:***
- (a) ***Was a hospital that ceased operations on or after ten (10) years prior to the effective date of this Act; or***
  - (b) ***Was a hospital that was converted to a licensed primary care center, rural health clinic, ambulatory health center, or other type of licensed health clinic or health center and, as of the effective date of that conversion, meets the criteria for licensure as a critical access hospital under this subsection or subsection (3) of this section.***
- (5) A critical access hospital shall provide the following services:
- (a) Twenty-four (24) hour emergency-room care that the secretary determines is necessary for insuring access to emergency care services in each area served by a critical access hospital; and
  - (b) Basic laboratory, radiologic, pharmacy, and dietary services. These services may be provided on a part-time, offsite contractual basis.
- ~~(6)~~~~(5)~~ A critical access hospital may provide the following services:
- (a) Swing beds or a distinct unit of the hospital which is a nursing facility in accordance with KRS Chapter 216B and subject to approval under certificate of need;
  - (b) Surgery;
  - (c) Normal obstetrics;
  - (d) Primary care;
  - (e) Adult day health care;
  - (f) Respite care;
  - (g) Rehabilitative and therapeutic services including, but not limited to, physical therapy, respiratory therapy, occupational therapy, speech pathology, and audiology, which may be provided on an off-site contractual basis;
  - (h) Ambulatory care;
  - (i) Home health services which may be established upon obtaining a certificate of need; and
  - (j) Mobile diagnostic services with equipment not exceeding the major medical equipment cost threshold pursuant to KRS Chapter 216B and for which there are no review criteria in the State Health Plan.
- ~~(7)~~~~(6)~~ The following staffing plan shall apply to a critical access hospital:
- (a) The hospital shall meet staffing requirements as would apply under section 1861(e) of Title XVIII of the federal Social Security Act to a hospital located in a rural area except that:
    - 1. The hospital need not meet hospital standards relating to the number of hours during a day, or days during a week, in which the hospital shall be open and fully staffed, except insofar as the facility is required to make available emergency services and nursing services available on a twenty-four (24) hour basis;
    - 2. The hospital need not otherwise staff the facility except when an inpatient is present;
  - (b) Physician assistants and nurse practitioners may provide inpatient care within the limits of their statutory scope of practice and with oversight by a physician who is not required to be on-site at the hospital.
- ~~(8)~~~~(7)~~ A critical access hospital shall have a quality assessment and performance improvement program and procedures for review of utilization of services.
- ~~(9)~~~~(8)~~ A critical access hospital shall have written contracts assuring the following linkages:
- (a) Secondary and tertiary hospital referral services which shall provide for the transfer of a patient to the appropriate level of care and the transfer of patients to the critical access hospital for recuperative care;

- (b) Ambulance services;
  - (c) Home health services; and
  - (d) Nursing facility services if not provided on site.
- (10)(9) If the critical access hospital is part of a rural health network, the hospital shall have the following:
- (a) An agreement for patient referral and transfer, development, and use of communications systems including telemetry and electronic sharing of patient data, and emergency and nonemergency transportation; and
  - (b) An agreement for credentialing and quality assurance with a network hospital, peer review organization, or other appropriate and qualified entity identified in the state rural health plan.
- (11)(10) The Cabinet for Health Services *and any insurer or managed care program for Medicaid recipients that contracts with the Department for Medicaid Services for the receipt of Federal Social Security Act Title XIX funds* shall provide for reimbursement of services provided to Medicaid recipients in a critical access hospital *at rates that are at least equal to those established by the Federal Health Care Financing Administration for Medicare reimbursement to a critical access hospital.*
- (12)(11) The Cabinet for Health Services shall promulgate administrative regulations pursuant to KRS Chapter 13A necessary to implement this section.

Section 2. Whereas the regulation of critical access hospitals is vital to the health care needs of the Commonwealth, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Approved April 21, 2000

## CHAPTER 440

(SB 309)

AN ACT relating to trusts.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 287 IS CREATED TO READ AS FOLLOWS:

*As used in Section 2 and Section 3 of this Act:*

- (1) *"Life beneficiary" means a beneficiary who is a current permissible or mandatory recipient of income or principal from the trust, or, if more than one (1), the beneficiary or beneficiaries of the oldest generation;*
- (2) *"Remainder beneficiary" means a beneficiary who would have received the trust property in fee but for the continuation of the trust by the corporate trustee;*
- (3) *"A portion or all of the trust" means a portion, including all, of any remainder beneficiary's share of the trust to which the remainder beneficiary would be entitled in fee following the death of the life beneficiary. The portion of each of the remainder beneficiary's share that is continued shall be held as a separate trust;*
- (4) *"Trust" has the same meaning as set forth in KRS 386.800; and*
- (5) *"Corporate trustee" means a trust company or a bank empowered as a fiduciary.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 287 IS CREATED TO READ AS FOLLOWS:

- (1) *A corporate trustee administering a trust may continue the term of a portion of the trust so long as the period of the continuation does not extend beyond the term of the Rule Against Perpetuities, as set forth in KRS 381.215, that is applicable to the trust.*
- (2) *Subject to KRS 381.215, the portion of the trust continued by the corporate trustee shall continue for the life of the remainder beneficiary of the trust, upon the same terms and conditions as provided in the trust, for the term preceding the life beneficiary's death. In addition, commencing with the death of the life beneficiary, the remainder beneficiary may withdraw that portion of the trust that has been continued by giving written notice to the corporate trustee. However, each year five percent (5%) of the remainder beneficiary's right of withdrawal shall lapse on December 31, and the lapses shall be cumulative.*

- (3) *The corporate trustee's authority granted in subsection (1) of this section shall not apply to any portion of a trust which:*
- (a) *Continues by its terms after the death of the life beneficiary; or*
  - (b) *Has been pledged to secure a debt.*
- (4) *This section shall apply to any trust that was irrevocable on January 1, 1976.*

Section 3. KRS 287.220 is amended to read as follows:

- (1) When acting as a fiduciary or in any other capacity in which the duties, powers, liabilities, rights, and compensation are regulated by law, or under the control or supervision of the court, banks and trust companies shall, except as provided in subsection (2) *and subsection (3) of this section*, be subject to the same duties and responsibilities, have the same rights and powers, and receive the same compensation as is allowed the individual holding or exercising similar offices or trusts.
- (2) Upon all bonds required to be executed by such corporation before any court, the capital stock shall be the only security required for the faithful performance of its duties, unless the court or officer before whom the bond is executed, or some party in interest demands additional security.
- (3) *A bank or trust company serving as a trustee of multiple trusts having one (1) or more common beneficiaries or remainder beneficiaries, need not obtain court approval for performance or execution of its duties, and it shall not be considered a conflict of interest solely because all beneficiaries or remainder beneficiaries of the trusts are not identical.*

Approved April 21, 2000

## CHAPTER 441

(SB 347)

AN ACT relating to the registration of motor vehicles in counties required to have a vehicle emission control program.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

- (1) *The Department of Vehicle Regulation shall provide and receive information on the emissions test status of vehicles registered in the Commonwealth of Kentucky. The Department of Vehicle Regulation shall provide appropriate emissions test and compliance status to the Department of Information Systems for inclusion in the AVIS database.*
- (2) *Upon notification to the Department of Vehicle Regulation from a county air pollution control district or the Natural Resources and Environmental Protection Cabinet of expiration of a vehicle emissions compliance certificate, the Department of Vehicle Regulation shall immediately notify the person who owns the vehicle that unless evidence of compliance is received within thirty (30) days, the department shall revoke the registration of the motor vehicle until:*
  - (a) *The person presents an emissions certificate to the county clerk and pays the reinstatement fee required under Section 2 of this Act; or*
  - (b) *The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that failure to obtain a current emissions certificate is the result of the inoperable condition of the motor vehicle.*
- (3) *The provisions of Sections 1, 2, 3, 4, and 5 of this Act shall not prevent the Transportation Cabinet, a county air pollution district, or the Natural Resources and Environmental Protection Cabinet from seeking the enforcement or operation of any other statute or ordinance that ensures the compliance of motor vehicles in the Commonwealth under KRS Chapter 186, KRS 224.20-710 to 224.20-765, or KRS Chapter 77.*
- (4) *The provisions of Sections 1, 2, 3, 4, and 5 of this Act shall apply to vehicles that are registered in a county authorized under KRS 224.20-710 to 224.20-765 or KRS Chapter 77 to conduct vehicle emissions tests.*

Section 2. KRS 186.180 is amended to read as follows:

- (a) If the owner loses his copy of a registration or transfer receipt, he may obtain a duplicate from the county clerk who issued the present owner's copy of the receipt by presenting the clerk proof of insurance on the motor vehicle in compliance with KRS 304.39-080, and by filing an affidavit, upon a form furnished by the cabinet. The owner shall pay to the clerk a fee of three dollars (\$3), except proof of insurance shall not be required for duplicates applied for by motor vehicle dealers as defined in KRS 190.010.
  - (b) When the owner's copy of any registration or transfer receipt shows that the spaces provided thereon for noting and discharging security interests have been exhausted, the owner may apply to the county clerk who issued the receipt in order to obtain a duplicate thereof. The owner shall surrender his copy of the current receipt to the clerk and provide proof of insurance on the motor vehicle in compliance with KRS 304.39-080, before a duplicate may be issued. The owner shall pay the clerk a fee of three dollars (\$3), except proof of insurance shall not be required for duplicates applied for by motor vehicle dealers as defined in KRS 190.010.
  - (c) Any security interest which has been discharged as shown by the records of the clerk or upon the owner's copy of the current receipt shall be omitted from the duplicate receipt to be issued by the clerk.
- (2) If the owner loses a registration plate, he shall surrender his registration receipt to the county clerk from whom it was obtained and file a written statement as to the loss of the plate. Upon presenting the clerk proof of insurance on the motor vehicle in compliance with KRS 304.39-080, and upon the payment of the sum of three dollars (\$3) for each plate and a fee of three dollars (\$3) to the clerk for his services, the owner shall be issued another registration receipt and a plate or plates which shall bear a different number from that of the lost plate. The clerk shall retain the owner's statement and a copy of the owner's proof of insurance, and shall make a notation on the triplicate copy of the surrendered registration receipt stating the number of the registration receipt replacing it. The original copy of the surrendered receipt shall be forwarded to the cabinet. The cabinet shall forthwith cancel the registration corresponding to the number of the lost plate. The cancellation shall be reported by the cabinet to the commissioner of the Department of State Police. Any person finding a lost registration plate shall deliver it to the Transportation Cabinet or to any county clerk for forwarding it to the cabinet.
- (3) If the owner moves from one (1) county into another county of the Commonwealth, he may obtain a registration plate bearing the name of the county of residence. In order to obtain a new registration plate, the owner shall surrender his current registration receipt and current registration plate to the county clerk. Upon being provided with proof of insurance on the motor vehicle in compliance with KRS 304.39-080, the clerk shall provide the owner with a new registration receipt and plate bearing the county name. The surrendered receipt and plate shall be forwarded to the Transportation Cabinet. The fee for this registration shall be five dollars (\$5) of which the clerk shall be entitled to three dollars (\$3) and the cabinet shall be entitled to two dollars (\$2).
- (4) If the owner's registration is revoked as a result of the provisions set forth in KRS 186A.040, the owner may have his registration reinstated by the county clerk who issued the present owner's copy of the receipt by presenting the clerk proof of:
  - (a) Insurance on the motor vehicle in compliance with KRS 304.39-080 and by filing an affidavit upon a form furnished by the cabinet; *or*
  - (b) *A valid compliance or exemption certificate in compliance with KRS 224.20-720 or issued under the authority of an air pollution control district under Section 4 of this Act.*
- (5) The owner *of a motor vehicle that has the vehicle's registration revoked under Section 1 of this Act* shall pay to the clerk a fee of twenty dollars (\$20), which shall be equally divided between the county clerk and the cabinet.

Section 3. KRS 186.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 186.020, 186.030, 186.040, 186.045(2), 186.050, 186.056, 186.060, 186.110, 186.130, 186.140, 186.160, 186.170, 186.180(1) *to (4)(a)*, 186.210, 186.230, or KRS 186.655 to 186.680 shall be guilty of a violation.
- (2) Any person who violates any of the provisions of KRS 138.465, 186.190, or 186.200 shall be guilty of a Class A misdemeanor.

- (3) A person who violates the provisions of KRS 186.450(4) or (5) shall be guilty of a violation. A person who violates any of the other provisions of KRS 186.400 to 186.640 shall be guilty of a Class B misdemeanor.
- (4) Any clerk or judge failing to comply with KRS 186.550(1) shall be guilty of a violation.
- (5) If it appears to the satisfaction of the trial court that any offender under KRS 186.400 to 186.640 has a driver's license but in good faith failed to have ~~it [same]~~ on his or her person or misplaced or lost ~~it [same]~~, the court may, in its discretion, dismiss the charges against the defendant without fine, imprisonment, or cost.
- (6) Any person who steals a motor vehicle registration plate or renewal decal shall be guilty of a Class D felony. Displaying a canceled registration plate on a motor vehicle shall be prima facie evidence of guilt under this section.
- (7) Any person who violates the provisions of KRS 186.1911 shall be guilty of a Class A misdemeanor.
- (8) Any person who makes a false affidavit to secure a license plate under KRS 186.172 shall be guilty of a Class A misdemeanor.
- (9) Any person who violates any provision of KRS 186.070 or 186.150 shall be guilty of a Class A misdemeanor.
- (10) Any person who operates a vehicle bearing a dealer's plate upon the highways of this Commonwealth with intent to evade the motor vehicle usage tax or registration fee shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.
- (11) Any person, other than a licensed dealer or manufacturer, who procures a dealer's plate with intent to evade the motor vehicle usage tax or registration fee shall be guilty of a Class D felony.
- (12) Any resident who unlawfully registers, titles, or licenses a motor vehicle in any state other than Kentucky with intent to evade the motor vehicle usage tax or the registration fee shall be guilty of a Class A misdemeanor if the amount of tax due is less than one hundred dollars (\$100), or of a Class D felony if the amount of tax due is more than one hundred dollars (\$100), and in addition shall be liable for all taxes so evaded with applicable interest and penalties.

Section 4. KRS 224.20-760 is amended to read as follows:

- (1) ***Except as provided in subsection (2) of this section,*** the provisions of KRS 224.20-710 to 224.20-765 shall not detract from the authority provided air pollution control districts in KRS Chapters 77 and 224.
- (2) The authority in KRS 224.20-720 is provided to air pollution control districts provided:
  - (a) The air pollution control district may function and exercise its powers pursuant to resolution or ordinance as provided in ***this section, Sections 1, 2, 3, and 5 of this Act, and*** KRS Chapter 77; and
  - (b) The air pollution control district has been granted concurrent jurisdiction by the cabinet pursuant to KRS 224.20-130.
- (3) Actions taken by an air pollution control district for violations of KRS 224.20-710 to 224.20-765 shall be enforced in accordance with the provisions of KRS 224.20-130(5).

Section 5. KRS 224.20-765 is amended to read as follows:

- (1) ***A person shall not be guilty of a criminal offense for failure to obtain a valid compliance or exemption certificate.***
- (2) A person convicted of knowingly violating any *statutory* provision of, ***or administrative regulation promulgated under KRS Chapter 13A to implement,*** KRS 224.20-710 to 224.20-765, ***other than KRS 224.20-720,*** ~~or any administrative regulation adopted pursuant to KRS 224.20-710 to 224.20-765~~ shall be guilty of a Class B misdemeanor.
- ~~(3)(2)~~ A person who is convicted of knowingly demanding or collecting a fee for the inspection of a vehicle other than the fees established pursuant to KRS 224.20-710 to 224.20-765 shall be guilty of a Class A misdemeanor.
- ~~(4)(3)~~ A person convicted of knowingly making or issuing any imitation of a compliance certificate or exemption certificate shall be guilty of a Class D felony.

(5)(4) A person convicted of willful improper issuance or use of an inspection certificate shall be guilty of a Class A misdemeanor.

**Approved April 21, 2000**

## CHAPTER 442

### (SCR 39)

A CONCURRENT RESOLUTION creating a task force on quality long-term care for the purpose of studying methods to promote and enhance the provision of quality care in Kentucky's long-term care facilities.

WHEREAS, there are currently over 35,000 long-term care beds in Kentucky; and

WHEREAS, in fiscal year 1998-1999, the Kentucky Medical Assistance Program spent over \$690,000,000 on long-term care services; and

WHEREAS, according to the Kentucky State Data Center, by 2020, the population over the age of 65 in Kentucky is estimated to grow to 717,607 which is an increase of 45%, as compared with only a 10% growth in Kentucky's total population; and

WHEREAS, between 2010 and 2020 Kentucky's entire population growth will be in the 65 and over category; and

WHEREAS, these stunning changes in our population will dramatically increase the need and demand for quality long-term care services; and

WHEREAS, Kentucky needs to prepare now for the challenges that will be presented in caring for this growing elderly population;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. The Legislative Research Commission is directed to establish a task force on quality long-term care during the 2000-2002 interim to study the issue of providing quality long-term care in Kentucky. The task force shall meet at least monthly, beginning not later than October 1, 2000, and shall report its findings and recommendations to the Legislative Research Commission and the Governor no later than September 1, 2001. The task force shall study methods to promote and enhance the quality of care provided in long-term care facilities in Kentucky, as well as in-home and community-based services, which shall include, but not limited to:

- (1) Wage pass through programs to increase staff salaries;
- (2) Financial incentives for facilities exceeding quality standards;
- (3) Linkage of reimbursement to staffing levels;
- (4) Provision of additional training for facility staff;
- (5) Mandatory staff-to-patient ratios;
- (6) Assisted living facilities and other nonmedical socially oriented living arrangements in the community; and
- (7) Noninstitutional services delivered in the home of the client including, but not limited to, the provision of home health, meals, housekeeping, and assistance with personal care.

Section 2. The task force shall consist of 27 members as follows:

- (1) The Chair of the House Health and Welfare Committee;
- (2) The Chair of the Senate Health and Welfare Committee;
- (3) The Chair of the House Appropriations and Revenue Committee;
- (4) The Chair of the Senate Appropriations and Revenue Committee;
- (5) The Chair of the House Seniors, Military Affairs, and Public Safety Committee;
- (6) The Secretary of the Cabinet for Health Services or the secretary's designee;

- (7) The Commissioner for the Department for Medicaid Services;
- (8) The Director of the Division of Licensing and Regulations;
- (9) The Kentucky State Long-Term Care Ombudsman;
- (10) The Director of the Division of Aging Services;
- (11) The Attorney General or the Attorney General's designee.
- (12) Sixteen members appointed jointly by the President of the Senate and the Speaker of the House of Representatives, with one member representing each of the following interests:
  - (a) The Kentucky Association of Health Care Facilities;
  - (b) The Kentucky Association of Not-for-Profit Homes and Services for the Aging;
  - (c) The Kentucky Nursing Home Association;
  - (d) The Kentucky Hospital Association;
  - (e) The Kentucky Medical Association;
  - (f) The Kentucky Nurses Association;
  - (g) The Kentucky Home Health Association;
  - (h) The Kentucky Hospice Association
  - (i) The American Association of Retired Persons;
  - (j) The Kentucky Association of Gerontology;
  - (k) The Kentucky Assisted Living Facilities Association;
  - (l) The Kentucky Adult Day Association;
  - (m) A district long-term care ombudsman;
  - (n) Two citizen members of a board of directors of a district long-term care ombudsman program; and
  - (o) An area development district.

Section 3. Except as provided in KRS 18A.200, members of the task force shall receive actual travel expenses while attending meetings.

Section 4. The task force may employ consultants if approved by the Legislative Research Commission, request and hear testimony, or take any necessary steps to ensure a fair, thorough, and reasonable study of the issue. The task force shall be staffed by the Legislative Research Commission, and include at least one Legislative Research Commission staff economist.

Section 5. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

**Approved April 21, 2000**

## **CHAPTER 443**

### **(SCR 113)**

A CONCURRENT RESOLUTION relating to small business.

WHEREAS, small business is the backbone of our state's economy; and

WHEREAS, the Subcommittee on Small Business Regulation of the Interim Joint Committee on Economic Development and Tourism examined the effects of regulation on Kentucky's small businesses during the 1998-99 interim; and



WHEREAS, the Subcommittee on Small Business Regulation of the Interim Joint Committee on Economic Development and Tourism found that administrative regulations promulgated by state agencies can be unduly burdensome to the growth and vitality of small business; and

WHEREAS, the Subcommittee on Small Business Regulation of the Interim Joint Committee on Economic Development and Tourism recommends that state agencies consult with the small business community when promulgating administrative regulations to better assess their impact and to consider alternatives that will ease the impact of administrative regulations on small business; and

WHEREAS, the Subcommittee on Small Business Regulation of the Interim Joint Committee on Economic Development and Tourism recommends the creation of a state-level small business advocacy function to assist small businesses with the regulatory process and advocate for the small business community; and

WHEREAS, the issues facing small businesses within the Commonwealth continue to be of concern to the General Assembly;

NOW, THEREFORE,

*Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky, the House of Representatives concurring therein:*

Section 1. There is hereby reauthorized for the 2000-01 interim a Subcommittee on Small Business Regulation of the Interim Joint Committee on Economic Development and Tourism. The subcommittee shall provide a forum in which small business concerns may be addressed in order to assist government agencies in considering the interests of small businesses as they create policies and establish administrative regulations.

Section 2. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

**Approved April 21, 2000**

## CHAPTER 444

(SJR 57)

A JOINT RESOLUTION relating to the display of historic documents that include a depiction of the Ten Commandments.

WHEREAS, in the Preamble to Kentucky's Constitution, the Framers acknowledged Almighty God as the source of the people's liberty and invoked His blessings on the citizens of the Commonwealth:

"We, the people of the Commonwealth of Kentucky, grateful to Almighty God for the civil, political and religious liberties we enjoy, and invoking the continuance of these blessings, do ordain and establish this Constitution"; and

WHEREAS, in 1992, the Kentucky General Assembly enacted KRS 158.195 to prevent the censorship or suppression of the official Acts of Congress or the writings and speeches of America's Founders and Presidents which contain references to God or the Bible; and

WHEREAS, the Ten Commandments appear over the bench where the United States Supreme Court Justices sit, thus showing the source from whence our laws and the governmental power of the state are derived; and

WHEREAS, America's colonial governments adopted the Ten Commandments not as an object of worship or an icon, but as the basis for their civil and criminal law, as illustrated on April 3, 1644, when the New Haven Colony Charter was adopted establishing that: "the judicial laws of God, as they were delivered by Moses be a rule to all the courts in this jurisdiction"; and

WHEREAS, when signing the Declaration of Independence on August 2, 1776, Samuel Adams, the "Father of the Revolution," emphasized its Biblical presuppositions:

"We have this day restored the Sovereign to whom all men ought to be obedient. He reigns in heaven and from the rising to the setting of the sun, let His kingdom come"; and

WHEREAS, on August 20, 1789, Congressman Fisher Ames from Massachusetts proposed the wording of the First Amendment which was adopted by the House of Representatives in the first session of the Congress of the

United States; and his writings clearly demonstrate that the Framers never intended the First Amendment to be so interpreted as to remove the Bible from public school classrooms:

"We are spending less time in the classroom on the Bible which should be the principal text in our schools . . ."; and

WHEREAS, in a letter dated August 18, 1790, President George Washington wrote to the Hebrew Congregation in Newport, Rhode Island, "All possess alike liberty of conscience and immunities of citizenship. . . . May the children of the stock of Abraham, who dwell in this land, continue to merit and enjoy the good will of the other inhabitants; while every one shall sit in safety under his own vine and fig tree, and there shall be none to make him afraid"; and

WHEREAS, in his "Farewell Address" of September 19, 1796, President George Washington pointed out the connection between the faith of the Nation and its political prosperity when he declared:

"Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. . . ."; and

WHEREAS, acknowledging the Bible as an integral part of the fabric of our society, on September 11, 1777, the Continental Congress adopted a resolution to import 20,000 Bibles from Holland and Scotland, as the colonies were at war with England; and

WHEREAS, on May 29, 1845, the day before his death, President Andrew Jackson stated:

"My lamp of life is nearly out, and the last glimmer has come. I am ready to depart when called. The Bible is true. The principles and statutes of that Holy Book have been the rule of my life, and I have tried to conform to its spirit as nearly as possible. Upon that sacred volume I rest my hope for eternal salvation, through the merits and blood of our blessed Lord and Saviour, Jesus Christ"; and

WHEREAS, President John Quincy Adams, the sixth President of the United States, wrote concerning the civil function of the Mosaic law:

"The law given from Sinai was a civil and municipal as well as a moral and religious code; it contained many statutes . . . of universal application -- laws essential to the existence of men in society and most of which have been enacted by every nation which ever professed any code of laws"; and

WHEREAS, in a June, 1778 letter to her son, John Quincy Adams, Abigail Adams reinforced noble values and a sense of ultimate accountability to God which she believed to be the foundation of true greatness:

"Great learning and superior abilities, should you ever possess them, will be of little value and small estimation, unless virtue, honor, truth, and integrity are added to them. Adhere to those religious sentiments and principles which were early instilled into your mind, and remember that you are accountable to your Maker for all your words and actions"; and

WHEREAS, on February 29, 1892, the United States Supreme Court, in a unanimous decision which has never been overruled, cited sixty-six organic authorities which show the Bible's singular influence on America:

"There is no dissonance in these declarations. There is a universal language pervading them all, having one meaning; they affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations of private persons; they are organic utterances; they speak the voice of the entire group. These authorities were collected to support the historical conclusion that: 'no purpose of action against religion can be imputed any legislation, state or nation, because this is a religious people. This is historically true. From the discovery of this continent to the present hour, there is a single voice making this affirmation . . . we find everywhere a clear recognition of the same truth . . . this is a Christian nation' "; and

WHEREAS, on May 7, 1911, President Woodrow Wilson, addressing the Tercentenary Celebration of the Translation of the Bible into the English Language, stated:

"Moreover, the Bible does what is so invaluable in human life -- it classifies moral values. It apprises us that men are not judged according to their wits, but according to their characters -- that the last of every man's reputation is his truthfulness, his squaring his conduct with the standards that he knew to be the standards of purity and rectitude. How many a man we appraise, ladies and gentlemen, as great today whom we do not admire as noble! A man may have great power and small character"; and

WHEREAS, President Woodrow Wilson's letter to the soldiers and sailors of the United States during World War I, recorded in the Congressional Record, advised them:

"The Bible is the word of life. I beg that you will read it and find this out for yourselves -- read not little snatches here and there, but long passages that will really be the road to the heart of it. You will find it full of real men and women not only, but also of things you have wondered about and been troubled about all your life, as men have been always; and the more you read, the more it will become plain to you what things are worthwhile and what are not, what things make men happy -- loyalty, right dealings, speaking the truth, readiness to give everything for what they think their duty, and, most of all, the wish that they may have the real approval of the Christ, who gave everything for them -- and the things that are guaranteed to make men unhappy -- selfishness, cowardice, greed, and everything that is low and mean. When you have read the Bible, you will know that it is the Word of God, because you will have found it the key to your own heart, your own happiness, and your own duty"; and

WHEREAS, in his book, "Sources of Power," President Jimmy Carter acknowledged the importance of the Mosaic law as a foundation:

"As we face changes and challenges, we need to hold on to the things that don't change, the foundations on which we can build our lives despite the uncertainty and danger of the future. God's law is the greatest of these foundations"; and

WHEREAS, in his February 22, 1990 proclamation designating 1990 as The International Year of Bible Reading, President George Bush declared:

"The Bible has had a critical impact upon the development of Western civilization. Western literature, art, and music are filled with images and ideas that can be traced to its pages. More important, our moral tradition has been shaped by the laws and teachings it contains. It was a biblical view of man -- one affirming the dignity and worth of the human person, made in the image of our Creator -- that inspired the principles upon which the United States is founded. President Jackson called the Bible 'the rock on which our Republic rests' because he knew that it shaped the Founding Fathers' concept of individual liberty and their vision of a free and just society. The Bible has not only influenced the development of our Nation's values and institutions, but also enriched the daily lives of millions of men and women who have looked to it for comfort, hope, and guidance. On the American frontier, the Bible was often the only book a family owned. For those pioneers living far from any church or school, it served both as a source of religious instruction and as the primary text from which children learned to read. The historic speeches of Abraham Lincoln and Dr. Martin Luther King, Jr., provide compelling evidence of the role Scripture played in shaping the struggle against slavery and discrimination. Today the Bible continues to give courage and direction to those who seek truth and righteousness. In recognizing its enduring value, we recall the words of the prophet Isaiah, who declared, 'The grass withereth, the flower fadeth; but the word of our God shall stand forever.' Containing revelations of God's intervention in human history, the Bible offers moving testimony to His love for mankind. Treasuring the Bible as a source of knowledge and inspiration, President Abraham Lincoln called this Great Book 'the best gift God has given to man.' President Lincoln believed that the Bible not only reveals the infinite goodness of our Creator, but also reminds us of our worth as individuals and our responsibilities toward one another";

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. The Kentucky Department of Education, with assistance as necessary by the Legislative Research Commission, shall electronically transmit KRS 158.195 and this resolution to all public school teachers in the Commonwealth.

Section 2. Documents depicting the Ten Commandments may be posted in classrooms by any public school teacher and on other public property, when incorporated into an historical display along with other historic documents as described in KRS 158.195. The purpose of the display shall not be to advance religion, but to advance the important secular purpose of illustrating how the Bible and the Ten Commandments have influenced the faith, morals, and character of American leaders who, in turn, have shaped American law, public policy, and institutions. For that reason, the General Assembly expresses no preference as to which version of the Ten Commandments is displayed or whether the display is in English, Hebrew, or a foreign language being taught in the classroom. To advance the secular purpose of making citizens of the Commonwealth more knowledgeable concerning the founding of America, the intent of the nation's Founders, and the formative influence of the Bible and the Ten Commandments on American leaders, institutions, and law, a copy of this resolution shall be made a prominent part of any historic display on public property which includes any depiction of the Ten Commandments.

Section 3. No fiscal court, city council, or school board shall mandate the posting of any historical displays set forth in KRS 158.195 which incorporate a depiction of the Ten Commandments until that governing body first sets forth by resolution or policy its secular purpose for erecting the historical display. This historical display shall not advance religion.

Section 4. Each historical display which incorporates a depiction of the Ten Commandments shall be accompanied by clearly legible copies of this resolution and of KRS 158.195; and the cost of posting and maintaining the displays may be paid for by voluntary private contributions.

Section 5. The Legislative Research Commission shall remit a sufficient number of copies of this resolution to the Department for Local Government for distribution by the department, in the manner it deems most efficient, to all elected officials of each city and county of the Commonwealth.

Section 6. The Legislative Research Commission shall remit a sufficient number of copies of this resolution to the Secretary of State for distribution by the Secretary of State, in the manner he deems most efficient, to the statewide elected officials of the Commonwealth.

Section 7. The General Assembly finds the Ten Commandments to be the precedent legal code of the Commonwealth which has provided the foundation for many of the civil and criminal statutes enacted into law throughout the history of the Commonwealth.

Section 8. The Department for Facilities Management shall relocate the monument inscribed with the Ten Commandments which was displayed on the Capitol grounds for nearly three decades to a permanent site on the Capitol grounds near Kentucky's floral clock to be made a part of a historical and cultural display which shall include the display of this resolution in order to remind Kentuckians of the Biblical foundations of the laws of the Commonwealth.

**Approved April 21, 2000**

## **CHAPTER 445**

### **(SJR 107)**

A JOINT RESOLUTION reauthorizing the Electricity Restructuring Task Force.

WHEREAS, the 1998 General Assembly assembled the Electricity Restructuring Task Force for the purpose of thoroughly studying the many aspects of electricity restructuring; and

WHEREAS, the 1998 task force acquired a significant base of knowledge on electricity restructuring which should not be lost to the state; and

WHEREAS, a finding of the 1998 task force stated that Kentucky is uniquely positioned because of low rates for electricity to monitor the progress of restructuring in other states and to develop options to best protect the interests of Kentuckians; and

WHEREAS, the issue of electricity restructuring is complex and deserving of continuing, thoughtful study;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. The Electricity Restructuring Task Force is reauthorized for the purpose of monitoring developments related to electricity restructuring, maintaining its knowledge of the issue, studying within the context of electricity restructuring low income energy assistance, and making recommendations it deems appropriate for consideration by the 2002 General Assembly and the Governor. The task force shall meet at least quarterly but may meet more frequently at the discretion of the chairpersons. The first meeting shall be held no later than October 1, 2000. The task force shall report to the Legislative Research Commission and the Governor no later than November 15, 2001.

Section 2. (1) The task force shall be comprised of the following members:

- (a) Ten members from the executive branch, to be appointed by the Governor, with one member being the Attorney General or his designee; and
- (b) Ten members from the General Assembly, of which three members shall be appointed by the President of the Senate, three members shall be appointed by the Speaker of the House, two members shall be

appointed by the Senate Minority Floor Leader, and two members shall be appointed by the House Minority Floor Leader. All legislative branch appointments shall be approved by the Legislative Research Commission.

- (2) The task force shall have three co-chairs, one appointed by the Governor, one appointed by the President of the Senate, and one appointed by the Speaker of the House. All appointments shall be made before July 31, 2000. All legislative appointments shall be approved by the Legislative Research Commission.

Section 3. Except as provided in KRS 18A.200, members of the task force shall receive actual travel expenses while attending meetings.

Section 4. The task force may employ consultants with the approval of the Legislative Research Commission, request and hear testimony, or take any necessary steps to maintain its knowledge of and to monitor developments related to the issue. The task force shall be staffed by the Legislative Research Commission with assistance from the Public Service Commission.

Section 5. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

**Approved April 21, 2000**

## CHAPTER 446

(SB 323)

AN ACT relating to the taxation of property.

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

Section 1. KRS 132.820 is amended to read as follows:

- (1) The cabinet shall **annually** value and assess unmined coal, oil, and gas reserves, and any other mineral or energy resources which are owned, leased, or otherwise controlled separately from the surface real property at no more than fair market value in place, considering all relevant circumstances. Unmined coal, oil, and gas reserves and other mineral or energy resources shall in all cases be valued and assessed by the Revenue Cabinet as a distinct interest in real property, separate and apart from the surface real estate.
- (2) Each owner or lessee of property assessed under subsection (1) of this section shall annually, between January 1 and April 15, ***list their property with the cabinet by filing***~~file~~ a return with the cabinet in a form as the cabinet may prescribe. Other individuals or corporations having knowledge of the property defined in subsection (1) of this section gained through contracting, extracting, or similar means may also be required by the cabinet to file a return.
- (3) ***Commencing with the 2001 tax year, the cabinet shall no less than once every four (4) years review each property listing using available geologic data. The cabinet shall maintain a record of the review for each parcel which includes the dates of the examination and the results of the review. If the cabinet assesses any property at a different value than that resulting from the taxpayer's listing based upon geologic data, the cabinet shall notify the taxpayer in the cabinet's notice of assessment.***
- (4) Any property subject to assessment by the cabinet under subsection (1) of this section which has not been listed for taxation, for any year in which it is taxable, by April 15 of that year shall be omitted property.
- ~~(5)~~~~(4)~~ After the valuation of unmined minerals or other energy sources has been finally fixed by the cabinet, the cabinet shall certify to the county clerk of each county the amount liable for county, city, or district taxation. The report shall be filed by the county clerk in his office, and shall be certified by the county clerk to the proper collecting officer of the county, city, or taxing district for collection.
- ~~(6)~~~~(5)~~ The notification, protest, and appeal of assessments under subsection (1) of this section shall be made pursuant to the provisions of KRS Chapter 131.
- ~~(7)~~~~(6)~~ No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS

131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of KRS 134.390 shall apply to the tax bill.

- ~~(8)(7)~~ The collection of tax bills generated from the assessments made under subsection (1) of this section shall be made pursuant to the provisions of KRS Chapter 134.
- (9) ***Any assessment of unmined coal or other minerals may be reviewed by the Revenue Cabinet after the filing of the return. If upon review, the cabinet finds that the assessment or the amount of taxes due should be increased due to revaluation or reclassification based upon information available at the time the return was filed, the cabinet shall give notice of the revised assessment to the taxpayer as provided under KRS 131.110 within five (5) years after the due date of the return. Upon the revised assessment being final, the tax bill shall be handled and collected as an omitted property tax bill and the additional tax shall be subject to the same penalties and interest as the tax on omitted property voluntarily listed.***

Section 2. KRS 136.120 is amended to read as follows:

- (1) Every railway company, sleeping car company, chair car company, dining car company, gas company, water company, ferry company, bridge company, street railway company, interurban electric railroad company, express company, electric light company, electric power company, telephone company, telegraph company, commercial air carrier, air freight carrier, pipeline company, common carrier water transportation company, privately owned regulated sewer company, cable television company, municipal solid waste disposal facility, as defined by KRS 224.01-010(15), where solid waste is disposed by landfilling, railroad car line company, which means any company, other than a railroad company, which owns, uses, furnishes, leases, rents, or operates to, from, through, in, or across this state or any part thereof, any kind of railroad car including, but not limited to, flat, tank, refrigerator, passenger, or similar type car, and every other like company or business performing any public service, except bus line companies, regular and irregular route common carrier trucking companies, and taxicab companies, shall annually pay a tax on its operating property to the state and to the extent the property is liable to taxation shall pay a local tax thereon to the county, incorporated city, and taxing district in which its operating property is located.
- (2) The property of the taxpayers shall be classified as operating property, nonoperating tangible property, and nonoperating intangible property. Nonoperating intangible property within the taxing jurisdiction of the Commonwealth shall be taxable for state purposes only at the same rate as the intangible property of other taxpayers not performing public services, and operating property and nonoperating tangible property shall be subject to state and local taxes at the same rate as the tangible property of other taxpayers not performing public services.
- (3) The Revenue Cabinet shall have sole power to ***annually*** value and assess all of the property of every corporation, company, association, partnership, or person performing any public service, including those enumerated above and all others to whom this section may apply, whether or not the operating property, nonoperating tangible property, or nonoperating intangible property has heretofore been assessed by the cabinet, and shall allocate the assessment as provided by KRS 136.170, and shall certify operating property liable to local taxation and nonoperating tangible property to the counties, cities, and taxing districts as provided in KRS 136.180. All of the property assessed by the cabinet pursuant to this section shall be assessed as of December 31 each year for the following year's taxes, and the lien therefor shall attach as of the assessment date. In the case of a taxpayer whose business is predominantly nonpublic service and the public service business in which he is engaged is merely incidental to his principal business, the cabinet shall in the exercise of its judgment and discretion determine, from evidence which it may have or obtain, what portion of the operating property is devoted to the public service business subject to assessment by the cabinet under this section and shall require the remainder of the property not so engaged to be assessed by the local taxing authorities.
- (4) ***Commencing with the 2001 tax year, the cabinet shall no less than once every four (4) years review the taxpayer report made under KRS 136.130 using independent industry and market data and research and regulating authority reports. The cabinet shall maintain a record of the review for each taxpayer.***

Approved April 21, 2000

**CHAPTER 447****(SB 152)**

AN ACT relating to gambling related activities.

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

Section 1. KRS 230.380 is amended to read as follows:

- (1) Any track licensed by the commission to conduct horse racing and desiring to establish a simulcast facility shall apply for and may receive approval from the commission for each simulcast facility. Prior to considering an application for approval of a simulcast facility, the commission shall notify by regular mail, each state senator, state representative, county judge/executive, and mayor in the jurisdiction in which the proposed simulcast facility is located, at least ten (10) days in advance of the commission meeting at which the application is to be considered or voted upon. Consideration of an application shall be based on criteria contained in administrative regulations promulgated under KRS 230.300. Approval, if granted, shall be granted for a term of one (1) calendar year.
- (2) A track or tracks may proceed with the establishment of a simulcast facility unless, within sixty (60) days of the date on which the commission approved the facility, the governing body of the local government jurisdiction in which the facility is to be located votes, by simple majority of those voting, to disapprove the establishment of the simulcast facility. For the purposes of this section, "governing body" means, in an incorporated area, the board of aldermen, city council or board of commissioners; in a county, the fiscal court; in an urban-county government, the urban-county council, or in a charter county, the legislative body created in accordance with KRS 67.825 to 67.875.
- (3) The commission shall not approve the establishment of any simulcast facility within a radius of fifty (50) miles of a licensed track. The commission may approve the establishment of one (1) simulcast facility within a radius of greater than fifty (50) miles but less than seventy-five (75) miles of a licensed track, but the facility shall not be approved to operate without the prior written consent of the licensed track within whose seventy-five (75) mile radius the facility is located.
- (4) The commission may promulgate administrative regulations as it deems appropriate to protect the integrity of pari-mutuel wagering at any simulcast facility.
- (5) Licensed tracks conducting horse racing may enter into joint agreements to establish or operate one (1) or more simulcast facilities, on terms and conditions as the participating tracks may determine. Any agreements respecting these arrangements shall be filed with the commission, and applications for simulcast facilities shall be filed by and licenses may be issued to, these licensed tracks by the commission.
- (6) A simulcast facility may be established and operated on property that is owned or leased and which is not used solely for the operation of a simulcast facility; provided however, that a simulcast facility may not be established on the premises of a lottery vendor.
- (7) A simulcast facility shall not be subject to and shall not pay any excise tax imposed pursuant to KRS 138.510, any license tax imposed under KRS 137.170, or any admission tax imposed under KRS 138.480.
- (8) One percent (1%) of all moneys wagered at a simulcast facility shall be dedicated for local economic development and shall be allocated as follows:
  - (a) If a simulcast facility is located in an incorporated area, seventy-five percent (75%) shall be allocated to the governing body of the city in which the facility is located, and twenty-five percent (25%) to the governing body of the county in which the facility is located.
  - (b) If a simulcast facility is located in an unincorporated area, all moneys shall be allocated to the governing body of the county or charter county in which the facility is located.
- (9) (a) After the deduction of moneys under subsection (8), simulcast facility shall deduct a commission allowed under KRS 230.3615 with respect to all wagers made at the simulcast facility. The commission, less moneys allocated in subsection (8) of this section, shall be split as follows:
  1. Thirty percent (30%) shall be allocated to the host track;
  2. Forty-six and one-half percent (46.5%) to the purse program at the host track;

3. Thirteen and one-half percent (13.5%) to be retained by the track or tracks owning the simulcast facility for the purpose of application to expenses incurred in connection therewith;
  4. Six percent (6%) to be allocated to the Kentucky Thoroughbred Owners and Breeders, Inc., to be expended as follows:
    - a. Up to three percent (3%) for capital improvements and promotion of off-track betting; and
    - b. The remainder for marketing and promoting the Kentucky thoroughbred industry; and
  5. Four percent (4%) to be allocated to the commission to be used for purses at county fairs in Kentucky licensed and approved by the commission, and for the standardbred sires stakes program established under KRS 230.770.
- (b) The commission of a simulcast facility derived from interstate wagering shall be reduced by any amounts required to be paid by contract to the host track or track conducting the live race before it is divided as set forth in this section. No simulcast facility may receive any interstate simulcast except with the approval of the live Kentucky host track.
  - (c) The Kentucky Thoroughbred Owners and Breeders, Inc., shall annually report to the commission on all money expended in accordance with subsection (9)(a)4. of this section. The report shall be in the form required, and provide all information required by the commission.
- (10) *Subsections (1) and (2) of this section shall also apply to the establishment by a track of a noncontiguous facility in a county in which pari-mutuel racing and wagering is not being conducted. Subsection (8) of this section shall also apply to a noncontiguous race track facility referenced in this subsection, unless there is a written agreement to the contrary between the track establishing the facility and the governing body of the local government jurisdiction in which the facility is to be established.*

Section 2. KRS 138.510 is amended to read as follows:

- (1) Except for the conduct of harness racing at a county fair, an excise tax is imposed on all tracks conducting pari-mutuel racing under the jurisdiction of the Kentucky Racing Commission. For each track with a daily average handle of one million two hundred thousand dollars (\$1,200,000) or above, the tax shall be in the amount of three and one-half percent (3.5%) of all money wagered during the fiscal year. A fiscal year as used in this subsection and subsection (2) *of this section* shall begin at 12:01 a.m. July 1 and end at 12 midnight June 30. For each track with a daily average handle under one million two hundred thousand dollars (\$1,200,000) the tax shall be an amount equal to one and one-half percent (1.5%) of all money wagered during the fiscal year. *However, effective January 1, 2001, if a host track located in this state is the location for the conduct of a one (1) day international horse racing event that distributes in excess of a total of ten million dollars (\$10,000,000) in purses, an excise tax shall not be imposed on pari-mutuel wagering on live racing conducted that day at the race track. This tax exemption shall remain in effect for any succeeding one (1) day international horse racing event if the event returns within three (3) years of the previously-held event.* For the purposes of this subsection, the daily average handle shall be computed from the amount wagered only at the host track on live racing and shall not include money wagered:
  - (a) At a receiving track;
  - (b) At a simulcast facility;
  - (c) On telephone account wagering; or
  - (d) At a track participating as a receiving track or simulcast facility displaying simulcasts and conducting interstate wagering as permitted by KRS 230.3771 and 230.3773.

Money shall be deducted from the tax paid by host tracks and deposited to the respective development funds in the amount of three-quarters of one percent (0.75%) of the *total* live racing handle for thoroughbred racing and one percent (1%) of the *total* live handle for harness racing.

- (2) An excise tax is imposed on:
  - (a) All licensed tracks conducting telephone account wagering;
  - (b) All tracks participating as receiving tracks in intertrack wagering under the jurisdiction of the Kentucky Racing Commission; and



- (c) All tracks participating as receiving tracks displaying simulcasts and conducting interstate wagering thereon.
- (3) The tax imposed in subsection (2) of this section shall be in the amount of three percent (3%) of all money wagered under subsection (2) of this section during the fiscal year. ***A noncontiguous track facility approved by the Kentucky Racing Commission on or after January 1, 1999, shall be exempt from the tax imposed under this subsection, if the facility is established and operated by a licensed track which has a total annual handle on live racing of two hundred fifty thousand dollars (\$250,000) or less. The amount of money exempted under this subsection shall be retained by the noncontiguous track facility, KRS 230.3771 and 230.378 notwithstanding.***
- (4) An amount equal to two percent (2%) of the amount wagered shall be deducted from the tax imposed in subsection (2) of this section and deposited as follows:
  - (a) If the money is deducted from taxes imposed under subsection (2)(a) and (b) of this section, it shall be deposited in the thoroughbred development fund if the host track is conducting a thoroughbred race meeting or the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund, if the host track is conducting a harness race meeting; or
  - (b) If the money is deducted from taxes imposed under subsection (2)(c) of this section, to the thoroughbred development fund if interstate wagering is conducted on a thoroughbred race meeting or to the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund, if interstate wagering is being conducted on a harness race meeting.
- (5) Two-tenths of one percent (0.2%) of the total amount wagered on live racing in Kentucky shall be deducted from the pari-mutuel tax levied in subsection (1) of this section, and one-twentieth of one percent (0.05%) of the total amount wagered on intertrack wagering shall be deducted for the pari-mutuel tax levied in subsection (2) of this section, and allocated to the equine industry program trust and revolving fund to be used for funding the equine industry program at the University of Louisville.
- (6) One-tenth of one percent (0.1%) of the total amount wagered in Kentucky shall be deducted from the pari-mutuel tax levied in subsections (1), (2), and (3) of this section and deposited to a trust and revolving fund to be used for the construction, expansion, or renovation of facilities or the purchase of equipment for equine programs at state universities. These funds shall not be used for salaries or for operating funds for teaching, research, or administration. Funds allocated under this subsection shall not replace other funds for capital purposes or operation of equine programs at state universities. The Kentucky Council on Postsecondary Education shall serve as the administrative agent and shall establish an advisory committee of interested parties, including all universities with established equine programs, to evaluate proposals and make recommendations for the awarding of funds. The Kentucky Council on Postsecondary Education may by administrative regulation establish procedures for administering the program and criteria for evaluating and awarding grants.

SECTION 3. A NEW SECTION OF KRS CHAPTER 230 IS CREATED TO READ AS FOLLOWS:

- (1) ***The board of directors of the Kentucky Racing Health and Welfare Fund, Inc., may create and fund the Kentucky Race Track Retirement Plan. The board shall use no more than twenty-five percent (25%) of the annual sum paid by the commission under KRS 230.361 to 230.373 to fund the plan.***
- (2) ***The plan shall be provided for the benefit of thoroughbred trainers, assistant trainers, exercise riders, grooms, stable attendants, and other stable employees who can demonstrate that they are not otherwise eligible to participate in any other private or public, nonself-funded retirement or pension plan.***
- (3) ***The Kentucky Race Track Retirement Plan shall be administered by the board of directors of the Kentucky Racing Health and Welfare Fund, Inc., for the charitable and benevolent purposes set forth in KRS 230.374, and no part of the sums administered by the fund for the plan or any net earnings of the plan shall inure to the benefit of any private individual, director, officer, or member of the fund, or any of the persons who paid sums to the commission under the provisions of KRS 230.361 to 230.373.***
- (4) ***The board of directors of the Kentucky Racing Health and Welfare Fund, Inc., shall be the trustee of the plan's funds and shall have full power to invest and reinvest funds. Investments shall be diversified to balance the risks associated with various investment options to maintain the long-term solvency of the plan. The board shall have full power to hold, purchase, sell, assign, transfer, or dispose of any of the investments in which any of the plan's funds have been invested, as well as of the proceeds of investments***

*belonging to the plan. The board members or any investment manager shall discharge their duties with respect to the assets of the plan solely in the interest of the plan's members and:*

- (a) *For the exclusive purposes of providing benefits to plan members and their beneficiaries and defraying reasonable expenses of administering the plan;*
- (b) *With the care, skill, prudence, and diligence under the circumstances that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims; and*
- (c) *In accordance with any other laws or instruments governing the administration of the plan's funds.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 372 IS CREATED TO READ AS FOLLOWS:

*The terms and provisions of this chapter do not apply to betting, gaming, or wagering that has been authorized, permitted, or legalized, including, but not limited to, all activities and transactions permitted under KRS Chapters 154A, 230, and 238.*

Section 5. KRS 230.230 is amended to read as follows:

- (1) The Governor shall appoint an executive director for the commission for a term of four (4) years~~and~~ who may be removed in the same manner as a commissioner. The executive director shall possess the powers and perform the duties imposed upon him by this chapter, and~~such~~ other duties as the commission may direct or prescribe. The executive director shall cause to be kept a full record of all proceedings before the commission and shall preserve at its general office all books, maps, records, documents, licenses, and other papers of the commission. All records of the commission shall be open to inspection by the public during regular office hours.
- (2) The **chairman and the executive director of the** commission may employ, **dismiss, or take other personnel action concerning** an assistant executive director,~~and~~ stenographers, clerks, and other personnel as ~~they~~<sup>it</sup> may deem necessary to efficiently operate ~~the commission's~~<sup>its</sup> general office or any branch thereof. The **chairman and the executive director of the** commission shall fix the compensation of all employees. Any member of the commission,~~or~~ the executive director, or any employee referred to in this section shall be reimbursed for expenses paid or incurred in the discharge of official business when approved by the **chairman or executive director of the** commission. The compensation of the employees referred to in this section, except for the executive director, together with reimbursement of expenses incurred by employees, a member of the commission, or the executive director, shall be paid from commission funds.

Section 6. KRS 230.240 is amended to read as follows:

- (1) In addition to the employees referred to in KRS 230.230, the **chairman and the executive director of the** commission may employ, **dismiss, or take other personnel action and determine the**~~at~~ reasonable compensation ~~of~~<sup>off</sup> stewards, supervisors of mutuels, veterinarians, inspectors, accountants, **security officers**~~guards~~, and other employees deemed by the **chairman or the executive director**~~commission~~ to be essential at or in connection with any horse race meeting and ~~in~~<sup>to</sup> the best interest of racing. **The security officers shall be peace officers and conservators of the peace on commission property and at all race tracks and grounds in the Commonwealth and shall possess all the common law and statutory powers and privileges now available or hereafter made available to sheriffs, constables, and police officers for the purpose of enforcing all laws relating directly or indirectly to the conduct of horse racing and pari-mutuel wagering thereon, or the enforcement of laws relating to the protection of persons or property on premises licensed by the commission.** The commission for the purpose of maintaining integrity and honesty in racing shall prescribe by administrative regulation the powers and duties of the persons employed under this section and qualifications necessary to competently perform their duties. In addition, the commission shall be responsible for seeing that racing officials employed under the provisions of this section~~shall~~ have adequate training to perform their duties in a competent manner.
- (2) The commission shall promulgate administrative regulations for effectively preventing the use of improper devices, **and restricting or prohibiting the use and** administration of drugs or stimulants or other improper acts ~~to~~<sup>for the purpose of affecting the speed or health of</sup> horses **prior to the horse participating in a race.** ~~in races in which they are to participate, and in connection therewith~~ The commission ~~may~~<sup>is authorized to</sup> acquire, operate, and maintain, or ~~to provide by~~ contract for the maintenance and operation of, a testing laboratory and related facilities, for the purpose of saliva, urine, or other tests, and to purchase supplies and equipment for and in connection with ~~the~~<sup>such</sup> laboratory or testing processes. The expense of the laboratory or other testing

processes, whether furnished by contract or otherwise, together with all supplies and equipment used in connection therewith, shall be paid by the various associations licensed under this chapter in the manner and in proportions as the commission shall by administrative regulation provide.

- (3) The compensation of the employees referred to in this section shall be paid by the licensee conducting the horse race meeting in connection with which the employees are utilized or employed. The salary of the executive director to the commission shall be prorated among and paid by the various associations licensed under this chapter in the manner as the commission shall, by administrative regulation, provide. The employees referred to in this section shall be deemed employees of the commission, and are paid by the licensee or association for convenience only.
- (4) Each person, as a condition precedent to the privilege of receiving a license under this chapter to conduct a horse race meeting, shall be deemed to have agreed ~~to that it shall~~ pay expenses and compensation as provided in this section and as may be actually and reasonably incurred.

Section 7. KRS 15.380 is amended to read as follows:

- (1) The following officers employed or appointed as full-time, part-time, or auxiliary officers, whether paid or unpaid, shall be certified:
  - (a) State Police officers;
  - (b) City, county, and urban-county police officers;
  - (c) Deputy sheriffs, except those identified in KRS 70.045 and 70.263(3);
  - (d) State or public university safety and security officers appointed pursuant to KRS 164.950;
  - (e) School security officers employed by local boards of education who are special law enforcement officers appointed under KRS 61.902;
  - (f) Airport safety and security officers appointed under KRS 183.880;
  - (g) Department of Alcoholic Beverage Control field representatives and investigators appointed under KRS 241.090; and
  - (h) Division of Insurance Fraud Investigators appointed under KRS 304.47-040.
- (2) The requirements of KRS 15.380 to 15.402 for certification may apply to all state peace officers employed pursuant to KRS Chapter 18A and shall, if adopted, be incorporated by the Department of Personnel for job specifications.
- (3) Additional training in excess of the standards set forth in KRS 15.380 to 15.402 for all peace officers possessing arrest powers who have specialized law enforcement responsibilities shall be the responsibility of the employing agency.
- (4) The following officers may, upon request of the employing agency, be certified by the council:
  - (a) Deputy coroners;
  - (b) Deputy constables;
  - (c) Deputy jailers;
  - (d) Deputy sheriffs under KRS 70.045 and 70.263(3);
  - (e) Officers appointed under KRS 61.360;
  - (f) Officers appointed under KRS 61.902, except those who are school security officers employed by local boards of education;
  - (g) Private security officers; and
  - (h) Employees of a correctional services division created pursuant to KRS 67A.028 and employees of a metropolitan correctional services department created pursuant to KRS 67B.010 to 67B.080.
- (5) The following officers shall be exempted from the certification requirements but may upon their request be certified by the council:
  - (a) Sheriffs;

- (b) Coroners;
  - (c) Constables;~~{and}~~
  - (d) Jailers; *and*
  - (e) ***Racing commission security officers employed under Section 6 of this Act.***
- (6) Federal peace officers cannot be certified under KRS 15.380 to 15.402.

**Approved April 21, 2000**

## CHAPTER 448

(HB 389)

AN ACT relating to retirement.

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

Section 1. KRS 21.427 is amended to read as follows:

- (1) (a) The board of trustees of the Judicial Form Retirement System shall arrange by appropriate contract or on a self-insured basis for a group hospital and medical insurance plan for recipients of a retirement allowance from the Judicial Retirement Plan, and their dependents. For recipients, or dependents, eligible for Medicare coverage, the board shall provide Medicare supplement hospital and medical insurance coverage. For recipients, or dependents, not eligible for Medicare coverage, the board shall provide hospital and medical insurance coverage comparable to that provided under the major state employees' group insurance, and the board may arrange for the recipients to be included in the major state employees group. ***For recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky, the board shall provide a medical insurance premium reimbursement plan as described in subsection (3) of this section.***
- (b) For the purpose of this section, the "dependent" of a recipient means the spouse or minor children, or both, of a recipient who is a living former member of the Judicial Retirement Plan, or the minor children of a deceased former member whose surviving spouse is the recipient.
- (2) (a) Depending upon the number of months of service credit upon which the retirement allowance was based, and upon there having been at least forty-eight (48) months of judicial service, all or a portion of the premium required to provide hospital and medical benefits under this section shall be paid from the judicial retirement fund, as follows:

Months of Judicial Service	Percentage of Premium
240 or more	100%
180 to 239, inclusive	75%
120 to 179, inclusive	50%
48 to 119, inclusive	25%

The foregoing payments shall be made by the fund only if the recipient agrees to pay the remaining, if any, percentage of the premium by deduction from his retirement allowance or by another method equally insuring the payment by him.

- (b) Notwithstanding any other statute to the contrary, any member with at least forty-eight (48) months of judicial service who is also eligible for benefits, or who is receiving benefits from any retirement plan or system administered by the Commonwealth shall be entitled to hospital and medical benefits as described in paragraph (a) of this subsection except that the number of months of service credit used in calculating the level of benefits shall be the sum of service credited to the member in all the state-administered retirement systems or plans.
1. Upon request of the member, the Judicial Retirement System shall compute the member's combined service in all the state-administered retirement systems or plans and calculate the portion of the member's premium to be paid by the Judicial Retirement Plan, according to the criteria established in paragraph (a) of this subsection. The state-administered retirement systems

or plans shall pay to the Judicial Retirement Plan the applicable percentage of the plan's cost of the retiree's hospital and medical premium which shall be equal to the percentage of the member's number of months of service in the applicable state-administered retirement systems or plans divided by his total combined service. The amounts paid by all the state-administered retirement systems or plans shall not be more than one hundred percent (100%) of the premium amount adopted by the respective boards of trustees.

2. A member who elects hospital and medical benefits under this subsection shall lose any claim to insurance benefits under any of the other state-administered retirement systems or plans.
- (3) ***The board shall establish a medical insurance premium reimbursement plan for recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky having the same Medicare hospital and medical insurance eligibility status. An eligible recipient shall file proof of payment for hospital and medical insurance premiums at the retirement office. Reimbursement to eligible recipients shall be made on a quarterly basis. The recipient shall be eligible for reimbursement of substantiated medical insurance premiums for an amount not to exceed the total monthly contribution determined by the board of trustees. The plan shall not be made available if all recipients are eligible for the same level of coverage as recipients living in Kentucky.***
- (4) Premiums paid for hospital and medical insurance procured under this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the judicial retirement fund shall not constitute income to the recipient. No commission shall be paid for hospital and medical insurance procured under this section.

Section 2. KRS 6.577 is amended to read as follows:

- (1) The board of trustees of the Judicial Form Retirement System shall arrange by appropriate contract or on a self insured basis to provide a group hospital and medical insurance plan for present and future recipients of a retirement allowance from the Legislators' Retirement Plan. The board may authorize present and future recipients of a retirement allowance from the Legislators' Retirement Plan who are under age sixty-five (65) to be included in the state employees group for hospital and medical insurance and shall provide benefits for recipients equal to those provided to state employees having the same Medicare hospital and medical insurance eligibility status. ***For recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky, the board shall provide a medical insurance premium reimbursement plan as described in subsection (5) of this section.***
- (2) Each employer participating in the Legislators' Retirement Plan shall contribute to the plan the amount necessary to provide hospital and medical insurance as provided for under this section. The employer contribution rate shall be developed by appropriate actuarial method as a part of the determination of the total employer contribution rate to the Legislators' Retirement Plan.
- (3) The premium required to provide hospital and medical benefits under this section shall be paid in full from the insurance fund established by KRS 6.575 for all recipients of a retirement allowance from the Legislators' Retirement Plan, if the recipient had two hundred forty (240) months or more of service upon retirement. If the recipient had less than two hundred forty (240) months of service, but at least one hundred thirty-two (132) months of service, fifty-five percent (55%) of the premium shall be paid from the insurance fund plus an additional five percent (5%) of the premium for each year of service beginning with the completion of twelve (12) years of service and continuing through the completion of nineteen (19) years of service. The recipient shall agree to pay by payroll deduction or another method the difference between what is paid from the insurance fund and one hundred percent (100%) of the premium. If the recipient had at least one hundred twenty (120) months of service, fifty percent (50%) of the premium shall be paid from the insurance fund, if the recipient agrees to pay the remaining fifty percent (50%) by payroll deduction from his retirement allowance or by another method. If the recipient had less than one hundred twenty (120) months of service but at least forty-eight (48) months of service, twenty-five percent (25%) of the premium shall be paid from the insurance fund, if the recipient agrees to pay the remaining seventy-five percent (75%) by payroll deduction from his retirement allowance or by another method. "Months of service" as used in this section shall not include service added to determine disability benefits.
- (4) The insurance fund shall pay the same percentage of the premium for the spouse and dependents of a recipient, or the beneficiary of the recipient, as the fund pays or paid for the member.

- (5) *The board shall establish a medical insurance premium reimbursement plan for recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky having the same Medicare hospital and medical insurance eligibility status. An eligible recipient shall file proof of payment for hospital and medical insurance premiums at the retirement office. Reimbursement to eligible recipients shall be made on a quarterly basis. The recipient shall be eligible for reimbursement of substantiated medical insurance premiums for an amount not to exceed the total monthly contribution determined by the board of trustees. The plan shall not be made available if all recipients are eligible for the same level of coverage as recipients living in Kentucky.*
- (6) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the insurance fund shall not constitute taxable income to an insured recipient. No commission shall be paid for hospital and medical insurance procured under authority of this section.
- (7)~~((6))~~ Notwithstanding any other statute to the contrary, any member with at least forty eight (48) months of legislative service who is also eligible for benefits, or who is receiving benefits from any retirement plan or system administered by the Commonwealth shall be entitled to hospital and medical benefits as described in subsection (3) of this section, except that the number of months of service credit used in calculating the level of benefits shall be the sum of the service credited to the member in all the state-administered retirement systems or plans.
- (a) Upon request of the member, the Legislators' Retirement Plan shall compute the member's combined service in all the state-administered retirement systems or plans, and calculate the portion of the member's premium to be paid by the Legislators' Retirement Plan, according to the criteria established in subsection (3) of this section. The state-administered retirement systems or plans shall pay to the Legislators' Retirement Plan the applicable percentage of the plan's costs of the retiree's hospital and medical premium which shall be equal to the percentage of the member's number of months of service in the applicable state-administered retirement system divided by his total combined service. The amounts paid by all the state-administered retirement systems or plans shall not be more than one hundred percent (100%) of the premium amount adopted by the respective boards of trustees.
- (b) A member who elects hospital and medical benefits under this section shall lose any claim to insurance benefits under any of the other state-administered retirement systems or plans.

Section 3. KRS 21.530 is amended to read as follows:

For administrative purposes only, as hereinafter provided, the Legislators' Retirement Plan and the Judicial Retirement Plan shall be coordinated under the name, Judicial Form Retirement System, but each of the plans shall maintain its separate identity. A board of trustees of that system hereby is created, to consist of eight (8) members, three (3) of whom shall be appointed by the Supreme Court, two (2) by the Governor, one (1) by the President of the Senate, one (1) by the Speaker of the House of Representatives, and one (1) by the president and speaker jointly. The appointments by the Governor shall not be from among the members of either of the plans in the system, or from among the persons drawing benefits from either of those plans. The members of the board shall serve for terms of four (4) years, commencing as of July 1, 1980, and until their successors are chosen and have qualified; provided that if a member of the board who was a member of one (1) of the plans in the system when he was appointed ceases to be a member of that plan, a vacancy shall thereupon be deemed to exist in his position on the board; and provided further, that the members of the Judicial Retirement Board in office on July 1, 1980, shall serve for the remainder of the terms for which they were appointed, as the members of the board created by this section, in the positions appointable by the Supreme Court and the Governor. Vacancies shall be filled by the appointing authority for the unexpired term. The members shall annually elect a chairman. Board members who do not receive an annual salary from the State Treasury, in another capacity, shall receive ***an amount equal to the per diem compensation paid to members of the General Assembly***~~seventy five dollars (\$75)~~ for each day they are in session. All members shall be reimbursed for their necessary expenses.

Section 4. KRS 21.450 is amended to read as follows:

- (1) The benefits provided by KRS 21.350 to 21.510 to be paid shall be funded through contract with a reputable life insurance company authorized to do business in this state, or through investment and reinvestment of funds in securities which, at the time of making the investment, are by law permitted for the investment of funds by fiduciaries in this state, or through a combination of such methods. To the extent that funding is provided through insurance contract, no contributions, payments or premiums shall be subject to any tax on insurance premiums or annuity considerations. The investment committee for the judicial retirement fund shall be trustee

of any and all funds contributed or appropriated to the retirement system, and shall have sole authority to make insurance contracts or investments.

- (2) The board members or any investment adviser shall discharge their duties with respect to the funds of the retirement system solely in the interest of the members and beneficiaries and:
  - (a) For the exclusive purposes of providing benefits to members and their beneficiaries and defraying reasonable expenses of administering the plan;
  - (b) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and
  - (c) In accordance with the laws, regulations and other instruments governing the funds.
- (3) ***Any accrual of benefits provided under this or any other applicable statute shall be no less than the benefit adjustment provided for in KRS 21.405(4) from the date of the last establishment of that benefit.***

Approved April 21, 2000

## CHAPTER 449

(HB 8)

AN ACT relating to fines and declaring an emergency.

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

Section 1. KRS 189.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456, and 189.960 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars (\$20) nor more than two thousand dollars (\$2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars (\$11) nor more than thirty dollars (\$30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.
- (2)
  - (a) Any person who violates the weight provisions of KRS 189.212, 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents (\$0.02) per pound for each pound of excess load when the excess is ***five thousand (5,000) pounds or less. When the excess exceeds five thousand (5,000) pounds the fine shall be two cents (\$0.02) per pound for each pound of excess load, but the fine levied shall not be less than one hundred dollars (\$100) and shall not be more than five hundred dollars (\$500)***~~two thousand (2,000) pounds or less, three cents (\$0.03) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (\$0.05) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (\$0.07) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (\$0.09) per pound when the excess exceeds five thousand (5,000) pounds, but in no case shall the fine be less than sixty dollars (\$60)}~~.
  - (b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, 189.490, or the dimension provisions of KRS 189.212, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
  - (c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.

- (3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars (\$15).
- (b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars (\$35) nor more than two hundred dollars (\$200).
- (4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
- (b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
- (c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.
- (5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) or imprisoned not less than thirty (30) days nor more than sixty (60) days, or both. For each subsequent offense occurring within three (3) years, the person shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.
- (6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars (\$15) in excess of the cost of the repair of the road.
- (7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars (\$20) nor more than fifty dollars (\$50).
- (8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100).
- (9) Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.
- (10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.
- (11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars (\$30) nor more than one hundred dollars (\$100) for each offense.
- (12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and, in the case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.
- (13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars (\$20) nor more than twenty-five dollars (\$25).
- (15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars (\$100) and, upon subsequent convictions, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for thirty (30) days, or both.
- (17) (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.
- (b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name the vehicle used in the transportation of inflammable liquids or explosives is licensed, the person shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each violation shall constitute a separate offense.



- (18) Any person who abandons a vehicle upon the right-of-way of a state highway for three (3) consecutive days shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.
- (19) Every person violating KRS 189.393 shall be guilty of a Class B misdemeanor, unless the offense is being committed by a defendant fleeing the commission of a felony offense which the defendant was also charged with violating and was subsequently convicted of that felony, in which case it is a Class A misdemeanor.
- (20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.
- (21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of a regulation shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.
- (22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
- (23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).
- (24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars (\$50).
- (25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars (\$25).
- (26) Any person who violates any of the provisions of KRS 189.125(3), KRS 189.290, KRS 189.300, KRS 189.340, KRS 189.345, KRS 189.370, KRS 189.393, or KRS 189.505, shall, in addition to any other fine imposed by this chapter, pay an additional fee of ten dollars (\$10). Funds collected pursuant to this subsection shall be deposited in the traumatic brain injury trust fund, created pursuant to KRS 211.476, within fourteen (14) days after the end of each quarter, to be used for the purposes set forth in KRS 211.470 to 211.478.
- (27) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.
- (28) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:
  - (a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and
  - (b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.
- (29) Any person who violates the provisions of KRS 189.285 shall have his or her operator's license suspended for a period of ninety (90) days and be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

Section 2. Whereas many individuals have been cited for excessive fines under changes inadvertently made to KRS 189.990(2)(a) by the 1998 General Assembly, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved April 21, 2000**

## **CHAPTER 450**

### **(HB 16)**

AN ACT relating to the area development districts' boards of directors.

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

Section 1. KRS 147A.060 is amended to read as follows:

There shall be in each area development district a board of directors. The composition of the board and the terms and appointments of its members in each district shall be specified by administrative regulation promulgated by the Department for Local Government in accordance with KRS Chapter 13A. The designee of a mayor or county judge/executive shall be a member of the designator's respective legislative body or their staff. Other persons who are not elected officials or *members of their staffs*~~[staff]~~ may be designated as *representatives*~~[a representative]~~ with the consent of that body. The Department for Local Government in specifying the composition of the board shall conform to applicable federal requirements. *A person who is a state officer, a deputy state officer, or a member of the General Assembly may serve only in a nonmember advisory capacity to the board of directors of an area development district. An area development district board of directors shall notify legislators of the provisions of this section, and of their right to participate in the activities of the area development district. If a legislator chooses to participate in accordance with this section, the area development district shall send meeting notices to that legislator at the same time board members are notified of the meetings.*

Approved April 21, 2000

## CHAPTER 451

### (HB 58)

AN ACT relating to exemptions from compulsory school attendance.

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

Section 1. KRS 159.030 is amended to read as follows:

- (1) The board of education of the district in which the child resides shall exempt from the requirement of attendance upon a regular public day school every child of compulsory school age:
  - (a) Who is a graduate from an accredited or an approved four (4) year high school; or
  - (b) Who is enrolled and in regular attendance in a private, parochial, or church regular day school. It shall be the duty of each private, parochial, or church regular day school to notify the local board of education of those students in attendance at the school. If a school declines, for any reason, to notify the local board of education of those students in attendance, it shall so notify each student's parent or legal guardian in writing, and it shall then be the duty of the parent or legal guardian to give proper notice to the local board of education; or
  - (c) Who is less than seven (7) years old and is enrolled and in regular attendance in a private kindergarten-nursery school; or
  - (d) Whose physical or mental condition prevents or renders inadvisable attendance at school or application to study; or
  - (e) Who is enrolled and in regular attendance in private, parochial, or church school programs for exceptional children; or
  - (f) Who is enrolled and in regular attendance in a state-supported program for exceptional children;
  - (g) For purposes of this section, "church school" shall mean a school operated as a ministry of a local church, group of churches, denomination, or association of churches on a nonprofit basis.
- (2) Before granting an exemption under subsection (1)(d) of this section the ~~[Kentucky]~~ board of education *of the district in which the child resides* shall require satisfactory evidence, in the form of a signed statement of a licensed physician, advanced registered nurse practitioner, psychologist, psychiatrist, *chiropractor*, or public health officer, that the condition of the child prevents or renders inadvisable attendance at school or application to study. On the basis of such evidence the board may exempt the child from compulsory attendance. Any child who is excused from school attendance more than six (6) months shall have two (2) signed statements from a combination of the following professional persons: a licensed physician, advanced registered nurse practitioner, psychologist, psychiatrist, *chiropractor*, and health officer. Exemptions of all children under the provisions of subsection (1)(d) of this section shall be reviewed annually with the evidence required being updated.

- (3) For any child who is excluded under the provisions of subsection (1)(d) of this section, home, hospital, institutional, or other regularly scheduled and suitable instruction meeting standards, rules and regulations of the Kentucky Board of Education shall be provided.

**Approved April 21, 2000**

## **CHAPTER 452**

**(HB 77)**

AN ACT relating to student dropout prevention.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

**(1) *The General Assembly hereby finds that:***

- (a) *Little progress has been made in reducing the state's student dropout rate;***
- (b) *The number of school dropouts in Kentucky is unacceptable;***
- (c) *The factors, such as lack of academic success, poor school attendance, lack of parental support and encouragement, low socioeconomic status, poor health, child abuse, drug and alcohol addictions, alienation from school and community, and other factors that are associated with an increased probability of students dropping out of school, occur long before the end of compulsory school age;***
- (d) *Students who drop out of school before graduation are less likely to have the basic capacities as defined in KRS 158.645 and the skills as defined in KRS 158.6451;***
- (e) *The number of school dropouts seriously interferes with Kentucky's ability to develop and maintain a well-educated and highly trained workforce;***
- (f) *The effects of students dropping out of school can be felt throughout all levels of society and generations in increased unemployment and underemployment, reduced personal and family incomes, increased crime, decreased educational, social, emotional, and physical well-being, and in increased needs for government services; and***
- (g) *The positive reduction in school dropouts can only be achieved by comprehensive intervention and prevention strategies.***

**(2) *The General Assembly declares on behalf of the people of the Commonwealth the following goals to be achieved by the year 2006:***

- (a) *The statewide annual average school dropout rate will be cut by fifty percent (50%) of what it was in the year 2000;***
- (b) *No school will have an annual dropout rate that exceeds five percent (5%); and***
- (c) *Each county will have thirty percent (30%) fewer adults between the ages of sixteen (16) and twenty-four (24) without a high school diploma or GED than the county had in the year 2000.***

SECTION 2. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

**(1) *No later than December 30, 2000, the Kentucky Department of Education shall establish and implement a comprehensive statewide strategy to provide assistance to local districts and schools to address the student dropout problem in Kentucky public schools. In the development of the statewide strategy, the department shall engage private and public representatives who have an interest in the discussion. The statewide strategy shall build upon the existing programs and initiatives that have proven successful. The department shall also take into consideration the following:***

- (a) *Analyses of annual district and school dropout data as submitted under Section 4 of this Act and KRS 158.6453;***
- (b) *State and federal resources and programs, including, but not limited to, extended school services; early learning centers; family resource and youth service centers; alternative education services; preschool; service learning; drug and alcohol prevention programs; School-to-Careers; High***

*Schools that Work; school safety grants; and other relevant programs and services that could be used in a multidimensional strategy;*

- (c) *Comprehensive student programs and services that include, but are not limited to, identification, counseling, mentoring, and other educational strategies for elementary, middle, and high school students who are demonstrating little or no success in school, who have poor school attendance, or who possess other risk factors that contribute to the likelihood of their dropping out of school; and*
- (d) *Evaluation procedures to measure progress within school districts, schools, and statewide.*
- (2) *The department with assistance from appropriate agencies shall provide technical assistance to districts requesting assistance with dropout prevention strategies and the development of district and schoolwide plans.*
- (3) *The department shall award grants to local school districts for dropout prevention programs based upon available appropriations from the General Assembly and in compliance with administrative regulations promulgated by the Kentucky Board of Education for this purpose. Seventy-five percent (75%) of the available dropout funds shall be directed to services for at-risk elementary and middle school students, including but not limited to, identification, counseling, home visitations, parental training, and other strategies to improve school attendance, school achievement, and to minimize at-risk factors. Twenty-five percent (25%) of the funds shall be directed to services for high school students identified as likely to drop out of school, including, but not limited to, counseling, tutoring, extra instructional support, alternative programming, and other appropriate strategies. Priority for grants shall be awarded to districts that average over a three (3) year period, an annual dropout rate exceeding five percent (5%).*
- (4) *The department shall disseminate information on best practices in dropout prevention in order to advance the knowledge for district and school level personnel to address the dropout problem effectively.*

Section 3. KRS 156.095 is amended to read as follows:

- (1) The Kentucky Department of Education shall establish, direct, and maintain a statewide program of professional development to improve instruction in the public schools.
- (2) Each local school district superintendent shall appoint a certified school employee to fulfill the role and responsibilities of a professional development coordinator who shall disseminate professional development information to schools and personnel. Upon request by a school council or any employees of the district, the coordinator shall provide technical assistance to the council or the personnel that may include planning and evaluation assistance or coordination activities.
  - (a) The manner of appointment, qualifications, and other duties of the professional development coordinator shall be established by Kentucky Board of Education through promulgation of administrative regulations.
  - (b) The local district professional development coordinator shall participate in the Kentucky Department of Education annual training program for local school district professional development coordinators. The training program may include, but not be limited to, the demonstration of various approaches to needs assessment and planning; strategies for implementing long-term, school-based professional development; strategies for strengthening teachers' roles in the planning, development, and evaluation of professional development; and demonstrations of model professional development programs. The training shall include information about teacher learning opportunities relating to the core content standards. The Kentucky Department of Education shall regularly collect and distribute this information.
- (3) The Kentucky Department of Education shall provide or facilitate optional, professional development programs for certified personnel throughout the Commonwealth that are based on the statewide needs of teachers, administrators, and other education personnel. Programs may include classified staff and parents when appropriate. Programs offered or facilitated by the department shall be at locations and times convenient to local school personnel and shall be made accessible through the use of technology when appropriate. They shall include programs that: address the goals for Kentucky schools as stated in KRS 158.6451; engage educators in effective learning processes and foster collegiality and collaboration; and provide support for staff to incorporate newly acquired skills into their work through practicing the skills, gathering information about the results, and reflecting on their efforts. Professional development programs may include, but not be limited to, focus on the following areas:
  - (a) Curriculum content and methods of instruction for each content area;

- (b) School-based decision making;
  - (c) Performance-based student assessment;
  - (d) Nongraded primary programs;
  - (e) Research-based instructional practices;
  - (f) Instructional uses of technology;
  - (g) Curriculum design to serve the needs of students with diverse learning styles and skills and of students of diverse cultures;
  - (h) Instruction of phonics; and
  - (i) Educational leadership.
- (4) The department shall utilize its regional service centers, in addition to collaboration with postsecondary education institutions, education cooperative and consortia, and professional education organizations, to provide local district personnel with access to high quality programming. The department shall assist school personnel in assessing the impact of professional development on their instructional practices and student learning.
- (5) The department shall assist districts with the development of long-term school and district improvement plans that include multiple strategies for professional development based on the assessment of needs at the school level.
- (a) Professional development strategies may include, but are not limited to, participation in teacher networks, training institutes, workshops, seminars, and study groups; collegial planning; action research; mentoring programs; appropriate university courses; and other forms of professional development.
  - (b) In planning the use of the four (4) days for professional development under KRS 158.070, priority shall be given to programs that increase teachers' understanding of curriculum content and methods of instruction appropriate for each content area based on individual school plans. Up to one (1) day may be used to provide training that is mandated by state or federal law. Only those employees identified in the mandate or affected by the mandate shall be required to attend the training.
  - (c) State funds allocated for professional development may be used to support professional development initiatives that are consistent with local plans, throughout the year for all staff, including classified and certified staff and parents on school councils or committees.
- (6) The Department of Education shall contract with an outside agency to complete an analysis of the current status of the statewide professional development program. The analysis shall include a comparison of models of professional development used in high-performing and award-winning schools. The analysis shall include specific recommendations regarding:
- (a) The effective advancement of a supply and demand system for vendors and consumers of professional development; and
  - (b) The development and dissemination through the Internet and other appropriate means of consumer information concerning specific professional development opportunities.

A written report shall be provided to the Department of Education by October 30, 1998. The Department of Education shall publicly report its actions within six (6) months of the release of the recommendations and subsequently issue annual reports on the status of the statewide professional development program.

- (7) During the **2000-2001 and 2001-2002**~~[1998-1999 and 1999-2000]~~ school years, the Department of Education shall **provide intensive, regional training for school personnel**~~[conduct an intensive statewide professional development program]~~ to address the characteristics and instructional needs of **exceptional students and students at risk of school failure and most likely to drop out of school**. The **training**~~[professional development]~~ shall be developed to meet the specific needs of all certified and classified personnel depending on their relationship with **these**~~[exceptional students and]~~ students~~[at risk of school failure]~~. The **training**~~[professional development]~~ for instructional personnel shall be designed to provide and enhance skills of personnel to:

- (a) **Identify at-risk students early in elementary schools as well as at-risk and potential dropouts in the middle and high schools;**

- (b) *Plan specific instructional strategies to teach at-risk students;*
- (c) Improve the academic achievement of ~~exceptional students and~~ students at risk of school failure *by providing individualized and extra instructional support to increase expectations for targeted students;*
- (d) *Involve parents as partners in ways to help their children and to improve their children's academic progress; and*
- (e) ~~(b)~~ Significantly reduce the dropout rate of all students ~~;~~ and
- ~~(c) Prepare all students for a successful transition to adult life.~~

Section 4. KRS 158.148 is amended to read as follows:

- (1) In cooperation with the Kentucky Education Association, the Kentucky School Boards Association, the Kentucky Association of School Administrators, the Parent-Teachers Association, the Kentucky Chamber of Commerce, the Farm Bureau, members of the Interim Joint Committee on Education, and other interested groups, and in collaboration with the Center for School Safety, the Department of Education shall develop:
  - (a) Statewide student discipline guidelines to ensure safe schools; and
  - (b) Recommendations designed to improve the learning environment *and school climate, parental and community involvement in the schools, and* student achievement ~~;~~ *and to reduce the dropout rate in the state's public schools.*
- (2) The department shall obtain statewide data on major discipline problems and reasons why students drop out of school. In addition, the department, in collaboration with the Center for School Safety, shall identify successful strategies currently being used in programs in Kentucky and in other states and shall incorporate those strategies into the statewide guidelines and the recommendations *under subsection (1) of this section* ~~to improve the learning environment and to reduce dropouts.~~
- (3) Copies of the discipline guidelines shall be distributed to all school districts. The statewide guidelines shall contain broad principles to guide local districts in developing their own discipline code and school councils in the selection of discipline and classroom management techniques under Section 13 of this Act; and in the development of the district-wide safety plan.
- (4) Each local board of education shall be responsible for formulating a code of acceptable behavior and discipline to apply to the students in each school operated by the board.
  - (a) The superintendent, or designee, shall be responsible for overall implementation and supervision, and each school principal shall be responsible for administration and implementation within each school. Each school council shall select and implement the appropriate discipline and classroom management techniques necessary to carry out the code. The board shall establish a process for a two-way communication system for teachers and other employees to notify a principal, supervisor, or other administrator of an existing emergency.
  - (b) The code shall contain the type of behavior expected from each student, the consequences of failure to obey the standards, and the importance of the standards to the maintenance of a safe learning environment where orderly learning is possible and encouraged.
  - (c) The principal of each school shall apply the code of behavior and discipline uniformly and fairly to each student at the school without partiality or discrimination.
  - (d) A copy of the code of behavior and discipline adopted by the board of education shall be posted at each school. Guidance counselors shall be provided copies for discussion with students. The code shall be referenced in all school handbooks. All school employees and parents shall be provided copies of the code.
- ~~(5) The Department of Education with assistance from the Center for School Safety shall provide technical assistance to those districts requesting assistance with dropout prevention strategies. Reporting requirements shall be established by the Department of Education; however, reports shall be prepared in a manner that will provide data on successful strategies for dropout prevention.~~
- ~~(6) The Kentucky Board of Education shall establish criteria for the development of dropout prevention programs and award grants based upon available appropriations from the General Assembly. These grants shall be~~

~~administered through contracts whereby school districts agree to provide dropout prevention services specified by the Kentucky Board of Education.]~~

Section 5. KRS 159.010 is amended to read as follows:

- (1) Except as provided in KRS 159.030, each parent, guardian, or other person residing in the state and having in custody or charge any child who has entered the primary school program or any child between the ages of six (6) and sixteen (16) shall send the child to a regular public day school for the full term that the public school of the district in which the child resides is in session or to the public school that the board of education of the district makes provision for the child to attend. A child's age is between six (6) and sixteen (16) when the child has reached his sixth birthday and has not passed his sixteenth birthday.
- (2) An unmarried child between the ages of sixteen (16) and eighteen (18) who wishes to terminate his public or nonpublic education prior to graduating from high school shall do so only after a conference with the principal or his designee, and the principal shall request a conference with the parent, guardian, or other custodian. Written notification of withdrawal must be received from his parent, guardian, or other person residing in the state and having custody or charge of him. The parent(s) and child shall be required to attend a one (1) hour counseling session with a school counselor on potential problems of nongraduates.
- (3) A child's age is between sixteen (16) and eighteen (18) when the child has reached his sixteenth birthday and has not passed his eighteenth birthday. Written permission for withdrawal shall not be required after the child's eighteenth birthday. Every child actually resident in this state is subject to the laws relating to compulsory attendance, and neither he nor the person in charge of him shall be excused from the operation of those laws or the penalties under them on the ground that the child's residence is seasonable or that his parent is a resident of another state.
- (4) ***Each school district shall contact each student between the ages of sixteen (16) and eighteen (18) who has voluntarily withdrawn from school within three (3) months of the date of withdrawal to encourage the student to reenroll in a regular program, alternative program, or GED preparation program. In the event, the student does not reenroll at that time, the school district shall make at least one (1) more attempt to reenroll the student before the beginning of the school year following the school year in which the student terminated his or her enrollment.***

Section 6. KRS 158.6455 is amended to read as follows:

It is the intent of the General Assembly that schools succeed with all students and receive the appropriate consequences in proportion to that success.

- (1) (a) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate administrative regulations in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A to establish a system for identifying and rewarding successful schools. A reward shall be distributed to successful schools based on the number of full-time, part-time, and itinerant certified staff employed in the school on the last working day of the year of the reward to be used for school purposes as determined by the school council or, if none exists, the principal. The Kentucky Board of Education shall identify reports, paperwork requirements, and administrative regulations from which high performing schools shall be exempt.
- (b) ***Effective July 1, 2006, the Kentucky Board of Education shall reward schools that exceed their improvement goal and have an annual average dropout rate below five percent (5%).***
- (2) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate by administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A the formula for a school accountability index to classify schools every two (2) years based on whether they have met their threshold level for school improvement, with school years 1998-2000 serving as the baseline. The formula shall reflect the school goals described in KRS 158.6451, except there shall be no measurement of the goals included in subsection (1)(b)3. and (1)(b)4.
- (3) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate an administrative regulation in conformity with KRS 158.6471

and 158.6472 and KRS Chapter 13A to establish appropriate consequences for schools failing to meet their threshold. The consequences shall be designed to improve teaching and learning and may include, but not be limited to:

- (a) A scholastic audit process under subsection (4) of this section to determine the appropriateness of a school's classification and to recommend needed assistance;
  - (b) School improvement plans;
  - (c) Eligibility to receive Commonwealth school improvement funds under KRS 158.805;
  - (d) Education assistance from highly skilled certified staff under KRS 158.782;
  - (e) Evaluation of school personnel; and
  - (f) Student transfer to successful schools.
- (4) (a) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate an administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A establishing the guidelines for conducting scholastic audits, which shall include the process for:
- 1. Appointing and training team members. The team shall include at least a highly skilled certified educator under KRS 158.782, a teacher, a principal or other local district administrator, a parent, and a university faculty member;
  - 2. Reviewing a school's learning environment, efficiency, and academic performance of students;
  - 3. Evaluating each certified staff member assigned to the school. Only certified members of the audit team shall evaluate personnel; and
  - 4. Making a recommendation to the Kentucky Board of Education about the appropriateness of a school's classification and a recommendation concerning the assistance required by the school to improve teaching and learning.
- (b) For information purposes, the board shall also conduct scholastic audits in a sample of schools that achieved their goal.
- (5) (a) Notwithstanding subsections (2), (3), and (4) of this section and KRS 158.645 to 158.805, the Kentucky Board of Education, after receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, shall promulgate an administrative regulation in conformity with the provisions of KRS 158.6471 and 158.6472 and in accordance with KRS Chapter 13A, establishing a formula for school accountability and a school improvement goal for each school for the 1998-1999 and 1999-2000 school years, with the 1996-97 and 1997-98 school years serving as the baseline. The formula shall be based on the academic and nonacademic components that are administered in a consistent manner during the four (4) year period.
- (b) 1. The Kentucky Board of Education shall reward schools that exceed their improvement goal and have an annual average dropout rate below eight percent (8%).
2. Schools failing to improve as identified by the board shall be reviewed by a scholastic audit team appointed by the state board under subsection (4) of this section. The audit shall not include a formal evaluation of each certified staff member. The team shall determine whether the school shall have highly skilled education assistance for advisory purposes. All schools failing to achieve their goal shall develop a school improvement plan and shall be eligible for school improvement funds under KRS 158.805.
- (6) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education may promulgate by administrative regulation, in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A, a system of district accountability that includes establishing a formula for accountability, goals for improvement over a two (2) year period, rewards for leadership in improving teaching and learning in the district, and consequences that address the problems and provide assistance when the district fails to achieve its goals set by the board.



- (7) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate administrative regulations in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A, to establish a process whereby a school shall be allowed to appeal a performance judgment which it considers grossly unfair. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. The state board may adjust a performance judgment on appeal when evidence of highly unusual circumstances warrants the conclusion that the performance judgment is based on fraud or a mistake in computations, is arbitrary, is lacking any reasonable basis, or when there are significant new circumstances occurring during the biennial assessment period which are beyond the control of the school.

**Approved April 21, 2000**

## **CHAPTER 453**

### **(HB 100)**

AN ACT relating to special military-related license plates.

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

SECTION 1. KRS 186.041 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *The provisions of this section shall govern the issuance of all special military-related license plates. A person who wants to purchase a special military-related license plate shall apply to the county clerk in the county where the person lives on a form prescribed by the Transportation Cabinet. Each initial and renewal application shall be accompanied by proof that the person is associated with the United States Army, United States Navy, United States Air Force, United States Marine Corps, United States Coast Guard, United States Coast Guard Auxiliary, Kentucky National Guard, Merchant Marines with service between December 7, 1941, and August 15, 1945, or Civil Air Patrol in one (1) of the following ways:*
- (a) *An active component member;*
  - (b) *A retired member; or*
  - (c) *A veteran who received a discharge under honorable conditions, or the veteran's widow and:*
    - 1. *Performed twenty-four (24) months of active-duty service;*
    - 2. *Received an early release due to injuries or other medical condition, or at the convenience of the service;*
    - 3. *Received a hardship discharge;*
    - 4. *Was separated or retired due to a disability; or*
    - 5. *Was determined to have a service-connected disability incurred during the enlistment.*
- (2) *Initial registration and renewal registration fees for special military-related license plates shall be charged as provided in this subsection:*
- (a) *Disabled veterans and recipients of the Congressional Medal of Honor licensed under subsection (5) of this section shall not be charged an initial registration fee and shall not be charged a renewal registration fee. The license plate and certificate of registration shall be issued free of charge;*
  - (b) *The initial registration fee shall be a seventeen dollar (\$17) state fee that shall be divided under the provisions of subsection (3) of this section and that includes the cost to reflectorize the plate under KRS 186.240(2)(c) and a three dollar (\$3) county clerk fee, and the renewal registration fee shall be a three dollar (\$3) county clerk fee for:*
    - 1. *Former prisoners of war licensed under subsection (10) of this section;*
    - 2. *Survivors of Pearl Harbor licensed under subsection (11) of this section; and*
    - 3. *Members of the National Guard licensed under subsection (12) of this section.*

- (c) *The initial registration fee shall be a seventeen dollar (\$17) state fee that shall be divided under the provisions of subsection (3) of this section, and the renewal registration fee shall be a twelve dollar (\$12) state fee that includes the cost to reflectorize the plate under KRS 186.240(2)(c) and a three dollar (\$3) county clerk fee for:*
- 1. Disabled veterans licensed under subsection (6) of this section;*
  - 2. Purple Heart recipients licensed under subsection (9) of this section, except that if a Purple Heart recipient also qualifies as a disabled veteran under subsection (5) of this section, the Purple Heart recipient may receive either a Purple Heart or a disabled veteran's license plate, both initial and renewal, and the certificate of registration free of charge;*
  - 3. Members of the Civil Air Patrol licensed under subsection (13) of this section; and*
  - 4. Other active, retired, veteran, reserve, or auxiliary members of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or Merchant Marines licensed under subsection (14) of this section.*
- (3) *The initial state fee collected under subsections (2)(b) and (2)(c) of this section shall be divided between the Transportation Cabinet and the Department of Veterans Affairs. The Transportation Cabinet shall receive twelve dollars (\$12) of the initial state fee and the Department of Veterans Affairs shall receive five dollars (\$5) of the initial state fee. The county clerk shall forward money collected under subsections (2)(b) and (2)(c) of this section to the Department of Veterans Affairs on a quarterly basis and the department shall deposit the money into the veteran's program trust fund established by KRS 40.460(2)(b). A person renewing a special military license plate issued under this section may donate five dollars (\$5) to support the veteran's program trust fund. Money donated under this subsection shall be paid to the county clerk who shall forward the money on a quarterly basis to the Department of Veterans Affairs and the department shall deposit the money into the veteran's program trust fund established by KRS 40.460(2)(b).*
- (4) *A special military-related license plate may be issued for use on a passenger car registered under KRS 186.050(1) or for a commercial vehicle registered under KRS 186.050(3)(a) that has a gross laden weight of six thousand (6,000) pounds or less. Except as provided in subsection (7) of this section, a license plate issued under this section shall have the renewal registration decal issued annually during the applicant's birth month. License plates issued under this section shall be a five (5) year license plate. The member, retired member, veteran, or reservist may purchase two (2) special military-related license plates annually for vehicles they own or lease.*
- (5) *A recipient of the Congressional Medal of Honor or a disabled veteran who has been or shall be given financial assistance toward the purchase or lease of a motor vehicle by the United States Department of Veterans Affairs under the provisions of 38 U.S.C. sec. 1901, or any other public law that may be passed by the Congress of the United States shall initially and annually be issued a certificate of registration and a special military-related license plate free of charge.*
- (6) *A veteran who has been declared to be at least seventy percent (70%) disabled by the United States Department of Veterans Affairs and has not received financial assistance from the United States Department of Veterans Affairs toward the purchase or lease of a motor vehicle shall be eligible for a disabled veterans license plate upon payment of the initial registration fee required in subsection (2)(c) of this section.*
- (7) *A disabled veterans license plate shall be printed in red, white, and blue colors. Half of the license plate shall be in one (1) color, the other half a second color, and the figures and lettering in the third color. Each plate shall contain the international symbol of access adopted by Rehabilitation International in 1969, the name of the state, the year, the registration number, and the words "Disabled Vet." A disabled veterans license plate shall have the renewal registration decal issued annually on July 31.*
- (8) *A recipient of the Congressional Medal of Honor shall be eligible for a Congressional Medal of Honor license plate that shall be printed in blue and white colors and shall follow the color scheme for all figures and letters as prescribed for passenger cars. Each plate shall contain the name or an abbreviation of the state and the words "Medal of Honor" and a number uniquely identifying each recipient, in lieu of registration numbers.*
- (9) *A recipient of a Purple Heart medal shall be eligible for a Purple Heart license plate upon payment of the initial registration fee required in subsection (2)(c) of this section. A Purple Heart license plate shall bear*

*the name "Purple Heart," a registration number, and an appropriate logo to be determined by the Transportation Cabinet.*

- (10) *A person who is a former prisoner of the enemy during World War I, World War II, the Korean War, or the Vietnam War, or the spouse of a deceased former prisoner of war, shall be eligible for a former prisoners of war license plate upon payment of the initial registration fee required in subsection (2)(b) of this section. The application shall be accompanied by written proof from the United States Department of Veterans Affairs or other appropriate federal agency stating the period of time the person or person's spouse was a prisoner of war. A former prisoner of war license plate shall be printed in red, white, and blue colors. Each plate shall contain the name of the state, the year, the registration number, and the words "Former P.O.W." If a former prisoner of war dies with a vehicle licensed as authorized under this section, the person's surviving spouse may retain the license plate for use on the same vehicle or on another vehicle that complies with the provisions of subsection (4) of this section.*
- (11) *A person who is certified by the Kentucky chapter of the Pearl Harbor Survivors Association as being a survivor of the attack on Pearl Harbor shall be eligible for a Pearl Harbor license plate upon payment of the initial registration fee required in subsection (2)(b) of this section. The Transportation Cabinet shall issue an applicant an appropriately designed plate identifying the vehicle as registered to a Pearl Harbor survivor. The person shall be required to attach to the special military-related license plate application written evidence from the Kentucky chapter of the Pearl Harbor Survivors Association that the person:*

  - (a) *Was a member of the United States Armed Forces on December 7, 1941;*
  - (b) *Was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m., Hawaii time, at Pearl Harbor, the island of Oahu, or offshore at a distance not to exceed three (3) miles;*
  - (c) *Was discharged honorably from the United States Armed Forces; and*
  - (d) *Is certified by the Kentucky chapter of the Pearl Harbor Survivors Association.*
- (12) *A person who is a member of the Kentucky National Guard, or a retired member, shall be eligible for a National Guard license plate upon payment of the initial registration fee required in subsection (2)(b) of this section. A National Guard license plate shall bear the name "Kentucky National Guard," a registration number, and the logo of the National Guard. Upon termination of membership in the Kentucky National Guard, except for those who remain eligible through retirement, a person shall comply with the provisions of subsection (15) of this section.*
- (13) *A person who is a member of the Civil Air Patrol shall be eligible for a Civil Air Patrol license plate upon payment of the initial registration fee required in subsection (2)(c) of this section. A Civil Air Patrol license plate shall bear the name "Civil Air Patrol," a registration number, and an appropriate logo to be determined by the Transportation Cabinet. Upon termination of membership in the Civil Air Patrol, a person shall comply with the provisions of subsection (15) of this section.*
- (14) (a) *A person who meets the requirements of subsection (1) of this section shall be eligible for a military license plate upon payment of the initial registration fee required in subsection (2)(c) of this section. The plate shall bear:*

  - 1. *A seal indicating Army, Navy, Air Force, Marine Corps, or Coast Guard, or, in the case of the Merchant Marines, a seal indicating the branch of service issuing a discharge;*
  - 2. *A decal indicating whether the person's status is active duty, reserve duty, veteran, retired veteran, or widow; and, if applicable, a decal for auxiliary in the case of the Coast Guard or a decal for the Merchant Marines;*
  - 3. *A veteran's decal may further indicate a veteran's service in a wartime era; and*
  - 4. *A registration number.*

(b) *Upon termination of membership in the active component or reserves of the United States Armed Forces or the United States Coast Guard, a person shall comply with the provisions of subsection (15) of this section.*

(c) *The Transportation Cabinet, in coordination with the Department of Veterans' Affairs, shall promulgate an administrative regulation under KRS Chapter 13A defining criteria for the issuance of specific decals for veterans' wartime service.*

- (15) *Except for persons changing their status to retired, within thirty (30) days of termination of membership or reserve status in a group eligible for a special military-related license plate, a person issued a military plate under this section shall return the plate to the county clerk of the county of his residence. Upon payment of a three dollar (\$3) county clerk fee, the county clerk shall issue the person a regular license plate to replace the special military-related license plate being surrendered.*
- (16) *Upon the sale, transfer, or termination of a lease of a motor vehicle for which a special military-related license plate has been issued, the owner shall return the military plate and the certificate of registration to the county clerk. The county clerk shall issue a regular license plate and certificate of registration upon payment of a twelve dollar (\$12) state fee which includes the fifty cent (\$0.50) fee to reflectorize the plate under KRS 186.240(2)(c) and a three dollar (\$3) county clerk fee. The twelve dollar (\$12) state fee shall be forwarded to the Transportation Cabinet. Upon request and payment of a three dollar (\$3) fee, the county clerk shall reissue the special military-related license plate for use on any other vehicle owned by the same person who purchased the special plate for the current licensing period.*
- (17) *The cabinet shall promulgate administrative regulations to set forth the documentation required in order to establish a person's qualifications to receive any license plate issued under this section.*
- (18) *A person seeking a special military-related license plate for a vehicle provided to that person pursuant to an occupation shall conform to the requirements of KRS 186.050(14).*
- (19) *If a special military-related license plate is lost, stolen, mutilated, or deteriorates to the point where the inscriptions or decals are not discernible, the person to whom the plate was issued may obtain a replacement plate free of charge.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 189 IS CREATED TO READ AS FOLLOWS:

- (1) *Any other provision of law to the contrary notwithstanding, a city, county, town, or other political subdivision of this state shall not require any license or fee from a disabled veteran or recipient of the Congressional Medal of Honor who has been issued a special military-related license plate under Section 1 of this Act, for the privilege of operating a motor vehicle upon any street or alley.*
- (2) *When a motor vehicle bearing a special military-related license plate for disabled veterans or recipients of the Congressional Medal of Honor is being operated by or for the benefit of the person, the motor vehicle may be parked for a period of two (2) hours in excess of the legal parking period permitted by local authorities unless a local ordinance or police regulation:*
  - (a) *Prohibits parking on a highway for the purpose of creating a fire lane;*
  - (b) *Provides for the accommodation of heavy traffic during morning, afternoon, or evening hours; or*
  - (c) *Prohibits parking a motor vehicle in a manner as to clearly be a traffic hazard.*

Section 3. The following KRS sections are repealed:

- 186.044 License plates for recipients of a Purple Heart medal.
- 186.1701 Special license plate for former prisoner of war.
- 186.1702 Special license plate for survivors of the attack on Pearl Harbor.
- 186.173 Special license plates for active or retired members of the National Guard.
- 186.1731 License plate for members of the Civil Air Patrol.
- 186.1732 Special license plate for active, reserve, retired, and veteran members of the United States Armed Forces.
- 186.182 Special license plates for recipients of Congressional Medal of Honor.
- 186.1861 Special license plates for United States Veterans.

Section 4. Any funds the Transportation Cabinet has received with applications for a United States Veterans license plate under KRS 186.1861 shall be refunded to each applicant within thirty (30) days of the effective date of this Act. Any trust and agency account established by the Transportation Cabinet for funds received under KRS 186.1861 is terminated.

**Approved April 21, 2000**

**CHAPTER 454****(HB 142)**

AN ACT relating to members of boards of education.

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

Section 1. KRS 160.280 is amended to read as follows:

- (1) Members of boards of education shall receive no salaries, but members of boards of education may receive a per diem of ~~seventy-five~~~~forty~~ dollars ~~(\$75)~~~~(\$40)~~ in any calendar year, and their actual expenses for each regular or special meeting attended. ***Members shall receive this same per diem for training required by KRS 160.180.*** In no case shall the expenses incurred within the district or per diem of any member exceed ~~two~~~~one~~ thousand dollars ~~(\$2,000)~~~~(\$1,000)~~ in any calendar year.
- (2) Notwithstanding the provisions of subsection (1) of this section, members of boards of education in counties containing a city of the first class wherein a merger pursuant to KRS 160.041 shall have been accomplished and members elected from the divisions and in the manner prescribed by KRS 160.210(5) shall receive a per diem of ~~seventy-five~~~~forty~~ dollars ~~(\$75)~~~~(\$40)~~, and may be reimbursed for other actual and necessary expenditures incurred in the district in the performance of their duties authorized by the board. ***Members shall receive this same per diem for training required by KRS 160.180.*** In no case shall the expenses incurred within the district or per diem of any member exceed ~~three thousand~~~~two thousand five hundred~~ dollars ~~(\$3,000)~~~~(\$2,500)~~ per calendar year.
- (3) Members of boards of education may be reimbursed for actual and necessary expenditures incurred outside the district in the performance of their duties authorized by the board.
- (4) All claims shall be made out according to law and filed with the secretary of the board and shall be approved and paid as other claims against the board.
- (5) Board members shall be eligible to participate in any group medical or dental insurance plan provided to employees of the district pursuant to KRS 161.158. Participating board members shall pay the full cost of any premium required for their participation in the plan.

**Approved April 21, 2000**

**CHAPTER 455****(HB 156)**

AN ACT relating to concealed deadly weapons.

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

Section 1. KRS 237.110 is amended to read as follows:

- (1) The Department of State Police is authorized to issue licenses to carry concealed firearms or other deadly weapons to persons qualified as provided in this section. The Department of State Police or the Administrative Office of the Courts shall conduct a record check, covering all offenses and conditions which are required under 18 U.S.C. sec. 922(g) and this section, in the manner provided by 18 U.S.C. sec. 922(s). Licenses shall be valid throughout the state for a period of ~~five~~ ~~(5)~~~~three~~~~(3)~~ years from the date of issuance. Any person in compliance with the terms of the license may carry a concealed firearm or other deadly weapon or combination of firearms and other deadly weapons on or about his person. The licensee shall carry the license at all times the licensee is carrying a concealed firearm or other deadly weapon and shall display the license upon request of a law enforcement officer. Violation of the provisions of this subsection shall constitute a noncriminal violation with a penalty of twenty-five dollars (\$25), payable to the clerk of the District Court.
- (2) The Department of State Police, following the record check required by subsection (1) of this section, shall issue a license if the applicant:
  - (a) Is a resident of the state and has been a resident for six (6) months or longer immediately preceding the filing of the application;

- (b) Is twenty-one (21) years of age or older;
- (c) Is not ineligible to possess a firearm pursuant to 18 U.S.C. sec. 922(d)(1), (g) or KRS 527.040;
- (d) Has not been committed to a state or federal facility for the abuse of a controlled substance or been convicted of a misdemeanor violation of KRS Chapter 218A or similar laws of any other state relating to controlled substances within a three (3) year period immediately preceding the date on which the application is submitted;
- (e) Does not chronically and habitually use alcoholic beverages as evidenced by the applicant having two (2) or more convictions for violating KRS 189A.010 within the three (3) years immediately preceding his application or if the applicant has been committed as an alcoholic pursuant to KRS Chapter 222, or similar laws of any other state, within the three (3) year period immediately preceding the date on which the application is submitted;
- (f) Demonstrates competence with a firearm by any one (1) of the following:
  - 1. Completion, prior to, on, or after October 1, 1996, of any hunter education and firearms safety course approved by the Department of Fish and Wildlife or a similar agency of another state. The Department of Fish and Wildlife may impose additional qualifications by promulgation of administrative regulations to meet the requirements of this section and may establish fees as may be required, so as to avoid a diversion of fish and game funds as specified in 50 C.F.R. Part 80. Any fee assessed shall be reasonable and shall not exceed the actual cost of administering the program;
  - 2. Completion, prior to, on, or after October 1, 1996, of any law enforcement firearms safety or training course or class offered for special local peace officers or special law enforcement officers conducted or approved by the Department of Criminal Justice Training;
  - 3. Completion, prior to, on, or after October 1, 1996, of any firearm safety or training course or class available to the general public offered by law enforcement, junior college, college, or private or public institution or organization or firearms training school, utilizing instructors certified by the Department of Criminal Justice Training; or
  - 4. Completion, prior to, on, or after October 1, 1996, of any firearms training or safety course or class conducted by a state-certified firearms instructor or an instructor holding a certification as a firearms instructor issued by a state or federal agency.

Classes presented pursuant to this paragraph shall include instruction on handguns, the safe use of handguns, the care and cleaning of handguns, handgun marksmanship principles, and actual range firing of a handgun in a safe manner. Classes presented pursuant to this paragraph shall include information on laws relating to firearms as described in KRS Chapters 237 and 527 and the law of the use of force as described in KRS Chapter 503. The Department of Criminal Justice Training, Department of State Police, and any other state agency with the authority to certify firearms instructors, shall promulgate uniform administrative regulations concerning the certification and decertification of all firearms instructors practicing in the Commonwealth of Kentucky. Notwithstanding any other provision of the Kentucky Revised Statutes, no person shall qualify as having demonstrated competence with a firearm pursuant to this subsection, unless certified by a governmental agency of the Commonwealth of Kentucky, or of the federal government. The Administrative Office of the Courts shall publish and make available, at no cost, information in a manner suitable for distribution to class participants. A legible photocopy of a certificate of completion of any of the courses or classes or a notarized affidavit from the instructor, school, club, organization, or group that conducts or teaches the course or class attesting to the completion of the course or class by the applicant shall constitute evidence of qualification under this paragraph. Peace officers who are retired and are members of the Kentucky Employees Retirement System, State Police Retirement System, or County Employees Retirement System *or other retirement system operated by or for a city, county, or urban-county in Kentucky* shall be deemed to have met the training requirement;

- (g) Has not been adjudicated an incompetent under KRS Chapter 202B or has waited three (3) years from the date his competency was restored by the court order under KRS Chapter 202B; and

- (h) Has not been involuntarily committed to a mental institution pursuant to KRS Chapter 202A, unless he possesses a certificate from a psychiatrist licensed in this state that he has not suffered from disability for a period of three (3) years.
- (3) The Department of State Police may deny a license if the applicant has been found guilty of a violation of KRS 508.030 or 508.080 within the three (3) year period prior to the date on which the application is submitted or may revoke a license if the licensee has been found guilty of a violation of KRS 508.030 or 508.080 within the preceding three (3) years.
- (4) The application for a permit, or renewal of a permit, to carry a concealed deadly weapon shall be obtained from the office of the sheriff in the county in which the person resides. The completed application and all accompanying material plus an application fee or renewal fee, as appropriate, of sixty dollars (\$60) shall be presented to the office of the sheriff of the county in which the applicant resides. A retired peace officer who is a member of the Kentucky Employees Retirement System, State Police Retirement System, County Employees Retirement System, or other retirement system operated by or for a city, county, or urban-county in Kentucky shall be exempt from paying the application or renewal fees following the date of his retirement. The sheriff shall transmit the application and accompanying material to the Department of State Police within five (5) working days. Twenty dollars (\$20) of the application fee shall be retained by the office of the sheriff for official expenses of the office. Twenty dollars (\$20) shall be sent to the Department of State Police with the application. Ten dollars (\$10) shall be transmitted by the sheriff to the Administrative Office of the Courts to fund background checks for youth leaders, and ten dollars (\$10) shall be transmitted to the Administrative Office of the Courts to fund background checks for applicants for concealed weapons. The application shall be completed, under oath, on a form promulgated by the Department of State Police by administrative regulation which shall only include:
  - (a) The name, address, place and date of birth, gender, and Social Security number of the applicant;
  - (b) A statement that, to the best of his knowledge, the applicant is in compliance with criteria contained within subsections (2) and (3) of this section;
  - (c) A statement that the applicant has been furnished a copy of this section and is knowledgeable about its provisions;
  - (d) A statement that the applicant has been furnished a copy of, has read, and understands KRS Chapter 503 as it pertains to the use of deadly force for self-defense in Kentucky; and
  - (e) A conspicuous warning that the application is executed under oath and that a materially false answer to any question, or the submission of any materially false document by the applicant, subjects the applicant to criminal prosecution under KRS 523.030.
- (5) The Department of State Police shall deny, suspend, or revoke a license to carry a concealed deadly weapon upon written notice by the Cabinet for Families and Children that the person has a child support arrearage which equals or exceeds the cumulative amount which would be owed after one (1) year of nonpayment, or for failure, after receiving appropriate notice, to comply with a subpoena or warrant relating to paternity or child support proceedings.
- (6) The applicant, if a resident of the Commonwealth, shall submit to the sheriff of the applicant's county of residence:
  - (a) A completed application as described in subsection (5) of this section;
  - (b) A recent color photograph of the applicant, as prescribed by administrative regulation; and
  - (c) A photocopy of a certificate or an affidavit or document as described in subsection (2)(f) of this section.
- (7) The Department of State Police shall, within ninety (90) days after the date of receipt of the items listed in subsection (6) of this section, either:
  - (a) Issue the license; or
  - (b) Deny the application based solely on the grounds that the applicant fails to qualify under the criteria listed in subsection (2) or (3) of this section. If the Department of State Police denies the application, it shall notify the applicant in writing, stating the grounds for denial and informing the applicant of a right to submit, within thirty (30) days, any additional documentation relating to the grounds of denial. Upon receiving any additional documentation, the Department of State Police shall reconsider its decision and

inform the applicant within twenty (20) days of the result of the reconsideration. The applicant shall further be informed of the right to seek de novo review of the denial in the District Court of his place of residence *within ninety (90) days from the date of the letter advising the applicant of the denial.*

- (8) The Department of State Police shall maintain an automated listing of licenseholders and pertinent information, and this information shall be available on-line, upon request, at all times to all Kentucky law enforcement agencies. Except as provided in this subsection, information on applications for licenses, names and addresses, or other identifying information relating to license holders shall be confidential and shall not be made available except to law enforcement agencies. Requests for information to be provided to any requester other than a bona fide law enforcement agency which has direct access to the Law Enforcement Information Network of Kentucky shall be made, in writing, directly to the commissioner of the Department of State Police, together with the fee required for the providing of the information. The Department of State Police shall, upon proper application and the payment of the required fee, provide to the requester in hard copy form only, a list of names of all holders in the Commonwealth of a license to carry a concealed deadly weapon. No identifying information other than the name shall be provided, and information for geographic areas or other subdivisions of any type from the list shall not be provided and shall be confidential. The fee to be charged shall be the same as for other public records provided by the Department of State Police. No request for lists of local or statewide permit holders shall be made to any state or local law enforcement agency, peace officer, or other agency of government other than the Department of State Police, and no state or local law enforcement agency, peace officer, or agency of government, other than the Department of State Police, shall provide any information not entitled to it by law. The names of all persons, other than law enforcement agencies and peace officers, requesting information under this section shall be a public record.
- (9) Within thirty (30) days after the changing of a permanent address, or within thirty (30) days after the loss or destruction of a license, the licensee shall notify the Department of State Police of the loss or destruction. Failure to notify the Department of State Police shall constitute a noncriminal violation with a penalty of twenty-five dollars (\$25) payable to the clerk of the District Court. When a licensee makes application to change his or her residence address or other information on the license, neither the sheriff nor the Department of State Police shall require a surrender of the license until a new license is in the office of the applicable sheriff and available for issuance. Upon the issuance of a new license, the old license shall be destroyed by the sheriff.
- (10) If a license is lost or destroyed, the license shall be automatically invalid, and the person to whom the same was issued may, upon payment of fifteen dollars (\$15) to the Department of State Police, obtain a duplicate, upon furnishing a notarized statement to the Department of State Police that the license has been lost or destroyed.
- (11) A license issued under this section shall be suspended or revoked if the licensee becomes ineligible to be issued a license under the criteria set forth in subsection (2)(a), (c), (d), (e), (f), or (h) of this section. When a domestic violence order or emergency protective order is issued pursuant to the provisions of KRS Chapter 403 against a person holding a license issued under this section, the holder of the permit shall surrender the license to the court or to the officer serving the order. The officer to whom the license is surrendered shall forthwith transmit the license to the court issuing the order. The license shall be suspended until the order is terminated, or until the judge who issued the order terminates the suspension prior to the termination of the underlying domestic violence order or emergency protective order, in writing and by return of the license, upon proper motion by the license holder. Subject to the same conditions as above, a peace officer against whom an emergency protective order or domestic violence order has been issued shall not be permitted to carry a concealed deadly weapon when not on duty, the provisions of KRS 527.020 to the contrary notwithstanding.
- (12) Not less than ninety (90) days prior to the expiration date of the license, the Department of State Police shall mail to each licensee a written notice of the expiration and a renewal form prescribed by the Department of State Police. The licensee may renew his license on or before the expiration date by filing with the sheriff of his county of residence the renewal form, a notarized affidavit stating that the licensee remains qualified pursuant to the criteria specified in subsections (2) and (3) of this section, and the required renewal fee. The license shall be renewed to a qualified applicant upon receipt of the completed renewal application and appropriate payment of fees. When a licensee makes application for a renewal of his or her license, neither the sheriff nor the Department of State Police shall require a surrender of the license until the new license is in the office of the applicable sheriff and available for issuance. Upon the issuance of a new license, the old license shall be destroyed by the sheriff. A licensee who fails to file a renewal application on or before its expiration date may renew his license by paying, in addition to the license fees, a late fee of fifteen dollars (\$15). No



license shall be renewed six (6) months or more after its expiration date, and the license shall be deemed to be permanently expired six (6) months after its expiration date. A person whose license has permanently expired may reapply for licensure pursuant to subsections (5), (6) and (7) of this section.

- (13) No license issued pursuant to this section shall authorize any person to carry a concealed firearm into:
- (a) Any police station or sheriff's office;
  - (b) Any detention facility, prison, or jail;
  - (c) Any courthouse, solely occupied by the Court of Justice courtroom, or court proceeding, except that nothing in this section shall preclude a judge from carrying a concealed weapon;
  - (d) Any meeting of the governing body of a county, municipality, or special district; or any meeting of the General Assembly or a committee of the General Assembly, except that nothing in this section shall preclude a member of the body, holding a concealed deadly weapon license, from carrying a concealed deadly weapon at a meeting of the body of which he is a member;
  - (e) Any portion of an establishment licensed to dispense beer or alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to that purpose;
  - (f) Any elementary or secondary school facility without the consent of school authorities as provided in KRS 527.070, any child-caring facility as defined in KRS 199.011, any day-care center as defined in KRS 199.894, or any certified family child-care home as defined in KRS 199.8982, except however, any owner of a certified child-care home may carry a concealed firearm into the owner's residence used as a certified child-care home;
  - (g) An area of an airport to which access is controlled by the inspection of persons and property; *or*
  - ~~(h) Any church, synagogue, house of worship, or other property owned, leased, or otherwise used and operated by a religious organization in the furtherance of a religious purpose, unless the person carrying the concealed deadly weapon has a concealed deadly weapon license and is the pastor of the church or an officer of the church; or~~
  - ~~(i) Any place where the carrying of firearms is prohibited by federal law.~~
- (14) The owner, business or commercial lessee, or manager of a private business enterprise, day-care center as defined in KRS 199.894 or certified or licensed family child-care home as defined in KRS 199.8982, or a health-care facility licensed under KRS Chapter 216B, except facilities renting or leasing housing, may prohibit persons holding concealed deadly weapon licenses from carrying concealed deadly weapons on the premises and may prohibit employees, not authorized by the employer, holding concealed deadly weapons licenses from carrying concealed deadly weapons on the property of the employer. If the building or the premises are open to the public, the employer or business enterprise shall post signs on or about the premises if carrying concealed weapons is prohibited. Possession of weapons in a vehicle on the premises shall not be a criminal offense so long as the weapons are not removed from the vehicle or brandished while the vehicle is on the premises. A private but not a public employer may prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons in vehicles owned by the employer, but may not prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons in vehicles owned by the employee, except that the Justice Cabinet may prohibit an employee from carrying any weapons, other than the weapons issued or authorized to be used by the employee of the cabinet, in a vehicle while transporting persons under the employee's supervision or jurisdiction. Carrying of a concealed weapon in a location specified in this subsection by a license holder shall not be a criminal act but may subject the person to denial from the premises or removal from the premises, and, if an employee of an employer, disciplinary measures by the employer.
- (15) All moneys collected by the Department of State Police pursuant to this section shall be used to administer the provisions of this section. By March 1 of each year, the Department of State Police and the Administrative Office of the Courts shall submit reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the amounts of money collected and the expenditures related to this section and KRS 237.115, 244.125, 527.020, and 527.070, and the administration of the provisions of this section and KRS 237.115, 244.125, 527.020, and 527.070.
- (16) The General Assembly finds as a matter of public policy that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed firearms and to occupy the field of regulation of the bearing of

concealed firearms to ensure that no person who qualifies under the provisions of this section is denied his rights. The General Assembly does not delegate to the Department of State Police the authority to regulate or restrict the issuing of licenses provided for in this section beyond those provisions contained in this section. This section shall be liberally construed to carry out the constitutional right to bear arms for self-defense.

- (17) (a) A person who has a valid license issued by another state of the United States to carry a concealed deadly weapon in that state may, subject to provisions of Kentucky law, carry a concealed deadly weapon in Kentucky, and his license shall be considered as valid in Kentucky.
- (b) The Department of State Police shall, not later than thirty (30) days after July 15, 1998, and not less than once every six (6) months thereafter, make written inquiry of the concealed deadly weapon carrying licensing authorities in each other state as to whether a Kentucky resident may carry a concealed deadly weapon in their state based upon having a valid Kentucky concealed deadly weapon license, or whether a Kentucky resident may apply for a concealed deadly weapon carrying license in that state based upon having a valid Kentucky concealed deadly weapon license. The Department of State Police shall attempt to secure from each other state permission for Kentucky residents who hold a valid Kentucky concealed deadly weapon license to carry concealed deadly weapons in that state, either on the basis of the Kentucky license or on the basis that the Kentucky license is sufficient to permit the issuance of a similar license by the other state. The Department of State Police shall enter into a written reciprocity agreement with the appropriate agency in each state that agrees to permit Kentucky residents to carry concealed deadly weapons in the other state on the basis of a Kentucky-issued concealed deadly weapon license or that will issue a license to carry concealed deadly weapons in the other state based upon a Kentucky concealed deadly weapon license. If a reciprocity agreement is reached, the requirement to recontact the other state each six (6) months shall be eliminated as long as the reciprocity agreement is in force. The information shall be a public record and shall be available to individual requesters free of charge for the first copy and at the normal rate for open records requests for additional copies.
- (18) By March 1 of each year, the Department of State Police shall submit a statistical report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the number of licenses issued, revoked, suspended, and denied since the previous report and in total and also the number of licenses currently valid. The report shall also include the number of arrests, convictions, and types of crimes committed since the previous report by individuals licensed to carry concealed weapons.

Section 2. Any person licensed to carry a concealed firearm upon the effective date of this Act shall automatically have his or her license to carry a concealed firearm extended to a period of five (5) years.

**Approved April 21, 2000**

## **CHAPTER 456**

**(HB 182)**

AN ACT relating to reorganization.

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

Section 1. KRS 439.302 is amended to read as follows:

The Commission on Correction and Community Service shall consist of the secretary of the Justice Cabinet, the commissioner of the Department of Corrections, the deputy commissioner of the Division of Community Services and Local Facilities; the deputy commissioner of the Division of Adult Correctional Institutions; ~~the chairman of the Parole Board;~~ two (2) Circuit Judges designated by the Governor; five (5) public members appointed by the Governor, these to include a psychiatrist, a professional educator, a member who is qualified to express the views of business and industry, a member who is qualified to express the views of organized labor, and a practicing attorney; and four (4) at-large appointees. The judicial and public members shall serve for the remainder of the term of office of the Governor during whose incumbency they were appointed, unless sooner removed for cause; all other members shall serve during their terms of office. The secretary of the Justice Cabinet shall act as chairman of the commission. All public members of the commission shall receive twenty-five dollars (\$25) per day for attending each meeting. Each commission member shall be reimbursed for his necessary travel and other expenses actually incurred in the discharge of his duties on the commission.

Section 2. KRS 439.320 is amended to read as follows:

- (1) The Governor shall appoint a Parole Board consisting of seven (7) members, to be confirmed by the Senate in accordance with KRS 11.160. He shall make each appointment from a list of three (3) names given to him by the Commission on Correction and Community Service. Each member appointed to the board shall have had at least five (5) years of actual experience in the field of penology, correction work, law enforcement, sociology, law, education, social work, medicine, or a combination thereof, or have served at least five (5) years previously on the Parole Board. No more than four (4) board members shall be of the same political party. The board shall be attached to the Justice Cabinet for administrative purposes only; the Department of Corrections shall provide any clerical, stenographic, administrative, and expert staff assistance the board deems necessary to carry out its duties.
- (2) The Governor shall name one (1) member as chairman of the board. ~~[- The chairman shall be the chief administrative officer of the board and shall be responsible for all administrative, organizational, and personnel matters of the board.]~~
- (3) The members of the board shall give full time to the duties of their office and shall receive necessary traveling expenses and a salary to be determined pursuant to KRS 64.640(2), except the chairman of the board shall receive additional compensation of one thousand dollars (\$1,000) per year for his services. Their terms of office shall be four (4) years and until their successors are appointed and have qualified. Their successors shall be appointed thereafter as provided in this section for terms of four (4) years, and a vacancy occurring before expiration of the term of office shall be similarly filled for the unexpired term. The chairman of the board shall serve as such until the expiration of his term at which time the Governor shall name his successor and designate the chairman of the board. If a vacancy occurs in the chairmanship of the board before the expiration of the term, the Governor may name a successor to serve for the remainder of the unexpired term.
- (4) The organization of the board shall be determined by the chairman and a quorum of the board shall be as follows:
  - (a) For parole hearings at which the inmate appears before the board, three (3) members; and
  - (b) For all other business, four (4) members. A decision by any three (3) member panel in a parole hearing shall be final only if it is unanimous; otherwise the case must be reviewed and voted on by not less than four (4) members of the board. Parole decisions for inmates who do not appear before the board shall be reviewed and voted on by not less than four (4) members of the board.
- (5) The Governor may not remove any member of the board except for disability, inefficiency, neglect of duty, or malfeasance in office. Before removal, he shall give the member a written copy of the charges against him and shall fix the time when he can be heard in his defense, which shall not be less than ten (10) days thereafter. Upon removal, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against the member and the findings thereupon with a record of the proceedings.
- (6) Upon the expiration of the terms of office of the two (2) board members whose terms expire May 23, 1994, the Governor shall appoint two (2) members to serve terms which will expire June 30, 1995. Thereafter, appointments to these two (2) terms shall be for four (4) years and shall be filled as provided for in subsection (3) of this section. The Governor may reappoint present members if they meet the qualifications set forth in subsection (1) of this section.
- (7) The Governor shall appoint up to two (2) part-time Parole Board members, to be confirmed by the Senate in accordance with KRS 11.160. The appointment process for these members shall be the same as set forth in subsection (1) of this section, and these members shall possess the same qualifications of a full-time Parole Board member with the additional requirement that they shall have previously served as a full-time Parole Board member. These members may participate in considering the grant or revocation of parole at the request of the chairman. No more than one (1) part-time Parole Board member shall serve on any panel of the board as set forth in subsection (4) of this section. The part-time Parole Board member called upon to serve shall be paid at a per diem rate equal to the per diem rate for the salary of a newly appointed full-time member and shall receive necessary travel expenses. The part-time Parole Board member shall serve for a period of four (4) years from the date of appointment and may be reappointed.
- (8) ***The office of executive director of the Parole Board is created. The office shall be headed by an executive director who shall be appointed by and directly responsible to the secretary of the Justice Cabinet in matters relating to administration. The executive director shall be responsible for the support services to the Parole Board in the area of financial, personnel, and facilities management; shall provide recommendations on administrative issues affecting the board to the secretary of the Justice Cabinet, the chairman of the Parole***

***Board, and Parole Board members; shall review and draft legislation and promulgate administrative regulations for the board; and shall review parole data and conduct long-range planning as relevant to the planning needs of the board.***

Section 3. The General Assembly confirms Executive Order 99-1329 reorganizing the Parole Board, dated September 28, 1999, to the extent it is not otherwise confirmed by this Act.

**Approved April 21, 2000**

## **CHAPTER 457**

### **(HB 202)**

AN ACT relating to inherited metabolic disease.

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

Section 1. KRS 205.560 is amended to read as follows:

- (1) The scope of medical care for which the Cabinet for Health Services undertakes to pay shall be designated and limited by regulations promulgated by the cabinet, pursuant to the provisions in this section. Within the limitations of any appropriation therefor, the provision of complete upper and lower dentures to recipients of Medical Assistance Program benefits who have their teeth removed by a dentist resulting in the total absence of teeth shall be a mandatory class in the scope of medical care. Payment to a dentist of any Medical Assistance Program benefits for complete upper and lower dentures shall only be provided on the condition of a preauthorized agreement between an authorized representative of the Medical Assistance Program and the dentist prior to the removal of the teeth. The selection of another class or other classes of medical care shall be recommended by the council to the secretary for health services after taking into consideration, among other things, the amount of federal and state funds available, the most essential needs of recipients, and the meeting of such need on a basis insuring the greatest amount of medical care as defined in KRS 205.510 consonant with the funds available, including, but not limited to, the following categories, except where the aid is for the purpose of obtaining an abortion:
  - (a) Hospital care, including drugs, and medical supplies and services during any period of actual hospitalization;
  - (b) Nursing-home care, including medical supplies and services, and drugs during confinement therein on prescription of a physician, dentist, or podiatrist;
  - (c) Drugs, nursing care, medical supplies, and services during the time when a recipient is not in a hospital but is under treatment and on the prescription of a physician, dentist, or podiatrist. ***For purposes of this paragraph, drugs shall include those amino acid modified preparations and low-protein modified food products for the treatment of the following inherited metabolic diseases, if the amino acid modified preparations or low-protein modified food products are prescribed for therapeutic treatment and are administered under the direction of a physician, and are limited to the following conditions:***
    1. ***Phenylketonuria;***
    2. ***Hyperphenylalaninemia;***
    3. ***Tyrosinemia (types I, II, and III);***
    4. ***Maple syrup urine disease;***
    5. ***A-ketoacid dehydrogenase deficiency;***
    6. ***Isovaleryl-CoA dehydrogenase deficiency;***
    7. ***3-methylcrotonyl-CoA carboxylase deficiency;***
    8. ***3-methylglutaconyl-CoA hydratase deficiency;***
    9. ***3-hydroxy-3-methylglutaryl-CoA lyase deficiency (HMG-CoA lyase deficiency);***
    10. ***B-ketothiolase deficiency;***
    11. ***Homocystinuria;***

12. *Glutaric aciduria (types I and II);*
  13. *Lysinuric protein intolerance;*
  14. *Non-ketotic hyperglycinemia;*
  15. *Propionic acidemia,*
  16. *Gyrate atrophy;*
  17. *Hyperornithinemia/hyperammonemia/homocitrullinuria syndrome;*
  18. *Carbamoyl phosphate synthetase deficiency;*
  19. *Ornithine carbamoyl transferase deficiency;*
  20. *Citrullinemia;*
  21. *Arginosuccinic aciduria;*
  22. *Methylmalonic acidemia; and*
  23. *Argininemia;*
- (d) Physician, podiatric, and dental services;
  - (e) Optometric services for all age groups shall be limited to prescription services, services to frames and lenses, and diagnostic services provided by an optometrist, to the extent the optometrist is licensed to perform the services and to the extent the services are covered in the ophthalmologist portion of the physician's program. Eyeglasses shall be provided only to children under age twenty-one (21);
  - (f) Drugs on the prescription of a physician used to prevent the rejection of transplanted organs if the patient is indigent;
  - (g) Nonprofit neighborhood health organizations or clinics where some or all of the medical services are provided by licensed registered nurses or by advanced medical students presently enrolled in a medical school accredited by the Association of American Medical Colleges and where the students or licensed registered nurses are under the direct supervision of a licensed physician who rotates his services in this supervisory capacity between two (2) or more of the nonprofit neighborhood health organizations or clinics specified in this paragraph;
  - (h) Services provided by health-care delivery networks as defined in KRS 216.900; and
  - (i) Services provided by midlevel health-care practitioners as defined in KRS 216.900.
- (2) Payments for hospital care, nursing-home care, and drugs or other medical, ophthalmic, podiatric, and dental supplies shall be on bases which relate the amount of the payment to the cost of providing the services or supplies. It shall be one (1) of the functions of the council to make recommendations to the Cabinet for Health Services with respect to the bases for payment. In determining the rates of reimbursement for long-term-care facilities participating in the Medical Assistance Program, the Cabinet for Health Services shall, to the extent permitted by federal law, not allow the following items to be considered as a cost to the facility for purposes of reimbursement:
    - (a) Motor vehicles that are not owned by the facility, including motor vehicles that are registered or owned by the facility but used primarily by the owner or family members thereof;
    - (b) The cost of motor vehicles, including vans or trucks, used for facility business shall be allowed up to fifteen thousand dollars (\$15,000) per facility, adjusted annually for inflation according to the increase in the consumer price index-u for the most recent twelve (12) month period, as determined by the United States Department of Labor. Medically equipped motor vehicles, vans, or trucks shall be exempt from the fifteen thousand dollar (\$15,000) limitation. Costs exceeding this limit shall not be reimbursable and shall be borne by the facility. Costs for additional motor vehicles, not to exceed a total of three (3) per facility, may be approved by the Cabinet for Health Services if the facility demonstrates that each additional vehicle is necessary for the operation of the facility as required by regulations of the cabinet;
    - (c) Salaries paid to immediate family members of the owner or administrator, or both, of a facility, to the extent that services are not actually performed and are not a necessary function as required by regulation

of the cabinet for the operation of the facility. The facility shall keep a record of all work actually performed by family members;

- (d) The cost of contracts, loans, or other payments made by the facility to owners, administrators, or both, unless the payments are for services which would otherwise be necessary to the operation of the facility and the services are required by regulations of the Cabinet for Health Services. Any other payments shall be deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for Health Services. Interest paid to the facility for loans made to a third party may be used to offset allowable interest claimed by the facility;
  - (e) Private club memberships for owners or administrators, travel expenses for trips outside the state for owners or administrators, and other indirect payments made to the owner, unless the payments are deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for Health Services; and
  - (f) Payments made to related organizations supplying the facility with goods or services shall be limited to the actual cost of the goods or services to the related organization, unless it can be demonstrated that no relationship between the facility and the supplier exists. A relationship shall be considered to exist when an individual, including brothers, sisters, father, mother, aunts, uncles, and in-laws, possesses a total of five percent (5%) or more of ownership equity in the facility and the supplying business. An exception to the relationship shall exist if fifty-one percent (51%) or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.
- (3) No vendor payment shall be made unless the class and type of medical care rendered and the cost basis therefor has first been designated by regulation.
  - (4) The rules and regulations of the Cabinet for Health Services shall require that a written statement, including the required opinion of a physician, shall accompany any claim for reimbursement for induced premature births. This statement shall indicate the procedures used in providing the medical services.
  - (5) The range of medical care benefit standards provided and the quality and quantity standards and the methods for determining cost formulae for vendor payments within each category of public assistance and other recipients shall be uniform for the entire state, and shall be designated by regulation promulgated within the limitations established by the Social Security Act and federal regulations. It shall not be necessary that the amount of payments for units of services be uniform for the entire state but amounts may vary from county to county and from city to city, as well as among hospitals, based on the prevailing cost of medical care in each locale and other local economic and geographic conditions, except that insofar as allowed by applicable federal law and regulation, the maximum amounts reimbursable for similar services rendered by physicians within the same specialty of medical practice shall not vary according to the physician's place of residence or place of practice, as long as the place of practice is within the boundaries of the state.
  - (6) Nothing in this section shall be deemed to deprive a woman of all appropriate medical care necessary to prevent her physical death.
  - (7) To the extent permitted by federal law, no medical assistance recipient shall be recertified as qualifying for a level of long-term care below the recipient's current level, unless the recertification includes a physical examination conducted by a physician licensed pursuant to KRS Chapter 311 or by an advanced registered nurse practitioner licensed pursuant to KRS Chapter 314 and acting under the physician's supervision.
  - (8) If payments made to community mental health centers, established pursuant to KRS Chapter 210, for services provided to the mentally retarded exceed the actual cost of providing the service, the balance of the payments shall be used solely for the provision of other services to the mentally retarded through community mental health centers.
  - (9) No long-term-care facility, as defined in KRS 216.510, providing inpatient care to recipients of medical assistance under Title XIX of the Social Security Act on July 15, 1986, shall deny admission of a person to a bed certified for reimbursement under the provisions of the Medical Assistance Program solely on the basis of the person's paying status as a Medicaid recipient. No person shall be removed or discharged from any facility solely because they became eligible for participation in the Medical Assistance Program, unless the facility can demonstrate the resident or the resident's responsible party was fully notified in writing that the resident was being admitted to a bed not certified for Medicaid reimbursement. No facility may decertify a bed occupied by

a Medicaid recipient or may decertify a bed that is occupied by a resident who has made application for medical assistance.

- (10) Family-practice physicians practicing in geographic areas with no more than one (1) primary-care physician per five thousand (5,000) population, as reported by the United States Department of Health and Human Services, shall be reimbursed one hundred twenty-five percent (125%) of the standard reimbursement rate for physician services.
- (11) The Cabinet for Health Services may make payments under the Medical Assistance program for services which are within the lawful scope of practice of a chiropractor licensed pursuant to KRS Chapter 312, to the extent the Medical Assistance Program pays for the same services provided by a physician.

Section 2. KRS 213.141 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, the cabinet shall prescribe by regulation a fee not to exceed five dollars (\$5), to be paid for certified copies of certificates or records, or for a search of the files or records when no copy is made, or for copies or information provided for research, statistical, or administrative purposes.
- (2) The cabinet shall prescribe by administrative regulation pursuant to KRS Chapter 13A a fee not to exceed ~~ten~~~~nine~~ dollars ~~(\$10)~~~~(\$9)~~ to be paid for a certified copy of a record of a birth, three dollars (\$3) of which shall be used by the Cabinet for Health Services or the Cabinet for Families and Children for the sole purpose of contracting for the operation of private, not-for-profit, self-help, education, and support groups for parents who want to prevent or cease physical, sexual, or mental abuse of children, **and one dollar (\$1) of which shall be used by the Division of Maternal and Child Health to pay for amino acid modified preparations and low-protein modified food products for the treatment of inherited metabolic diseases listed in subsection (1)(c) of Section 1 of this Act, if:**
  - (a) *The amino acid modified preparations or low-protein modified food products are prescribed for the therapeutic treatment of inherited metabolic diseases listed in subsection (1)(c) of Section 1 of this Act and are administered under the direction of a physician; and*
  - (b) *The affected person's amino acid modified formula and foods are not covered under any public or private health benefit plan.*
- (3) Fees collected under this section by the state registrar shall be used to help defray the cost of administering the system of vital statistics.
- (4) No fee or compensation shall be allowed or paid for furnishing certificates of birth or death required in support of any claim against the government for compensation, insurance, back pay, or other allowances or benefits for any person who has at any time served as a member of the Army, Navy, Marine Corps, or Air Force of the United States.
- (5) The cabinet shall notify the State Board of Elections monthly of the name, address, birthdate, sex, race, and Social Security number of residents of the Commonwealth who died during the previous month. This data shall include only those persons who were over the age of eighteen (18) years at the date of death. No fee or compensation shall be allowed for furnishing these lists.

Section 3. KRS 214.155 is amended to read as follows:

- (1) The administrative officer or other person in charge of each institution caring for infants twenty-eight (28) days or less of age and the person required in pursuance of the provisions of KRS 213.046 shall register the birth of a child, and cause to have administered to every such infant or child in its or his care tests for inborn errors of metabolism, including but not limited to phenylketonuria (PKU), in accordance with rules or regulations prescribed by the secretary of the Cabinet for Health Services. Testing, recording, and reporting of the results of such tests shall be performed at such times and in such manner as may be prescribed by the secretary of the Cabinet for Health Services or his designee. The secretary of the Cabinet for Health Services shall by regulation establish and collect fees to cover the cost of analyzing the testing samples for inborn errors of metabolism.
- (2) Nothing in this section shall be construed to require the testing of any child whose parents are members of a nationally recognized and established church or religious denomination, the teachings of which are opposed to medical tests, and who object in writing to the testing of such child on that ground.

- (3) *The cabinet shall make available the names and addresses of health care providers, including, but not limited to, physicians, nurses, and nutritionists, who may provide postpartum home visits to any family whose infant or child has tested positive for an inborn error of metabolism, including, but not limited to, PKU.*

SECTION 4. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A health benefit plan that provides coverage for a family or dependent shall provide coverage of a newly born child of the insured from the moment of birth.*
- (2) *Coverage for a newly born child shall consist of coverage of injury or sickness, including the necessary care and treatment of medically diagnosed inherited metabolic diseases.*
- (3) *If payment of a specific premium or fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer within thirty-one (31) days after the date of birth in order to have the coverage continue beyond that thirty-one (31) day period.*
- (4) (a) *For purposes of this subsection:*
1. *"Amino acid modified preparation" means a product intended for the dietary treatment of an inherited metabolic disease listed in subsection (1)(c) of Section 1 of this Act under the direction of a physician; and*
  2. *"Low-protein modified food" means a product formulated to have less than one (1) gram of protein per serving and intended for the dietary treatment of an inherited metabolic disease listed in subsection (1)(c) of Section 1 of this Act under the direction of a physician.*
- (b) *A health benefit plan that provides prescription drug coverage shall provide that coverage for amino acid modified preparations and low-protein modified food products for the treatment of inherited metabolic diseases if the amino acid products are prescribed for the therapeutic treatment of inherited metabolic diseases and are administered under the direction of a physician. Coverage under this subsection may be subject, for each plan year, to a cap of four thousand dollars (\$4,000) on both individual medical food prescription expenditures and medical formulas, subject to annual inflation adjustments.*
- (5) *The requirements of this section shall apply to all health benefit plans delivered on and after the effective date of this Act.*
- (6) *Nothing in this section or Section 1, 2, or 3 of this Act shall be construed to require a health benefit plan to provide coverage for an amino acid modified preparation or low-protein modified food for the treatment of lactose intolerance, protein intolerance, food allergy, food sensitivity, or any other condition or disease not listed in subsection (1)(c) of Section 1 of this Act.*

Approved April 21, 2000

## CHAPTER 458

### (HB 213)

AN ACT relating to the personal care assistance program.

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

Section 1. KRS 205.925 is amended to read as follows:

The cabinet shall implement the provisions of KRS 205.900 to 205.920 on a statewide basis and shall serve at least two hundred (200) severely physically disabled adults *or more as provided in the state executive branch budget bill.*

Approved April 21, 2000



**CHAPTER 459****(HB 216)**

AN ACT relating to hunting and fishing licenses.

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

Section 1. KRS 150.175 is amended to read as follows:

- (1) The kinds of licenses and tags authorized by this chapter, and the acts authorized to be performed under the licenses and tags, subject to the other provisions of this chapter and subject to administrative regulations promulgated under this chapter, shall be as follows:
  - (a) Statewide resident sport fishing license, which authorizes the holder to take fishes by angling, or take crayfish by a minnow seine, or by hand, to take minnows by the use of a minnow seine, minnow trap, or dip net, or to take fishes by grabbing, gigging, snagging, snaring, jugging, and bow and arrow, and to take frogs and turtles from any waters in any county of this state open for such purposes and subject to the limitations in this chapter and additional limitations that the department may from time to time prescribe. This license shall not authorize the holder to sell fish;
  - (b) A short-term sport fishing license, which may be issued only to a nonresident and which authorizes the holder to perform all acts authorized by a statewide sport fishing license and subject to the same limitations or prescribed administrative regulations. This license shall not authorize the holder to sell fish;
  - (c) A resident commercial fishing license and a nonresident commercial fishing license, which authorize a holder to perform any act authorized by a sport fishing license and to take rough fishes from the waters of the state by the use of commercial fishing gear as prescribed by administrative regulation. The license shall also authorize the holder to sell rough fishes, other than those protected by administrative regulation;
  - (d) A commercial fishing gear tag, which shall be attached to each piece of commercial fishing gear including hoop nets, slat traps, trotline, wing nets, and to each one hundred (100) feet of linear gear or portion thereof in use, including commercial seines, gill nets, or trammel nets. Commercial gear tags may be issued only to a person holding a resident or nonresident commercial fishing license;
  - (e) Live fish and bait dealer's licenses, resident and nonresident, which authorize the holder to sell bait and live fish as may be prescribed by administrative regulation;
  - (f) Musseling licenses, resident and nonresident, which authorize the holder to take mussels for commercial purposes as may be prescribed by administrative regulation;
  - (g) A statewide resident hunting license, which authorizes the holder to take or pursue wild animals, wild birds, frogs, and turtles with gun, bow and arrow, dog, or falcon, or to participate in a fox-hunting party engaged in the hunting or pursuing of foxes with dogs for sport, according to the provisions of the laws and administrative regulations of the department;
  - (h) A junior statewide hunting license, which may be issued to a person before he has reached his sixteenth birthday, and which authorizes the holder to exercise all the privileges authorized by a statewide hunting license. No junior hunting license shall be issued without the written permission of parent, guardian, or person having custody of the person under sixteen (16) years of age;
  - (i) Trapping licenses, resident and nonresident, which authorize the holder to take wild animals by trapping upon his own lands or upon the lands of another person, if the holder of the license shall have first obtained a written consent as provided in KRS 150.092;
  - (j) Taxidermist licenses, commercial and noncommercial, which authorize the holder to engage in the act of preparing, stuffing, and mounting the skins of wildlife;
  - (k) A commercial guide's license, which authorizes the holder to guide hunting and fishing parties according to the provisions of the laws and administrative regulations of the department;
  - (l) Fur buyer's licenses, resident and nonresident, which authorize the holder to buy raw furs from licensed trappers and hunters and to sell raw furs so purchased. Applicants for the license shall state the number

of premises to be used and shall display at each a copy of the license as furnished by the department, except that the commissioner may limit the number of copies furnished and may revoke the license for violation;

- (m) A fur processor's license, which may be issued only to a resident, a partnership, firm, or corporation of this state and which authorizes the holder to buy raw furs when in legal possession for processing, manufacture, or retention in cold storage or for resale;
- (n) A nonresident sport fishing license, which authorizes the holder to perform any act authorized by a resident statewide sport fishing license. This license shall not authorize the holder to sell fish;
- (o) A nonresident annual hunting license, which authorizes the holder to perform any act authorized by a resident statewide hunting license;
- (p) Shoot-to-retrieve field trial permits, four (4) day and single day, which authorize a permit holder to conduct a shoot-to-retrieve field trial on private or government-owned lands. With a four (4) day permit, all participants, whether residents or nonresidents, shall not be required to possess any other license to participate in the permitted field trial, and the permit shall expire four (4) days after the date on which the field trial began. With the single day permit, the permit is valid for one (1) day and all participants shall have a valid resident or nonresident annual Kentucky hunting license. A permit is not required to conduct a shoot-to-retrieve field trial on a licensed shooting preserve; however, all participants that take or attempt to take game shall have in their possession a resident or nonresident annual Kentucky hunting license or a nonresident shooting preserve license;
- (q) A special license to nonresidents for the purpose of hunting on licensed hunting preserves. This license shall be good only for the preserve for which it was issued and shall remain in effect only for one (1) year. These licenses shall be issued in ink by the preserve manager, and he shall ensure that each hunter is properly licensed before going into the field. When the hunter owns either a nonresident or resident statewide hunting license for the current year, the special license shall not be required. The commissioner, with the approval of the commission, may establish and regulate hunting preserves, either private or commercial;
- (r) A big game permit and a junior big game permit, which, in combination with a valid statewide hunting license or a valid junior statewide hunting license, authorize the holder to take or pursue deer, bear, or wild turkey, in any designated open area of this state, during the open season and according to the provisions of the laws and administrative regulations governing the hunting;
- (s) A combination hunting and fishing license, which authorizes only resident holders to perform all acts valid under either a sport fishing or hunting license;
- (t) A trout permit, which in combination with a valid statewide fishing license, authorizes the holder to take trout by angling or as may be prescribed by administrative regulation;
- (u) A commercial waterfowl permit, which authorizes the holder to establish and operate a commercial waterfowl hunting preserve;
- (v) A short-term hunting license, which may be issued only to a nonresident and which authorizes the holder to perform all acts authorized by a statewide hunting license, except for hunting big game species for which an annual nonresident hunting license shall be required, and according to the provisions of the laws and administrative regulations of the department;
- (w) A joint statewide resident sport fishing license issued to a husband and wife which authorizes them to take fish as provided in subsection (1) of this section. The license fee for this joint license shall be ten percent (10%) less than the license fee set by the commission for two (2) statewide resident sport fishing licenses;
- (x) A Kentucky waterfowl permit, which in combination with a valid statewide hunting license and compliance with applicable federal law, authorizes the holder to take or pursue waterfowl and migratory shore or upland game birds;
- (y) A pay lake license which authorizes the holder to operate privately owned impounded waters for fishing purposes for which a fee is charged;
- (z) A migratory game bird permit, which, in combination with a statewide hunting license and compliance with applicable federal law, allows the holder to take migratory shore or upland game birds; and

- (aa) A senior/disabled combination hunting and fishing license, which authorizes the holder to perform all acts valid under a sport fishing license, a sport hunting license, or a state permit to take deer, turkey, trout, waterfowl, or migratory shore or upland game birds, and which shall be available to a Kentucky resident who is:
1. Sixty-five (65) years of age or older;
  2. An American veteran at least fifty percent (50%) disabled as a result of a service-connected disability; or
  3. Declared permanently and totally disabled by the Federal Social Security Administration, *the United States Office of Personnel Management, the Teachers' Retirement System of the State of Kentucky*, the Department of Workers' Claims, or its equivalent from another state, or the United States Railroad Retirement Board.

The senior/disabled combination license shall not be valid unless the holder carries proof of residency and proof of age or disability, as the department may require by administrative regulation, on his or her person while performing an act authorized by the license.

**Approved April 21, 2000**

## CHAPTER 460

**(HB 231)**

AN ACT relating to transportation.

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

Section 1. KRS 186.675 is amended to read as follows:

- (1) The annual registration fee for trailers and semitrailers which are drawn by motor vehicles required to be licensed under KRS 186.050(1) shall be four dollars and fifty cents (\$4.50). The annual registration fee for trailers and semitrailers which are drawn by motor vehicles required to be licensed under KRS 186.050(3) to (13) shall be nineteen dollars and fifty cents (\$19.50).
- (2) The provisions of KRS 186.650 to 186.700 shall not apply to privately owned and operated trailers used for the transportation of:
  - (a) Boats;~~;~~
  - (b) Luggage;~~;~~
  - (c) Personal effects;~~;~~
  - (d) Farm products, farm supplies, or farm equipment;
  - (e) *All-terrain vehicles as defined in KRS 189.010(24);*
  - (f) *Wildlife as defined in KRS 150.010(41) that the owner or operator of the trailer has obtained while hunting; and*
  - (g) *Firearms or other supplies used in conjunction with hunting wildlife.*
- (3) The registration fee for mobile homes and recreational vehicles shall be nine dollars and fifty cents (\$9.50) except the registration fee for camping trailers, travel trailers, and truck campers shall be four dollars and fifty cents (\$4.50). The clerk shall issue the registration plate furnished by the cabinet and shall be paid for this service the sum of one dollar (\$1).
- ~~(4)~~~~(2)~~ Beginning April 1, 1993, at the request of the owner, trailers and semitrailers which are drawn by motor vehicles required to be licensed under KRS 186.050(3) to (13) may be permanently registered, except the registration shall expire when the trailer or semitrailer is sold or when it is otherwise permanently removed from service by the owner. The registration fee for the period shall be ninety-eight dollars (\$98). The clerk shall issue the registration plate furnished by the cabinet and shall be paid for this service the sum of three dollars (\$3).

Section 2. KRS 189.515 is amended to read as follows:

- (1) Except for vehicles authorized to operate on a public highway as of July 15, 1998, and except as provided in subsection (6) of this section, a person shall not operate an all-terrain vehicle upon any public highway or roadway or upon the right-of-way of any public highway or roadway.
- (2) A person shall not operate an all-terrain vehicle on private property without the consent of the landowner, tenant, or individual responsible for the property.
- (3) A person shall not operate an all-terrain vehicle on public property unless the governmental agency responsible for the property has approved the use of all-terrain vehicles.
- (4) Except for vehicles authorized to operate on a public highway ~~as of July 15, 1998~~, a person operating an all-terrain vehicle on public property shall wear approved protective headgear, in the manner prescribed by the secretary of the Transportation Cabinet, at all times that the vehicle is in motion. The approved headgear requirement shall not apply when the operator of any all-terrain vehicle is engaged in:
  - (a) Farm or agriculture related activities;
  - (b) Mining or mining exploration activities;
  - (c) Logging activities;
  - (d) Any other business, commercial, or industrial activity; or
  - (e) Use of that vehicle on private property.
- (5)
  - (a) A person under the age of sixteen (16) years shall not operate an all-terrain vehicle with an engine size exceeding ninety (90) cubic centimeters displacement, and a person under the age of sixteen (16) years shall not operate an all-terrain vehicle except under direct parental supervision.
  - (b) A person under the age of twelve (12) years shall not operate an all-terrain vehicle with an engine size exceeding seventy (70) cubic centimeters displacement.
- (6)
  - (a) ***A person may operate an all-terrain vehicle on any two (2) lane public highway in order to cross the highway. In crossing the highway under this paragraph, the operator shall cross the highway at as close to a ninety (90) degree angle as is practical and safe, and shall not travel on the highway for more than two-tenths (2/10) of a mile.***
  - (b) ***A person may operate an all-terrain vehicle on any two (2) lane public highway, if the operator is engaged in farm or agricultural related activities, construction, road maintenance, or snow removal.***
  - (c) The Transportation Cabinet may designate, and a city or county government may designate, those public highways, segments of public highways, and adjoining rights-of-way of public highways under its jurisdiction where all-terrain vehicles that ~~are~~<sup>were</sup> prohibited ~~as of July 15, 1998~~, may be operated.
  - (d) ***A person operating an all-terrain vehicle on a public highway under this subsection shall possess a valid operator's license.***
  - (e) ***A person operating an all-terrain vehicle on a public highway under this subsection shall comply with all applicable traffic regulations.***
  - (f) ***A person shall not operate an all-terrain vehicle under this subsection unless the all-terrain vehicle has at least one (1) headlight and two (2) taillights, which shall be illuminated at all times the vehicle is in operation.***
  - (g) ***A person operating an all-terrain vehicle under this subsection shall restrict the operation to daylight hours, except when engaged in snow removal or emergency road maintenance.***

Approved April 21, 2000

## CHAPTER 461

(HB 240)

AN ACT relating to reorganization.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 12 IS CREATED TO READ AS FOLLOWS:

*The Office of Early Childhood Development is hereby created within the Office of the Governor. The office shall be headed by an executive director, who shall be appointed by the Governor in accordance with KRS 11.040 and shall serve at the pleasure of and under the direction of the Governor.*

- (1) *The office's duties, rights, and responsibilities shall include, but not be limited to, the following:*
  - (a) *Provide assistance to the Governor's Early Childhood Task Force in accomplishing its mission and charge as set forth in Executive Order 99-351;*
  - (b) *Create a strategic plan to design Kentucky's early childhood development efforts toward assisting families and enhancing opportunities for young children to succeed as citizens;*
  - (c) *Craft coordination and collaboration between Kentucky communities, various levels of state and local government, nonprofit organizations, businesses, health organizations, churches, and parents to provide integrated and comprehensive services for all families that undergird the early development of children;*
  - (d) *Identify and assess the most common challenges, existing resources, and services within the state and make recommendations to the Governor, state legislature, or other governing bodies regarding the demand and effectiveness of present services and improvements that should be addressed;*
  - (e) *Develop performance measures that will provide consistent and fair evaluation and accountability regarding the effectiveness of service providers, programs, activities, and services affecting early childhood development;*
  - (f) *Design information campaigns to raise public awareness and promote citizen engagement regarding the critical nature of early childhood development and to increase the will of citizens to make quality resources and services more widely available to families and children;*
  - (g) *Create the beginning of a seamless system for youth that will assist them from birth until they begin their careers; and*
  - (h) *Undertake new and progressive initiatives to improve and enhance the delivery of services affecting early childhood development.*
- (2) *The executive director may, at the request of the Governor or any cabinet secretary, serve as a designee on boards, commissions, task forces, or other committees addressing issues relating to early childhood development.*
- (3) *The Finance and Administration Cabinet, the Governor's Office of Policy and Management, and the Personnel Cabinet shall take all steps necessary to effectuate the provisions of this section.*
- (4) *The Governor shall appoint a special advisor to serve the Office of Early Childhood Development.*

Section 2. KRS 12.023 is amended to read as follows:

The following organizational units and administrative bodies shall be attached to the Office of the Governor:

- (1) Council on Postsecondary Education;
- (2) Department of Military Affairs;
- (3) Department for Local Government;
- (4) Kentucky Commission on Human Rights;
- (5) Kentucky Commission on Women;
- (6) Kentucky Commission on Military Affairs;
- (7) Coal Marketing and Export Council;
- (8) Governor's Office of Child Abuse and Domestic Violence Services;
- (9) Office of the Chief Information Officer;~~and~~
- (10) Office of Coal Marketing and Export; *and*
- (11) *Office of Early Childhood Development.*

Section 3. The General Assembly hereby confirms Executive Order 99-1513, dated November 12, 1999, which created and established the Office of Early Childhood Development within the Office of the Governor, to the extent it is not otherwise confirmed or superseded by this Act.

**Approved April 21, 2000**

## **CHAPTER 462**

### **(HB 248)**

AN ACT relating to hazardous duty retirement and declaring an emergency.

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

Section 1. KRS 61.592 is amended to read as follows:

- (1) "Hazardous position" means:
  - (a) Any position whose principal duties involve active law enforcement, including the positions of probation and parole officer and Commonwealth detective, active fire suppression or prevention, or other positions, including, but not limited to, pilots of the Transportation Cabinet and paramedics and emergency medical technicians, with duties that require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning;~~;~~
  - (b) ~~{Hazardous positions shall include }~~Positions in the Department of Corrections in state correctional institutions and the Kentucky Correctional Psychiatric Center with duties that regularly and routinely require face-to-face contact with inmates;
  - (c) ***The effective date of participation under hazardous duty coverage for positions in the Alcoholic Beverage Control Commission shall be April 1, 1998. The employer and employee contributions shall be paid by the employer and forwarded to the retirement system for the period not previously reported.***
- (2) Each employer may request of the board hazardous duty coverage for those positions as defined in subsection (1) of this section, but a county, narrowly defined as one (1) of Kentucky's one hundred and twenty (120) counties, the provisions of KRS 78.510(3) notwithstanding, shall request hazardous duty coverage for its full-time paid firefighters. Upon request, each employer shall certify to the system, in the manner prescribed by the board, the names of all employees working in a hazardous position as defined in subsection (1) of this section for which coverage is requested. The certification of the employer shall bear the approval of the agent or agency responsible for the budget of the department or county indicating that the required employer contributions have been provided for in the budget of the employing department or county. The system shall determine whether the employees whose names have been certified by the employer are working in positions meeting the definition of a hazardous position as provided by subsection (1) of this section.
- (3)
  - (a) An employee participating in the Kentucky Employees Retirement System who is determined by the system to be working in a hazardous position in accordance with subsection (2) of this section shall contribute, for each pay period for which he receives compensation, seven percent (7%) of his creditable compensation. An employee participating in the County Employees Retirement System who is determined by the system to be working in a hazardous duty position in accordance with subsection (2) of this section shall contribute, for each pay period for which he receives compensation, eight percent (8%) of his creditable compensation;
  - (b) Each employer shall pay employer contributions based on the creditable compensation of the employees determined by the system to be working in a hazardous position at the employer contribution rate as determined by the board. The rate shall be determined by actuarial methods consistent with the provisions of KRS 61.565;
  - (c) If the employer participated in the system prior to electing hazardous duty coverage, the employer may pay to the system the cost in order that the nonhazardous service be credited as hazardous service, or the employer may establish a payment schedule for payment of the cost of the hazardous service above that which would be funded within the existing employer contribution rate. The employer may extend the payment schedule to a maximum of thirty (30) years. Payments made by the employer under this subsection shall be deposited to the retirement allowance account of the proper retirement system and

these funds shall not be considered accumulated contributions of the individual members. If the employer elects not to make the additional payment, the employee may make the lump-sum payment in his own behalf or may pay by increments. Payments made by the employee under this subsection shall not be picked up, as described in KRS 61.560(4), by the employer. If neither the employer nor employee makes the payment, the service prior to hazardous coverage shall remain nonhazardous.

- (4) Except for the employee contribution by members of the Kentucky Employees Retirement System, the normal retirement age, retirement allowance, other benefits, eligibility requirements, rights, and responsibilities of a member in a hazardous position, as prescribed by subsections (1), (2), and (3) of this section, and the responsibilities, rights, and requirements of his employer shall be as prescribed for a member and employer participating in the State Police Retirement System as provided for by KRS 16.510 to 16.652. The employee contribution for a member of the Kentucky Employees Retirement System shall be seven percent (7%).
- (5) Any person employed in a hazardous position after July 1, 1972, shall be required to undergo a thorough medical examination by a licensed physician, and a copy of the medical report of the physician shall be retained on file by the employee's department or county and made available to the system upon request.
- (6) If doubt exists regarding the benefits payable to a hazardous position employee under this section, the board shall determine the benefits payable under KRS 61.515 to 61.705, or 78.520 to 78.852, or 16.510 to 16.652.

Section 2. Whereas the implementation of this provision should correspond with the planning for the new fiscal year, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved April 21, 2000**

## **CHAPTER 463**

### **(HB 268)**

AN ACT relating to mental health and substance abuse.

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

SECTION 1. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 4 of this Act, unless the context requires otherwise:*

- (1) *"Mental health condition" means any condition or disorder that involves mental illness or alcohol and other drug abuse as defined in KRS 222.005 and that falls under any of the diagnostic categories listed in the Diagnostic and Statistical Manual of Mental Disorders (Fourth Edition) or that is listed in the mental disorders section of the international classification of disease, or the most recent subsequent editions;*
- (2) *"Terms or conditions" includes day or visit limits, episodes of care, any lifetime or annual payment limits, deductibles, copayments, prescription coverage, coinsurance, out-of-pocket limits, and any other cost-sharing requirements; and*
- (3) *"Treatment of a mental health condition" includes, but is not limited to, any necessary outpatient, inpatient, residential, partial hospitalization, day treatment, emergency detoxification, or crisis stabilization services.*

SECTION 2. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any other provision of law, a health benefit plan issued or renewed after the effective date of this Act that provides coverage for treatment of a mental health condition shall provide coverage of any treatment for a mental health condition under the same terms or conditions as provided for treatment of a physical health condition.*
- (2) *Expenses for mental health and physical health conditions shall be combined for purposes of meeting deductible and out-of-pocket limits required under a health benefit plan.*

- (3) *A health benefit plan that does not otherwise provide for management of care under the plan or that does not provide for the same degree of management of care for all health or mental health conditions may provide coverage for treatment of mental health conditions through a managed care organization.*
- (4) *For the purposes of a health benefit plan issued or renewed on or after the effective date of this Act, any mental health condition that is excluded from the standard health benefit plan authorized by KRS 304.17A-250 and in effect on January 1, 2000, may continue as an exclusion under this section.*
- (5) *A violation of this section shall constitute an act of discrimination and shall be an unfair trade practice under this chapter. The remedies provided under subtitle 12 of this chapter shall apply to conduct in violation of this section.*

SECTION 3. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*Sixty (60) days prior to the regular session of the General Assembly in 2002, and sixty (60) days prior to each subsequent regular session of the General Assembly, the commissioner shall submit a written report to the Legislative Research Commission on the impact on health insurance costs of Sections 1 to 4 of this Act.*

SECTION 4. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Nothing in Sections 1 to 4 of this Act shall be construed as mandating coverage for mental health conditions.*
- (2) *The following shall be exempt from the provisions of Sections 1 to 4 of this Act:*
  - (a) *A group health benefit plan covering fewer than fifty (50) employees;*
  - (b) *An individual health benefit plan; and*
  - (c) *An employer-organized association as defined in KRS 304.17A-005.*

Approved April 21, 2000

## CHAPTER 464

(HB 275)

AN ACT relating to interlocal agreements.

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

Section 1. KRS 65.260 is amended to read as follows:

- (1) No agreement made pursuant to KRS 65.210 to 65.300 shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made pursuant to KRS 65.210 to 65.300, that performance may be offered in satisfaction of the obligation or responsibility.
- (2) Except as provided in subsections (3) and (4) of this section, every agreement made pursuant to KRS 65.210 to 65.300 shall, prior to and as a condition precedent to its entry into force, be submitted to the Attorney General who shall determine whether the agreement is in proper form and compatible with the laws of this state, *except for interlocal agreements between cities, counties, charter counties, urban-county governments, and sheriffs upon approval of the fiscal court which shall be submitted to the Department for Local Government.* The Attorney General *or the Department for Local Government* shall approve any agreement submitted to ~~them~~~~him~~ under this subsection unless *they find*~~he finds~~ that it does not meet the conditions set forth in KRS 65.210 to 65.300. ~~If in the event that~~ the agreement does not meet these conditions, the Attorney General *or the Department for Local Government* shall detail in writing, addressed to the governing bodies of the public agencies concerned, the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within sixty (60) days of its submission shall constitute approval thereof.
- (3) The submission of an interlocal cooperative agreement to the Attorney General *or the Department for Local Government* as provided in subsection (2) of this section shall not be required for any cooperative agreement



which involves only the construction, reconstruction, or maintenance of a municipal road or bridge, provided a written agreement is approved by each of the affected governing bodies.

- (4) Interlocal cooperative agreements between school boards and counties shall be exempt from the provisions of subsection (2) of this section.

Section 2. KRS 65.220 is amended to read as follows:

It is the purpose of KRS 65.210 to 65.300 to permit local governmental units *and the sheriff upon approval of the fiscal court* to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

Section 3. KRS 65.230 is amended to read as follows:

As used in KRS 65.210 to 65.300, unless the context otherwise requires, "public agency" means any political subdivision of this state, any agency of the state government or of the United States, *a sheriff*, and any political subdivision of another state. It also means a state-supported or private institution of higher education and a county or independent public school district for the purposes of entering into a joint agreement to establish and operate a program or facility, including a center for child learning and study, designed to help one (1) or more schools meet any of the goals set forth in KRS 158.6451, or for the investment of funds. If a private institution of higher education proposes to participate in an agreement pursuant to the Interlocal Cooperation Act, the Attorney General shall determine if the proposal is compatible with the United States Constitution, as part of the review of the agreement provided in KRS 65.260(2).

Section 4. KRS 65.245 is amended to read as follows:

- (1) It is the purpose of this section to clarify the ability of cities, counties, urban-counties, ~~and~~ charter-counties, *and sheriffs upon approval of the fiscal court* to share their revenues by entering into interlocal agreements.
- (2) Any city, county, urban-county, or charter-county may by ordinance enter into cooperative interlocal agreements for the sharing of revenues. *A sheriff, upon approval of the fiscal court, may enter into a memorandum of agreement with local governments for the purposes of sharing of revenues.* The distribution of the revenues shall be as agreed upon by the local governments *or the sheriff* and contained in the interlocal agreement.

Approved April 21, 2000

## CHAPTER 465

(HB 287)

AN ACT relating to economic development and declaring an emergency.

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

Section 1. KRS 154.33-510 is amended to read as follows:

As used in KRS 154.33-501 to 154.33-585, unless the context otherwise requires:

- (1) "Area" or "region" means the geographical area represented by the East Kentucky Corporation, including that part of Kentucky contained within the Appalachian region as defined by the federal Appalachian Regional Development Act of 1965, as amended, except that the counties of Clark, ~~Estill~~, Garrard, Lincoln, *and* Madison ~~and Powell~~ shall not be included as part of the "area" or "region," as defined herein, for the purposes of KRS 154.33-501 to 154.33-585;
- (2) "Board" means the board of directors of the corporation;
- (3) "Bonds" or "notes" means revenue bonds, commercial paper revenue bonds, refunding revenue bonds, variable rate revenue bonds, notes or other obligations issued by the corporation under the authority of KRS 154.33-501 to 154.33-585;
- (4) "Committee" means the executive committee of the board of directors of the corporation, possessing all powers, duties, and responsibilities as provided in KRS 154.33-540, and as may be otherwise provided by the board;

- (5) "Commonwealth" means the Commonwealth of Kentucky;
- (6) "Corporation" means the East Kentucky Corporation;
- (7) "Executive director" means the chief administrator of the corporation having responsibility for its day-to-day operations, and possessing all duties, responsibilities, and authorities as specified by the board or executive committee;
- (8) "Fund" means the East Kentucky economic development fund as provided by KRS 154.33-550;
- (9) "Local governing body" means the fiscal court of any county within the area or the legislative body of any city represented on the board of the corporation; and
- (10) "Project" means any economic or job development activity or program or facility or undertaking located within the area which is planned, developed, implemented, operated, financed, or otherwise assisted by the corporation pursuant to KRS 154.33-501 to 154.33-585.

Section 2. KRS 154.85-010 is amended to read as follows:

As used in KRS 154.85-001 to 154.85-085, unless the context otherwise requires:

- (1) "Area" or "region" means the geographical area represented by the West Kentucky Corporation, including all the following counties: Allen, Ballard, Barren, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Christian, Crittenden, Daviess, Edmonson, Fulton, Graves, Grayson, Hancock, Hardin, Hart, Henderson, Hickman, Hopkins, Larue, Livingston, Logan, Lyon, Marion, Marshall, McCracken, McLean, Meade, Metcalfe, Monroe, Muhlenberg, Nelson, Ohio, Simpson, *Spencer, Taylor*, Todd, Trigg, Union, Warren, Washington, Webster;
- (2) "Board" means the board of directors of the corporation;
- (3) "Bonds" or "notes" means revenue bonds, commercial paper revenue bonds, refunding revenue bonds, variable rate revenue bonds, bond anticipation notes, or other obligations issued by the corporation under the authority of KRS 154.85-035 and 154.85-045;
- (4) "Committee" means the executive committee of the board of directors of the corporation, possessing all powers, duties, and responsibilities as provided in KRS 154.85-035 and 154.85-040, and as may be otherwise provided by the board;
- (5) "Commonwealth" means the Commonwealth of Kentucky;
- (6) "Corporation" means the West Kentucky Corporation;
- (7) "Executive officer" or "president" means the chief administrator of the corporation having responsibility for its day-to-day operations, and possessing all duties, responsibilities, and authorities as specified by the board or executive committee;
- (8) "Fund" means the West Kentucky economic development fund as provided by KRS 154.85-050;
- (9) "Local governing body" means the fiscal court of any county within the area or the legislative body of any city represented on the board of the corporation; and
- (10) "Project" means any economic or job development activity or program or facility or undertaking located within the area which is planned, developed, implemented, operated, financed, or otherwise assisted by the corporation pursuant to KRS 154.85-001 to 154.85-085.

Section 3. KRS 154.45-010 is amended to read as follows:

As used in KRS 154.45-020 to 154.45-110, unless the context otherwise requires:

- (1) "Authority" means the Enterprise Zone Authority of Kentucky;
- (2) *"Employee" means a person who works twenty (20) hours or more per week and is employed by a business located in an enterprise zone and includes a qualified seasonal employee. For purposes of determining whether a qualified business maintains the percentage of targeted workforce employees required by KRS 154.45-010(8) for the entire time it is certified as a qualified business, a qualified seasonal employee shall be deemed to be employed for the entire calendar year;*
- (3) "Enterprise zone" means an area designated by the authority to be eligible for the benefits of KRS 154.45-020 to 154.45-110;

- (4)(3) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed;
- (5)(4) "Existing business" means a person, corporation, or other entity engaged in the active conduct of a trade or business at a location within the enterprise zone prior to the date the authority designated the area as an enterprise zone;
- (6)(5) "Local government" means a city, county, urban-county government, or charter county government;
- (7)(6) "New business" means a person, corporation, or other entity who was not engaged in the active conduct of a trade or business in the enterprise zone prior to the date the authority designated the area as an enterprise zone, and who becomes engaged in the active conduct of a trade or business within the enterprise zone after the date the authority designated the area as an enterprise zone;
- (8)(7) "Qualified business" means an existing business or new business that has been certified by the authority to have at least fifty percent (50%) of its employees performing substantially all of their services within an enterprise zone and meeting one (1) of the following criteria:
- (a) With a new business employing at least twenty-five percent (25%) of the business's employees from the targeted workforce; or
  - (b) With an existing business creating new activity within the enterprise zone of not less than a twenty percent (20%) increase in the number of employees or by a twenty percent (20%) increase in capital investment within eighteen (18) months from the date of application for certification as a qualified business. Businesses that are certified based upon an increase in employees shall employ at least twenty-five percent (25%) of the new employees from the targeted workforce.
- (9)(8) "Qualified employee" means an employee of a qualified business;~~and~~
- (10) *"Qualified seasonal employee" means a seasonal employee employed by a seasonal business for at least sixty (60) days during the calendar year;*
- (11) *"Seasonal business" means a business with respect to which seasonal employees constitute at least eighty percent (80%) of the total number of employees of the business during the calendar year. For purposes of this definition, a person shall be treated as an employee only if the person is employed by the business for at least sixty (60) days during the calendar year;*
- (12) *"Seasonal employee" means a person who is employed by a qualified business during certain seasons or during part of the calendar year; and*
- (13)(9) "Targeted workforce" means Kentucky residents:
- (a) Who reside within an enterprise zone; or
  - (b) Who have been unemployed for at least ninety (90) days or who have received public assistance benefits, based on need and intended to alleviate poverty, for at least ninety (90) days prior to employment with a qualified business.
  - (c) For the purpose of this subsection, "Kentucky resident" means a person who has resided in the Commonwealth for at least ninety (90) days.

Section 4. Whereas it is increasingly difficult to obtain the necessary number of qualified employees to perform needed services, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved April 21, 2000**

## CHAPTER 466

**(HB 330)**

AN ACT relating to economic development and declaring an emergency.

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

Section 1. KRS 154.12-207 is amended to read as follows:

- (1) The corporation may, subject to appropriation from the General Assembly or from funds made available to the corporation from any other public or private source, provide grants-in-aid to educational institutions, and business and industry, not in excess of two hundred thousand dollars (\$200,000) per grant-in-aid. Such grants-in-aid shall be used exclusively for programs which are consistent with the provisions of this chapter.
- (2) To qualify for a grant-in-aid, an educational institution and a business or industry shall submit a joint application to the corporation that contains a proposal for a program of skills training and education; a description of the program; the type of skills training or education to be provided; a statement of the total cost of the program and breakdown of the costs associated with equipment, personnel, facilities, and materials; and with respect to educational institutions only, a statement of the technical assistance and financial support for the program received or pledged from business and industry.
- (3) Approval of the grant-in-aid application by the board, shall be based upon the following criteria:
  - (a) The program must be within the scope of KRS 154.12-204 to 154.12-208;
  - (b) Participants in the program must be limited to *a Kentucky resident, as the term is defined in KRS 141.010*~~[citizens of the Commonwealth]~~;
  - (c) The program must involve an area of skills training and education which is needed by business and industry and for which a shortage of qualified individuals exists within the Commonwealth;
  - (d) The grant-in-aid must be essential to the success of the program as the resources of the educational institution are inadequate to attract the technical assistance and financial support necessary from business and industry;
  - (e) The educational institution must have obtained a firm commitment from business and industry for the information, technical assistance and financial support which, together, with the grant-in-aid, the resources of the applicant, and support from any other source, is sufficient to ensure the success of the program. In addition, the commitment of financial support from business and industry shall be equal to or greater than the amount of the requested grant-in-aid; and
  - (f) The educational institution must have established adequate auditing procedures and reporting methods for the submission of information and data as required by the corporation.

Section 2. KRS 154.12-2084 is amended to read as follows:

As used in KRS 154.12-2084 to 154.12-2089, unless the context requires otherwise:

- (1) "Approved company" means any qualified company seeking to sponsor an occupational upgrade training program or skills upgrade training program for the benefit of one (1) or more of its employees, which is approved by the authority to receive skills training investment credits in accordance with KRS 154.12-2084 to 154.12-2089;
- (2) "Approved costs" means:
  - (a) Fees or salaries required to be paid to instructors who are employees of the approved company, instructors who are full-time, part-time, or adjunct instructors with an educational institution, and instructors who are consultants on contract with an approved company in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company;
  - (b) Administrative fees charged by educational institutions in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company and specifically approved by the Bluegrass State Skills Corporation;
  - (c) The cost of supplies, materials, and equipment used exclusively in an occupational upgrade training program or skills upgrade training program sponsored by an approved company;
  - (d) The cost of leasing a training facility where space is unavailable at an educational institution or at the premises of an approved company in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company;
  - (e) Employee wages to be paid in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company; and
  - (f) All other costs of a nature comparable to those described in this subsection;

- (3) "Bluegrass State Skills Corporation" means the Bluegrass State Skills Corporation created by KRS 154.12-205;
- (4) "Commonwealth" means the Commonwealth of Kentucky;
- (5) "Educational institution" means a public or nonpublic secondary or postsecondary institution or an independent institution within the Commonwealth authorized by law to provide a program of skills training or education beyond the secondary school level;
- (6) "Employee" means any person:
  - (a) Who is currently a permanent full-time employee of the qualified company; and
  - (b) Who has been employed by the qualified company for the last twelve (12) calendar months immediately preceding the filing of the application for skills training investment credits by the qualified company;  
*and*
  - (c) *Who is a Kentucky resident, as that term is defined in KRS 141.010;*

For purposes of this subsection, a "full-time employee" means an employee who has been employed by the qualified company for a minimum of thirty-five (35) hours per week for more than two hundred fifty (250) work days during the most recently ended calendar year and is subject to the tax imposed by KRS 141.020;
- (7) "Occupational upgrade training" means employee training sponsored by a qualified company that is designed to qualify the employee for a promotional opportunity with the qualified company;
- (8) "Preliminarily approved company" means a qualified company seeking to sponsor an occupational upgrade training program or skills upgrade training program, which has received preliminarily approval from the authority under KRS 154.12-2088 to receive a certain maximum amount of skills training investment credits;
- (9) "Qualified company" means any person, corporation, limited liability company, partnership, limited partnership, registered limited liability partnership, sole proprietorship, firm, enterprise, franchise, association, organization, holding company, joint stock company, professional service corporation, or any other legal entity through which business is conducted that has been actively engaged in any of the following qualified activities within the Commonwealth for not less than three (3) consecutive years: manufacturing, including the processing, assembling, production, or warehousing of any property; processing of agricultural and forestry products; telecommunications; health care; product research and engineering; tool and die and machine technology; mining; tourism and operation of facilities to be used in the entertainment, recreation, and convention industry; and transportation in support of manufacturing. Notwithstanding the provisions of this subsection, any company whose primary purpose is the sale of goods at retail shall not constitute a qualified company;
- (10) "Skills upgrade training" means employee training sponsored by a qualified company that is designed to provide the employee with new skills necessary to enhance productivity, improve performance, or retain employment including, but not limited to, technical and interpersonal skills training, and training that is designed to enhance the computer skills, communication skills, problem solving, reading, writing, or math skills of employees who are unable to function effectively on the job due to deficiencies in these areas or who risk displacement because their skill deficiencies inhibit their training potential for new technology; and
- (11) "Skills training investment credit" means the credit against Kentucky income tax imposed by KRS 141.020 or 141.040, as provided in KRS 154.12-2086(1).

Section 3. KRS 154.28-110 is amended to read as follows:

- (1) The approved company may require, in lieu of receiving the income tax credits described in KRS 154.28-090, that each employee subject to state tax imposed by KRS 141.020, as a condition of employment, agree to pay a job development assessment fee, equal to ~~three~~~~two~~ percent (3%)(2%) of the gross wages of each employee whose job was created as a result of the economic development project, for the purpose of retiring the loans or other financing as described in KRS 154.28-090, incurred in connection with the economic development project.
- (2) Each employee so assessed shall be entitled to a credit against Kentucky income tax withheld as provided by KRS 141.310 and 141.350 equal to the job development assessment fee withheld from his or her wages during the calendar year.

- (3) If an approved company shall elect to impose the assessment as a condition of employment, it shall be authorized to deduct the assessment from each paycheck of each employee.
- (4) Any approved company collecting an assessment as provided in subsection (1) of this section shall make its payroll books and records available to the authority at such reasonable times as the authority shall request and shall file with the authority documentation respecting the assessment as the authority may require.
- (5) Any assessment of the wages of employees of an approved company in connection with their employment at an economic development project pursuant to subsection (1) of this section shall permanently lapse on the date any loans or other financing, as described in KRS 154.28-090, incurred in connection with the economic development project mature or are prepaid in full.

Section 4. Whereas it is important that participants in the Bluegrass State Skills Corporation be Kentucky residents as the term is defined in the state income tax code, and it is important to induce economic development and promote the growth of industry in the Commonwealth, an emergency is declared to exist and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Approved April 21, 2000**

## CHAPTER 467

### (HB 366)

AN ACT relating to crimes and punishments.

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

Section 1. KRS 189A.005 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath;
- (2) "Refusal" means declining to submit to any test or tests pursuant to KRS 189A.103. Declining may be either by word or by the act of refusal. If the breath testing instrument for any reason shows an insufficient breath sample and the alcohol concentration cannot be measured by the breath testing instrument, the law enforcement officer shall then request the defendant to take a blood or urine test in lieu of the breath test. If the defendant then declines either by word or by the act of refusal, he shall then be deemed to have refused *if the refusal occurs at the site at which any alcohol concentration or substance test is to be administered*; ~~and~~
- (3) When age is a factor, it shall mean age at the time of the commission of the offense;
- (4) *Unless otherwise provided, license suspensions under this chapter shall be imposed by the court. The court shall impose the applicable period of license suspension enumerated by this chapter and shall include in its order or judgment the length and terms of any suspension imposed. The license suspension shall be deemed effective on the date of entry of the court's order or judgment. The role of the Transportation Cabinet shall be limited to administering the suspension period under the terms and for the duration enumerated by the court in its order or judgment;*
- (5) *"Limited access highway" has the same meaning as "limited access facility" does in KRS 177.220;*
- (6) *"License" means any driver's or operator's license or any other license or permit to operate a motor vehicle issued under or granted by the laws of this state including:*
  - (a) *Any temporary license or instruction permit;*
  - (b) *The privilege of any person to obtain a valid license or instruction permit, or to drive a motor vehicle whether or not the person holds a valid license; and*
  - (c) *Any nonresident's operating privilege as defined in KRS Chapters 186 or 189.*

Section 2. KRS 189A.010 is amended to read as follows:

- (1) A person shall not operate or be in physical control of a motor vehicle anywhere in this state:

- (a) ***Having an alcohol concentration of 0.08 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle***~~[While the alcohol concentration in his blood or breath is 0.10 or more based on the definition of alcohol concentration in KRS 189A.005];~~
  - (b) While under the influence of alcohol;
  - (c) While under the influence of any other substance or combination of substances which impairs one's driving ability;
  - (d) While under the combined influence of alcohol and any other substance which impairs one's driving ability; or
  - (e) ***Having an alcohol concentration of 0.02 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle***~~[While the alcohol concentration in his blood or breath is 0.02 or more based on the definition of alcohol concentration in KRS 189A.005]~~ if the person is under the age of twenty-one (21).
- (2) ***With the exception of the results of the tests administered pursuant to subsection (7) of Section 8 of this Act, if the sample of the person's blood or breath that is used to determine the alcohol concentration thereof was obtained more than two (2) hours after cessation of operation or physical control of a motor vehicle, the results of the test or tests shall be inadmissible as evidence in a prosecution under paragraphs (1)(a) and (1)(e) of this section. The results of the test or tests, however, may be admissible in a prosecution under paragraphs (1)(b) and (1)(d).***
- (3) In any prosecution for a violation of subsection (1)(b) or (d) of this section in which the defendant is charged with having operated or been in physical control of a motor vehicle while under the influence of alcohol, the alcohol concentration in the defendant's blood as determined at the time of making analysis of his blood or breath shall give rise to the following presumptions:
- (a) If there was an alcohol concentration of less than 0.05 based upon the definition of alcohol concentration in KRS 189A.005, it shall be presumed that the defendant was not under the influence of alcohol; and
  - (b) If there was an alcohol concentration of 0.05 or greater but less than ***0.08***~~[0.10]~~ based upon the definition of alcohol concentration in KRS 189A.005, that fact shall not constitute a presumption that the defendant either was or was not under the influence of alcohol, but that fact may be considered, together with other competent evidence, in determining the guilt or innocence of the defendant.

The provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the questions of whether the defendant was under the influence of alcohol or other substances, in any prosecution for a violation of subsection (1)(b) or (d) of this section.

- ~~(4)(3)~~ The fact that any person charged with violation of subsection (1) of this section is legally entitled to use any substance, including alcohol, shall not constitute a defense against any charge of violation of subsection (1) of this section.
- ~~(5)(4)~~ Any person who violates the provisions of paragraphs (a), (b), (c), or (d) of subsection (1) of this section shall:
- (a) For the first offense within a five (5) year period, be fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500) or be imprisoned in the county jail for not less than forty-eight (48) hours nor more than thirty (30) days or both.~~[If the person has a blood or breath alcohol concentration of 0.18 or higher, he or she shall be sentenced to at least seven (7) days' imprisonment, but the court may probate five (5) of those days.]~~ Following sentencing, the defendant may apply to the judge for permission to enter a community labor program for not less than forty-eight (48) hours nor more than thirty (30) days in lieu of fine or imprisonment, or both. ***If any of the aggravating circumstances listed in subsection (11) of this section are present while the person was operating or in physical control of a motor vehicle, the mandatory minimum term of imprisonment shall be four (4) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.***

- (b) For the second offense within a five (5) year period, be fined not less than three hundred fifty dollars (\$350) nor more than five hundred dollars (\$500) and shall be imprisoned in the county jail for not less than seven (7) days nor more than six (6) months and, in addition to fine and imprisonment, may be sentenced to community labor for not less than ten (10) days nor more than six (6) months. ***If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be fourteen (14) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.***
- (c) ~~If the alcohol concentration is below 0.18, -~~For a third offense within a five (5) year period, be fined not less than five hundred dollars (\$500) nor more than one thousand (\$1,000) and shall be imprisoned in the county jail for not less than thirty (30) days nor more than twelve (12) months and may, in addition to fine and imprisonment, be sentenced to community labor for not less than ten (10) days nor more than twelve (12) months. ***If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be sixty (60) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release***~~-If the alcohol concentration is 0.18 or above, he or she shall be guilty of a Class D felony~~.
- (d) For a fourth or subsequent offense within a five (5) year period, be guilty of a Class D felony. ***If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be two hundred forty (240) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of release.***
- (e) For purposes of this subsection, prior offenses shall include all convictions in this state, and any other state, or jurisdiction for operating or being in control of a motor vehicle while under the influence of alcohol or other substances that impair one's driving ability, or any combination of alcohol and such substances, or while having an unlawful alcohol concentration, or driving while intoxicated, but shall not include convictions for violating subsection (1)(e) of this section. A court shall receive as proof of a prior conviction a copy of that conviction, certified by the court ordering the conviction.
- ~~(6)(5)~~ Any person who violates the provisions of subsection (1)(e) of this section shall have his driving privilege or operator's license suspended by the court for a period of no less than thirty (30) days but no longer than six (6) months, and the person shall be fined no less than one hundred dollars (\$100) and no more than five hundred dollars (\$500), or sentenced to twenty (20) hours of community service in lieu of a fine. A person subject to the penalties of this paragraph shall not be subject to the penalties established in subsection ~~(5)(4)~~ of this section or any other penalty established pursuant to KRS Chapter 189A, ***except those established in subsection (1) of Section 3 of this Act.***
- ~~(7)(6)~~ If the person is under the age of twenty-one (21) and there was an alcohol concentration of ~~0.08~~~~0.10~~ or greater based on the definition of alcohol concentration in KRS 189A.005, the person shall be subject to the penalties established pursuant to subsection ~~(5)(4)~~ of this section.
- ~~(8)(7)~~ For a second or third offense within a five (5) year period, the minimum sentence of imprisonment or community labor shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a fourth or subsequent offense under this section, the minimum term of imprisonment shall be one hundred twenty (120) days, and this term shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a second or subsequent offense, at least forty-eight (48) hours of the mandatory sentence shall be served consecutively.
- ~~(9)(8)~~ When sentencing persons under subsection ~~(5)(4)~~(a) of this section at least one (1) of the penalties shall be assessed and that penalty shall not be suspended, probated, or subject to conditional discharge or other form of early release.
- ~~(10)(9)~~ In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.
- (11) ***For purposes of this section, aggravating circumstances are any one (1) or more of the following:***
  - (a) ***Operating a motor vehicle in excess of thirty (30) miles per hour above the speed limit;***
  - (b) ***Operating a motor vehicle in the wrong direction on a limited access highway;***
  - (c) ***Operating a motor vehicle that causes an accident resulting in death or serious physical injury as defined in KRS 500.080;***



- (d) *Operating a motor vehicle while the alcohol concentration in the operator's blood or breath is 0.18 or more as measured by a test or tests of a sample of the operator's blood or breath taken within two (2) hours of cessation of operation of the motor vehicle;*
- (e) *Refusing to submit to any test or tests of one's blood, breath, or urine requested by an officer having reasonable grounds to believe the person was operating or in physical control of a motor vehicle in violation of subsection (1) of this section; and*
- (f) *Operating a motor vehicle that is transporting a passenger under the age of twelve (12) years old.*

~~(12)~~~~(10)~~ Any person who violates the provisions of subsection (1) of this section shall be assessed twenty dollars (\$20) in addition to the fines imposed by subsections ~~(5)~~~~(4)~~ and ~~(6)~~~~(5)~~ of this section. Funds collected pursuant to this subsection shall be deposited in the traumatic brain injury trust fund, created pursuant to KRS 211.476, within fourteen (14) days after the end of each quarter, to be used for the purposes set forth in KRS 211.470 to 211.478.

Section 3. KRS 189A.040 is amended to read as follows:

- (1) In addition to any other penalty prescribed by subsection ~~(5)~~~~(4)~~(a) *or (6)* of KRS 189A.010, the court shall sentence the person to attend an alcohol or substance abuse education or treatment program subject to the following terms and conditions for a first offender *or a person convicted under subsection (1)(e) of Section 2 of this Act*:
  - (a) The treatment or education shall be for a period of ninety (90) days and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program.
  - (b) Each defendant shall pay the cost of the education or treatment program up to his ability to pay but no more than the actual cost of the treatment.
  - (c) Upon written report to the court by the administrator of the program that the defendant has completed the program recommended by the administrator based upon the assessment of the defendant, the defendant ~~shall~~~~may~~ be released prior to the expiration of the ninety (90) day period.
  - (d) Failure to complete the education or treatment program or to pay the amount specified by the court for education or treatment shall constitute contempt, and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending completion of the education or treatment program.
- (2) In addition to any other penalty prescribed by subsection ~~(5)~~~~(4)~~(b) of KRS 189A.010, the court shall sentence the person to an alcohol or substance abuse treatment program subject to the following terms and conditions for a second offender:
  - (a) The sentence shall be for a period of one (1) year and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program.
  - (b) Each defendant shall pay the cost of the treatment program up to his ability to pay but no more than the actual cost of the treatment.
  - (c) Upon written report to the court by the administrator of the program that the defendant has completed the program recommended by the administrator based upon the assessment of the defendant, the defendant may be released prior to the expiration of the one (1) year period.
  - (d) Failure to complete the treatment program or to pay the amount specified by the court for treatment shall constitute contempt of court and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending the completion of the treatment program.
- (3) In addition to any other penalty prescribed by subsection ~~(5)~~~~(4)~~(c) or (d) of KRS 189A.010, the court shall sentence the person to an alcohol or substance abuse treatment program subject to the following terms and conditions for a third or subsequent offender:
  - (a) The sentence shall be for a period of one (1) year and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program. The program may be an inpatient or residential-type program.

- (b) Each defendant shall pay the cost of the treatment program up to his ability to pay but no more than the actual cost of the program.
  - (c) A defendant, upon written recommendation to the court by the administrator of the program, may be released from the inpatient or residential program prior to the expiration of one (1) year but shall be retained in the program on an outpatient basis for the remainder of the year period.
  - (d) Failure to complete the treatment program or to pay the amount specified by the court for treatment shall constitute contempt of court, and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending completion of the treatment program.
- (4) Costs of treatment or education programs which are paid from the service fee established by KRS 189A.050, or from state or federal funds, or any combination thereof, shall be deducted from the amount which the defendant must pay.
  - (5) For the purposes of this section, "treatment" means service in an alcohol or substance abuse education or treatment program or facility licensed, regulated, and monitored by the Cabinet for Health Services for services as required under this section.
  - (6) The Cabinet for Health Services shall promulgate administrative regulations for the licensure of education and treatment facilities and programs for offenders receiving education or treatment under this section. The criteria developed by the Cabinet for Health Services shall include:
    - (a) Manner of assessment;
    - (b) Appropriate education and treatment plans; and
    - (c) Referrals to other treatment providers.
  - (7) The participating facilities and programs shall be required to abide by these standards and shall report completion to the Transportation Cabinet. Upon request, the facility or program shall report to the courts regarding the progress of offenders being treated pursuant to this section.
  - (8) Administrative decisions regarding the licensure of education and treatment facilities and programs may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 4. KRS 189A.050 is amended to read as follows:

- (1) All persons convicted of violation of KRS 189A.010(1)(a), (b), (c), or (d) shall be sentenced to pay a service fee of two hundred *fifty* dollars (~~\$250~~)(~~\$200~~), which shall be in addition to all other penalties authorized by law.
- (2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS 534.020 relating to the method of imposition and KRS 534.060 as to remedies for nonpayment of the fee.
- (3) The *revenue collected from the* service fee *imposed by this section* shall be utilized~~[to fund enforcement of this chapter and for the support of jails, recordkeeping, treatment and education programs authorized by this chapter, and the Department of Public Advocacy.]~~ *as follows:*
  - (a) *Fifteen percent (15%) of the amount collected shall be transferred to the Kentucky State Police forensic laboratory for the acquisition, maintenance, testing, and calibration of alcohol concentration testing instruments and the training of laboratory personnel to perform these tasks;*
  - (b)~~(4)~~ Twenty-five percent (25%) of the service fee collected pursuant to this section shall be allocated to the Department of Public Advocacy;~~[These funds shall be placed in a special trust and agency account for the Department of Public Advocacy, and the funds]~~
  - (c) *One percent (1%) shall be transferred to the Prosecutor's Advisory Council for training of prosecutors for the prosecution of persons charged with violations of this chapter and for obtaining expert witnesses in cases involving the prosecution of persons charged with violations of this chapter or any other offense in which driving under the influence is a factor in the commission of the offense charged;*
  - (d) *Any amount specified by a specific statute shall be transferred as provided in that statute; and*

- (e) *The remainder of the service fee shall be utilized to fund enforcement of this chapter and for the support of jails, recordkeeping, treatment, and educational programs authorized by this chapter and by the Department of Public Advocacy.*
- (4) *The amounts specified in paragraphs (a), (b), and (c) of subsection (3) of this section shall be placed in trust and agency accounts that shall not lapse.*

Section 5. KRS 189A.070 is amended to read as follows:

- (1) Unless the person is under eighteen (18) years of age, in addition to the penalties specified in KRS 189A.010, a person convicted of violation of KRS 189A.010(1)(a), (b), (c), or (d) shall have his license to operate a motor vehicle or motorcycle revoked by the court as follows:
  - (a) For the first offense within a five (5) year period, *for a period of not less than thirty (30) days nor more than one hundred twenty (120) {ninety} days;*
  - (b) For the second offense within a five (5) year period, *for a period of not less than twelve (12) months nor more than eighteen (18) months;*
  - (c) For a third offense within a five (5) year period, *for a period of not less than twenty-four (24) months nor more than thirty-six (36) months;* and
  - (d) For a fourth or subsequent offense within a five (5) year period, sixty (60) months.
  - (e) For purposes of this section, "offense" shall have the same meaning as described in KRS 189A.010(5){(4)}(e).
- (2) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.
- (3) In addition to the period of license revocation set forth in subsection (1) of this section, no person shall be eligible for reinstatement of his privilege to operate a motor vehicle until he has completed the alcohol or substance abuse education or treatment program ordered pursuant to KRS 189A.040.
- (4) A person under the age of eighteen (18) who is convicted of violation of KRS 189A.010(1)(a), (b), (c), or (d) shall have his license revoked by the court until he reaches the age of eighteen (18) or shall have his license revoked as provided in subsection (1) of this section, whichever penalty will result in the longer period of revocation.
- (5) Licenses revoked pursuant to this chapter shall forthwith be surrendered to the court upon conviction. The court shall transmit the conviction records, and other appropriate information to the Transportation Cabinet. A court shall not waive or stay this procedure.
- (6) Should a person convicted under this chapter whose license is revoked fail to surrender it to the court upon conviction, the court shall issue an order directing the sheriff or any other peace officer to seize the license forthwith and deliver it to the court.

Section 6. KRS 189A.080 is amended to read as follows:

~~{(1)} All licenses suspended or revoked pursuant to *subsection (6) of Section 2 of this Act*, KRS{189A.060 or} 189A.070{(1)}, or *Sections 10, 13, or 14 of this Act* shall be surrendered to the court *and forwarded to the Transportation Cabinet*. ~~Other revocations pursuant to this chapter shall be administered by the Transportation Cabinet.~~~~

- ~~(2) The court shall retain control of the license until such time as the suspension or revocation imposed pursuant to KRS 189A.060 or 189A.070(1) is lifted and the court shall provide notification of the suspension and actions taken within five (5) days to the Transportation Cabinet.~~
- ~~(3) At the end of the period of license suspension or revocation, imposed pursuant to KRS 189A.060 or 189A.070(1), the person whose license was suspended or revoked may apply to the circuit clerk for reinstatement of the license. If all requirements of KRS Chapter 186 have been met and the license has not been suspended or revoked by the Transportation Cabinet for other reasons, the license shall be returned.~~

Section 7. KRS 189A.090 is amended to read as follows:

- (1) No person shall operate *or be in physical control of* a motor vehicle while his license is revoked or suspended *under Section 5 of this Act, subsection (6) of Section 2 of this Act, Sections 10, 13, or 14 of this Act, or*

*operate or be in physical control of a motor vehicle without a functioning ignition interlock device in violation of subsection (1) of Section 28 of this Act*~~[for violation of KRS 189A.010, nor shall any person who has no motor vehicle or motorcycle operator's license operate a motor vehicle while his privilege to operate a motor vehicle has been revoked or suspended for a violation of KRS 189A.010].~~

- (2) *In addition to any other penalty imposed by the court*, any person who violates subsection (1) of this section shall:
- (a) For a first offense *within a five (5) year period*, be guilty of a Class B misdemeanor *and have his license revoked by the court for six (6) months, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of paragraphs (a), (b), (c), or (d) of subsection (1) of Section 2 of this Act, in which event he shall be guilty of a Class A misdemeanor and have his license revoked by the court for a period of one (1) year;*
  - (b) For a second offense *within a five (5) year period*, be guilty of a Class A misdemeanor *and have his license revoked by the court for one (1) year, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of paragraphs (a), (b), (c), or (d) of subsection (1) of Section 2 of this Act, in which event he shall be guilty of a Class D felony and have his license revoked by the court for a period of two (2) years;*
  - (c) For a third or subsequent offense *within a five (5) year period*, be guilty of a Class D felony *and have his license revoked by the court for two (2) years, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of paragraphs (a), (b), (c), or (d) of subsection (1) of Section 2 of this Act, in which event he shall be guilty of a Class D felony and have his license revoked by the court for a period of five (5) years.*
- (3) *The five (5) year period under this section shall be measured in the same manner as in Section 5 of this Act*~~[In addition to the penalties above his operator's license shall be revoked for twice the original period of revocation].~~

Section 8. KRS 189A.103 is amended to read as follows:

The following provisions shall apply to any person who operates or is in physical control of a motor vehicle or a vehicle that is not a motor vehicle in this Commonwealth:

- (1) He ~~has [is deemed to have]~~ given his consent to one (1) or more tests of his blood, breath, and urine, or combination thereof, for the purpose of determining alcohol concentration or presence of a substance which may impair one's driving ability, if *an officer has reasonable grounds to believe that*~~[arrested for any offense arising out of]~~ a violation of KRS 189A.010(1) or 189.520(1) *has occurred*.
- (2) Any person who is dead, unconscious, or otherwise in a condition rendering him incapable of refusal is deemed not to have withdrawn the consent provided in subsection (1) of this section, and the test may be given.
- (3) The breath, blood, and urine tests administered pursuant to this section shall be administered at the direction of a peace officer having reasonable grounds to believe the person has committed a violation of KRS 189A.010(1) or 189.520(1).
  - (a) Tests of the person's breath, blood, or urine, to be valid pursuant to this section, shall have been performed according to the administrative regulations promulgated by the secretary of the Justice Cabinet, *and shall have been performed, as to breath tests, only after a peace officer has had the person under personal observation at the location of the test for a minimum of twenty (20) minutes.*
  - (b) All breath tests shall be administered by a peace officer holding a certificate, as an operator of a breath analysis instrument, issued by the secretary of the Justice Cabinet or his designee.
- (4) A breath test shall consist of a test which is performed in accordance with the manufacturer's instructions for the use of the instrument. *The secretary of the Justice Cabinet shall keep available for public inspection copies of these manufacturer's instructions for all models of breath testing devices in use by the Commonwealth of Kentucky.*
- (5) When the preliminary breath test, breath test, or other evidence gives the peace officer reasonable grounds to believe there is impairment by a substance which is not subject to testing by a breath test, then blood or urine tests, or both, may be required in addition to a breath test, or in lieu of a breath test.

- (6) Only a physician, registered nurse, phlebotomist, medical technician, or medical technologist not otherwise prohibited by law can withdraw any blood of any person submitting to a test under this section.
- (7) ***After the person has submitted to all alcohol concentration tests and substance tests requested by the officer*** the person tested shall be permitted to have a person listed in subsection (6) of this section of his own choosing administer a test or tests in addition to any tests administered at the direction of the peace officer. Tests conducted under this section shall be conducted within a reasonable length of time. Provided, however, the nonavailability of the person chosen to administer a test or tests in addition to those administered at the direction of the peace officer within a reasonable time shall not be grounds for rendering inadmissible as evidence the results of the test or tests administered at the direction of the peace officer.

Section 9. KRS 189A.105 is amended to read as follows:

- (1) ***A person's***~~[No person shall be compelled to submit to any test or tests specified in KRS 189A.103, but his]~~ refusal to submit to~~[such]~~ tests ***under Section 8 of this Act*** shall result in revocation of his driving privilege as provided in this chapter.
- (2) (a) At the time a breath, blood, or urine test is requested, the person shall be informed:
  - 1. That, if the person refuses to submit to such tests, the ***fact of this refusal may be used against him in court as evidence of violating Section 2 of this Act and will result in revocation of his driver's license, and if the person refuses to submit to the tests and is subsequently convicted of violating subsection (1) of Section 2 of this Act then he will be subject to a mandatory minimum jail sentence which is twice as long as the mandatory minimum jail sentence imposed if he submits to the tests, and that if the person refuses to submit to the tests he will be unable to obtain a hardship license***~~[person's privilege to drive shall be revoked for a period of six (6) months, or more, pursuant to this chapter]; and~~
  - 2. That, if a test is taken, ***the results of the test may be used against him in court as evidence of violating subsection (1) of Section 2 of this Act, and that if the results of the test are 0.18 or above and the person is subsequently convicted of violating subsection (1) of Section 2 of this Act, then he will be subject to a sentence that is twice as long as the mandatory minimum jail sentence imposed if the results are less than 0.18***~~[and the results indicate that the person has an alcohol concentration of 0.10 or greater, or, if the person is under the influence of alcohol or a substance that impairs one's driving ability or a combination of alcohol and such substance, the person shall be subject to criminal penalties and the person's driving license shall be revoked for a period of at least ninety (90) days]; and~~
  - 3. That ***if the person first submits to the requested alcohol and substance tests***, the person has the right to have a test or tests of his blood performed by a person of his choosing described in KRS 189A.103 within a reasonable time of his arrest at the expense of the person arrested.
- (b) Nothing in this subsection shall be construed to prohibit a judge of a court of competent jurisdiction from issuing a search warrant or other court order requiring a blood or urine test, or a combination thereof, of a defendant charged with a violation of KRS 189A.010, or other statutory violation arising from the incident, when a person is killed or suffers physical injury, as defined in KRS 500.080, as a result of the incident in which the defendant has been charged.
- (3) ***During the period immediately preceding the administration of any test, the person shall be afforded an opportunity of at least ten (10) minutes but not more than fifteen (15) minutes to attempt to contact and communicate with an attorney, and shall be informed of this right. Inability to communicate with an attorney during this period shall not be deemed to relieve the person of his obligation to submit to the tests and the penalties specified by Section 2 of this Act and Section 10 of this Act shall remain applicable to the person upon refusal. Nothing in this section shall be deemed to create a right to have an attorney present during the administration of the tests, but the person's attorney may be present if the attorney can physically appear at the location where the test is to be administered within the time period established in this section.***
- (4) ***Immediately following the administration of the final test requested by the officer, the person shall again be informed of his right to have a test or tests of his blood performed by a person of his choosing described in Section 8 of this Act within a reasonable time of his arrest at the expense of the person arrested. He shall then be asked "Do you want such a test?" The officer shall make reasonable efforts to provide transportation to the tests.***

Section 10. KRS 189A.107 is amended to read as follows:

- (1) *A person who refuses to submit to an alcohol concentration or substance test requested by an officer having reasonable grounds to believe that the person violated subsection (1) of Section 2 of this Act shall have his driver's license suspended by the court during the pendency of the action under Section 13 of this Act*~~[Except as provided in KRS 189A.220(2), suspensions for refusal to take an alcohol concentration or substance test shall be as follows:~~
  - ~~(a) For a first refusal in a five (5) year period, six (6) months;~~
  - ~~(b) For a second refusal within a five (5) year period, eighteen (18) months;~~
  - ~~(c) For a third refusal within a five (5) year period, thirty six (36) months; and~~
  - ~~(d) For a fourth or subsequent offense within a five (5) year period, sixty (60) months].~~
- (2) In the event a defendant is not convicted of a violation of KRS 189A.010(1) in a case in which *it is alleged that* he refused to take an alcohol concentration or substance test, *upon motion of the attorney for the Commonwealth, the court shall conduct a hearing, without a jury, to determine by clear and convincing evidence if the person actually refused the testing. However, the hearing shall not be required if the court has made a previous determination of the issue at a hearing held under Sections 13 and 14 of this Act. If the court finds that the person did refuse to submit to the testing, the court shall suspend the person's driver's license for a period of time within the time range specified that the license would have been suspended upon conviction as set forth in subsection (1) of Section 5 of this Act*~~[the court's final judgment shall impose the penalty required by this section. Except as provided in KRS 189A.220(2), in the event a defendant is convicted of a violation of KRS 189A.010(1), the final judgment shall impose the license revocation penalty required by this section or the license penalty revocation required for the conviction, whichever is longer].~~

Section 11. KRS 189A.120 is amended to read as follows:

- (1) When an alcohol concentration for a person twenty-one (21) years of age or older in a prosecution for violation of KRS 189A.010 is *0.08*~~[0.10]~~ or above, is 0.02 or above for a person under the age of twenty-one (21), or when the defendant, regardless of age, has refused to take an alcohol concentration or substance test, a prosecuting attorney shall not agree to the amendment of the charge to a lesser offense and shall oppose the amendment of the charge at trial, unless all prosecution witnesses are, and it is expected they will continue to be, unavailable for trial.
- (2) A prosecuting attorney shall not amend a blood alcohol concentration, and he shall oppose the amendment of the percentage, unless uncontroverted scientific evidence is presented that the test results were in error. In the cases the prosecutor shall state his reasons for agreeing with the amendment, and the scientific data upon which the amendment was made shall be made a part of the record in this case.
- (3) The record of charges and disposition thereof, including reasons for amending the charges, shall be transmitted by the court to the Justice Cabinet for inclusion in the centralized criminal history record information system under KRS 17.150.

Section 12. KRS 189.520 is amended to read as follows:

- (1) No person under the influence of intoxicating beverages or any substance which may impair one's driving ability shall operate a vehicle that is not a motor vehicle anywhere in this state.
- (2) No peace officer or State Police officer shall fail to enforce rigidly this section.
- (3) In any criminal prosecution for a violation of subsection (1) of this section, wherein the defendant is charged with having operated a vehicle which is not a motor vehicle while under the influence of intoxicating beverages, the alcohol concentration, as defined in KRS 189A.005, in the defendant's blood as determined at the time of making an analysis of his blood, urine, or breath, shall give rise to the following presumptions:
  - (a) If there was an alcohol concentration of less than 0.05, it shall be presumed that the defendant was not under the influence of alcohol;
  - (b) If there was an alcohol concentration of 0.05 or greater but less than *0.08*~~[0.10]~~, such fact shall not constitute a presumption that the defendant either was or was not under the influence of alcohol, but such fact may be considered, together with other competent evidence, in determining the guilt or innocence of the defendant;

- (c) If there was an alcohol concentration of ~~0.08~~~~[0.10]~~ or more, it shall be presumed that the defendant was under the influence of alcohol.
- (4) The provisions of subsection (3) of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether the defendant was under the influence of intoxicating beverages.

Section 13. KRS 189A.200 is amended to read as follows:

- (1) ~~[In addition to the pretrial suspension of a motor vehicle operator's license authorized by KRS 189A.060,]~~ The court shall at the arraignment or as soon as such relevant information becomes available suspend the motor vehicle operator's license and motorcycle operator's license and driving privileges of any person charged with a violation of KRS 189A.010(1)~~[(a), (b), (c), or (d)]~~ who:
  - (a) Has refused to take an alcohol concentration or substance test as reflected on the uniform citation form;~~or~~
  - (b) Has been convicted of one (1) or more prior offenses as described in KRS 189A.010(5)~~[(4)]~~(e) or has had his operator's license revoked or suspended on one (1) or more occasions for refusing to take an alcohol concentration or substance test, in the five (5) year period immediately preceding his arrest; **or**
  - (c) ***Was involved in an accident that resulted in death or serious physical injury as defined in KRS 500.080 to a person other than the defendant.***
- (2) Persons whose licenses have been suspended pursuant to this section may file a motion for judicial review of the suspension, and the court shall conduct the review in accordance with this chapter within thirty (30) days after the filing of the motion. The court shall, at the time of the suspension, advise the defendant of his rights to the review.
- (3) When the court orders the suspension of a license pursuant to this section, the defendant shall immediately surrender the license to the Circuit Court clerk, and the court shall retain the defendant in court or remand him into the custody of the sheriff until the license is produced and surrendered. If the defendant has lost his operator's license, other than due to a previous suspension or revocation, which is still in effect, the sheriff shall take him to the office of the circuit clerk so that a new license can be issued. If the license is currently under suspension or revocation, the provisions of this subsection shall not apply.
- (4) The Circuit Court clerk shall ***forthwith transmit to the Transportation Cabinet***~~[retain]~~ any license surrendered to him pursuant to this section~~[until]~~:
  - (a) ~~The court enters an order directing the return of the license to the defendant;~~
  - (b) ~~In the event of a first offense charge not involving a refusal by the defendant to take an alcohol concentration or substance test, for a violation of KRS 189A.010(1)(a), (b), (c), or (d), ninety (90) days have elapsed since the surrender of the license and the case has not been concluded;~~
  - (c) ~~In the event of a second offense charge not involving a refusal by the defendant to take an alcohol concentration or substance test, for a violation of KRS 189A.010(1)(a), (b), (c), or (d), twelve (12) months have elapsed since the surrender of the license and the case has not been concluded;~~
  - (d) ~~In the event of a third offense charge not involving a refusal by the defendant to take an alcohol concentration or substance test, for a violation of KRS 189A.010(1)(a), (b), (c), or (d), twenty four (24) months have elapsed since the surrender of the license and the case has not been concluded;~~
  - (e) ~~In the event of a fourth or subsequent offense charge not involving a refusal by the defendant to take an alcohol concentration or substance test, for a violation of KRS 189A.010(1)(a), (b), (c), or (d), sixty (60) months have elapsed since the surrender of the license and the case has not been concluded;~~
  - (f) ~~In the event of a charge involving a refusal by the defendant to take an alcohol concentration or substance test, for a violation of KRS 189A.010(1)(a), (b), (c), or (d), the period specified by KRS 189A.107 has elapsed since the surrender of the license and the case has not been concluded;~~
  - (g) ~~A judgment of acquittal is entered in the case unless the applicable suspension period required by KRS 189A.107 has not expired; or~~
  - (h) ~~A judgment of conviction for a violation of KRS 189A.010(1)(a), (b), (c), or (d) is entered in the case, whereupon the clerk shall transmit the license forthwith to the Department of Transportation].~~

- (5) *Licenses suspended under this section shall remain suspended until a judgment of conviction or acquittal is entered in the case or until the court enters an order terminating the suspension, but in no event for a period longer than the maximum license suspension period applicable to the person under Sections 5 and 10 of this Act*~~[The clerk shall promptly notify the Department of Transportation of all licenses surrendered pursuant to this section].~~
- (6) Any person whose operator's license has been suspended pursuant to this section shall be given credit for all pretrial suspension time against the period of revocation imposed. *Licenses suspended under this section shall remain suspended until a judgment of conviction or acquittal is entered in the case or until the court enters an order terminating the suspension, but in no event for a period longer than the maximum license suspension period applicable to the person under Sections 5 and 10 of this Act*~~[upon conviction].~~

Section 14. KRS 189A.220 is amended to read as follows:

~~[(1)]~~ In any judicial review of a pretrial suspension imposed for refusal to take an alcohol concentration or substance test, if the court determines, by the preponderance of the evidence, that:

- ~~(1)[(a)]~~ The person was charged and arrested by a peace officer with violation of KRS 189A.010(1);
- ~~(2)[(b)]~~ The officer had reasonable grounds to believe that the person was operating or in physical control of a motor vehicle in violation of KRS 189A.010(1);
- ~~(3)[(c)]~~ The person was advised of the implied consent law pursuant to KRS 189A.103;
- ~~(4)[(d)]~~ The peace officer requested the person to take the test or tests pursuant to KRS 189A.103; and then
- ~~(5)[(e)]~~ The person refused to take a test requested by a peace officer pursuant to KRS 189A.103,

then the court shall continue the suspension of the person's operator's license or privilege to operate a motor vehicle *during the pendency of the proceedings*.

~~[(2)]~~ If there is a conviction prior to a judicial review of a pretrial suspension for refusal to take an alcohol concentration or substance test, then the period of revocation applicable to the conviction shall apply.]

SECTION 15. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

*In any judicial review of a pretrial suspension imposed under subsection (1)(c) of Section 13 of this Act, if the court determines by a preponderance of the evidence that:*

- (1) The person was charged and arrested by a peace officer with violation of Section 2 of this Act;*
- (2) The officer had reasonable grounds to believe that the person was operating or in physical control of a motor vehicle in violation of Section 2 of this Act;*
- (3) There is probable cause to believe that the person committed the violation of subsection (1) of Section 2 of this Act as charged; and*
- (4) There is probable cause to believe that the person was involved in an accident that resulted in death or serious physical injury as defined in KRS 500.080 to a person other than the defendant;*

*then the court shall continue the suspension of the person's operator's license or privilege to operate a motor vehicle during the pendency of the proceedings.*

Section 16. KRS 189A.310 is amended to read as follows:

- (1) A court may, upon application of the defendant, *or attorney for the Commonwealth or upon its own motion*~~[and with notice to the Transportation Cabinet, which shall be a party]~~, and if the facts of the case so indicate, order that a prior conviction *not meeting applicable case law regarding admissibility of a prior conviction* cannot be used to enhance *criminal* penalties *including*~~for~~ license suspensions or revocations, or for other purposes for which such a conviction might be used.
- ~~(2)~~ ~~Determinations pursuant to this section shall be made in strict conformity to the requirements of Boykin v. Alabama, 395 U.S. 238 (1969), and the requirements of that case shall not be expanded upon unless later applicable case law so dictates.~~
- ~~(3)~~ ~~The provisions of this section shall not apply to a case in which the prior conviction has not been subject to final judgment, or is under appeal at the time the defendant makes his application pursuant to subsection (1).~~



- (4)] The Transportation Cabinet shall give full faith and credit to any court decision meeting the requirements of this section.

Section 17. KRS 189A.410 is amended to read as follows:

- (1) At any time following *the expiration of the minimum license suspension periods enumerated in subsection (6) of Section 2 of this Act and Sections 5 and 10 of this Act*~~[conviction for a first offense violation of KRS 189A.010]~~ the court ~~may~~*shall* grant the person hardship driving privileges for the *balance of the suspension period imposed by the court*~~[final sixty (60) days of his initial ninety (90) day revocation]~~, upon written petition of the defendant, if it finds reasonable cause to believe that revocation would hinder the person's ability to:
  - (a) Continue his employment;
  - (b) Continue attending school or an educational institution;
  - (c) Obtain necessary medical care;
  - (d) Attend driver improvement, alcohol, or substance abuse education programs; or
  - (e) Attend court-ordered counseling or other programs.
- (2) *Whenever the court grants a person hardship driving privileges under subsection (1) of this section, the court through court order, may:*
  - (a) *Prohibit the person from operating any motor vehicle or motorcycle without a functioning ignition interlock device, as defined in subsection (1) of Section 27 of this Act;*
  - (b) *Require that the person comply with all of the requirements of Section 27 of this Act, except for the requirements found in subsection (2) of Section 27 of this Act; and*
  - (c) *Require the person to install an ignition interlock device on every vehicle owned or leased by the person who is permitted to operate a motor vehicle under this section.*
- (3) The court shall not issue a hardship license to a person who has refused to take an alcohol concentration or substance test or tests offered by a law enforcement officer.

Section 18. KRS 189.530 is amended to read as follows:

- (1) No person shall provide a motor vehicle to another to operate upon a highway, knowing that the other person is in an intoxicated condition, or under the influence of any substance which may impair one's driving ability.
- (2) *A person is guilty of possession of an open alcoholic beverage container in a motor vehicle, when he or she has in his or her possession an open alcoholic beverage container in the passenger area of a motor vehicle located on a public highway or on the right-of-way of a public highway. However, nothing in this section shall prohibit the possession of an open alcoholic beverage container by an individual who is strictly a passenger and not the driver, in the passenger area of a motor vehicle maintained or used primarily for the transportation of persons for compensation, such as buses, taxis, and limousines, or in a recreational vehicle, motor home, or motor coach.*
- (3) *For purposes of this section, "alcoholic beverage" means:*
  - (a) *Beer, ale, porter, stout, and other similar fermented beverages including sake or similar products of any name or description containing one-half of one percent (0.5%) or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;*
  - (b) *Wine of not less than one-half of one percent (0.5%) of alcohol by volume; or*
  - (c) *Distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form including all dilutions and mixtures thereof from whatever source or by whatever process produced.*
- (4) *For the purposes of this section "open alcoholic beverage container" means any bottle, can, or other receptacle that contains any amount of alcoholic beverage, and*
  - (a) *Is open or has a broken seal; or*
  - (b) *The contents of which are partially removed.*

- (5) *For the purposes of this section "passenger area" means the area designed to seat the driver and the passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including the glove compartment. Passenger area does not include possession of an open alcoholic beverage container in a locked glove compartment, or behind the last upright seat or in an area not normally occupied by the driver or a passenger in a motor vehicle that is not equipped with a trunk.*
- (6) *For the purpose of this section "public highway" or "right-of-way of a public highway" means the entire width between and immediately adjacent to the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.*
- (7) *No person shall, as a result of a single course of conduct, be tried for or convicted of a violation of this section and a violation of KRS 222.202 or KRS 525.100. The attorney for the Commonwealth shall elect under which statute to proceed. A conviction, decision not to prosecute, or dismissal of charges under any of these statutes shall operate as a bar to prosecution under any other of these statutes for offenses arising out of the same course of conduct.*

SECTION 19. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

- (1) *Unless the court orders installation of an ignition interlock device under Section 27 of this Act, upon the conviction of a second or subsequent offense of Section 2 of this Act, a person shall have the license plate or plates on all of the motor vehicles owned by him or her, either solely or jointly, impounded by the court of competent jurisdiction in accordance with the following procedures:*
  - (a) *At the final sentencing hearing, the person who has been convicted of a second or subsequent offense of subsection (1)(a), (b), (c), or (d) of Section 2 of this Act, shall physically surrender any and all license plate or plates currently in force on any motor vehicle owned either individually or jointly by him or her to the court. The order of the court suspending the license plate or plates shall not exceed the time for the suspension of the motor vehicle operator's license of the second or subsequent offender as specified in KRS 189A.070.*
  - (b) *The clerk of the court shall retain any surrendered plate or plates and transmit all surrendered plate or plates to the Transportation Cabinet in the manner set forth by the Transportation Cabinet in administrative regulations promulgated by the Transportation Cabinet.*
- (2) *Upon application, the court may grant hardship exceptions to family members or other individuals affected by the surrender of any license plate or plates of any vehicle owned by the second or subsequent offender. Hardship exceptions may be granted by the court to the second or subsequent offender's family members or other affected individuals only if the family members or other affected individuals prove to the court's satisfaction that their inability to utilize the surrendered vehicles would pose an undue hardship upon the family members or affected other individuals. Upon the court's granting of hardship exceptions, the clerk or the Transportation Cabinet as appropriate, shall return to the family members or other affected individuals the license plate or plates of the vehicles of the second or subsequent offender for their utilization. The second or subsequent offender shall not be permitted to operate a vehicle for which the license plate has been suspended or for which a hardship exception has been granted under any circumstances.*
- (3) *If the license plate of a jointly owned vehicle is impounded, this vehicle may be transferred to a joint owner of the vehicle who was not the violator.*
- (4) *If the license plate of a motor vehicle is impounded, the vehicle may be transferred.*

Section 20. KRS 186.018 is amended to read as follows:

- (1) For purposes of maintaining driving history records of operators of motor vehicles of the Commonwealth, the files of the Transportation Cabinet shall be used to ascertain the driving history record of each person who is licensed to operate a motor vehicle within the Commonwealth. Except as provided in subsection (2) of this section, the Transportation Cabinet shall destroy, and shall not maintain records of moving traffic convictions that are more than five (5) years old. Notwithstanding, for any licensee who now holds, who has applied for, or has ever held a Class A, B, or C license issued pursuant to KRS 281A.170, the cabinet shall keep conviction records indefinitely.
- (2) The Transportation Cabinet shall not release information on the driving history record of a person under the age of twenty-one (21) whose operator license has been suspended pursuant to KRS 189A.010(6)~~[(5)]~~. The

cabinet shall destroy, and shall not maintain, the record of the suspension of a person's operator's license if the license was suspended pursuant to KRS 189A.010(6)(5), within five (5) working days of the person's operator's license being reinstated.

- (3) The cabinet shall charge a fee of three dollars (\$3) for any driving history record, ten cents (\$0.10) of which shall be deposited in a special account within the road fund to be used exclusively by the Transportation Cabinet for the state driver education program as designated in KRS 186.535.

Section 21. KRS 189A.240 is amended to read as follows:

In any judicial review of a pretrial suspension imposed under KRS 189A.200(1)(b), if the court determines by a preponderance of the evidence that:

- (1) The person was charged and arrested by a peace officer with a violation of KRS 189A.010(1)(a), (b), (c), or (d);
- (2) The peace officer had reasonable grounds to believe that the person was operating a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), or (d);
- (3) There is probable cause to believe that the person committed the violation of KRS 189A.010(1)(a), (b), (c), or (d) as charged; and
- (4) The person has been convicted of one (1) or more prior offenses as described in KRS 189A.010(5)(4)(e) or has had his motor vehicle operator's license suspended or revoked on one (1) or more occasions for refusing to take an alcohol concentration or substance test, in the five (5) year period immediately preceding his arrest, then the court shall continue to suspend the person's operator's license or privilege to operate a motor vehicle. The provisions of this section shall not be construed as limiting the person's ability to challenge any prior convictions or license suspensions or refusals.

Section 22. KRS 235.240 is amended to read as follows:

- (1) A person shall not operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device in a reckless or negligent manner so as to endanger the life or property of any person.
- (2) A person shall not operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device while intoxicated or under the influence of any other substance which impairs one's driving ability.
- (3) Any person who operates a vessel upon the waters of the Commonwealth shall be deemed to have given consent to a test or tests as accepted by the state's evidentiary mandate for the purpose of determining the operator's alcohol concentration or the presence of other drugs. The test or tests shall be administered at the direction of a law enforcement officer who has probable cause to believe that the operator may have been violating this section.
- (4) For the purposes of enforcing this section, the elements of the offense are those established in KRS 189A.010(1) to (4)(3), except that the penalties for this offense are set forth in KRS 235.990.

Section 23. KRS 281A.2102 is amended to read as follows:

In addition to the penalties established by this chapter for driving a commercial motor vehicle under the influence of alcohol:

- (1) Any person convicted of driving a commercial motor vehicle while the alcohol concentration of the person's blood or breath is four hundredths (0.04) to eight hundredths (0.08) shall be fined not less than twenty dollars (\$20) and not more than fifty dollars (\$50).
- (2) Any person convicted of driving a commercial motor vehicle while the alcohol concentration of the person's blood or breath is greater than eight hundredths (0.08) shall be fined under the provisions of KRS 189A.010(5)(4)(a) to (d).

Section 24. KRS 189A.100 is amended to read as follows:

- (1) Law enforcement agencies may administer preliminary breath tests using devices or equipment which will ensure an accurate determination of blood alcohol content. Such tests may be administered in the field to a person suspected of violation of KRS 189A.010 before the person is arrested. This test may be administered in addition to any other blood alcohol level test authorized by law. A person's refusal to take a preliminary breath test shall not be used against him in a court of law or in any administrative proceeding.

- (2) Law enforcement agencies may record on film or video tape or by other visual and audible means ***the pursuit of a violator or suspected violator, the traffic stop, or*** field sobriety tests administered at the scene of an arrest for violation of KRS 189A.010 or such tests at a police station, jail, or other suitable facility subject to the following conditions:
- (a) The testing is recorded in its entirety (except for blood alcohol analysis testing); and
  - (b) The entire recording ***of the field sobriety tests and the entire recording of such portions of the pursuit and traffic stop as were recorded*** is shown in court unless the defendant waives the showing of any portions not offered by the prosecution; and
  - (c) The entire recording is available to be shown by the defense at trial if the defendant so desires regardless of whether it was introduced by the Commonwealth; and
  - (d) The defendant or his counsel is afforded an opportunity to view the entire recording a reasonable time before the trial in order to prepare an adequate defense; and
  - (e) Recordings shall be used for official purposes only, ***which shall include:***
    - 1. ***Viewing in court;***
    - 2. ***Viewing by the prosecution and defense in preparation for a trial; and***
    - 3. ***Viewing for purposes of administrative reviews and official administrative proceedings***~~and shall be shown only in court, to the prosecution and defense in preparation for a trial, or upon the order of a court.~~ Recordings shall otherwise be considered as confidential records; and
  - (f) ***The videotape or film taken in accordance with this section shall, upon order of the District Court, be destroyed after the later of the following:***
    - 1. ***Fourteen (14) months, if there is no appeal of any criminal or traffic case filed as a result of the videotape or film, or if the videotape or film does not record the actual happening of an accident involving a motor vehicle;***
    - 2. ***Fourteen (14) months after a decision has been made not to prosecute any case upon which an arrest has been made or a citation issued as a result of the videotape or film, if the videotape does not record the actual happening of an accident involving a motor vehicle;***
    - 3. ***Twenty-six (26) months, if there is no appeal of any criminal or traffic case filed as a result of the videotape or film, if the videotape or film records the actual happening of an accident involving a motor vehicle;***
    - 4. ***After all appeals have been exhausted arising from any criminal or traffic case filed as a result of the videotape;***
    - 5. ***At the conclusion of any civil case arising from events depicted on the videotape or film; or***
    - 6. ***At the conclusion of the exhaustion of all appeals arising from any law enforcement agency administrative proceedings arising from events depicted on the videotape or film; and***~~After all appeals have been exhausted the recordings shall, upon the order of a District Court, be destroyed; and~~
  - (g) Public officials or employees utilizing or showing recordings other than as permitted in this chapter or permitting others to do so shall be guilty of official misconduct in the first degree.
- (3) ***When a peace officer makes a videotape or film recording of any transaction covered by subsection (2) of this section and a citation is issued or an arrest is made the peace officer shall note on the uniform citation that a videotape has been made of the transaction.***

Section 25. KRS 189.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456, and 189.960 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each

offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars (\$20) nor more than two thousand dollars (\$2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars (\$11) nor more than thirty dollars (\$30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

- (2) (a) Any person who violates the weight provisions of KRS 189.212, 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents (\$0.02) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents (\$0.03) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (\$0.05) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (\$0.07) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (\$0.09) per pound when the excess exceeds five thousand (5,000) pounds, but in no case shall the fine be less than sixty dollars (\$60).
- (b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, 189.490, or the dimension provisions of KRS 189.212, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
- (c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.
- (3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars (\$15).
- (b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars (\$35) nor more than two hundred dollars (\$200).
- (4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
- (b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
- (c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.
- (5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) or imprisoned not less than thirty (30) days nor more than sixty (60) days, or both. For each subsequent offense occurring within three (3) years, the person shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.
- (6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars (\$15) in excess of the cost of the repair of the road.
- (7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars (\$20) nor more than fifty dollars (\$50).
- (8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100).
- (9) (a) Any person who violates KRS 189.530(I) shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.
- (b) *Any person who violates subsection (2) of Section 18 of this Act shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100).*

- (10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.
- (11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars (\$30) nor more than one hundred dollars (\$100) for each offense.
- (12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and, in the case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.
- (13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars (\$20) nor more than twenty-five dollars (\$25).
- (15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars (\$100) and, upon subsequent convictions, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for thirty (30) days, or both.
- (17)
  - (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.
  - (b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name the vehicle used in the transportation of inflammable liquids or explosives is licensed, the person shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each violation shall constitute a separate offense.
- (18) Any person who abandons a vehicle upon the right-of-way of a state highway for three (3) consecutive days shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.
- (19) Every person violating KRS 189.393 shall be guilty of a Class B misdemeanor, unless the offense is being committed by a defendant fleeing the commission of a felony offense which the defendant was also charged with violating and was subsequently convicted of that felony, in which case it is a Class A misdemeanor.
- (20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.
- (21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of a regulation shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.
- (22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
- (23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).
- (24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars (\$50).
- (25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars (\$25).
- (26) Any person who violates any of the provisions of KRS 189.125(3), KRS 189.290, KRS 189.300, KRS 189.340, KRS 189.345, KRS 189.370, KRS 189.393, or KRS 189.505, shall, in addition to any other fine imposed by this chapter, pay an additional fee of ten dollars (\$10). Funds collected pursuant to this subsection shall be deposited in the traumatic brain injury trust fund, created pursuant to KRS 211.476, within fourteen (14) days after the end of each quarter, to be used for the purposes set forth in KRS 211.470 to 211.478.
- (27) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.

- (28) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:
- (a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and
  - (b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.
- (29) Any person who violates the provisions of KRS 189.285 shall have his or her operator's license suspended for a period of ninety (90) days and be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

Section 26. KRS 186.560 is amended to read as follows:

- (1) The cabinet shall forthwith revoke the license of any operator of a motor vehicle upon receiving record of his conviction of any of the following offenses:
- (a) Murder or manslaughter resulting from the operation of a motor vehicle;
  - (b) Driving a vehicle which is not a motor vehicle while under the influence of alcohol or any other substance which may impair one's driving ability;
  - (c) Perjury or the making of a false affidavit under KRS 186.400 to 186.640 or any law requiring the registration of motor vehicles or regulating their operation on highways;
  - (d) Any felony in the commission of which a motor vehicle is used;
  - (e) Conviction or forfeiture of bail upon three (3) charges of reckless driving within the preceding twelve (12) months;
  - (f) Conviction of driving a motor vehicle involved in an accident and failing to stop and disclose his identity at the scene of the accident;
  - (g) Conviction of theft of a motor vehicle or any of its parts, including the conviction of any person under the age of eighteen (18) years;
  - (h) Failure to have in full force and effect the security required by Subtitle 39 of KRS Chapter 304 upon conviction of a second and each subsequent offense within any five (5) year period;
  - (i) Conviction for fraudulent use of a driver's license or use of a fraudulent driver's license to purchase or attempt to purchase alcoholic beverages, as defined in KRS 241.010, in violation of KRS 244.085; and
  - (j) Conviction of operating a motor vehicle, motorcycle, or moped without an operator's license as required by KRS 186.410.
- (2) If the person convicted of any offense named in subsection (1) of this section is not the holder of a license, the cabinet shall deny the person so convicted a license for the same period of time as though he had possessed a license which had been revoked. If through an inadvertence the defendant should be issued a license, the cabinet shall forthwith cancel it.
- (3) The cabinet upon receiving a record of the conviction of any person upon a charge of operating a motor vehicle while the license of that person is denied or suspended, or revoked, or while his privilege to operate a motor vehicle is withdrawn, shall immediately extend the period of the first denial, suspension, revocation, or withdrawal for an additional like period.
- (4) The revocation or denial of a license or the withdrawal of the privilege of operating a motor vehicle for a violation of subsection (1)(a) of this section shall be for a period of not less than five (5) years. Revocations or denials under this section shall not be subject to any lessening of penalties authorized under any other provision of this section or any other statute.
- (5) Except as provided in subsections (3), (4), and (8) of this section, in all other cases, the revocation or denial of a license or the withdrawal of the privilege of operating a motor vehicle under this section shall be for a period of six (6) months, except that, if the same person has had one (1) previous conviction of any offense enumerated in subsection (1) of this section, regardless of whether the person's license was revoked because of

the previous conviction, the period of the revocation, denial, or withdrawal shall be one (1) year; if the person has had more than one (1) previous conviction of the offenses considered collectively as enumerated in subsection (1) of this section, regardless of whether the person's license was revoked for any previous conviction, the period of revocation, denial, or withdrawal shall be for not less than two (2) years. If the cabinet, upon receipt of the written recommendation of the court in which any person has been convicted of violating KRS 189.520(1) or KRS 244.085(5) as relates to instances in which a driver's license or fraudulent driver's license was the identification used or attempted to be used in the commission of the offense, who has had no previous conviction of said offense, the person's operator's license shall not be revoked, but the person's operator's license shall be restricted to any terms and conditions the secretary in his discretion may require, provided the person has enrolled in an alcohol or substance abuse education or treatment program as the cabinet shall require. If the person fails to satisfactorily complete the education or treatment program or violates the restrictions on his operator's license, the cabinet shall immediately revoke his operator's license for a period of six (6) months.

- (6) In order to secure the reinstatement of a license to operate a motor vehicle or motorcycle restored following a period of suspension or revocation pursuant to ~~KRS 189A.060,~~ 189A.070 ~~or~~ and 189A.080, the person whose license is suspended or revoked shall comply with the fees and other procedures of the Transportation Cabinet with regard to the reinstatement of suspended or revoked licenses.
- (7) The cabinet shall revoke the license of any operator of a motor vehicle upon receiving notification that the person is under age eighteen (18) and has dropped out of school or is academically deficient, as defined in KRS 159.051(1).
- (8) A person under the age of eighteen (18) who is convicted of the offenses of subsections (1) or (3) of this section, except for subsection (1)(h) of this section, shall have his license revoked until he reaches the age of eighteen (18) or shall have his license revoked as provided in this section, whichever penalty will result in the longer period of revocation.

SECTION 27. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

- (1) *For the purposes of this section and Sections 17 and 28 of this Act, "ignition interlock device" means a device that connects a motor vehicle ignition system or motorcycle ignition system to a breath alcohol analyzer and prevents a motor vehicle ignition or motorcycle ignition from starting if a driver's breath alcohol concentration, as defined in Section 1 of this Act, exceeds 0.02, as measured by the device.*
- (2) *In lieu of ordering license plate impoundment under Section 19 of this Act of a person convicted of a second or subsequent violation of Section 2 of this Act, the court may order installation of an ignition interlock device as provided in this section as follows:*
  - (a) *Except as provided in paragraph (d) of this subsection, at the time that the court revokes a person's license under any provision of Section 5 of this Act other than subsection (1)(a) of Section 5 of this Act, the court shall also order that at the conclusion of the license revocation the person shall be prohibited from operating any motor vehicle or motorcycle without a functioning ignition interlock device.*
  - (b)
    1. *The first time in a five (5) year period that a person is penalized under this section, a functioning ignition interlock device shall be installed for a period of six (6) months.*
    2. *The second time in a five (5) year period that a person is penalized under this section, a functioning ignition interlock device shall be installed for a period of twelve (12) months.*
    3. *The third or subsequent time in a five (5) year period that a person is penalized under this section, a functioning ignition interlock device shall be installed for a period of thirty (30) months.*
    4. *The person whose license has been suspended for a second or subsequent violation of Section 2 of this Act shall not be able to apply to the court for permission to install an ignition interlock device until the person has completed one (1) year of license suspension without any subsequent conviction for a violation of Section 2 or 7 of this Act. If the court grants permission to install an ignition interlock device, an ignition interlock device shall be installed on all vehicles owned or leased by the person whose license has been suspended.*



- (c) *In determining the five (5) year period under paragraph (b) of this subsection, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered, resulting in the license revocations described in Section 5 of this Act.*
    - (d) *If the court finds that a person is required to operate a motor vehicle or motorcycle in the course and scope of the person's employment and the motor vehicle or motorcycle is owned by the employer, then the court shall order that the person may operate that motor vehicle or motorcycle during regular working hours for the purposes of his or her employment without installation of a functioning ignition interlock device on that motor vehicle or motorcycle if the employer has been notified of the prohibition established under paragraphs (a), (b), and (c) of this subsection.*
  - (3) *Upon ordering the installation of a functioning ignition interlock device, the court, without a waiver or a stay of the following procedure, shall:*
    - (a) *Transmit its order and other appropriate information to the Transportation Cabinet;*
    - (b) *Direct that the Transportation Cabinet records reflect:*
      - 1. *That the person shall not operate a motor vehicle or motorcycle without a functioning ignition interlock device, except as provided in paragraph (d) of subsection (2) of this section; and*
      - 2. *Whether the court has expressly permitted the person to operate a motor vehicle or motorcycle without a functioning ignition interlock device, as provided in paragraph (d) of subsection (2) of this section;*
    - (c) *Direct the Transportation Cabinet to attach or imprint a notation on the driver's license of any person restricted under this section stating that the person shall operate only a motor vehicle or motorcycle equipped with a functioning ignition interlock device. However, if the exception provided for in paragraph (d) of subsection (2) of this section applies, the notation shall indicate the exception;*
    - (d) *Require proof of the installation of the functioning ignition interlock device and periodic reporting by the person for the verification of the proper functioning of the device;*
    - (e) *Require the person to have the device serviced and monitored at least every ninety (90) days for proper functioning by an entity approved by the Transportation Cabinet; and*
    - (f) *Require the person to pay the reasonable cost of leasing or buying, installing, servicing, and monitoring the device. The court may establish a payment schedule for the person to follow in paying the cost.*
  - (4) *The Transportation Cabinet shall:*
    - (a) *Certify ignition interlock devices for use in this Commonwealth;*
    - (b) *Approve ignition interlock device installers who install functioning ignition interlock devices under the requirements of this section;*
    - (c) *Approve servicing and monitoring entities identified in paragraph (e) of subsection (3) of this section;*
    - (d) *Publish and periodically update on the Transportation Cabinet web site a list of the certified ignition interlock devices, the approved ignition interlock installers, and the approved servicing and monitoring entities;*
    - (e) *Develop a warning label that an ignition interlock device installer shall place on a functioning ignition interlock device before installing that device. The warning label shall warn of the penalties established in Section 28 of this Act; and*
    - (f) *Promulgate administrative regulations to carry out the provisions of this subsection.*

SECTION 28. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

- (1) *No person shall operate a motor vehicle or motorcycle without a functioning ignition interlock device when prohibited to do so under subsection (2) of Section 27 of this Act or under subsection (2) of Section 17 of this Act.*

- (2) (a) *No person shall start a motor vehicle or motorcycle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle or motorcycle to a person subject to the prohibition established in subsection (2) of Section 27 of this Act or under subsection (2)(b) of Section 17 of this Act.*
- (b) *Any person who violates paragraph (a) of this subsection shall:*
  - 1. *For a first offense, be guilty of a Class B misdemeanor; and*
  - 2. *For a second or subsequent offense, be guilty of a Class A misdemeanor.*
- (3) (a) *No person shall:*
  - 1. *Knowingly install a defective ignition interlock device on a motor vehicle or motorcycle; or*
  - 2. *Tamper with an installed ignition interlock device with the intent of rendering it defective.*
- (b) *Any person who violates paragraph (a) of this subsection shall:*
  - 1. *For a first offense, be guilty of a Class B misdemeanor; and*
  - 2. *For a second or subsequent offense, be guilty of a Class A misdemeanor and be prohibited from installing ignition interlock devices or directing others in the installation of ignition interlock devices.*
- (4) (a) *No person shall direct another person to install a defective ignition interlock device on a motor vehicle or motorcycle when the person giving the direction knows that the ignition interlock device is defective.*
- (b) *Any person who violates paragraph (a) of this subsection shall:*
  - 1. *For a first offense, be guilty of a Class B misdemeanor; and*
  - 2. *For a second or subsequent offense, be guilty of a Class A misdemeanor and be prohibited from directing others in the installation of ignition interlock devices or installing ignition interlock devices.*

Section 29. KRS 186.560 is amended to read as follows:

- (1) The cabinet shall forthwith revoke the license of any operator of a motor vehicle upon receiving record of his conviction of any of the following offenses:
  - (a) Murder or manslaughter resulting from the operation of a motor vehicle;
  - (b) Driving a vehicle which is not a motor vehicle while under the influence of alcohol or any other substance which may impair one's driving ability;
  - (c) Perjury or the making of a false affidavit under KRS 186.400 to 186.640 or any law requiring the registration of motor vehicles or regulating their operation on highways;
  - (d) Any felony in the commission of which a motor vehicle is used;
  - (e) Conviction or forfeiture of bail upon three (3) charges of reckless driving within the preceding twelve (12) months;
  - (f) Conviction of driving a motor vehicle involved in an accident and failing to stop and disclose his identity at the scene of the accident;
  - (g) Conviction of theft of a motor vehicle or any of its parts, including the conviction of any person under the age of eighteen (18) years;
  - (h) Failure to have in full force and effect the security required by Subtitle 39 of KRS Chapter 304 upon conviction of a second and each subsequent offense within any five (5) year period;
  - (i) Conviction for fraudulent use of a driver's license or use of a fraudulent driver's license to purchase or attempt to purchase alcoholic beverages, as defined in KRS 241.010, in violation of KRS 244.085; and
  - (j) Conviction of operating a motor vehicle, motorcycle, or moped without an operator's license as required by KRS 186.410.

- (2) If the person convicted of any offense named in subsection (1) of this section is not the holder of a license, the cabinet shall deny the person so convicted a license for the same period of time as though he had possessed a license which had been revoked. If through an inadvertence the defendant should be issued a license, the cabinet shall forthwith cancel it.
- (3) The cabinet upon receiving a record of the conviction of any person upon a charge of operating a motor vehicle while the license of that person is denied or suspended, or revoked, or while his privilege to operate a motor vehicle is withdrawn, shall immediately extend the period of the first denial, suspension, revocation, or withdrawal for an additional like period.
- (4) The revocation or denial of a license or the withdrawal of the privilege of operating a motor vehicle for a violation of subsection (1)(a) of this section shall be for a period of not less than five (5) years. Revocations or denials under this section shall not be subject to any lessening of penalties authorized under any other provision of this section or any other statute.
- (5) Except as provided in subsections (3), (4), and (8) of this section, in all other cases, the revocation or denial of a license or the withdrawal of the privilege of operating a motor vehicle under this section shall be for a period of six (6) months, except that, if the same person has had one (1) previous conviction of any offense enumerated in subsection (1) of this section, regardless of whether the person's license was revoked because of the previous conviction, the period of the revocation, denial, or withdrawal shall be one (1) year; if the person has had more than one (1) previous conviction of the offenses considered collectively as enumerated in subsection (1) of this section, regardless of whether the person's license was revoked for any previous conviction, the period of revocation, denial, or withdrawal shall be for not less than two (2) years. If the cabinet, upon receipt of the written recommendation of the court in which any person has been convicted of violating KRS 189.520(1) or KRS 244.085(5) as relates to instances in which a driver's license or fraudulent driver's license was the identification used or attempted to be used in the commission of the offense, who has had no previous conviction of said offense, the person's operator's license shall not be revoked, but the person's operator's license shall be restricted to any terms and conditions the secretary in his discretion may require, provided the person has enrolled in an alcohol or substance abuse education or treatment program as the cabinet shall require. If the person fails to satisfactorily complete the education or treatment program or violates the restrictions on his operator's license, the cabinet shall immediately revoke his operator's license for a period of six (6) months.
- (6) In order to secure the reinstatement of a license to operate a motor vehicle or motorcycle restored following a period of suspension or revocation pursuant to KRS 189A.060, 189A.070, ~~and~~ 189A.080, **and Section 7 of this Act**, the person whose license is suspended or revoked shall comply with the fees and other procedures of the Transportation Cabinet with regard to the reinstatement of suspended or revoked licenses.
- (7) The cabinet shall revoke the license of any operator of a motor vehicle upon receiving notification that the person is under age eighteen (18) and has dropped out of school or is academically deficient, as defined in KRS 159.051(1).
- (8) A person under the age of eighteen (18) who is convicted of the offenses of subsections (1) or (3) of this section, except for subsection (1)(h) of this section, shall have his license revoked until he reaches the age of eighteen (18) or shall have his license revoked as provided in this section, whichever penalty will result in the longer period of revocation.

SECTION 30. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

- (1) ***The only alcohol or substance testing that is subject to refusal or enhancement of penalties provided for in this chapter is:***
  - (a) ***Breath analysis testing by a machine installed, tested, and maintained by the Commonwealth for that specific purpose at a police station or detention facility;***
  - (b) ***Blood or urine testing at the request of the officer at a police station, detention facility, or medical facility; or***
  - (c) ***Combination of tests required in paragraphs (a) or (b) of this subsection.***
- (2) ***The results of any breath analysis by an instrument other than one specified in subsection (1) of this section shall be inadmissible in court.***

Section 31. The following KRS sections are repealed:

- 186.642 "Habitual violator" defined.
- 186.643 Information to be filed by county attorney.
- 186.644 Hearing.
- 186.645 Findings of court.
- 186.646 License not to be issued to habitual violator.
- 186.647 Restoration of license.
- 186.648 Appeal.
- 186.649 Law not to affect existing laws or ordinances of political subdivisions.
- 186.992 Penalty.
- 189A.015 Offenses committed prior to July 13, 1984.
- 189A.060 Pretrial suspension of operator's license.

Section 32. This Act shall become effective October 1, 2000.

**Approved April 21, 2000**

## **CHAPTER 468**

**(HB 371)**

AN ACT relating to health insurance.

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

Section 1. KRS 304.17A-150 is amended to read as follows:

- (1) On and after July 15, 1995, it is an unfair trade practice for an insurer, agent, broker, or any other person in the business of marketing and selling health plans, to commit or perform any of the following acts:
  - (a) Encourage individuals or groups to refrain from filing an application for coverage with the insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or
  - (b) Encourage or direct individuals or groups to seek coverage from another insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or
  - (c) Encourage an employer to exclude an employee from coverage.

The provisions of paragraphs (a) and (b) of this subsection shall not apply to information provided regarding the established geographic service area of an insurer.

- (2) It is an unfair trade practice for an insurer to compensate an agent, broker, or any other person in the business of marketing and selling health plans on the basis of the health status, claims experience, industry, occupation, or geographic location of the insured or prospective insured.
- (3) It shall constitute an unfair trade practice for any insurer, insurance agent, or third-party administrator to refer an individual employee to the Kentucky guaranteed acceptance program or to arrange for an individual employee to apply to that plan, for the purpose of separating an employee from group health insurance coverage provided in connection with the individual's employment.
- (4) ***It is an unfair trade practice for an insurer that offers multiple health benefit plans to require a health care provider, as a condition of participation in a health benefit plan of the insurer, to participate in any of the insurer's other health benefit plans. In addition to the proceedings and penalties provided in this chapter for violation of this provision, a contract provision violating this subsection is void.***
- (5) It is an unfair trade practice for an insurer not to compute an insured's coinsurance or cost sharing on the basis of the amount actually received by a health-care provider from the insurer.

- ~~(6)~~~~(5)}~~ The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any insurer that fails to pay an assessment under KRS 304.17A-470. As an

alternative, the commissioner may levy a civil penalty on any member insurer that fails to pay the assessment when due. The civil penalty shall not exceed five percent (5%) of the unpaid assessment per month, but no civil penalty shall be less than one hundred dollars (\$100) per month.

~~(7)(6)~~ The remedy provided by KRS 304.12-120 shall be available for conduct proscribed by this section.

**Approved April 21, 2000**

## **CHAPTER 469**

**(HB 392)**

AN ACT relating to the Kentucky lottery.

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

Section 1. KRS 154A.110 is amended to read as follows:

- (1) Proceeds of lottery prizes shall be subject to Kentucky state income tax. Any attachments, garnishments, or executions authorized and issued pursuant to statute shall also be withheld if served upon the process agent of the corporation. This section shall not apply to a retailer.
- (2) The board shall adopt rules to establish a system of verifying the validity of tickets claimed to win prizes and to effect payment of such prizes, except that:
  - (a) No prize, nor any portion of a prize, nor any right of any person to a prize awarded shall be assignable. Any prize, or portion thereof, remaining unpaid at the death of a prize winner shall be paid to the estate of such deceased prize winner or to the trustee under a revocable living trust established by the deceased prize winner as settlor, provided that a copy of such a trust has been filed with the corporation along with a notarized letter of direction from the settlor and no written notice of revocation has been received by the corporation prior to the settlor's death. Following such a settlor's death and prior to any payment to such a successor trustee, the corporation shall obtain from the trustee and each trust beneficiary a written agreement to indemnify and hold the corporation harmless with respect to any claims that may be asserted against the corporation arising from payment to or through the trust. Notwithstanding any other provisions of this section, any person, pursuant to an appropriate judicial order, shall be paid the prize to which a winner is entitled.
  - (b) No ticket shall knowingly be sold to any person under the age of eighteen (18), but this section does not prohibit the purchase of a ticket by a person eighteen (18) years of age or older for the purpose of making a gift to any person of any age. In such case, the corporation shall direct payment to an adult member of the person's family or the legal guardian of the person on behalf of such person. The person named as custodian shall have the same powers and duties as prescribed for a custodian pursuant to the Uniform Transfers to Minors Act.
  - (c) No prize shall be paid arising from claimed tickets that are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received or not recorded by the corporation within applicable deadlines, lacking in captions that conform and agree with the play symbols as appropriate to the lottery game involved, or not in compliance with such additional specific rules and public or confidential validation and security tests of the corporation appropriate to the particular lottery game involved.
  - (d) No particular prize in any lottery game shall be paid more than once, and in the event of a binding determination that more than one claimant is entitled to a particular prize, the sole remedy of such claimants is the award to each of them of an equal share in the prize.
  - (e) A holder of a winning cash ticket from a Kentucky lottery game shall claim a prize within three hundred sixty-five (365) days (for a ticket issued before January 1, 1995), and within one hundred eighty (180) days (for a ticket issued on or after January 1, 1995), or for a multistate lottery game within one hundred eighty (180) days, after the drawing in which the prize was won. In any Kentucky lottery game in which the player may determine instantly if he has won or lost, he shall claim a prize within three hundred sixty-five (365) days (for lottery games commenced or tickets printed or reprinted before January 1, 1995), and within one hundred eighty (180) days (for lottery games commenced or tickets printed or reprinted on or after January 1, 1995), or for a multistate lottery game within one hundred eighty (180)

days, after the end of the lottery game as announced by the corporation. However, a holder of a pull-tab lottery ticket shall claim a prize within the time period and in the manner printed on the ticket. If a valid claim is not made for a prize within the applicable period, the prize shall constitute an unclaimed prize for purposes of subsection (3) of this section.

- (f) No prize shall be paid upon a ticket purchased or sold in violation of this chapter. Any such prize shall constitute an unclaimed prize for purposes of subsection (3) of this section.
- (3) Any unclaimed prize money may be retained by the corporation and added to the pool from which future prizes are to be awarded or used for special prize promotions, or may be appropriated by the General Assembly directly from the corporation for any public purpose. For fiscal years **2000-2001 and 2001-2002**~~1998-99 and 1999-00~~, any unclaimed prize money in excess of six million dollars (\$6,000,000) shall be transferred to the affordable housing trust fund established by KRS 198A.710.
- (4) The corporation is discharged of all liability upon payment of a prize.
- (5) No ticket shall be purchased by and no prize shall be paid to any of the following persons:
  - (a) Any member of the board of directors, officers, or employees of the corporation;
  - (b) Any vendors or related entities, or any member of the board of directors, officers, employees of, partners in, or owners of any vendors or related entities to the vendors; or
  - (c) Any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of any such person.

Section 2. KRS 198A.715 is amended to read as follows:

- (1) The administering agency for the trust fund shall be the Kentucky Housing Corporation, which shall use moneys from the trust fund to make, or participate in the making, of loans or grants for the eligible activities described in this section. Loans or grants shall be made upon the determination by the corporation that the loan or grant shall be used to create new sources of funding, or to supplement existing sources of funding for eligible activities, and shall not be used to replace existing or available funds.
- (2) Activities eligible for funding shall include:
  - (a) Provision of matching funds for federal housing dollars requiring a local or state match including, but not limited to, the National Affordable Housing Act of 1990;
  - (b) Acquisition of housing units for the purpose of preservation or conversion as very low-income housing;
  - (c) New construction or rehabilitation of very low income housing units;
  - (d) Matching funds for technical assistance directly related to providing housing for persons pursuant to KRS 198A.700 to 198A.730; and
  - (e) Administrative costs for housing assistance programs or organizations eligible for funding pursuant to subsection (3) of this section, if the grants or loans will substantially increase the recipient's access to housing funds other than those available under KRS 198A.700 to 198A.730.
- (3) Organizations eligible for funding from the trust fund include local governments, local government housing authorities, nonprofit organizations, and regional or statewide housing assistance organizations.
- (4) Housing units provided to very low-income persons or families pursuant to KRS 198A.700 to 198A.730, shall be deed-restricted under the following conditions:
  - (a) Rental housing shall be deed-restricted for a minimum of thirty (30) years. Amendments may be granted by the board of directors of the corporation on a case-by-case basis. Investment from the trust fund into a specific housing type shall revert to like housing for very low-income persons.
  - (b) Single-family units or units for sale shall be deed restricted for a minimum of five (5) years.
- (5) In the development of housing pursuant to KRS 198A.700 to 198A.730, displacement of very low-income persons shall not be permitted unless the project shall pay all reasonable relocation costs as defined by the board of directors of the corporation.

- (6) There shall not be discrimination in the sale or rental, or otherwise making available or denying, a dwelling funded under KRS 198A.700 to 198A.730 to any buyer or renter because of race, religion, sex, familial status, disability, or national origin.
- (7) In the event that the corporation chooses to use trust fund dollars with or as a match to the Federal Home Investment Partnership Program or other federal programs, the strictest affordability requirements shall apply.
- (8) Trust fund dollars shall be contributed permanently to a project, except when serving as a match for federal housing programs that require all funds to be contributed permanently to the federal program. All repayment, interest, or other return on the investment of trust fund dollars are required to be returned to the trust fund and used for eligible trust fund activities in accordance with the requirements of KRS 198A.700 to 198A.730. Trust fund dollars invested in a project with federal dollars requiring a permanent contribution shall be recaptured to the federal program account.
- (9) *The Kentucky Housing Corporation shall report semiannually to the Interim Joint Committee on Appropriations and Revenue on how the money transferred from the Kentucky Lottery Corporation's unclaimed prize account under KRS 154A.110(3) has been utilized. The corporation shall also make an annual report to the Legislative Research Commission on the disposition of the Kentucky Lottery Corporation's unclaimed prize money for each fiscal year.*

Approved April 21, 2000

## CHAPTER 470

(HB 420)

AN ACT relating to superintendents of schools.

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

Section 1. KRS 160.350 is amended to read as follows:

- (1) After considering the recommendations of a screening committee, as provided in KRS 160.352, each board of education shall appoint a superintendent of schools whose term of office shall begin on July 1, following his appointment. The appointment may be for a term of no more than four (4) years. In the event a vacancy occurs in the office of superintendent prior to the expiration of the term set by the board, the term shall expire on the date the vacancy occurs. Therefore, the board may appoint a superintendent for a new term as provided in this subsection, which shall begin on the date of the superintendent's appointment, except when the vacancy occurs after a school board election and before the newly elected members take office. When a vacancy occurs during this period, the position shall not be filled until the new members take office, but the board may appoint an acting superintendent to serve a term not to exceed six (6) months. This appointment may be renewed once for a period not to exceed three (3) months. If a vacancy occurs, a local board may also appoint an acting superintendent during the period the screening committee pursuant to KRS 160.352 conducts its business and prior to the actual appointment of the new superintendent. No superintendent shall resign his term and accept a new term from the same board of education prior to the expiration date of his present term. In the case of a vacancy in the office for an unexpired term, the board of education shall make the appointment so that the term will end on June 30. The board shall set the salary of the superintendent to be paid in regular installments.
- (2) Before any superintendent assumes his duties, he shall present to the board of education that appointed him a statement signed by the chief state school officer that the superintendent has been duly issued a certificate of administration and supervision issued in accordance with the provisions of law and which qualifies him to hold the position to which he has been appointed, and he shall hold such certificate throughout the period of his employment. A superintendent candidate who is to begin his duties after June 30, 1994, shall successfully complete the training program and assessment center process within one (1) year of assuming his duties as superintendent. A superintendent shall not serve as director or officer of a bank, trust company, or savings or loan association which has his school district funds on deposit. Following appointment, the superintendent shall establish residency in Kentucky.
- (3) A superintendent of schools may be removed for cause by a vote of four-fifths (4/5) of the membership of a board of education and upon approval by the chief state school officer. However, if the dismissal of the superintendent has been recommended by a highly skilled certified educator pursuant to KRS 158.6455 and the action is approved by the chief state school officer, the board shall terminate the superintendent's contract.

Written notice setting out the charges for removal shall be spread on the minutes of the board and given to the superintendent. The board shall seek approval by the chief state school officer for removing the superintendent. The chief state school officer shall investigate the accuracy of the charges made, evaluate the superintendent's overall performance during his appointment, and consider the educational performance of the students in the district. Within thirty (30) days of notification, he shall either approve or reject the board's request.

- (4) *After the completion of a superintendent's first contract or after four (4) years, whichever comes last, the board of education may, no later than June 30, extend the contract of the superintendent for one (1) additional year beyond the current term of employment.*

**Approved April 21, 2000**

## **CHAPTER 471**

### **(HB 421)**

AN ACT relating to home health care.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 4 of this Act unless the context requires otherwise:*

- (1) *"Home health aide" means an individual who is hired to perform home health aide services.*
- (2) *"Home health agency" means a public agency or private organization, or a subdivision of such an agency or organization which is licensed as a home health agency by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board and is certified to participate as a home health agency under Title XVIII of the Social Security Act.*
- (3) *"Home health aide services" means those services provided by a home health aide and supervised by a registered nurse which are directed towards the personal care of the patient. Such services shall include but not be limited to the following:*
  - (a) *Helping the patient with bath and care of mouth, skin, and hair;*
  - (b) *Helping the patient to the bathroom or in using a bedpan;*
  - (c) *Helping the patient in and out of bed and assisting with ambulation;*
  - (d) *Helping the patient with prescribed exercises which the patient and home health aide have been taught by appropriate professional personnel;*
  - (e) *Assisting with medication ordinarily self-administered that has been specifically ordered by a physician;*
  - (f) *Performing incidental household services as are essential to the patient's health care at home, if these services would have been performed if the patient was in a hospital or skilled nursing facility; and*
  - (g) *Reporting changes in the patient's condition or family situation to the professional nurse supervisor.*
- (4) *"Nurse aide" means an individual, including a nursing student, medication aide, and a person employed through a nursing pool, who provides nursing or nursing related services to a resident in a nursing facility or home health agency, excluding:*
  - (a) *An individual who is a licensed health professional;*
  - (b) *A volunteer who provides the nursing or nursing-related services without monetary compensation; and*
  - (c) *A person who is hired by the resident or family to sit with the resident and who does not perform nursing or nursing-related services.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:



*The Cabinet for Health Services shall establish an abuse registry to include information pertaining to findings of resident neglect as defined at 42 C.F.R. 488.301 or abuse as defined at 42 C.F.R. 488.301, and misappropriation of resident property by a nurse aide or home health aide. The abuse registry may be created by expanding or modifying the existing nurse aide abuse registry to include home health aides as permitted by 42 C.F.R. 483.156.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

*Home health agencies shall not be operated by or employ any person who is listed on the expanded or modified nurse aide abuse registry as permitted by 42 C.F.R. 483.156. The expanded or modified nurse aide abuse registry shall be checked prior to the employment of a home health aide by home health agencies. The home health agency shall document the check of the expanded or modified nurse aide abuse registry for each prospective home health aide.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

*The Cabinet for Health Services shall promulgate administrative regulations in accordance with KRS Chapter 13A that establish and maintain an abuse registry for nurse aides and home health aides. The cabinet shall also expand or modify the hearing and appeals procedure to include nurse aides and home health aides.*

Approved April 21, 2000

## CHAPTER 472

(HB 453)

AN ACT relating to life insurance.

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

Section 1. KRS 304.15-020 is amended to read as follows:

- (1) "Industrial life insurance" is that form of life insurance written under policies of face amount of \$3,000 or less issued on the basis of an industrial mortality table, and under which premiums are payable monthly or more often.
- (2) "Wholesale life insurance" is that plan of life insurance, other than salary savings life insurance or pension trust insurance and annuities, under which individual policies are issued to the employees of any employer and where ~~such~~ policies are issued on the lives of not less than four (4) employees at date of issue. Premiums for ~~the~~ ~~such~~ policies shall be paid either wholly from the employer's funds, or funds contributed by him, or partly from ~~the~~ ~~such~~ funds and partly from funds contributed by the insured employees.
- (3) "College life insurance" is that form of life insurance sold to college students, the initial premiums for which are financed by a promissory note.
- (4) "Viatical settlement broker" means an individual, partnership, corporation, or other ~~person~~ ~~entity~~ who or that for another and for a fee, commission, or other valuable consideration, offers or advertises the availability of viatical settlements, introduces a viator to viatical settlement providers, or offers or attempts to negotiate viatical settlements between a viator and one (1) or more viatical settlement providers. "Viatical settlement broker" does not include an attorney, **certified public** accountant, or financial planner who is retained to represent the viator and whose compensation is not paid by the viatical settlement provider.
- (5) "Viatical settlement contract" means a written agreement entered into between a viatical settlement provider and a ~~viator~~ ~~person~~ owning a life insurance policy or who owns or is covered under a group policy insuring the life of a person ~~and the~~ ~~who has a catastrophic or life threatening illness or condition. The~~ agreement ~~establishes~~ ~~shall establish~~ the terms under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyowner's assignment, transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. **A viatical settlement contract also includes a contract for a loan or other financial transaction secured primarily by an individual or group life policy, with the following exceptions:**
  - (a) A loan by a life insurance company in accordance with the terms of the life insurance contract; or
  - (b) A loan secured by the cash value of a policy.

- (6) "Viatical settlement provider" means an individual, partnership, corporation, or other ~~person~~~~entity~~ who or that enters into an agreement with a person owning a life insurance policy or who owns or is covered under a group policy insuring the life of a person ~~who has a catastrophic or life-threatening illness or condition~~, under the terms of which the viatical settlement provider pays compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyowner's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. Viatical settlement provider does not include:
- (a) Any bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;
  - (b) The issuer of a life insurance policy that provides accelerated benefits that accelerate in anticipation of death or upon the occurrence of specified life-threatening or catastrophic conditions as defined by the policy or rider; ~~or~~
  - (c) Any natural person who *is not licensed in accordance with Section 2 this Act and who* enters into no more than one (1) agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit; *or*
  - (d) *A related provider trust.*
- (7) "Viator" means the owner of a life insurance policy that insures the life of a person ~~who has a catastrophic or life-threatening illness or condition, or the certificate holder~~ who enters into *a viatical settlement contract*~~an agreement under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider~~.
- (8) *"Independent third-party trustee" means a custodial bank that:*
- (a) *Carries out custodial functions for the viatical settlement provider through its trust department;*
  - (b) *Is audited annually by an independent certified public accountant whose audit report, together with the related financial statements, and whose report on internal controls are made available to the viatical settlement provider and the commissioner upon request;*
  - (c) *Maintains policies and procedures requiring that the custodied deposits are recognized as deposits to be set aside and reserved as the specific property of the viatical settlement provider, and are not subject to any creditor relationship with the custodial bank;*
  - (d) *Maintains blanket bond coverage relating to its custodial functions with limits equal to or exceeding those suggested by the American Bankers Association;*
  - (e) *Maintains capital and surplus funds equal to or exceeding twenty-five million dollars (\$25,000,000) unless it is licensed and regulated by the Commonwealth of Kentucky, in which case its capital and surplus funds shall equal or exceed ten million dollars (\$10,000,000);*
  - (f) *Has demonstrated sufficient experience in handling custodial accounts, and shall not include any person associated, affiliated, or under common control with a viatical settlement provider or viatical settlement broker; and*
  - (g) *Is licensed in good standing with the Department of Financial Institutions, or comparable federal authority.*
- (9) *"Related provider trust" means a trust established by a licensed viatical settlement provider for the purpose of entering into or owning viatical settlement contracts. This term shall not include an independent third-party trustee.*
- (10) *"Viatical settlement purchaser" means a person other than a licensee under Subtitle 15 of KRS Chapter 304, who gives consideration for a life insurance policy or an interest in a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit.*

Section 2. KRS 304.15-700 is amended to read as follows:

- (1) No person may act as a viatical settlement provider *or broker*, or enter into or solicit a viatical settlement contract without first having obtained a license from the commissioner. *All applicants for a viatical settlement*

*broker license shall attend the required viatical broker training and pass a viatical broker examination designated by the department through administrative regulation.*

- (2) The examination of contracts shall take place simultaneously with the company's approval process. *Any form to be used in the solicitation of the transaction and the transaction shall be filed for prior approval with the department and shall contain a form number. Viatical settlement providers and brokers shall provide the department notice of any change in the licensee's name, residence address, principal business address, or mailing address at least thirty (30) days prior to the effective date of the change* ~~Provided that the viatical settlement provider or viatical settlement broker complies with KRS 304.15-020 and KRS 304.15-700 to 304.15-725, the provider or broker transacting business in this state prior to July 15, 1998, may continue to transact the business until the commissioner approves or disapproves the provider's or broker's application for license. The application shall be filed on forms provided by the commissioner no later than November 1, 1998.~~
- (3)~~(2)~~ The commissioner shall promulgate administrative regulations in accordance with KRS Chapter 13A that are necessary to provide for the *following*:
- (a) Licensing of viatical settlement providers;
  - (b) *Licensing of viatical settlement brokers;*
  - (c) *Termination* ~~and the termination~~ *or revocation of the license of a viatical settlement provider and a viatical settlement broker; and*
  - (d) *Prescribing that the amount of the viatical examination fee shall be equal to the life examination fee.*
- (4) *Prior to issuance of a license as a viatical settlement broker or viatical settlement provider, the applicant shall file with the commissioner, and thereafter for as long as the license remains in effect shall keep in force, evidence of financial responsibility in the sum of not less than five hundred thousand dollars (\$500,000) per occurrence, and the sum of one million five hundred thousand dollars (\$1,500,000) in the aggregate, for all occurrences within one (1) year. This evidence shall be in the form of an errors and omissions insurance policy issued by an authorized insurer, a bond issued by an authorized corporate surety, a deposit, or any combination of these evidences of financial responsibility. The policy, bond, deposit, or combination thereof shall not be terminated without thirty (30) days' prior written notice to the licensee and the commissioner.*
- (5)~~(3)~~ No person shall use any viatical settlement contract in this Commonwealth unless it has been filed with and approved by the commissioner. *At the expiration of sixty (60) days from the date the filing is complete, the form filed shall be deemed approved unless the commissioner has by order given prior approval or disapproval. Approval of a form by the commissioner shall constitute a waiver of any unexpired portion of the waiting period. The commissioner may extend by not more than thirty (30) days the time period in which he or she may approve or disapprove any form. The commissioner shall give notice to the licensee of the extension before expiration of the initial sixty (60) day period. At the expiration of the extended period, and in the absence of the prior approval or disapproval, the form shall be deemed approved. The commissioner may at any time, after notice and for cause shown, withdraw any approval* ~~Any viatical settlement contract form filed with the commissioner shall be deemed approved if it has not been disapproved within sixty (60) days of filing.~~ *The commissioner shall disapprove a viatical settlement contract form if, in the determination of the commissioner, the contract or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise are misleading or unfair to the policyowner. Upon notice and hearing the commissioner shall withdraw approval of any contract later determined to be unreasonable, misleading, unfair, or contrary to the interest of the public.*
- (6) *A licensed viatical settlement provider shall not use any person to perform the functions of a viatical settlement broker as defined in Section 1 of this Act unless the person holds a current and valid license as a viatical settlement broker. Individuals employed by viatical settlement providers shall not engage in viatical settlement broker activities unless they hold a current and valid license. A licensed viatical settlement broker shall not use any person to perform the functions of a viatical settlement provider as defined in Section 1 of this Act unless the person holds a current and valid license as a viatical settlement provider. Individuals employed by viatical settlement brokers shall not engage in viatical settlement broker activities unless they hold a current valid license.*
- (7) *If any employee of a licensee violates any provision of Sections 1 to 12 of this Act, the department may take disciplinary action against the employer licensee.*

- (8) *When a viatical settlement provider elects to use a related provider trust in accordance with Section 10 of this Act, the viatical settlement provider shall file notice of its intention to use that trust with the department with a copy of the trust agreement. Any change in the trust agreement shall be filed with the commissioner prior to its effect.*
- (9) *Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker represents the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator.*
- (10) *Any additional death benefit payment on a life insurance policy that is the subject of a viatical settlement contract with a double or additional indemnity for accidental death shall be payable to the following:*
  - (a) *The beneficiary last named by the policy owner prior to entering into the viatical settlement contract; or*
  - (b) *To the estate of the viator in the absence of a beneficiary.*

Section 3. KRS 304.15-705 is amended to read as follows:

- (1) The commissioner may, when the commissioner deems it reasonably necessary to protect the interests of the public, examine the business and affairs of any licensee or applicant for a license. The commissioner shall have the authority to order information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interest of the public. The reasonable expenses incurred in conducting any examination shall be paid by the licensee or applicant.
- (2) Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the commissioner, unless required by law.
- (3) Records of all transactions of viatical settlement contracts shall be maintained by the licensee *for five (5) years after the death of the viator*, and shall be available to the commissioner for inspection during reasonable business hours. *All other business records shall be kept for a period of five (5) years following creation of records, or the completion of the purpose for which records were created, whichever shall occur last.*
- (4) *Upon issuance of a viatical settlement provider or broker license, the licensee shall be deemed to have appointed the Kentucky Secretary of State as the licensee's attorney to receive service of process issued against the licensee in this state. The appointment shall be irrevocable, shall bind any successor in interest or to the assets or liabilities of the licensee, and shall remain in effect as long as there is in force in this state or elsewhere a contract that would give rise to a cause of action in this state, made by the licensee, or liabilities or duties arising therefrom. KRS 304.3-230(5) to (8) shall apply to the service of process.*

Section 4. KRS 304.15-715 is amended to read as follows:

- (1) A viatical settlement provider entering into a viatical settlement contract with any person~~[who has a catastrophic or life-threatening illness or condition]~~ shall first obtain:
  - (a) A written statement from a licensed attending physician that the person is of sound mind and under no constraint or undue influence; and
  - (b) A witnessed document in which the person consents to the viatical settlement contract, acknowledges ~~any[the]~~ catastrophic or life-threatening illness, represents that he or she has a full and complete understanding of the viatical settlement contract and a full and complete understanding of the benefits of the life insurance policy, releases his or her medical records, and acknowledges that he or she has entered into the viatical settlement contract freely and voluntarily.
- (2) All medical information solicited or obtained by any licensee shall be subject to the applicable provision of state law relating to confidentiality of medical information.
- (3) All viatical settlement contracts entered into in this state shall contain an unconditional refund provision that provides for a refund within at least thirty (30) days from the date of the contract or fifteen (15) days from the receipt of the viatical settlement proceeds, whichever is less.
- (4) ~~[Immediately upon receipt from the insurer of the effect of the transfer of ownership of the insurance policy, the viatical settlement provider shall pay the proceeds of the settlement to an account in a custodian bank that meets the qualifications outlined in 806 KAR 7:090 Section 3.]~~ *The independent third-party trustee[custodian] shall [be required to] transfer the proceeds that are due to the viator within two (2) business days upon receipt of acknowledgment of the transfer of ownership from the insurer.*

- (5) Failure to tender the viatical settlement by the date disclosed to the viator renders the contract null and void.
- (6) All licensed viatical settlement providers transacting business in Kentucky ~~shall~~<sup>must</sup> have the ~~insured's~~<sup>viator's</sup> medical condition reviewed by a qualified third-party physician or physician firm. Qualification shall be met with the approval of Standard and Poors, Moody's, or any other reviewing entity approved by the commissioner.
- (7) *When the viatical settlement contract is executed, the viatical settlement provider shall provide the viator with a separate form from which the viator may choose one of the following options:*
  - (a) *That the viator be provided written notice of the identity of the new owner upon any future transfer of ownership in the life insurance policy being viated; or*
  - (b) *To forgo written notice of the identity of any future purchaser of, or investor in, the life insurance policy being viated.*
- (8) *Within ten (10) days of the expiration of the rescission period, the viatical settlement provider shall send written notification to the insurer that the policy has become the subject of a viatical transaction.*

SECTION 5. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *When the department finds that a violation presents an immediate danger to the public health, safety, or welfare that requires an immediate final order, it shall issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent.*
- (2) *The department may impose and collect an administrative fine not to exceed ten thousand dollars (\$10,000) for each violation of a cease and desist order issued in accordance with this section.*

SECTION 6. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*It is unlawful for any person:*

- (1) *To knowingly enter into a viatical settlement contract when the subject life insurance policy was obtained by means of a false, deceptive, or misleading application for the life insurance policy;*
- (2) *In the solicitation or purchase of a viatical settlement:*
  - (a) *To employ a device, scheme, or artifice to defraud;*
  - (b) *To obtain money or property by means of an untrue statement of a material fact, or by any omission to state a material fact;*
  - (c) *To engage in any transaction, practice, or course of business that operates or would operate as a fraud or deceit upon a person; and*
  - (d) *To misrepresent that the viatical provider, viatical broker, or other licensee has been guaranteed, sponsored, recommended, or approved by the state, or by any local, state, or federal agency or officer thereof.*

*This subsection shall not prohibit a statement that the person is licensed, if that statement is true and the effect of the statement is not misrepresented;*

- (3) *To act as a viatical settlement broker if the person is acting as a viatical settlement provider in the same viatical settlement contract;*
- (4) *To act as the viatical settlement broker or provider regarding a life insurance policy if the broker or provider is the life insurance agent that produced or receives commissions from the policy being viated; and*
- (5) *If the person is licensed as a viatical settlement provider or viatical settlement broker, to pay any compensation or provide anything of value to an insured's physician, attorney, accountant, or any other person who provides medical, legal, or financial advice to the insured as a finder's or referral fee.*

SECTION 7. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A viatical settlement transaction shall be completed through the independent third-party trustee. Within three (3) business days of receipt of a signed viatical settlement contract from the viator, the viatical settlement provider shall pay the proceeds due to the viator, and any commission due the viatical settlement broker, to an escrow or trust account managed by the independent third-party trustee pending acknowledgment of the insurer of the transfer of ownership of the policy. The independent third-party trustee shall provide the viator written proof of deposit within three (3) days of deposit of the proceeds. An advance or partial payment of the proceeds from the viatical settlement provider to the viator under the settlement contract shall not be used to effect transfer of the subject policy. Partial payment shall be made at the sole discretion and risk of the viatical settlement provider.*
- (2) *Upon receipt of all viatical settlement contract proceeds, the independent third-party trustee shall hold the proceeds for disbursement in accordance with Sections 1 to 12 of this Act and the viatical settlement contract. In no event shall the viatical settlement provider or independent third-party trustee pay any commission or fee to the viatical settlement broker prior to the end of the rescission period.*
- (3) *The viatical settlement contract is rescinded if the insured dies during the rescission period. If the independent third-party trustee receives information that the insured died during the rescission period and the trustee still holds the funds, it shall verify the death and then refund the proceeds to the viatical settlement provider. If the proceeds have been disbursed by the independent third-party trustee and the insured died during the rescission period, the viatical settlement provider shall pay the viator the difference between the death benefit and the amount of the proceeds disbursed to the viator. No commission or fee shall be due the viatical settlement broker if the insured dies during the rescission period.*
- (4) *A viatical settlement provider shall not negotiate or enter into a viatical settlement contract with a viator if the policy contains an accelerated benefits provision allowing benefits to be paid for a period in advance of the expected death that is equal to or exceeds the time period available under the viatical settlement contract, and at an amount that is equal to or exceeds the amount available under the viatical settlement contract unless the issuer of the policy, in writing, denies, declines, or refuses to provide the accelerated benefits. If the insurer does not respond to a request to effectuate an accelerated benefits provision sent by certified mail within thirty (30) days after receiving the request, the insurer shall be deemed to have denied, declined, or refused to provide the accelerated benefits.*

SECTION 8. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *In addition to the penalties and other enforcement provisions of Sections 1 to 14 of this Act, if any person violates any provision of Sections 1 to 12 of this Act, or any administrative regulations promulgated under Sections 1 to 12 of this Act, the department may seek an injunction in Franklin Circuit Court or in the Circuit Court of the county where the person resides or has a principal place of business and may apply for temporary and permanent orders that the department determines necessary to restrain the person from committing the violation.*
- (2) *Any person damaged by the acts of a person in violation of any provision of Sections 1 to 12 of this Act may bring a civil action against the person in the Circuit Court of the county in which the alleged violator resides, or has a principal place of business, or in the county where the alleged violation occurred.*

Section 9. KRS 304.15-710 is amended to read as follows:

A viatical settlement provider shall *provide the viator a copy of the department's consumer guide relating to viaticals* and disclose the following information to the viator no later than the date that the viatical settlement contract is signed by all parties:

- (1) That possible alternatives to viatical settlement contracts may exist for persons with catastrophic or life-threatening illnesses, including, but not limited to, accelerated benefits offered by the issuer of the life insurance policy;
- (2) That some or all of the proceeds of the viatical settlement may be taxable, and that assistance should be sought from a personal tax advisor;
- (3) That the viatical settlement could be subject to the claims of creditors;
- (4) That receipt of a viatical settlement may adversely affect the recipient's eligibility for Medicaid or other government benefits or entitlements, and that advice should be obtained from the appropriate agencies;

- (5) That the policyowner has a right to rescind a viatical settlement contract within thirty (30) days of the date it is executed by all parties or within fifteen (15) days of the receipt of the viatical settlement proceeds by the viator, whichever is less, *that the contract is rescinded if the insured dies within the rescission period;*~~and~~
- (6) That *viaticating a joint policy or policy with family riders or coverage of any life other than the viator may cause a loss of coverage on the other lives and that the viator should consult with an insurance advisor;*
- (7) *That the viatical settlement provider shall deposit the proceeds due the viator and any commissions due the viatical settlement broker with an independent third-party trustee within three (3) days of receipt of the contract signed by the viator, and that the independent third-party trustee shall mail proof of deposit within three (3) days of deposit, and that the funds will be available to the viator within two (2) business days of notification from the insurer of the effect of the transfer of ownership;*
- (8) *The name, address, and telephone number of the independent third-party trustee and the fact that the viator may inspect and receive copies of the relevant trust, or escrow agreements, or other documents; and*
- (9) *The amount and method of calculation of any fee, commission, or compensation to be paid the viatical settlement broker.*

SECTION 10. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*A related provider trust shall be subject to all provisions of Sections 1 to 14 of this Act that apply to the viatical settlement provider, and that establish the related provider trust, except subsection (1) of Section 2 of this Act shall not apply to the related provider trust. The viatical settlement provider is liable and responsible for the performance of all obligations of the related trust and compliance of the trust with all provisions of Sections 1 to 14 of this Act.*

Section 11. KRS 304.42-190 is amended to read as follows:

No person, including an insurer, agent,~~or~~ affiliate of an insurer, *viatical settlement provider, or viatical settlement broker* shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement which uses the existence of the Insurance Guaranty Association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Kentucky Life and Health Insurance Guaranty Association Act. This section shall not apply to the Kentucky Life and Health Insurance Guaranty Association or any other entity which does not sell or solicit insurance.

SECTION 12. A NEW SECTION OF SUBTITLE 99 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *When a license issued under Section 2 of this Act is suspended or revoked, the licensee, if the commissioner directs, shall proceed, immediately following the effective date of the suspension or revocation to conclude the affairs it is transacting under its license. The licensee shall not solicit, negotiate, advertise, or effectuate new contracts. The department shall retain jurisdiction over the licensee and trust until all viatical contracts have been fulfilled or canceled or have expired.*
- (2) *During the suspension or revocation period in which the licensee is concluding existing contracts, the licensee shall continue to comply with Sections 1 to 14 of this Act as if the license were in force.*

SECTION 13. A NEW SECTION OF SUBTITLE 99 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*Any person who violates any provisions of Sections 1 to 12 of this Act shall be subject to civil fines by the commissioner in an amount not less than one thousand dollars (\$1,000) and not more than twenty-five thousand dollars (\$25,000). Each violation shall constitute a separate offense.*

SECTION 14. A NEW SECTION OF SUBTITLE 99 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*The department shall refer violations to the Division of Insurance Fraud Investigation for further investigation, and, if appropriate, the Division of Insurance Fraud Investigation shall proceed as set forth in KRS 304.47-050(5).*

Approved April 21, 2000

## CHAPTER 473

### (HB 454)

AN ACT relating to the Interstate Compact for Adult Offender Supervision and matters incidental to the adoption thereof.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 439 IS CREATED TO READ AS FOLLOWS:

- (1) *The Governor of this Commonwealth is authorized and directed to execute a compact on behalf of the Commonwealth with any of the United States legally joining therein in the form substantially as follows:*

#### ARTICLE I

##### PURPOSE

*The compacting states to this Interstate Compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary return offenders to the originating jurisdictions.*

*The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.*

*It is the purpose of this compact and the interstate commission created hereunder, through means of joint and cooperative action among the compacting states: to provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits and obligations of the compact among the compacting states.*

*In addition, this compact will: create a interstate commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.*

*The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and bylaws and rules promulgated hereunder.*

*It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and are therefore public business.*

#### ARTICLE II

##### DEFINITIONS

*As used in this compact, unless the context clearly requires a different construction:*



A. "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

B. "Bylaws" means those bylaws established by the interstate commission for its governance, or for directing or controlling the interstate commission's actions or conduct.

C. "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact.

D. "Compacting state" means any state which has enacted the enabling legislation for this compact.

E. "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

F. "Interstate commission" means the Interstate Commission for Adult Offender Supervision established by this compact.

G. "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

H. "Noncompacting state" means any state which has not enacted the enabling legislation for this compact.

I. "Offender" means an adult placed under, or subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

J. "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private.

K. "Rules" means acts of the interstate commission, duly promulgated pursuant to Article VII of this compact, substantially affecting interested parties in addition to the interstate commission, which shall have the force and effect of law in the compacting states.

L. "State" means a state of the United States, the District of Columbia, and any other territorial possessions of the United States.

M. "State council" means the resident members of the State Council for Interstate Adult Offender Supervision created by each state under Article III of this compact.

### ARTICLE III

#### THE COMPACT COMMISSION

A. The compacting states hereby create the "Interstate Commission for Adult Offender Supervision." The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers, and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

B. The interstate commission shall consist of commissioners selected and appointed by resident members of a state council for interstate adult offender supervision for each state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and compact administrators. Each state council shall appoint as its commissioner the compact administrator from that state to serve on the interstate commission in such capacity under or pursuant to applicable law of the member state. Each compacting state retains the right to determine the qualifications of the compact administrator who shall be appointed by the state council or by the governor in consultation with the legislature and the judiciary.

In addition to appointment of its commissioner to the national interstate commission, each state council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by each member state, including but not limited to, development of policy concerning operations and procedures of the compact within that state.

*C. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations; such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, and crime victims. All noncommissioner members of the interstate commission shall be ex-officio (nonvoting) members. The interstate commission may provide in its bylaws for such additional ex-officio, nonvoting members as it deems necessary.*

*D. Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.*

*E. The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of 27 or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.*

*F. The interstate commission shall establish an executive committee which shall include commission officers, members, and others as shall be determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking and/or amendment to the compact. The executive committee oversees the day-to-day activities managed by the executive director and interstate commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws, and as directed by the interstate commission and performs other duties as directed by commission or set forth in the bylaws.*

#### ARTICLE IV

##### POWERS AND DUTIES OF THE INTERSTATE COMMISSION

*The interstate commission shall have the following powers:*

*1. To adopt a seal and suitable bylaws governing the management and operation of the interstate commission.*

*2. To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.*

*3. To oversee, supervise, and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the compact commission.*

*4. To enforce compliance with compact provisions, interstate commission rules, and bylaws, using all necessary and proper means, including but not limited to, the use of judicial process.*

*5. To establish and maintain offices.*

*6. To purchase and maintain insurance and bonds.*

*7. To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs.*

*8. To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder.*

*9. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.*

*10. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same.*

*11. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.*

*12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.*

*13. To establish a budget and make expenditures and levy dues as provided in Article IX of this compact.*

14. *To sue and be sued.*

15. *To provide for dispute resolution among compacting states.*

16. *To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.*

17. *To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission.*

18. *To coordinate education, training, and public awareness regarding the interstate movement of offenders for officials involved in such activity.*

19. *To establish uniform standards for the reporting, collecting, and exchanging of data.*

## ARTICLE V

### ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

#### Section A. Bylaws

1. *The interstate commission shall, by a majority of the members, within twelve months of the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:*

a. *Establishing the fiscal year of the interstate commission;*

b. *Establishing an executive committee and such other committees as may be necessary;*

c. *Providing reasonable standards and procedures:*

(i) *For the establishment of committees, and*

(ii) *Governing any general or specific delegation of any authority or function of the interstate commission;*

d. *Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;* e. *Establishing the titles and responsibilities of the officers of the interstate commission;*

f. *Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the interstate commission; and*

g. *Providing a mechanism for winding up the operations of the interstate commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;*

h. *Providing transition rules for "start up" administration of the compact;*

i. *Establishing standards and procedures for compliance and technical assistance in carrying out the compact.*

#### Section B. Officers and Staff

1. *The interstate commission shall, by a majority of the members, elect from among its members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the bylaws. The chairperson or, in his or her absence or disability, the vice chairperson, shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.*

2. *The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, and hire and supervise such other staff as may be authorized by the interstate commission, but shall not be a member.*

#### Section C. Corporate Records of the Interstate Commission

*The interstate commission shall maintain its corporate books and records in accordance with the bylaws.*

**Section D. Qualified Immunity, Defense, and Indemnification**

*1. The members, officers, executive director, and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities; provided, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damaged, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.*

*2. The interstate commission shall defend the commissioner of a compacting state, or his or her representatives or employees, or the interstate commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from intentional wrongdoing on the part of such person.*

*3. The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees, or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgement obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided, that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.*

**ARTICLE VI**

**ACTIVITIES OF THE INTERSTATE COMMISSION**

*1. The interstate commission shall meet and take such actions as are consistent with the provisions of this compact.*

*2. Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the interstate commission, such act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.*

*3. Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone, or other means of telecommunication or electronic communication, shall be subject to the same quorum requirements of meetings where members are present in person.*

*4. The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.*

*5. The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.*

*6. Public notice shall be given of all meetings, and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall promulgate rules consistent with the principles contained in the "Government in Sunshine Act," 5 U.S.C. Section 552(b), as may be amended. The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:*

- a. Relate solely to the interstate commission's internal personnel practices and procedures;*
  - b. Disclose matters specifically exempted from disclosure by statute;*
  - c. Disclosure trade secrets or commercial or financial information which is privileged or confidential;*
  - d. Involve accusing any person of a crime, or formally censuring any person;*
  - e. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;*
  - f. Disclose investigatory records compiled for law enforcement purposes;*
  - g. Disclose information contained in or related to examination, operating, or conditions reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;*
  - h. Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity;*
  - i. Specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or proceeding.*
- 7. For every meeting closed pursuant to this provision, the interstate commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.*
- 8. The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements.*

## ARTICLE VII

### RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

- 1. The interstate commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states;*
- 2. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the Federal Administrative Procedure Act, 5 U.S.C. Sections 551 et seq., and the Federal Advisory Committee Act, 5 U.S.C. App. 2, Sections 1 et seq., as may be amended (hereinafter "APA").*
- 3. All rules and amendments shall become binding as of the date specified in each rule or amendment.*
- 4. If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.*
- 5. When promulgating a rule, the interstate commission shall:*
- a. Publish the proposed rule stating with particularity the text of the rule which is proposed and the reason for the proposed rule;*
  - b. Allow persons to submit written data, facts, opinions, and arguments, which information shall be publicly available;*
  - c. Provide an opportunity for an informal hearing; and*
  - d. Promulgate a final rule and its effective date, if appropriate, based on the rulemaking record.*
- 6. Not later than sixty days after a rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate*

*commission's action is not supported by substantial evidence (as defined in the APA) in the rulemaking record, the court shall hold the rule unlawful and set it aside.*

*7. Subjects to the addressed within 12 months after the first meeting must at a minimum include:*

- a. Notice to victims and opportunity to be heard;*
- b. Offender registration and compliance;*
- c. Violations/returns;*
- d. Transfer procedures and forms;*
- e. Eligibility for transfer;*
- f. Collection of restitution and fees from offenders;*
- g. Data collection and reporting;*
- h. The level of supervision to be provided by the receiving state;*

*i. Transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact;*

*j. Mediation, arbitration, and dispute resolution.*

*The existing rules governing the operation of the previous compact superseded by this Act shall be null and void twelve (12) months after the first meeting of the interstate commission created hereunder.*

*8. Upon determination by the interstate commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule.*

## **ARTICLE VIII**

### **OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION**

#### **BY THE INTERSTATE COMMISSION**

##### **Section A. Oversight**

*1. The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.*

*2. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.*

##### **Section B. Dispute Resolution**

*1. The compacting states shall report to the interstate commission on issues or activities of concern to them, and cooperate with and support the interstate commission in the discharge of its duties and responsibilities.*

*2. The interstate commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.*

*3. The interstate commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.*

##### **Section C. Enforcement**

*The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in Article XI, Section B, of this compact.*

## **ARTICLE IX**

**FINANCE**

*1. The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.*

*2. The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.*

*3. The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.*

*4. The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.*

**ARTICLE X****COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT**

*1. Any state, as defined in Article II of this compact, is eligible to become a compacting state.*

*2. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in interstate commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.*

*3. Amendments to the compact may be proposed by the interstate commission for the enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.*

**ARTICLE XI****WITHDRAWAL, DEFAULT, TERMINATION,  
AND JUDICIAL ENFORCEMENT****Section A. Withdrawal**

*1. Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided, that a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.*

*2. The effective date of withdrawal is the effective date of the repeal.*

*3. The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state.*

*4. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.*

*5. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.*

*6. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.*

**Section B. Default**

*1. If the interstate commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws, or any duly promulgated rules, the interstate commission may impose any or all of the following penalties:*

*a. Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission;*

*b. Remedial training and technical assistance as directed by the interstate commission;*

*c. Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice or chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, interstate commission bylaws, or duly promulgated rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of suspension.*

*2. Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice or chief judicial officer, and the majority and minority leaders of the defaulting state's legislature and the state council of such termination.*

*3. The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.*

*4. The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state.*

*5. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.*

#### *Section C. Judicial Enforcement*

*The interstate commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices to enforce compliance with the provisions of the compact, its duly promulgated rules, and bylaws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys fees.*

#### *Section D. Dissolution of Compact*

*1. The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.*

*2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.*

### **ARTICLE XI**

#### **SEVERABILITY AND CONSTRUCTION**

*1. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.*

*2. The provisions of this compact shall be liberally constructed to effectuate its purposes.*

### **ARTICLE XII**

#### **BINDING EFFECT OF COMPACT AND OTHER LAWS**

##### *Section A. Other Laws*



*1. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.*

*2. All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.*

**Section B. Binding Effect of the Compact**

*1. All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.*

*2. All agreements between the interstate commission and the compacting states are binding in accordance with their terms.*

*3. Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.*

*4. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.*

*(2) This compact may be cited as the Interstate Compact for Adult Offender Supervision.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 439 IS CREATED TO READ AS FOLLOWS:

*With respect to the Interstate Compact for Adult Offender Supervision set out in Section 1 of this Act:*

*(1) The Governor shall establish by an executive reorganization order under KRS 12.027 and 12.028:*

*(a) The initial composition, terms, and compensation of the Kentucky State Council for Interstate Adult Offender Supervision required by Article III, Paragraph B, of that compact, with the Governor making the appointments to those positions, except that any positions representing the legislative branch shall be made jointly by the Speaker of the House of Representatives and the President of the Senate and any positions representing the judicial branch shall be made by the Chief Justice of the Commonwealth;*

*(b) The qualifications, term, and compensation of the compact administrator required by Article II, Paragraph B, of that compact, with the Governor, in consultation with the Speaker of the House of Representatives, the President of the Senate, and the Chief Justice of the Commonwealth, making the appointment of the compact administrator; and*

*(c) Any other matters necessary for the implementation of the compact at the time that it becomes effective.*

*(2) Except as provided in subsection (1)(a) and (b) of this section, the Department of Corrections may promulgate in accordance with KRS Chapter 13A any administrative regulations necessary to implement and administer the compact after it comes into effect.*

Section 3. The following KRS section is repealed:

439.560 Compact with other states for out-of-state parolee supervision.

Section 4. This Act takes effect the later of July 1, 2001, or upon enactment of the Interstate Compact for Adult Offender Supervision, in substantially the form set out in Section 1 of this Act, by no less than thirty-five states, as that term is defined in Section 1 of this Act. In making a determination that this Act has come into effect, the Reviser of Statutes may rely on the written representation of the National Institute of Corrections of the United States Department of Justice.

**Approved April 21, 2000**

**CHAPTER 474****(HB 465)**

AN ACT relating to boating.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 235 IS CREATED TO READ AS FOLLOWS:

- (1) *All persons under twelve (12) years of age in an open boat or on an open deck of a vessel being used for recreational purposes on the waters of this state shall wear a personal flotation device approved by the United States Coast Guard while the vessel is underway. Any personal flotation devices required by this section shall be in good and serviceable condition, appropriately sized, and properly worn by the person. It shall be unlawful for any person to operate a vessel in violation of this subsection.***
- (2) *No boat or watercraft owner or operator shall permit a child under the age of twelve (12) years to violate subsection (1) of this section.***
- (3) *The provisions of this section shall not apply to a child who is a passenger on a commercial vessel licensed by the United States Coast Guard for the transportation of passengers for hire or to a toll ferry operating pursuant to a certificate of convenience and necessity or a perpetual and irrevocable franchise operating pursuant to KRS 280.010 to 280.110.***
- (4) *A charge under subsection (1) or (2) of this section shall be dismissed if the defendant provides to the county attorney or the court proof that the person who was alleged to be under twelve (12) years of age was actually twelve (12) years of age or older. If the information is provided to the county attorney and the county attorney deems the proof sufficient, the county attorney shall seek dismissal of the charge and the defendant shall not be required to appear in court. If the information is presented in court and the court deems the proof sufficient, the court shall dismiss the charge. In either case, court costs shall not be assessed.***

Section 2. KRS 235.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of this chapter or administrative regulations adopted under this chapter shall be fined not less than fifty dollars (\$50) nor more than two hundred dollars (\$200). After July 15, 2000, any person who violates KRS 235.230 shall be fined not less than fifteen dollars (\$15) nor more than one hundred dollars (\$100) and each day the violation continues may constitute a separate offense.**
- (2) Any person who violates KRS 235.240 shall not be subject to the penalties of KRS Chapter 189A but shall be guilty of a separate offense and subject to a fine of one hundred dollars (\$100) to two hundred fifty dollars (\$250) for the first offense, a fine of two hundred fifty dollars (\$250) to five hundred dollars (\$500) for the second offense, and a fine of five hundred dollars (\$500) to one thousand dollars (\$1,000) or imprisonment in the county jail for not less than thirty (30) days, or both, for the third or subsequent offense. Refusal to submit to a breath alcohol analysis or similar test in violation of KRS 235.240(3) shall be deemed an offense.**
- (3) A person may, in addition or in lieu of the penalties specified in subsection (1) or (5) of this section and in addition to the penalties of subsection (2) of this section, be required to take a safe-boating course approved by the department or offered by the United States Coast Guard, Coast Guard Auxiliary, or U.S. Power Squadron and to present the court a certificate documenting successful completion of the course.**
- (4) After July 15, 2000, any person who violates KRS 235.420 or 235.430 shall be fined not less than fifteen dollars (\$15) nor more than one hundred dollars (\$100). A person who violates KRS 235.420 or 235.430 shall be fined not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300) for the second offense, and not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) for the third or any subsequent offense.**
- (5) Any person failing to obey a citation issued in accordance with KRS 235.315 shall be guilty of a separate offense and shall be fined not less than fifty dollars (\$50) nor more than two hundred dollars (\$200).**
- (6) Any person who makes a false statement regarding a marine boat toilet on the application for registration or renewal registration for a motorboat shall be fined one hundred dollars (\$100). This penalty shall be separate from any other penalty that may be applicable for violation of this chapter.**

- (7) Any person who resists, obstructs, interferes with, threatens, attempts to intimidate, or in any other manner interferes with any officer in the discharge of his duties, other than a criminal homicide or an assault against an officer enforcing the provisions of this chapter, KRS Chapter 150, or the administrative regulations issued under either of these chapters, shall be guilty of a Class A misdemeanor.
- (8) Any person who commits a criminal homicide or an assault against an officer enforcing the provisions of this chapter, KRS Chapter 150, or the administrative regulations issued under either of these chapters shall be subject to the penalties specified for the offense under KRS Chapter 507 or 508, as appropriate.
- (9) ***Any person who violates Section 1 of this Act shall be fined fifty dollars (\$50).***

**Approved April 21, 2000**

## CHAPTER 475

### (HB 510)

AN ACT relating to the executive branch code of ethics.

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

Section 1. KRS 11A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Business" means any corporation, limited liability corporation, partnership, limited liability partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit;
- (2) "Commission" means the Executive Branch Ethics Commission;
- (3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;
- (4) "Family" means spouse and children, as well as a person who is related to a public servant as any of the following, whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister;
- (5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received; ***"gift" does not include gifts from family members, campaign contributions, or door prizes available to the public;***
- (6) "Income" means any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of compensation or any combination thereof;
- (7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the Kentucky Board of Education, the State Board for Adult and Technical Education, the Council on Postsecondary Education, and any person who holds a personal service contract to perform on a full-time basis for a period of time not less than six (6) months a function of any position listed in this subsection;
- (8) "Official duty" means any responsibility imposed on a public servant by virtue of his position in the state service;
- (9) "Public servant" means:
  - (a) The Governor;
  - (b) The Lieutenant Governor;

- (c) The Secretary of State;
  - (d) The Attorney General;
  - (e) The Treasurer;
  - (f) The Commissioner of Agriculture;
  - (g) The Auditor of Public Accounts;
  - (h) Each Railroad Commissioner; and
  - (i) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;
- (10) "Agency" means every state office, cabinet, department, board, commission, public corporation, or authority in the executive branch of state government. A public servant is employed by the agency by which his appointing authority is employed, unless his agency is attached to the appointing authority's agency for administrative purposes only, or unless the agency's characteristics are of a separate independent nature distinct from the appointing authority and it is considered an agency on its own, such as an independent department;
- (11) "Lobbyist" means any person employed as a legislative agent as defined in KRS 6.611(22) or any person employed as an executive agency lobbyist as defined in KRS 11A.201(8);
- (12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes, opposes, or acts;
- (13) "Candidate" means those persons who have officially filed candidacy papers or who have been nominated by their political party pursuant to KRS 118.105, 118.115, 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to (h) of this section;
- (14) "Does business with" or "doing business with" means contracting, entering into an agreement, leasing, or otherwise exchanging services or goods with a state agency in return for payment by the state, including accepting a grant, but not including accepting a state entitlement fund disbursement;
- (15) "Public agency" means any governmental entity;
- (16) "Appointing authority" means the agency head or any person whom he has authorized by law to act on behalf of the agency with respect to employee appointments;~~and~~
- (17) "Represent" means to attend an agency proceeding, write a letter, or communicate with an employee of an agency on behalf of someone else; *and*
- (18) ***"Directly involved" means to work on personally or to supervise someone who works on personally.***

Section 2. KRS 11A.040 is amended to read as follows:

- (1) No public servant, in order to further his own economic interests, or those of any other person, shall knowingly disclose or use confidential information acquired in the course of his official duties.
- (2) No public servant shall knowingly receive, directly or indirectly, any interest or profit arising from the use or loan of public funds in his hands or to be raised through any state agency.
- (3) No public servant shall knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business or regulatory action with himself, or with any business in which he or a member of his family has any interest greater than five percent (5%) of the total value thereof.
- (4) No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:
  - (a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or
  - (b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or

- (c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises; or
  - (d) Purchases from a state agency that are available on the same terms to the general public or that are made at public auction.
- (5) No public servant shall knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.
- (6) No former officer or public servant listed in KRS 11A.010(9)(a) to (h) shall, within six (6) months of termination of his employment, knowingly by himself or through any business in which he owns or controls an interest of at least five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he was employed. This provision shall not apply to a contract, purchase, or good faith negotiation made under KRS Chapter 416 relating to eminent domain or to agreements that may directly or indirectly involve public funds disbursed through entitlement programs. This provision shall not apply to purchases from a state agency that are available on the same terms to the general public or that are made at public auction. ***This provision shall not apply to former officers of the Department of Public Advocacy whose continued representation of clients is necessary in order to prevent an adverse effect on the client.***
- (7) No present or former officer or public servant listed in KRS 11A.010(9)(a) to (h) shall, within six (6) months following termination of his office or employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with, or is regulated by, the state in matters in which he was directly involved during the last thirty-six (36) months of his tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he was involved prior to taking office or beginning his term of employment, or for which he received, prior to his state employment, a professional degree or license, provided that, for a period of six (6) months, he personally refrains from working on any matter in which he was directly involved during the last thirty-six (36) months of his tenure in state government. This subsection shall not prohibit the performance of ministerial functions including, but not limited to, filing tax returns, filing applications for permits or licenses, or filing incorporation papers, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs.
- (8) A former public servant shall not act as a lobbyist or lobbyist's principal in matters in which he was directly involved during the last thirty-six (36) months of his tenure for a period of one (1) year after the latter of:
- (a) The date of leaving office or termination of employment; or
  - (b) The date the term of office expires to which the public servant was elected.
- (9) A former public servant shall not represent a person or business before a state agency in a matter in which the former public servant was directly involved during the last thirty-six (36) months of his tenure, for a period of one (1) year after the latter of:
- (a) The date of leaving office or termination of employment; or
  - (b) The date the term of office expires to which the public servant was elected.
- (10) Without the approval of his appointing authority, no public servant shall accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds.
- (a) The appointing authority shall review administrative regulations established under KRS Chapter 11A when deciding whether to approve outside employment for a public servant.
  - (b) The appointing authority shall not approve outside employment for a public servant if the public servant is involved in decision-making or recommendations concerning the person or business from which the public servant seeks outside employment or compensation.
  - (c) The appointing authority, if applicable, shall file quarterly with the Executive Branch Ethics Commission a list of all employees who have been approved for outside employment along with the name of the outside employer of each.

- (11) The prohibitions imposed by subsection (5) or (10) of this section shall not apply to Professional Golfers' Association class A members who teach golf lessons and receive a fee or lesson charge at golf courses owned and operated by the Kentucky Department of Parks. Instruction provided by an employee of the Commonwealth shall only be given while the employee is on his or her own personal time. The commissioner of the Department of Parks shall promulgate administrative regulations to establish guidelines for the process by which Professional Golfers' Association class A members are approved to teach golf lessons at Kentucky Department of Parks-owned golf courses. The exception granted by this subsection is in recognition of the benefits that will accrue to the Kentucky Department of Parks due to increased participation at state-owned golf courses.

Section 3. KRS 11A.045 is amended to read as follows:

- (1) No public servant, his spouse, or dependent child knowingly shall accept ~~any tangible~~ gifts or gratuities, **including travel expenses, meals, alcoholic beverages, and honoraria**, totaling a value greater than twenty-five dollars (\$25) in a single calendar year, ~~or travel expenses, meals, alcoholic beverages, lodging or honoraria of any value,~~ from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the agency in which the public servant is employed or which he supervises, or from any group or association which has as its primary purpose the representation of those persons or businesses. ***Nothing contained in this subsection shall prohibit the commission from authorizing exceptions to this subsection where such exemption would not create an appearance of impropriety.*** ~~[The following items are exempt:~~
- ~~(a) Coffee, soft drinks, pastries, hors d'oeuvres, or similar refreshments;~~
  - ~~(b) Food consumed at a public event to which twenty five (25) or more individuals are in attendance if that event is also open to participants other than public servants and members of the donor's industry;~~
  - ~~(c) Meals, beverages, and free admission to an event if the public servant, as a part of his official duty, is a speaker or has a significant role in the program;~~
  - ~~(d) A campaign contribution to an employee's own campaign if in compliance with KRS Chapters 121 and 121A and all other campaign finance laws;~~
  - ~~(e) A gift from a family member who is not acting as an intermediary for a person from whom the gift would be otherwise prohibited;~~
  - ~~(f) Food, clothing, and shelter in times of natural disaster or other emergency;~~
  - ~~(g) Door prizes, if also open to persons other than public servants and members of the donor's industry and if all participants have an equal chance of receiving the prize;~~
  - ~~(h) Gifts which are modest, reasonable, and customary, received on special occasions such as marriage or retirement;~~
  - ~~(i) Awards of modest and reasonable value which are publicly received in recognition of public or charitable service, such as plaques;~~
  - ~~(j) Prizes awarded based solely on skill, such as those received in golf or tennis tournaments, if those tournaments are open to participants other than public servants and members of the donor's industry;~~
  - ~~(k) Meals at conferences or seminars which are included as part of the dues paid or registration fee and which are available to all attendees; and~~
  - ~~(l) A single copy of a textbook received by an educator for review.]~~
- (2) Nothing in KRS 11A.001 to 11A.110 shall prohibit or restrict the acceptance by a public servant of the Cabinet for Economic Development or by any other public servant working directly with the cabinet on an economic incentive package of anything of economic value as a gift or gratuity, if the gift or gratuity:
- (a) Was not solicited by the public servant;
  - (b) Was accepted by the public servant in the performance of his or her official duties and in compliance with guidelines to be established by the Kentucky Economic Development Partnership which shall include requirements that all gifts or gratuities of a reportable value under KRS 11A.050(3)(k) be registered with the Kentucky Economic Development Partnership and with the Executive Branch Ethics Commission and that all tangible property with a value in excess of twenty-five dollars (\$25), other than

food and beverages consumed on the premises, shall be turned over to the Cabinet for Economic Development within thirty (30) days of receipt. In filing reports of gifts or gratuities with the Executive Branch Ethics Commission, the Cabinet for Economic Development may delete information identifying the donors if the cabinet believes identification of the donors would damage economic development; and

- (c) Was not accepted under circumstances which would create a violation of KRS Chapter 521.

Section 4. KRS 11A.050 is amended to read as follows:

- (1) Each officer, each public servant listed in KRS 11A.010(9)(a) to (h), and each candidate shall file a statement of financial disclosure with the commission, as follows:
  - (a) Each officer and each public servant listed in KRS 11A.010(9)(a) to (h) who occupies his position during any portion of a calendar year shall file the statement for that ***portion of the calendar year he occupied the position***~~entire calendar year~~ on or before April 15 of the following year, whether or not he remains an officer or public servant as listed in KRS 11A.010(9)(a) to (h).
  - (b) ***Each officer and public servant listed in KRS 11A.010(9)(a) to (h) who does not remain an officer or public servant listed in KRS 11A.010(9)(a) to (h) for the entire calendar year shall file the statement for the portion of the calendar year that the person served as an officer or public servant listed in KRS 11A.010(9)(a) to (h). The statement shall be filed with the commission within thirty (30) days after the date the person no longer serves as an officer or public servant listed in KRS 11A.010(9)(a) to (h).***
  - (c) A candidate shall file the statement reflecting the previous calendar year with the commission no later than February 15.
- (2) The statement of financial disclosure shall be filed on a form prescribed by the commission. The commission shall provide copies of the form upon request without charge.
- (3) The statement shall include the following information for the preceding calendar year:
  - (a) Name and entire residential and business address of filer;
  - (b) Title of position or office whereby filing is required;
  - (c) Any other occupations of filer and spouse;
  - (d) Positions held by the filer or his spouse in any business, ***and the name and address of the business***~~[partnership, or corporation for profit];~~
  - (e) Names and addresses of all businesses in which the filer, his spouse, or dependent children has or had an interest of ten thousand dollars (\$10,000) at fair market value or five percent (5%) ownership interest or more;
  - (f) ***The name and address of any source of gross income exceeding one thousand dollars (\$1,000) from any one (1) source to***~~[Sources of gross income of]~~ the filer,~~[or]~~ his spouse, ***or dependent child,*** as well as information concerning the nature of the business, and the form of the income;
  - (g) Sources of retainers received by the filer or his spouse ***relating to matters of the state agency for which the filer works or supervises or of any other entity of state government for which the filer would serve in a decision-making capacity, including each source's name and address;***
  - (h) Any representation or intervention for compensation by the filer or his spouse for any person ***or business before a state agency for which the filer works or supervises or before any entity of state government for which the filer would serve in a decision-making capacity, including the name and address of the person or business***~~[policy making entities in state government];~~
  - (i) All positions of a fiduciary nature ***held by the filer or his spouse*** in a business, ***including the name and address of the business;***
  - (j) Information, ***including a street address or location,*** regarding any real property in which there is an interest of ten thousand dollars (\$10,000) or more held by the filer, his spouse, or dependent children;

- (k) Sources, ***including each source's name and address***, of gifts of money or property with a retail value of more than two hundred dollars (\$200) ***from any one (1) source*** to the filer, his spouse, or dependent children, except those from ***a member of the filer's family*** ~~[spouse, parents, or grandparents]~~; and
- (l) Identity, ***including an address***, of creditors owed more than ten thousand dollars (\$10,000), except debts arising from the purchase of consumer goods.

Paragraphs (a) to (l) of this subsection shall not require disclosure of specific dollar amounts or of privileged information.

SECTION 5. A NEW SECTION OF KRS CHAPTER 11A IS CREATED TO READ AS FOLLOWS:

***An agency that is directed by statute to adopt a code of ethics shall be exempt from KRS Chapter 11A upon the effective date of an Act of the General Assembly creating the agency's code of ethics or upon the effective date of an administrative regulation that creates the agency's code of ethics.***

Section 6. KRS 11A.080 is amended to read as follows:

- (1)
  - (a) Upon a complaint signed under penalty of perjury by any person, or upon its own motion, the commission shall conduct a preliminary investigation of any alleged violation of this chapter.
  - (b) The preliminary investigation shall begin not later than ten (10) days after the next commission meeting following the receipt of the sworn complaint, or, if the investigation is initiated by the commission's own motion, not later than ten (10) days after the date of the adoption of the motion.
  - (c) Within ten (10) days of the commencement of the preliminary investigation, the commission shall forward a copy of the complaint, if one has been filed, or a statement of possible violations being investigated, and a general statement of the applicable law to the person alleged to have committed a violation.
- (2) All commission proceedings and records relating to a preliminary investigation shall be confidential until a final determination is made by the commission, except:
  - (a) The commission may turn over to the Attorney General, the United States Attorney, or the Commonwealth's Attorney of the jurisdiction in which the offense allegedly occurred, evidence which may be used in criminal proceedings;
  - (b) If the alleged violator publicly discloses the existence of a preliminary investigation, the commission may publicly confirm the existence of the inquiry and, in its discretion, make public any documents which were issued to either party;
  - (c) ***If the matter being investigated was referred to the commission from another state agency, the commission may inform the referring state agency of the status of any preliminary investigation and of any action taken on the matter.***
- (3) If the commission determines in the preliminary investigation that the facts are not sufficient to constitute a violation of this chapter, the commission shall immediately terminate the investigation and notify in writing the complainant, if any, and the person alleged to have committed a violation. The commission may confidentially inform the alleged violator of potential violations and provide information to ensure future compliance with the law. If the alleged violator publicly discloses the existence of such action by the commission, the commission may confirm the existence of the resolution and, in its discretion, make public any documents which were issued to the alleged violator.
- (4) If the commission, during the course of the preliminary investigation, finds probable cause to believe that a violation of this chapter has occurred, the commission may, upon majority vote:
  - (a) Due to mitigating circumstances such as lack of significant economic advantage or gain by the alleged violator, lack of significant economic loss to the state, or lack of significant impact on public confidence in government, in writing, confidentially reprimand the alleged violator for potential violations of the law and provide a copy of the reprimand to the alleged violator's appointing authority, if any. If the alleged violator publicly discloses the existence of such an action, the commission may confirm the existence of the action and, in its discretion, make public any documents which were issued to the alleged violator; or
  - (b) Initiate an administrative proceeding to determine whether there has been a violation.



Section 7. KRS 11A.100 is amended to read as follows:

- (1) The provisions of KRS Chapter 13B shall apply to all commission administrative hearings.
- (2) All administrative hearings of the commission carried out pursuant to the provisions of this section shall be public, unless the members vote to go into executive session in accordance with KRS 61.810.
- (3) The commission, upon a finding pursuant to an administrative hearing that there has been clear and convincing proof of a violation of this chapter, may:
  - (a) Issue an order requiring the violator to cease and desist the violation; *and*
  - (b) Issue an order requiring the violator to file any report, statement, or other information as required by this chapter; *and*
  - (c) In writing, publicly reprimand the violator for potential violations of the law and provide a copy of the reprimand to the alleged violator's appointing authority, if any; *and*
  - (d) In writing, recommend to the violator's appointing authority that the violator be removed or suspended from office or employment, and include a recommendation for length of suspension, to be approved by the appointing authority, if any; *and for*
  - (e) Issue an order requiring the violator to pay a civil penalty of not more than *five*~~two~~ thousand dollars *(\$5,000)*~~(\$2,000)~~ for each violation of this chapter.
- (4) In addition to any other remedies provided by law, any violation of this chapter which has substantially influenced the action taken by any state agency in any particular matter shall be grounds for voiding, rescinding, or canceling the action on such terms as the interests of the state and innocent third persons require.
- (5) The commission shall refer to the Attorney General evidence of violations of KRS 11A.040 for prosecution. The Attorney General shall have responsibility for all prosecutions under the law and may request from the commission all evidence collected in its investigation. The commission may represent itself through the general counsel in all subsequent proceedings.

Section 8. KRS 11A.990 is amended to read as follows:

- (1) Any person who violates KRS 11A.040 shall be guilty of a Class D felony. In addition:
  - (a) The judgment of conviction for a violation of KRS 11A.040(2) shall recite that the offender is disqualified to hold office thereafter; and
  - (b) Any person who violates KRS 11A.040(1) to (5) shall be judged to have forfeited any employment, or constitutional or statutory office he holds, provisions of KRS Chapter 18A to the contrary notwithstanding.
- (2) Any officer, public servant, or candidate required to file a statement of financial disclosure ~~under~~*pursuant to* KRS 11A.050 who does not file the statement by a date specified in that section shall have his salary withheld from the first day of noncompliance until he shall have completed the action required by law. The amount withheld shall be deducted from his overall pay and allowances and shall ~~not~~ be recoverable *upon the filing of the statement of financial disclosure*~~pursuant to Section 235 of the Constitution of Kentucky~~. The commission may grant a reasonable extension of time for filing a statement of financial disclosure for good cause shown.
- (3) Any person who maliciously files with the commission a false charge of misconduct on the part of any public servant or other person shall be fined not to exceed five thousand dollars (\$5,000), or imprisoned in a county jail for a term not to exceed one (1) year, or both.
- (4) Prosecution for violation of any provision of KRS 11A.040 shall not be commenced after four (4) years have elapsed from the date of the violation.
 

Any executive agency lobbyist, employer, or real party in interest who violates any provision in KRS 11A.206 shall for the first violation be subject to a civil penalty not to exceed five thousand dollars (\$5,000). For the second and each subsequent violation, he shall be guilty of a Class D felony.
- (5) Any executive agency lobbyist, employer, or real party in interest who fails to file the initial registration statement or updated registration statement required by KRS 11A.211 or 11A.216, or who fails to remedy a

deficiency in any filing in a timely manner, may be fined by the commission an amount not to exceed one hundred dollars (\$100) per day, up to a maximum total fine of one thousand dollars (\$1,000).

- (6) Any executive agency lobbyist, employer, or real party in interest who intentionally fails to register, or who intentionally files an initial registration statement or updated registration statement required by KRS 11A.211 or 11A.216 which he knows to contain false information or to omit required information shall be guilty of a Class D felony.
- (7) An executive agency lobbyist, employer, or real party in interest who files a false statement of expenditures or details of a financial transaction under KRS 11A.221 or 11A.226 is liable in a civil action to any official or employee who sustains damage as a result of the filing or publication of the statement.
- (8) Violation of KRS 11A.236 is a Class D felony.

**Approved April 21, 2000**

## CHAPTER 476

### (HB 517)

AN ACT relating to health insurance.

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

SECTION 1. SUBTITLE 17B OF KRS CHAPTER 304 IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

*As used in this subtitle, unless the context requires otherwise:*

- (1) *"Administrator" is defined in KRS 304.9-051(1);*
- (2) *"Agent" is defined in KRS 304.9-020;*
- (3) *"Assessment process" means the process of assessing and allocating guaranteed acceptance program losses or Kentucky Access funding as provided for in Section 11 of this Act;*
- (4) *"Authority" means the Kentucky Health Care Improvement Authority;*
- (5) *"Case management" means a process for identifying an enrollee with specific health care needs and interacting with the enrollee and their respective health care providers in order to facilitate the development and implementation of a plan that efficiently uses health care resources to achieve optimum health outcome;*
- (6) *"Commissioner" is defined in KRS 304.1-050(1);*
- (7) *"Department" is defined in KRS 304.1-050(2);*
- (8) *"Earned premium" means the portion of premium paid by an insured that has been allocated to the insurer's loss experience, expenses, and profit year to date;*
- (9) *"Enrollee" means a person who is enrolled in a health benefit plan offered under Kentucky Access;*
- (10) *"Eligible individual" is defined in subsection (7) of Section 17 of this Act;*
- (11) *"Guaranteed acceptance program" or "GAP" means the Kentucky Guaranteed Acceptance Program established and operated under KRS 304.17A-400 to 304.17A-480;*
- (12) *"Guaranteed acceptance program participating insurer" means an insurer that offered health benefit plans through December 31, 2000, in the individual market to guaranteed acceptance program qualified individuals;*
- (13) *"Health benefit plan" is defined in subsection (17) of Section 17 of this Act;*
- (14) *"High-cost condition" means acquired immune deficiency syndrome (AIDS), angina pectoris, ascites, chemical dependency, cirrhosis of the liver, coronary insufficiency, coronary occlusion, cystic fibrosis, Friedreich's ataxia, hemophilia, Hodgkin's disease, Huntington's chorea, juvenile diabetes, leukemia, metastatic cancer, motor or sensory aphasia, multiple sclerosis, muscular dystrophy, myasthenia gravis, myotonia, open-heart surgery, Parkinson's disease, polycystic kidney, psychotic disorders, quadriplegia,*

*stroke, syringomyelia, Wilson's disease, chronic renal failure, malignant neoplasm of the trachea, malignant neoplasm of the bronchus, malignant neoplasm of the lung, malignant neoplasm of the colon, short gestation period for a newborn child, and low birth weight of a newborn child;*

- (15) *"Incurred losses" means for Kentucky Access the excess of claims paid over premiums received;*
- (16) *"Insurer" is defined in subsection (22) of Section 17 of this Act;*
- (17) *"Kentucky Access" means the program established in accordance with Sections 1 to 16 of this Act;*
- (18) *"Kentucky Access Fund" means the fund established in Section 11 of this Act;*
- (19) *"Kentucky Health Care Improvement Authority" means the board established to administer the program initiatives listed in subsection (5) of Section 2 of this Act;*
- (20) *"Kentucky Health Care Improvement Fund" means the fund established for receipt of the Kentucky tobacco master settlement moneys for program initiatives listed in subsection (5) of Section 2 of this Act;*
- (21) *"MARS" means the Management Administrative Reporting System administered by the Commonwealth;*
- (22) *"Medicaid" means coverage in accordance with Title XIX of the Social Security Act, 42 U.S.C. secs. 1396 et seq., as amended;*
- (23) *"Medicare" means coverage under both Parts A and B of Title XVIII of the Social Security Act, 42 U.S.C. secs. 1395 et seq., as amended;*
- (24) *"Pre-existing condition exclusion" is defined in KRS 304.17A-220(3);*
- (25) *"Standard health benefit plan" means a health benefit plan that meets the requirements of Section 21 of this Act;*
- (26) *"Stop-loss carrier" means any person providing stop-loss health insurance coverage;*
- (27) *"Supporting insurer" means all insurers, stop-loss carriers, and self-insured employer-controlled or bona fide associations; and*
- (28) *"Utilization management" is defined in KRS 304.17A-500(12).*

SECTION 2. A NEW SECTION OF SUBTITLE 17B OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby established the Kentucky Health Care Improvement Authority as an agency, instrumentality, and political subdivision of the Commonwealth and a public body corporate and politic with all the powers, duties, and responsibilities conferred upon it by statute and necessary or convenient to carry out its functions. The authority shall be administered by a board of fifteen (15) members and is created to perform the public functions of administering programs financed by the funds appropriated to the authority in conformance with Sections 1 to 16 of this Act and any terms and conditions established by the General Assembly as a part of the act appropriating the funds. The members of the board shall consist of the following:*
  - (a) *The commissioner of the Department of Insurance, who shall serve as chair;*
  - (b) *The secretary of the Cabinet for Health Services, who shall serve as vice chair;*
  - (c) *Two (2) nonvoting members serving ex officio from the House of Representatives, one (1) of whom shall be appointed by the Speaker of the House and one (1) appointed by the minority floor leader, and who shall serve a term of two (2) years;*
  - (d) *Two (2) nonvoting members serving ex officio from the Senate, one (1) of whom shall be appointed by the President of the Senate and one (1) appointed by the minority floor leader, and who shall serve a term of two (2) years;*
  - (e) *The deans of the University of Louisville School of Medicine and the University of Kentucky College of Medicine;*
  - (f) *The commissioner of the Department for Public Health;*
  - (g) *Two (2) representatives of Kentucky health care providers, who shall be appointed by the Governor; and*

- (h) *Four (4) citizens at large of the Commonwealth, who shall be appointed by the Governor.*
- (2) *The terms of office of the initial appointments of the citizen at-large members of the board shall expire one (1), two (2), three (3), and four (4) years respectively from the expiration date of the initial appointment. One (1) of the initial terms of the representatives of health care providers, at least one (1) of whom shall be male and at least one (1) of whom shall be female, shall be for two (2) years and one (1) shall be for four (4) years. All succeeding appointments shall be for four (4) years from the expiration date of the term of the initial appointment. Two (2) of the citizens at large shall be male and two (2) shall be female. Board members shall serve until their successors are appointed.*
  - (3) *In making private sector and citizen-at-large appointments to the board, the Governor shall assure broad geographical and ethnic representation as well as representation from consumers and the major sectors of Kentucky's health care and health insurance businesses. Private sector and citizen-at-large members shall serve without compensation but shall be reimbursed for reasonable and necessary expenses.*
  - (4) *The authority shall establish priorities for programs and the expenditure of funds, establish procedures for accountability, and develop mechanisms to measure the success of programs that receive allocated funds in accordance with any criteria or instructions provided by the General Assembly. The authority shall be attached to the Department of Insurance for administrative purposes and shall establish advisory boards it deems appropriate, which shall consist of health insurance consumers, health care providers, and insurance company representatives, to assist with oversight of fund expenditures.*
  - (5) *Grants and funds obtained under Sections 1 to 16 of this Act shall be used for expenditures as follows:*
    - (a) *Seventy percent (70%) of all moneys in the fund shall be placed into the Kentucky Access fund for the purpose of funding Kentucky Access;*
    - (b) *Twenty percent (20%) of all moneys in the fund shall be spent on a collaborative partnership between the University of Louisville and the University of Kentucky dedicated to lung cancer research; and*
    - (c) *Ten percent (10%) of all moneys in the fund shall be used to discourage the use of harmful substances by minors.*
  - (6) *The authority shall assure that a public hearing is held on the expenditure of funds allocated under this section, except for funds allocated to the Kentucky Access fund. Advertisement of the public hearing shall be published at least once but may be published two (2) more times, if one (1) publication occurs not less than seven (7) days nor more than twenty-one (21) days before the scheduled date of the public hearing. The authority shall submit an annual report to the Governor and the General Assembly indicating how the funds were used and an evaluation of the program's effectiveness in health care and access to health insurance for Kentucky residents.*
  - (7) *Neither the authority nor its employees shall be liable for any obligations of any of the programs established under Sections 1 to 16 of this Act. No member or employee of the authority shall be liable, and no cause of action of any nature may arise against them, for any act or omission related to the performance of their powers and duties under Sections 1 to 16 of this Act, unless the act or omission constitutes willful or wanton misconduct. The authority may provide in its policies and procedures for indemnification of, and legal representation for, its members and employees.*
  - (8) *The authority shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of Sections 1 to 16 of this Act, including, but not limited to, retaining the staff it deems necessary for the proper performance of its duties.*
  - (9) *The authority shall meet at least quarterly and at other times upon call of the chair or a majority of the authority.*

SECTION 3. A NEW SECTION OF SUBTITLE 17B OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby created Kentucky Access, which shall ensure that health coverage is made available to each Kentucky individual resident applying and qualifying for coverage. Any health coverage provided under this section shall begin no sooner than January 1, 2001. Kentucky Access is designed for the purpose of implementing an acceptable alternative mechanism within the meaning of 42 U.S.C. sec. 300gg-44(a)(1) so that Kentucky may preserve the flexibility over the regulation of health coverage allowed by federal law.*

- (2) *Kentucky Access shall operate under the supervision of the department.*
- (3) *Neither the department nor its employees shall be liable for any obligations of Kentucky Access. No member or employee of the department shall be liable, and no cause of action of any nature may arise against them, for any act or omission related to the performance of their powers and duties under Sections 1 to 16 of this Act, unless such act or omission constitutes willful or wanton misconduct. The department may provide in its policies and procedures for indemnification of, and legal representation for, its members and employees.*

SECTION 4. A NEW SECTION OF SUBTITLE 17B OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*In its duties to operate and administer Kentucky Access, the department shall, through itself or designated agents:*

- (1) *Establish administrative and accounting procedures for the operation of Kentucky Access;*
- (2) *Enter into contracts as necessary;*
- (3) *Take legal action necessary:*
  - (a) *To avoid the payment of improper claims against Kentucky Access or the coverage provided by or through Kentucky Access;*
  - (b) *To recover any amounts erroneously or improperly paid by Kentucky Access;*
  - (c) *To recover any amounts paid by the Kentucky Access as a result of mistake of fact or law;*
  - (d) *To recover other amounts due Kentucky Access; or*
  - (e) *To operate and administer its obligations under the provisions of Sections 1 to 16 of this Act;*
- (4) *Establish, and modify as appropriate, rates, rate schedules, rate adjustments, premium rates, expense allowances, claim reserve formulas, and any other actuarial function appropriate to the administration and operation of Kentucky Access. Premium rates and rate schedules may be adjusted for appropriate factors, including, but not limited to, age and sex, and shall take into consideration appropriate factors in accordance with established actuarial and underwriting practices;*
- (5) *Establish procedures under which applicants and participants in Kentucky Access shall have an internal grievance process and a mechanism for external review through an independent review organization in accordance with this chapter;*
- (6) *Select a third-party administrator in accordance with Section 6 of this Act;*
- (7) *Require that all health benefit plans, riders, endorsements, or other forms and documents used to administer Kentucky Access meet the requirements of Subtitles 12, 14, 17, 17A, and 38 of this chapter;*
- (8) *Adopt nationally recognized uniform claim forms in accordance with this chapter;*
- (9) *Develop and implement a marketing strategy to publicize the existence of Kentucky Access, including, but not limited to, eligibility requirements, procedures for enrollment, premium rates, and a toll-free telephone number to call for questions;*
- (10) *Establish and review annually provider reimbursement rates that ensure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under Kentucky Access at least to the extent that such care and services are available to the general population. The department shall only authorize contracts with health care providers that prohibit the provider from collecting from the enrollee any amounts in excess of copayment amounts, coinsurance amounts, deductible amounts, and amounts for noncovered services;*
- (11) *Conduct periodic audits to assure the general accuracy of the financial and claims data submitted to the department and be subject to an annual audit of its operations;*
- (12) *Issue health benefit plans January 1, 2001, or thereafter, in accordance with the requirements of Sections 1 to 16 of this Act;*
- (13) *Require a referral fee of fifty dollars (\$50) to be paid to agents who refer applicants who are subsequently enrolled in Kentucky Access. The referral fee shall be paid only on the initial enrollment of an applicant. Referral fees shall not be paid on any enrollments of enrollees who have been previously enrolled in Kentucky Access, or for renewals for enrollees;*

- (14) *Bill and collect premiums from enrollees in the amount determined by the department;*
- (15) *Assess insurers and stop-loss carriers in accordance with Section 11 of this Act;*
- (16) *Reimburse GAP participating insurers for GAP losses pursuant to Section 11 of this Act;*
- (17) *Establish a provider network for Kentucky Access by developing a statewide provider network or by contracting with an insurer for a statewide provider network. In the event the department contracts with an insurer, the department may take into consideration factors including, but not limited to, the size of the provider network, the composition of the provider network, and the current market rate of the provider network. The provider network shall be made available to the third-party administrator specified in Section 6 of this Act and shall be limited to Kentucky Access enrollees.*
- (18) *Be audited by the Auditor of Public Accounts;*
- (19) *By administrative regulation, amend the definition of high-cost conditions provided in Section 1 of this Act by adding other high-cost conditions;*
- (20) *The department shall report on an annual basis to the Interim Joint Committee on Banking and Insurance the separation plan pursuant to Section 18 of this Act for the division of duties and responsibilities between the operation of the Department of Insurance and the operation of Kentucky Access; and*
- (21) *Any other actions as may be necessary and proper for the execution of the department's powers, duties, and obligations under Sections 1 to 16 of this Act.*

SECTION 5. A NEW SECTION OF SUBTITLE 17B OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*In its duties to operate and administer Kentucky Access, the department may, through itself or third parties:*

- (1) *Exercise any and all powers granted to insurers under this chapter; and*
- (2) *Sue or be sued.*

SECTION 6. A NEW SECTION OF SUBTITLE 17B OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall select a third-party administrator, through the state competitive bidding process, to administer Kentucky Access. The third-party administrator shall be an administrator licensed by the department. The department shall consider criteria in selecting a third-party administrator that shall include, but not be limited to, the following:*
  - (a) *A third-party administrator's proven ability to demonstrate performance of the operations of an insurer to include the following: enrollee enrollment, eligibility determination, provider enrollment and credentialing, utilization management, quality improvement, drug utilization review, premium billing and collection, claims payment, and data reporting;*
  - (b) *The total cost to administer Kentucky Access;*
  - (c) *A third-party administrator's proven ability to demonstrate that Kentucky Access shall be administered in a cost-efficient manner;*
  - (d) *A third-party administrator's proven ability to demonstrate experience in two (2) or more states administering a risk pool for a minimum of a three (3) year period; and*
  - (e) *A third-party administrator's financial condition and stability.*
- (2) *The department may contract with the third-party administrator for a period of four (4) years with an option for a two (2) year extension as approved by the department on a year-by-year contract basis. At least one (1) year prior to the expiration of the third-party administrator's contract, the department may solicit third-party administrators, including the current third-party administrator, to submit bids to serve as the third-party administrator for the succeeding four (4) year period.*
- (3) *In addition to any duties and obligations set forth in the contract with the third-party administrator, the third-party administrator shall:*
  - (a) *Develop and establish policies and procedures for enrollee enrollment, eligibility determination, provider enrollment and credentialing, utilization management, case management, disease*

*management, quality improvement, drug utilization review, premium billing and collection, data reporting, and other responsibilities determined by the department;*

- (b) Develop and establish policies and procedures for paying the agent referral fee under Sections 1 to 16 of this Act;*
  - (c) Develop and establish policies and procedures to ensure timely and efficient payment of claims to include, but not limited to, the following:*
    - 1. Develop and provide a claims billing manual to health care providers enrolled in Kentucky Access that includes information relating to the proper billing of a claim and the types of claim forms to use;*
    - 2. Payment of all claims in accordance with the provisions of this chapter and the administrative regulations promulgated thereunder; and*
    - 3. Notification to an enrollee through an explanation of benefits if a claim is denied or if there is enrollee financial responsibility of a paid claim for deductible or coinsurance amounts;*
  - (d) Issue denial letters under KRS 304.17A-540 for denial of preauthorization and precertification requests for medical necessity and medical appropriateness determinations;*
  - (e) Submit information to the department under KRS 304.17A-330;*
  - (f) Submit reports to the department regarding the operation and financial condition of Kentucky Access. The frequency, content, and form of the reports shall be determined by the department;*
  - (g) Submit an annual report to the department three (3) months after the end of each calendar year. The annual report shall include:*
    - 1. Earned premium;*
    - 2. Administrative expenses;*
    - 3. Incurred losses for the year;*
    - 4. Paid losses for the year;*
    - 5. Number of enrollees enrolled in Kentucky Access by category of eligibility; and*
    - 6. Any other information requested by the department; and*
  - (h) Be subject to examination by the department under Subtitles 2 and 3 of this chapter.*
- (4) The third-party administrator shall be paid for necessary and reasonable expenses, as provided in the contract between the department and the third-party administrator.*

SECTION 7. A NEW SECTION OF SUBTITLE 17B OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) The schedule of rates, premium rates charged to enrollees, deductible amounts, copayment amounts, coinsurance amounts, and other cost-sharing amounts shall be established by the department. Premium rates charged to enrollees are not intended to fully cover the cost of providing health care coverage to Kentucky Access enrollees, and any claims in excess of premium rates shall be covered by the Kentucky Access fund.*
- (2) Premium rates for health benefit plans provided under Kentucky Access shall bear a reasonable relationship to each other. Premium rates shall be varied based on age and gender. The initial premium rates for plan coverage shall not exceed one hundred fifty percent (150%) of the applicable individual standard risk rates, as established by the department. In no event shall premium rates exceed one hundred seventy-five percent (175%) of the rates applicable to individual standard risks.*
- (3) Premium rates for coverage issued by Kentucky Access shall be established annually by the department, using reasonable actuarial principles, and shall reflect anticipated experience and expenses for risks under Kentucky Access.*

SECTION 8. A NEW SECTION OF SUBTITLE 17B OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Any individual who is an eligible individual is eligible for coverage under Kentucky Access, except as specified in paragraphs (a), (b), (d), and (e) of subsection (4) of this section.*
- (2) *Any individual who is not an eligible individual who has been a resident of the Commonwealth for at least twelve (12) months immediately preceding the application for Kentucky Access coverage is eligible for coverage under Kentucky Access if one (1) of the following conditions is met:*
  - (a) *The individual has been rejected by at least two (2) insurers for coverage of a health benefit plan that is substantially similar to Kentucky Access coverage;*
  - (b) *The individual has been offered coverage substantially similar to Kentucky Access coverage at a premium rate greater than the Kentucky Access premium rate at the time of enrollment or upon renewal; or*
  - (c) *The individual has a high-cost condition listed in Section 1 of this Act.*
- (3) *A Kentucky Access enrollee whose premium rates exceed claims for a three (3) year period shall be issued a notice of insurability. The notice shall indicate that the Kentucky Access enrollee has not had claims exceed premium rates for a three (3) year period and may be used by the enrollee to obtain insurance in the regular individual market.*
- (4) *An individual shall not be eligible for coverage under Kentucky Access if:*
  - (a) *The individual has, or is eligible for, on the date of application for coverage under Kentucky Access, substantially similar coverage under another contract or policy, unless the individual was issued coverage from a GAP participating insurer as a GAP qualified individual prior to January 1, 2001. A GAP qualified individual shall be automatically eligible for coverage under Kentucky Access without regard to the requirements of subsection (2) of this section. An individual who is ineligible for coverage pursuant to this paragraph shall not preclude the individual's spouse or dependents from being eligible for Kentucky Access coverage. As used in this paragraph, "eligible for" includes any individual who was eligible for coverage but waived that coverage. That individual shall be ineligible for Kentucky Access coverage through the period of waived coverage;*
  - (b) *The individual is eligible for coverage under Medicaid or Medicare;*
  - (c) *The individual previously terminated Kentucky Access coverage and twelve (12) months have not elapsed since the coverage was terminated, unless the individual demonstrates a good faith reason for the termination;*
  - (d) *Except for covered benefits paid under the standard health benefit plan as specified in Section 10 of this Act, Kentucky Access has paid two million dollars (\$2,000,000) in covered benefits per individual. The maximum limit under this paragraph may be increased by the department; or*
  - (e) *The individual is confined to a public institution or incarcerated in a federal, state, or local penal institution or in the custody of federal, state, or local law enforcement authorities, including work release programs.*

- (5) *The coverage of any person who ceases to meet the requirements of this section may be terminated.*

SECTION 9. A NEW SECTION OF SUBTITLE 17B OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *At least annually, the department shall evaluate and revise as necessary rates to be charged to Kentucky Access enrollees.*
- (2) *Except as provided in Section 10 of this Act, the department may revise its health benefit plans, cost-sharing arrangements, plan delivery rules, schedule of benefits, rates, and cost-containment features provided under Kentucky Access at the time of the health benefit plan renewal as necessary to ensure that Kentucky Access maintains adequate resources for continued operation.*

SECTION 10. A NEW SECTION OF SUBTITLE 17B OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Kentucky Access shall offer at least three (3) health benefit plans to enrollees, which shall be similar to the health benefit plans currently being marketed to individuals in the individual market. One (1) plan shall be the standard health benefit plan set forth in KRS 304.17A-250.*



- (2) *At least one (1) plan shall be offered in a traditional fee-for-service form. At least one (1) plan may be offered in a managed-care form at such time as the department can establish an appropriate provider network in available service areas.*
- (3) *The department shall provide for utilization review and case management for all health benefit plans issued under Kentucky Access.*
- (4) *The department shall review and compare health benefit plans provided under Kentucky Access to health benefit plans provided in the individual market. Based on the review, the department may amend or replace the health benefit plans issued under Kentucky Access, except for the standard health benefit plan as specified in subsection (1) of this section.*
- (5) *Individuals who apply and are determined eligible for health benefit plans issued under Kentucky Access shall have coverage effective the first day of the month after the application month.*
- (6) *For eligible individuals, health benefit plans issued under Kentucky Access shall not impose any pre-existing condition exclusions. In all other cases, a pre-existing condition exclusion may be imposed in accordance with KRS 304.17A-230.*
- (7) *Health benefit plans issued under Kentucky Access shall be guaranteed renewable except as otherwise specified in Section 8 of this Act and KRS 304.17A-240.*
- (8) *All health benefit plans issued under Kentucky Access shall provide that, upon the death or divorce of the individual in whose name the contract was issued, every other person covered in the contract may elect within sixty-three (63) days to continue under the same or a different contract.*
- (9) *Health benefit plans issued under Kentucky Access shall coordinate benefits with other health benefit plans and be the payor of last resort.*
- (10) *Except for the standard health benefit plan specified in subsection (1) of this section, health benefit plans issued under Kentucky Access shall pay covered benefits up to a lifetime limit of two million dollars (\$2,000,000) per covered individual. The maximum limit under this subsection may be increased by the department.*

SECTION 11. A NEW SECTION OF SUBTITLE 17B OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *In addition to the other powers enumerated in Sections 1 to 16 of this Act, the department shall assess insurers in the amounts specified in this section. The assessment shall be used for the purpose of funding GAP losses and Kentucky Access.*
  - (a) *The amount of the assessment for each calendar year shall be as follows:*
    1. *From each stop-loss carrier, an amount that is equal to two dollars (\$2) upon each one hundred dollars (\$100) of health insurance stop-loss premiums;*
    2. *From all insurers, an amount based on the total amount of all health benefit plan premiums earned during the prior assessment period and paid by all insurers who received any of the health benefit plan premiums on which the annual assessment is based. The percentage rate used for the annual assessment shall be the same percentage rate as calculated in the GAP risk adjustment process for the six (6) month period of July 1, 1998, through December 31, 1998;*
    3. *If determined necessary by the department, a second assessment may be assessed in the same manner as the annual assessment in subparagraph 2. of this paragraph; and*
    4. *In no event shall the sum of the first assessment provided for in subparagraph 2. of this paragraph and the second assessment provided for in subparagraph 3. of this paragraph be greater than one percent (1%) of the total amount of all assessable health benefit plan premiums earned during the prior assessment period.*
  - (b) *The first assessment shall be for the period from January 1, 2000, through December 31, 2000, and shall be paid on or before March 31, 2001. Subsequent annual assessments shall be paid on or before March 31 of the year following the assessment period.*
- (2) *Every supporting insurer shall report to the department, in a form and at the time as the department may specify, the following information for the specified period:*

- (a) *The insurer's total stop-loss premiums and health benefit plan premiums in the individual, small group, large group, and association markets; and*
  - (b) *Other information as the department may require.*
- (3) *As part of the assessment process, the department shall establish and maintain the Kentucky Access fund. All funds shall be held at interest, in a single depository designated in accordance with KRS 304.8-090(1) under a written trust agreement in accordance with KRS 304.8-095. All expense and revenue transactions of the fund shall be posted to the Management Administrative Reporting System (MARS) and its successors.*
- (4) *The Kentucky Access fund shall be funded from the following sources:*
  - (a) *Premiums paid by Kentucky Access enrollees;*
  - (b) *The funds designated for Kentucky Access in the Kentucky Health Care Improvement fund;*
  - (c) *Appropriations from the General Assembly;*
  - (d) *All premium taxes collected under KRS Chapter 136 from any insurer, and any retaliatory taxes collected under KRS 304.3-270 from any insurer, for accident and health premiums that are in excess of the amount of the premium taxes and retaliatory taxes collected for the calendar year 1997;*
  - (e) *Annual assessments from supporting insurers;*
  - (f) *A second assessment from supporting insurers;*
  - (g) *Gifts, grants, or other voluntary contributions;*
  - (h) *Interest or other earnings on the investment of the moneys held in the account; and*
  - (i) *Any funds remaining on January 1, 2001, in the guaranteed acceptance program account may be transferred to the Kentucky Access fund.*
- (5) *The department shall determine on behalf of Kentucky Access the premiums, the expenses for administration, the incurred losses, taking into account investment income and other amounts needed to satisfy reserves, estimated claim liabilities, and other obligations for each calendar year. The department shall also determine the amount of the actual guaranteed acceptance program plan losses for each calendar year. The department shall assess insurers as follows:*
  - (a) *On or before March 31 of each year, the amount set forth in subsection (1)(a)1. and (1)(a)2. of this section.*
  - (b) *If the amount of actual guaranteed acceptance program plan losses exceeds the assessment provided for in paragraph (a) of this subsection, a second assessment shall be authorized under subsection (1)(a)3. of this section. If the amount of GAP losses exceeds the assessments provided under subsection (1)(a)1., subsection (1)(a)2., and subsection (1)(a)3. of this section, moneys received and available from the Kentucky Health Care Improvement Fund after the department determines available funding for Kentucky Access for the current calendar year pursuant to subsection (6) of this section, shall be used to reimburse GAP participating insurers for any actual guaranteed acceptance program losses. If the amount of GAP losses exceeds the amount in the Kentucky Health Care Improvement Fund after reserving sufficient funds for Kentucky Access for the current year, each GAP participating insurer shall be reimbursed up to the amount of its proportional share of actual guaranteed acceptance program plan losses from the fund. Effective for any assessment on or after January 1, 2001, in calculating GAP losses, total premiums and total claims of the GAP participating insurer shall be used. Actual guaranteed acceptance program losses shall be calculated as the difference between the total GAP claims and the total GAP premiums on an aggregate basis.*
  - (c) *If GAP losses are fully covered by the assessment process provided for in subsection (1)(a)1. and (1)(a)2. of this section and the second assessment provided for in subsection (1)(a)3. of this section is not necessary to cover GAP losses, and as determined by the department using reasonable actuarial principles Kentucky Access funding is needed, a second assessment provided for in subsection (1)(a)3. of this section shall be completed.*
- (6) *After the end of each calendar year, GAP losses shall be reimbursed only after the department determines that appropriate funding is available for Kentucky Access for the current calendar year. GAP losses shall be reimbursed after reserving sufficient funds for Kentucky Access.*

- (7) *With respect to a GAP participating insurer who reasonably will be expected both to pay assessments and to receive payments from the assessment fund, the department shall calculate the net amount owed to or to be received from the fund, and the department shall only collect assessments for or make payments from the fund based upon net amounts.*
- (8) *Insurers paying an assessment may include in any health insurance rate filing the amount of these assessments as provided for in Subtitle 17A of this chapter.*
- (9) *Insurers shall pay any assessment amounts authorized in Sections 1 to 16 of this Act within thirty (30) days of receiving notice from the department of the assessment amount.*
- (10) *Any surpluses remaining in the Kentucky Access fund after completion of the assessment process for a calendar year shall be maintained for use in the assessment process for future calendar years and such funds shall not lapse. The general fund appropriations to the Kentucky Access fund shall not lapse.*
- (11) *Assessments on health benefit plan premiums that are required under Sections 1 to 16 of this Act shall not be applied to premiums received by an insurer for state employees, Medicaid recipients, Medicare beneficiaries, and CHAMPUS insureds.*
- (12) *The department shall direct that receipts of Kentucky Access be held at interest, and may be used to offset future losses or to reduce plan premiums in accordance with the terms of Sections 1 to 16 of this Act. As used in this subsection, "future losses" may include reserves for incurred but not reported claims.*
- (13) *The department shall conduct examinations of insurers and stop-loss carriers reasonably necessary to determine if the information provided by the insurers or stop-loss carriers is accurate.*
- (14) *The insurer, as a condition of conducting health insurance business in Kentucky, shall pay the assessments specified in Sections 1 to 16 of this Act.*
- (15) *The stop-loss carrier, as a condition of doing health insurance business in Kentucky, shall pay the assessments specified in Sections 1 to 16 of this Act.*

SECTION 12. A NEW SECTION OF SUBTITLE 17B OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *After the end of each calendar year, a GAP participating insurer shall report the following information for the previous calendar year:*
  - (a) *The total earned premium in the individual, small group, large group, and association markets;*
  - (b) *The number of GAP policies in force as of December 31;*
  - (c) *The amount of the insurer's GAP premiums received during the calendar year covered by the report;*
  - (d) *The amount of the insurer's GAP claims paid during the calendar year covered by the report;*
  - (e) *The amount of the insurer's GAP losses; and*
  - (f) *Other information as the department may require to be reported.*
- (2) *After the end of each calendar year, and based upon the reports filed under subsection (1) of this section, the department shall calculate and provide to each insurer who filed a report the following information relating to the calendar year:*
  - (a) *The amount of each reporting insurer's market share;*
  - (b) *The total amount of GAP premiums for all reporting insurers;*
  - (c) *The total amount of GAP claims paid by all reporting insurers;*
  - (d) *The amount of total actual GAP losses;*
  - (e) *The amount of the insurer's assessment or refund; and*
  - (f) *Other information as the department may elect to calculate and report.*

*The department shall complete its calculation and provide each insurer the results of its calculation within sixty (60) days after receiving all required information.*

- (3) *The department shall pay GAP losses to GAP participating insurers in accordance with this section and subsection (5) of Section 11 of this Act.*

- (4) *The department shall conduct examinations of insurers participating in Kentucky Access as are reasonably necessary to determine if the information provided by the insurers is accurate.*

SECTION 13. A NEW SECTION OF SUBTITLE 17B OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Any health benefit plan issued to a GAP qualified individual under the GAP program shall be renewed at the option of the enrollee, except for the reasons set out in KRS 304.17A-240.*
- (2) *The Guaranteed Acceptance Program shall remain in effect except for KRS 304.17A-400, 304.17A-420, 304.17A-440, 304.17A-460, 304.17A-470, and 304.17A-480.*

SECTION 14. A NEW SECTION OF SUBTITLE 17B OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*Kentucky Access and the department shall be exempt from all taxes levied by the state or any of its subdivisions.*

SECTION 15. A NEW SECTION OF SUBTITLE 17B OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Sixty (60) days prior to the regular session of the General Assembly in the year 2002, and sixty (60) days prior to each subsequent regular session of the General Assembly thereafter, the department shall submit a written report to the Legislative Research Commission and provide a detailed briefing. The report shall contain an evaluation of Kentucky Access, an evaluation of issues concerning high-risk individuals, and other information as the department deems necessary.*
- (2) *Beginning no later than June 30, 2001, and annually thereafter, the Auditor of Public Accounts shall audit Kentucky Access and within sixty (60) days of completion of the audit shall submit a copy of the audit to the Legislative Research Commission and the Department of Insurance.*

SECTION 16. A NEW SECTION OF SUBTITLE 17B OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall promulgate administrative regulations necessary to carry out the provisions of Sections 1 to 16 of this Act.*
- (2) *Kentucky Access shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:*
- (a) *Subtitle 1;*
  - (b) *Subtitle 2;*
  - (c) *Subtitle 3;*
  - (d) *Subtitle 5;*
  - (e) *Subtitle 8;*
  - (f) *Subtitle 9;*
  - (g) *Subtitle 12;*
  - (h) *Subtitle 14;*
  - (i) *Subtitle 17;*
  - (j) *Subtitle 17A;*
  - (k) *Subtitle 25;*
  - (l) *Subtitle 38; and*
  - (m) *Subtitle 47.*

Section 17. KRS 304.17A-005 is amended to read as follows:

As used in this subtitle, unless the context requires otherwise:

- (1) "Association" means an entity, other than an employer-organized association, that has been organized and is maintained in good faith for purposes other than that of obtaining insurance for its members and that has a constitution and bylaws;
- (2) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the insurer to the individual or small group, or employer as defined in KRS 304.17A-0954, with similar case characteristics for health benefit plans with the same or similar coverage;
- (3) "Bona fide association" means an entity as defined in 42 U.S.C. sec. 300gg-91(d)(3);
- (4) "Church plan" means a church plan as defined in 29 U.S.C. sec. 1002(33);
- (5) "COBRA" means any of the following:
  - (a) 26 U.S.C. sec. 4980B other than subsection (f)(1) as it relates to pediatric vaccines;
  - (b) The Employee Retirement Income Security Act of 1974 (29 U.S.C. sec. 1161 et seq. other than sec. 1169); or
  - (c) 42 U.S.C. sec. 300bb;
- (6) (a) "Creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:
  - 1. A group health plan;
  - 2. Health insurance coverage;
  - 3. Part A or Part B of Title XVIII of the Social Security Act;
  - 4. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928;
  - 5. Chapter 55 of Title 10, United States Code;
  - 6. A medical care program of the Indian Health Service or of a tribal organization;
  - 7. A state health benefits risk pool;
  - 8. A health plan offered under Chapter 89 of Title 5, United States Code;
  - 9. A public health plan, as defined in regulations; or
  - 10. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. sec. 2504(e)).
  - (b) This term does not include coverage consisting solely of coverage of excepted benefits as defined in subsection (10) of this section;
- (7) "Eligible individual" means an individual:
  - (a) For whom, as of the date on which the individual seeks coverage, the aggregate of the periods of creditable coverage is eighteen (18) or more months and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan. A period of creditable coverage under this paragraph shall not be counted if, after that period, there was a sixty-three (63) day period of time, excluding any waiting or affiliation period, during all of which the individual was not covered under any creditable coverage;
  - (b) Who is not eligible for coverage under a group health plan, Part A or Part B of Title XVIII of the Social Security Act (42 U.S.C. secs. 1395j et seq.), or a state plan under Title XIX of the Social Security Act (42 U.S.C. secs. 1396 et seq.) and does not have other health insurance coverage;
  - (c) With respect to whom the most recent coverage within the coverage period described in paragraph (a) of this subsection was not terminated based on a factor described in KRS 304.17A-240(2)(a), (b), and (c);
  - (d) If the individual had been offered the option of continuation coverage under a COBRA continuation provision or under KRS 304.18-110, who elected the coverage; and
  - (e) Who, if the individual elected the continuation coverage, has exhausted the continuation coverage under the provision or program;

- (8) "Employer-organized association" means any of the following:
- (a) Any entity that was qualified by the commissioner as an eligible association prior to April 10, 1998, and that has actively marketed a health insurance program to its members since September 8, 1996, and which is not insurer-controlled;
  - (b) Any entity organized under KRS 247.240 to 247.370 that has actively marketed health insurance to its members and that is not insurer-controlled; or
  - (c) Any entity that is a bona fide association as defined in 42 U.S.C. sec. 300gg-91(d)(3), whose members consist principally of employers, and for which the entity's health insurance decisions are made by a board or committee, the majority of which are representatives of employer members of the entity who obtain group health insurance coverage through the entity or through a trust or other mechanism established by the entity, and whose health insurance decisions are reflected in written minutes or other written documentation.

Except as provided in KRS 304.17A-200, 304.17A.210, and 304.17A-220, no employer-organized association shall be treated as an association, small group, or large group under this subtitle;

- (9) "Employer-organized association health insurance plan" means any health insurance plan, policy, or contract issued to an employer-organized association, or to a trust established by one (1) or more employer-organized associations, or providing coverage solely for the employees, retired employees, directors and their spouses and dependents of the members of one (1) or more employer-organized associations;
- (10) "Excepted benefits" means benefits under one (1) or more, or any combination thereof, of the following:
- (a) Coverage only for accident, or disability income insurance, or any combination thereof;
  - (b) Coverage issued as a supplement to liability insurance;
  - (c) Liability insurance, including general liability insurance and automobile liability insurance;
  - (d) Workers' compensation or similar insurance;
  - (e) Automobile medical payment insurance;
  - (f) Credit-only insurance;
  - (g) Coverage for on-site medical clinics;
  - (h) Other similar insurance coverage, specified in administrative regulations, under which benefits for medical care are secondary or incidental to other insurance benefits;
  - (i) Limited scope dental or vision benefits;
  - (j) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof;
  - (k) Such other similar, limited benefits as are specified in administrative regulations;
  - (l) Coverage only for a specified disease or illness;
  - (m) Hospital indemnity or other fixed indemnity insurance;
  - (n) Benefits offered as Medicare supplemental health insurance, as defined under section 1882(g)(1) of the Social Security Act;
  - (o) Coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code; and
  - (p) Coverage similar to that in paragraphs (n) and (o) of this subsection that is supplemental to coverage under a group health plan;
- (11) "Governmental plan" means a governmental plan as defined in 29 U.S.C. sec. 1002(32);
- (12) "Guaranteed acceptance program participating insurer" means an insurer that is required to or has agreed to offer health benefit plans in the individual market to guaranteed acceptance program qualified individuals ***under KRS 304.17A-400 to 304.17A-480;***

- (13) "Guaranteed acceptance program plan" means a health benefit plan in the individual market issued by an insurer that provides health benefits to a guaranteed acceptance program qualified individual and is eligible for assessment and refunds under the guaranteed acceptance program *under KRS 304.17A-400 to 304.17A-480*;
- (14) "Guaranteed acceptance program" means the Kentucky Guaranteed Acceptance Program established and operated under KRS 304.17A-400 to 304.17A-480;
- (15) "Guaranteed acceptance program qualified individual" means an individual who, *on or before December 31, 2000*:
  - (a) Is not an eligible individual;
  - (b) Is not eligible for or covered by other health benefit plan coverage;
  - (c) Within the previous three (3) years has been diagnosed with or treated for a high-cost condition or has had benefits paid under a health benefit plan for a high-cost condition, or is a high risk individual as defined by the underwriting criteria applied by an insurer under the alternative underwriting mechanism established in KRS 304.17A-430(3);
  - (d) Has been a resident of Kentucky for at least twelve (12) months immediately preceding the effective date of the policy; and
  - (e) Has not had his or her most recent coverage under any health benefit plan terminated or nonrenewed because of any of the following:
    - 1. The individual failed to pay premiums or contributions in accordance with the terms of the plan or the insurer had not received timely premium payments;
    - 2. The individual performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage; or
    - 3. The individual engaged in intentional and abusive noncompliance with health benefit plan provisions;
- (16) "Guaranteed acceptance plan supporting insurer" means either an insurer, *on or before December 31, 2000*, that is not a guaranteed acceptance plan participating insurer or is a stop loss carrier, *on or before December 31, 2000*, provided that a guaranteed acceptance plan supporting insurer shall not include an employer-sponsored self-insured health benefit plan exempted by ERISA;
- (17) "Health benefit plan" means any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; provider sponsored integrated health delivery network; a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; health maintenance organization contract; or any health benefit plan that affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky, and does not include policies covering only accident, credit, dental, disability income, fixed indemnity medical expense reimbursement policy, long-term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance, short-term coverage, student health insurance offered by a Kentucky-licensed insurer under written contract with a university or college whose students it proposes to insure, medical expense reimbursement policies specifically designed to fill gaps in primary coverage, coinsurance, or deductibles and provided under a separate policy, certificate, or contract, or coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code;
- (18) "Health care provider" or "provider" means any facility or service required to be licensed pursuant to KRS Chapter 216B, pharmacist as defined pursuant to KRS Chapter 315, and any of the following independent practicing practitioners:
  - (a) Physicians, osteopaths, and podiatrists licensed under KRS Chapter 311;
  - (b) Chiropractors licensed under KRS Chapter 312;
  - (c) Dentists licensed under KRS Chapter 313;
  - (d) Optometrists licensed under KRS Chapter 320;

- (e) Physician assistants regulated under KRS Chapter 311;
  - (f) Nurse practitioners licensed under KRS Chapter 314; and
  - (g) Other health care practitioners as determined by the department by administrative regulations promulgated under KRS Chapter 13A;
- (19) (a) "High-cost condition" *pursuant to the Kentucky Guaranteed Acceptance Program*, means a covered condition in an individual policy as listed in paragraph (c) of this subsection or as added by the commissioner in accordance with KRS 304.17A-280, but only to the extent that the condition exceeds the numerical score or rating established pursuant to uniform underwriting standards prescribed by the commissioner under paragraph (b) of this subsection that account for the severity of the condition and the cost associated with treating that condition.
- (b) The commissioner by administrative regulation shall establish uniform underwriting standards and a score or rating above which a condition is considered to be high-cost by using:
1. Codes in the most recent version of the "International Classification of Diseases" that correspond to the medical conditions in paragraph (c) of this subsection and the costs for administering treatment for the conditions represented by those codes; and
  2. The most recent version of the questionnaire incorporated in a national underwriting guide generally accepted in the insurance industry as designated by the commissioner, the scoring scale for which shall be established by the commissioner.
- (c) The diagnosed medical conditions are: acquired immune deficiency syndrome (AIDS), angina pectoris, ascites, chemical dependency cirrhosis of the liver, coronary insufficiency, coronary occlusion, cystic fibrosis, Friedreich's ataxia, hemophilia, Hodgkin's disease, Huntington chorea, juvenile diabetes, leukemia, metastatic cancer, motor or sensory aphasia, multiple sclerosis, muscular dystrophy, myasthenia gravis, myotonia, open heart surgery, Parkinson's disease, polycystic kidney, psychotic disorders, quadriplegia, stroke, syringomyelia, and Wilson's disease;
- (20) "Index rate" means, for each class of business as to a rating period, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate;
- (21) "Individual market" means the market for the health insurance coverage offered to individuals other than in connection with a group health plan;
- (22) "Insurer" means any insurance company; health maintenance organization; self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA; provider-sponsored integrated health delivery network; self-insured employer-organized association, or nonprofit hospital, medical-surgical, dental, or health service corporation authorized to transact health insurance business in Kentucky;
- (23) "Insurer-controlled" means that the commissioner has found, in an administrative hearing called specifically for that purpose, that an insurer has or had a substantial involvement in the organization or day-to-day operation of the entity for the principal purpose of creating a device, arrangement, or scheme by which the insurer segments employer groups according to their actual or anticipated health status or actual or projected health insurance premiums;
- (24) "Large group" means:
- (a) An employer with fifty-one (51) or more employees; or
  - (b) An affiliated group with fifty-one (51) or more eligible members;
- (25) "Managed care" means systems or techniques generally used by third-party payors or their agents to affect access to and control payment for health care services and that integrate the financing and delivery of appropriate health care services to covered persons by arrangements with participating providers who are selected to participate on the basis of explicit standards for furnishing a comprehensive set of health care services and financial incentives for covered persons using the participating providers and procedures provided for in the plan;
- (26) "Market segment" means the portion of the market covering one (1) of the following:
- (a) Individual;
  - (b) Small group;



- (c) Large group; or
- (d) Association;
- (27) "Provider network" means an affiliated group of varied health care providers that is established to provide a continuum of health care services to individuals;
- (28) "Provider-sponsored integrated health delivery network" means any provider-sponsored integrated health delivery network created and qualified under KRS 304.17A-300 and KRS 304.17A-310;
- (29) "Purchaser" means an individual, organization, employer, association, or the Commonwealth that makes health benefit purchasing decisions on behalf of a group of individuals;
- (30) "Rating period" means the calendar period for which premium rates are in effect. A rating period shall not be required to be a calendar year;
- (31) "Restricted provider network" means a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of the providers that have entered into a contractual arrangement with the insurer to provide health care services to covered individuals;
- (32) "Self-insured plan" means a group health insurance plan in which the sponsoring organization assumes the financial risk of paying for covered services provided to its enrollees;
- (33) "Small employer" means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least two (2) but not more than fifty (50) employees on business days during the preceding calendar year and who employs at least two (2) employees on the first day of the plan year;
- (34) "Small group" means:
  - (a) A small employer with two (2) to fifty (50) employees; or
  - (b) An affiliated group or association with two (2) to fifty (50) eligible members; and
- (35) "Standard benefit plan" means the plan identified in KRS 304.17A-250.

Section 18. KRS 304.17A-080 is amended to read as follows:

- (1) There is hereby created and established a Health Insurance Advisory Council whose duties shall be to review and discuss with the commissioner any issues which impact the provision of health insurance in the state. The advisory council shall consist of ***nine (9)***~~seven (7)~~ members: the commissioner plus ***eight (8)***~~six (6)~~ persons appointed by the Governor with the advice of the commissioner to serve two (2) year terms. The commissioner shall serve as chair of the advisory council.
- (2) The ***eight (8)***~~six (6)~~ persons appointed by the Governor with the advice of the commissioner shall be:
  - (a) Two (2) representatives of insurers currently offering health benefit plans in the state;
  - (b) Two (2) practicing health care providers;~~and~~
  - (c) Two (2) representatives of purchasers of health benefit plans; ***and***
  - (d) ***Two (2) representatives of agents.***
- (3) The council shall:
  - (a) Review and discuss the design of the standard health benefit plan;
  - (b) Review and discuss the rate-filing process for all health benefit plans;
  - (c) Review and discuss the administrative regulations concerning this subtitle to be promulgated by the department;
  - (d) Make recommendations on high-cost conditions as provided in subsection (5) of this section;~~and~~
  - (e) ***Advise the Department of Insurance concerning the Department of Insurance's separation plan for the division of duties and responsibilities between the operation of the Department of Insurance and the operation of Kentucky Access;***
  - (f) ***Review and discuss issues that impact Kentucky Access; and***

- (g) Review and discuss other issues at the request of the commissioner.
- (4) The advisory council shall be a budgetary unit of the department which shall pay all of the advisory council's necessary operating expenses and shall furnish all office space, personnel, equipment, supplies, and technical or administrative services required by the advisory council in the performance of the functions established in this section.
- (5) ***Prior to January 1, 2001***, no less than annually, the Health Insurance Advisory Council shall review the list of high-cost conditions established by the commissioner under KRS 304.17A-005(19) and 304.17A-280 and recommend changes to the commissioner. The commissioner may accept or reject any or all of the recommendations and may make whatever changes by administrative regulation the commissioner deems appropriate. The council, in making recommendations, and the commissioner, in making changes, shall consider, among other things, actual claims and losses on each diagnosis and advances in treatment of high-cost conditions. ***On or after January 1, 2001, no less than annually, the Health Insurance Advisory Council shall review the list of high-cost conditions established by the Department for Kentucky Access and report to the commissioner any and all recommended changes.***
- (6) For each calendar year that the Kentucky Guaranteed Acceptance Program is operating, every insurer shall report to the commissioner and the Health Insurance Advisory Council, in the form and at the time as the commissioner by administrative regulation may specify, information that the commissioner deems necessary for the council and commissioner to evaluate the list of high-cost conditions as required under this section.

Section 19. KRS 304.17A-0952 is amended to read as follows:

Premium rates for a health benefit plan issued or renewed to an individual, a small group, or an association on or after April 10, 1998, shall be subject to the following provisions:

- (1) The premium rates charged during a rating period to an individual with similar case characteristics for the same coverage, or the rates that could be charged to that individual under the rating system for that class of business, shall not vary from the index rate by more than thirty-five percent (35%) of the index rate, ***except that the premium rates charged to an individual shall not vary from the index rate by more than fifty percent (50%) for two (2) consecutive years beginning January 1, 2001.***
- (2) The percentage increase in the premium rate charged to an individual for a new rating period shall not exceed the sum of the following:
  - (a) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the insurer is not issuing new policies, the insurer shall use the percentage change in the base premium rate;
  - (b) Any adjustment, not to exceed ~~twenty[ten]~~ percent **(20%)**~~((40%))~~ annually and adjusted pro rata for rating periods of less than one (1) year, due to the claim experience, mental and physical condition, including medical condition, medical history, and health service utilization, or duration of coverage of the individual and dependents as determined from the insurer's rate manual for the class of business; and
  - (c) Any adjustment due to change in coverage or change in the case characteristics of the individual as determined from the insurer's rate manual for the class of business.
- ~~(3) (a) Notwithstanding subsection (2) of this section, at renewal the insurer may replace modified community rates with rates determined in accordance with subsection (1) of this section.~~
- ~~(b) Within the limitations set out in subsections (1) and (2) of this section, the premium rate for health benefit plans issued to high risk individuals under modified community rating who at the time of issue had a high cost condition during the period from July 15, 1995, until April 10, 1998, for a new rating period:~~
  - ~~1. Shall not be increased by more than twenty five percent (25%) on either of the first two (2) renewal dates after April 10, 1998. The total increase shall not result in a rate that exceeds thirty five percent (35%) of the index rate. Notwithstanding subsection (1) of this section, the program established under KRS 304.17A 400 shall reimburse the insurer for any premium loss incurred under this subsection to the extent that funds are available;~~
  - ~~2. May be increased without restriction to the applicable rate as determined by the insurer's rate manual on the third renewal date after April 10, 1998; and~~

~~3. Shall be subject to subsection (2) of this section on the fourth renewal date after April 10, 1998, and thereafter.~~

- ~~(4)}~~ The premium rates charged during a rating period to a small group or to an association member with similar case characteristics for the same coverage, or the rates that could be charged to that small group or that association member under the rating system for that class of business, shall not vary from the index rate by more than twenty-five percent (25%) of the index rate, ***except that the premium rate charged to a small group or association shall not vary from the index rate by more than fifty percent (50%) for two (2) consecutive years beginning January 1, 2001.***
- ~~(4)}~~~~(5)}~~ The percentage increase in the premium rate charged to a small group or to an association member for a new rating period shall not exceed the sum of the following:
- (a) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the insurer is not issuing new policies, the insurer shall use the percentage change in the base premium rate;
  - (b) Any adjustment, not to exceed ~~twenty-five~~ percent **(20%)**~~(15%)~~ annually and adjusted pro rata for rating periods of less than one (1) year, due to the claims experience, mental and physical condition, including medical condition, medical history, and health service utilization, or duration of coverage of the employee, association member, or dependents as determined from the insurer's rate manual for the class of business; and
  - (c) Any adjustment due to change in coverage or change in the case characteristics of the small group or association member as determined from the insurer's rate manual for the class of business.
- ~~(5)}~~~~(6)}~~ In utilizing case characteristics, the ratio of the highest rate factor to the lowest rate factor within a class of business shall not exceed five to one (5:1). For purpose of this limitation, case characteristics include age, gender, occupation or industry, and geographic area.
- ~~(6)}~~~~(7)}~~ Adjustments in rates for claims experience, mental and physical condition, including medical condition, medical history, and health service utilization, health status, and duration of coverage shall not be charged to an individual group member or the member's dependents. Any adjustment shall be applied uniformly to the rates charged for all individuals and dependents of the small group.
- ~~(7)}~~~~(8)}~~ The commissioner may approve establishment of additional classes of business upon application to the commissioner and a finding by the commissioner that the additional class would enhance the efficiency and fairness for the applicable market segment.
- (a) The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business in that market segment by more than ten percent (10%).
  - (b) An insurer may establish a separate class of business only to reflect substantial differences in expected claims experience or administrative cost related to the following reasons:
    - 1. The insurer uses more than one (1) type of system for the marketing and sale of the health benefit plans; or
    - 2. The insurer has acquired a class of business from another insurer.
  - (c) ***Notwithstanding any other provision of this subsection, beginning January 1, 2001, a GAP participating insurer may establish a separate class of business for the purpose of separating guaranteed acceptance program qualified individuals from other individuals enrolled in their plan prior to January 1, 2001. The index rate for the separate class created under this paragraph shall be established taking into consideration expected claims experience and administrative costs of the new class of business and the previous class of business.***
- ~~(8)}~~~~(9)}~~ For the purpose of this section, a health benefit plan that utilizes a restricted provider network shall not be considered similar coverage to a health benefit plan that does not utilize a restricted provider network if utilization of the restricted provider network results in substantial differences in claims costs.
- ~~(9)}~~~~(10)}~~ Notwithstanding any other provision of this section, an insurer shall not be required to utilize the experience of those individuals with high-cost conditions who enrolled in its plans between July 15, 1995, and April 10, 1998, to develop the insurer's index rate for its individual policies.

- ~~(10)(11)~~ Nothing in this section shall be construed to prevent an insurer from offering incentives to participate in a program of disease prevention or health improvement.

Section 20. KRS 304.17A-150 is amended to read as follows:

- (1) On and after July 15, 1995, it is an unfair trade practice for an insurer, agent, broker, or any other person in the business of marketing and selling health plans, to commit or perform any of the following acts:
  - (a) Encourage individuals or groups to refrain from filing an application for coverage with the insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or
  - (b) Encourage or direct individuals or groups to seek coverage from another insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or
  - (c) Encourage an employer to exclude an employee from coverage.

The provisions of ~~paragraphs (a) and (b) of~~ this subsection shall not apply to information provided regarding the established geographic service area of an insurer.

- (2) It is an unfair trade practice for an insurer to compensate an agent, broker, or any other person in the business of marketing and selling health plans on the basis of the health status, claims experience, industry, occupation, or geographic location of the insured or prospective insured, ***except as provided in Sections 1 to 16 of this Act.***
- (3) It shall constitute an unfair trade practice for any insurer, insurance agent, or third-party administrator to refer an individual employee to ***Kentucky Access***, ~~the Kentucky guaranteed acceptance program~~ or to arrange for an individual employee to apply to ***Kentucky Access*** ~~that plan~~, for the purpose of separating an employee from group health insurance coverage provided in connection with the individual's employment.
- (4) ***It is an unfair trade practice for an insurer that offers multiple health benefit plans to require a health care provider, as a condition of participation in a health benefit plan of the insurer, to participate in any of the insurer's other health benefit plans. In addition to the proceedings and penalties provided in this chapter for violation of this provision, a contract violating this subsection is void.***
- (5) It is an unfair trade practice for an insurer not to compute an insured's coinsurance or cost sharing on the basis of the amount actually received by a health-care provider from the insurer.
- ~~(6)(5)~~ The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any insurer that fails to pay an assessment under ***Section 11 of this Act*** ~~KRS 304.17A-470~~. As an alternative, the commissioner may levy a civil penalty on any member insurer that fails to pay the assessment when due. The civil penalty shall not exceed five percent (5%) of the unpaid assessment per month, but no civil penalty shall be less than one hundred dollars (\$100) per month.
- ~~(7)(6)~~ The remedy provided by KRS 304.12-120 shall be available for conduct proscribed by this section.

Section 21. KRS 304.17A-250 is amended to read as follows:

- (1) The commissioner shall, by administrative regulations promulgated under KRS Chapter 13A, define one (1) standard health benefit plan that shall provide health insurance coverage in the individual and small group markets after June 30, 1998. As a condition of doing business in the ~~individual or~~ small group market in the Commonwealth, the health insurer shall offer the standard health benefit plan, but the extent to which the standard health benefit plan shall be offered on a guaranteed issue basis shall only be as provided in KRS 304.17A-200 ~~and 304.17A-210~~. ***As a condition of doing business in the individual market on or after January 1, 2001, a health insurer shall offer the standard health benefit plan.*** Except as may be necessary to coordinate with changes in federal law, the commissioner shall not alter, amend, or replace the standard health benefit plan more frequently than annually. Initially, the standard health benefit plan shall be the standard high plan in effect on April 10, 1998.
- (2) The standard health benefit plan shall be available in at least one (1) of these four (4) forms of coverage:
  - (a) A fee-for-service product type;
  - (b) A health maintenance organization type;
  - (c) A point-of-service type; and
  - (d) A preferred provider organization type.

- (3) The standard health benefit plan shall be defined so that it meets the requirements of *Section 11 of this Act*~~[KRS 304.17A-430]~~ for inclusion in calculating assessments and refunds under *Kentucky Access*~~[the guaranteed acceptance program]~~.
- (4) Any health insurer who elects to offer health insurance policies in the individual or small group markets in this state shall, as a condition of offering health benefit plans in this state after June 30, 1998, offer and issue the standard health benefit plan in the individual or small group markets in each and every form of coverage that the health insurer offers to sell.
- (5) Nothing in this section shall be construed:
  - (a) To require a health insurer to offer a standard health benefit plan in a form of coverage that the health insurer has not selected;
  - (b) To prohibit a health insurer from offering other health benefit plans in the individual or small group markets in addition to the standard health benefit plan; or
  - (c) To require that a standard health benefit plan have guaranteed issue, renewability, or pre-existing condition exclusion rights or provisions that are more generous to the applicant than the health insurer would be required to provide under KRS 304.17A-200,~~[304.17A-210,]~~ 304.17A-220, 304.17A-230, and 304.17A-240.
- (6) Insurance agents licensed under this chapter who present for sale any health benefit plan in the individual or small group markets to a prospective applicant shall also inform that person of the existence of the standard benefit plan in the same form of coverages offered by the same insurer.
- (7)
  - (a) A benefits comparison shall be delivered to a prospective applicant for any health insurance coverage in the individual or small group markets at the time of initial solicitation through means that prominently direct the attention of the prospective applicant to the document and its purpose.
    - 1. The commissioner shall prescribe a standard format, including style, arrangement, and overall appearance, and the content of a benefits comparison.
    - 2. In the case of agent solicitations, an agent shall deliver the benefits comparison to the prospective applicant prior to the presentation of an application or enrollment form.
    - 3. In the case of direct response solicitations, the benefits comparison shall be presented in conjunction with any application or enrollment form.
  - (b) The benefits comparison given to a prospective applicant shall include:
    - 1. A description of the principal benefits and coverage provided in the standard health benefit plan offered under this section, and the health benefit policy being offered to the prospective applicant;
    - 2. A statement of the principal exclusions, reductions, and limitations contained in the standard health benefit plan offered under this section, and the health benefit plan being offered to the prospective applicant; and
    - 3. A chart providing a direct comparison of the insurer's premium rate for the standard health benefit plan offered under this section, and the health benefit policy being offered to the prospective applicant.
  - (c) At the time of the execution of an application for any health benefit plan, the prospective applicant shall sign a statement contained in or accompanying the application, which shall remain on file with the health insurer for five (5) years, indicating that the insured has been provided with and understands the benefits comparison required by this subsection.
  - (d) As used in this subsection and in subsection (6) of this section, the term "prospective applicant" refers only to a natural person who is a resident of the Commonwealth and who is purchasing health insurance coverage in the individual market providing benefits to that person, that person's spouse, or that person's children. It does not include an employer or representative of an employer who is considering health insurance coverage that would provide benefits to employees and their families.
- (8) All health benefit plans shall cover hospice care at least equal to the Medicare benefits.

- (9) All health benefit plans shall coordinate benefits with other health benefit plans in accordance with the guidelines for coordination of benefits prescribed by the commissioner as provided in KRS 304.18-085.
- (10) Every health insurer of any kind, nonprofit hospital, medical-surgical, dental and health service corporation, health maintenance organization, or provider-sponsored health delivery network that issues or delivers an insurance policy in this state that directs or gives any incentives to insureds to obtain health care services from certain health care providers shall not imply or otherwise represent that a health care provider is a participant in or an affiliate of an approved or selected provider network unless the health care provider has agreed in writing to the representation or there is a written contract between the health care provider and the insurer or an agreement by the provider to abide by the terms for participation established by the insurer. This requirement to have written contracts shall apply whenever an insurer includes a health care provider as a part of a preferred provider network or otherwise selects, lists, or approves certain health care providers for use by the insurer's insureds. The obligation set forth in this section for an insurer to have written contracts with providers selected for use by the insurer shall not apply to emergency or out-of-area services.
- (11) A self-insured plan may select any third party administrator licensed under KRS 304.9-052 to adjust or settle claims for persons covered under the self-insured plan.
- (12) Any health insurer that fails to issue a premium rate quote to an individual within thirty (30) days of receiving a *properly* completed application request for the quote shall be required to issue coverage to that individual and shall not impose any pre-existing conditions exclusion on that individual with respect to the coverage. Each health insurer offering individual health insurance coverage in the individual market in the Commonwealth that refuses to issue a health benefit plan to an *applicant or* insured with a *disclosed* high-cost condition *as specified in Section 1 of this Act or for any reason*, shall provide the individual with a denial letter within twenty (20) working days of the request for coverage. The letter shall include the name and title of the person making the decision, a statement setting forth the ~~specific high cost condition that is the~~ basis for refusing to issue a policy, a description of *Kentucky Access, and the telephone number for a contact person who can provide additional information about Kentucky Access*~~the Guaranteed Acceptance Program, and the name and the telephone number of a contact person who can provide additional information about the Guaranteed Acceptance Program~~.
- (13) If a standard health benefit plan covers services that the plan's insureds lawfully obtain from health departments established under KRS Chapter 212, the health insurer shall pay the plan's established rate for those services to the health department.
- (14) No individually insured person shall be required to replace an individual policy with group coverage on becoming eligible for group coverage that is not provided by an employer. In a situation where a person holding individual coverage is offered or becomes eligible for group coverage not provided by an employer, the person holding the individual coverage shall have the option of remaining individually insured, as the policyholder may decide. This shall apply in any such situation that may arise through an association, an affiliated group, the Kentucky state employee health insurance plan, or any other entity.

Section 22. KRS 304.17A-260 is amended to read as follows:

An insurer that, on or after July 15, 1995, until April 10, 1998, issued standard health benefit plans under KRS 304.17A-160 and then ceased doing business in Kentucky may apply to the commissioner on or after *the effective date of this Act*~~April 10, 1998~~, until *April/January* 1, *2001/1999*, for approval to reenter Kentucky, and if the commissioner grants approval the insurer may engage in the health insurance business notwithstanding the provisions of KRS 304.17A-110(1)(d) as it existed on the date the insurer ceased doing business in Kentucky.

Section 23. KRS 304.17A-320 is amended to read as follows:

- (1) No employer-organized association shall in this state self-insure in order to provide health benefit plans for its members unless it holds a certificate of filing from the commissioner.
- (2) To qualify for a certificate of filing and to maintain a certificate of filing, the employer-organized association shall comply with the provisions of Subtitle 48 of this chapter to the extent not in conflict with the expressed provisions of this section.
- (3) Each association that holds a certificate of filing from the commissioner shall be subject to the following:
  - (a) All assessments placed on insurers under *Section 11 of this Act*~~KRS 304.17A-460~~;
  - (b) All rating restrictions placed on employer-organized associations under KRS 304.17A-0954;

- (c) All rate review requirements placed on insurers under this subtitle;
  - (d) All data collection requirements placed on insurers under this subtitle; and
  - (e) Provisions of Subtitle 12 of this chapter that apply to health insurers.
- (4) Each association that holds a certificate of filing from the commissioner shall notify its members that health benefit plans issued to its members through the association are not protected through the Kentucky Life and Health Insurance Guaranty Association.
  - (5) Under the provisions of KRS 304.48-220, the commissioner may revoke the certificate of filing of any association. A violation of any provision of this section shall be deemed a violation of Subtitle 48 of this chapter for purposes of KRS 304.48-220.

SECTION 24. A NEW SECTION OF KRS 304.17A-500 TO 304.17A-570 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "hospitalist" means a physician of record at a hospital for a patient of a participating physician and who may return the care of the patient to that physician at the end of the hospitalization.*
- (2) *A contract between a managed care plan and a physician shall not require the mandatory use of a hospitalist.*

Section 25. KRS 304.17A-095 is amended to read as follows:

- (1) Notwithstanding any other provisions of this chapter to the contrary, each insurer that issues, delivers, or renews any health benefit plan shall, before use thereof, file with the commissioner its rates, fees, dues, and other charges paid by insureds, members, enrollees, or subscribers, shall submit a copy of the filing to the Attorney General, and shall comply with the provisions of this section. The insurer shall adhere to its rates, fees, dues, and other charges as filed with the commissioner. The insurer may submit new filings from time to time as it deems proper.
- (2)
  - (a) A rate filing under this section may be used by the insurer on and after the date of filing with the commissioner prior to approval by the commissioner. A rate filing shall be approved or disapproved by the commissioner within sixty (60) days after the date of filing. Should sixty (60) days expire after the commissioner receives the filing before approval or disapproval of the filing, the filing shall be deemed approved. The commissioner may hold a hearing within sixty (60) days after receiving a filing containing a rate increase. Not less than thirty (30) days in advance of a hearing held under this section, the commissioner shall notify the Attorney General in writing of the hearing. The Attorney General may participate as a health insurance consumer intervenor and be considered a party to the hearing.
  - (b) The commissioner shall hold a hearing upon written request, including the reasons for the request, by the Attorney General, provided the request is in accordance with subsection (3) of this section.
  - (c) The commissioner shall hold a hearing, unless waived by the health insurer, before ordering a retroactive reduction of rates.
  - (d) The hearing shall be a public hearing conducted in accordance with KRS Chapter 13B.
  - (e) In the circumstances of a filing that has been deemed approved under paragraph (a) of this subsection, the commissioner shall have the authority to order a retroactive reduction of rates to a reasonable rate if after applying the factors in subsection (3) of this section the commissioner determines that the rates were unreasonable. If the commissioner seeks to order a retroactive reduction of rates and more than one (1) year has passed since the date of the filing, the commissioner shall consider the reasonableness of the rate over the entire period during which the filing has been in effect.
- (3) In approving or disapproving a filing under this section, the commissioner shall consider:
  - (a) Whether the benefits provided are reasonable in relation to the premium or fee charged;
  - (b) Whether the fees paid to providers for the covered services are reasonable in relation to the premium or fee charged;
  - (c) Previous premium rates or fees for the policies or contracts to which the filing applies;
  - (d) The effect of the rate or rate increase on policyholders, enrollees, and subscribers;

- (e) Whether the rates, fees, dues, or other charges are excessive, inadequate, or unfairly discriminatory; and
  - (f) The effect on the rates of any assessment made under *Section 11 of this Act* ~~[KRS 304.17A-460]~~; and
  - (g) Other factors as deemed relevant by the commissioner.
- (4) The rates for each policyholder shall be guaranteed for twelve (12) months at the rate in effect on the date of issue or date of renewal.
- (5) At any time the commissioner, after a public hearing for which at least thirty (30) days' notice has been given, may withdraw approval of rates or fees previously approved under this section and may order an appropriate refund or future premium credit to policyholders, enrollees, and subscribers if the commissioner determines that the rates or fees previously approved are in violation of this chapter.
- (6) *Notwithstanding subsection (2)(a) to (e) of this section, premium rates may be used upon filing with the department of a policy form not previously used if the filing is accompanied by the policy form filing and a minimum loss ratio guarantee. Insurers may use the filing procedure specified in this subsection only if the affected policy forms disclose the benefit of a minimum loss ratio guarantee. An insurer may not elect to use the filing procedure in this subsection for a policy form that does not contain the minimum loss ratio guarantee. Insurers may not amend policy forms to provide for a minimum loss ratio guarantee. If an insurer elects to use the filing procedure in this subsection for a policy form or forms, the insurer shall not use a filing of premium rates that does not provide a minimum loss ratio guarantee for that policy form or forms.*
- (a) *The minimum loss ratio shall be in writing and shall contain at least the following:*
- 1. *An actuarial memorandum specifying the expected loss ratio that complies with the standards as set forth in this subsection;*
  - 2. *A statement certifying that all rates, fees, dues, and other charges are not excessive, inadequate, or unfairly discriminatory;*
  - 3. *Detailed experience information concerning the policy forms;*
  - 4. *A step-by-step description of the process used to develop the experience loss ratio, including demonstration with supporting data;*
  - 5. *A guarantee of a specific lifetime minimum loss ratio, that shall be greater than or equal to the following, taking into consideration adjustments for duration as set forth in administrative regulations promulgated by the commissioner:*
    - a. *Seventy percent (70%) for policies issued to individuals or for certificates issued to members of an association that does not offer coverage to small employers;*
    - b. *Seventy percent (70%) for policies issued to small groups of two (2) to ten (10) employees or for certificates issued to members of an association that offers coverage to small employers; and*
    - c. *Seventy-five percent (75%) for policies issued to small groups of eleven (11) to fifty (50) employees;*
  - 6. *A guarantee that the actual Kentucky loss ratio for the calendar year in which the new rates take effect, and for each year thereafter until new rates are filed, will meet or exceed the minimum loss ratio standards referred to in subparagraph 5. of this paragraph, adjusted for duration;*
  - 7. *A guarantee that the actual Kentucky lifetime loss ratio shall meet or exceed the minimum loss ratio standards referred to in subparagraph 5. of this paragraph; and*
  - 8. *If the annual earned premium volume in Kentucky under the particular policy form is less than two million five hundred thousand dollars (\$2,500,000), the minimum loss ratio guarantee shall be based partially on the Kentucky earned premium and other credibility factors as specified by the commissioner.*
- (b) *The actual Kentucky minimum loss ratio results for each year at issue shall be independently audited at the insurer's expense and the audit shall be filed with the commissioner not later than one hundred twenty (120) days after the end of the year at issue. The audit shall demonstrate the*



*calculation of the actual Kentucky loss ratio in a manner prescribed as set forth in administrative regulations promulgated by the commissioner.*

- (c) *The insurer shall refund premiums in the amount necessary to bring the actual loss ratio up to the guaranteed minimum loss ratio.*
- (d) *A Kentucky policyholder affected by the guaranteed minimum loss ratio shall receive a portion of the premium refund relative to the premium paid by the policyholder. The refund shall be made to all Kentucky policyholders insured under the applicable policy form during the year at issue if the refund would equal ten dollars (\$10) or more per policy. The refund shall include statutory interest from July 1 of the year at issue until the date of payment. Payment shall be made not later than one hundred eighty (180) days after the end of the year at issue.*
- (e) *Premium refunds of less than ten dollars (\$10) per insured shall be aggregated by the insurer and paid to the Kentucky State Treasury.*
- (f) *None of the provisions of subsections (2) and (3) of this section shall apply if premium rates are filed with the department and accompanied by a minimum loss ratio guarantee that meets the requirements of this subsection. Such filings shall be deemed approved.* Each insurer paying a risk assessment under *Section 11 of this Act*~~[KRS 304.17A-460]~~ may include the amount of the assessment in establishing premium rates filed with the commissioner under this section. The insurer shall identify any assessment allocated.
- (g) *The policy form filing of an insurer using the filing procedure with a minimum loss ratio guarantee will disclose to the enrollee, member, or subscriber as prescribed by the commissioner an explanation of the lifetime loss ratio guarantee, and the actual loss ratio, and any adjustments for duration.*
- (h) *The insurer who elects to use the filing procedure with a minimum loss ratio guarantee shall notify all policyholders of the refund calculation, the result of the refund calculation, the percent of premium on an aggregate basis to be refunded if any, any amount of the refund attributed to the payment of interests, and an explanation of amounts less than ten dollars (\$10).*
- (7) The commissioner may by administrative regulation prescribe any additional information related to rates, fees, dues, and other charges as they relate to the factors set out in subsection (3) of this section that he or she deems necessary and relevant to be included in the filings and the form of the filings required by this section. *When determining a loss ratio for the purposes of loss ratio guarantee, the insurer shall divide the total of the claims incurred, plus preferred provider organization expenses, case management and utilization review expenses, plus reinsurance premiums less reinsurance recoveries by the premiums earned less state and local premium taxes less other assessments. For purposes of determining the loss ratio for any loss ratio guarantee pursuant to this section, the commissioner may examine the insurer's expenses for preferred provider organization, case management, utilization review, and reinsurance used by the insurer in calculating the loss ratio guarantee for reasonableness. Only those expenses found to be reasonable by the commissioner may be used by the insurer for determining the loss ratio for purposes of any loss ratio guarantee.*

Section 26. KRS 304.17A-290 is amended to read as follows:

- (1) Coverage of an individual who is not a state employee or a small group which on April 10, 1998, is covered under KRS 18A.2251 or KRS 18A.2281 shall not be renewed after April 10, 1998.
- (2) The state employee health insurance fund established under KRS 18A.2281 shall be deemed an insurer as defined in KRS 304.17A-005 only for the coverage it provides to individuals not state employees or to small groups and only until such time as this coverage terminates in accordance with subsection (1) of this section.
- ~~(3) The state employee health insurance fund established under KRS 18A.2281 shall be subject to assessments and reimbursements under KRS 304.17A-400 to 304.17A-480 only for the premium collected and the claims paid for individuals who are not state employees and the small groups which are covered by the fund.~~
- ~~(4)~~ Except as provided in this section, the state employee health insurance fund established under KRS 18A.2281 shall not be deemed an insurer for any other purpose in this chapter and, in no event, at any time more than twelve (12) months after April 10, 1998, shall it be deemed to be an insurer.

Section 27. KRS 304.17A-0954 is amended to read as follows:

- (1) For purposes of this section:

- (a) "Base premium rate" has the meaning provided in KRS 304.17A-005;
  - (b) "Employer" means a person engaged in a trade or business who has two (2) or more employees within the state in each of twenty (20) or more calendar weeks in the current or preceding calendar year;
  - (c) "Employer-organized association" means any of the following:
    - 1. Any entity which was qualified by the commissioner as an eligible association prior to April 10, 1998, and which has actively marketed a health insurance program to its members after September 8, 1996, and which is not insurer-controlled;
    - 2. An entity organized under KRS 247.240 to 247.370 that has actively marketed health insurance to its members and which is not insurer-controlled; or
    - 3. Any entity which is a bona fide association as defined in 42 U.S.C. sec. 300gg-91(d)(3), whose members consist principally of employers, and for which the entity's health insurance decisions are made by a board or committee the majority of which are representatives of employer members of the entity who obtain group health insurance coverage through the entity or through a trust or other mechanism established by the entity, and whose health insurance decisions are reflected in written minutes or other written documentation;
  - (d) "Index rate" has the meaning provided in KRS 304.17A-005.
- (2) Notwithstanding any other provision of this chapter, the amount or rate of premiums for an employer-organized association health plan may be determined, subject to the restrictions of subsection (3) of this section, based upon the experience or projected experience of the employer-organized associations whose employers obtain group coverage under the plan. Without the written consent of the employer-organized association filed with the commissioner, the index rate for the employer-organized association shall be calculated solely with respect to that employer-organized association and shall not be tied to, linked to, or otherwise adversely affected by any other index rate used by the issuing insurer.
- (3) The following restrictions shall be applied in calculating the permissible amount or rate of premiums for an employer-organized health insurance plan:
- (a) The premium rates charged during a rating period to members of the employer-organized association with similar characteristics for the same or similar coverage, or the premium rates that could be charged to a member of the employer-organized association under the rating system for that class of business, shall not vary from its own index rate by more than twenty-five percent (25%) of its own index rate, ***except that the premium rates charged to an employer-organized association shall not vary from the index rate by more than fifty percent (50%) for two (2) consecutive years beginning January 1, 2001.***
  - (b) The percentage increase in the premium rate charged to an employer member of an employer-organized association for a new rating period shall not exceed the sum of the following:
    - 1. The percentage change in the new business premium rate for the employer-organized association measured from the first day of the prior rating period to the first day of the new rating period;
    - 2. Any adjustment, not to exceed ~~twenty-five percent (25%)~~ **(20%)** annually and adjusted pro rata for rating period of less than one (1) year, due to the claims experience, mental and physical condition, including medical condition, medical history, and health service utilization, or duration of coverage of the member as determined from the insurer's rate manual; and
    - 3. Any adjustment due to change in coverage or change in the case characteristics of the member as determined by the insurer's rate manual.
- (4) In utilizing case characteristics, the ratio of the highest rate factor to the lowest rate factor within a class of business shall not exceed five to one (5:1). For purpose of this limitation, case characteristics include age, gender, occupation or industry, and geographic area.
- (5) For the purpose of this section, a health insurance contract that utilizes a restricted provider network shall not be considered similar coverage to a health insurance contract that does not utilize a restricted provider network if utilization of the restricted provider network results in measurable differences in claims costs.

Section 28. KRS 304.32-270 is amended to read as follows:

Nonprofit hospital, medical-surgical, dental, and health service corporations shall be subject to the provisions of this subtitle, and to the following provisions of this code, to the extent applicable and not in conflict with the express provisions of this subtitle:

- (1) Subtitle 1 -- Scope -- General Definitions and Provisions;
- (2) Subtitle 2 -- Insurance Commissioner;
- (3) Subtitle 7 -- Investments;
- (4) Subtitle 8 -- Administration of Deposits;
- (5) Subtitle 12 -- Trade Practices and Frauds;
- (6) Subtitle 25 -- Continuity of Management;
- (7) Subtitle 33 -- Insurers Rehabilitation and Liquidation;
- (8) Subtitle 18 -- KRS 304.18-110, 304.18-120 -- Group Conversion and KRS 304.18-045;
- (9) Subtitle 4 -- Fees and Taxes;
- (10) Subtitle 99 -- Penalties;
- (11) Subtitle 14 -- KRS 304.14-500 to 304.14-560;~~and~~
- (12) Subtitle 17A -- Health Benefit Plans; *and*
- (13) ***Subtitle 17B -- Kentucky Access.***

Section 29. KRS 304.38-200 is amended to read as follows:

Health maintenance organizations shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:

- (1) Subtitle 1 -- Scope -- General Definitions and Provisions;
- (2) Subtitle 2 -- Insurance Commissioner;
- (3) Subtitle 3 -- Authorization of Insurers and General Requirements;
- (4) Subtitle 4 -- Fees and Taxes;
- (5) Subtitle 5 -- Kinds of Insurance -- Limits of Risk -- Reinsurance;
- (6) Subtitle 6 -- Assets and Liabilities;
- (7) Subtitle 7 -- Investments;
- (8) Subtitle 8 -- Administration of Deposits;
- (9) Subtitle 12 -- Trade Practices and Frauds;
- (10) Subtitle 14 -- KRS 304.14-500 to 304.14-560;
- (11) Subtitle 17A -- Health Benefit Plans;
- (12) ***Subtitle 17B -- Kentucky Access;***
- (13) Subtitle 25 -- Continuity of Management;
- ~~(14)(13)~~ Subtitle 33 -- Insurers Rehabilitation and Liquidation;
- ~~(15)(14)~~ Subtitle 37 -- Insurance Holding Company Systems; and
- ~~(16)(15)~~ Subtitle 99 -- Penalties.

Section 30. KRS 91A.080 is amended to read as follows:

- (1) The legislative body of each city, county, or urban-county government which elects to impose and collect license fees or taxes upon insurance companies for the privilege of engaging in the business of insurance may enact or change its license fee or rate of tax to be effective July 1 of each year on a prospective basis only and shall file with the commissioner of insurance at least one hundred (100) days prior to the effective date, a copy of all ordinances and amendments which impose any such license fee or tax. No less than eighty-five (85) days

prior to the effective date, the commissioner of insurance shall promptly notify each insurance company engaged in the business of insurance in the Commonwealth of those cities, county, or urban-county governments which have elected to impose the license fees or taxes and the current amount of the license fee or rate of tax.

- (2) Any license fee or tax imposed by a city, county, or urban-county government upon an insurance company with respect to life insurance policies, may be based upon the first year's premiums, and if so based, shall be applied to the amount of the premiums actually collected within each calendar quarter upon the lives of persons residing within the corporate limits of the city, county, or urban-county government.
- (3) Any license fee or tax imposed by a city, county, or urban-county government upon any insurance company with respect to any policy which is not a life insurance policy shall be based upon the premiums actually collected by the company within each calendar quarter on risks located within the corporate limits of the city, county, or urban-county government on those classes of business which the company is authorized to transact, less all premiums returned to policyholders. In determining the amount of license fee or tax to be collected and to be paid to the city, county, or urban-county government, the insurance company shall use the tax rate effective on the first day of the policy term. When an insurance company collects a premium as a result of a change in the policy during the policy term, the tax rate used shall be the rate in effect on the effective date of the policy change. With respect to premiums returned to policyholders, the license fee or tax shall be returned by the insurance company to the policyholder pro rata on the unexpired amount of the premium at the same rate at which it was collected and shall be taken as a credit by the insurance company on its next quarterly report to the city, county, or urban-county government. Any license fee or tax imposed upon premium receipts shall not include premiums received for insuring employers against liability for personal injuries to their employees, or the death of their employees, caused thereby, under the provisions of the Workers' Compensation Act.
- (4) The Department of Insurance shall, by administrative regulation, provide for a reasonable collection fee to be retained by the insurance company or its agent as compensation for collecting the tax, except that the collection fee shall not be more than fifteen percent (15%) of the fee or tax collected and remitted to the city, county or urban-county government or two percent (2%) of the premiums subject to the tax, whichever is less. To facilitate computation, collection, and remittance of the fee or tax and collection fee provided in this section, the fees or taxes set out in subsection (1), (2), or (3) of this section, together with the collection fee in this section, may be rounded off to the nearest dollar amount.
- (5) Pursuant to KRS 304.3-270, if any other state retaliates against any Kentucky domiciliary insurer because of the requirements of this section, the commissioner of insurance shall impose an equal tax upon the premiums written in this state by insurers domiciled in the other state.
- (6) Accounting and reporting procedures for collection and reporting of the fees or taxes and the collection fee herein provided shall be determined by administrative regulations promulgated by the Department of Insurance.
- (7) Upon written request of the legislative body of any city, county, or urban-county government, at the expense of the requesting city, county, or urban-county government, which shall be paid in advance by the city, county, or urban-county government to the Department of Insurance, the Department of Insurance shall examine, or cause to be examined by contract with qualified auditors, the books or records of the insurance companies or agents subject to the fee or tax to determine whether the fee or tax is being properly collected and remitted, and the findings of the examination shall be reported to the city, county, or urban-county government. Willful failure to properly collect and remit the fee or tax imposed by a city, county, or urban-county government pursuant to the authority granted by this section shall constitute grounds for the revocation of the license issued to an insurance company or agent under the provisions of KRS Chapter 304.
- (8) The license fees or taxes provided for by subsections (2) and (3) of this section shall be due thirty (30) days after the end of each calendar quarter. Annually, by March 31, each insurer shall furnish each city, county, or urban-county government, to which the tax or fee is remitted, with a breakdown of all collections in the preceding calendar year for the following categories of insurance:
  - (a) Casualty;
  - (b) Automobile;
  - (c) Inland marine;

- (d) Fire and allied perils;
  - (e) Health; and
  - (f) Life.
- (9) Any license fee or tax not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6) from the date due until paid. Such interest payable to the city, county, or urban-county government is separate of penalties provided for in subsection (7) of this section. No city, county, or urban-county government may impose any penalties other than those provided for in this subsection.
  - (10) No license fee or tax imposed under this section shall apply to premiums received on policies of group health insurance provided for state employees under KRS 18A.225 and KRS 42.800 to 42.825.
  - (11) No county may impose the tax authorized by this section upon the premiums received on policies issued to public service companies which pay ad valorem taxes.
  - (12) Insurance companies which pay license fees or taxes pursuant to this section shall credit city license fees or taxes against the same license fees or taxes levied by the county, when the license fees or taxes are levied by the county on or after July 13, 1990.
  - (13) ***No license fee or tax imposed under this section shall apply to premiums received on health insurance policies issued to individuals nor to policies issued through Kentucky Access created in Section 3 of this Act.***

Section 31. KRS 304.17A-515 is amended to read as follows:

- (1) A managed care plan shall arrange for a sufficient number and type of primary care providers and specialists throughout the plan's service area to meet the needs of enrollees. Each managed care plan shall demonstrate that it offers:
  - (a) An adequate number of accessible acute care hospital services, where available;
  - (b) An adequate number of accessible primary care providers, including family practice and general practice physicians, internists, obstetricians/gynecologists, and pediatricians, where available;
  - (c) An adequate number of accessible specialists and subspecialists, and when the specialist needed for a specific condition is not represented on the plan's list of participating specialists, enrollees have access to nonparticipating health care providers with prior plan approval;
  - (d) The availability of specialty services; and
  - (e) ***A provider network that meets the following accessibility requirements:***
    - 1. ***For urban areas, a provider network that is available to all persons enrolled in the plan within thirty (30) miles or thirty (30) minutes of each person's place of residence or work, to the extent that services are available; or***
    - 2. ***For areas other than urban areas, a provider network that makes available primary care physician services, hospital services, and pharmacy services within thirty (30) minutes or thirty (30) miles of each enrollee's place of residence or work, to the extent those services are available. All other providers shall be available to all persons enrolled in the plan within fifty (50) minutes or fifty (50) miles of each enrollee's place of residence or work, to the extent those services are available***~~[A provider network that is available to all persons enrolled in the plan within thirty (30) miles or thirty (30) minutes of each person's place of residence, to the extent those services are available].~~
- (2) A managed care plan shall provide telephone access to the plan during business hours to ensure plan approval of nonemergency care. A managed care plan shall provide adequate information to enrollees regarding access to urgent and emergency care.
- (3) A managed care plan shall establish reasonable standards for waiting times to obtain appointments, except as provided for emergency care.

Section 32. The following KRS sections are repealed effective January 1, 2001:

304.17A-210 Guaranteed-issue basis of individual market plans -- Guidelines -- Exceptions.

304.17A-280 Additions to high-cost conditions list -- Hearing.

- 304.17A-400 Guaranteed Acceptance Program -- Nondiscrimination in provider payment -- Participation by insurer as condition to do business.
- 304.17A-420 Participating insurer -- Written notification of program status -- Program participating insurer requirements -- Exemptions.
- 304.17A-440 Premium -- Limitations.
- 304.17A-460 Insurer annual reports -- Department calculations and notification to insurer -- Assessments and refunds -- Stop-loss carrier -- Examinations of participating insurers.
- 304.17A-470 Risk adjustment process -- Program account -- Funding -- Calculation of losses -- Assessments.
- 304.17A-480 Report to Legislative Research Commission -- Audit.

Section 33. Sections 19, 20, 21, 23, 25, 26, and 27 of this Act take effect January 1, 2001.

**Approved April 21, 2000**

## **CHAPTER 477**

**(HB 519)**

AN ACT relating to teachers' retirement.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 156 IS CREATED TO READ AS FOLLOWS:

- (1) *For purposes of Sections 1 and 2 of this Act, "critical shortage area" means a lack of certified teachers in particular subject areas, in grade levels, or in geographic locations at the elementary and secondary level, as determined annually by the commissioner of education. The commissioner may use any source considered reliable including, but not limited to, data provided by the Education Professional Standards Board and local education agencies to identify the critical shortage areas.*
- (2) *The Kentucky Board of Education shall promulgate administrative regulations to establish procedures to be used to appoint retired teachers and administrators to positions in critical shortage areas under this section and Section 2 of this Act. The administrative regulations shall assure that:*
  - (a) *A retired teacher or administrator shall not be hired until the superintendent assures that he or she has made every reasonable effort to recruit an active teacher or administrator for the position on an annual basis; and*
  - (b) *A retired teacher or administrator shall be paid, at a minimum, a salary at Rank II with ten (10) years of experience based on a single salary schedule adopted by the district.*

*The commissioner of education shall report members reemployed under this section to the Kentucky Teachers' Retirement System.*

- (3) *If a local school district needs a person to fill a critical shortage position after reaching its quota established under Section 2 of this Act, the commissioner of education with the approval of the executive director of the Kentucky Teachers' Retirement System may allow the district to exceed its quota if the statewide quota has not been met.*

Section 2. KRS 161.605 is amended to read as follows:

- (1) Retired members may perform substitute teaching in the public schools for the equivalent of one hundred (100) days in any one (1) school year and receive compensation based on a standard salary schedule adopted by a district for all substitute teachers without reduction in retirement annuities.
- (2) A retired member may be employed as a part-time or temporary teacher in the public schools for a period not to exceed the equivalent of one hundred (100) days in any one (1) school year.
- (3) Retired members may be employed part-time or temporarily in a nonteaching capacity in the public schools and receive compensation for this employment without reduction in retirement annuities, except that retired members may not be employed in excess of a one hundred (100) day period in any one (1) school year in the same position from which they retired, or a position substantially similar to the one from which they retired, or

any position listed in KRS 161.220(4) which requires membership in the retirement system. Positions which generally require certification or graduation from a four (4) year college or university as a condition of employment which are created, or changed to remove the position from coverage under KRS 161.220(4) are also subject to the one hundred (100) day limitation in this subsection. The board of trustees shall determine if employment in a nonteaching position qualifies for an exemption under this subsection.

- (4) Members retired from an agency listed in KRS 161.220(4)(b) may be employed in a part-time teaching capacity by one (1) of the universities participating in the Teachers' Retirement System, not to exceed the equivalent of twelve (12) teaching hours in any one (1) fiscal year.
- (5) Calculation of the number of days for part-time teaching, substitute teaching, or part-time employment in a nonteaching capacity under this section shall not exceed the ratio between a school year and the actual months of retirement for the member during that school year. The board of trustees by administrative regulation may establish fractional equivalents of a day of teaching service.
- (6) When a retired member returns to employment as a part-time teacher or in a nonteaching capacity as provided in subsections (2), (3), and (4) of this section, the employer shall contribute annually to the retirement system on the compensation paid to the retired member at rates determined by the retirement system actuary that reflect accrued liability for nonuniversity and university members.
- (7) *The board of trustees shall provide for reemployment of retired members as full-time teachers or in a nonteaching capacity under the following conditions:*
  - (a) *A retired teacher or administrator may return to full-time teaching in a position that has been determined by the commissioner of education to be a critical shortage area as defined in Section 1 of this Act and for which the person is certified. When the commissioner of education certifies to the retirement system that qualified applicants are not available to fill teaching or administrative positions in critical academic subject areas, grade levels, or geographic areas, local school districts may employ, as full-time employees, during a school fiscal year, up to a maximum of two (2) retired members, or one percent (1%) of the total active members of the retirement system in a school district, whichever is greater. Retired members who are reemployed in a full-time position covered by the retirement system shall be rehired on a one (1) year contract in a district other than the one from which they retired following an absence of at least three (3) months or in the same district from which they retired following an absence of at least one (1) year.*
  - (b) *Retired members reemployed under this subsection shall remain eligible to receive their retirement annuity.*
  - (c) *Retired members reemployed under this subsection shall waive their health insurance coverage with the retirement system during the period of reemployment and receive health insurance coverage that is provided to regular full-time employees of a district.*
  - (d) *Local school districts shall make annual payments to the retirement system on the compensation paid to the reemployed retirees at rates determined by the retirement system's actuary that reflect accrued liability for nonuniversity members.*
  - (e) *Retirees that are reemployed under this provision shall make retirement contributions to the retirement system at rates specified under KRS 161.540 and the employer shall make contributions to the retirement system at rates specified under KRS 161.550. The reemployed retiree's entire contribution and a matching amount from the employer's contribution shall be placed in a separate defined contribution fund administered by the retirement system with annual interest applied at the actuarially assumed rate. When the retiree's reemployment terminates, the total contributions with interest shall be paid by lump sum or on a monthly straight life basis to the retiree. If the member dies prior to retiring, the designated beneficiary shall receive a refund, and if there is a remaining balance at the death of the member after retirement, it shall be paid to the beneficiary designated by the member for this benefit.*
  - (f) *The provisions of this subsection shall not be covered under KRS 161.714.*

Approved April 21, 2000

**CHAPTER 478****(HB 892)**

AN ACT relating to coal taxes.

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

Section 1. KRS 143.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Cabinet" means "Revenue Cabinet."
- (2) "Coal" means and includes any material composed predominantly of hydrocarbons in a solid state.
- (3) "Severed," "severing," or "severance" means the physical removal of coal from the earth.
- (4) "Ton" means a short ton of 2,000 pounds. The number of tons shall be determined at the first point at which the coal is weighed.
- (5) "Taxpayer" shall mean and include any individual, partnership, joint venture, association, or corporation engaged in severing and/or processing coal in this state. In instances where contracts, either oral or written, are entered into by which persons, organizations, or businesses are engaged to mine or process the coal but do not obtain title to or do not have an economic interest therein, the party who owns the coal or has an economic interest shall be the taxpayer.
- (6) "Gross value" is synonymous with gross income from property as defined in Section 613(c) of the Internal Revenue Code and regulations 1.613-3 and 1.613-4 in effect on December 31, 1977, with the exception that in all instances transportation expense, as defined in subsection (11) of this section, incurred in transporting coal shall not be considered as gross income from the property. Gross value shall be reported as follows:
  - (a) For coal severed and/or processed and sold during a reporting period, gross value shall be the amount received or receivable by the taxpayer.
  - (b) For coal severed and/or processed, but not sold during a reporting period, gross value shall be determined as follows:
    1. If the coal is to be sold under the terms of an existing contract, the contract price shall be used in computing gross value.
    2. If there is no existing contract, the fair market value for that grade and quality of coal shall be used in computing gross value.
  - (c) In a transaction involving related parties, gross value shall be the amount received or receivable from the first noncontrolled sale by the related parties. If coal is sold to a related party for consumption, gross value shall not be less than the fair market value for coal of similar grade and quality.
  - (d) In the absence of a sale, gross value shall be the fair market value for coal of similar grade and quality.
  - (e) If severed coal is purchased for the purpose of processing and resale, the gross value shall be the amount received or receivable during the reporting period reduced by the amount paid or payable to the registered taxpayer actually severing the coal.
  - (f) If severed coal is purchased for the purpose of processing and consumption, the gross value shall be the fair market value of processed coal of similar grade and quality reduced by the amount paid or payable to the registered taxpayer actually severing the coal.
  - (g) In all instances, the gross value shall not be reduced by any taxes, including the tax levied by KRS 143.020, royalties, sales commissions, or any other expense.
- (7) "Reporting period" means the period for which each taxpayer shall compute his tax liability and remit the tax due to the cabinet. The reporting period shall be monthly. However, the cabinet may, under certain conditions, authorize a quarterly reporting period.
- (8) "Processing" includes cleaning, breaking, sizing, dust allaying, treating to prevent freezing, or loading or unloading for any purpose. "Processing" shall not include:



- (a) Acts performed by a final consumer who is not a related party to the person who severed and/or processed the coal if such acts are performed only at the site where the coal is consumed for purposes of generating electricity; or
  - (b) The act of unloading or loading for shipment coal that has not been severed, cleaned, broken, sized, or otherwise treated in Kentucky.
- (9) "Related party" means two (2) or more persons, organizations, or businesses owned or controlled directly or indirectly by the same interest. Control shall exist if a contract or lease, either written or oral, is entered into whereby one (1) party mines or processes coal owned or held by another party and the owner or lessor participates in the mining, processing, or marketing of the coal or receives any value other than an arm's length passive royalty interest. In the case of related parties, the cabinet may apportion or allocate the receipts between or among the persons, organizations, or businesses if it determines that the apportionment or allocation is necessary in order to more clearly reflect gross value.
- (10) "Economic interest" for the purposes of this chapter shall be synonymous with the economic interest ownership required by Internal Revenue Code Section 611 in effect on December 31, 1977, entitling the taxpayer to a depletion deduction for income tax purposes with the exception that a party who only receives an arm's length royalty shall not be considered as having an economic interest.
- (11) Transportation expense shall mean:
- (a) The amount paid by a taxpayer to a third party for transporting coal from the mine mouth or pit to a processing plant, tipple, or loading dock.
  - (b) The expense incurred by a taxpayer using his own facilities in transporting coal from the mine mouth or pit to a processing plant, tipple, or loading dock.
  - (c) Transportation expenses shall not include:
    - 1. The cost of acquisition, improvements, and maintenance of real property;
    - 2. The cost of acquisition and operating expenses of mining and nonmining loading or unloading facilities;
    - 3. The cost of acquisition and operating expenses of equipment used to load or unload the coal at the mine, processing facility, and mining and nonmining loading facility.
- (12) "Registered taxpayer" as used in subsection (6)(e) and (f) of this section shall mean a "taxpayer" as defined in subsection (5) of this section who holds a valid coal tax certificate of registration required under KRS 143.030(1) and the certificate of registration was valid for the period in which his coal was sold.
- (13) ***"Above-drainage" means coal in a coal bed that outcrops at the surface within a mine permit area and that is accessed at the outcrop location.***
- (14) ***"Below-drainage" means coal in a coal bed that does not outcrop at the surface within a mine permit area and that is accessed by mine slopes or other openings that penetrate the coal a minimum of thirty (30) feet below the surface drainage level.***
- (15) ***"Mining ratio" means the amount of bank cubic yards of surface material that must be removed before a ton of coal can be mined.***

SECTION 2. A NEW SECTION OF KRS CHAPTER 143 IS CREATED TO READ AS FOLLOWS:

- (1) ***A nonrefundable severance tax credit against the severance tax imposed by KRS 143.020 shall be allowed for new permitted production after July 1, 2000, as follows.***
- (a) ***For coal mined from above-drainage seams using deep mining or underground mining methods, the credit shall be equal to:***
    - 1. ***Two and one-quarter percent (2.25%) of the gross value of coal with a coal thickness of between twenty-seven (27) and thirty (30) inches; or***
    - 2. ***Three percent (3%) of the gross value of coal with a coal thickness of less than twenty-seven (27) inches.***
  - (b) ***For coal mined from below-drainage seams using deep mining or underground mining methods, the credit shall be equal to:***

1. *Two and one-quarter percent (2.25%) of the gross value of coal with a coal thickness of between thirty-two (32) and thirty-six (36) inches;*
  2. *Three percent (3%) of the gross value of coal with a coal thickness of between twenty-seven (27) and thirty-two (32) inches; or*
  3. *Three and three-quarters percent (3.75%) of the gross value of coal with a coal thickness of less than twenty-seven (27) inches.*
- (2) *Coal thickness under subsection (1) of this section shall be based on the weighted average isopach mapping of actual coal thickness by mine as certified by a professional engineer for each reporting period. The taxpayer shall attach a copy of the certified isopach mapping for each reporting period to the return filed for that period.*
- (3) *The taxpayer shall take the tax credit under this section in conjunction with the taxpayer's monthly return.*

Approved April 21, 2000

## CHAPTER 479

(HB 538)

AN ACT relating to compensation of property valuation administrators.

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

Section 1. KRS 132.590 is amended to read as follows:

- (1) The compensation of the property valuation administrator shall be based on *the schedule contained in subsection (2) of this section as modified by subsection (3) of this section. The compensation of the property valuation administrator shall be calculated by the Revenue Cabinet annually.* ~~{(1) the area, (2) the population, and (3) the assessed value of property in the county in accordance with the provisions of the following scale, with one (1) point per each ten (10) square miles or fraction thereof of the area of the county; one (1) point per one thousand (1,000) population of the county; one (1) point per million dollars (\$1,000,000) of assessment on the first one hundred million (\$100,000,000) and one half (1/2) point per million dollars (\$1,000,000) of assessment over one hundred million (\$100,000,000);~~

Number of Points		Grade
At Least	But Less Than	Classification
5,000	---	15
1,000	5,000	14
350	1,000	13
300	350	12
225	300	11
150	225	10
125	150	9
100	125	8
	100	7}

Should a property valuation administrator for any reason vacate the office in any year during his term of office, he shall be paid only for the calendar days actually served during the year.

- (2) *The salary schedule for property valuation administrators provides for nine (9) levels of salary based upon the population of the county in the prior year as determined by the United States Department of Commerce, Bureau of the Census annual estimates. To implement the salary schedule, the cabinet shall, by November 1 of each year, certify for each county the population group applicable to each county based on the most recent estimates of the United States Department of Commerce, Bureau of the Census. The salary schedule provides four (4) steps for yearly increments within each population group. Property valuation*

*administrators shall be paid according to the first step within their population group for the first year or portion thereof they serve in office. Thereafter, each property valuation administrator, on January 1 of each subsequent year, shall be advanced automatically to the next step in the salary schedule until the maximum salary figure for the population group is reached. If the county population as certified by the cabinet increases to a new group level, the property valuation administrator's salary shall be computed from the new group level at the beginning of the next year. A change in group level shall have no effect on the annual change in step. Prior to assuming office, any person who has previously served as a property valuation administrator must certify to the Revenue Cabinet the total number of years, not to exceed four (4) years, that the person has previously served in the office. The cabinet shall place the person in the proper step based upon a formula of one (1) incremental step per full calendar year of service:*

**SALARY SCHEDULE**

<b>County Population by Group</b>	<b>Steps and Salary for Property Valuation Administrators</b>			
	<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>	<b>Step 4</b>
<b>Group I</b> <b>0-4,999</b>	<b>\$45,387</b>	<b>\$46,762</b>	<b>\$48,137</b>	<b>\$49,513</b>
<b>Group II</b> <b>5,000-9,999</b>	<b>49,513</b>	<b>50,888</b>	<b>52,263</b>	<b>53,639</b>
<b>Group III</b> <b>10,000-19,999</b>	<b>53,639</b>	<b>55,014</b>	<b>56,389</b>	<b>57,765</b>
<b>Group IV</b> <b>20,000-29,999</b>	<b>55,702</b>	<b>57,765</b>	<b>59,828</b>	<b>61,891</b>
<b>Group V</b> <b>30,000-44,999</b>	<b>59,828</b>	<b>61,891</b>	<b>63,954</b>	<b>66,017</b>
<b>Group VI</b> <b>45,000-59,999</b>	<b>61,891</b>	<b>64,641</b>	<b>67,392</b>	<b>70,143</b>
<b>Group VII</b> <b>60,000-89,999</b>	<b>66,017</b>	<b>68,768</b>	<b>71,518</b>	<b>74,269</b>
<b>Group VIII</b> <b>90,000-499,999</b>	<b>68,080</b>	<b>71,518</b>	<b>74,957</b>	<b>78,395</b>
<b>Group IX</b> <b>500,000 and up</b>	<b>72,206</b>	<b>75,644</b>	<b>79,083</b>	<b>82,521</b>

~~[The grade classification system provided in subsection (1) of this section shall in all respects be equivalent to the grade classification for state employees as established by the Personnel Cabinet and subject to the provisions of subsection (4) of this section and be determined on the basis of the total area of the county as determined from information provided by the Kentucky agricultural statistics or other reliable data, the United States Bureau of the Census and the assessment of property subject to state tax as certified by the Revenue Cabinet, including the amount of assessment on which taxes are deferred under the provisions of the Agricultural and Horticultural Land Act, except that the amount of assessment of livestock and farm machinery shall be excluded in determining the grade classification.]~~

- (3) (a) *For calendar year 2000, the salary schedule in subsection (2) of this section shall be increased by the amount of increase in the annual consumer price index as published by the United States Department of Commerce for the year ended December 31, 1999. This salary adjustment shall take effect on the effective date of this Act, and shall not be retroactive to the preceding January 1.*
- (b) *For each calendar year beginning after December 31, 2000, upon publication of the annual consumer price index by the United States Department of Commerce, the annual rate of salary for the property valuation administrator shall be determined by applying the increase in the consumer*

*price index to the salary in effect for the previous year. This salary determination shall be retroactive to the preceding January 1*~~[The provisions of this section shall be computed on the 1978 assessment and on each annual assessment thereafter].~~

- (c) *In addition to the step increases based on service in office, each property valuation administrator shall be paid an increase of six hundred eighty-seven dollars and sixty-seven cents (\$687.67) for each forty (40) hour training unit successfully completed. This amount shall be increased by the consumer price index adjustments prescribed in paragraphs (a) and (b) of this subsection. Each training unit shall be approved and certified by the Kentucky Revenue Cabinet. Each unit shall be available to property valuation administrators in each office based on continuing service in that office.*
- (4) *Notwithstanding any provision contained in this section, no property valuation administrator holding office on the effective date of this Act shall receive any reduction in salary or reduction in adjustment to salary otherwise allowable by the statutes in force on the effective date of this Act*~~[Each property valuation administrator shall upon taking office for the first time be placed in the first step in grade and shall annually, effective January 1 after serving no less than twelve (12) months, be advanced one (1) step in grade; except that any person appointed or elected to fill a vacancy in the office of property valuation administrator shall be eligible for advancement one (1) step in grade effective January 1 following completion of at least six (6) months' service. The Revenue Cabinet is authorized to make grade classification changes corresponding to any approved for cabinet employees in comparable positions so long as such changes do not violate the integrity of the classification system and, except further, subject to availability of funds, that the cabinet may extend cost-of-living increases approved for cabinet employees to the property valuation administrators by advancement in grade].~~
- (5) Deputy property valuation administrators and other authorized personnel~~[likewise]~~ may be advanced one (1) step in grade upon completion of twelve (12) months' continuous service~~[and given such other benefits relating to reclassification of position or cost of living adjustments as are provided in subsection (4) of this section for property valuation administrators]~~. *The Revenue Cabinet may make grade classification changes corresponding to any approved for cabinet employees in comparable positions, so long as the changes do not violate the integrity of the classification system. Subject to availability of funds, the cabinet may extend cost-of-living increases approved for cabinet employees to deputy property valuation administrators and other authorized personnel, by advancement in grade.*
- (6) Beginning with the 1990-1992 biennium, the Revenue Cabinet shall prepare a biennial budget request for the staffing of property valuation administrators' offices. An equitable allocation of employee positions to each property valuation administrator's office in the state shall be made on the basis of comparative assessment work units. Assessment work units shall be determined from the most current objective information available from the United States Bureau of the Census and other similar sources of unbiased information. Beginning with the 1996-1998 biennium, assessment work units shall be based on parcel count per employee. ~~[Until that time the property valuation administrator's office shall be allowed by the state as compensation for deputies, other authorized personnel, and for other authorized expenditures, one and one quarter cents (\$0.0125) on each one hundred dollars (\$100) of the property assessed, including motor vehicles and the amount of assessment on which taxes are deferred under the agricultural and horticultural land act but exclusive of livestock and farm machinery, on the first two hundred fifty million dollars (\$250,000,000) and one cent (\$0.01) on each one hundred dollars (\$100) of the property assessed over two hundred fifty million dollars (\$250,000,000); but ]~~*The total sum allowed by the state to any property valuation administrator's office as compensation for deputies, other authorized personnel, and for other authorized expenditures shall not exceed the amount fixed by the Revenue Cabinet. However, each property valuation administrator's office shall be allowed as a minimum such funds that are required to meet the federal minimum wage requirements for two (2) full-time deputies.*
- (7) Beginning with the 1990-1992 biennium each property valuation administrator shall submit by June 1 of each year for the following fiscal year to the Revenue Cabinet a budget request for his office which shall be based upon the number of employee positions allocated to his office under subsection (6) of this section and upon the county and city funds available to his office and show the amount to be expended for deputy and other authorized personnel including employer's share of FICA and state retirement, and other authorized expenses of the office. The Revenue Cabinet shall return to each property valuation administrator, no later than July 1, an approved budget for the fiscal year.
- (8) Each property valuation administrator may appoint any persons approved by the Revenue Cabinet to assist him in the discharge of his duties. Each deputy shall be more than twenty-one (21) years of age and may be

removed at the pleasure of the property valuation administrator. The salaries of deputies and other authorized personnel shall be fixed by the property valuation administrator in accordance with the grade classification system established by the Revenue Cabinet and shall be subject to the approval of the Revenue Cabinet. The Personnel Cabinet shall provide advice and technical assistance to the Revenue Cabinet in the revision and updating of the personnel classification system, which shall be equitable in all respects to the personnel classification systems maintained for other state employees. Any deputy property valuation administrator employed or promoted to a higher position may be examined by the Revenue Cabinet in accordance with standards of the Personnel Cabinet, for the position to which he is being appointed or promoted. No state funds available to any property valuation administrator's office as compensation for deputies and other authorized personnel or for other authorized expenditures shall be paid without authorization of the Revenue Cabinet prior to the employment by the property valuation administrator of deputies or other authorized personnel or the incurring of other authorized expenditures.

- (9) Each county fiscal court shall annually appropriate and pay each fiscal year to the office of the property valuation administrator as its cost for use of the assessment, as required by KRS 132.280, an amount determined as follows:

Assessment Subject to

County Tax of:

At Least	But Less Than	Amount
----	\$100,000,000	\$0.005 for each \$100 of the first \$50,000,000 and \$0.002 for each \$100 over \$50,000,000.
\$100,000,000	150,000,000	\$0.004 for each \$100 of the first \$100,000,000 and \$0.002 for each \$100 over \$100,000,000.
150,000,000	300,000,000	\$0.004 for each \$100 of the first \$150,000,000 and \$0.003 for each \$100 over \$150,000,000.
300,000,000	----	\$0.004 for each \$100.

- (10) The total sum to be paid by the fiscal court to any property valuation administrator's office under the provisions of subsection (9) of this section shall not exceed the limits set forth in the following table:

Assessed Value of Property Subject to

County Tax of:

At Least	But Less Than	Limit
----	\$ 700,000,000	\$ 25,000
\$ 700,000,000	1,000,000,000	35,000
1,000,000,000	2,000,000,000	50,000
2,000,000,000	2,500,000,000	75,000
2,500,000,000	5,000,000,000	100,000
5,000,000,000	----	175,000

This allowance shall be based on the assessment as of the previous January 1 and shall be used for deputy and other personnel allowance, supplies, maps and equipment, travel allowance for the property valuation administrator and his deputies and other authorized personnel, and other authorized expenses of the office.

- (11) Annually, after appropriation by the county of funds required of it by subsection (9) of this section, and no later than August 1, the property valuation administrator shall file a claim with the county for that amount of the appropriation specified in his approved budget for compensation of deputies and assistants, including employer's shares of FICA and state retirement, for the fiscal year. The amount so requested shall be paid by the county into the State Treasury by September 1, or paid to the property valuation administrator and be submitted to the State Treasury by September 1. These funds shall be expended by the Revenue Cabinet only for compensation of approved deputies and assistants and the employer's share of FICA and state retirement in the appropriating county. Any funds paid into the State Treasury in accordance with this provision but unexpended by the close of the fiscal year for which they were appropriated shall be returned to the county from which they were received.
- (12) After submission to the State Treasury or to the property valuation administrator of the county funds budgeted for personnel compensation under subsection (11) of this section, the fiscal court shall pay the remainder of the county appropriation to the office of the property valuation administrator on a quarterly basis. Four (4) equal payments shall be made on or before September 1, December 1, March 1, and June 1 respectively. Any unexpended county funds at the close of each fiscal year shall be retained by the property valuation administrator, except as provided in KRS 132.601(2). During county election years the property valuation administrator shall not expend in excess of forty percent (40%) of the allowances available to his office from county funds during the first five (5) months of the fiscal year in which the general election is held.
- (13) The provisions of this section shall apply to urban-county governments. In an urban-county government, all the rights and obligations conferred on fiscal courts by the provisions of this section shall be exercised by the urban-county government.
- (14) When an urban-county form of government is established through merger of existing city and county governments as provided in KRS Chapter 67A, the annual county assessment shall be presumed to have been adopted as if the city had exercised the option to adopt as provided in KRS 132.285, and the annual amount to be appropriated to the property valuation administrator's office shall be the combined amount that is required of the county under this section and that required of the city under KRS 132.285, except that the total shall not exceed one hundred thousand dollars (\$100,000) for any urban-county government with an assessment subject to countywide tax of less than three billion dollars (\$3,000,000,000), one hundred twenty-five thousand dollars (\$125,000) for an urban-county government with an assessment subject to countywide tax between three billion dollars (\$3,000,000,000) and five billion dollars (\$5,000,000,000), and two hundred thousand dollars (\$200,000) for an urban-county government with an assessment subject to countywide tax in excess of five billion dollars (\$5,000,000,000). For purposes of this subsection, the amount to be considered as the assessment for purposes of KRS 132.285 shall be the amount subject to taxation for full urban services.
- ~~(15) Notwithstanding the provisions of subsection (1) of this section, any property valuation administrator whose county classification would be reduced from that existing as of June 17, 1978, shall not have his compensation reduced but shall continue to be compensated at his then current salary until such time as an increase in points earned by his county or a cabinet adjustment, under subsection (4) of this section, qualify him for an increase in compensation.~~
- ~~(16) The county classification system provided in subsections (1) and (2) of this section shall in no way affect reclassification approved prior to this enactment nor shall they be construed to affect any future reclassifications provided under subsection (4) of this section.~~
- ~~(17) Notwithstanding the provisions of subsection (1) of this section, the points awarded for the assessed value of property in the county for the calculation of the compensation of the property valuation administrator for 1996 and subsequent years shall be equal to the number of points awarded for the assessed value of property for 1995, or the number of points required by the provisions of subsection (1) of this section, whichever is greater.~~
- ~~(18) Notwithstanding the provisions of subsection (9) of this section, the amount appropriated and paid by each county fiscal court to the office of the property valuation administrator for 1996 and subsequent years shall be equal to the amount paid to the office of the property valuation administrator for 1995, or the amount required by the provisions of subsections (9) and (10) of this section, whichever is greater.~~

Section 2. KRS 132.385 is amended to read as follows:

- (1) The cabinet shall develop and administer a program for the purpose of providing education and training in the technical, legal, and administrative aspects of property tax administration for property valuation administrators, deputy property valuation administrators, and cabinet employees. Courses may be created and taught by cabinet personnel or the cabinet may adopt specific courses offered by appropriate professional organizations.
- (2) The cabinet shall develop and administer, in cooperation with the property valuation administrators, a certification program for property valuation administrators, deputy property valuation administrators, and cabinet employees. A professional designation, "certified Kentucky assessor" (CKA), shall be awarded to those individuals successfully meeting the standards established by this program. Minimum requirements shall include one hundred twenty (120) hours of classroom instruction, passage of subject matter examinations, and three (3) years of experience in Kentucky property tax administration. An advanced designation, "senior Kentucky assessor" (SKA), shall be awarded to those individuals successfully completing an additional ninety (90) hours of classroom instruction, passage of subject matter examinations, and an additional two (2) years of experience in Kentucky property tax administration. Correspondence course credit administered by the cabinet may be substituted for no more than thirty (30) hours of the one hundred twenty (120) hours required for the "certified Kentucky assessor" (CKA) designation, and for no more than fifteen (15) hours of the additional ninety (90) hours required for the "senior Kentucky assessor" (SKA) designation.
- ~~[(3) Any property valuation administrator awarded the certified Kentucky assessor designation shall receive a five percent (5%) salary increase effective the first day of the month following receipt of the designation. Any property valuation administrator awarded the senior Kentucky assessor designation shall receive an additional five percent (5%) salary increase effective the first day of the month following receipt of the designation.]~~

Section 3. The following KRS sections are repealed:

132.591 Alternative compensation scheme for administrator, contingent on state funding.

132.595 Adjustment of compensation.

**Approved April 21, 2000**

## CHAPTER 480

**(HB 544)**

AN ACT relating to law enforcement.

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

Section 1. KRS 15.310 is amended to read as follows:

As used in KRS 15.315 to 15.510, 15.990, and 15.992, unless the context otherwise requires:

- (1) "Basic training course" means the peace officer basic training course provided by the Department of Criminal Justice Training or a course approved and recognized by the Kentucky Law Enforcement Council ~~[pursuant to KRS 15.440];~~
- (2) "Certified peace officer" means a peace officer who is certified under KRS 15.380 to 15.402;
- (3) "Certification" means the act by the council of issuing certification to a peace officer who successfully completes the training requirements ~~[established or approved by the Kentucky Law Enforcement Council]~~ pursuant to **Section 5 of this Act** ~~[KRS 15.440]~~ and the requirements set forth within this chapter;
- (4) "Council" means the Kentucky Law Enforcement Council established by KRS 15.315 to 15.510, 15.990, and 15.992;
- (5) "Department" means the Department of Criminal Justice Training of the Justice Cabinet;
- (6) "Law enforcement officer" means a member of a lawfully organized police unit or police force of county, city or metropolitan government who is responsible for the detection of crime and the enforcement of the general criminal laws of the state, as well as sheriffs, sworn deputy sheriffs, campus security officers, law enforcement support personnel, public airport authority security officers, other public and federal peace officers responsible for law enforcement, and special local peace officers licensed pursuant to KRS 61.360;
- (7) "Peace officer" means a person defined in KRS 446.010;

- (8) "Secretary" means the secretary of the Justice Cabinet; and
- (9) "Validated job task analysis" means the minimum entry level qualifications and training requirements for peace officers in the Commonwealth based upon an actual survey and study of police officer duties and responsibilities conducted by an entity recognized by the Kentucky Law Enforcement Council as being competent to conduct such a study.

Section 2. KRS 15.330 is amended to read as follows:

- (1) The council is vested with the following functions and powers:
  - (a) To prescribe standards for the approval and continuation of approval of schools at which law enforcement training courses required under KRS 15.310 to 15.510 and KRS 15.990 to 15.992 shall be conducted, including but not limited to minimum standards for facilities, faculty, curriculum, and hours of attendance related thereto;
  - (b) To prescribe minimum qualifications for instructors at such schools, except that institutions of higher education shall be exempt from council requirements;
  - (c) To prescribe qualifications for attendance and conditions for expulsion from such schools;
  - (d) To approve, to issue, and to revoke for cause certificates to schools and instructors as having met requirements under KRS 15.310 to 15.510 and KRS 15.990 to 15.992;
  - (e) To approve law enforcement officers and other persons as having met requirements under KRS 15.310 to 15.510 and KRS 15.990 to 15.992;
  - (f) To inspect and evaluate schools at any time and to require of schools, instructors, and persons approved or to be approved under the provisions of KRS 15.310 to 15.510 and KRS 15.990 to 15.992, any information or documents;
  - (g) To ~~promulgate~~~~[recommend]~~ reasonable rules and ~~administrative~~ regulations ***in accordance with KRS Chapter 13A***~~[to the secretary]~~ to accomplish the purposes of KRS 15.310 to 15.510 and KRS 15.990 to 15.992;
  - (h) To monitor the Law Enforcement Foundation Program as prescribed in KRS 15.410 to 15.510;
  - (i) To adopt bylaws for the conduct of its business not otherwise provided for; and
  - (j) The council shall have the authority to certify police officers as set out in this chapter.
- (2) The provisions of KRS 15.310 to 15.510 and KRS 15.990 to 15.992 do not apply to the Department of State Police except for the certification requirement established by this chapter.

Section 3. KRS 15.380 is amended to read as follows:

- (1) The following officers employed or appointed as full-time, part-time, or auxiliary officers, whether paid or unpaid, shall be certified:
  - (a) State Police officers, ***but for the commissioner of the State Police***;
  - (b) City, county, and urban-county police officers;
  - (c) Deputy sheriffs, except those identified in KRS 70.045 and 70.263(3);
  - (d) State or public university safety and security officers appointed pursuant to KRS 164.950;
  - (e) School security officers employed by local boards of education who are special law enforcement officers appointed under KRS 61.902;
  - (f) Airport safety and security officers appointed under KRS 183.880;
  - (g) Department of Alcoholic Beverage Control field representatives and investigators appointed under KRS 241.090; and
  - (h) Division of Insurance Fraud Investigators appointed under KRS 304.47-040.
- (2) The requirements of KRS 15.380 to 15.402 for certification may apply to all state peace officers employed pursuant to KRS Chapter 18A and shall, if adopted, be incorporated by the Department of Personnel for job specifications.



- (3) Additional training in excess of the standards set forth in KRS 15.380 to 15.402 for all peace officers possessing arrest powers who have specialized law enforcement responsibilities shall be the responsibility of the employing agency.
- (4) The following officers may, upon request of the employing agency, be certified by the council:
  - (a) Deputy coroners;
  - (b) Deputy constables;
  - (c) Deputy jailers;
  - (d) Deputy sheriffs under KRS 70.045 and 70.263(3);
  - (e) Officers appointed under KRS 61.360;
  - (f) Officers appointed under KRS 61.902, except those who are school security officers employed by local boards of education;
  - (g) Private security officers; and
  - (h) Employees of a correctional services division created pursuant to KRS 67A.028 and employees of a metropolitan correctional services department created pursuant to KRS 67B.010 to 67B.080.
- (5) The following officers shall be exempted from the certification requirements but may upon their request be certified by the council:
  - (a) Sheriffs;
  - (b) Coroners;
  - (c) Constables;~~and~~
  - (d) Jailers; *and*
  - (e) *Commissioner of the State Police.*
- (6) Federal peace officers cannot be certified under KRS 15.380 to 15.402.

Section 4. KRS 15.382 is amended to read as follows:

A person certified after December 1, 1998, under KRS 15.380 to 15.402 shall, at the time of becoming certified, meet the following minimum qualifications:

- (1) Be a citizen of the United States;
- (2) Be at least twenty-one (21) years of age;
- (3) Be a high school graduate or have successfully completed a General Education Development (G.E.D.) examination;
- (4) Possess a valid license to operate a motor vehicle;
- (5) Be fingerprinted for a criminal background check;
- (6) Not have been convicted of any felony;
- (7) Not be prohibited by federal or state law from possessing a firearm;
- (8) Have received and read the Kentucky Law Enforcement Officers Code of Ethics as established by the council;
- (9) Have *not* received *a dishonorable*~~[an honorable]~~ discharge, *or general discharge under other than honorable conditions* if having served in any branch of the armed forces of the United States;
- (10) Have passed a medical examination *as defined* by the council *by administrative regulation* to determine if he can perform peace officer duties as determined by a validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall pass the medical examination, appropriate to the agency's job task analysis, of the employing agency. All agencies shall certify passing medical examination results to the council, which shall accept them as complying with KRS 15.315 to 15.510;
- (11) Have passed a drug screening test administered or approved by the council by administrative regulation. A person shall be deemed to have passed a drug screening test if the results of the test are negative for the use of

an illegal controlled substance or prescription drug abuse. Any agency that administers its own test that meets or exceeds this standard shall certify passing test results to the council, which shall accept them as complying with KRS 15.315 to 15.510;

- (12) Have undergone a background investigation established or approved by the council by administrative regulation to determine suitability for the position of a peace officer. If the employing agency has established its own background investigation that meets or exceeds the standards of the council, as set forth by administrative regulation, the agency shall conduct the background investigation and shall certify background investigation results to the council, which shall accept them as complying with KRS 15.315 to 15.510;
- (13) Have been interviewed by the employing agency;
- (14) Not have had certification as a peace officer permanently revoked in another state;
- (15) Have taken a psychological ~~suitability screening examination~~ administered or approved by the council by administrative regulation to determine the person's suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take that agency's psychological examination, appropriate to the agency's job task analysis. All agencies shall certify psychological examination results to the council, which shall accept them as complying with KRS 15.315 to 15.510;
- (16) Have passed a physical agility test administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take the physical agility examination of the employing agency. All agencies shall certify physical agility examination results to the council, which shall accept them as demonstrating compliance with KRS 15.315 to 15.510; and
- (17) Have taken a polygraph examination administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties. Any agency that administers its own polygraph examination as approved by the council shall certify the results that indicate whether a person is suitable for employment as a peace officer to the council, which shall accept them as complying with KRS 15.315 to 15.510.

SECTION 5. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

- (1) *Any peace officers employed or appointed after December 1, 1998, who have not successfully completed basic training at a school certified or recognized by the Kentucky Law Enforcement Council, shall within one (1) year of their appointment or employment, successfully complete at least six hundred forty (640) hours of basic training at a school certified or recognized by the Kentucky Law Enforcement Council.*
- (2) *All peace officers with active certification status shall successfully complete forty (40) hours of annual in-service training that has been certified or recognized by the Kentucky Law Enforcement Council, that is appropriate to the officer's rank and responsibility and the size and location of his department.*
- (3) *In the event of extenuating circumstances beyond the control of an officer that prevent the officer from completing the basic or in-service training within the time specified in subsections (1) and (2) of this section, the secretary of the Justice Cabinet or his designee may grant the officer an extension of time, not to exceed one hundred eighty (180) days in which to complete the training. Any peace officer who fails to successfully complete the basic or in-service training within the specified time period shall lose his law enforcement powers and certification status.*
- (4) *An officer who has lost his law enforcement powers due solely to his failure to meet the training requirements of this section or any other applicable provision of Kentucky law mandating law enforcement training may regain his certification status and law enforcement powers upon successful completion of the training deficiency.*

Section 6. KRS 15.386 is amended to read as follows:

The following certification categories shall exist:

- (1) Precertification status. The officer is currently employed or appointed by an agency and meets or exceeds all those minimum qualifications set forth in KRS 15.382, but has not successfully completed a basic training course, except those officers covered by KRS 15.400. *Upon the council's verification that the minimum qualifications have been met*, the officer shall have full peace officer powers as authorized under the statute under which he was appointed or employed. If an officer fails to successfully complete a basic training course

within one (1) year of employment, his enforcement powers shall automatically terminate, and he shall not exercise peace officer powers in the Commonwealth until he has successfully completed a basic training course.

- (2) Certification status. Unless the certification is in revoked status or inactive status, the officer is currently employed or appointed by an agency and has met all training requirements. The officer shall have full peace officer powers as authorized under the statute under which he was appointed or employed.
- (3) Inactive status.
  - (a) The person has been separated *on or after December 1, 1998*, from the agency by which he was employed or appointed and has no peace officer powers; *or*
  - ~~(b) The person has been employed by another agency in a non peace officer position; or~~
  - ~~(c)~~ The person is on military active duty for a period exceeding three hundred sixty-five (365) days.

The person may remain on inactive status. A person who is on inactive status and who returns to a peace officer position shall have certification status restored if he has not committed an act for which his certified status may be revoked pursuant to KRS 15.380 to 15.402 and by successfully completing forty (40) hours of in-service training as prescribed by the council.

- (4) Revoked or denied status. The officer has no enforcement powers and has been separated from an enforcement agency for any one (1) of the following reasons:
  - (a) Failure to meet or maintain training requirements;
  - (b) Willful falsification of information to obtain or maintain certified status;
  - (c) Certification was the result of an administrative error;
  - (d) Plea of guilty to, conviction of, or entering of an Alford plea to any felony;
  - (e) Prohibition by federal or state law from possessing a firearm.
- (5) The design of a certificate may be changed periodically. When a new certificate is produced, it shall be distributed free of charge to each currently certified peace officer.

Section 7. KRS 15.388 is amended to read as follows:

- (1) Within five (5) working days of employment or appointment, the chief executive officer of the employing agency, or his designee, shall file a report with the council certifying that the newly employed officer is certified or meets or exceeds the precertification qualifications of KRS 15.382.
- (2) If the person is certified, the council shall continue certified status.
- (3) If the person is on inactive status, the council shall upgrade to certified status unless the certification is revoked as provided by KRS 15.380 to 15.402.
- (4) If the person is not certified and not on inactive status, the council shall designate the person as being in precertification status.
- (5) A person who is in precertification status shall, upon successful completion of the required basic training, be certified unless he has committed an act that would result in revocation of his certificate in which case he shall be denied certification.
- (6) A person who is denied certified status under this section shall have the same right of appeal as a person who has been revoked under KRS 15.380 to 15.402.
- (7) If the certified officer has successfully completed the basic training required by *Section 5 of this Act* ~~KRS 95.955~~ and transfers from a peace officer position from a current employer to a peace officer position for another employer, and both employers have, at least ten (10) working days prior to the effective date of the transfer, notified the council in writing of the transfer, the council shall maintain the officer in certified status.

Section 8. KRS 15.396 is amended to read as follows:

- (1) An agency may be required to pay for all training received by a person from the Department of Criminal Justice Training or any other facility approved by the Kentucky Law Enforcement Council if the agency

knowingly employs or appoints a person to be an officer of any type as enumerated in KRS 15.380 and if that person fails to achieve certified status as required by KRS 15.380 to 15.402.

- (2) The agency shall be denied participation in the Kentucky Law Enforcement Foundation Program Fund if the agency knowingly employs or appoints a person to be an officer of any type as enumerated in KRS 15.380 and if that person:
  - (a) Fails to meet those minimum qualifications set forth in KRS 15.402;
  - (b) Fails to achieve certified status as required by KRS 15.380 to 15.402; or
  - (c) Fails to maintain the minimum training requirements set forth in *Section 5 of this Act* ~~KRS 95.955~~.
- (3) *An agency that is in violation of subsection (1) or (2) of this section may be relieved of the associated penalty upon:*
  - (a) *Termination of the officer who is the source of the violation; or*
  - (b) *Correction of the officer's deficiency.*

Section 9. KRS 15.440 is amended to read as follows:

Each local unit of government which meets the following requirements shall be eligible to share in the distribution of funds from the Law Enforcement Foundation Program fund:

- (1) Employs one (1) or more police officers;
- (2) Pays every police officer at least the minimum federal wage;
- (3) Maintains the minimum educational requirement of a high school degree, or its equivalent as determined by the Kentucky Law Enforcement Council, for employment of police officers on or after July 1, 1972, and for all sheriffs appointed or elected on or after July 15, 1998, and all deputy sheriffs, and state or public university police officers employed after July 15, 1998; provided, however, that all police officers employed prior to July 1, 1972, shall be deemed to have met the requirements of this subsection, and that all sheriffs serving in office on July 15, 1998, all deputy sheriffs, and state or public university police, employed prior to July 15, 1998 shall be deemed to have met the requirements of this subsection;
- (4) Requires all police officers employed on or after July 1, 1972, and all sheriffs appointed or elected on or after July 15, 1998, and deputy sheriffs, and state or public university police officers employed on or after January 1, 1998, to successfully complete a basic training course of at least *six hundred forty (640)* ~~four hundred (400)~~ hours' duration within one year of the date of employment at a school certified or recognized by the Kentucky Law Enforcement Council. All sheriffs serving in office on July 15, 1998, all deputy sheriffs, and state or public university police, employed prior to January 1, 1998, shall be deemed to have met the requirements of this subsection. The council may, by the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A, set the number of hours for basic training at a number higher than *six hundred forty (640)* ~~four hundred (400)~~ hours based upon a training curriculum approved by the Kentucky Law Enforcement Council as determined by a validated job task analysis;
- (5) Requires all police officers, whether originally employed before or after July 1, 1972, and all sheriffs appointed or elected before, on, or after July 15, 1998, and all deputy sheriffs and state or public police officers employed before, on, or after July 15, 1998, to successfully complete each calendar year an in-service training course, appropriate to the officer's rank and responsibility and the size and location of his department, of at least forty (40) hours' duration at a school certified or recognized by the Kentucky Law Enforcement Council;
- (6) Requires compliance with all provisions of law applicable to local police, state or public university police, or sheriffs and their deputies, including transmission of data to the centralized criminal history record information system as required by KRS 17.150;
- (7) Requires compliance with all reasonable rules and regulations, appropriate to the size and location of the local police department, state or public university police department, or sheriff's office, issued by the Justice Cabinet to facilitate the administration of the fund and further the purposes of KRS 15.410 to 15.510;
- (8) Provided, however, that no local unit of government which meets the criteria of this section shall be eligible to continue sharing in the distribution of funds from the Law Enforcement Foundation Program fund unless the local police department, state or public university police department, or sheriff's office actually begins and

continues to comply with the requirements of this section; provided, further, that no local unit shall be eligible to share in the distribution of funds from the Law Enforcement Foundation Program fund until the local police department, state or public university police department, or sheriff's office has substantially complied with subsections (6) and (7) of this section.

Section 10. KRS 15.590 is amended to read as follows:

KRS 15.540 to 15.580 shall be administered by the ***commissioner of the Department of Criminal Justice Training***~~[secretary of justice]~~, who shall issue such administrative regulations as necessary regarding training, in-service training, and telecommunications practices.

Section 11. KRS 15A.070 is amended to read as follows:

- (1) The Department of Criminal Justice Training shall establish, supervise and coordinate training programs and schools for law enforcement personnel, and any other justice or nonlaw-enforcement-related personnel as prescribed by the secretary.
- (2) The Department of Criminal Justice Training shall make a continuing study of law enforcement training standards and upon request may furnish information relating to standards for recruitment, employment, promotion, organization, management, and operation of any law enforcement agency in Kentucky.
- (3) The Department of Criminal Justice Training shall conduct continuing research on criminal law and criminal justice subjects related to law enforcement training.
- (4) The Department of Criminal Justice Training may by administrative regulation provide for administrative hearings to be conducted in accordance with KRS Chapter 13B.
- (5) ***The commissioner of the Department of Criminal Justice Training may promulgate administrative regulations in accordance with KRS Chapter 13A.***

Section 12. KRS 70.263 is amended to read as follows:

- (1) Each person serving as a covered deputy sheriff on the effective date of an ordinance that creates a deputy sheriff merit board for the county in which he serves shall have successfully completed, within one (1) year following the effective date of that ordinance, at least ***six hundred forty (640)***~~[four hundred (400)]~~ hours of training approved by the Kentucky Law Enforcement Council. Training approved by the Kentucky Law Enforcement Council received before the effective date of the ordinance may be used to satisfy all or part of this requirement.
- (2) Each person appointed as a covered deputy sheriff in a county that has adopted a deputy sheriff merit board before the date of his appointment shall have successfully completed, within one (1) year following the appointment, at least ***six hundred forty (640)***~~[four hundred (400)]~~ hours of training approved by the Kentucky Law Enforcement Council. Training approved by the Kentucky Law Enforcement Council received before the effective date of the ordinance may be used to satisfy all or part of this requirement.
- (3) A deputy sheriff whose official duty is to provide security service to the courts, and who is compensated pursuant to KRS 64.092, shall, the provisions of subsections (1) and (2) of this section notwithstanding, satisfy the training requirements for employment if he completes law enforcement training which the Administrative Office of the Courts certifies to the sheriff as acceptable. If the training was not received prior to the effective date of the ordinance creating the deputy sheriff merit board, in the case of a deputy sheriff serving when the ordinance was passed, or prior to appointment in the case of a deputy sheriff appointed after the effective date of the ordinance, then it shall be received within one (1) year following the effective date of the ordinance or the date of appointment, as the case may be.
- (4) A person failing to meet the requirements of this section shall forfeit his position as deputy sheriff immediately upon the expiration of the applicable one (1) year time limit.

Section 13. KRS 95.955 is amended to read as follows:

- (1) All police officers and auxiliary police officers originally appointed or employed by a city, urban-county, or charter county government after July 14, 1992, shall, within one (1) year of their appointment or employment, successfully complete at least ***six hundred forty (640)***~~[four hundred (400)]~~ hours of basic training administered or approved by the Department of Criminal Justice Training.

- (2) All police officers and auxiliary police officers specified in subsection (1) of this section shall, upon completion of the basic training required in the same section, successfully complete forty (40) hours of annual in-service training administered or approved by the Department of Criminal Justice Training.
- (3) All police officers and auxiliary police officers appointed or employed before July 14, 1992, shall successfully complete forty (40) hours of annual in-service training administered or approved by the Department of Criminal Justice Training.
- (4) In the event of extenuating circumstances beyond the control of the officer such as injury, illness, or personal tragedy which prevents the officer from completing the basic or in-service training within the time specified in subsections (1) to (3) of this section, the officer shall complete the training within one hundred eighty (180) days after return to duty. Any police officer or auxiliary police officer who fails to successfully complete the basic or in-service training within the specified time period shall not be authorized thereafter to carry deadly weapons or make arrests and may be dismissed from employment as a police officer or from membership on the auxiliary police force.

**Approved April 21, 2000**

## CHAPTER 481

(HB 563)

AN ACT relating to highway weight limits.

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

Section 1. KRS 189.271 is amended to read as follows:

- (1) Notwithstanding any other provision of laws, the Transportation Cabinet may issue special permits to the owners, operators, or lessees of motor vehicles for the purpose of hauling industrial materials whose gross weight or dimensions, including vehicle and load, exceeds the limits prescribed by this chapter or which in other respects fail to comply with the requirements of this chapter. A separate permit shall be required for each vehicle. Such permits shall be issued for specified materials only and shall designate the portions of the state primary road system over which such vehicle may operate pursuant to the permit. Such permit shall be issued for a stated period of time ***determined by the applicant*** not to exceed ***three (3) years***, ~~one (1) year~~ and ***an existing permit may be renewed pending an inspection by the cabinet of the routes listed on the permit. Permits under this section*** shall be upon such terms and conditions as the cabinet may, in its discretion, require in the public interest.
- (2) ***The cabinet may establish a system by which a current permit holder can be granted a new permit specifying different routes or materials without having to complete a new application or pay a separate application fee.***
- (3) The cabinet shall require, as a condition to the issuance of the permit, that the applicant pay a reasonable fee, to be fixed by the cabinet, and shall require that an applicant convicted under provisions of KRS 189.990(2)(a) two (2) or more times within a five (5) year period give bond, with approved surety, in an amount not to exceed six thousand dollars (\$6,000) for each vehicle to indemnify the Commonwealth of Kentucky against damage to highways or bridges resulting from the operation of any motor vehicle under the authorization of such permit. ***A bond acquired under this subsection may be carried forward to another permit if the cabinet has not gone against the bond.***
- (4) The operation of any motor vehicle in accordance with the terms of any such permit shall not constitute a violation of this chapter, if the operator has the permit, or a copy of it, authenticated as the cabinet may require, in his possession.
- ~~(5)(2)}~~ The cabinet shall not issue a permit under this section for a vehicle whose gross weight, including vehicle and load, exceeds the maximum gross weight as provided in KRS 189.222.
- ~~(6)(3)}~~ The cabinet shall not issue a permit under this section for a vehicle whose dimensions, including vehicle and load, exceed the maximum dimension as provided in KRS 189.222.
- ~~(7)(4)}~~ A person shall not operate a motor vehicle in violation of the terms and conditions of any permit issued by the cabinet pursuant to this section.

~~(8)(5)~~ As used in this section, industrial materials shall mean all cargo, whether divisible or indivisible, which a motor vehicle transports in the usual and ordinary course of business and shall specifically include, but not be limited to, agricultural products, minerals, or natural resources transported by a motor vehicle.

~~(9)(6)~~ The cabinet may:

- (a) Exercise general supervision of the administering and enforcement of this section.
- (b) **Promulgate administrative**~~Adopt rules and~~ regulations, **subject to the limitations of this section**, with respect to the issuance of a permit, including, but not limited to, **administrative**~~rules and~~ regulations concerning the duration of permits and weight limits for various types of vehicles, materials, and highways.
- (c) **Promulgate administrative**~~Adopt rules and~~ regulations with respect to the amount, terms and conditions of the bond and the sufficiency of the surety of such bond required by this section. **The cabinet shall allow applicants not required to post a surety bond under subsection (3) of this section to self-insure to meet the bonding requirements of this section.**
- (d) Issue, continue in effect, revoke, modify, or deny, under such conditions as the cabinet may prescribe, permits provided for under this section.

Section 2. KRS 189.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456, and 189.960 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars (\$20) nor more than two thousand dollars (\$2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars (\$11) nor more than thirty dollars (\$30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.
- (2)
  - (a) Any person who violates the weight provisions of KRS 189.212, 189.221, 189.222, 189.226, 189.230, **or 189.270**~~or 189.271~~ shall be fined two cents (\$0.02) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents (\$0.03) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (\$0.05) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (\$0.07) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (\$0.09) per pound when the excess exceeds five thousand (5,000) pounds, but in no case shall the fine be less than sixty dollars (\$60).
  - (b) **Any person who violates the provisions of Section 1 of this Act and is operating on a route designated on the permit shall be fined one hundred dollars (\$100); otherwise, the penalties in paragraph (a) of this subsection shall apply.**
  - (c) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, 189.490, or the dimension provisions of KRS 189.212, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
  - ~~(d)(e)~~ Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.
- (3)
  - (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars (\$15).
  - (b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars (\$35) nor more than two hundred dollars (\$200).

- (4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
- (b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
- (c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.
- (5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) or imprisoned not less than thirty (30) days nor more than sixty (60) days, or both. For each subsequent offense occurring within three (3) years, the person shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.
- (6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars (\$15) in excess of the cost of the repair of the road.
- (7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars (\$20) nor more than fifty dollars (\$50).
- (8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100).
- (9) Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.
- (10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.
- (11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars (\$30) nor more than one hundred dollars (\$100) for each offense.
- (12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and, in the case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.
- (13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars (\$20) nor more than twenty-five dollars (\$25).
- (15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars (\$100) and, upon subsequent convictions, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for thirty (30) days, or both.
- (17) (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.
- (b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name the vehicle used in the transportation of inflammable liquids or explosives is licensed, the person shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each violation shall constitute a separate offense.
- (18) Any person who abandons a vehicle upon the right-of-way of a state highway for three (3) consecutive days shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.



- (19) Every person violating KRS 189.393 shall be guilty of a Class B misdemeanor, unless the offense is being committed by a defendant fleeing the commission of a felony offense which the defendant was also charged with violating and was subsequently convicted of that felony, in which case it is a Class A misdemeanor.
- (20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.
- (21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of a regulation shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.
- (22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
- (23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).
- (24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars (\$50).
- (25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars (\$25).
- (26) Any person who violates any of the provisions of KRS 189.125(3), KRS 189.290, KRS 189.300, KRS 189.340, KRS 189.345, KRS 189.370, KRS 189.393, or KRS 189.505, shall, in addition to any other fine imposed by this chapter, pay an additional fee of ten dollars (\$10). Funds collected pursuant to this subsection shall be deposited in the traumatic brain injury trust fund, created pursuant to KRS 211.476, within fourteen (14) days after the end of each quarter, to be used for the purposes set forth in KRS 211.470 to 211.478.
- (27) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.
- (28) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:
  - (a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and
  - (b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.
- (29) Any person who violates the provisions of KRS 189.285 shall have his or her operator's license suspended for a period of ninety (90) days and be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

**Approved April 21, 2000**

## **CHAPTER 482**

**(HB 579)**

AN ACT relating to chemical munitions.

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

Section 1. KRS 224.50-130 is amended to read as follows:

- (1) The General Assembly of Kentucky finds that:
  - (a) The compounds listed in subsection (2) of this section were designed and configured to be utilized for warfare, with the purpose of incapacitating or inducing lethality in persons who come in contact with the compounds, and that the compounds have no legitimate civilian use;
  - (b) The Commonwealth of Kentucky owes to its residents a duty of utmost care to assure that no person will be exposed to these compounds or the degradation by-products of these compounds through purposeful

or accidental release of the compounds into the air, land, or water of the Commonwealth, and also owes a duty to utilize the police powers of the Commonwealth to guarantee the safe demilitarization, decommissioning, dismantling, and disposal of weapons containing these compounds and to eliminate potential risks of exposure from the treatment and disposal of the compounds;

- (c) Section 6929 of Title 42 of the United States Code, specifically recognizes and reserves to the Commonwealth the authority to impose reasonable restrictions directly relating to public health and safety with respect to the management of hazardous wastes beyond the minimum standards established under federal law; and
  - (d) There exist substantial gaps in information concerning the acute and chronic health effects and environmental consequences of exposure to the compounds and the degradation by-products of the compounds listed in subsection (2) of this section, which, given the high acute toxicity of the compounds relative to other regulated hazardous wastes, justify the imposition of standards correlative to the uncertainties and severity of risks potentially posed by the treatment or disposal of the compounds.
- (2) Notwithstanding any other provision of this chapter, within thirty (30) days after July 15, 1988, the cabinet shall list the following **compounds**~~[substances]~~ as hazardous wastes for the purposes of regulation of the treatment, storage, and disposal of the wastes under the delegated authority of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.: GB (isopropyl methyl phosphonofluoridate); VX (O-ethyl-S-(2-diisopropylaminoethyl) methyl phosphonothiolate); and H (bis(2-chloroethyl) sulfide) and related compounds.
- (3) In addition to the requirements of KRS 224.46-520(1), the cabinet shall consider the criteria set forth in this subsection in making a determination to issue, deny, or condition a permit for any person desiring a permit to construct or operate a hazardous-waste site or facility for treatment~~[, storage,]~~ or disposal of any of the **compounds**~~[substances]~~ identified in subsection (2) of this section. The applicant shall affirmatively demonstrate, and the cabinet shall find prior to issuance, conditional issuance, or denial of the permit, **or draft permit** that:
- (a) The proposed treatment or destruction technology has been fully proven in an operational facility of scale, configuration, and throughput comparable to the proposed facility, **or has been demonstrated as effective, within the chemical weapons disposal programs as directed in Pub. L. 104-208 and other applicable federal laws,**~~[for a period of time]~~ sufficient to provide~~[consistent]~~ assurance of destruction or neutralization at an efficiency of ninety-nine and nine thousand, nine hundred, and ninety-nine ten thousandths percent (99.9999%) for each **compound listed in subsection (2) of this section that is**~~[substance]~~ proposed to be treated or destroyed, with the efficiency to be demonstrated as achievable~~[during the design life of the facility]~~ under all operating conditions.~~[including]~~ During the occurrence of malfunctions, upsets, or unplanned shutdowns, **all quantities of any compound listed in subsection (2) of this section shall be contained, reprocessed or otherwise controlled so as to ensure that the required efficiency is attained prior to any release to the environment;**
  - (b) Monitoring data from an operational facility **or alternative disposal program** as described in paragraph (a) of this subsection reflects **that the**~~[absence of]~~ emissions from treatment and destruction facilities or fugitive sources, including but not limited to the **emissions of the compounds**~~[substances]~~ identified in subsection (2) of this section and products of combustion,~~[and]~~ incomplete combustion, **and other processes**~~[which]~~ alone or in combination present **no more than a minimal**~~[any]~~ risk of acute or chronic human health effect, as demonstrated by sufficient and applicable toxicological data, or adverse environmental effect; and
  - (c) **An emergency response**~~[A]~~ plan has been submitted to the cabinet and approved, **after public notice and an opportunity to be heard,** providing for~~[development and funding of]~~ sufficient training, coordination, and equipment for state and local emergency response personnel, including~~[the]~~ health, police, fire, and **other responders**~~[emergency response fields]~~, to assure the ability of the community to respond to releases from such a facility. **The plan shall demonstrate,**~~[including development and funding of an emergency response plan by the applicant which demonstrates]~~ the capability of evacuating prior to exposure, **or otherwise mitigating exposure for** all individuals that might be exposed to releases from the facility during a credible worst-case release. In determining the population and area of potential exposure during a worst-case release, all possible climatic conditions and population distributions shall be assumed for the largest area where any exposure to the release could induce acute or chronic health consequences or environmental impact. **If such a plan has not been fully**

*implemented at the time of permit approval, the Division of Emergency Management shall advise the cabinet of critical shortcomings. Any permit issued shall include, as conditions, the resolution of critical shortcomings in the implementation of the plan, and shall not allow actual destruction of any of the compounds identified in subsection (2) of this section to begin until those permit conditions have been met to the satisfaction of the Division of Emergency Management. No later than January 1, 2001, the Division of Emergency Management shall complete an assessment of a draft plan previously submitted by the applicant and the respective counties and, after public notice and an opportunity to be heard, shall approve or reject the draft plan. The cabinet shall conduct no technical review of a permit application for treatment or disposal of these compounds until notified in writing by the Division of Emergency Management that the draft plan has been approved.*~~[The plan shall be developed and submitted for approval by the applicant, and no technical review of a permit subject to this section shall proceed unless the plan has first been approved, after public notice and an opportunity to be heard concerning the plan]~~

- (4) In considering any application for a permit subject to this section, and supporting information which shall be provided by the applicant on request by the cabinet, the cabinet shall not issue a permit unless, as part of the alternatives analysis of KRS 224.46-520(1), the cabinet makes an affirmative finding after public notice and an opportunity to be heard, that ***no alternative method of treatment or disposal exists in an operational facility or alternative disposal program as described in subsection (3)(a) of this section that create less risk of release, or acute or chronic health effect, or adverse environmental effect.***~~[-]~~
- ~~(a) No alternative method of treatment or disposal, including, but not limited to, neutralization and transportation to a less populated disposal site, exists that creates less risk of release or harm to the public or the environment in the event of release;~~
- ~~(b) No alternative method of treatment or destruction, including, but not limited to, neutralization and transportation to a less populated disposal site, is likely to exist or could be developed which would pose less risk of release or harm to the public or environment in the event of release, before the time that the decomposition of the compounds or the containers or munitions housing the compounds, necessitates destruction of the compounds due to serious risk of imminent and substantial release of the compounds due to instability or container degradation. In considering alternatives to the proposed activity, the cabinet shall affirmatively consider all reasonable alternatives, including alternatives that could be developed, and shall issue a permit only where it finds by clear and convincing evidence that no alternative treatment or disposal option, including transportation, exists or could be developed that would provide greater protection against exposure or harm to the public or environment.]~~
- (5) In addition to the definition of the term as defined in this chapter, the term "treatment", as used in this section, shall include the manual or mechanical handling of the chemical compounds listed in subsection (2) of this section and of any munitions containing the compounds ***during***~~[- and]~~ the processing of munitions to remove the compounds, to separate ***munitions***~~[compound]~~ components, and to otherwise prepare the components and compounds for destruction, neutralization,~~[- transportation,]~~ dismantling, or decommissioning. ***The term "treatment" shall not include the handling, movement, or overpacking of containers or munitions containing a compound listed in subsection (2) of this section within the fenced boundaries of an area used for the storage of those munitions if:***
- (a) A plan for the handling, movement, or overpacking is submitted and approved by the cabinet, after public notice and opportunity to be heard, before the handling, movement, or overpacking occurs; or***
- (b) An emergency has occurred and the handling, movement, or overpacking is necessary to protect human health, safety, or the environment, if a report describing the handling, movement, or overpacking is submitted to the cabinet as soon as possible after the emergency is abated.***

Approved April 21, 2000

## CHAPTER 483

(HB 629)

AN ACT relating to Commonwealth legal actions, and declaring an emergency.

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

## SECTION 1. A NEW SECTION OF KRS CHAPTER 48 IS CREATED TO READ AS FOLLOWS:

- (1) *The General Assembly hereby finds and declares that:*
- (a) *Public accountability for funds or other assets recovered in a legal action by or on behalf of the general public, the Commonwealth, or its duly elected statewide constitutional officers is appropriate and required, whether the character of the assets or funds recovered is public or private;*
  - (b) *Accountability for assets or funds recovered by duly elected statewide constitutional officers is essential to the public trust, and is even more critical when that officer was a party to the action that resulted in the recovery by virtue of the public office he or she holds;*
  - (c) *Public accountability demands the applicability of the Kentucky Open Records Law, KRS 61.870 to 61.884, and the Kentucky Open Meetings Law, KRS 61.805 to 61.850, so that the actions of individuals or agencies who are charged with the administration of funds or other assets are conducted in full view, and are open to public scrutiny;*
  - (d) *The General Assembly recognizes that the Attorney General of the Commonwealth of Kentucky has filed or been a party to actions by virtue of the public office he holds, and has recovered certain assets or funds of approximately forty-five million dollars (\$45,000,000), plus interest, for or on behalf of the citizens of the Commonwealth in the cases of Commonwealth of Kentucky, ex rel., Attorney General, Albert B. Chandler, III v. Anthem Insurance Companies, Inc., Southeastern Group, Inc., Southeastern United Medigroup, Inc., Franklin Circuit Court, Division I, Civil Action No. 97-CI-01566, and Southeastern United Medigroup, Inc., Southeastern Group, Inc., and Anthem Insurance Companies, Inc., v. Commonwealth of Kentucky, Department of Insurance, Franklin Circuit Court, Division II, Civil Action No. 97-CI-00405;*
  - (e) *The terms of the settlement of those actions referenced in subsection (1)(d) of this section serve a public purpose and require that the proceeds of settlement be used "to address the unmet health care needs of Kentucky citizens";*
  - (f) *In accordance with the terms of the settlement referenced in subsection (1)(d) of this section, a foundation has been or is to be formed and appointments to that foundation made after receiving recommendations from an advisory board whose appointments will be made from nominees of the Attorney General;*
  - (g) *While it may be important that, in certain circumstances, funds or assets received retain their character, identity, and purpose, it is also important that the process by which funds are administered and the individuals named to serve on the advisory board and the foundation in the settlement referenced in subsection (1)(d) of this section be open to public scrutiny and be required to make reports and be accountable to the public; and*
  - (h) *The power to appropriate funds for public purposes is solely within the purview of the legislative branch of government, and the General Assembly, as a steward of the budgetary process, shall take steps to assure that future settlements are handled in a manner that assures maximum accountability to the citizens of the Commonwealth and their duly elected legislative representatives.*
- (2) *Therefore, any other provision of the common law or statutory law to the contrary notwithstanding:*
- (a) *The provisions of subsection (3) of this section shall apply to the settlement referenced in subsection (1)(d) of this section, and to the advisory board, corporation, organization, foundation, charitable trust, constructive trust, board, commission, or entity, created by court order or otherwise, to administer the settlement proceeds to provide for the "unmet health care needs of Kentucky citizens"; and*
  - (b) *Except for the settlement referenced in subsection (1)(d) of this section, the provisions of subsection (4) of this section shall apply whenever the Attorney General or other duly elected statewide constitutional officer is a party or has entered his appearance in a legal action on behalf of the Commonwealth of Kentucky, including ex rel. or other type actions, and a disposition of that action has resulted in the recovery of funds or assets to be held in trust by the Attorney General or other duly elected statewide constitutional officer or a person, organization, or entity created by the Attorney General or the Commonwealth, through court action or otherwise, to administer the trust funds or assets, for charitable, eleemosynary, benevolent, educational, or similar public purposes;*

- (c) *Except as otherwise provided in paragraphs (a) and (b) of this subsection, the provisions of subsection (5) of this section shall apply when any funds or assets of any kind or nature whatsoever, including, but not limited to, public funds as defined in KRS 446.010 and private funds or assets are recovered by judgment or settlement of a legal action by or on behalf of the Commonwealth of Kentucky, including ex rel. or other type actions filed by a duly elected statewide constitutional officer under that officer's statutory or common law authority.*
- (3) *The advisory board, corporation, organization, foundation, charitable trust, constructive trust, board, commission, or entity, created by court order or otherwise, in accordance with the settlement outlined in subsection (1)(d) of this section, shall be deemed a public trust, and shall:*
- (a) *Be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884, and the Kentucky Open Meetings Act, KRS 61.805 to 61.850;*
  - (b) *Be audited on an annual basis by the Auditor of Public Accounts;*
  - (c) *Provide any records, documents, written reports, and audits to the Governor, Auditor of Public Accounts, and the Legislative Research Commission, as may be requested;*
  - (d) *Provide representatives of the organization or entity to testify before any committee of the General Assembly, when requested, concerning the work and financial condition of the organization or entity;*
  - (e) *Encourage the Franklin Circuit Court to authorize the Governor to appoint two (2) at-large members to the board of directors of the foundation created by the settlement agreement; and*
  - (f) *Provide written notice of any disbursement of funds or assets to the co-chairs of the Interim Joint Committee on Appropriations and Revenue, the secretary of the Finance and Administration Cabinet, and the state controller at least fourteen (14) days prior to making disbursement. Within forty-five (45) days after receipt of the notice of disbursement of funds or assets in accordance with this subsection, the Interim Joint Committee on Appropriations and Revenue may hold a hearing on the disbursement. If requested by the Interim Joint Committee on Appropriations and Revenue, members of the advisory board, corporation, organization, foundation, charitable trust, constructive trust, board, commission, or entity making disbursement and the person, organization, or other entity receiving the disbursement shall appear and give testimony concerning the proposed disbursement. Following the hearing, the Interim Joint Committee on Appropriations and Revenue shall make findings concerning whether or not the disbursement:*
    - 1. *Is consistent with the nature, character, and purpose for which the funds were recovered; and*
    - 2. *Is in the best interest of the Commonwealth.*

*A copy of the findings shall be publicly released and mailed or otherwise delivered to the entity or organization seeking disbursement, the secretary of the Finance and Administration Cabinet, and the state controller.*
- (4) *Except for the settlement referenced in subsection (1)(d) of this section, whenever the Attorney General or other duly elected statewide constitutional officer is a party to or has entered his appearance in, a legal action on behalf of the Commonwealth of Kentucky, including ex rel. or other type actions, and a disposition of that action has resulted in the recovery of funds or assets to be held in trust by the Attorney General or other duly elected statewide constitutional officer or by a person, organization, or entity created by the Attorney General, or the Commonwealth, through court action or otherwise, to administer the trust funds or assets, for charitable, eleemosynary, benevolent, educational, or similar public purposes, those funds shall be deposited in the State Treasury and the funds or assets administered and disbursed by the Charitable Asset Administration Board created under this section. As used in this section "CAAB" means the Charitable Asset Administration Board.*
- (a) *The CAAB shall consist of the following members, who shall be confirmed by the Senate under KRS 11.160, and who shall serve at the pleasure of the duly elected statewide constitutional officer making the appointment during that constitutional officer's term of office:*
    - 1. *Three (3) members to be appointed by the Governor;*
    - 2. *Three (3) members to be appointed by the Attorney General; and*
    - 3. *Three (3) members to be appointed by the Auditor of Public Accounts.*

- (b) *Each duly elected statewide constitutional officer under paragraph (a) of this subsection shall appoint at least one (1) member who has a background in the administration of charitable, eleemosynary, benevolent, educational, or similar type trust assets, but shall not be currently involved in any activity that would violate the provisions of KRS 11A.040, as they relate to the performance of the appointee's duties on the CAAB.*
- (c) *All appointees to the CAAB shall comply with the provisions of the Executive Branch Code of Ethics found in KRS Chapter 11A.*
- (d) *A vacancy in the membership of the CAAB shall be filled in the same manner and under the same conditions as the initial appointment to the board.*
- (e) *The CAAB shall:*
  - 1. *Be a nonprofit, de jure, quasi-governmental corporation subject to the Kentucky Open Records Law, KRS 61.870 to 61.884, and Kentucky Open Meetings Law, KRS 61.800 to 61.850;*
  - 2. *Have any and all general corporate, trust, or other powers reasonable or necessary to fulfill the requirements and purposes of the CAAB;*
  - 3. *Be audited on an annual basis by the Auditor of Public Accounts;*
  - 4. *Provide any documents, written reports, and audits to the Legislative Research Commission as may be requested; and*
  - 5. *Provide representatives of the organization or entity to testify before any committee of the Kentucky General Assembly when requested concerning the work and financial condition of the CAAB.*
- (f) *The CAAB shall have full authority over the administration, control, and disbursement of any funds recovered under this subsection. The CAAB shall receive, analyze, administer, disburse, and preserve the identity, character, and nature and the charitable, eleemosynary, benevolent, educational, or similar public purpose of the funds or assets received consistent with this subsection and the authority for administering the funds recovered as set forth in the:*
  - 1. *Articles of incorporation and bylaws of the corporation;*
  - 2. *Partnership agreement or other business association agreement;*
  - 3. *Contractual agreement;*
  - 4. *Governing documents of the public or private foundation;*
  - 5. *Charitable trust documents;*
  - 6. *Terms of the constructive trust;*
  - 7. *Orders of a state or federal court;*
  - 8. *State or federal law or regulation; or*
  - 9. *Any other governing documents necessary to properly administer the funds recovered.*
- (g) *The CAAB may hold public hearings, if necessary, concerning the proper administration or disbursement of trust assets received and to be administered under this subsection.*
- (h) *1. After the effective date of this Act, all charitable, eleemosynary, benevolent, educational, or similar type trust funds or assets, to which this subsection applies, recovered by way of judgment, settlement, or otherwise, shall be transferred to the CAAB for administration of those funds or assets consistent with their charitable, eleemosynary, benevolent, educational, or similar public purpose and the provisions of this subsection.*
  - 2. *For those legal actions settled prior to the effective date of this Act, except for the settlement outlined in subsection (1)(d) of this section to which subsection (3) of this section shall apply, where charitable, eleemosynary, benevolent, educational, or similar type trust funds or assets, are recovered by way of judgment or settlement, and to which this subsection would otherwise be applicable, the federal and state courts where those actions are pending are encouraged to transfer any trust funds or assets remaining after administration to the CAAB.*

- (5) (a) *Any other provision of the common law or statutory law to the contrary notwithstanding, and except as otherwise provided in this section, any funds or assets of any kind or nature whatsoever, including, but not limited to, public funds as defined in KRS 446.010 and private funds or assets when recovered by judgment or settlement of a legal action by or on behalf of the Commonwealth of Kentucky, including ex rel. or other type actions filed by a duly elected statewide constitutional officer under that officer's statutory or common law authority shall be deemed public funds, and shall be deposited into an account maintained by the Finance and Administration Cabinet.*
- (b) *No funds to which this subsection applies when deposited in an account maintained by the Finance and Administration Cabinet shall be disbursed without a specific legislative appropriation of the deposited funds by the General Assembly while in regular or special legislative session.*
- (6) *The common law, including the common law authority of any duly elected statewide constitutional officer, is specifically abrogated to the extent it is inconsistent with the provisions of this section.*
- (7) *The provisions of this section shall not apply to actions by or on behalf of the Commonwealth or its duly elected statewide constitutional officers, if the recovery sought and received is for specific individuals identified as parties to the action either by individual Social Security number, other individual identifying number, or by the individual's proper name.*
- (8) *Notwithstanding any statute or common law to the contrary, and except as provided in this subsection, an elected statewide constitutional officer or any other state official or agency shall not file or participate as a plaintiff, petitioner, party, intervening party, attorney, or amicus curiae in any litigation challenging the constitutionality of this section. State funds and employee time shall not be expended by any person or agency in support of such a challenge. If the constitutionality of this section is challenged, the Finance and Administration Cabinet shall be the sole named respondent in that litigation, and shall consult with the Legislative Research Commission regarding defense of that litigation.*

Section 2. KRS 15.020 is amended to read as follows:

The Attorney General is the chief law officer of the Commonwealth of Kentucky and all of its departments, commissions, agencies, and political subdivisions, and the legal adviser of all state officers, departments, commissions, and agencies, and when requested in writing shall furnish to them his written opinion touching any of their official duties, and shall prepare proper drafts of all instruments of writing required for public use, and shall exercise all common law duties and authority pertaining to the office of the Attorney General under the common law, except when modified by statutory enactment. He shall communicate with the Legislative Research Commission as required by KRS 418.075. ***Except as otherwise provided in subsection (8) of Section 1 of this Act and Section 8 of this Act***, he shall appear for the Commonwealth in all cases in the Supreme Court or Court of Appeals wherein the Commonwealth is interested, and shall also commence all actions or enter his appearance in all cases, hearings, and proceedings in and before all other courts, tribunals, or commissions in or out of the state, and attend to all litigation and legal business in or out of the state required of him by law, or in which the Commonwealth has an interest, and any litigation or legal business that any state officer, department, commission, or agency may have in connection with, or growing out of, his or its official duties, except where it is made the duty of the Commonwealth's attorney or county attorney to represent the Commonwealth. When any attorney is employed for any said agency, the same shall have the approval of such agency before such employment. ***If any funds of any kind or nature whatsoever are recovered by or on behalf of the Commonwealth, in any action, including an ex rel. action where the Attorney General has entered an appearance or is a party according to statutory or common law authority, those funds shall be handled under Section 1 of this Act.***

Section 3. KRS 15.060 is amended to read as follows:

The Attorney General shall:

- (1) With the assistance of the Auditor of Public Accounts and the Revenue Cabinet, investigate the condition of all unsatisfied claims, demands, accounts and judgments in favor of the Commonwealth.
- (2) When he believes that any fraudulent, erroneous or illegal fee bill, account, credit, charge or claim has been erroneously or improperly approved, allowed or paid out of the Treasury to any person, institute the necessary actions to recover the same. To this end he may employ assistants and experts to assist in examining the fee bills, accounts, settlements, credits and claims, and the books, records and papers of any of the officers of the Commonwealth.

- (3) Institute the necessary actions to collect and cause the payment into the Treasury of all unsatisfied claims, demands, accounts and judgments in favor of the Commonwealth, except where specific statutory authority is given the Revenue Cabinet to do so.
- (4) *Comply with Section 1 of this Act, if any funds of any kind or nature whatsoever are recovered by or on behalf of the Commonwealth, in any legal action, including an ex rel. action in which the Attorney General has entered an appearance or is a party under statutory or common law authority.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

***KRS 367.190, 367.200, 367.210, 367.220 and KRS 367.110 to 367.360 to the contrary notwithstanding, if funds of any kind or nature whatsoever are recovered by or on behalf of the Commonwealth in a legal action, including an ex rel. action in which the Attorney General has entered an appearance or is a party under statutory or common law authority, those funds recovered shall be handled in accordance with Section 1 of this Act.***

Section 5. The provisions of subsection (3) of Section 1 of this Act shall apply to the settlement of the actions set out in Section 1(1)(d) of this Act and specifically to the proceeds of a settlement currently in a restricted account in the Finance and Administration Cabinet, titled the "Anthem Settlement Fund" pursuant to Agreed Order, entered on December 16, 1999, in the case of Commonwealth of Kentucky, ex rel., Attorney General Albert B. Chandler, III, v. Anthem Insurance Companies, Inc., Southeastern Group, Inc., Southeastern United Medigroup, Inc., Franklin Circuit Court, Division No. I, 97-CI-01566.

Section 6. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 7. Because it is critical that funds or assets acquired through litigation by or on behalf of the Commonwealth be properly appropriated by the General Assembly and disbursed in an accountable, orderly and appropriate fashion, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Section 8. Notwithstanding any statute or common law to the contrary, and except as provided in this section, an elected statewide constitutional officer or any other state official or agency shall not file or participate as a plaintiff, petitioner, party, intervening party, attorney, or amicus curiae in any litigation challenging the constitutionality of any portion of this Act. State funds and employee time shall not be expended by any person or agency in support of such a challenge. If the constitutionality of any portion of this Act is challenged, the Finance and Administration Cabinet shall be the sole named respondent in that litigation, and shall consult with the Legislative Research Commission regarding defense of that litigation.

Section 9. The common law is specifically abrogated to the extent inconsistent with the provisions of Sections 1 to 8 of this Act.

**Approved April 21, 2000**

## **CHAPTER 484**

**(HB 636)**

AN ACT relating to retirement.

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

Section 1. KRS 67A.360 is amended to read as follows:

Words and phrases, wherever used in KRS 67A.360 to 67A.690, unless a different meaning is clearly indicated by the context, shall have the following meanings:

- (1) "Fund" shall mean the "Policemen's and Firefighter's Retirement Fund of the .... Urban-County Government";
- (2) "Government" shall mean the governmental unit of any urban-county government in the Commonwealth of Kentucky, including the governmental unit of any former urban-county government which changes its form of government, class or other status;
- (3) "Department" shall mean the police department or the fire department of a government;



- (4) "Board" shall mean the board of trustees provided in KRS 67A.360 to 67A.690 as the agency responsible for the direction and operation of the affairs and business of the fund. The board shall hold title to all assets of the fund;
- (5) "Member" shall mean any member of the police or fire department who is included in the membership of the fund;
- (6) "Service" shall mean actual employment in a department of a government, or a city existing within the boundaries of the government immediately prior to the establishment of an urban-county government, for salary or compensation, or service otherwise creditable as herein provided;
- (7) "Prior service" shall mean service rendered prior to the date of establishment of the fund or the fund of a city existing within the boundaries of the government immediately prior to the establishment of an urban-county government;
- (8) "Membership service" shall mean service rendered on or after the date of establishment of the fund or the fund of a city existing within the boundaries of the government immediately prior to the establishment of an urban-county government;
- (9) "Total service" shall mean prior service, membership service, and ***service credit purchased by a member as provided in Section 2 of this Act***~~[military service]~~;
- (10) "Regular interest" shall mean such rate of interest as shall be fixed by the board, provided that for the first five (5) years of operation of the fund the rate shall be not less than three percent (3%) per annum, compounded annually;
- (11) "Occupational disability" shall mean disability due to occupational causes, including but not limited to injury or disease. The presumption of contracting disease "while on active duty as a result of strain or the inhalation of noxious fumes, poisons or gases" created by KRS 79.080 shall be a presumption of "occupational disability" hereunder;
- (12) "Occupational death" shall mean death due to occupational causes, including, but not limited to, injury or disease;
- (13) "Average salary" shall mean the highest average annual salary of the member for any three (3) consecutive years of service within the total service of the member, including employee contributions picked up after August 1, 1982 pursuant to KRS 67A.510(2);
- (14) The masculine pronoun, wherever used, shall include the feminine pronoun; and widow shall include widower;
- (15) The fiscal year of the fund shall date from July 1 of any year to June 30 of the next year following;
- (16) "Total disability" shall mean a disability which substantially precludes a person from performing with reasonable regularity the substantial and material parts of any gainful work or occupation in the service of the department that he would be competent to perform were it not for the fact that the impairment is founded upon conditions which render it reasonably certain that it will continue indefinitely;
- (17) "Minor child" includes, as applicable, a child under the age of twenty-three (23) still engaged in full-time education;~~[and]~~
- (18) "Mayor," "commissioner of finance," "commissioner of public safety," and "director of ***human resources***"~~[personnel]~~ shall mean the persons holding the office or job most closely resembling the ordinary meaning of such terms, in the event that a government does not have an office so described; ***and***
- (19) ***"Salary" means the member's actual base rate of pay and any other compensation that the government chooses to include. "Salary" may include longevity pay, training incentive pay, and hazardous duty and special duty pay but shall exclude uniform and equipment allowances, uniform maintenance allowances, education incentive pay, annual payments for excess accumulated sick leave credit, compensation for overtime work, except for scheduled overtime of fire department members, and any other compensation excluded by the government.***

Section 2. KRS 67A.402 is amended to read as follows:

- (1) (a) ***Except as otherwise provided in paragraph (b) of this subsection, any member who has at least five (5) years of total service credit as a member of the fund may purchase service credit, that is not otherwise purchasable, for up to a maximum of four (4) years of service. The member shall not be***

*entitled to purchase any service credit for which he has been given credit in another defined benefit retirement fund; however, the member may purchase government service credit by transferring funds directly from another public defined benefit retirement plan if the member provides proof that he is not eligible for a retirement benefit from the other public defined benefit retirement fund*~~[was honorably discharged from any branch of the armed services of the United States may purchase service credit for up to a maximum of four (4) years of active military service within five (5) years from July 15, 1990, or from the date he becomes a member of the fund, whichever occurs later].~~

- (b) *Any provision of law to the contrary notwithstanding, no service credit purchase under this subsection shall be counted toward the accrual of a health or other medical insurance retirement benefit in this retirement system.*
- (2) A member who purchases service credit~~[for military service]~~ shall *file an application with the board within the five (5) year period. The member shall* pay to the fund~~[in a lump sum one hundred percent (100%) of]~~ an amount which shall be determined by actuarial method consistent with the methods prescribed for determining the purchase of prior service credit *which shall be the principal.*
- (3) *Payment of the principal shall be made in a lump sum or payment of the principal and interest may be made by installments. Interest, at the annual rate of return on investments of the fund for the preceding year, shall be established by the commissioner of finance on or before August 31 of each year and shall be based on financial statements of the fund for the year ending June 30, except that the interest shall not be less than three percent (3%). Interest shall be added to the principal for the time period for which installments are to be made.*
- (4) *If payments are made by installment, the cost of purchasing the service credit shall be recalculated annually based upon the member's current salary, the interest rate established by the commissioner of finance, and other factors required by the actuarial method. The member's payments shall be adjusted annually to reflect the annual recalculation of the cost of purchasing service credit. Installment payments shall be consecutive and the total number of monthly installments shall not be less than twelve (12) or more than two hundred forty (240). The member shall pay the installments by payroll deduction.*
- (5) *Payments shall not be considered accumulated contributions of the member and shall not be picked up by the urban-county government. No employer contribution shall be paid on the installments. The board shall determine how much of the total cost represents payment for one (1) quarter of the service to be purchased and the member shall receive service credit for one (1) quarter of the service each time this amount is paid.*
- (6) *If the member dies, retires, or ceases to be a member of the fund before he has made all installment payments for the purchase of service credit, the fund shall refund to the member, his qualified surviving spouse, or his estate, the portion of any payment that does not represent a full quarter of service.*
- (7) *A member who does not repay a refund of contributions, as provided in subsection (3) of Section 6 of this Act, shall be entitled to purchase service credit for prior membership service.*
- (8) *The member may cancel a purchase obligation at any time, but once canceled, a member shall have forever forfeited, waived, and relinquished the right to purchase service credit.*

Section 3. KRS 67A.430 is amended to read as follows:

- (1) The rate of retirement annuity shall be two and one-half percent (2.5%) of average salary, as defined in KRS 67A.360(13), for each year of total service~~[up to and including thirty (30) years, subject to a maximum of seventy five percent (75%) of average salary]~~. Fractional periods of service shall be considered in the calculation of such annuities according to the aforesaid rate. Provided, however, that no retiree, or his surviving widow, whether he retired before or after June 16, 1972, under this section shall receive a pension of less than \$100 a month and when Social Security benefits are increased the minimum shall be increased by a like amount, provided that the increase shall not exceed five percent (5%).
- (2) Any retiree or surviving spouse who as of January 1, 1996, is receiving a monthly annuity of less than the amount established as the poverty guideline for a single person by the United States Department of Commerce shall have the pension increased to the amount established as the poverty guideline for calendar year 1996, and the board may increase this annuity as provided by KRS 67A.690(1).

Section 4. KRS 67A.460 is amended to read as follows:

- (1) If a total and permanent occupational disability occurs, the member shall receive an annuity calculated pursuant to subsection (2) of this section. This benefit shall begin at the time his salary ceases, and shall be paid during his entire lifetime. At the member's death, his eligible widow, if any, shall receive the benefits as provided under KRS 67A.492, and his minor children, if any, shall receive benefits as provided under KRS 67A.440.
- (2) The minimum annuity rate for a total and permanent occupational disability shall be sixty percent (60%) of the member's last rate of salary. The minimum rate shall be increased by one half (1/2) of the amount by which the member's percentage of disability exceeds twenty percent (20%), but this increase shall be not more than fifteen percent (15%) of the member's last rate of salary and the member's total annuity shall not be greater than seventy-five percent (75%) of his last rate of salary.
- (3) The member's percentage of disability shall be the average of the impairment rating determined by two (2) physicians selected by the board under KRS 67A.480, using the latest edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment".
- (4) ***If a member is eligible for a service retirement annuity under KRS 67A.410(1) or (2) and the amount of his service retirement annuity would exceed the amount of his total and permanent occupational disability annuity, as determined by the board under this section, then the member may elect to receive an additional service retirement annuity payment equal to the amount by which his service retirement annuity would have exceeded the amount of his total and permanent occupational disability annuity, in addition to his disability annuity, by filing with the board the application required by KRS 67A.410. A member who is eligible for a certificate entitling him to a service retirement annuity under KRS 67A.410(2) shall not be eligible to receive this additional service retirement annuity payment until he attains the age of forty-six (46).***

Section 5. KRS 67A.492 is amended to read as follows:

- (1) Upon the death of a retired member, his surviving widow shall receive an annuity equal to sixty percent (60%) of the member's final annuity, or of the member's final rate of pay, whichever is greater. The surviving widow must have been married to the member for at least ***one (1) year prior to the member's death or*** six (6) months prior to ***the member's*** retirement in order to be eligible for the benefits provided in this section.
- (2) Any member who retires on July 15, 1990, or thereafter, shall have the option at retirement to purchase an increased annuity allowance for his surviving widow. The amount of any such optional survivorship allowance shall be actuarially equivalent to the amount of retirement allowance otherwise payable to him. The member may elect either of two (2) options:
  - (a) Survivorship seventy-five percent (75%). The member may elect to receive a decreased retirement allowance during his lifetime and have seventy-five percent (75%) of such retirement allowance continue after his death to his eligible widow until her death or remarriage.
  - (b) Survivorship one hundred percent (100%). The member may elect to receive a decreased retirement allowance during his lifetime and have such retirement allowance continued at the same rate after his death to his eligible widow until her death or remarriage.

Section 6. KRS 67A.500 is amended to read as follows:

- (1) Upon withdrawal from service prior to retirement, a member shall be entitled to receive a refund of the amount of contributions made by the member or picked up by the urban-county government pursuant to KRS 67A.510(2) after the date of establishment, without interest. Payments of picked up employee contributions shall be subject to state and federal tax as appropriate.
- (2) Any member receiving a refund of contributions shall thereby ipso facto forfeit, waive, and relinquish all accrued rights and benefits in the system, including all credited and creditable service. The board may, in its discretion, regardless of cause, withhold payment of a refund for a period not to exceed six (6) months after receipt of an application from a member.
- (3) Any member who has received a refund shall be considered a new member upon subsequent reemployment if such person qualifies for membership under ***KRS 67A.360 to 67A.690***~~[the provisions hereof]~~. ***Any member who is reemployed after withdrawing from service and who received a refund of contributions shall, within ninety (90) days of his reemployment or prior to retirement, whichever occurs first, [After the completion of at least five (5) years of continuous membership service following his latest reemployment, such member shall have the right to] make a repayment to the system of the amount or amounts previously received as a refund, including [six percent (6%)] interest at the rate determined by the board to be the actual rate of return on***

*investments made by the board, but not less than three percent (3%) per annum, from the dates of the refund to the date of repayment, compounded annually. Upon the restoration of such refunds, ~~as herein provided,~~ such member shall have reinstated to his account all credited service represented by the refunds of which repayment has been made. Repayment of refunds by any member shall include all refunds received by a member prior to the date of his last withdrawal from service, with interest, and shall be made in a single lump sum payment. ~~Such~~ Repayments shall not be picked up by the urban-county government. **If repayment is not made within the specified time period, the member shall have forever forfeited, waived, and relinquished the right to have reinstated to his account the credited service represented by the refunds for which repayment was not made, but shall not be precluded from purchasing service credit as provided in Section 2 of this Act.***

- (4) Any member who has received, or who is entitled to receive, a refund, but who within six (6) months of becoming entitled to receive such refund, qualifies for membership under the provisions of a fund in effect in another government, or city of the second class, adopted pursuant to law, shall have the option of paying his refund into such other fund, in which event he shall be deemed a member of such other fund and his account therein shall be credited with all contributions, including those picked up pursuant to KRS 67A.510(2), and service under his original fund.

Section 7. KRS 67A.530 is amended to read as follows:

- (1) The responsibility for the proper operation of the fund and the direction of its policies shall be vested in a board of trustees of **twelve (12)**~~eleven (11)~~ members, consisting of the mayor, the commissioner of public safety, the commissioner of finance, the director of **human resources**~~personnel~~, **two (2)**~~one (1)~~ retired **members**~~member~~ of the fund, the chiefs of the police and fire department, and two (2) active members of each department, who shall be elected by ballot by the active members of the respective departments and shall serve for alternating terms of two (2) years under rules adopted by the board. One of the active members representing each department shall be elected on even-numbered years; and the other active member representing such department shall be elected on odd-numbered years. In the event of a vacancy of an elected member, the pension board shall fill the vacancy by appointment until the next regular election.
- (2) The retired fund **members**~~member~~ shall be selected by retired fund members by ballot to serve ~~a~~ two (2) year **terms**~~term~~. **One (1) retired fund member shall be a retired fire department member, and the other shall be a retired police department member.** Retired fund members **of a department** shall submit the names of at least three (3) nominees **from their department** to the pension board not less than three (3) months before the term of office is due to expire. ~~For the term beginning October 15, 1990, names of nominees shall be submitted to the pension board by no later than July 15, 1990.~~ The pension board shall cause to be prepared an official ballot which shall be distributed to all retired fund members by mail to their last known address. The ballot shall contain the name, address, and former **department**~~position~~ of each of the ~~three (3)~~ candidates. Retired fund members shall vote for one (1) candidate **from each department** by marking a square opposite the name of the candidate of his choice and returning the marked ballot to the secretary of the pension board. Votes shall be tabulated by a committee of three (3) pension board members appointed by the chairman for that purpose. The tabulating committee shall report in writing to the pension board the results of the election and the name of the retired fund member who shall serve on the board. In the event of a vacancy of an elected retired fund member of the board, the pension board shall fill the vacancy by appointment until the next regular election.
- (3) It is the intention of KRS 67A.360 to 67A.690 that the one elected member from each department on the pension boards of funds serving immediately prior to the adoption of the urban-county form of government shall retain his office for one (1) year, and that the other elected member from each department shall be elected for a two (2) year term.

Section 8. KRS 67A.560 is amended to read as follows:

- (1) The officers of the board shall consist of a president, vice president, and a secretary. The president shall be the chief executive officer of the board, shall preside at all meetings and shall appoint all necessary committees. The vice president shall serve as president in the absence of the president.
- (2) The board shall designate a secretary who may be a member of the board and shall fix his compensation. The secretary shall keep a full account of all proceedings of the board and shall give notice of all meetings and give effect to all resolutions, orders, and directives of the board. He shall be in charge of the detailed affairs of administration of the fund; shall keep the record of proceedings of all meetings; shall keep all books, files, records, and accounts of the fund; shall receive all applications for annuities, benefits, and refunds; shall

prepare periodic reports relative to the financial operations of the fund for the information of the board and its membership; shall compile all statistics pertinent to the operations of the fund; and shall answer all correspondence received by the board.

- (3) The commissioner of finance shall be ex officio treasurer of the board and custodian of the fund. He shall have custody of all cash and securities of the fund, subject to the authority and directives of the board, and shall keep such accounts and records as may be prescribed by the board. These accounts and records shall be subject to inspection of the board or any member thereof.
- (4) The commissioner of finance shall, within ten (10) days after his selection, execute a bond to the board, with good surety, in such penal sum as the board directs, to be approved by the board, conditioned upon the faithful performance of the duties of his office, and that he will safely keep and will truthfully account for all money and properties that come into his hands as treasurer of the fund, and that upon the expiration of his term of office, he will deliver to his successor all securities, unexpended moneys, and other properties that come into his hands as treasurer of the fund. The bond will be filed with the secretary of the board, and suit thereon may be filed in the name of the board for use of the board or any person injured by its breach. The premium on said bond may be paid out of the fund.
- (5) The commissioner of law of the government shall serve as legal adviser to the board on all matters pertaining to the fund involving suits or actions at law, and on any questions of the interpretation of the provisions hereof, except that the board shall have the power to hire independent counsel for any suits or actions of law, the cost of such independent counsel to be borne by the pension fund.
- (6) The board may employ actuarial assistance from time to time to advise it in matters relating to the technical aspects of operations of the fund, to assist in the preparation of the periodic financial reports, to determine rates of ~~urban-county~~<sup>city</sup> contribution and to make periodic analyses of the operation of the fund. Within six (6) months after the establishment of an urban-county form of government, an actuarial study shall be made for the purpose of recommending rates, mortality, disability, retirement, separations from service, and other essential factors. **Beginning July 1, 2000, and** at least once every ~~two (2)~~<sup>three (3)</sup> years thereafter an actuarial survey and investigation shall be made of the operating experience of the fund, including a study of the rates, mortality, disability, retirement, separations from service, and other essential factors. The actuary shall recommend all mortality and interest tables to be adopted by the board, and shall recommend, if appropriate, cost-of-living increases as provided in KRS 67A.430. In the event such survey is not undertaken as provided herein, any member of the fund or any annuitant may obtain an injunction or mandamus requiring such survey and investigation, or may obtain the appointment of a person or persons to make such study and investigation, from the Circuit Court of any county in which the government is located.
- (7) The board shall establish rules and regulations to implement the provisions of KRS 67A.360 to 67A.690 which shall not be inconsistent therewith.

**Approved April 21, 2000**

## **CHAPTER 485**

**(HB 641)**

AN ACT relating to retirement.

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

Section 1. KRS 161.155 is amended to read as follows:

- (1) As used in this section:
  - (a) "Teacher" shall mean any person for whom certification is required as a basis of employment in the common schools of the state;
  - (b) "Employee" shall mean any person, other than a teacher, employed in the public schools, whether on a full or part-time basis;
  - (c) "Immediate family" shall mean the teacher's spouse, children including stepchildren, grandchildren, parents and spouse's parents, grandparents, and spouse's grandparents, without reference to the location or residence of said relative, and any other blood relative who resides in the teacher's home; and

- (d) "Sick leave bank" shall mean an aggregation of sick leave days contributed by teachers for use by teachers who have exhausted all sick leave and other available paid leave days.
- (2) Each district board of education shall allow to each teacher in its common school system not less than ten (10) days of sick leave during each school year, without deduction of salary. Sick leave shall be granted to a teacher if he presents a personal affidavit or a certificate of a physician stating that the teacher was ill, that the teacher was absent for the purpose of attending to a member of his immediate family who was ill, or for the purpose of mourning a member of his immediate family. The ten (10) days of sick leave herein granted may be taken by a teacher on any ten (10) days of the school year and shall be granted in addition to accumulated sick leave days that have been credited to the teacher under the provisions of subsection (3) of this section.
- (3) Days of sick leave not taken by a teacher during any school year shall accumulate without limitation and be credited to that teacher. Accumulated sick leave may be taken in any school year. Any district board of education may, in its discretion, allow teachers in its common school system sick leave in excess of the number of days prescribed in this section and may allow school district employees and teachers to use up to three (3) days' sick leave per school year for emergency leave pursuant to KRS 161.152(3). Any accumulated sick leave days credited to a teacher shall remain so credited in the event he transfers his place of employment from one (1) school district to another within the state or to the Kentucky Department of Education or transfers from the Department of Education to a school district after June 30, 1985.
- (4) Accumulated days of sick leave shall be granted to a teacher if, prior to the opening day of the school year, an affidavit or a certificate of a physician is presented to the district board of education, stating that the teacher is unable to commence his duties on the opening day of the school year, but will be able to assume his duties within a period of time that the board determines to be reasonable.
- (5) Any school employee may repurchase previously used sick leave days with the concurrence of the local school board by paying to the district an amount equal to the total of all costs associated with the used sick leave.
- (6) A district board of education may adopt a plan for a sick leave bank. The plan may include limitations upon the number of days a teacher may annually contribute to the bank and limitations upon the number of days a teacher may annually draw from the bank. Only those teachers who contribute to the bank may draw upon the bank. Days contributed will be deducted from the days available to the contributing teacher. The sick leave bank shall be administered in accordance with a policy adopted by the board of education.
- (7)
  - (a) A district board of education shall establish a sick leave donation program to permit teachers to voluntarily contribute sick leave to teachers in the same school district who are in need of an extended absence from school. A teacher who has accrued more than fifteen (15) days sick leave may request the board of education to transfer a designated amount of sick leave to another teacher who is authorized to receive the sick leave donated. A teacher may not request an amount of sick leave be donated that reduces his or her sick leave balance to less than fifteen (15) days.
  - (b) A teacher may receive donations of sick leave if:
    - 1. The teacher or a member of his or her immediate family suffers from a medically certified illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the teacher to be absent for at least ten (10) days;
    - 2. The teacher's need for the absence and use of leave are certified by a licensed physician;
    - 3. The teacher has exhausted his or her accumulated sick leave, personal leave, and any other leave granted by the school district; and
    - 4. The teacher has complied with the school district's policies governing the use of sick leave.
  - (c) While an employee is on sick leave provided by this section, he or she shall be considered a school district employee, and his or her salary, wages, and other employee benefits shall not be affected.
  - (d) Any sick leave that remains unused, is not needed by a teacher, and will not be needed in the future shall be returned to the teacher donating the sick leave.
  - (e) The board of education shall adopt policies and procedures necessary to implement the sick leave donation program.
- (8) A teacher may use up to thirty (30) days of sick leave following the birth or adoption of a child or children. Additional days may be used when the need is verified by a physician's statement.

- (9) After July 1, 1982, a district board of education may compensate, at the time of retirement ***or upon the death of a member in active contributing status at the time of death who was eligible to retire by reason of service, an employee or a teacher, or the estate of an employee or a teacher,*** for each unused sick leave day. The rate of compensation for each unused sick leave day shall be based on a percentage of the daily salary rate calculated from the employee's or teacher's last annual salary, not to exceed thirty percent (30%). Payment for unused sick leave days shall be incorporated into the annual salary of the final year of service; provided that the member makes the regular retirement contribution for members on the sick leave payment. The accumulation of these days includes unused sick leave days held by the employee or teacher at the time of implementation of the program.
- (10) Any statute to the contrary notwithstanding, employees and teachers who transferred from the Department of Education to a school district, from a school district to the Department of Education, or from one (1) school district to another school district after July 15, 1981, shall receive credit for any unused sick leave to which the employee or teacher was entitled on the date of transfer. This credit shall be for the purposes set forth in subsection (9) of this section.
- (11) ***The death benefit provided in subsection (9) of this section may be cited as the Baughn Benefit.***

Approved April 21, 2000

## CHAPTER 486

(HB 645)

AN ACT relating to city utilities.

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

Section 1. KRS 96.740 is amended to read as follows:

- (1) Any municipality desiring to acquire and operate an electric plant under the provisions of KRS 96.550 to 96.900 or any municipality now owning and operating an electric plant may elect to operate under the provisions of KRS 96.550 to 96.900 by enacting an ordinance declaring therein the desire and intention of the municipality to accept and operate under the provisions of KRS 96.550 to 96.900 and by providing in ~~the said~~ ordinance that the municipality accepts and agrees to all of the provisions of KRS 96.550 to 96.900, and to all of ~~the said~~ provisions as they may be from time to time amended by the acts of the General Assembly of Kentucky. The ordinance shall further authorize the mayor or chief executive to appoint a board, subject to the approval of the appointments by the governing body of the municipality as hereinafter in KRS 96.750 to 96.900 provided. Upon the passage of ~~the said~~ ordinance the mayor or chief executive of any ~~such~~ municipality may, with the approval of the governing body of the municipality, appoint a board of public utilities, consisting of four (4) residents of the municipality who have resided therein for not less than one (1) year next preceding the date of the appointment. ~~The said~~ board must be appointed and qualified before the municipality shall have any authority to proceed further under the provisions of KRS 96.550 to 96.900. ~~The said~~ board, when so appointed and qualified, shall be and hereby is declared to be a body politic and corporate, with perpetual succession; and ~~said body~~ may contract and be contracted with, sue and be sued, in and by its corporate name, and have and use a corporate seal. The name of ~~the said~~ board shall be "Electric Plant Board of the City of ....." (The name of the municipality to be inserted.)
- (2) No person shall be appointed a member of the board who has, within the last two (2) years next before his ***or her*** appointment, held any public office, or who is related within the third degree to the mayor or any member of the governing body of the municipality.
- (3) Neither the board nor the superintendent appointed by the board shall appoint to any subordinate office which it may create nor employ in any capacity any person who is related within the third degree to any member of the board or to the mayor of ~~the said~~ municipality or to any member of the governing body of ~~that said~~ municipality. No officer or employee of a municipality shall be eligible for such appointment until at least one (1) year after the expiration of the term of his ***or her*** public office, or employment, ***except that the one (1) year waiting period after the expiration of the term of public office or employment shall not apply to an employee of a municipality that is not related within the third degree to the mayor or any member of the governing body of the municipality, at the time of appointment or employment by the board;*** ~~and any payment made in violation of this clause of this section shall be illegal and the superintendent and the board~~

~~members voting for or approving or consenting to same shall be personally liable for the amount so paid and this liability may be enforced by suit by any citizen of the municipality].~~

- (4) The members of the board shall be citizens, taxpayers, and legal voters of ~~the~~~~[such]~~ municipality and shall not at the time of the appointment be indebted to the municipality either directly or indirectly or be surety on the official bond of any officer of ~~the~~~~[said]~~ municipality.
- (5) If at any time during his *or her* term of office a member of the board becomes a candidate for or is elected or appointed to any public office, he *or she* shall automatically vacate his *or her* membership from the board, and another person shall be appointed to his *or her* place.
- (6) The municipality shall pay the cost of securing bonds for board members from a surety company qualified to do business in Kentucky, and ~~[said]~~ members shall execute bond in an amount required by resolution of the governing body, and conditioned upon the faithful performance of their official duties.
- (7) Each member of the board shall qualify by taking the oath required by Section 228 of the Constitution.

Section 2. KRS 96.520 is amended to read as follows:

- (1) Any city of the second, third, fourth, fifth, or sixth class may purchase, establish, erect, maintain, and operate electric light, heat, and power plants, with extensions and necessary appurtenances, within or without the corporate limits of the city, for the purpose of supplying the city and its inhabitants with electric light, heat, power, and telecommunications. ***Any city-owned utility created under this section that provides municipal telephone service shall be regulated as to that service by KRS Chapter 278. For the***~~[and, for this]~~ purpose, ***of providing electric light, heat, power, and telephone services, a city of the second, third, fourth, fifth, or sixth class*** may enter into and fulfill the terms of an interconnection agreement with any electric or combination electric or gas utility whose rates and service are regulated by the Public Service Commission of Kentucky (or, if not so regulated, operating and having customers only outside of Kentucky), or an affiliate entirely owned by or under complete common ownership with an electric or combination electric and gas utility whose rates and service are regulated by the Public Service Commission of Kentucky. ***Any city of the second, third, fourth, fifth, or sixth class***~~[and]~~ may establish, erect, maintain, and operate plants, individually or jointly with any of these utilities or utility affiliate. In the case of any joint action, a city and utility or utility affiliate may provide by contract for their respective responsibilities, for operation and maintenance and for the allocation of expenses, revenues, and power. If in the accomplishment of this purpose a city at any time has capacity or energy surplus to the immediate needs of the city and its inhabitants, the surplus, if not disposed of for consumption outside this state, may be disposed of only to an electric or combination electric and gas utility whose rates and service are regulated by the Public Service Commission of Kentucky, or to an affiliate entirely owned by or under complete common ownership with such a utility.
- (2) The city shall proceed in the same manner and be governed by the same conditions as are set forth in KRS 96.360 to 96.510 for the acquisition and operation of a water system, with the following exceptions:
  - (a) A petition calling for an election on the proposition of purchasing an existing plant shall be signed by at least two hundred (200) qualified voters of the city, rather than by twenty-five percent (25%) of the qualified voters of the city who voted at the last preceding regular election.
  - (b) Notwithstanding any other laws, bonds may be issued bearing interest at a rate or rates and may be sold on a basis to yield interest at a rate or rates as may be determined upon the sale of the bonds.
  - (c) Bonds of an issue, or bonds of two (2) or more issues consolidated for the purposes of sale, which equal or exceed \$10,000,000 in the aggregate principal amount may be sold at public or private sale without compliance with KRS 424.360.
- (3) This section constitutes a method for the acquisition of an electric light, heat, and power plant by any city of the second, third, fourth, fifth, or sixth class in addition or as an alternate to any other method authorized by statute, provided that the city was operating an electric plant on June 1, 1942, and has not elected to operate under KRS 96.550 to 96.900. No proceedings shall be required for the acquisition of any electric light, heat, or power plant or the issuance of bonds under this section except the proceedings required by KRS 96.360 to 96.510.

Approved April 21, 2000



**CHAPTER 487****(HB 667)**

AN ACT relating to mental health.

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

Section 1. KRS 202A.028 is amended to read as follows:

- (1) Following an examination by a qualified mental health professional and a certification by that professional that the person meets the criteria for involuntary hospitalization, a judge may order the person hospitalized for a period not to exceed seventy-two (72) hours, excluding weekends and holidays. For the purposes of this section, the qualified mental health professional shall be a staff member of a regional community mental health or mental retardation program, ***unless the person to be examined is hospitalized and under the care of a licensed psychiatrist, in which case the qualified mental health professional shall be the psychiatrist if the psychiatrist is ordered, subject to the court's discretion, to perform the required examination.***
- (2) Any person who has been admitted to a hospital under subsection (1) of this section shall be released from the hospital within seventy-two (72) hours, excluding weekends and holidays, unless further held under the applicable provisions of this chapter.
- (3) Any person admitted to a hospital under subsection (1) of this section or transferred to a hospital while ordered hospitalized under subsection (1) of this section shall be transported from the person's home county by the sheriff of that county or other peace officer as ordered by the court. The sheriff or other peace officer may, upon agreement of a person authorized by the peace officer, authorize the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the person to the hospital. The transportation costs of the sheriff, other peace officer, ambulance service, or other private agency on contract with the cabinet shall be paid by the cabinet in accordance with an administrative regulation promulgated by the cabinet, pursuant to KRS Chapter 13A.
- (4) Any person released from the hospital under subsection (2) of this section shall be transported to the person's county of discharge by a sheriff or other peace officer, by an ambulance service designated by the cabinet, or by other appropriate means of transportation which is consistent with the treatment plan of that person. The transportation cost of transporting the patient to the patient's county of discharge when performed by a peace officer, ambulance service, or other private agency on contract with the cabinet shall be paid by the cabinet in accordance with an administrative regulation issued by the cabinet pursuant to KRS Chapter 13A.
- (5) No person who has been held under subsection (1) of this section shall be held in jail pending evaluation and transportation to the hospital.

**Approved April 21, 2000**

**CHAPTER 488****(HB 677)**

AN ACT relating to real estate brokerage.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 324 IS CREATED TO READ AS FOLLOWS:

- (1) ***All actively licensed agents except those licensees exempt under subsection (5) of Section 7 of this Act, shall successfully complete six (6) classroom hours of continuing education each year. Three (3) of the six (6) hours shall be in real estate law. The commission shall promulgate administrative regulations to establish procedures for implementing this requirement.***
- (2) ***In order to qualify to teach continuing education courses, all continuing education instructors shall maintain a minimum rating as prescribed by the commission by the promulgation of administrative regulations.***

SECTION 2. A NEW SECTION OF KRS CHAPTER 324 IS CREATED TO READ AS FOLLOWS:

- (1) **No person shall:**
- (a) ***Solicit or request a referral fee from a real estate licensee unless that person introduced the business to the real estate licensee from whom the referral fee is sought and a contractual referral fee relationship exists between the person and the real estate licensee; or***
  - (b) ***Threaten to reduce or withhold employee relocation benefits or to take other action adverse to the interests of a client of a real estate licensee because of an agency relationship.***
- (2) ***No real estate licensee, relocation firm, or firm with a corporate relocation policy or benefits, or anyone on behalf of any licensee or firm, shall counsel a client of another real estate licensee regarding the manner in which the client may terminate or amend an existing listing contract, buyer agency agreement, or other agency relationship. Communicating corporate relocation policy or benefits to a transferring employee shall not be considered a violation of this section, as long as the communication does not involve advice or encouragement regarding the manner in which the client may terminate or amend an existing agency relationship.***
- (3) ***Violation of this section by a broker or sales associate shall be considered improper conduct as referred to in subsection (4)(w) of Section 17 of this Act. Violation of this section by unlicensed persons shall be subject to the penalties in KRS 324.990.***

Section 3. KRS 324.010 is amended to read as follows:

~~{(1)}~~ As used in this chapter, unless the context requires otherwise:

- (1)~~{(a)}~~ "Real estate brokerage" means a single, multiple, or continuing act of ***dealing in time shares or options***, selling or offering for sale, buying or offering to buy, negotiating the purchase, sale, or exchange of real estate, engaging in property management, leasing or offering to lease, renting or offering for rent, or referring or offering to refer for the purpose of securing prospects, any real estate or the improvements thereon for others for a fee, ~~commission,~~ compensation, or other valuable consideration;
- (2)~~{(b)}~~ "Commission" means the Kentucky Real Estate Commission;
- (3)~~{(c)}~~ "Net listing" means a listing agreement that provides for a stipulated net price to the owner and the excess over the stipulated net price to be received by the licensee as the ***fee compensation or other valuable consideration***~~commission~~;
- (4)~~{(d)}~~ "Principal broker" means a person licensed as a broker under KRS 324.046 who, in addition to performing acts of real estate brokerage or transactions comprehended by that definition, is the single broker responsible for the operation of the company with which he or she is associated;
- (5)~~{(e)}~~ "Real estate" means real estate in its ordinary meaning and includes timeshares, options, leaseholds, and other interests less than leaseholds;
- (6)~~{(f)}~~ "Sales associate" means any person ***licensed in accordance with subsection (2) of Section 7 of this Act that is affiliated***~~associated~~ with a Kentucky-licensed principal broker~~who is licensed under KRS 324.046(2)~~ and ***who, when engaging in***~~performs acts of~~ real estate brokerage, ***does so*** under the ***supervision***~~direction and control~~ of the principal broker;
- (7)~~{(g)}~~ "Approved real estate school" means:
  - (a)~~{1}~~ A school that has been given a certificate of approval by the State Board for Proprietary Education ***or other regulatory bodies that exercise jurisdiction over accreditation and approval*** and the Kentucky Real Estate Commission. The school shall also be currently in good standing with both the State Board for Proprietary Education ***or other regulatory bodies that exercise jurisdiction over accreditation and approval*** and the commission; or
  - (b)~~{2}~~ A National Association of Realtors recognized program which has been reviewed by the Kentucky Real Estate Commission and deemed an approved real estate school;
- (8)~~{(h)}~~ "Accredited ***institution***~~real estate school~~" means a college or university accredited by appropriately recognized educational associations or chartered and licensed in Kentucky that grants credits toward ***a program for either an associate, baccalaureate, graduate, or professional degree***~~an associate degree or a baccalaureate degree to those students successfully completing a course in real estate~~;

- (9) ~~(4)~~ "Property management" means the overall management of real property for others for a fee, ~~commission,~~ compensation, or other valuable consideration, and may include the marketing of property, the leasing of property, collecting rental payments on the property, payment of notes, mortgages, and other debts on the property, coordinating maintenance for the property, remitting funds and accounting statements to the owner, and other activities that the commission may determine by administrative regulation; ~~and~~
- (10) ~~(1)~~ "Broker" means any person who is licensed under KRS 324.046(1) and performs acts of real estate brokerage;
- (11) *"Regular employee" means an employee who works for an employer, whose total compensation is subject to withholding of federal and state taxes and FICA payments, and who receives from the employer a fixed salary governed by federal wage guidelines that is not affected by specific real estate transactions;*
- (12) *"Referral fee" means consideration of any kind paid or demanded for the referral of a potential or actual buyer, seller, lessor, or lessee of real estate;*
- (13) *"Designated agency" means a form of agency relationship that exists when a principal broker, in accordance with Section 13 of this Act, identifies different licensees in the same real estate brokerage firm to separately represent more than one (1) party in the same real estate transaction;*
- (14) *"Affiliation" means the relationship agreed upon between a licensee and a principal broker and reported to the commission, where the licensee places his license with the principal broker for supervision of the licensee's real estate brokerage activity;*
- (15) *"Canceled" means the status of a license when a licensee fails to renew a license, writes the commission a check for fees that is not honored, fails to re-affiliate with a principal broker, or fails to complete requirements for continuing education;*
- (16) *"Suspended" means the status of a license when disciplinary action has been ordered against a licensee that prohibits the brokerage of real estate for a specific period of time; and*
- (17) *"Revoked" means the status of a license when disciplinary action has been ordered that removes the licensee's legal authority to broker real estate for a minimum of five (5) years.*

~~(2) One (1) act for a fee, commission, compensation, or other valuable consideration of buying or selling real estate of or for another; offering for another to buy, sell, or exchange real estate; leasing, renting, or offering to rent real estate; referring or offering to refer real estate for the purpose of securing prospects; or dealing in options or time sharing shall constitute the person performing, offering, or attempting to perform the act as a broker or sales associate.~~

Section 4. KRS 324.020 is amended to read as follows:

- (1) It shall be unlawful for any person *who is not licensed as a real estate broker or sales associate to hold himself out to the public as a real estate broker or sales associate or use any terms, titles, or abbreviations which express, infer, or imply that the person is licensed as a real estate broker or sales associate* ~~to act as a broker or real estate sales associate or to advertise or assume to act as a broker or sales associate within the Commonwealth of Kentucky, without a license issued by the Kentucky Real Estate Commission~~.
- (2) *No person shall practice real estate brokerage unless the person holds a license to practice real estate brokerage under this chapter.*
- (3) A licensee who is an owner or a builder-developer shall comply with the provisions of this chapter and the administrative regulations applying to real estate brokers and sales associates.
- ~~(4)~~ ~~(3)~~ No broker shall split fees with or compensate any person who is not licensed to perform any of the acts regulated by this chapter, except that a broker may *compensate* ~~pay a commission to~~ or split fees with a broker licensed outside of Kentucky ~~who represents an out of state client~~.
- ~~(5)~~ ~~(4)~~ *Except as authorized in subsection (1) of Section 10 and Section 33 of this Act,* no sales associate ~~licensed in Kentucky~~ shall supervise another licensed sales associate or manage *a real estate brokerage* ~~an~~ office ~~, except by permission of the commission and when acting on the death of the principal broker~~.
- ~~(6)~~ ~~(5)~~ The Kentucky Real Estate Commission may seek and obtain injunctive relief against any unlicensed individual acting in violation of this chapter by filing a civil action in the Circuit Court where the commission is located or where the unlawful activity took place.

Section 5. KRS 324.030 is amended to read as follows:

KRS 324.020(1) **and** (2) shall not apply to:

- (1) Any person who as owner or lessor performs any of the acts defined in KRS 324.010 with reference to property owned or leased by him or to his regular employees, with respect to the property so owned or leased, if the acts are performed in the regular course of, or as an incident to, the management of the property and the investment in it;
- (2) Any person acting as attorney in fact under a duly executed power of attorney from the owner authorizing the final consummation by performance of any contract for the sale, leasing, or exchange of real estate;
- (3) Any attorney-at-law who is performing his duties as attorney-at-law;
- (4) Any receiver, trustee in bankruptcy, administrator, or executor, person selling real estate under order of any court, or a trustee acting under a trust agreement, deed of trust, or will or the regular salaried employees thereof;
- (5) A person engaged in property management, if the person:
  - (a) Is a regular employee of the owner or principal broker of the company engaged in property management; or
  - (b) Receives as his primary compensation the use of a rental unit; **or**
- (6) ***A nonlicensed person under the supervision of a licensed real estate broker who contacts the public for the purpose of setting an appointment for the broker to meet with them regarding buying or selling property and giving out general public information specifically authorized by the broker.***

Section 6. KRS 324.045 is amended to read as follows:

- (1) Licenses shall be granted only to persons who are trustworthy and competent to transact the business of a broker or sales associate in a manner to safeguard the interest of the public, and only after satisfactory proof of qualifications has been presented to the commission.
- (2) In addition to proof of honesty, truthfulness, and good reputation of any applicant for a license, each applicant shall pass a written examination conducted by the commission, or its authorized representative. The examination shall be of the scope and wording sufficient in the judgment of the commission to establish the competency of the applicant to act as a broker or sales associate in a manner to protect the interests of the public. However, an examination shall not be required for the renewal of any present or future license, unless the license has been revoked, suspended, or is allowed to expire without renewal for a period of more than one (1) year.
- (3) The commission shall hold examinations at the times and places it determines, and an examination fee shall be collected from each applicant to defray the expenses of holding the examinations.
- (4) ***The commission may, by the promulgation of administrative regulations, require all licensure applicants to submit to a criminal record check for which the applicant shall be responsible for the payment of any fees incurred.***

Section 7. KRS 324.046 is amended to read as follows:

- (1) Every applicant for initial licensure as a broker shall have:
  - (a) Successfully completed not less than twenty-one (21) academic credit hours or the equivalent ***from an accredited institution or approved real estate school.*** ~~[with at least] Twelve (12) hours shall be in real estate courses, three (3) hours of which shall be a course in broker management skills. The commission shall, by promulgation of administrative regulations, determine the required course content of broker management skills courses; and [from an accredited or approved real estate school and shall have]~~
  - (b) Been engaged in the real estate business as a sales associate averaging at least twenty (20) hours per week for a period of twenty-four (24) months prior to application.
- (2) Every applicant for initial licensure as a sales associate shall have successfully completed six (6) academic credit hours or their equivalent in real estate courses from an accredited ***institution*** or approved real estate school.

- (3) Proof of the academic credit hours shall be an official transcript from the attended university and a sworn notarized affidavit signed by both the applicant and his or her principal broker or other documentation satisfactory to the commission. The applicant may file a complaint with the commission if the principal broker unjustly refuses to sign the affidavit.
- (4) The commission may reduce the two (2) year experience requirement for applicants for a broker's license to one (1) year, if the applicant has an associate degree in real estate or a baccalaureate degree with a major *or minor* in real estate.
- (5) Persons licensed under the real estate laws of this state prior to June 19, 1976~~;~~
- ~~(a) Who have continuously maintained an active license since that date~~ shall not be subject to any educational changes in this chapter or subject to any continuing education requirements~~;~~ ~~and~~
- ~~(b) Who have not continuously maintained an active license since that date may be exempted from continuing education requirements if the commission determines their qualifications merit such an exemption~~.

Section 8. KRS 324.090 is amended to read as follows:

- (1) Licenses shall expire on the thirty-first day of March of each year. The commission shall renew a license for each ensuing year, in the absence of any reason or condition which might warrant the refusal of the granting of the license, upon receipt of the written request of the applicant and payment of the annual fees required. A new license shall be mailed only if the licensee's name, address, status, or affiliation changes.
- (2) A fine not to exceed two hundred dollars (\$200) shall be assessed for failure to renew on time before a new license is issued. Failure to receive a renewal form shall not constitute an adequate excuse for failure to renew on time nor shall failure of the mail.
- (3) Any license not renewed at the end of the renewal year as prescribed by the commission shall automatically revert to expired status. *An expired*~~The~~ license may be reactivated before a lapse of one (1) year, if delinquent fees are paid by the licensee.

Section 9. KRS 324.111 is amended to read as follows:

- (1) A principal broker shall maintain an escrow account or accounts, separate from the individual or office account, in which all contract deposits and money belonging to others shall be deposited without unreasonable delay. The escrow accounts shall be maintained within the State of Kentucky and shall be identified to the commission in writing.
- (2) The broker may place the deposit in an interest-bearing account or instrument. The interest earned shall accrue to the person agreed to in writing by all parties.
- (3) No checks shall be drawn against uncollected deposits in the escrow account.
- (4) None of the contract deposits shall be withdrawn until the contract has been terminated by performance, by agreement in writing between all parties, or by order of a court of competent jurisdiction, except as permitted in subsection (6) of this section.
- (5) Upon licensure and each renewal, the principal broker shall sign a permit giving the commission the permission to audit all his escrow accounts.
- (6) Upon being notified that one (1) or more parties to a contract intends not to perform, the broker may release the contract deposit as provided in the contract or if no provision is made in the contract, the broker may initiate the release process. The release process shall require the broker to notify all parties at their last known address by certified mail that the contract deposit shall be distributed to the parties specified in the letter *unless all parties*~~(if the parties fail to perform,~~ enter into a written mutual release, or *unless one (1) or more of the parties* initiate litigation within sixty (60) days of the mailing date of the certified letter. If neither buyer nor seller initiates litigation or enters into a written release within sixty (60) days of the mailing date of the certified letter, the broker may release the deposit *to the party identified in the certified letter* without penalty under this section *and without civil liability in the courts of the Commonwealth of Kentucky*.
- (7) All principal brokers whose companies engage in property management shall maintain property management accounts separate from all other accounts *or specifically indicate in all escrow records if funds are property management funds*.

- (8) A broker or sales associate who owns rental property shall not be required to use the principal broker's management account for the rental property, unless required by the principal broker.

Section 10. KRS 324.112 is amended to read as follows:

- (1) No principal broker shall maintain a branch office outside a fifty (50) mile radius of the main office without having a broker managing the branch office.
- (2) A sales associate with two (2) years experience in the real estate business, averaging at least twenty (20) hours per week for a period of twenty-four (24) months prior, may manage a branch office inside a fifty (50) mile radius of the main office.
- (3) The licenses of all ~~licensees~~~~[brokers and sales associates]~~ shall be kept on file in the office in which they are actively engaged and affiliated.
- (4) ***A principal broker in the process of closing a real estate brokerage business may affiliate temporarily with another principal broker if:***
  - (a) *No other licensee is affiliated with the former principal broker;*
  - (b) *Both the former and the latter principal brokers represent to the commission that the affiliation is for the purpose of closing the former principal broker's business; and*
  - (c) *Both the former and the latter principal brokers give assurances satisfactory to the commission that no consumer will be adversely affected by the affiliation or the closing of the former principal broker's business.*

Section 11. KRS 324.115 is amended to read as follows:

- (1) ***Except as provided in subsection (2) of this section,*** every broker licensed under KRS 324.045 shall maintain a definite place of business in this state.
- (2) ~~At, except a]~~ broker who is a nonresident shall not be required to maintain an active place of business in this state if:
  - (a) He or she maintains a business place in the state of original licensure;
  - (b) ***The state of original licensure, in accordance with its reciprocity agreement with the commission, does not require Kentucky licensees holding licenses in that state to maintain an office in that state; and***
  - (c) ***Paragraphs (a) and (b) of this subsection do not conflict***~~[, unless this provision conflicts]~~ with the commission's agreement of reciprocity with the state of original licensure.

Section 12. KRS 324.117 is amended to read as follows:

- (1) ***No real estate advertising shall be intentionally false, misleading, or deceptive***~~[Real estate advertising shall not be false, misleading, or deceptive. All real estate advertising shall specify the names of the real estate company listed on the licensee's real estate license or the name of the principal broker and a designation indicating that the licensee is engaged in the real estate business. The commission shall promulgate administrative regulations to define false, misleading, or deceptive advertising].~~
- (2) The name of a deceased broker may remain a part of the firm name.
- (3) No associate may have his or her name in the firm name.
- (4) Any ~~licensees~~~~[sales associate or broker]~~ affiliated with a principal broker shall advertise in the name of the real estate company listed on the ~~licensee's~~~~[associate's or broker's]~~ real estate license or the name of the principal broker, unless he or she is selling, renting, leasing, or otherwise dealing in his or her own property.
- (5) ***The commission shall, by the promulgation of administrative regulations, define false, misleading, or deceptive advertising.***
- (6) ***The commission shall, by the promulgation of administrative regulations, define the manner in which licensees may utilize any internet electronic communication for advertising or marketing.***

Section 13. KRS 324.121 is amended to read as follows:

- (1) A principal broker may **designate one (1) or more affiliated licensees**~~[appoint himself or herself or a licensee with which he or she is associated]~~ to act as ~~[an]~~ agent for a seller **or lessor, to the exclusion of all other licensees affiliated with the principal broker. A principal broker may designate one (1) or more affiliated licensees to act as agent for a**~~[or]~~ buyer **or lessee, or prospective buyer or lessee** to the exclusion of all other licensees ~~affiliated~~<sup>[associated]</sup> with the principal broker. **The designation procedure shall be made in writing and communicated to all licensees affiliated with the principal broker. The designated agent shall inform and obtain the consent of the buyer or lessee, or prospective buyer or lessee to the designation.**
- (2) If a principal broker ~~designates~~<sup>[appoints]</sup> one (1) **or more licensees**~~[licensee]~~ to represent the seller and **one (1) or more other licensees**~~[another licensee]~~ to represent the buyer or the prospective buyer in the same transaction, **only** the principal broker~~[, the firm, or the licensees]~~ shall~~[not]~~ be deemed to be **a dual agent representing the seller and buyer in a limited fiduciary capacity. As a dual agent, the principal broker shall not disclose to either party confidential information learned relative to the other party. Except as set forth in subsection (3) of this section, this designation shall not affect the principal broker's agency relationships in cooperative sales between consumers separately represented by nonaffiliated principal brokers**~~[agents]~~.
- (3) **No exchange of information or**~~[If the licensees are appointed in accordance with subsection (1) of this section,]~~ knowledge between or among **consumers, whether** the seller,~~[the]~~ buyer, **lessor, or lessee, and** the principal broker, the firm, or the licensees shall~~[not]~~ be imputed **as a matter of law in any real estate transaction.**
- (4) Nothing in this section shall prevent a real estate brokerage firm or licensee from entering into a dual agency relationship with **consumers in a real estate transaction**~~[the seller and the buyer or the prospective buyer if the firm or licensee complies with the provisions of this chapter and administrative regulations promulgated by the commission on agency disclosure. Any licensee who, after such compliance, personally represents both the seller and the buyer in a particular transaction shall be deemed a disclosed dual agent].~~

Section 14. KRS 324.142 is amended to read as follows:

Any licensee who **engages**~~[proposes to engage]~~ in~~[ sales of a]~~ promotional **activities**~~[nature]~~ in this Commonwealth for property located outside of this Commonwealth shall first apply to the commission for its approval before so doing, and shall comply with administrative regulations, restrictions, and conditions the commission may impose as well as those provisions set forth in this chapter.

Section 15. KRS 324.150 is amended to read as follows:

- (1) The commission or its staff may on its own initiative **investigate the actions of any licensee or any person who acts in that capacity.**~~[, and shall]~~ On the verified written complaint of any person, **the commission shall investigate the actions of any**~~[broker or sales associate or any]~~ person who assumes to act in **that**~~[such]~~ capacity, if the complaint,~~[or complaint]~~ together with **any**~~[other]~~ evidence presented in connection with it, **alleges**~~[makes out]~~ a prima facie case **that a violation set out in Section 17 of this Act has been committed. After the investigation, the commission**~~[It]~~ **may order a hearing and, in appropriate cases, take disciplinary action against**~~[suspend or revoke]~~ **any licensee who is found in violation of**~~[license for grounds stated in]~~ KRS 324.160.
- (2) To investigate allegations of practices violating the provisions of this chapter, the commission may:
  - (a) Issue subpoenas to compel attendance of witnesses and the production of documents;
  - (b) Administer oaths;
  - (c) Examine witnesses; and
  - (d) Pay appropriate witness fees.

Section 16. KRS 324.151 is amended to read as follows:

- (1) All complaints against licensees shall be submitted to the commission on forms furnished by the commission. The complaint shall state facts which, if true, would **constitute**~~[make out]~~ a prima facie case **that the licensee has violated the provisions of Section 17 of this Act**~~[against the licensee]~~. **If the complaint does not constitute a prima facie case, the commission shall allow the complainant ten (10) days to revise and supplement the complaint in order to cure any defect. If the complainant fails to respond within ten (10) days or if the revised and supplemented complaint does not constitute a prima facie case that the licensee has violated the provisions of Section 17 of this Act, the commission shall dismiss the matter without requiring the licensee to file or serve a response.**

- (2) ***If the complaint constitutes a prima facie case that a licensee has violated the provisions of Section 17 of this Act,*** a copy of the complaint, exhibits attached thereto, and any subsequent pleadings, shall be served on the licensee~~[-defendant]~~, by the commission, at the licensee's last known address and shall show certification that there has been service by writing to the last known address.
- (3) ***If the commission serves the complaint upon the licensee,*** the~~[-defendant]~~ licensee shall file with the commission an answer to the complaint,~~[-and]~~ properly notarized, on forms secured from commission offices. The answer shall be returned to the commission within twenty (20) days. ***The licensee shall deliver to the complainant at his last known address***~~[-and]~~ a copy of the answer, exhibits attached thereto, ~~and~~~~[-as well as]~~ any subsequent pleadings~~[-, shall be served on complainant and shall show certification that there has been service by writing to the last known address]~~. All further pleadings in the matter filed with the commission by either party shall show that a copy has been furnished to the opposing party or parties.

Section 17. KRS 324.160 is amended to read as follows:

- (1) The commission may ***order any or all of the following sanctions for violation of subsections (4) to (7) of this section:***
- (a) ***Suspension of any license;***~~[-suspend or]~~
  - (b) ***Revocation of***~~[-revoke]~~ any license;~~[-or]~~
  - (c) Levy ***of*** fines not to exceed ***one thousand dollars (\$1,000);***~~[-five hundred dollars (\$500), or both, and]~~
  - (d) ***Placing of***~~[-place]~~ any licensee on probation for a period of up to twelve (12) months;~~[-or]~~
  - (e) ***Requiring***~~[-require]~~ successful completion of academic credit hours ***or additional credit hours*** in real estate courses from an accredited ***institution*** or approved real estate school; or
  - (f) ***Issuing***~~[-issue]~~ a formal ***or informal*** reprimand.~~[-or order a licensee to pay restitution in an amount to be determined by the commission after a hearing, as a condition of continued licensure, for any of the following causes:]~~
- (2) ***A canceled license may be renewed if the licensee pays all necessary fees and meets all other active licensure requirements within one (1) year of the cancellation date. No licensee whose license is canceled shall engage in real estate brokerage during the period of cancellation or receive any compensation for real estate brokerage unless the compensation was earned prior to the effective date of the cancellation.***
- (3) ***No licensee whose license is suspended shall engage in real estate brokerage or receive any compensation for real estate brokerage unless the compensation was earned prior to the suspension period.***
- (4) ***The commission shall impose sanctions set out in subsection (1) of this section against a licensee for:***
- (a) Obtaining a license through false or fraudulent representation;
  - (b) Making any substantial misrepresentation or failing to disclose known defects which substantially affect the value of the property;
  - (c) Making any false promises of a character likely to influence, persuade, or induce;
  - (d) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents or advertising or otherwise;
  - (e) Acting for more than one (1) party in a transaction without the knowledge of all parties for whom the licensee acts;
    - 1. A real estate licensee shall not directly or indirectly buy property listed with him or her ***or with the broker with whom the licensee is affiliated,*** nor acquire an interest therein, without ***first indicating in writing on the offer to purchase his or her status as a licensee***~~[-making his or her true position clearly known in writing on the sales contract or offer to purchase]~~;
    - 2. Before a ~~[-real estate]~~ licensee ***becomes a party to a contract to purchase real property, the licensee shall disclose his or her status as a licensee to all parties to the transaction, in writing, on the sales contract or on the offer to purchase;***~~[-buys,]~~
    - 3. ***Before a licensee*** sells, or receives compensation for property in which the licensee owns an interest, the licensee shall disclose, ***in writing,*** any interest in the property to all parties to the transaction;



- (f) Accepting valuable consideration for the performance of any of the acts specified in this chapter, from any person, except from his or her principal broker **in accordance with a compensation agreement between them**~~at the time the brokerage agreement was obtained~~. When acting as an agent in the management of property, a real estate licensee shall not accept any commission, rebate, or profit on expenditures made for a client without the full knowledge and consent of the client;
  - (g) Representing or attempting to represent a broker other than a principal broker, without the express knowledge and consent of ~~the~~~~that~~ principal broker **with whom the licensee is affiliated**;
  - (h) Failing to account for or remit, within a reasonable time, any money belonging to others that comes into the licensee's possession. When acting as a property manager, the licensee shall render an accounting and remit all moneys to his or her client strictly in accordance with the contract of employment;
  - (i) Paying valuable consideration to any person for services performed in violation of this chapter;
  - (j) Entering a plea of guilty or an "Alford" plea to, or having been found guilty of, or having been convicted of, a felony **or of a misdemeanor involving sexual misconduct**~~and~~ the time for appeal has lapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following the conviction~~;~~~~and~~ suspending the imposition of sentence~~;~~~~or~~;
  - (k) Failing to report a ~~felony~~ conviction~~,~~~~or~~ plea of guilty~~to a felony~~, or an "Alford" plea to a felony **or a misdemeanor involving sexual misconduct** to the commission~~;~~~~or~~;
  - (l) Soliciting, selling, or offering for sale real property under a scheme or program that constitutes a lottery, contest, or deceptive practice~~;~~~~or~~;
  - (m) Offering prizes for the purpose of influencing a purchaser or prospective purchaser of real estate~~;~~~~or~~;
  - (n) Acting in the dual capacity of **licensee**~~broker~~ and undisclosed principal in **any real estate**~~the~~ transaction;
  - (o)~~(k)~~ Guaranteeing, authorizing, or permitting a person to guarantee that future profits shall result from a resale of real property;
  - (p)~~(4)~~ Negotiating or attempting to negotiate the sale, exchange, lease, or rental of real property, or attempting to obtain a brokerage agreement with **a consumer**~~an owner or lessor~~ knowing that the **consumer**~~owner or lessor~~ had a written outstanding contract granting exclusive agency **with**~~in~~ ~~connection with the property to~~ another real estate broker;
  - (q)~~(m)~~ Publishing or circulating an unjustified or unwarranted threat of legal proceedings or other action;
  - (r)~~(n)~~ Failing or refusing on demand to furnish copies of a document pertaining to a transaction dealing with real estate to a person whose signature is affixed to the document;
  - (s)~~(o)~~ Failing, within a reasonable time, to provide information requested by the commission as a result of a formal or informal complaint to the commission which may indicate a violation of this chapter;
  - (t)~~(p)~~ Paying valuable consideration to any person for the name of potential sellers or buyers, except as otherwise provided in **subsection (4) of Section 4 of this Act**~~KRS 324.020(3)~~;
  - (u)~~(q)~~ Violating any of the provisions in this chapter or any lawful order, rule, or administrative regulation made or issued under the provisions of this chapter;
  - (v)~~(r)~~ Any other conduct that constitutes improper, fraudulent, or dishonest dealing; or
  - (w)~~(s)~~ Gross negligence.
- (5)~~(2)~~ Any conduct constituting an act of discrimination regarding a person's race, color, creed, sex, or national origin, including use of scare tactics or blockbusting, shall be considered improper conduct as referred to in subsection (4)~~(v)~~~~(1)~~~~(r)~~ of this section.
- (6)~~(3)~~ No unlawful act or violation of any provision of this chapter by any affiliated licensee of the principal broker shall be cause for holding the principal broker primarily liable, unless the broker has knowledge of the unlawful violation and did not prevent it. The principal broker and his or her designated manager, if any, shall exercise adequate supervision over the activities of licensed affiliates and all company employees to ensure

that violations of this chapter do not occur. ~~The [A principal broker's]~~ failure **of a broker or his designated manager** to exercise adequate supervision of the licensed affiliates shall constitute a violation of this chapter.

- (7)(4) The practice of obtaining, negotiating, or attempting to negotiate "net listings" shall be considered improper dealing.

Section 18. KRS 324.170 is amended to read as follows:

- (1) The commission shall, before denying an application for license or before **ordering any disciplinary action against a licensee**, ~~[suspending or revoking any license, set the matter down for]~~ order a hearing. The hearing shall be conducted in accordance with the provisions of KRS Chapter 13B. If the applicant or licensee is a sales associate, the commission shall also notify the principal broker of the hearing by mailing notice by certified mail, return receipt requested, to the broker's last known business address. The commission shall order the presence of the principal broker **or his designated representative** at the hearing.
- (2) All hearings shall be conducted by a quorum of the commission or by a hearing officer appointed by the commission. Hearing officers shall not **order any disciplinary action against a licensee** ~~[suspend, revoke, or fine any licensee or place any licensee on probation]~~. The function of hearing officers appointed to conduct hearings shall be to preside at the hearing and to prepare a recommended order to be submitted to the commission.

Section 19. KRS 324.200 is amended to read as follows:

- (1) If the commission **determines** ~~[shall determine]~~ after a hearing that any applicant is not entitled to receive a license, a license shall not be granted to the applicant, and if the commission **determines** ~~[shall determine]~~ after a hearing that any licensee **has violated** ~~[is guilty of a violation of]~~ any of the provisions of this chapter, the **disciplinary measures in subsection (1) of Section 17 of this Act may be ordered** ~~[license shall be suspended or revoked]~~.
- (2) Any party aggrieved by the action of the commission in refusing to grant a license or in **ordering any disciplinary action** ~~[suspending or revoking a license]~~ may appeal to the Circuit Court where the licensee has his principal place of business or where the applicant resides in accordance with KRS Chapter 13B. Disciplinary action imposed by the commission shall be automatically stayed during the pendency of an appeal to a circuit or appellate court, unless otherwise indicated in the final order of the commission.

Section 20. KRS 324.220 is amended to read as follows:

No person who has had a broker's or sales associate's license revoked shall be issued another license for five (5) years from the date of revocation. All persons seeking issuance of another license after **the five (5) year period of** revocation may do so only at the discretion of the commission and shall retake the appropriate examination and meet all of the contemporary licensing requirements.

Section 21. KRS 324.230 is amended to read as follows:

The revocation **or suspension** of a principal broker's license shall automatically **render inactive** ~~[suspend]~~ every license granted to any person by virtue of association with the principal broker whose license has been revoked **or suspended**, pending a change of principal broker and the issuance of a new license. Such new license shall be issued without charge, if granted during the same year in which the original license was granted.

Section 22. KRS 324.281 is amended to read as follows:

- (1) There is hereby created the Kentucky Real Estate Commission. The Governor shall appoint five (5) persons, at least four (4) of whom, immediately prior to the date of their appointment have been residents of the state for ten (10) years and whose vocation for a period of at least ten (10) years shall have been that of an active real estate licensee. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. The term of the members of the commission shall be for four (4) years and until their successors are appointed and qualify, except as provided in subsections (2) and (3) of this section.
- (2) ~~All [Vacancies occurring in 1984 shall be filled by one (1) appointment for a three (3) year term and one (1) appointment for a four (4) year term; all subsequent]~~ appointments shall be for the specified four (4) year term. **No person appointed after the effective date of this Act shall serve more than two (2) consecutive terms.**
- (3) For each appointment or vacancy, the Kentucky Association of Realtors shall supply a list of not less than three (3) names of licensees to the Governor each year from which the broker or sales associate appointments shall

be made. The Governor may fill vacancies arising in the middle of the year from those remaining on the list or from a new list supplied by the association.

- (4) There shall not be more than three (3) of any one (1) political party serving on the commission at the same time. Appointees to fill vacancies shall be appointed for the unexpired term.
- (5) It shall be the duty of the commission to ~~promulgate~~~~[draft]~~ administrative regulations; to hold disciplinary hearings concerning matters in controversy as provided by this chapter; to conduct examinations for applicants eligible under this chapter **or alternatively to contract with an entity to conduct examinations**; to conduct necessary educational seminars and courses directed toward continuing education within the real estate field; to investigate or cause to be investigated any irregularities in violation of this chapter or the promulgated and authorized administrative regulations of the commission; to participate with any other agency of the Commonwealth or the authorized agency of another state for the betterment or improvement of the administration of the statutes or administrative regulations governing this commission. Any action taken by the commission under this subsection shall be appealable as are other actions of the commission under this chapter.
- (6) The commission, at its discretion, may use the funds necessary to purchase liability insurance for members and executive officers of the commission, inspectors, and for members of the staff exempted from classified service of the state by KRS 18A.115.
- (7) The commission shall require all actively-licensed agents, except for those agents who were licensed prior to June 19, 1976, to successfully complete mandatory continuing education as a condition of license renewal.~~{ The commission shall implement this provision by promulgating an administrative regulation. The classroom hours of mandatory continuing education shall be six (6) hours per year. Two (2) of the six (6) hours shall pertain to the study of real estate law. }~~
- (8) ***The commission shall, by the promulgation of administrative regulations, develop a review process by which continuing education courses may be approved for credit. An applicant may seek the commission's approval for credit for courses not previously approved by the commission by submitting sufficient information describing the course to the commission for review.***

Section 23. KRS 324.2811 is amended to read as follows:

A member shall be automatically removed from the commission and a vacancy shall be created if:

- (1) A licensee of the commission ceases to be a broker or sales associate;
- (2) A consumer member of the commission acquires a license or **financial** interest in the practice of real estate;
- (3) A member enters a plea of guilty to, or has been found guilty of, a felony in which fraud is an essential element or to any crime involving moral turpitude and the time for appeal has lapsed or the judgment or conviction has been affirmed on appeal; or
- (4) A member ceases to be a bona fide resident of this Commonwealth.

Section 24. KRS 324.282 is amended to read as follows:

The commission, immediately upon qualification of the member appointed in each year, shall organize by selecting from its members a chairperson~~, and may do all things necessary and convenient for carrying into effect the provisions of this chapter~~. The commission ~~shall~~~~[may from time to time]~~ promulgate~~[necessary]~~ administrative regulations **in accordance with KRS Chapter 13A and this chapter to effectively carry out and enforce the provisions of this chapter**, but the commission shall not promulgate any administrative regulation which in any way fixes prices, **establishes fees, or sets the rate at which licensees are compensated**~~[or commissions]~~.

Section 25. KRS 324.287 is amended to read as follows:

The commission shall **set**, charge, and collect the following fees:

- (1) Examination fee, not to exceed **one hundred dollars (\$100)**~~[seventy five dollars (\$75)]~~.
- (2) Broker's and sales associate's original license fee, not to exceed thirty dollars (\$30).
- (3) Broker's and sales associate's renewal fee, not to exceed thirty dollars (\$30).
- (4) Transfer from one (1) principal broker to another, not to exceed ten dollars (\$10).
- (5) Certification of status with the commission, ten dollars (\$10).

- (6) Request for any change, not to exceed ten dollars (\$10).
- (7) Recovery fund, not to exceed thirty dollars (\$30).
- (8) ***Broker's and associate's applicant license criminal record check fee, not to exceed thirty dollars (\$30).***

Section 26. KRS 324.288 is amended to read as follows:

No affiliation fee shall be charged in any year to a licensee. As used in this section, "affiliation ***fee***"~~[-fee]~~ means any fee or compensation paid by a licensee, to any person, for the privilege of listing his license with a particular principal broker, in records submitted to the commission.

Section 27. KRS 324.310 is amended to read as follows:

- (1) If any sales associate is discharged or terminates his association with the principal broker, it shall be the duty of the broker to immediately deliver or mail to the commission the sales associate's license with the release statement signed by the principal broker. The broker shall, at the time of mailing the sales associate's license to the commission, address a communication to the last known residence address of the sales associate, which shall advise the sales associate that his license has been delivered or mailed to the commission. A copy of the communication to the sales associate shall accompany the license when mailed or delivered to the commission. It shall be unlawful for any sales associate to perform any of the acts contemplated by this chapter either directly or indirectly under authority of his license from and after the date of receipt of the license from the broker by the commission.
- (2) A licensee may place his license in escrow with the commission provided that:
  - (a) The licensee does not engage in any real estate activity for others during the term of escrow of the license; and
  - (b) The licensee pays the annual license renewal fees for each year the license is in escrow.
- (3) At the request of the licensee,~~[-and]~~ upon the meeting of requirements applicable to active licensees ***and completion of all continuing education requirements***, a license placed in escrow shall be automatically converted to an active license upon payment of the established change fee.

Section 28. KRS 324.312 is amended to read as follows:

A principal broker shall return an associate's license to the commission upon request. A principal broker that fails to return a license to the commission upon request shall be in violation of ***subsection (4)(v) of KRS 324.160***~~[(1)(c)]~~.

Section 29. KRS 324.360 is amended to read as follows:

- (1) This section shall apply to sales and purchases involving ***single-family*** residential real estate ***dwelling***s if any person licensed under this chapter receives compensation.
- (2) The commission shall promulgate an administrative regulation authorizing a "seller's disclosure of conditions form."
- (3) The form shall provide for disclosure by the seller of the following:
  - (a) Basement condition and whether it leaks;
  - (b) Roof condition and whether it leaks;
  - (c) Source and condition of water supply;
  - (d) Source and condition of sewage service;
  - (e) Working condition of component systems; and
  - (f) Other matters the commission deems appropriate.
- (4) ***The seller of the property shall complete and sign the form at the time he or she executes any listing agreement or similar agreement by which a licensee intends to market the property. A copy of the form shall be provided by the listing agent to any prospective buyer or a buyer's authorized representative upon request. A copy of the form shall be delivered by the listing agent to any prospective purchaser or his representative within seventy-two (72) hours of the listing agent's receipt of a written and signed offer to purchase. The listing agent shall solicit the signature of the buyer on a copy of the form which the listing agent shall retain in the principal broker's records. The signature shall evidence the listing agent's***

*compliance with the provisions of this section. Should the buyer refuse to sign the form, the licensee shall record the buyer's refusal to sign on the form and retain a copy in his principal broker's records*~~[The form shall be completed and signed by the seller at the time of listing for sale or, for property not listed for sale, completed and signed by the seller within five (5) business days of any executory contract for sale of the residential real estate. The form shall not be required for residential purchases of new homes if a written warranty is offered, for a sale of real estate at auction, or for a court supervised foreclosure].~~

- (5) *If the subject property is offered for sale by the property's owner without a listing agreement, any licensee involved in the transaction shall provide a blank form to the property's owner and shall request that the property's owner complete and sign the form. If the property's owner completes and signs the form, the licensee shall deliver the form to the buyer or potential buyer not later than one hundred twenty (120) hours after the creation of any executory contract for sale of the property. The licensee shall solicit the signature of the buyer on a copy of the form as delivered to the buyer or prospective buyer and shall retain the copy in his or her principal broker's records. The signature of the buyer or prospective buyer shall evidence the listing agent's compliance with the provisions of this section. Should the buyer refuse to sign the form, the licensee shall record the buyer's refusal to sign on the form and retain a copy in his or her principal broker's records*~~[An accurate copy of the completed form shall be retained by the licensed broker or sales associate who receives compensation in the transaction. An accurate copy shall be delivered to any prospective purchaser upon request and to any prospective purchaser making a signed written offer to purchase, without unreasonable delay. Delivery shall be the responsibility of the broker or sales associate who anticipates being compensated in the transaction].~~
- (6) *The original of the form shall be retained by the listing broker or by the broker of any licensee who presents an offer on a property not subject to a listing agreement.*
- (7) *The form shall not be required for residential purchases of new homes if a warranty is offered, for a sale of real estate at an auction, or for a court supervised foreclosure.*
- (8) If the seller refuses to complete and sign the form, his refusal shall be communicated in writing by the broker or sales associate who *is involved*~~[anticipates being compensated]~~ in the transaction to the purchaser or prospective purchaser, without unreasonable delay.
- (9) *It shall be a violation of this chapter for a licensee to complete any portion of the form unless the licensee is the owner of the property or has been requested by the owner to complete the form. The request shall be acknowledged in writing on the form and the licensee shall be held harmless for any representation that appears on the form.*

Section 30. KRS 324.395 is amended to read as follows:

- (1) All real estate licensees, except those whose licenses are in escrow in accordance with KRS 324.310(2), shall carry errors and omissions insurance to cover all activities contemplated under this chapter.
- (2) The commission shall make the insurance mandated under this section available to all licensees by contracting with an insurance provider for a group policy, after competitive, sealed bidding in accordance with KRS Chapter 45A.
- (3) Any policy obtained by the commission shall be available to all licensees with no right on the part of the insurance provider to cancel any licensee.
- (4) Licensees shall have the option of obtaining errors and omissions insurance independently, if the coverage contained in the policy and the financial condition of the insurance company complies with the minimum requirements established by the commission.
- (5) The commission shall determine the terms and conditions of coverage mandated under this section, including, but not limited to, the minimum limits of coverage, the permissible deductible, and permissible exemptions.
- (6) Each licensee shall be notified of the required terms and conditions of coverage for the annual policy at least thirty (30) days prior to the annual license renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, shall be filed with the commission by the annual license renewal date by each licensee who opts not to participate in the group insurance program administered by the commission.
- (7) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group insurance program at a reasonable premium, not to exceed one hundred

twenty-five dollars (\$125), the insurance requirement mandated by this section shall be void during the applicable contract year.

~~[(8) The errors and omissions insurance mandated by this section shall become effective April 1, 1987.]~~

Section 31. KRS 324.400 is amended to read as follows:

- (1) There is hereby created and established in the State Treasury the real estate education, research, and recovery fund.
- (2) In addition to the license fees provided for in *Section 25 of this Act* ~~[KRS 324.070]~~, upon renewal of every broker's and sales associate's license, as well as any and all other types of licenses, if any, issued by the commission, as of June 30, 1972, and every regular annual renewal date thereafter, the commission shall charge each of the aforesaid licensees an amount not to exceed thirty dollars (\$30) per year to be included in the real estate education, research, and recovery fund. Each and every original applicant for a license after July 1, 1972, shall likewise submit to the commission an additional fee of thirty dollars (\$30) to be deposited in the real estate education, research, and recovery fund and shall also be subjected thereafter to an annual renewal fee as of the regular renewal period.
- (3) In addition to the license fees provided for in *Section 25 of this Act* ~~[KRS 324.070]~~, the commission, based upon its own discretion as to need, may assess each licensee upon renewal an amount less than thirty dollars (\$30) per year, or nothing, but not more. Each original applicant must pay the original amount of thirty dollars (\$30), but on renewal will be subjected to the same renewal amount as other licensees.

Section 32. KRS 324.420 is amended to read as follows:

- (1) An aggrieved party ~~may~~~~shall~~ commence an *administrative* action which may result in collection from the recovery fund by first filing *a complaint* with the commission on a form prepared by the commission. *The complaint shall constitute a prima facie case that a licensee is in violation of Section 17 of this Act and is subject to the same conditions set forth in Section 15 of this Act. If the complaint constitutes a prima facie case and the matter is not settled,* the commission shall hold a hearing pursuant to the requirements set forth in the provisions of this chapter and KRS Chapter 13B to determine if a violation of this chapter has in fact occurred. If a violation of fraud is so found, the commission shall determine if the violation resulted in damages to complainant and in what amount. If damages cannot be accurately determined, then the amount of damages shall be determined by a Circuit Court in the county where the violation took place. In the event the question of damages is referred to the Circuit Court, the decision of the commission will not be final and appealable until the question of damages is certifiable.
- (2) Upon final order by the commission or upon certification to the commission by the Circuit Court on the issue of damages, and after the licensee has refused to pay the claim within a period of twenty (20) days of entry of a final order, the aggrieved party or parties shall be paid the amount or amounts by the commission from the recovery fund.
- (3) The license of the licensee against whom the claim was made by the aggrieved party shall be suspended or may be permanently revoked until such time as the licensee has reimbursed the recovery fund in full for all amounts paid, plus interest at the rate of ten percent (10%) per annum.
- (4) Any party aggrieved by a final order of the commission may appeal to the Circuit Court where the licensee has his principal place of business or where the applicant resides in accordance with KRS Chapter 13B.
- (5) Upon the final order of the court, and after the commission has paid from the real estate education, research, and recovery fund any sum to the aggrieved party, the commission shall be subrogated to all of the rights of the aggrieved party to the extent of the payment. The aggrieved party shall to the extent of the payment assign his right, title and interest in the judgment to the commission. After such assignment, the commission may challenge in bankruptcy court any attempt by a former licensee to discharge the debt, if proper notice is given. Any funds recovered by the commission shall be deposited in the real estate education, research, and recovery fund.
- (6) No aggrieved party shall be entitled to recover compensation from the real estate education, research, and recovery fund unless the action against the licensee is commenced within two (2) years from actual knowledge of the cause of action or from the time when circumstances should reasonably have put the aggrieved party on notice of the cause of action.
- (7) For purposes of this section, an "aggrieved party" shall mean either:

- (a) A member of the consumer public who stands in a direct relationship to the licensee, i.e., one who demonstrates an interest in purchasing, leasing, renting, or otherwise securing an interest in real estate through a licensee ***and who believes that the licensee is in violation of the provisions of this chapter;*** or
  - (b) ***A member of the consumer public***~~One~~ who directly engages the services of a licensee for purposes of selling, leasing, renting, or otherwise dealing in ***his or her***~~their~~ own property.
- (8) If at any time the money on deposit in the real estate education, research and recovery fund is insufficient to satisfy any duly-authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the real estate education, research, and recovery fund, satisfy such unpaid claim or portions thereof, in the order that such claims or portions were originally filed, plus accumulated interest at the rate of ten percent (10%) per annum.
- (9) Any funds in excess of the four hundred thousand dollar (\$400,000) level which are not being currently used, may be invested and reinvested as set forth in subsection (2) of KRS 324.410.

Section 33. KRS 324.425 is amended to read as follows:

In case of death ***or other incapacity*** of a principal broker having a licensed sales associate or sales associates affiliated at the time of death ***or other incapacity***, the commission reserves the right in its discretion, based upon the merits of each case, to permit one (1) of the sales associates to complete and close the then existing business of the deceased ***or incapacitated*** broker for a temporary period not to exceed six (6) months.

Section 34. The following KRS sections are repealed:

324.070 License fees.

324.340 Power of cities to regulate brokers not affected.

**Approved April 21, 2000**

## CHAPTER 489

**(HB 678)**

AN ACT relating to crimes and punishments.

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

Section 1. KRS 532.358 is amended to read as follows:

Any prisoner who has completed his sentence in a county or regional jail ***or under condition of home incarceration*** shall, from the day incarceration ceases and within the time and amount designated by the sentencing court, pay restitution to his victim and reimbursement for his incarceration to the state or local government ***and his or her home incarceration fees***, in addition to any other monetary and community service sanctions imposed by the sentencing court. The sentencing court may use its contempt sanctions to enforce its orders.

**Approved April 21, 2000**

## CHAPTER 490

**(HB 685)**

AN ACT relating to crimes and punishments.

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

Section 1. KRS 525.120 is amended to read as follows:

- (1) A person is guilty of abuse of a corpse when except as authorized by law he intentionally treats a corpse in a way that would outrage ordinary family sensibilities.
- (2) Abuse of a corpse is a Class A misdemeanor, ***unless the act attempted or committed involved sexual intercourse or deviate sexual intercourse with the corpse, in which case it is a Class D felony.***

Section 2. KRS 514.110 is amended to read as follows:

- (1) A person is guilty of receiving stolen property when he receives, retains, or disposes of movable property of another knowing that it has been stolen, *or having reason to believe that it has been stolen*, unless the property is received, retained, or disposed of with intent to restore it to the owner.
- (2) The possession by any person of any recently stolen movable property shall be prima facie evidence that such person knew such property was stolen.
- (3) Receiving stolen property is a Class A misdemeanor unless the value of the property is three hundred dollars (\$300) or more, or unless the property is a firearm (regardless of the value of the firearm), in which case it is a Class D felony.

**Approved April 21, 2000**

## CHAPTER 491

(HB 689)

AN ACT relating to audits of school district cooperatives and school districts.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 43 IS CREATED TO READ AS FOLLOWS:

- (1) *The Auditor of Public Accounts shall be responsible for an annual audit of the funds contained in each school district cooperative, school district consortium, school district corporation, and any other entity formed by school districts in an agreement made pursuant to KRS 65.210 to 65.300, with the cost of the audit to be borne by the audited entity.*
- (2) *A school district cooperative, school district consortium, school district corporation, or other entity formed by school districts in an agreement made pursuant to KRS 65.210 to 65.300 may employ a certified public accountant to audit the books, accounts, and papers of the cooperative, consortium, corporation, or other entity in lieu of the audit required by subsection (1) of this section, if the Auditor of Public Accounts declines in writing to assume responsibility for performing the audit or fails to respond in writing within thirty (30) days of receiving the cooperative's, consortium's, corporation's, or other entity's written notice of its intent to employ a certified public accountant to conduct the audit. The cooperative, consortium, corporation, or other entity shall not enter into any contract with a certified public accountant for an audit unless the Auditor of Public Accounts has declined in writing to assume responsibility for performing the audit or has failed to respond within thirty (30) days of receipt of a written request for an audit.*
- (3) (a) *Any contract with a certified public accountant entered into as a result of the Auditor of Public Accounts either declining to assume responsibility of performing the audit or failing to respond within thirty (30) days of receipt of a written request for an audit shall specify the following:*
  1. *That the certified public accountant shall forward a copy of the audit report and management letters to the Auditor of Public Accounts for review;*
  2. *That the Auditor of Public Accounts shall have the right to review the certified public accountant's work papers before and after the release of the audit; and*
  3. *That after review of the certified public accountant's work papers, if discrepancies are found, the Auditor of Public Accounts shall notify the audited entity of the discrepancies. If the certified public accountant does not correct these discrepancies prior to the release of the audit, the Auditor of Public Accounts may conduct its own audit to verify the findings of the certified public accountant's report.*
- (b) *If an audit verifying the findings of the certified public accountant's report is conducted by the Auditor of Public Accounts, the total audit expense incurred by the audited entity shall be an allowable expenditure and shall be paid by the audited entity to the Auditor of Public Accounts. If the audit conducted by the Auditor of Public Accounts discloses discrepancies in the audit by the certified public accountant, the findings of the Auditor of Public Accounts shall be deemed official for all purposes.*

Section 2. KRS 156.265 is amended to read as follows:



- (1) There shall be a State Committee for School District Audits comprised of the Governor, or a person designated by him, the Attorney General, *the Auditor of Public Accounts*, a person designated by the *Legislative Research Commission to represent the Office of Education Accountability*, ~~secretary of the Finance and Administration Cabinet~~ and the *commissioner of education* ~~chief state school officer~~. The *Auditor of Public Accounts* ~~Governor, or the person designated by him,~~ shall be the *chair* ~~chairman~~ of the committee.
- (2) The committee shall have the accounts of each board audited not less than once every ~~two (2)~~ fiscal ~~year~~ *years*. The committee also may, at any time, cause to be made a comprehensive and complete audit of any board. Upon the written request of the state board, the *commissioner of education* ~~chief state school officer~~, the Attorney General, the Auditor of Public Accounts, the Governor, or the Office of Education Accountability, the committee may cause the accounts of a board to be audited. Each audit shall cover such period of time, and shall include such auditing procedures and standards, as the committee may designate.
- (3) Audits authorized under this section are in addition to any audits contemplated under KRS 11.090, 156.200 or KRS Chapter 43.
- (4) The actual expense of any audit authorized under this section shall be borne equally by the district board of education and by the committee from funds allocated to it.
- (5) *The committee shall meet at least quarterly. Additional or special meetings may be called by the chair.*

Approved April 21, 2000

## CHAPTER 492

(HB 709)

AN ACT relating to consumer protection.

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

Section 1. KRS 304.2-430 is amended to read as follows:

Nothing in KRS 304.2-400 to 304.2-420 shall prevent continuing the practice of paying any of the direct or indirect expenses incurred by the department, including, but not limited to, those involving salaries, retirement, and Social Security of officers, employees, or representatives of the department, or any other expenses by appropriations from the general fund. However, the general fund shall be reimbursed for any such payments made on or after July 15, 1986, as well as any money transferred to the insurance regulatory trust fund in connection with the initial funding of the insurance regulatory trust fund, and shall be repaid by transfer from the insurance regulatory trust fund to the general fund no later than the end of the next biennium.

Section 2. KRS 304.2-165 is amended to read as follows:

- (1) The commissioner shall review, *and investigate where applicable*, all written complaints *involving entities or individuals engaged in the business of insurance in Kentucky* ~~that a health insurer doing business in Kentucky has denied a claim of an insured~~.
- (2) The commissioner shall send a copy of the complaint to the *entity or individual* ~~insurer~~ and *the entity or individual shall send* ~~request~~ a written *or electronic message response* ~~reply be sent~~ to the commissioner within *fifteen (15) calendar* ~~ten (10)~~ days *from the date of the commissioner's letter*.
- (3) Upon review of a complaint, the commissioner shall make a *finding* ~~recommendation~~ to the *entity or individual and the complainant* ~~insurer and the insured~~.
- (4) This section shall not limit the power of the commissioner to exercise any other authority under this code *as to an* ~~or to a health~~ insurance ~~claim~~ dispute.

SECTION 3. A NEW SECTION OF SUBTITLE 14 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*An action or request for reimbursement for any overpayment of a health insurance claim pursuant to any health insurance contract shall be brought not more than two (2) years from the date the claim was filed. No insurer, assignee of the insurer, or other person, whether acting for himself or another in connection with a health insurance transaction shall make any claim or seek recovery for reimbursement for any overpayment pursuant to*

*any health insurance contract from any person more than two (2) years after the claim was filed, unless the claim was false or fraudulent.*

SECTION 4. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*For the protection of the people of Kentucky, the commissioner may by order deny, suspend, or place conditions upon any license subject to the provisions of this subtitle.*

- (1) *An order denying a license or appointment shall be based upon the application and any other information pertaining to the applicant available to the department.*
- (2) *One (1) or more of the following circumstances shall be considered for an order suspending a license:*
  - (a) *The licensee's indictment for crime involving dishonesty, breach of trust, a violation of Subtitle 47 of this chapter, or a violation of 18 USC 1033;*
  - (b) *Sworn consumer complaints to the department against the licensee showing clear and convincing evidence of a violation of KRS 304.9-400 totaling in the aggregate three hundred dollars (\$300) or more;*
  - (c) *The suspension or revocation of any other professional license held by the licensee in Kentucky or any other jurisdiction.*
- (3) *The commissioner may place conditions upon any license for any reason set forth in subsection (2) of this section.*
- (4) *Any person aggrieved by an order of the commissioner under this section may file an application for an emergency hearing pursuant to KRS 13B.125 within sixty (60) days of the date of the order. The department shall conduct the hearing within ten (10) working days of the request for a hearing, and within five (5) working days of the completion of the hearing the agency or hearing officer shall render a written decision affirming, modifying, or revoking the emergency order. The emergency order shall be affirmed if there is substantial evidence of a violation of law that constitutes an immediate danger to the public health, safety, or welfare. The commissioner shall participate in an expedited hearing at the applicant's written request.*

Approved April 21, 2000

## CHAPTER 493

(HB 712)

AN ACT relating to the legislative ethics code.

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

Section 1. KRS 6.656 is amended to read as follows:

- (1) The chair and the vice chair of the commission shall be elected by a majority vote of the members of the commission. The chair and the vice chair shall serve terms of one (1) year and may be reelected. The chair shall preside at meetings of the commission. The vice chair shall preside in the absence or disability of the chair.
- (2) The commission shall meet within ninety (90) days of February 18, 1993. The time and place of the meeting shall be determined by the chair. Thereafter, the commission shall meet at such times deemed necessary at the call of the chair or a majority of its members. A quorum shall consist of five (5) or more members. An affirmative vote of five (5) or more members shall be necessary for commission action.
- (3) A member of the commission shall receive one hundred dollars (\$100) per day *and reimbursement for attending meetings and shall be reimbursed* for actual and necessary expenses incurred in the performance of his official duties as a member of the commission *for meeting days and for a maximum of two (2) nonmeeting days per month devoted to commission-related work.*

Section 2. KRS 6.686 is amended to read as follows:

- (1) (a) The commission shall have jurisdiction to investigate and proceed as to any violation of this code upon the filing of a complaint. The complaint shall be a written statement *alleging a violation against one (1)*

*or more named persons and stating*~~off~~ the essential facts constituting the violation charged. The complaint shall be made under oath and signed by the complaining party before a person who is legally empowered to administer oaths. The commission shall have no jurisdiction in absence of a complaint. A member of the commission may file a complaint.

- (b) Within ten (10) days of the filing of a complaint, the commission shall cause a copy of the complaint to be served by certified mail upon the person alleged to have committed the violation.
  - (c) Within twenty (20) days of service of the complaint the person alleged to have committed the violation may file an answer with the commission. The filing of an answer is wholly permissive, and no inferences shall be drawn from the failure to file an answer.
  - (d) Not later than ten (10) days after the commission receives the answer, or the time expires for the filing of an answer, the commission shall initiate a preliminary inquiry into any alleged violation of this code. If the commission determines that the complaint fails to state a claim of an ethics violation, the complaint shall be dismissed.
  - (e) Within thirty (30) days of the commencement of the inquiry, the commission shall give notice of the status of the complaint and a general statement of the applicable law to the person alleged to have committed a violation.
- (2) All commission proceedings, including the complaint and answer and other records relating to a preliminary inquiry, shall be confidential until a final determination is made by the commission, except:
- (a) The commission may turn over to the Attorney General, the United States Attorney, Commonwealth's attorney, or county attorney of the jurisdiction in which the offense allegedly occurred, evidence which may be used in criminal proceedings; and
  - (b) If the complainant or alleged violator publicly discloses the existence of a preliminary inquiry, the commission may publicly confirm the existence of the inquiry and, in its discretion, make public any documents which were issued to either party.
- (3) The commission shall afford a person who is the subject of a preliminary inquiry an opportunity to appear in response to the allegations in the complaint. The person shall have the right to be represented by counsel, to appear and be heard under oath, and to offer evidence in response to the allegations in the complaint.
- (4) If the commission determines by the answer or in the preliminary inquiry that the complaint does not allege facts sufficient to constitute a violation of this code, the commission shall immediately terminate the matter and notify in writing the complainant and the person alleged to have committed a violation. The commission may confidentially inform the alleged violator of potential violations and provide information to ensure future compliance with the law. If the alleged violator publicly discloses the existence of such action by the commission, the commission may confirm the existence of the action and, in its discretion, make public any documents that were issued to the alleged violator.
- (5) If the commission, during the course of the preliminary inquiry, finds probable cause to believe that a violation of this code has occurred, the commission shall notify the alleged violator of the finding, and the commission may, upon majority vote:
- (a) Due to mitigating circumstances such as lack of significant economic advantage or gain by the alleged violator, lack of significant economic loss to the state, or lack of significant impact on public confidence in government, confidentially reprimand, in writing, the alleged violator for potential violations of the law and provide a copy of the reprimand to the presiding officer of the house in which the alleged violator serves, or the alleged violator's employer, if the alleged violator is a legislative agent. ***The proceedings leading to a confidential reprimand and the reprimand itself shall remain confidential except that,*** if the alleged violator publicly discloses the existence of such an action, the commission may confirm the existence of the action and, in its discretion, make public any documents which were issued to the alleged violator; or
  - (b) Initiate an adjudicatory proceeding to determine whether there has been a violation.
- (6) Any person who knowingly files with the commission a false complaint of misconduct on the part of any legislator or other person shall be guilty of a Class A misdemeanor.

Section 3. KRS 6.691 is amended to read as follows:

- (1) The Kentucky Rules of Civil Procedure and the Kentucky Rules of Evidence shall apply to all commission adjudicatory hearings. All testimony in a commission adjudicatory proceeding shall be under oath. All parties shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses, to submit evidence, and to be represented by counsel and any other due process rights, privileges, and responsibilities of a witness appearing before the courts of the Commonwealth of Kentucky. Before testifying, all witnesses shall be given a copy of the regulations governing commission proceedings. All witnesses shall be entitled to be represented by counsel.
- (2) Any person whose name is mentioned during adjudicatory proceedings of the commission and who may be adversely affected thereby may appear personally before the commission on the person's own behalf, with or without attorney, to give a statement in opposition to such adverse mention or file a written statement of that opposition for incorporation into the record of proceeding.
- (3) All adjudicatory proceedings of the commission carried out pursuant to the provisions of this section shall be public, unless the members vote to go into executive session in accordance with KRS 61.810.
- (4) Within thirty (30) days after the end of an adjudicatory proceeding pursuant to the provisions of this section, the commission shall meet in executive session for the purpose of reviewing the evidence before it. Within thirty (30) days after completion of deliberations, the commission shall publish a written report of its findings and conclusions which shall be based on whether the person accused has complied with the statute as written.
- (5) ***No penalty provided for in this section shall be imposed except as the result of an adjudicatory proceeding held upon the filing of a complaint. Notwithstanding the administrative penalties provided for in Sections 6, 7, and 8 of this Act,*** the commission, upon a finding pursuant to an adjudicatory proceeding that there has been clear and convincing proof of a violation of this code, may:
  - (a) Issue an order requiring the violator to cease and desist the violation;
  - (b) Issue an order requiring the violator to file any report, statement, or other information as required by this code;
  - (c) In writing, publicly reprimand the violator for potential violations of the law and provide a copy of the reprimand to the presiding officer of the house in which the alleged violator serves;
  - (d) In writing, recommend to the house in which the violator serves that the violator be sanctioned as recommended by the commission, which may include a recommendation for censure or expulsion;
  - (e) Issue an order requiring the violator to pay a civil penalty of not more than two thousand dollars (\$2,000); or
  - (f) Revoke the registration of any legislative agent or employer for a period not to exceed five (5) years. ***During the period of the revocation, the agent or employer or any other entity which constitutes nothing more than the legislative agent or employer operating under a different name or identity shall not be permitted to register as a legislative agent or employer.***
- (6) The commission may refer to the Attorney General, county attorney, or Commonwealth's attorney of the appropriate jurisdiction, for prosecution evidence of criminal violations of this code. The Attorney General shall have responsibility for all prosecutions under the law and may request from the commission all evidence collected in its investigation.
- (7) Findings of fact or final determinations by the commission that a violation of this code has been committed, or any testimony related to the commission's findings of fact or final determinations, shall not be admissible in criminal proceedings in the courts of the Commonwealth of Kentucky. Evidence collected by the commission may be used in a criminal proceeding if otherwise relevant.
- (8) Any person found by the commission to have committed a violation of this code may appeal the action to the Franklin Circuit Court. The appeal shall be initiated within thirty (30) days after the date of the final action of the commission by filing a petition with the court against the commission. The commission shall transmit to the clerk of the court all evidence considered by the commission at the public hearing. The court shall hear the appeal upon the record as certified by the commission.

Section 4. KRS 6.711 is amended to read as follows:

- (1) The commission shall design the general curriculum of orientation courses, which shall include, but not be limited to, explanations and discussions of the ethics laws, administrative regulations, relevant internal policies,

specific technical and legal requirements, summaries of advisory opinions, underlying purposes and principles of ethics laws, examples of practical application of the laws and principles, and a question-and-answer participatory segment regarding common problems and situations. The commission shall prepare the methods and materials necessary to implement the curriculum.

- (2) The commission shall:
  - (a) Administer the orientation courses for legislators;
  - (b) Designate instructors to conduct their courses who shall be trained by the commission; and
  - (c) Notify legislators regarding attendance in these courses.
- (3) The orientation courses shall be conducted in January of each odd-numbered year. Each course shall be at least **three (3)** ~~six (6)~~ hours in length and shall be designed for approval by the Kentucky Bar Association for continuing legal education ethics credits which the bar association may require.
- (4) To facilitate participant interaction, those portions of the courses dedicated to group participation shall be closed to the public.
- (5) Each legislator shall complete the initial orientation course offered under this section. Each legislator elected after the initial orientation course shall complete the next orientation course conducted. The commission may grant permission for a legislator to attend a later course for good cause shown.

Section 5. KRS 6.793 is amended to read as follows:

- (1) The statement of financial interests required by KRS 6.781 shall be filed with the commission for the preceding calendar year by no later than February 15 of each year, complete through December 31 of the preceding year, except that:
  - (a) A candidate for nomination or election to the General Assembly shall file his statement no later than twenty-one (21) days after the **filing deadline as set by the law or within ten (10) days of the filing deadline if it is a special election** date he became a candidate as defined in KRS 6.611; and
  - (b) An individual appointed to a position listed in KRS 6.781(3) shall file his initial statement no later than twenty-one (21) days after the date of his appointment.
- (2) The commission may grant a reasonable extension of time for filing a statement of financial interests for good cause shown.

Section 6. KRS 6.797 is amended to read as follows:

- (1) The commission shall notify by certified mail each person required to file a statement of financial interests who fails to file the statement in a timely manner, completely, or in the form required by the commission. The notice shall specify the type of failure or delinquency and shall advise the person of the penalties for violation of this section.
- (2)
  - (a) Any person who fails to file the statement or who fails to remedy a deficiency in his filing identified by the commission in the notice under subsection (1) of this section in a timely manner may be fined by the commission an amount not to exceed one hundred dollars (\$100) per day, up to a maximum total fine of one thousand dollars (\$1,000) **without the necessity of a complaint being filed, notwithstanding Section 2(1)(a) of this Act, but only after notice has been given to the alleged violator of the intent of the commission to impose a fine, including the amount of the fine, and an opportunity has been afforded the alleged violator to appear before the commission or otherwise offer evidence as he may choose in mitigation of the imposition of the fine.**
  - (b) Any person who intentionally files a statement of financial interests which he knows to contain false information or to omit required information shall be guilty of a Class A misdemeanor.

Section 7. KRS 6.807 is amended to read as follows:

- (1) Each legislative agent and employer, within seven (7) days following engagement of a legislative agent, shall file with the commission an initial registration statement listing the following:
  - (a) The name, business address and telephone number, and occupation of the legislative agent;
  - (b) The name, brief description of the nature of the business, nature and identity of the organized association, coalition, or public interest entity, business address and telephone number of the employer,

and the real party in interest on whose behalf the legislative agent is lobbying, if it is different from the employer. For the purposes of this section, if a trade association or other charitable or fraternal organization that is exempt from federal income taxation under Section 501(c) of the Internal Revenue Code is the employer, the statement shall not list the names and addresses of each member of the association or organization, if the association or organization itself is listed;

- (c) The name, bill number, or a brief description of the legislative action for which the legislative agent is or will be engaged in lobbying on behalf of their employer or as a representative of the organized association, coalition, or public interest entity;
  - (d) The date on which the legislative agent was engaged; and
  - (e) Certification by the employer and legislative agent that the information contained in the registration statement is complete and accurate.
- (2) The registration shall be valid through the next thirty-first day of December of an odd-numbered year, unless previously terminated.
- (3) (a) In addition to the initial registration statement required by subsection (1) of this section, each legislative agent and employer shall file an updated registration statement with the commission to be received by the commission, not later than 4 p.m. on the fifteenth day of January, February, March, April, and May, and the fifteenth day of September of each even-numbered year, and the fifteenth day of January, May, and September in each odd-numbered year, for the period since the end of the period covered by the previous report until the last day of the month preceding the filing date. The commission may grant a reasonable extension of time for filing the updated registration statement for good cause shown.
- (b) The updated registration statement shall confirm the continuing existence of each engagement described in an initial registration statement, and list the specific bills or resolutions on which the agent lobbied under that engagement during the period covered by the updated statement. Any statement of expenditures required to be filed by KRS 6.821 and any details of financial transactions required to be filed by KRS 6.824 shall be filed with the updated registration statement.
- (4) If a legislative agent is engaged by more than one employer, the agent shall file a separate initial and updated registration statement for each engagement. If an employer engages more than one (1) legislative agent, the employer shall file only one (1) updated registration statement under subsection (3) of this section, which shall contain the information required by subsection (3) of this section regarding all legislative agents engaged by the employer.
- (5) (a) A change in any information required by subsection (1)(a), (b), or (c) of this section shall be reflected in the next updated registration statement filed under subsection (3) of this section.
- (b) Within thirty (30) days after the termination of an engagement, the legislative agent who was employed under the engagement shall file written notice of the termination with the commission.
- (c) ***If the termination of a legislative agent leaves an employer without the engagement of any legislative agents, within thirty (30) days after the termination, the employer shall file written notice with the commission of its intent to terminate its current registration.***
- (6) Upon registration pursuant to subsection (1) of this section, the legislative agent shall be issued a card by the commission, showing that the legislative agent is registered. The registration card shall be valid from the date of its issuance through the next thirty-first day of December of an odd-numbered year.
- (7) Any legislative agent or employer who fails to file the initial registration statement or updated registration statement, or who fails to remedy a deficiency in any filing in a timely manner, may be fined by the commission an amount not to exceed one hundred dollars (\$100) per day, up to a maximum total fine of one thousand dollars (\$1,000) ***without the necessity of a complaint being filed, notwithstanding Section 2(1)(a) of this Act, but only after notice has been given to the alleged violator of the intent of the commission to impose a fine, including the amount of the fine, and an opportunity has been afforded the alleged violator to appear before the commission or otherwise offer evidence as he may choose in mitigation of the imposition of the fine.***
- (8) Any legislative agent or employer who intentionally fails to register shall be guilty of a Class D felony.

Section 8. KRS 6.821 is amended to read as follows:

- (1) With the updated registration statement required by KRS 6.807(3), each legislative agent, or representative of an organized association, coalition, or public interest entity, and each employer shall file a statement of expenditures as provided in subsections (2), (3), and (4) of this section. A representative of an organized association, coalition, or public interest entity shall identify the source of the entity or association's funds and financial resources. A legislative agent shall file a separate statement of expenditures for each employer engaging him.
- (2) If an employer or any legislative agent whom he engaged made expenditures, either separately or in combination with each other, either directly or indirectly, for food and beverages consumed on the premises on behalf of any particular member of the General Assembly or his immediate family, the employer or legislative agent shall also state the following:
  - (a) The name of the legislator or member of his immediate family on whose behalf the expenditures were made;
  - (b) The total amount of the expenditures made;
  - (c) A brief description of the expenditures made; and
  - (d) The approximate date the expenditures were made.
- (3) In addition to the information required by subsection (2) of this section, a statement filed by a legislative agent shall show:
  - (a) The total amount of lobbying expenditures made by the legislative agent during the reporting period covered by the statement, whether or not reimbursed by the employer; and
  - (b) Cumulative amounts, except personal expenses, expended by the legislative agent for food, beverages, lodging, transportation, entertainment, and other expenses directly associated with the legislative agent's lobbying activities during the reporting period.
- (4) (a) In addition to the information required by subsection (2) of this section, a statement filed by an employer shall list:
  1. The total amount of lobbying related expenditures made by the employer filing the statement during the period covered by the statement;
  2. A complete and itemized account of all amounts expended for receptions or other events held under subsection (5) of this section, including the date and location of the event and the name of the group of public servants invited to the event;
  3. A complete and itemized account of all other amounts expended for lobbying, including food and lodging expenses and reimbursements, and not including personal expenses incurred by an employer or a legislative agent; and
  4. The cumulative compensation paid to legislative agents, prorated to reflect the time the legislative agents were engaged in lobbying during the period covered by the statement.
  - (b) No employer is required to show any expenditure on a statement filed under this subsection if the expenditure is reported on a statement filed under subsection (2) of this section by a legislative agent engaged by the employer.
- (5) (a) Any statement required to be filed under this section shall be filed at the times specified in KRS 6.807. Each statement shall cover expenditures made during the period that ended on the last day of the month immediately preceding the month in which the statement is required to be filed.
  - (b) No portion of the amount of an expenditure for a dinner, party, or other function sponsored by an employer or legislative agent shall be attributed to, or counted toward the amount for a calendar year if the event qualifies under KRS 6.611(2)(b)8., 11., or 12.
  - (c) The amount spent for a function described in paragraph (b) of this subsection shall be added with other expenditures to determine the total amount of expenditures reported in the statement under subsections (2) and (3) of this section.
  - (d) If it is impractical or impossible for a legislative agent or employer to determine exact dollar amounts or values of expenditures, reporting of good faith estimates, based upon reasonable accounting procedures, constitutes compliance with this subsection.

- (6) All legislative agents and employers shall retain receipts or maintain records for all expenditures that are required to be reported pursuant to this section. These receipts or records shall be maintained for a period ending on the thirty-first day of December of the second calendar year after the year in which the expenditure was made.
- (7) Any legislative agent or employer who fails to file a required statement of expenditures, or who fails to remedy any deficiency in his filing in a timely manner may be fined by the commission an amount not to exceed one hundred dollars (\$100) per day, up to a maximum total fine of one thousand dollars (\$1,000) ***without the necessity of a complaint being filed, notwithstanding Section 2(1)(a) of this Act, but only after notice has been given to the alleged violator of the intent of the commission to impose a fine, including the amount of the fine, and an opportunity has been afforded the alleged violator to appear before the commission or otherwise offer evidence as he may choose in mitigation of the imposition of the fine.***
- (8) Any legislative agent or employer who intentionally files a statement of expenditures which he knows to contain false information or to omit required information shall be guilty of a Class D felony.

**Approved April 21, 2000**

## CHAPTER 494

### (HB 725)

AN ACT relating to recanvass procedures for elections.

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

Section 1. KRS 117.305 is amended to read as follows:

- (1) The canvass and returns provided for in KRS 117.275 shall constitute the official returns of the precinct, unless before ~~4<sup>6</sup>~~ p.m. on the Tuesday following a primary or regular election, or ***before 4 p.m. on the day following***~~[within twenty-four (24) hours after the close of the polls in]~~ a special election held for the purpose of filling a vacancy, the county clerk or county board of elections takes notice of a discrepancy in the tally of votes cast in any precinct or number of precincts, or a candidate makes a written request to the county board of elections in the case of a candidate who has filed with the county clerk, or the Secretary of State in the case of a candidate who has filed with the Secretary of State, to check and recanvass the voting machines and absentee ballots of any precinct or any number of precincts involving his race. After this time period has elapsed and notice is taken, the ***county*** election board shall~~[immediately]~~ ***assemble at 9 a.m. on the Thursday following the filing deadline to request a recanvass, and not sooner,*** and recheck and recanvass each machine and make a proper return thereof to the county clerk, and the canvass and return shall become the official returns for the election. In making the recanvass, the board shall make a record of the number of the seal upon the voting machine and, without unlocking the machine against voting, recanvass the vote cast thereon. If, ~~after~~<sup>***upon***</sup> a recanvass, it is found that the original canvass of the returns has been correctly made from the machine, and that there still remains a discrepancy unaccounted for, this discrepancy shall be noted.~~[The registering counter of each candidate who requested a recanvass and the counter of the candidate's opponent shall be reset at zero (0) before it is tested, after which it shall be operated at least one hundred (100) times.]~~ If, upon recanvass, it appears that the original canvass of the returns by the election officers was incorrect, the returns and all papers being prepared by the board shall be corrected accordingly~~[, except that there shall be no change in the vote of any candidate from that originally certified unless the candidate was actually notified].~~ The county board of elections shall, immediately upon receipt of a request for a recanvass, notify each candidate for the office of the time and place of the recanvass. At the recanvass, each political party represented on the board may appoint a representative there to be its governing body, and also each candidate to be voted for may be present, either in person or by a representative or both. The county board of elections shall authorize representatives of the news media to observe the recanvass of the votes cast on the voting machine in each precinct. Nothing in this section shall prohibit an individual from requesting, in addition to a recanvass, a recount as authorized by KRS Chapter 120.
- (2) The State Board of Elections shall prescribe forms to be used by county boards of election to report all recanvassed votes. The form shall include the following information:
  - (a) The name of the county in which the recanvass was conducted;
  - (b) The date of the report;



- (c) The date of the election;
- (d) The office for which the recanvass was conducted;
- (e) The names of each candidate for the office being recanvassed; and
- (f) The machine votes, absentee votes, and vote totals for each candidate, as well as write-in votes cast in a regular or special election for candidates whose names did not appear on the ballot.

The report shall be signed by each member of the county board of elections.

- (3) The county board of elections shall file its recanvass report as prescribed in administrative regulations promulgated by the State Board of Elections in conformity with KRS Chapter 13A.
- (4) *The State Board of Elections shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish the proper procedures for conducting a recanvass for each type of voting system approved by the State Board of Elections and in use in Kentucky.*

Approved April 21, 2000

## CHAPTER 495

(HB 728)

AN ACT relating to state employee compensation.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 64 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby established an advisory council to be known as the Executive Branch Compensation Advisory Council.*
  - (a) *The council shall consist of three (3) voting members: the state budget director, the secretary of the Governor's Executive Cabinet, and the secretary of the Finance and Administration Cabinet.*
  - (b) *The state budget director shall serve as the chair of the council.*
  - (c) *If a voting member is unable to attend a meeting of the council, he shall designate, in writing, a member of his staff to attend in his place, and such designation shall confer on such designee, for that meeting only, the authority to act, including the right to vote on any matter coming before the council.*
- (2) *The council shall be attached to the Personnel Cabinet for administrative purposes. Personnel Cabinet staff shall provide necessary administrative and operational support for the council. The council may, from time to time, utilize the services of professional and technical personnel employed by other agencies of state government, if the need arises. The council shall meet on a quarterly basis at a time and place to be determined by the council. Additional meetings may be called upon request of two (2) voting members of the council.*
- (3) *The duties of the council shall include the following:*
  - (a) *Advise and make recommendations to the secretary of the Personnel Cabinet on appropriate salaries for the following:*
    - 1. *The heads of the various departments in the executive branch of state government, with the exception of:*
      - a. *Departments headed by constitutionally elected officers;*
      - b. *The Department of Education;*
      - c. *The Council on Postsecondary Education; and*
      - d. *The Kentucky Authority for Educational Television;*
    - 2. *The heads of offices, as defined in KRS 12.010;*

3. *The administrative heads of boards and commissions and for their employees, if they are not covered by the salary schedules set forth in KRS Chapter 16, KRS Chapter 18A, or KRS Chapter 151B, notwithstanding any other statute to the contrary empowering a board, commission, authority, or other administrative body for which the Personnel Cabinet provides personnel and payroll services except for any board governing any of the Kentucky Retirement Systems, the Kentucky Higher Education Assistance Authority, the Kentucky Authority for Educational Television, or the Council on Postsecondary Education to establish, set, or approve the salaries of its administrative head and other employees;*
  4. *Requests from boards, commissions, or cabinet heads to approve salary increases in excess of those increases provided other state employees to individuals in the positions listed in paragraphs (a), (b), and (c) of this subsection;*
    - (b) *Advise the secretary of the Personnel Cabinet on requests from agencies to establish or abolish a separate salary schedule, or schedules, reflective of the marketplace need to recruit and hire classified employees in technical or professional fields when the classified service salary schedule is inadequate. A positive recommendation of such requests shall not be granted unless significant credible evidence exists of a job market shortage and an inadequacy of the classified or unclassified salary schedules to recruit and retain competent, qualified applicants for such positions; and*
    - (c) *Recommend that the Personnel Cabinet conduct salary surveys of the executive branch positions outlined in subsection (3)(a)1., 2., and 3. of this section, using state governments in the seven (7) states contiguous to the Commonwealth, other states in the southeastern United States, and private sector employers, where appropriate.*
- (4) *The council's recommendations shall:*
- (a) *Take into consideration the provisions of Section 2 of this Act, if the specific position in question is subject to the provisions of Section 2 of this Act; and*
  - (b) *Not take into consideration the provisions of Section 2 of this Act, if the specific position in question is exempt from the provisions of Section 2 of this Act.*

Section 2. KRS 64.640 is amended to read as follows:

- (1) Except as otherwise provided in subsection (2) of this section, and excepting officers elected by popular vote, employees of the General Assembly, including employees of the Legislative Research Commission, members of boards and commissions, those officers and employees of Kentucky Educational Television exempt from classified service as provided in KRS 18A.115, presidents and employees of the state universities and the state colleges, and persons employed by the commissioner of parks on a temporary basis under KRS 148.026, the Personnel Cabinet shall prepare ~~schedules~~~~[a schedule]~~ of compensation, payable out of the State Treasury, with a minimum~~[and maximum]~~ salary rate, and ~~other~~~~[such intermediate]~~ salary rates as are deemed necessary or advisable, for the office or position of employment of every state officer and employee, including specifically the offices and positions of employment in every constitutional administrative department, statutory administrative department, independent agency, **board, commission** or other unit of state government. *The language of any statute empowering a board, commission, authority, or other administrative body for which the Personnel Cabinet provides personnel and payroll services except for any board governing any of the Kentucky Retirement Systems, the Kentucky Higher Education Assistance Authority, the Kentucky Authority for Educational Television, or the Council on Postsecondary Education to establish, set, or approve the salaries of its administrative head and other employees to the contrary notwithstanding, the establishment or setting of salaries for administrative heads or other employees shall be subject to the approval of the secretary of the Personnel Cabinet. The*~~[Such]~~ *schedules and rates shall be based upon studies of the duties and responsibilities of the offices and positions and upon a comparison with rates being paid for similar or comparable services elsewhere, and in the preparation of such schedules, the Personnel Cabinet shall ascertain and record the duties, responsibilities, and authority pertaining to the various offices and positions in the state service, and classify such positions in the manner provided in KRS 18A.030, 18A.035, 18A.110, 18A.130, 18A.135, and 18A.150 to 18A.160. No such schedule shall become effective until it has been approved by the Governor* **by executive order.**
- (2) The Governor shall set the compensation payable out of the State Treasury to each officer or position in the state service, which officer or position heads a statutory administrative department, independent agency, or other unit of state government except for those excluded under subsection (1) of this section. Such compensation shall be based upon studies of the duties and responsibilities and classification of the positions

by the Governor and upon a comparison with compensation being paid for similar or comparable services elsewhere, provided, however, such compensation shall not exceed the amount provided for compensation to the Governor in KRS 64.480, the provisions of KRS 64.660 to the contrary notwithstanding.

- (3) The compensation payable out of the State Treasury to officers and employees subordinate to any office or position covered by subsection (2) of this section shall not exceed the maximum rate established pursuant to subsection (2) of this section for such office or position, except with respect to physicians as provided in KRS 64.655 and employees of the Public Service Commission of Kentucky whose compensation shall be fixed, within constitutional limits, by the Personnel Cabinet with the approval of the Governor as provided in subsection (1) of this section.
- (4) Nothing in this section shall preclude the allowance of maintenance to officers and employees of the state.

Section 3. KRS 64.690 is amended to read as follows:

- (1) Except as provided in KRS 64.610 and in this section, KRS 64.480 to 64.740 are intended to supersede any existing statute, fixing the compensation, or authorizing any public officer or body to fix the compensation, of any public officer or employee covered by KRS 64.480 to 64.740.
- (2) Any public officer or body which has authority to fix the compensation of any state officer or employee covered by ***Section 2 of this Act***~~KRS 64.640~~ shall exercise such authority, subject to the schedule and limits of compensation for the particular office or position prescribed ***in Section 2 of this Act***~~under KRS 64.640~~. ***The secretary of the Personnel Cabinet shall have the authority to monitor and require compliance with the provisions of Sections 1 to 3 of this Act.***
- (3) KRS 64.480 to 64.740 are not intended to supersede any existing statute, with respect to the compensation of circuit clerks, county clerks, sheriffs, master commissioners, and receivers, and their deputies and assistants, in counties containing a population of seventy thousand (70,000) or more, or property valuation administrators, their deputies, and assistants, in any county.

Section 4. KRS 18A.195 is amended to read as follows:

- (1) A state employee who is authorized to work one (1) or more hours in excess of the prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis. Upon the written request of an employee ***who is not exempt from the provisions of the Federal Fair Labor Standards Act, 29 U.S.C. sec. 201, et seq.***, an appointing authority may grant compensatory time, in lieu of overtime pay, at the rate of one and one-half (1.5) hours for each hour the employee is authorized to work in excess of forty (40) hours in a work week. An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his compensatory leave in the receiving agency.
- (2) Any employee who leaves state service shall be paid for the balance of unused compensatory time.

**Approved April 21, 2000**

## CHAPTER 496

**(HB 734)**

AN ACT relating to the Court of Justice.

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

Section 1. KRS 26A.090 is amended to read as follows:

As used in KRS 26A.090 to 26A.115, unless the context otherwise requires:

- (1) "Operating costs allowance" means compensation equivalent to the annual expenses borne by the unit of government for utilities, janitorial service, rent, insurance, and necessary maintenance, repair, and upkeep of the court facility which do not increase the permanent value or expected life of the court facility, but keeps it in efficient operating condition, and, at the election of the Administrative Office of the Courts, capital costs of interior or mechanical renovations for the benefit of the court.
- (2) "Use allowance" means compensation equal to four percent (4%) annually of the total original capital costs and the cost of capitalized renovation of the court facility, except that if indebtedness has been incurred in respect to such capital costs at an interest rate equal to or greater than seven percent (7%), compensation shall be at a

rate of eight percent (8%) annually of that portion of the capital costs for which the rate applies. For refinanced projects constructed or renovated prior to July 1, 1994, the use allowance payment shall not change for the term of the original bond issue, unless there is a change in the space occupied. For court facilities renovated or constructed after July 1, 1994, "use allowance" means the court's proportional share of the annual principal and interest cost in connection with the renovation or construction, but not to exceed eight percent (8%) annually of capital costs, or, if there is no debt, four percent (4%) annually of capital costs. ***Beginning with court facility construction or renovation projects authorized by the 2000 Regular Session of the General Assembly, "use allowance" means the court's proportional share of the annual principal and interest costs in connection with the construction or renovation of the facility, not to exceed the authorized annual use allowance.***

- (3) "Capital costs" means the costs borne by the unit of government, excluding grants, conditioned by the grantor agency specifically for court facility construction or renovation, for acquisition of property and for construction and capitalized renovation including interest accruing during construction or renovation, but no other interest of each court facility. If capital costs are not documented, reasonable estimates provided by qualified appraisers will suffice. ***After the effective date of this Act, capital costs, for the purpose of computing the maximum annual use allowance, shall not exceed the project scope as authorized by the General Assembly in the judicial branch budget or as increased and approved under Section 4 of this Act.***
- (4) "Capitalized renovation" means all remodeling involving the structural or mechanical systems, except for remodeling that involves substantial demolition of the original structure. Remodeling involving substantial demolition of the original structure shall constitute construction resulting in a new court facility.
- (5) "Unit of government" means a county, city, urban-county government, special district, or corporate entity created for the purpose of constructing or holding title to a court facility.
- (6) "Court facility" means the land and buildings owned or operated by a unit of government in which space for the court of justice is provided. Judges' benches, jury and witness boxes, and fixed seating shall be considered as permanent building fixtures.
- (7) "Court facilities standards committee" means a committee consisting of the Chief Justice or his designee; one (1) judge each of the Court of Appeals, the Circuit Court, and the District Court appointed by the Supreme Court; the president of the Circuit Clerks' Association; the ~~chairmen~~~~chairman~~ of the ***House and Senate Judiciary***~~Civil~~ Committees of the General Assembly; the secretary of the Finance and Administration Cabinet; ***the director of the Administrative Office of the Courts***; and a county judge/executive appointed by the Governor. Each appointed member shall serve for a term of four (4) years from the date of his appointment or until he vacates the office in respect to which he was appointed, whichever is earlier.

SECTION 2. A NEW SECTION OF KRS CHAPTER 26A IS CREATED TO READ AS FOLLOWS:

- (1) ***The Chief Justice shall establish rules of procedure or guidelines on matters relating to the design, financing, and construction of court facilities. The rules or guidelines shall encompass:***
  - (a) ***The duties and responsibilities of the Administrative Office of the Courts under this section;***
  - (b) ***Criteria for evaluating the feasibility or practicability of various contracting or construction methods;***
  - (c) ***A project management system for managing, monitoring, and reporting on projects through all phases from funding to completion, including change-order procedures;***
  - (d) ***Assistance to counties in evaluating proposals for architectural, construction, or other professional services;***
  - (e) ***Methods for financing energy savings projects, Americans with Disabilities Act projects, and other improvement projects;***
  - (f) ***Kentucky standards for court facilities, including detailed requirements for space, construction, interior and exterior finishes, structural and mechanical systems, fixed and moveable furniture and equipment, and maximum unit cost for court facilities throughout the Commonwealth; and***
  - (g) ***The maintenance and operation of court facilities after construction.***
- (2) ***The Administrative Office of the Courts shall oversee the design, financing, and construction of court facilities. The Administrative Office of the Courts shall:***

- (a) *Assess the need for court facilities construction or renovation throughout the Commonwealth. The assessment shall consider the age, space adequacy, projected needs, structural soundness, mechanical and electrical systems, security needs, and interior and exterior quality of existing court facilities;*
  - (b) *Develop a project program for the construction or renovation of court facilities that the Administrative Office of the Courts determines to be most in need of construction or renovation, based on the needs assessment required under paragraph (a) of this subsection. The project program shall detail a complete and specifically defined court facilities project that conforms to the Kentucky standards for court facilities established under paragraph (f) of subsection (1) of this section, and shall include itemized space requirements, space relationships, design goals, scope limits, site considerations, cost estimates, and a proposed project budget;*
  - (c) *Establish the financial condition of any county that contains a court facility for which a project program under paragraph (b) of this subsection has been developed to determine the county's ability to participate in the proposed project. The Administrative Office of the Courts may discharge this responsibility by obtaining certification of the county's financial condition from the Department for Local Government, under subsection (5) of Section 7 of this Act;*
  - (d) *Develop a prioritized list, with cost estimates, based on land availability and the considerations required by this section, of proposed court facilities projects, and submit the list to the Chief Justice for approval and to the Court Facilities Standards Committee for informational purposes only. Upon approval by the Chief Justice, the Administrative Office of the Courts shall submit the prioritized list to the Capital Planning Advisory Board, by April 15 of each odd-numbered year, in accordance with KRS 7A.120; and*
  - (e) *Develop and maintain uniform contracts to be used by local units of government when procuring architectural, construction, financial, or other services relating to court facilities projects authorized by the General Assembly.*
- (3) *Before the Administrative Office of the Courts submits a budget request for court projects under KRS 48.050, each local unit of government that is expected to participate in financing a requested court project shall enter into a written memorandum of agreement with the Administrative Office of the Courts. Each county with a court project authorized by the 2000 General Assembly shall enter into a written memorandum of agreement with the Administrative Office of the Courts. The agreement shall be developed by the Administrative Office of the Courts, shall specify the rights, duties, and obligations of the local unit of government and the Administrative Office of the Courts relating to the project, and shall be contingent upon the project's authorization by the General Assembly.*
  - (4) *No contract, and no modification to any contract, relating to the design, financing, or construction of court facilities projects authorized by the General Assembly shall be executed unless first reviewed and approved by the Administrative Office of the Courts.*
  - (5) *All court facilities projects, beginning with those authorized by the 2000 General Assembly, shall comply with the Kentucky standards for court facilities established under paragraph (f) of subsection (1) of this section. No other standards shall be used.*
  - (6) *This section shall not affect or apply to any contract executed prior to the effective date of this Act.*
  - (7) *All local units of government or any other entity providing space to the Court of Justice under KRS 26A.100 shall, consistent with the law, comply with the rules of procedure and guidelines established by the Chief Justice and administered by the Administrative Office of the Courts under this section.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 26A IS CREATED TO READ AS FOLLOWS:

- (1) *The use allowance in the judicial branch budget recommendation submitted under KRS 48.100 shall be determined as if bonds will be issued for a term of twenty (20) years at the prevailing market rate, computed from the estimated date that the Court of Justice will occupy the facility. If the market rate for the bonds has increased when the bonds are to be sold, the director of the Administrative Office of the Courts may approve an extension in the bond term, up to a total of twenty-five (25) years, but only as necessary to keep the annual use allowance within the budgeted amount. All bonds issued by any local unit of government for court facilities projects shall be limited to the term approved by the Administrative Office of the Courts.*

- (2) *Before approving any bond issue for a term exceeding twenty-five (25) years, the director of the Administrative Office of the Courts shall submit a proposal for the extended term to the Interim Joint Committee on Appropriations and Revenue and the Capital Projects and Bond Oversight Committee. The proposal shall include a statement of the necessity for the extended bond term and the impact of the extended term on the project's budgeted scope and authorized annual use allowance.*
- (3) *Within thirty (30) days after receiving a proposal to extend a bond term beyond twenty-five (25) years, the Interim Joint Committee on Appropriations and Revenue and the Capital Projects and Bond Oversight Committee shall either approve or disapprove the proposal and shall then promptly notify the director of the Administrative Office of the Courts. If either committee disapproves the proposal, the director of the Administrative Office of the Courts shall take one (1) of the following actions and shall notify the committee of its decision in writing within thirty (30) days:*
  - (a) *Disapprove and take no further action on the proposal;*
  - (b) *Revise the proposal to comply with the committee's objections; or*
  - (c) *Determine to approve and proceed with the proposal over the committee's objection.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 26A IS CREATED TO READ AS FOLLOWS:

- (1) *There is created a court facility use allowance contingency fund. The fund shall consist of money appropriated to it in the judicial branch budget by the General Assembly. Money in the fund shall not lapse but shall be carried forward to the next fiscal year or biennium.*
- (2) *The Court of Justice may agree to increase the budgeted scope of a court project or project pool authorized in a judicial branch budget bill enacted by the General Assembly, and may use the use allowance contingency fund to cover any resulting increase in the budgeted annual use allowance, if and only if:*
  - (a) *The appropriate unit of government first submits a proposal for the increase to the Court Facilities Standards Committee, and the Court Facilities Standards Committee approves the increase;*
  - (b) *The annual use allowance for the project or project pool, adjusted for the proposed increase in scope, would not exceed the annual use allowance specified for that project or project pool in the multiyear use allowance schedule set out in the judicial branch budget bill or memorandum by more than fifteen percent (15%); and*
  - (c) *The requirements of Section 5 of this Act have been met.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 26A IS CREATED TO READ AS FOLLOWS:

- (1) *Before the Court of Justice gives final approval to an increase in the budgeted scope of an authorized project or project pool listed in a judicial branch budget bill which would result in an increased use allowance, the director of the Administrative Office of the Courts shall submit a proposal for the increase to the Capital Projects and Bond Oversight Committee at least fourteen (14) days prior to the committee meeting. The proposal shall include:*
  - (a) *The multiyear use allowance specified in the judicial branch budget bill or memorandum;*
  - (b) *The proposed increase in the use allowance;*
  - (c) *The reasons and necessity for the proposed increase;*
  - (d) *A statement as to whether or how the proposed use of funds conforms with the requirements of the law; and*
  - (e) *Any other information that the committee requests.*
- (2) *Within thirty (30) days after receiving a proposal to increase the use allowance, the Capital Projects and Bond Oversight Committee shall either approve or disapprove the proposal and shall then promptly notify the director of the Administrative office of the Courts of its decision.*
- (3) *If the Capital Projects and Bond Oversight Committee disapproves the proposal, the director of the Administrative Office of the Courts shall take one (1) of the following actions and shall notify the committee of its decision in writing within thirty (30) days of receiving the committee's notice of disapproval:*
  - (a) *Revise the proposal to comply with the committee's objections;*

- (b) *Cancel and take no further action on the proposal; or*
- (c) *Determine to implement the proposal over the committee's objection.*
- (4) *The Administrative Office of the Courts shall report to the Capital Projects and Bond Oversight Committee within thirty (30) days of any action taken by the Court of Justice to approve a scope increase of a project within a pool which would increase the use allowance for that project.*
- (5) *The Capital Projects and Bond Oversight Committee shall maintain records of proposals, findings, decisions, and actions taken under this section. When appropriate, the committee shall provide this information to other legislative committees or to the General Assembly.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 26A IS CREATED TO READ AS FOLLOWS:

- (1) *The Administrative Office of the Courts shall provide to the Capital Projects and Bond Oversight Committee, at the committee's January, April, July, and October regular meetings, a status report on the progress of all incomplete court facilities projects. For each project, the status report shall include:*
  - (a) *The project title;*
  - (b) *The county in which the project is located;*
  - (c) *The scope and use allowance authorized for the project in the judicial branch budget and budget memorandum, and any increases to the scope or use allowance under Section 4 of this Act;*
  - (d) *The current status of the project;*
  - (e) *An explanation of any delay or major change in the project; and*
  - (f) *Any other information that the committee requests.*
- (2) *On August 1 of each year, the Administrative Office of the Courts shall prepare a financial report on the court facility use allowance contingency fund for the fiscal year ending on June 30 of that year. The report shall include, with explanations, allotments, expenditures, encumbrances, and the available balance.*

Section 7. KRS 147A.021 is amended to read as follows:

- (1) The Department for Local Government shall have the following powers and duties:
  - (a) To require any reports from local governments that will enable it adequately to provide the technical and advisory assistance authorized by this section.
  - (b) To encourage, conduct, or participate in training courses in procedures and practices for the benefit of local officials, and in connection therewith, to cooperate with associations of public officials, business and professional organizations, university faculties, or other specialists.
  - (c) To request assistance and information, which shall be provided by all departments, divisions, boards, bureaus, commissions, and other agencies of state government to enable the department to carry out its duties under this section.
  - (d) At its discretion, to compile and publish annually a report on local government.
- (2) The Department for Local Government shall coordinate for the Governor the state's responsibility for, and shall be responsible for liaison with the appropriate state and federal agencies with respect to, the following programs:
  - (a) Demonstration cities and metropolitan development act as amended with the exception of Title I of the Housing and Community Development Act of 1974 as amended through 1981;
  - (b) Farmers Home Administration;
  - (c) Veterans Administration Act as amended, as it pertains to housing.
- (3) The Department for Local Government shall provide technical assistance and information to units of local government, including but not limited to:
  - (a) Personnel administration;
  - (b) Ordinances and codes;
  - (c) Community development;

- (d) Appalachian Regional Development Program;
  - (e) Economic Development Administration Program;
  - (f) Intergovernmental Personnel Act Program;
  - (g) Land and Water Conservation Fund Program;
  - (h) Area Development Fund Program;
  - (i) Gas System Restoration Project;
  - (j) Joint Funding Administration Program;
  - (k) State clearinghouse for A-95 review;
  - (l) The memorandums of agreement with the area development districts to provide management assistance to local governments; and
  - (m) The urban development office.
- (4) The Department for Local Government shall exercise all of the functions of the state local finance officer provided in KRS Chapters 66, 68, and 131 relating to the control of funds of counties, cities, and other units of local government.
- (5) *Upon request of the Administrative Office of the Courts, the Department for Local Government shall evaluate the financial condition of any local unit of government selected to participate in a court facilities construction or renovation project under Section 2 of this Act, and shall certify to the Administrative Office of the Courts the local unit of government's ability to participate in the project.*

**Approved April 21, 2000**

## CHAPTER 497

**(HB 736)**

AN ACT relating to accidents.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 277 IS CREATED TO READ AS FOLLOWS:

- (1) *In any circumstance involving an accident on a railroad, or any alleged violation of law involving the operation of a train, in which the engineer or any other train crew member is detained by any law enforcement officer investigating the accident or alleged violation of law:*
- (a) *The engineer and other train crew members shall not be required to show the law enforcement officer the person's operator's license issued under KRS Chapter 186; and*
  - (b) *The law enforcement officer shall be prohibited from requiring an engineer or other train crew member to show the law enforcement officer the person's operator's license issued under KRS Chapter 186.*

Section 2. KRS 189.635 is amended to read as follows:

- (1) The Justice Cabinet, Department of State Police, shall be responsible for maintaining a reporting system for all vehicle accidents which occur within the Commonwealth. Such accident reports shall be utilized for such purposes as will improve the traffic safety program in the Commonwealth involving the collection, processing, storing, and dissemination of such data and the establishment of procedures by administrative regulations to insure that uniform definitions, classifications, and other federal requirements are in compliance.
- (2) Any person operating a vehicle on the highways of this state who is involved in an accident resulting in fatal or nonfatal personal injury to any person or damage to the vehicle rendering the vehicle inoperable shall be required to immediately notify a law enforcement officer having jurisdiction. In the event the operator fails to notify or is incapable of notifying a law enforcement officer having jurisdiction, such responsibility shall rest with the owner of the vehicle or any occupant of the vehicle at the time of the accident. A law enforcement officer having jurisdiction shall investigate the accident and file a written report of the accident with his law enforcement agency.



- (3) Every law enforcement agency whose officers investigate a vehicle accident of which a report must be made as required in this chapter shall file a report of the accident with the Department of State Police within ten (10) days after investigation of the accident upon forms supplied by the department.
- (4) Any person operating a vehicle on the highways of this state who is involved in an accident resulting in any property damage exceeding five hundred dollars (\$500) in which an investigation is not conducted by a law enforcement officer shall file a written report of the accident with the Department of State Police within ten (10) days of occurrence of the accident upon forms provided by the department.
- (5) All accident reports filed with the Department of State Police in compliance with subsection (4) above shall remain confidential except that the department may disclose the identity of a person involved in an accident when his identity is not otherwise known or when he denies his presence at an accident. ***Except as provided in subsection (7) of this section,*** all other accident reports required by this section, and the information contained in the reports, shall be confidential and exempt from public disclosure except when produced pursuant to a properly executed subpoena or court order, or except pursuant to subsection (6) of this section. These reports shall be made available only to the parties to the accident, the parents or guardians of a minor who is party to the accident, and the insurers of any party who is the subject of the report, or to the attorneys of the parties.
- (6) The report shall be made available to a news-gathering organization, solely for the purpose of publishing or broadcasting the news. The news-gathering organization shall not use or distribute the report, or knowingly allow its use or distribution, for a commercial purpose other than the news-gathering organization's publication or broadcasting of the information in the report. A newspaper, periodical, or radio or television station shall not be held to have used or knowingly allowed the use of the report for a commercial purpose merely because of its publication or broadcast.
- (7) ***The motor vehicle insurers of any train engineer or other train crew member involved in an accident on a railroad while functioning in their professional capacity shall be prohibited from obtaining a copy of any accident report filed on the accident under this section without written consent from the individual the company insures. Insurance companies issuing motor vehicle policies in the Commonwealth shall be prohibited from raising a policyholder's rates solely because the policyholder, in his or her professional capacity, is a train engineer or other train crew member involved in an accident on a railroad.***

Approved April 21, 2000

## CHAPTER 498

(HB 739)

AN ACT relating to retired teachers and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS 161.230 TO 161.716 IS CREATED TO READ AS FOLLOWS:

- (1) ***The board of trustees is authorized to provide a supplemental retirement benefit plan for the sole purpose of enabling the employer to apply the same formula for determining benefits payable to all employees covered by the retirement system, whose benefits under the retirement system are limited by Section 415 of the Internal Revenue Code of 1986, as amended from time to time. This plan is intended to constitute a qualified governmental excess benefit plan as described in Section 415 of the Internal Revenue Code.***
- (2) ***The board of trustees shall administer this plan and have full discretionary fiduciary authority to determine all questions in connection with the plan. The board of trustees may adopt procedural rules and administrative regulations and may employ and rely on any legal counsel, actuaries, accountants, and agents as it deems advisable to assist in the administration of this plan.***
- (3) ***All members and retired former members in the retirement system shall be eligible to participate in this plan whenever their benefits under the retirement system would exceed the limitation on benefits imposed by Section 415 of the Internal Revenue Code.***
- (4) ***On or after the effective date of this plan, the employer shall pay to each eligible member in the retirement system who retires on or after that date and to each former member who retired before that date and his or her beneficiaries a supplemental pension benefit, equal to the amount by which the benefit that would have been payable under the retirement system, without regard to any provision therein incorporating the***

*limitation on benefits imposed by Section 415 of the Internal Revenue Code, exceeds the benefit actually payable, taking into account the limitation imposed on the retirement system by Section 415 of the code. These supplemental pension benefits shall be computed and payable under the same terms and conditions and to the same person as the benefits payable to, or on account of, an eligible member under the retirement system.*

- (5) *Benefits payable under this plan shall not be subject to the dollar limit applicable to eligible deferred compensation plans under Section 457 of the Internal Revenue Code, nor to the "substantial risk or forfeiture" rules of Section 457(f) of the code applicable to ineligible deferred compensation plans. In addition, benefits payable under this plan shall not be taken into account in determining whether any other plan of the employer is an eligible deferred compensation plan under Section 457 of the code.*
- (6) *Funding of benefits payable under this plan shall be provided by the state, as employer, and shall be segregated from funds that are maintained by the retirement system for payment of the regular benefits provided by the retirement system. The employer may establish a grantor trust for payment of benefits provided under this plan, with the employer treated as "grantor" thereof for purposes of Section 677 of the Internal Revenue Code. The rights of any person to receive benefits under this plan are limited to those of a general creditor of the employer.*

SECTION 2. A NEW SECTION OF KRS 161.230 TO 161.716 IS CREATED TO READ AS FOLLOWS:

- (1) *The board of trustees is authorized to implement a limited defined contribution plan for the sole purpose of providing retirement allowance payments for retired members who have been approved by the retirement system for full-time reemployment as provided in Section 16 of this Act.*
- (2) *The defined contribution plan shall be administered separately from the regular benefits provided for members of the retirement system, except that the contributions to the plan shall be invested in the same manner as other contributions to the retirement system.*
- (3) *All retired members of the retirement system who are approved by the retirement system for full-time reemployment as provided in Section 16 of this Act shall be eligible to participate in the plan.*
- (4) *Separate member accounts shall be maintained for participants in this plan which shall reflect the annual contributions made to the participant's account based on the rates and interest levels specified in Section 16 of this Act.*
- (5) *When the retiree's reemployment terminates, the total contributions and accrued interest in the participant's account will be paid in a lump sum payment or on an actuarial straight life monthly basis to the retiree. If the member dies prior to making application for a retirement allowance under this plan, the beneficiary designated by the participant for this plan shall receive a refund of the funds in the account. If there is a remaining balance in the account at the death of the participant after retirement from this plan, it shall be paid to the beneficiary designated by the participant for this benefit.*
- (6) *Retired members shall be eligible to receive their retirement annuity when approved for reemployment and participation in this plan. Service as a reemployed retiree may not be used in any manner for credit under the regular retirement benefit plans provided by the retirement system.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 156 IS CREATED TO READ AS FOLLOWS:

- (1) *For purposes of this section and Section 16 of this Act, "critical shortage area" means a lack of certified teachers in particular subject areas, in grade levels, or in geographic locations at the elementary and secondary level, as determined annually by the commissioner of education. The commissioner may use any source considered reliable including, but not limited to, data provided by the Education Professional Standards Board and local education agencies to identify the critical shortage areas.*
- (2) *The Kentucky Board of Education shall promulgate administrative regulations to establish procedures to be used to appoint retired teachers and administrators to positions in critical shortage areas under this section and Section 16 of this Act. The administrative regulations shall assure that a retired teacher or administrator shall not be hired until the superintendent assures the commissioner of education that the superintendent has made every reasonable effort to recruit an active teacher or administrator for the position on an annual basis. The commissioner of education shall report members reemployed under this section to the Kentucky Teachers' Retirement System.*
- (3) *If a local school district needs a person to fill a critical shortage position after reaching its quota established under Section 16 of this Act, the commissioner of education, with the approval of the executive director of*

*the Kentucky Teachers' Retirement System, may allow the district to exceed its quota if the statewide quota has not been met.*

SECTION 4. A NEW SECTION OF KRS 161.230 TO 161.716 IS CREATED TO READ AS FOLLOWS:

- (1) Any active contributing member may purchase service credit as authorized under KRS Chapter 161 by rolling over funds from a previous plan qualified under Section 401(a) or 401(k) of the Internal Revenue Code to the extent that rollovers are permitted by the rules set forth in the Internal Revenue Code. The rollovers may be made directly from a previous qualified plan or through a conduit individual retirement account as permitted by the rules set forth in the Internal Revenue Code.*
- (2) Any active contributing member may purchase service credit as authorized under KRS Chapter 161 by transferring funds directly from a retirement plan maintained by the Commonwealth of Kentucky and qualified under Section 401(a) or 401(k) of the Internal Revenue Code, to the extent that transfers are permitted by the rules set forth in the Internal Revenue Code.*
- (3) The amount of any transfer or rollover purchase as permitted under subsections (1) and (2) of this section, excluding that portion credited to the medical insurance fund under subsection (5) of Section 8 of this Act, shall be credited to the individual member's account and shall be considered accumulated contributions of the member.*

Section 5. KRS 161.220 is amended to read as follows:

As used in KRS 161.230 to 161.716 and KRS 161.990:

- (1) "Retirement system" means the arrangement provided for in KRS 161.230 to 161.716 and KRS 161.990 for payment of allowances to members;
- (2) "Retirement allowance" means the amount annually payable during the course of his natural life to a member who has been retired by reason of service;
- (3) "Disability allowance" means the amount annually payable to a member retired by reason of disability;
- (4) "Member" means the chief state school officer, deputy commissioners, associate commissioners, and all division directors in the State Department of Education, and any regular or special teacher, or professional occupying a position requiring certification or graduation from a four (4) year college or university, as a condition of employment, and who is employed by public boards, institutions, or agencies as follows:
  - (a) Local boards of education;
  - (b) Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Western Kentucky University, and any community colleges established under the control of these universities;
  - (c) State-operated secondary area vocational education or area technology centers, Kentucky School for the Blind, and Kentucky School for the Deaf;
  - (d) The State Department of Education, other public education agencies as created by the General Assembly, and those members of the administrative staff of the Teachers' Retirement System of the State of Kentucky whom the board of trustees may designate by administrative regulation;
  - (e) Regional cooperative organizations formed by local boards of education or other public educational institutions listed in this subsection, for the purpose of providing educational services to the participating organizations;
  - (f) All full-time members of the staffs of the Kentucky Association of School Administrators, Kentucky Education Association, Kentucky Vocational Association, Kentucky High School Athletic Association, Kentucky Academic Association, and the Kentucky School Boards Association who were members of the Kentucky Teachers' Retirement System or were qualified for a position covered by the system at the time of employment by the association in the event that the board of directors of the respective association petitions to be included. The board of trustees of the Kentucky Teachers' Retirement System may designate by resolution whether part-time employees of the petitioning association are to be included. The state shall make no contributions on account of these employees, either full-time or part-time. The association shall make the employer's contributions, including any contribution that is specified under KRS 161.550. The provisions of this paragraph shall be applicable to persons in the employ of the associations on or subsequent to July 1, 1972;

- (g) The Department for Adult Education and Literacy;
  - (h) The Department for Technical Education;
  - (i) The Office of General Counsel within the Office of the Secretary of the Cabinet for Workforce Development;
  - (j) The Office for Policy and Budget within the Office of the Secretary of the Cabinet for Workforce Development;
  - (k) The Office of Personnel Services within the Office of the Secretary of the Cabinet for Workforce Development;
  - (l) The Office for Administrative Services within the Office of the Secretary of the Cabinet for Workforce Development;
  - (m) The Department of Vocational Rehabilitation;
  - (n) The Kentucky Educational Collaborative for State Agency Children;
  - (o) The Governor's Scholars Program;
  - (p) Any person who is retired for service from the retirement system and is reemployed by an employer identified in this subsection in a position that the board of trustees deems to be a member;
  - (q) Employees of the Cabinet for Workforce Development who are transferred to the Kentucky Community and Technical College System and who occupy positions covered by the Kentucky Teachers' Retirement System shall remain in the Teachers' Retirement System. New employees occupying these positions, as well as newly created positions qualifying for Teachers' Retirement System coverage that would have previously been included in the Cabinet for Workforce Development, shall be members of the Teachers' Retirement System; and
  - (r) Effective January 1, 1998, employees of state community colleges who are transferred to the Kentucky Community and Technical College System shall continue to participate in federal old age, survivors, disability, and hospital insurance and a retirement plan other than the Kentucky Teachers' Retirement System offered by Kentucky Community and Technical College System. New employees occupying positions in the Kentucky Community and Technical College System as referenced in KRS 164.5807(5) that would not have previously been included in the Cabinet for Workforce Development, shall participate in federal old age, survivors, disability, and hospital insurance and have a choice at the time of employment of participating in a retirement plan provided by the Kentucky Community and Technical College System, including participation in the Kentucky Teachers' Retirement System, on the same basis as faculty of the state universities as provided in KRS 161.540 and 161.620.
- (5) "Present teacher" means any teacher who was a teacher on or before July 1, 1940, and became a member of the retirement system created by 1938 (1st Extra. Sess.) Ky. Acts ch. 1, on the date of the inauguration of the system or within one (1) year after that date, and any teacher who was a member of a local teacher retirement system in the public elementary or secondary schools of the state on or before July 1, 1940, and continued to be a member of the system until he, with the membership of the local retirement system, became a member of the state Teachers' Retirement System or who becomes a member under the provisions of KRS 161.470(4);
- (6) "New teacher" means any member not a present teacher;
- (7) "Prior service" means the number of years during which the member was a teacher in Kentucky prior to July 1, 1941, except that not more than thirty (30) years' prior service shall be allowed or credited to any teacher;
- (8) "Subsequent service" means the number of years during which the teacher is a member of the Teachers' Retirement System after July 1, 1941;
- (9) "Final average salary" means the average of the five (5) highest annual salaries which the member has received for service in a covered position and on which the member has made contributions, or on which the public board, institution, or agency has picked-up employee contributions pursuant to KRS 161.540(2), or the average of the five (5) years of highest salaries as defined in KRS 61.680(2)(a), which shall include picked-up employee contributions. Additionally, the board of trustees may approve a final average salary based upon the average of the three (3) highest salaries for members who are at least fifty-five (55) years of age and have a minimum of twenty-seven (27) years of Kentucky service credit. However, if any of the five (5) or three (3) highest annual salaries used to calculate the final average salary was paid within the three (3) years

immediately prior to the date of the member's retirement, the amount of salary to be included for each of those three (3) years for the purpose of calculating the final average salary shall be limited to the lesser of:

- (a) The member's actual salary; or
- (b) The member's annual salary that was used for retirement purposes during each of the prior three (3) years, plus a percentage increase equal to the percentage increase received by all other members employed by the public board, institution, or agency, or for employees of school districts, the highest percentage increase received by members on any one (1) rank and step of the salary schedule of the school district. The increase shall be computed on the salary that was used for retirement purposes.

This limitation shall not apply if the member receives an increase in salary in a percentage exceeding that received by the other members, and this increase was accompanied by a corresponding change in position or in length of employment. This limitation shall also not apply to the payment to a member for accrued annual leave or accrued sick leave which is authorized by statute and which shall be included as part of a retiring member's annual compensation for the member's last year of active service;

- (10) "Annual compensation" means the total salary received by a member as compensation for all services performed in employment covered by the retirement system during a fiscal year. Annual compensation shall not include payment for any benefit or salary adjustments made by the public board, institution, or agency to the member or on behalf of the member which is not available as a benefit or salary adjustment to other members employed by that public board, institution, or agency. Annual compensation shall not include the salary supplement received by a member under KRS 158.782 on or after July 1, 1996. The board of trustees shall determine if any benefit or salary adjustment qualifies as annual compensation;
- (11) "Age of member" means the age attained on the first day of the month immediately following the birthdate of the member. This definition is limited to retirement eligibility and does not apply to tenure of members;
- (12) "Age of entrance" means the age attained at the last birthday of any member at the time of the establishment of the retirement system, if the member was a member subject to membership in the system at that time. Otherwise it means the age attained as of July 1 of the fiscal year in which he first becomes a member of the retirement system. Any birthday occurring on February 29 shall be considered as occurring on February 28;
- (13) "Regular interest" means interest at three percent (3%) per annum;
- (14) "Accumulated contributions" means the contributions of a member to the teachers' savings fund, including picked-up employee contributions as described in KRS 161.540(2), plus accrued regular interest;
- (15) "Annuitant" means a person who receives a retirement allowance or a disability allowance;
- (16) "Local retirement system" means any teacher retirement or annuity system created in any public school district in Kentucky in accordance with the laws of Kentucky;
- (17) "Fiscal year" means the twelve (12) month period from July 1 to June 30. A contract for a member employed by a local board of education may not exceed two hundred sixty-one (261) days in the fiscal year;
- (18) "Public schools" means the schools and other institutions mentioned in subsection (4) of this section;
- (19) "Dependent" as used in KRS 161.520 and 161.525 means a person who was receiving, at the time of death of the member, at least one-half (1/2) of the support from the member for maintenance, including board, lodging, medical care, and related costs;
- (20) "Active contributing member" means a member currently making contributions to the Teachers' Retirement System, who made contributions in the next preceding fiscal year, for whom picked-up employee contributions are currently being made, or for whom these contributions were made in the next preceding fiscal year;~~and~~
- (21) "Regular teacher, supervisor, or administrator," when used to determine eligibility for membership in the retirement system, means a professional employee holding a position which requires services on a continuing basis equal to at least seven-tenths (7/10) of normal full-time service on a daily or weekly basis; **and**
- (22) ***"Full actuarial cost," when used to determine the payment that a member must pay for service credit means the actuarial value of all costs associated with the enhancement of a member's benefits or eligibility for benefit enhancements, including health insurance supplement payments made by the retirement system. The actuary for the retirement system shall determine the full actuarial value costs and actuarial cost factor tables as provided in Section 7 of this Act.***

Section 6. KRS 161.250 is amended to read as follows:

- (1) The general administration and management of the retirement system, and the responsibility for its proper operation and for making effective provisions of KRS 161.155 and 161.220 to 161.714 are vested in a board of trustees to be known as the "Board of Trustees of the Teachers' Retirement System of the State of Kentucky." The board of trustees shall consist of the chief state school officer, the State Treasurer, and seven (7) other trustees elected as provided in KRS 161.260. Four (4) of the elective trustees shall be members of the retirement system, to be known as teacher trustees, two (2) shall be persons who are not members of the teaching profession, to be known as the lay trustees, and one (1) shall be an annuitant of the retirement system to be known as the retired teacher trustee. One (1) teacher trustee shall be elected annually for a four-year term. The retired teacher trustee shall be elected every four (4) years. The chief state school officer and the State Treasurer are considered ex-officio members of the board of trustees and may designate in writing a person to represent them at board meetings.
- (2) *A member, retired member, or designated beneficiary may appeal the retirement system's decisions that materially affect the amount of service retirement allowance, amount of service credit, eligibility for service retirement or eligibility for survivorship benefits to which that member, retired member, or designated beneficiary claims to be entitled. All appeals must be in writing and filed with the retirement system within thirty (30) days of the claimant's first notice of the retirement system's decision. For purposes of this section, notice shall be complete and effective upon the date of mailing of the retirement system's decision to the claimant at the claimant's last known address. Failure by the claimant to file a written appeal with the retirement system within the thirty (30) day period shall result in the decision of the retirement system becoming permanent with the effect of a final and unappealable order. Appeals may include a request for an administrative hearing which shall be conducted in accordance with the provisions of KRS Chapter 13B. A member, retired member, or designated beneficiary who has filed a timely, written appeal of a decision of the retirement system may, following the administrative hearing and issuance of the final order by the board of trustees, appeal the final order of the board of trustees to the Franklin Circuit Court in accordance with the provisions of KRS Chapter 13B.*

Section 7. KRS 161.400 is amended to read as follows:

- (1) The board of trustees shall designate as actuary a competent person who shall be a fellow of the Conference of Actuaries in Public Practice or a member of the American Academy of Actuaries. He shall be the technical adviser of the board on matters regarding the operation of the funds of the system and shall perform such other duties as are required in connection therewith. At least once in each six (6) year period after the first year of operation of the system, the actuary shall make an actuarial investigation into the actuarial assumptions used, including, but not limited to, mortality, earnable interest, and service and compensation of the members and beneficiaries of the retirement system; make a valuation of the assets and liabilities of the funds of the system; and recommend to the board of trustees such changes as may be deemed necessary to keep the retirement system on a sound financial basis. On the basis of the results of such investigations, the board of trustees shall make necessary changes in the retirement system within the provisions of law and shall recommend the contributions payable by the state within the limits specified in KRS 161.550. At least once in each two (2) year period the actuary shall make an actuarial valuation of the retirement system. The valuation shall include a description of the actuarial assumptions used, and such assumptions shall be reasonably related to the experience of the system and represent the actuary's best estimate of anticipated experience.
- (2) Actuarial factors *and actuarial cost factor tables* in use by the retirement system for all purposes shall be determined by the actuary of the retirement system and approved by the board of trustees *by resolution and implemented without the necessity of an administrative regulation.* ~~[-but]~~ The assets of the system shall be valued at market value, or at a modified market value determined by the board to be a prudent measure of asset value. *Effective July 1, 1992, the* ~~For the period July 15, 1990, to June 30, 1992, the assumed rate of investment return shall be set at one and one half (1 1/2) percentage points above the assumed rate of salary increase. Thereafter, this~~ spread between investment and salary assumptions shall be reviewed and adjusted at the time of actuarial valuation, based upon the most recent five (5) year experience of the system.
- (3) A copy of each actuarial investigation and valuation shall be forwarded to the Legislative Research Commission no later than ten (10) days after receipt by the board.

Section 8. KRS 161.420 is amended to read as follows:

All of the assets of the retirement system are for the exclusive purpose of providing benefits to members and annuitants and defraying reasonable expenses of administering the system. The board of trustees shall be the trustee of

all funds of the system and shall have full power and responsibility for administering the funds. It is hereby declared that the restrictions and rights provided herein shall not be subject to reduction or impairment by alteration, amendment, or repeal. All the assets of the retirement system shall be credited according to the purpose for which they are held to one (1) of the following funds:

- (1) The expense fund shall consist of the funds set aside from year to year by the board of trustees to defray the expenses of the administration of the retirement system. Each fiscal year an amount not greater than four percent (4%) of the income earned from investments during the immediate past fiscal year shall be set aside into the expense fund or expended for the administration of the retirement system;
- (2) The teachers' savings fund shall consist of the contributions paid by members of the retirement system into this fund and regular interest assigned by the board of trustees from the guarantee fund. The accumulated contributions of a member returned to him upon his withdrawal or paid to his estate or designated beneficiary in the event of his death shall be paid from the teachers' savings fund. Any accumulated contributions forfeited by a failure of a teacher or his estate to claim these contributions shall be transferred from the teachers' savings fund to the guarantee fund. The accumulated contributions of a member shall be transferred from the teachers' savings fund to the allowance reserve fund in the event of retirement by reason of service or disability;
- (3) The state accumulation fund shall consist of funds appropriated by the state for the purpose of providing annuities, survivor benefits, and death benefits, including any sums appropriated for meeting unfunded liabilities, together with regular interest assigned by the board of trustees from the guarantee fund. At the time of retirement or death of a member there shall be transferred from the state accumulation fund to the allowance reserve fund an amount which together with the sum transferred from the teachers' savings fund will be sufficient to provide the member a retirement allowance and provide for benefits under KRS 161.520, 161.525, and 161.655;
- (4) The allowance reserve fund shall be the fund from which shall be paid all retirement allowances and benefits provided under KRS 161.520, 161.525, and 161.655. In addition, whenever a change in the status of a member results in an obligation on this fund, there shall be transferred to this fund from the teachers' savings fund, and the state accumulation fund, the amounts as may be held in those funds for the account or benefit of the member;
- (5) The medical insurance fund shall consist of amounts accumulated for the purpose of providing benefits as provided in KRS 161.675. One and five tenths percent (1.5%) of the gross annual payroll of all members shall be deposited to this fund. One-half (1/2) of this amount shall derive from member contributions and one-half (1/2) from a state appropriation. The board of trustees may allocate ~~up to a maximum of one and sixty five hundredths percent (1.65%) of~~ the three and twenty-five hundredths percent (3.25%) of the total salaries of active members that the state appropriates annually as provided under KRS 161.550. All claims for benefits under KRS 161.675 shall be paid from this fund. Any amounts not required to meet current costs shall be maintained as a reserve for these benefits; and
- (6) The guarantee fund shall be maintained to facilitate the crediting of uniform interest on the amounts of the other funds, except the expense fund, to finance operating expenses directly related to investment management services, and to provide a contingent fund out of which special requirements of any of the other funds may be covered. All income, interest, and dividends derived from the authorized deposits and investments shall be paid into the guarantee fund. Any funds received from gifts and bequests, which the board is hereby authorized to accept and expend without limitation in a manner either expressed by the donor or deemed to be in the best interest of the membership, shall be credited to the guarantee fund. Any funds transferred from the teachers' savings fund by reason of lack of claimant or because of a surplus in any fund and any other moneys whose disposition is not otherwise provided for, shall also be credited to the guarantee fund. The interest allowed by the board of trustees to each of the other funds shall be paid to these funds from the guarantee fund. Any deficit occurring in any fund that would not be automatically covered shall be met by the payments from the guarantee fund to that fund. The board of trustees may, at any time during a fiscal year, transfer from the guarantee fund to the medical insurance fund an amount not to exceed four percent (4%) of the income earned from investments during the immediate past year.
- (7) The school employee annuity fund shall consist of those funds voluntarily contributed under the provisions of section 403(b) of the Internal Revenue Code by a retired member of the Teachers' Retirement System with accounts that existed on or after July 1, 1996. The contributions shall not be picked up as provided in KRS 161.540(2). Separate member accounts shall be maintained for each member. The board of trustees may promulgate administrative regulations pursuant to KRS Chapter 13A to manage this program.

- (8) *The supplemental retirement benefit fund shall consist of those funds contributed by the member and the employer for the purpose of constituting a qualified government excess benefit plan as described in Section 415 of the Internal Revenue Code for accounts that existed on or after July 1, 1996. The contributions shall not be picked up as provided in KRS 161.540(2). Separate member accounts shall be maintained for each member. The board of trustees may promulgate administrative regulations pursuant to KRS Chapter 13A to administer this program.*
- (9) *The defined contribution fund shall consist of those funds contributed by retired members who have been approved by the retirement system for full-time reemployment in a position covered by the retirement system and contributions made by the employer for the purpose of providing separate retirement allowances for periods of reemployment. Separate member accounts shall be maintained for each member. The board of trustees may promulgate administrative regulations pursuant to KRS Chapter 13A to administer this program. The contributions shall not be picked up as provided in KRS 161.540(2).*

Section 9. KRS 161.500 is amended to read as follows:

- (1) At the close of each fiscal year, the retirement system shall add service credit to the account of each member who made contributions to his or her account during the year. Members shall be entitled to a full year of service credit if their total paid days were not less than one hundred eighty (180) days of a one hundred eighty-five (185) day contract for a regular school or fiscal year. In the event a member is paid for less than one hundred eighty (180) days, the member may purchase credit according to administrative regulations established by the board of trustees. In no case shall more than one (1) year of service be credited for all service performed in one (1) fiscal year. Members who complete their employment contract prior to the close of a fiscal year and elect to retire prior to the close of a fiscal year shall have their service credit reduced by eight percent (8%) for each calendar month that the retirement becomes effective prior to July 1.
- (2) Members who are employed and paid for less than the number of days required in their normal employment year shall be entitled to pro rata service credit for the fractional service. Such credit shall be based upon the number of days employed and the number of days in the member's annual employment agreement or normal employment year.
- (3) Service credit may not exceed the ratio between the school or fiscal year and the number of months or fraction of a month the member is employed during that year.
- (4) *No service credit shall be granted in the Teachers' Retirement System for service that has been or will be used in qualifying for annuity benefit payments from another retirement system financed wholly or in part by public funds.*

Section 10. KRS 161.507 is amended to read as follows:

- (1) An active contributing member of the Teachers' Retirement System may receive service credit for active service rendered in the uniformed services of the Armed Forces of the United States, including the commissioned corps of the Public Health Service, subject to the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 and to administrative regulations promulgated by the board of trustees. Military service includes service in the uniformed services that occurs before the employment of a member in a position covered by the retirement system or where a member leaves covered employment without giving advance written or verbal notice of performing duty in the uniformed services. Service in the uniformed services also includes uniformed service that occurs after employment in a position covered by the retirement system where the member has given advance written or verbal notice of performing duty in the uniformed services and the member returns directly from uniformed services to covered employment. Military service may be credited only if discharge was honorable or was not terminated upon the occurrence of any of the events listed in 38 U.S.C. sec. 4304. Service shall be considered as Kentucky teaching service, except that service may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1) unless the service occurred after the member gave written or verbal notice of performing duty in the uniformed services and the member returned directly from uniformed services to covered employment. A maximum of six (6) years of military service may be credited, but in no case a greater number of years than the actual years of contributing service in Kentucky.
- (2) No credit shall be granted for military service which has been or will be used in qualifying for annuity benefit payments from another retirement system financed wholly or in part by public funds.
- (3) A member having twenty (20) years or more of active duty in the military service, and who is qualified for regular federal retirement benefits based on this military service, may not receive credit for any military service



in the Teachers' Retirement System. This subsection shall apply to service presented for credit on July 1, 1975, and after this date.

- (4) (a) A member receiving retirement credit for active duty in the armed services of the United States prior to employment in a position covered by the retirement system or where the member leaves covered employment without giving advance written or verbal notice of performing duty in the uniformed services shall contribute to the retirement system an amount equal to thirty-five percent (35%) of the actuarial cost for each year of service for which the member is receiving credit. Two percent (2%) of the thirty-five percent (35%) required payment shall be allocated to the medical insurance fund. These contributions shall not be picked up, as described in KRS 161.540(2). In purchasing retirement credit for active duty in the armed services, the latest years of service shall be considered first in allowing credit toward retirement. The board of trustees shall adopt a table of actuarial factors to be used in calculating the amount of contribution required for crediting this service.
- (b) If military service occurred after the member gave written or verbal notice of performing duty in the uniformed services and the member returns directly from uniformed services to covered employment, the member shall contribute the regular member contribution required by KRS 161.540. The member may make the payment of delayed contributions in a lump sum payment or in installments not to exceed five (5) years beginning with the member's date of reemployment. Interest at the rate of eight percent (8%) per annum shall be charged for delayed contributions beginning with the member's date of reemployment until paid.
- (5) An active contributing member of the Teachers' Retirement System may receive service credit for service in the military reserves of the United States or the National Guard. The member may purchase one (1) month of service for each six (6) months of service in the reserves or the National Guard. The member shall pay the full actuarial cost of ~~this [the]~~ service in the military reserves or the National Guard **as provided in subsection (22) of Section 5 of this Act**. Service in the military reserves or the National Guard shall be treated as service earned prior to participation in the system and shall not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1). The payment shall not be picked up by the employer, as described in KRS 161.540(2).

Section 11. KRS 161.5465 is amended to read as follows:

On or after August 1, 1998, a member of the Teachers' Retirement System in active contributing status who has a minimum of twenty (20) years of service credit may purchase up to a maximum of five (5) years of service credit that is not otherwise purchasable under any of the provisions of KRS 161.230 to 161.716 and that meets the definition of nonqualified service as provided in Section 1526 of the Federal Taxpayer Relief Act of 1997. The member shall pay the full actuarial cost of the service credit as **provided in subsection (22) of Section 5 of this Act** ~~determined by the Teachers' Retirement System~~. The payment shall not be picked up by the employer as described in KRS 161.540(2), and the member's payment shall be credited to the member's contribution account and shall be considered accumulated contributions of the member. Payment by the member may be by lump sum or by installment payments as provided in KRS 161.597.

Section 12. KRS 161.548 is amended to read as follows:

A member of the Teachers' Retirement System who is in an active contributing status with the system, and who was formerly employed in a regional community mental health and mental retardation service program, organized and operated under the provisions of KRS 210.370 to 210.480, which does not participate in a state-administered retirement system, may obtain credit for the period of his service in the regional community mental health and mental retardation program by paying to the Teachers' Retirement System the full **actuarial** cost of the service credit purchased, as **provided in subsection (22) of Section 5 of this Act** ~~determined by the system~~. The service credit purchased may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1). ~~Payment for the service credit purchased may be made in installments in lieu of a lump sum payment.~~ The payment shall not be picked up, as described in KRS 161.540(2), and the entire payment shall be placed in the teachers' savings fund.

Section 13. KRS 161.549 is amended to read as follows:

A member of the Teachers' Retirement System who is in an active contributing status with the system, and who was formerly employed by a Federal Head Start agency, operated under 42 U.S.C. secs. 9831 et seq., which does not participate in a state-administered retirement system, may obtain credit for the period of the member's service in the Head Start program by paying to the Teachers' Retirement System the full **actuarial** cost of the service credit

purchased, as ***provided in subsection (22) of Section 5 of this Act***~~[determined by the system]~~. The service credit purchased may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1). Payment for the service credit purchased may be made in installments in lieu of a lump-sum payment. The payment shall not be picked up, as described in KRS 161.540(2), and the entire payment shall be placed in the teachers' savings fund.

Section 14. KRS 161.553 is amended to read as follows:

- (1) The cost of providing statutory benefit improvements for annuitants may be funded by annual appropriations from the state on an actuarial amortized basis over the lifetime of the annuitants. The schedules in subsections (1)(a), (1)(b), and (1)(c) of this section are the annual appropriations which shall be made by the state for benefit improvements approved in the respective fiscal years or bienniums prior to July 1, ***2002***~~[2000]~~:

(a)	Cost of Living Allowance	<b><i>2000-2001</i></b> <del>[1998-1999]</del>	Each Succeeding Fiscal Year
			<del>[\$4,465,400 through 2000-2001]</del> <del>—and]</del> \$2,331,300 in 2001-2002
	1986-1988	\$4,465,400	
	1988-1990	\$5,761,700	\$5,761,700 through 2002-2003 and \$2,972,700 in 2003-2004
	1990-1992	\$4,901,700	\$4,901,700 through 2004-2005 and \$2,486,800 in 2005-2006
	1992-1994	\$2,229,400	\$2,229,400 through 2006-2007 and \$1,125,700 in 2007-2008
	1994-1996	\$6,142,000	\$6,142,000 through 2010-2011
	1996-1998	\$4,459,000	\$4,459,000 through 2010-2011
	1998-2000	<b><i>\$15,333,900</i></b> <del>[\$7,395,300]</del>	\$15,333,900 through 2012-2013 and \$7,938,600 through 2013-2014
	<b><i>2000-2002</i></b>	<b><i>\$2,311,500</i></b>	<b><i>\$6,132,100 through 2001-2002 and \$12,511,400 through 2014-2015 and \$7,227,700 in 2015-2016</i></b>
(b)	Minimum Value Annuities	<b><i>2000-2001</i></b> <del>[1998-1999]</del>	Each Succeeding Fiscal Year
			<del>[\$1,227,000 through 2000-2001]</del> <del>—and]</del> \$1,020,400 in 2001-2002
	1986-1988	\$1,227,000	
	1988-1990	\$1,718,200	\$1,718,200 through 2002-2003 and \$879,500 in 2003-2004
	1990-1992	\$2,246,900	\$2,246,900 through 2004-2005 and \$1,232,100 in 2005-2006
	1992-1994	\$2,217,700	\$2,217,700 through 2006-2007
	1994-1996	\$2,126,000	\$2,126,000 through 2008-200
(c)	Sick Leave Allowance	<b><i>2000-2001</i></b> <del>[1998-1999]</del>	Each Succeeding Fiscal Year

<i>1998-2000</i>	<i>\$5,140,000</i>	<i>\$5,140,000 through 2012-2013 and \$2,905,600 through 2013-2014</i>
<i>2000-2002</i>	<i>\$3,698,800</i>	<i>\$7,886,400 through 2014-2015 and \$4,187,600 in 2015-2016</i>
	<del>[\$3,657,000</del>	<del>\$7,828,000 in 1999-2000] [\$7,828,000 through 2012-2013] [and] [\$4,171,000 through 2013-2014]</del>

- (2) The present values of providing statutory cost-of-living increases for annuitants not included in subsection (1) of this section are to be assigned to the unfunded obligations of the retirement system and are identified as follows:

1986-1988	\$34,689,893
1990-1992	\$68,107,473
1992-1994	\$15,749,976

Section 15. KRS 161.595 is amended to read as follows:

- (1) Upon service retirement, a member of the Teachers' Retirement System may obtain credit for all or any part of the service otherwise creditable under the Kentucky Employees Retirement System, the County Employees Retirement System, or in the service of the United States government for which service credit is not otherwise given, upon the payment by the member of ***the full actuarial cost of the service credit purchased as defined in subsection (22) of Section 5 of this Act***~~[such amount or amounts as are actuarially determined to be equal to the increased liability of the Teachers' Retirement System by virtue of such additional service credit.]~~ Such payments shall not be picked up, as described in KRS 161.540(2).
- (2) The amount paid under this section shall be considered as accumulated contributions of the individual member.
- (3) No person shall be allowed credit for the same period of service in more than one (1) of these three (3) retirement systems.

Section 16. KRS 161.605 is amended to read as follows:

- (1) Retired members may perform substitute teaching in the public schools for the equivalent of one hundred (100) days in any one (1) school year and receive compensation based on a standard salary schedule adopted by a district for all substitute teachers without reduction in retirement annuities.
- (2) A retired member may be employed as a part-time or temporary teacher in the public schools for a period not to exceed the equivalent of one hundred (100) days in any one (1) school year.
- (3) Retired members may be employed part-time or temporarily in a nonteaching capacity in the public schools and receive compensation for this employment without reduction in retirement annuities, except that retired members may not be employed in excess of a one hundred (100) day period in any one (1) school year in the same position from which they retired, or a position substantially similar to the one from which they retired, or any position listed in KRS 161.220(4) which requires membership in the retirement system. Positions which generally require certification or graduation from a four (4) year college or university as a condition of employment which are created, or changed to remove the position from coverage under KRS 161.220(4) are also subject to the one hundred (100) day limitation in this subsection. The board of trustees shall determine if employment in a nonteaching position qualifies for an exemption under this subsection.
- (4) Members retired from an agency listed in KRS 161.220(4)(b) may be employed in a part-time teaching capacity by one (1) of the universities participating in the Teachers' Retirement System, not to exceed the equivalent of twelve (12) teaching hours in any one (1) fiscal year.
- (5) Calculation of the number of days for part-time teaching, substitute teaching, or part-time employment in a nonteaching capacity under this section shall not exceed the ratio between a school year and the actual months of retirement for the member during that school year. The board of trustees by administrative regulation may establish fractional equivalents of a day of teaching service.

- (6) When a retired member returns to employment as a part-time teacher or in a nonteaching capacity as provided in subsections (2), (3), and (4) of this section, the employer shall contribute annually to the retirement system on the compensation paid to the retired member at rates determined by the retirement system actuary that reflect accrued liability for nonuniversity and university members.
- (7) *The board of trustees shall provide for reemployment of retired members as full-time teachers or in a nonteaching capacity under the following conditions:*
  - (a) *A retired teacher or administrator may return to full-time teaching in a position that has been determined by the commissioner of education to be a critical shortage area as defined in Section 3 of this Act and for which the person is certified. When the commissioner of education certifies to the retirement system that qualified applicants are not available to fill teaching or administrative positions in critical academic subject areas, grade levels, or geographic areas, local school districts may employ, as full-time employees, during a school fiscal year, up to a maximum of two (2) retired members, or one percent (1%) of the total active members of the retirement system in a school district, whichever is greater. Retired members who are reemployed in a full-time position covered by the retirement system shall be rehired on a one (1) year contract in a district other than the one from which they retired following an absence of at least three (3) months or in the same district from which they retired following an absence of at least one (1) year.*
  - (b) *Retired members reemployed under this section shall remain eligible to receive their retirement annuity.*
  - (c) *Retired members reemployed under this subsection shall waive their health insurance coverage with the retirement system during the period of reemployment and receive health insurance coverage that is provided to regular full-time employees of the district.*
  - (d) *Local school districts shall make annual payments to the retirement system on the compensation paid to the reemployed retirees at rates determined by the retirement system's actuary that reflect accrued liability for nonuniversity members.*
  - (e) *Retirees who are reemployed under this provision shall make retirement contributions to the retirement system at rates specified under KRS 161.540 and the employer shall make contributions to the retirement system at rates specified under KRS 161.550. The member's entire contribution and a matching amount from the employer's contribution shall be placed in a separate defined contribution fund administered by the retirement system, with annual interest applied at the actuarially assumed rate. When the retiree's reemployment terminates, the total contributions with interest will be paid in a lump sum or on a monthly straight life basis to the retiree. If the member dies before retiring, the designated beneficiary shall receive a refund, and if there is a remaining balance at the death of the member after retirement, it shall be paid to the beneficiary designated by the member for this benefit.*
  - (f) *The provisions pertaining to the reemployment of retired members as full-time employees shall be granted by the board of trustees when it is deemed necessary to assist school districts in filling teaching or nonteaching positions in critical academic or geographic areas and when doing so would not create a significant negative impact on the funding status of the retirement system. The provisions of this subsection are optional with the board of trustees and shall not be covered under KRS 161.714.*

Section 17. KRS 161.607 is amended to read as follows:

- (1) Any member of the Teachers' Retirement System who enters employment covered by the Kentucky Employees Retirement System, the State Police Retirement System, or the County Employees Retirement System, prior to July 1, 1976, may retain membership in the Teachers' Retirement System instead of joining the new system.
- (2) Retention of membership in the Teachers' Retirement System by any member of the General Assembly who upon election is a contributing member of the Teachers' Retirement System shall be effected by conforming with KRS 61.680(4)(c). Members of the General Assembly who retain membership shall make retirement contributions based upon their annual compensation as defined under KRS 161.220 or on their creditable compensation as defined under KRS 61.510, whichever is the larger amount. Service as a member of the General Assembly may be used to meet the service requirements of KRS 61.680(2)(a) ~~and 161.510~~ regardless of the system to which contributions are made by the member.

- (3) Any member of the Teachers' Retirement System entering employment as described in subsection (1) of this section must exercise the option within ninety (90) days of the beginning of such employment.
- (4) Persons who enter service covered by the Teachers' Retirement System prior to July 1, 1976, and who hold membership in a Kentucky retirement system financed in whole or part with public funds may retain membership in that system providing the statutes and regulations governing said system make continued membership possible.
- (5) Any person who has elected an option provided in this section may cancel such election and gain membership in the system which normally covers the position in which currently employed, provided that such cancellation of option election must be completed prior to January 1, 1977.

Section 18. KRS 161.620 is amended to read as follows:

- (1) The retirement allowance, in the form of a life annuity with refundable balance, of a member retiring for service shall be calculated as follows:
  - (a) For retirements effective July 1, 1998, and thereafter, the annual allowance for each year of service shall be two percent (2%) of the final average salary for service performed prior to July 1, 1983, and two and one-half percent (2.5%) of the final average salary for service performed after July 1, 1983, for all members not employed by a state college or university. The annual retirement allowance for each year of service performed at state colleges or universities that participate in the Teachers' Retirement System shall be two percent (2%) of the final average salary. Actuarial discounts due to age or service credit at retirement may be applied as provided in this section; and
  - (b) The retirement allowance of a member at retirement shall not exceed the member's last annual compensation or the member's final average salary, whichever is the greater amount.
- (2) Effective July 1, 1990, and annually on July 1 thereafter, the retirement allowance of each retired member and of each beneficiary of a retirement option who has been retired at least ten (10) months shall be increased in the amount of one and one-half percent (1.5%).
- (3) Any member qualifying for retirement under a life annuity with refundable balance shall be entitled to receive an annual allowance amounting to not less than **three hundred twenty-five dollars (\$325) effective July 1, 2000, and three hundred thirty-five dollars (\$335) effective July 1, 2001**~~three hundred dollars (\$300) effective July 1, 1998, and not less than three hundred ten dollars (\$310) effective July 1, 1999~~, multiplied by the service credit years of the member. These minimums shall apply to the retired members receiving annuity payments and to those members retiring on or subsequent to the effective dates listed in this subsection.
- (4) The minimum retirement allowance provided in this section shall apply in the case of members retired or retiring under an option other than a life annuity with refundable balance in the same proportion to the benefits of the member and his beneficiary or beneficiaries as provided in the duly-adopted option tables at the time of the member's retirement.
- (5) Effective July 1, ~~2000~~~~1998~~, the monthly allowance of each member retired for at least one (1) year, and each recipient of a retirement option of the retired member shall be increased in an amount not to exceed **eight-tenths of one percent (0.8%)**~~one and one-half percent (1.5%)~~ of the monthly allowance in effect the previous month. The level of increase provided for in this subsection shall be determined by the funding provided in the **2000-2002**~~1998-2000~~ biennium budget appropriation.
- (6) Effective July 1, ~~2001~~~~1999~~, the monthly allowance of each member retired for at least one (1) year, and each recipient of a retirement option of the retired member shall be increased in an amount not to exceed **one percent (1.0%)**~~one and one-half percent (1.5%)~~ of the monthly allowance in effect the previous month. The level of increase provided for in this subsection shall be determined by the funding provided in the **2000-2002**~~1998-2000~~ biennium budget appropriation.
- (7) Effective July 1, 1990, monthly payments of two hundred dollars (\$200) shall be payable for the benefit of an adult child of a member retired for service when the child's mental or physical condition is sufficient to cause dependency on the member at the time of retirement. Eligibility for this payment shall continue for the life of the child or until the time the mental or physical condition creating the dependency no longer exists or the child marries. Benefits under this subsection shall apply to legally adopted survivors provided the proceedings for the adoption were initiated at least one (1) year prior to the death of the member. The board of trustees shall be the sole judge of eligibility or dependency and may require formal application or information relating thereto.

- (8) Members of the Teachers' Retirement System shall be subject to the annuity income limitations imposed by Section 415 of the Internal Revenue Service Code as enacted in 1988.
- (9) Compensation in excess of the limitations imposed by Section 401(a)(17) of the Internal Revenue Code shall *not be used in determining a member's regular retirement annuity but shall be used in determining retirement allowance payments under the supplemental retirement plan of the retirement system which is intended to constitute a qualified governmental excess benefit plan as provided in Section 415 of the Internal Revenue Code*~~[be disregarded]~~. The limitation on compensation for eligible members shall not be less than the amount which was allowed to be taken into account by the retirement system in effect on July 1, 1993. For this purpose, an eligible member is an individual who was a member of the retirement system before the first plan year beginning after December 31, 1995.

Section 19. KRS 161.623 is amended to read as follows:

- (1) Effective July 1, 1982, and thereafter, a district board of education or other employer of members of the Teachers' Retirement System may compensate, at the time of retirement for service, an active teacher for unused sick-leave days in accordance with this section.
- (2) Upon the member's application for service retirement, the employer shall certify the retiring member's unused accumulated sick-leave balance to the board of trustees of the Kentucky Teachers' Retirement System. The member's sick-leave balance, expressed in days, shall be divided by one hundred eighty-five (185) days to determine the amount of service credit that may be considered for addition to the member's retirement account for the purpose of determining the retirement allowance under KRS 161.620. Such sick-leave credit shall not be used for the purpose of determining whether the member is eligible to receive a retirement allowance under KRS 161.600.
- (3) The board shall compute the cost to the retirement system of the sick-leave credit for each retiring member and shall bill the last employer of the retiring member for such cost. The employer shall pay the cost of such service credit to the retirement system within fifteen (15) days after receiving notification of the cost from the board.
- (4) Retiring members who receive service credit under this section shall not be eligible to receive compensation for accrued sick leave under KRS 161.155(9) or any other statutory provision.
- (5) Employer participation is optional and the employer may opt to purchase less service credit than the member is eligible to receive provided the same percentage of reduction is made applicable to all retiring members of the employer during a school fiscal year.
- (6) The board of trustees shall formulate and adopt necessary rules and regulations for the administration of the foregoing provisions.
- (7) *Payments to the retirement system for service credit obtained under this section or for compensation credit obtained under KRS 161.155(9) shall be based on the full actuarial cost as defined in subsection (22) of Section 5 of this Act.*

Section 20. KRS 161.655 is amended to read as follows:

- (1) Effective July 1, 2000~~[1998]~~, *the Teachers' Retirement System shall provide a life insurance benefit in a minimum amount of five thousand dollars (\$5,000) for its members who are retired for service or disability. This life insurance policy shall be payable* upon the death of a member retired for service or disability~~[, a death benefit of three thousand dollars (\$3,000) shall be paid]~~ to the member's estate or to a party designated by the member on a form prescribed by the retirement system. *The Teachers' Retirement System shall provide a life insurance benefit in a minimum amount of two thousand dollars (\$2,000) for its active contributing members. This life insurance policy shall be payable* upon the death of an active contributing member~~[, a death benefit of two thousand dollars (\$2,000) shall be paid]~~ to the member's estate or to a party designated by the member on a form prescribed by the retirement system. Application for *payment of life insurance proceeds*~~[the death benefit]~~ shall be made to the Teachers' Retirement System together with acceptable evidence of death and eligibility. The reciprocal provisions of KRS 61.680(2)(a) shall not apply to the *coverage and payment of proceeds by the life insurance benefit*~~[payment of death benefits]~~ under this section.
- (2) Suit or civil action shall not be required for the collection of the *proceeds of the life insurance*~~[death]~~ benefit provided for by this section, but nothing in this section shall prevent the maintenance of suit or civil action against the beneficiary or legal representative receiving the *proceeds of the life insurance*~~[death]~~ benefit.

Section 21. KRS 161.675 is amended to read as follows:

- (1) *The board of trustees shall arrange by appropriate contract or on a self-insured basis to provide a broad program of group hospital and medical insurance for present and future eligible recipients of a retirement allowance from the Teachers' Retirement System. The board of trustees may also arrange to provide health insurance coverage by health maintenance organizations as defined in KRS 18A.225 as an alternative to group hospital and medical insurance for persons eligible for hospital and medical benefits under this section. The board of trustees may authorize present and future eligible recipients of a retirement allowance from the Teachers' Retirement System who are less than age sixty-five (65), to be included in the state-sponsored health insurance that is provided to active teachers and state employees under KRS 18A.225.*~~(a) — The board of trustees shall enter into contracts with insurance carriers or other health care providers for the purpose of providing a program of hospital and medical insurance coverage to members who are age sixty-five (65) or older and retired for service.~~
  - ~~(b) — The board of trustees may enter into contracts with insurance carriers or other health providers for the purpose of providing a broad program of hospital and medical insurance coverage to members below age sixty five (65) who are retired for service or disability and to the surviving spouse of deceased members who are eligible to receive the member's retirement benefits as provided in KRS 161.525.~~
  - ~~(c) — The board of trustees may offer, on a cost basis, coverage of spouses and dependents not eligible for regular coverage.~~
- (2) The coverage provided shall be as set forth in the contracts and the administrative regulations of the board of trustees. The board of trustees may change the levels of coverage *and eligibility conditions* to meet the changing needs of the annuitants and when necessary to contain the expenses of the insurance program within the funds available to finance the insurance program. The contracts and administrative regulations shall provide for, but not be limited to, hospital room and board, surgical procedures, doctors' care in the hospital, and miscellaneous hospital costs. A retiree whose effective date of retirement is July 1, 1974, and thereafter, must have a minimum of five (5) years creditable Kentucky service in the Teachers' Retirement System or of combined service in the Kentucky Employees Retirement System, of which at least two (2) years was creditable service under KRS ~~161.510 and~~ 161.607(2), to qualify for the coverage. The board of trustees shall offer coverage to the disabled child of a retired member regardless of the disabled child's age if the retired member pays the entire premium for the disabled child's coverage. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.
- (3) *All expenses for benefits under this section shall be paid from the funding provisions contained in subsection (5) of Section 8 of this Act, premium charges received from the annuitants and the spouses, and from funds that may be appropriated or allocated by statute.*
- (4)
  - (a) *The board of trustees shall determine the amount of health insurance supplement payments that the Teachers' Retirement System will provide to assist eligible recipients of a retirement allowance in paying the cost of their health insurance, based on the funds available in the medical insurance fund. The board of trustees shall establish the maximum monthly amounts of health insurance supplement payments that will be made by the retirement system for eligible recipients of a retirement allowance. The board of trustees shall annually establish the percentage of the maximum monthly health insurance supplement payment that will be made, based on age and years of service credit of eligible recipients of a retirement allowance. Monthly health insurance supplement payments made by the retirement system may not exceed the amount of the single coverage insurance premium chosen by the eligible recipients of a retirement allowance. In order to qualify for health insurance supplements made by the retirement system, the recipient of a supplement payment must agree to pay the difference between the insurance premium and the applicable supplement payment, by payroll deduction from his retirement allowance, or by a payment method approved by the retirement system.*
  - (b) *The board of trustees may offer, on a full-cost basis, health care insurance coverage provided by the retirement system to spouses and dependents of eligible retirees not eligible for regular coverage. Recipients of a retirement allowance from the retirement system must agree to pay the cost of this coverage by payroll deduction from their retirement allowance or by a payment method approved by the retirement system.*
  - (c) *The board of trustees shall offer, on a full-cost basis, health insurance coverage provided by the retirement system to the disabled child of a retired member, regardless of the age of the disabled*

*child. A child shall be considered disabled for purposes of this section if the child has been determined to be eligible for Federal Social Security disability benefits.*

- (5) The board of trustees is empowered to require the annuitant and the annuitant's spouse to pay a premium charge to assist in the financing of the hospital and medical insurance program. The board of trustees is empowered to pay the expenses for insurance coverage from the medical insurance fund, from the premium charges received from the annuitants and the spouses, and from funds that may be appropriated or allocated by statute. The board may provide insurance coverage by making payment to insurance carriers including health insurance plans that are available to active and retired state employees and active teachers, institutions, and individuals for services performed, or the board of trustees may elect to provide insurance on a "self-insurance" basis or a combination of these provisions.
- (6) *The board of trustees may approve health insurance supplement payments to eligible retirees or recipients who are less than sixty-five (65) years of age, as reimbursement for hospital and medical insurance premiums made by retirees for their individual coverage. Eligible retirees or recipients are those retirees or recipients who are not eligible for Medicare and who do not reside in Kentucky or in an area outside of Kentucky where comparable coverage is available. The reimbursement payments shall not exceed the minimum supplement payment that would have been made had the retiree lived in Kentucky. Eligible retirees or recipients shall submit proof of payment to the retirement system for hospital and medical insurance that they have obtained. Reimbursement payments shall be made on a quarterly basis.*
- ~~(7)(4)~~ Contracts negotiated may include the provision that a stated amount of hospital cost or period of hospitalization shall incur no obligation on the part of the insurance carrier or the retirement system.
- ~~(8)(5)~~ The board of trustees is empowered to promulgate administrative regulations to assure efficient operation of the hospital and medical insurance program.
- ~~(9)(6)~~ Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the insurance fund shall not constitute taxable income to an insured recipient.

Section 22. The following KRS section is repealed:

161.510 Prior service allowed new members.

Section 23. Whereas, retirement annuity adjustments are implemented at the beginning of the fiscal year, an emergency is declared to exist, and this Act takes effect July 1, 2000.

**Approved April 21, 2000**

## **CHAPTER 499**

### **(HB 756)**

AN ACT relating to special wastes.

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

Section 1. KRS 224.50-760 is amended to read as follows:

- (1) (a) For purposes of this section and KRS 224.46-580(7), special wastes are those wastes of high volume and low hazard which include but are not limited to mining wastes, utility wastes (fly ash, bottom ash, scrubber sludge), sludge from water treatment facilities and wastewater treatment facilities, cement kiln dust, gas and oil drilling muds, and oil production brines. Other wastes may be designated special wastes by the cabinet;
- (b) Disposal sites or facilities for special wastes shall be exempt from the provisions of KRS 224.46-520 and the provisions of KRS 224.43-810, 224.43-815, and 224.46-820 to 224.46-870 but may be regulated by the cabinet consistent with the Resource Conservation and Recovery Act of 1976, as amended (Public Law 94-580), and regulations issued pursuant thereto, unless the special waste received is listed or meets the criteria of a hazardous waste in regulations pursuant to KRS 224.46-510(3). If the special waste is a hazardous waste as specified in regulations pursuant to KRS 224.46-510(3), the site or facility shall be required by the cabinet to comply with the provisions of KRS 224.46-520 but shall not be subject to the requirements of KRS 224.40-310(6);



- (c) Generators of special wastes shall register with the cabinet and be subject to the provisions of KRS 224.46-510, except for generators of coal mining wastes which shall be regulated pursuant to the provisions of KRS Chapter 350;
  - (d) The cabinet shall, when promulgating regulations affecting special waste, recognize special waste as a separate and distinct indivisible category and shall recognize the distinct differences between the category of special wastes and other hazardous wastes and solid wastes as defined in KRS 224.01-010(31)(a) and KRS 109.012(9) due to the fact that special wastes have large volume but low hazardousness. The cabinet's regulations for the generation, transport, recordkeeping, reporting, treatment, storage, and disposal shall reflect those distinct differences. The cabinet's regulations shall recognize and incorporate, where appropriate, and if consistent with the policies of KRS 224.46-510 to 224.46-570, any deadline extensions, studies, and specialized requirements for specific kinds of special wastes that are or may be undertaken at the federal or other levels of government; and
  - (e) It is the intent of the General Assembly that the processing of sludge from water treatment facilities and wastewater treatment facilities by composting shall be considered an industrial process. The cabinet shall, when promulgating administrative regulations affecting sludge from water treatment facilities and wastewater treatment facilities, consider the treatment of this sludge by composting as an industrial process. The provisions of this paragraph and subsection (3) of this section shall not apply to a city, county, urban-county government, charter county government, or special district as defined in KRS Chapter 65, *or to a public or private college or university* that processes its own water treatment or wastewater treatment sludge by composting on property owned or leased by the city, county, urban-county government, charter county government, ~~or~~ special district, *or public or private college or university*.
- (2) Generators of waste oil shall be exempt from the provisions of KRS 224.46-510 and 224.46-520 so long as waste oil is not specified as a hazardous waste in regulations pursuant to KRS 224.46-510(3) but may be regulated by the cabinet consistent with the Resource Conservation and Recovery Act of 1976, as amended (Public Law 94-580), and regulations issued pursuant thereto.
  - (3) A permit application to establish, operate, or modify a composting site or composting facility for the processing of water treatment sludge or wastewater treatment sludge, shall require immediately the general public notice provided for in KRS 224.40-310(4) and (5). If a hearing is requested, no permit to establish, operate, or modify a composting site or facility shall be issued prior to the public hearing. The hearing shall be held within the county where the composting site or facility is located or proposed. Composting of this sludge shall be considered an industrial process.

**Approved April 21, 2000**

## CHAPTER 500

(HB 757)

AN ACT relating to health insurance.

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

SECTION 1. A NEW SECTION OF KRS 304.17A-500 TO 304.17A-590 IS CREATED TO READ AS FOLLOWS:

- (1) *A managed care plan as defined in Section 5 of this Act shall file with the commissioner sample copies of any agreements it enters into with providers for the provision of health care services. The commissioner shall promulgate administrative regulations prescribing the manner and form of the filings required. The agreements shall include the following:*
  - (a) *A hold harmless clause that states that the provider may not, under any circumstance, including:*
    - 1. *Nonpayment of moneys due the providers by the managed care plan,*
    - 2. *Insolvency of the managed care plan, or*
    - 3. *Breach of the agreement,*

*bill, charge, collect a deposit, seek compensation, remuneration, or reimbursement from, or have any recourse against the subscriber, dependent of subscriber, enrollee, or any persons acting on their behalf, for services provided in accordance with the provider agreement. This provision shall not prohibit collection of deductible amounts, copayment amounts, coinsurance amounts, and amounts for noncovered services;*

- (b) *A continuity of care clause that states that if an agreement between the provider and the managed care plan is terminated for any reason, other than a quality of care issue or fraud, the provider shall continue to provide services and reimburse the provider in accordance with the agreement until the subscriber, dependent of the subscriber, or the enrollee is discharged from an inpatient facility, or the active course of treatment is completed, whichever time is greater, and in the case of a pregnant woman, services shall continue to be provided through the end of the post-partum period if the pregnant woman is in her fourth or later month of pregnancy;*
  - (c) *A survivorship clause that states the hold harmless clause and continuity of care clause shall survive the termination of the agreement between the provider and the managed care plan; and*
  - (d) *A clause requiring that if a provider enters into any subcontract agreement with another provider to provide health care services to the subscriber, dependent of the subscriber, or enrollee of a managed care plan the subcontract agreement must meet all requirements of this subtitle and that all such subcontract agreements shall be filed with the commissioner in accordance with this subsection.*
- (2) *An insurer that enters into any risk-sharing arrangement or subcontract agreement shall file a copy of the arrangement with the commissioner. The insurer shall also file the following information regarding the risk-sharing arrangement:*
- (a) *The number of enrollees affected by the risk-sharing arrangement;*
  - (b) *The health care services to be provided to an enrollee under the risk-sharing arrangement;*
  - (c) *The nature of the financial risk to be shared between the insurer and entity or provider, including, but not limited to, the method of compensation;*
  - (d) *Any administrative functions delegated by the insurer to the entity or provider. The insurer shall describe a plan to ensure that the entity or provider will comply with KRS 304.17A-500 to 304.17A-590 in exercising any delegated administrative functions; and*
  - (e) *The insurer's oversight and compliance plan regarding the standards and method of review.*
- (3) *Nothing in this section shall be construed as requiring an insurer to submit the actual financial information agreed to between the insurer and the entity or provider. The commissioner shall have access to a specific risk sharing arrangement with an entity or provider upon request to the insurer. Financial information obtained by the department shall be considered to be a trade secret and shall not be subject to KRS 61.872 to 61.884.*

Section 2. KRS 304.17A-505 is amended to read as follows:

An insurer shall disclose in writing to an *insured or* enrollee, in a manner consistent with the provisions of KRS 304.14-420 to 304.14-450, the terms and conditions of its health insurance contract and shall promptly provide the enrollee with written notification of any change in the terms and conditions prior to the effective date of the change. The insurer shall provide the required information at the time of enrollment and upon request thereafter.

- (1) The information required to be disclosed under this section shall include a description of:
  - (a) Covered services and benefits to which the enrollee or other covered person is entitled;
  - (b) Restrictions or limitations on covered services and benefits;
  - (c) Financial responsibility of the covered person, including copayments and deductibles;
  - (d) Prior authorization and any other review requirements with respect to accessing covered services;
  - (e) Where and in what manner covered services may be obtained;
  - (f) Changes in covered services or benefits, including any addition, reduction, or elimination of specific services or benefits;

- (g) The covered person's right to appeal and the procedure for initiating an appeal of a utilization management decision made by or on behalf of the insurer with respect to the denial, reduction, or termination of a health care benefit or the denial of payment for a health care service;
  - (h) The procedure to initiate an appeal through the process under KRS 211.464(1)(g);
  - (i) Measures in place to ensure the confidentiality of the relationship between an enrollee and a health care provider;~~and~~
  - (j) Other information as the commissioner shall require by administrative regulation;
  - (k) *A summary of the drug formulary, including, but not limited to, a listing of the most commonly used drugs, drugs requiring prior authorization, any restrictions, limitations, and procedures for authorization to obtain drugs not on the formulary and, upon request of an insured or enrollee, a complete drug formulary; and*
  - (l) *A statement informing the insured or enrollee that if the provider meets the insurer's enrollment criteria and is willing to meet the terms and conditions for participation, the provider has the right to become a provider for the insurer.*
- (2) The insurer shall file the information required under this section with the department.

Section 3. KRS 304.17A-510 is amended to read as follows:

- (1) In addition to the disclosure requirements provided in KRS 304.17A-505, an insurer that offers a managed care plan shall disclose to an enrollee, in writing, in a manner consistent with KRS 304.14-420 to 304.14-450, the following information at the time of enrollment and upon request:
- (a) A current participating provider directory providing information on a covered person's access to primary care health care providers, including available participating health care providers, by provider category or specialty and by county. The directory shall include the professional office address of each participating health care provider. The directory shall also provide information about participating hospitals and other providers. The insurer shall promptly notify each covered person on the termination or withdrawal from the insurer's provider network of the covered person's designated primary care provider;
  - (b) General information about the type of financial incentives between participating providers under contract with the insurer and other participating health care providers and facilities to which the participating providers refer their managed care patients;~~and~~
  - (c) The insurer's managed care plan's standard for customary waiting times for appointments for urgent and routine care; *and*
  - (d) *The existence of any hold harmless agreements it has with providers and their effect on the enrollee.*

The insurer shall provide a prospective enrollee with information about the provider network, including hospital affiliations, and other information specified in this subsection, upon request.

- (2) Upon request of a covered person, an insurer shall promptly inform the person:
- (a) Whether a particular network provider is board certified; and
  - (b) Whether a particular network provider is currently accepting new patients.
- (3) Each insurer shall annually make available to its enrollees at its principal office and place of business:
- (a) Its most recent annual statement of financial condition including a balance sheet and summary of receipts and disbursements; and
  - (b) A current description of its organizational structure and operation.

Section 4. KRS 304.17A-515 is amended to read as follows:

- (1) A managed care plan shall arrange for a sufficient number and type of primary care providers and specialists throughout the plan's service area to meet the needs of enrollees. Each managed care plan shall demonstrate that it offers:
- (a) An adequate number of accessible acute care hospital services, where available;

- (b) An adequate number of accessible primary care providers, including family practice and general practice physicians, internists, obstetricians/gynecologists, and pediatricians, where available;
- (c) An adequate number of accessible specialists and subspecialists, and when the specialist needed for a specific condition is not represented on the plan's list of participating specialists, enrollees have access to nonparticipating health care providers with prior plan approval;
- (d) The availability of specialty services; and
- (e) *A provider network that meets the following accessibility requirements:*
  - 1. *For urban areas, a provider network that is available to all persons enrolled in the plan within thirty (30) miles or thirty (30) minutes of each person's place of residence or work, to the extent that services are available; or*
  - 2. *For areas other than urban areas, a provider network that makes available primary care physician services, hospital services, and pharmacy services within thirty (30) minutes or thirty (30) miles of each enrollee's place of residence or work, to the extent those services are available. All other providers shall be available to all persons enrolled in the plan within fifty (50) minutes or fifty (50) miles of each enrollee's place of residence or work, to the extent those services are available*

~~[A provider network that is available to all persons enrolled in the plan within thirty (30) miles or thirty (30) minutes of each person's place of residence, to the extent those services are available].~~

- (2) A managed care plan shall provide telephone access to the plan during business hours to ensure plan approval of nonemergency care. A managed care plan shall provide adequate information to enrollees regarding access to urgent and emergency care.
- (3) A managed care plan shall establish reasonable standards for waiting times to obtain appointments, except as provided for emergency care.

Section 5. KRS 304.17A-500 is amended to read as follows:

As used in KRS 304.17A-500 to **304.17A-590**~~[304.17A-570]~~, unless the context requires otherwise:

- (1) **"Areas other than urban areas" means a classification code that does not meet the definition of urban area;**
- (2) "Contract holder" means an employer or organization that purchases a contract for services;
- (3)~~(2)~~ "Covered person" means a person on whose behalf an insurer offering the plan is obligated to pay benefits or provide services under the health insurance policy;
- (4)~~(3)~~ "Emergency medical condition" means:
  - (a) A medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that **a prudent layperson would reasonably have cause to believe constitutes a condition that** the absence of immediate medical attention could reasonably be expected to result in:
    - 1. Placing the health of the individual or, with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy;
    - 2. Serious impairment to bodily functions; or
    - 3. Serious dysfunction of any bodily organ or part; or
  - (b) With respect to a pregnant woman who is having contractions:
    - 1. A situation in which there is inadequate time to effect a safe transfer to another hospital before delivery; or
    - 2. A situation in which transfer may pose a threat to the health or safety of the woman or the unborn child;
- (5)~~(4)~~ "Enrollee" means a person who is enrolled in a managed health care plan;
- (6)~~(5)~~ "Grievance" means a written complaint submitted by or on behalf of an enrollee;
- (7)~~(6)~~ "Health insurance policy" means "health benefit plan" as defined in KRS 304.17A-005;

- (8)(7) "Insurer" has the meaning provided in KRS 304.17A-005;
- (9)(8) "Managed care plan" means a health insurance policy that integrates the financing and delivery of appropriate health care services to covered persons by arrangements with participating providers who are selected to participate on the basis of explicit standards to furnish a comprehensive set of health care services and financial incentives for covered persons to use the participating providers and procedures provided for in the plan;
- (10)(9) "Participating health care provider" means a health care provider that has entered into an agreement with an insurer to provide health care services to an enrollee in its managed care plan;
- (11)(10) "Quality assurance or improvement" means the ongoing evaluation by a managed care plan of the quality of health care services provided to its enrollees;
- (12)(11) "Record" means any written, printed, or electronically recorded material maintained by a provider in the course of providing health services to a patient concerning the patient and the services provided. "Record" also includes the substance of any communication made by a patient to a provider in confidence during or in connection with the provision of health services to a patient or information otherwise acquired by the provider about a patient in confidence and in connection with the provision of health services to a patient; ~~and~~
- (13) ***"Risk sharing arrangement" means any agreement that allows an insurer to share the financial risk of providing health care services to enrollees or insureds with another entity or provider where there is a chance of financial loss to the entity or provider as a result of the delivery of a service. A risk sharing arrangement shall not include a reinsurance contract with an accredited or admitted reinsurer.***
- (14)(12) ***"Urban area" means a classification code whereby the zip code population density is greater than three thousand (3,000) persons per square mile; and***
- (15) "Utilization management" means a system for reviewing the appropriate and efficient allocation of health care services under a health benefits plan according to specified guidelines, in order to recommend or determine whether, or to what extent, a health care service given or proposed to be given to a covered person should or will be reimbursed, covered, paid for, or otherwise provided under the plan. The system may include preadmission certification, the application of practice guidelines, continued stay review, discharge planning, preauthorization of ambulatory care procedures, and retrospective review.

Section 6. KRS 304.17A-540 is amended to read as follows:

- (1) Any insurer that limits coverage for any treatment, procedure, **a** drug, or device shall define the limitations and fully disclose those limits in the health insurance policy or certificate coverage.
- (2) (a) Any insurer that denies coverage for a treatment, procedure, **a** drug ***that requires prior approval***, or device for an enrollee shall provide the enrollee with a denial letter that shall include:
  1. The name, license number, state of licensure, and title of the person making the decision;
  2. A statement setting forth the specific medical and scientific reasons for denying coverage ***of a service, if the coverage is denied for reasons of medical necessity***~~for identifying that provision of the schedule of benefits or exclusions that demonstrates that coverage is not available;~~
  - ~~3. A description of other alternative treatment, services, or supplies covered by the plan, if any; and~~
  - 3.~~4.~~ Instructions for initiating or complying with the plan's grievance or appeal procedure stating at a minimum whether the appeal must be in writing, any time limitations or schedules for filing appeals and the name and phone number of a contact person who can provide additional information.
- (b) The denial letter shall be provided within:
  1. Two (2) regular working days of the submitted request where preauthorization for a treatment, procedure, drug, or device is involved;
  2. Twenty-four (24) hours of the submitted request where hospital preadmission review is sought;
  3. Twenty (20) working days of the receipt of requested medical information where the plan has initiated a retrospective review; and
  4. Twenty (20) working days of the initiation of the review process in all other instances.

Section 7. KRS 304.17A-580 is amended to read as follows:

- (1) ***An insurer offering*** health benefit plans shall educate their insureds about the availability, location, and appropriate use of emergency and other medical services, cost-sharing provisions for emergency services, and the availability of care outside an emergency department.
- (2) ***An insurer offering*** health benefit plans ~~using a defined network of health care providers~~ shall cover emergency ***medical conditions and shall pay for emergency*** department screening and stabilization services both in-network and out-of-network without prior authorization for ***conditions that reasonably appear to a prudent layperson to constitute an emergency medical condition based on the patient's presenting symptoms and condition. An insurer shall be prohibited from denying the emergency room services and altering the level of coverage or cost-sharing requirements for any condition or conditions that constitute an emergency medical condition as defined in Section 5 of this Act***~~use consistent with the prudent layperson standard~~.
- (3) Emergency department personnel shall contact a patient's primary care provider or ***insurer***~~health benefit plan~~, as appropriate, as quickly as possible to discuss follow-up and poststabilization care and promote continuity of care.

Section 8. KRS 304.17A-590 is amended to read as follows:

- (1) An insurer that offers a managed care plan shall disclose to an enrollee, in writing, in a manner consistent with KRS 304.14-420 to 304.14-450, and any risk-bearing managed care plan shall disclose to an enrollee, in writing, at the time of enrollment and thereafter upon request, and as new providers are contracted with by the plans, or as the directory may change, a current participating provider directory providing information on a covered person's access to primary care physicians and specialists, optometrists, chiropractors, and hospitals, including available participating physicians, optometrists, chiropractors, and hospitals, by provider category or specialty and by county. The directory shall include the following:
  - (a) Professional office addresses and telephone numbers for all participating ***providers***~~:~~
    1. ~~Primary care physicians;~~
    2. ~~Optometrists;~~
    3. ~~Chiropractors;~~
    4. ~~Hospitals; and~~
    5. ~~Other health care providers as defined under KRS 304.17A-010(11);~~
  - ~~(b) Information about drug formularies and their restrictions, limitations, and procedures for authorization outside the formularies;~~
  - ~~(b)(c)~~ The benefits for each provider type;
  - ~~(c)(d)~~ General information about the type of financial incentives between participating providers under contract with the insurer and other participating health care providers and facilities to which the participating providers refer their managed care patients; and
  - ~~(d)(e)~~ Grievance procedures available under the plans for complaint resolutions.
- (2) The insurer shall promptly notify each covered person on the termination or withdrawal from the insurer's provider network of the covered person's designated primary care provider.
- (3) The provisions of this section shall be implemented prior to any open enrollment period for which the effective date of coverage will be January 1, 1999, or for which the effective date shall commence after an open enrollment period, and shall continue for each open enrollment period thereafter.

Section 9. KRS 304.17A-535 is amended to read as follows:

- (1) A managed care plan shall include a drug utilization review program, the primary emphasis of which shall be to enhance quality of care for enrollees by assuring appropriate drug therapy within the health care provider's legally authorized scope of practice, that includes the following:
  - (a) Retrospective review of prescription drugs furnished to enrollees;
  - (b) Education of health care providers and enrollees regarding the appropriate use of prescription drugs; and

- (c) Ongoing periodic examination of data on outpatient prescription drugs to ensure quality therapeutic outcomes for enrollees.
- (2) The drug utilization review program shall utilize the following to effectuate the purposes of subsection (1) of this section:
  - (a) Relevant clinical criteria and standards for drug therapy;
  - (b) Nonproprietary criteria and standards developed and revised through input from participating health care providers;
  - (c) Intervention that focuses on improving therapeutic outcomes; and
  - (d) Measures to ensure the confidentiality of the relationship between an enrollee and a health care provider.
- (3) When, in the professional opinion of a provider with prescriptive authority, the provider determines that generic substitution of a pharmaceutical product is medically inappropriate, the provider shall prescribe the pharmaceutical product the provider determines medically appropriate with the indication "Do Not Substitute," and no substitution shall be made without the provider's approval.
- (4) *A managed care plan that restricts pharmacy benefits to a drug formulary shall have an exceptions policy through which the managed care plan may cover a prescription drug not included on the formulary.*

SECTION 10. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Any insurer delivering or issuing a health benefit plan subject to this subtitle or a health insurance policy or contract covering specified disease shall give the policyholder or contract holder at least forty-five (45) days advance written notice of cancellation. The notice shall be mailed by registered mail to the policyholder's or contract holder's last address as shown by the records of the insurer. However, if cancellation is for nonpayment of premium, at least fourteen (14) days written notice accompanied by the reason therefor shall be given. Written notice of cancellation for nonpayment of premium shall not be required for health insurance policies in the individual market under which premiums are payable monthly or more frequently and regularly collected by a licensed agent.*
- (2) *On and after January 1, 2001, every insurer offering group health insurance coverage in the Commonwealth shall include in its contract with group policyholders or contract holders, regardless of the situs of the contract, a provision requiring the group policyholder or contract holder to mail promptly to each person covered under the group policy or contract a legible, true copy of any notice of cancellation of the group coverage which may be received from the insurer and to provide promptly to the insurer proof of that mailing and the date thereof. The notice of cancellation mailed by the group policyholder or contract holder to each person covered under the group policy or contract shall include information regarding the conversion rights of covered persons upon termination of the group policy or contract. This information shall be in clear and easily understandable language.*
- (3) *In the event of cancellation, the insurer shall return promptly the unearned portion of any premium paid. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.*
- (4) *If the insurer fails to provide the forty-five (45) days notice required by this section, the coverage shall remain in effect at the existing premium until forty-five (45) days after the notice is given or until the effective date of replacement coverage obtained by the insured, whichever occurs first.*

Approved April 21, 2000

## CHAPTER 501

(HB 763)

AN ACT relating to state personnel.

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

Section 1. KRS 18A.110 is amended to read as follows:

- (1) The secretary shall promulgate comprehensive administrative regulations for the classified service governing:

- (a) Applications and examinations;
  - (b) Certification and selection of eligibles;
  - (c) Classification and compensation plans;
  - (d) Incentive programs;
  - (e) Layoffs;
  - (f) Registers;
  - (g) Types of appointments;
  - (h) Attendance; hours of work; compensatory time; annual, court, military, sick, voting, and special leaves of absence, provided that the secretary shall not promulgate administrative regulations that would reduce the rate at which employees may accumulate leave time below the rate effective on December 10, 1985; *and*
  - (i) ***Employee evaluations.***
- (2) The secretary shall promulgate comprehensive administrative regulations for the unclassified service.
- (3) (a) Except as provided by KRS 18A.355, the secretary shall not promulgate administrative regulations that would reduce an employee's salary; and
- (b) As provided by KRS 18A.0751(4)(e), the secretary may submit a proposed administrative regulation providing for an initial probationary period in excess of six (6) months to the board for its approval.
- (4) The secretary may promulgate administrative regulations to implement state government's affirmative action plan under KRS 18A.138.
- (5) (a) The administrative regulations shall comply with the provisions of this chapter and KRS Chapter 13A, and shall have the force and effect of law after compliance with the provisions of KRS Chapters 13A and 18A and the procedures adopted thereunder;
- (b) Administrative regulations promulgated by the secretary shall not expand or restrict rights granted to, or duties imposed upon, employees and administrative bodies by the provisions of this chapter; and
- (c) No administrative body other than the Personnel Cabinet shall promulgate administrative regulations governing the subject matters specified in this section.
- (6) Prior to filing an administrative regulation with the Legislative Research Commission, the secretary shall submit the administrative regulation to the board for review.
- (a) The board shall review the administrative regulation proposed by the secretary not less than twenty (20) days after its submission to it;
- (b) Not less than five (5) days after its review, the board shall submit its recommendations in writing to the secretary;
- (c) The secretary shall review the recommendations of the board and may revise the proposed administrative regulation if he deems it necessary; and
- (d) After the secretary has completed the review provided for in this section, he may file the proposed administrative regulation with the Legislative Research Commission pursuant to the provisions of KRS Chapter 13A.
- (7) The administrative regulations shall provide:
- (a) For the preparation, maintenance, and revision of a position classification plan for all positions in the classified service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same class. The secretary shall allocate the position of every employee in the classified service to one (1) of the classes in the plan. The secretary shall reallocate existing positions, after consultation with appointing authorities, when it is determined that they are incorrectly allocated, and there has been no substantial change in duties from those in effect when such positions were last classified. The occupant of a position being reallocated shall continue to serve in the reallocated position with no reduction in salary;



- (b) For a pay plan for all employees in the classified service, after consultation with appointing authorities and the state budget director. The plan shall take into account such factors as:
1. The relative levels of duties and responsibilities of various classes of positions;
  2. Rates paid for comparable positions elsewhere taking into consideration the effect of seniority on such rates; and
  3. The state's financial resources.

Amendments to the pay plan shall be made in the same manner. Each employee shall be paid at one (1) of the rates set forth in the pay plan for the class of position in which he is employed, provided that the full amount of the annual increment provided for by the provisions of KRS 18A.355, and the full amount of an increment due to a promotion, salary adjustment, reclassification, or reallocation, shall be added to an employee's base salary or wages;

- (c) For open competitive examinations to test the relative fitness of applicants for the respective positions. The examinations shall be announced publicly and applications accepted at least ten (10) days prior to certification of a register, and may be advertised through the press, radio, and other media. The secretary shall continue to receive applications and examine candidates on a continuous basis long enough to assure a sufficient number of eligibles to meet the needs of the service. Except as provided by this chapter, he shall add the names of successful candidates to existing eligible lists in accordance with their respective ratings. The secretary shall be free to use any investigation of education and experience and any test of capacity, knowledge, manual skill, character, personal traits, or physical fitness, which in his judgment, serves the need to discover the relative fitness of applicants;
- (d) As provided by this chapter, for the establishment of eligible lists for appointment, upon which lists shall be placed the names of successful candidates in the order of their relative excellence in the respective examinations. Except as provided by this chapter, an eligible's score shall expire automatically one (1) year from the date of testing, unless the life of the score is extended by action of the secretary for a period not to exceed one (1) additional year. Except for those individuals exercising reemployment rights, all eligibles may be removed from the register when a new examination is established;
- (e) For the rejection of candidates or eligibles who fail to comply with reasonable requirements of the secretary in regard to such factors as age, physical condition, training, and experience, or who have attempted any deception or fraud in connection with an examination;
- (f) Except as provided by this chapter, for the appointment of a person whose score is included in the five (5) highest scores earned on the examination;
- (g) For annual, sick, and special leaves of absence, with or without pay, or reduced pay, after approval by the Governor as provided by KRS 18A.155(1)(d);
- (h) For layoffs, in accordance with the provisions of KRS 18A.113, 18A.1131, and 18A.1132, by reasons of lack of work, abolishment of a position, a material change in duties or organization, or a lack of funds;
- (i) For the development and operation of programs to improve the work effectiveness of employees in the state service, including training, whether in-service or compensated educational leave, safety, health, welfare, counseling, recreation, employee relations, and employee mobility without written examination;~~{and}~~
- (j) ***For a uniform system of annual employee evaluation for classified employees, with status, that shall be considered in determining eligibility for discretionary salary advancements, promotions, and disciplinary actions. The administrative regulations shall:***
1. ***Require the secretary to determine the appropriate number of job categories to be evaluated and a method for rating each category;***
  2. ***Provide for periodic informal reviews during the evaluation period which shall be documented on the evaluation form and pertinent comments by either the employee or supervisor may be included;***

3. *Establish a procedure for internal dispute resolution with respect to the final evaluation rating;*
  4. *Permit a classified employee, with status, who receives either of the two (2) lowest possible evaluation ratings to appeal to the Personnel Board for review after exhausting the internal dispute resolution procedure. The final evaluation shall not include supervisor comments on ratings other than the lowest two (2) ratings ;*
  5. *Require that an employee who receives the highest possible rating shall receive the equivalent of two (2) workdays, not to exceed sixteen (16) hours, credited to his or her annual leave balance. An employee who receives the second highest possible rating shall receive the equivalent of one (1) workday, not to exceed eight (8) hours, credited to his or her annual leave balance; and*
  6. *Require that an employee who receives the lowest possible evaluation rating shall either be demoted to a position commensurate with the employee's skills and abilities or be terminated; and*
- (k) For other administrative regulations not inconsistent with this chapter and KRS Chapter 13A, as may be proper and necessary for its enforcement.

Section 2. KRS 18A.095 is amended to read as follows:

- (1) (a) The provisions of this section shall not apply to employees commissioned pursuant to the provisions of KRS 281.770.
- (b) Dismissals, demotions, suspensions, and other penalizations of these commissioned employees, and appeals relating thereto, shall be governed by the provisions of KRS 281.771 and 281.772.
- (2) A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.
- (3) Prior to dismissal, a classified employee with status shall be notified in writing of the intent to dismiss him. The notice shall also state:
  - (a) The specific reasons for dismissal including:
    1. The statutory or regulatory violation;
    2. The specific action or activity on which the intent to dismiss is based;
    3. The date, time, and place of such action or activity; and
    4. The name of the parties involved; and
  - (b) That the employee has the right to appear personally, or with counsel if he has retained counsel, to reply to the head of the cabinet or agency or his designee.
- (4) The Personnel Cabinet shall prescribe and distribute a form to be completed and forwarded by an employee who wishes to appear before the head of the cabinet or agency or his designee, to each appointing authority. The form shall be attached to every notice of intent to dismiss, and shall contain written instructions explaining:
  - (a) The right granted an employee under the provisions of this section relating to pretermination hearings; and
  - (b) The time limits and procedures to be followed by all parties in pretermination hearings.
- (5) No later than five (5) working days after receipt of the notice of intent to dismiss, excluding the day he receives the notice, the employee may request to appear, personally or with counsel if he has retained counsel, to reply to the head of the cabinet or agency or his designee.
- (6) Unless waived by the employee, the appearance shall be scheduled within six (6) working days after receipt of an employee's request to appear before the head of the cabinet or agency or his designee, excluding the day his request is received.
- (7) No later than five (5) working days after the employee appears before the head of the cabinet or agency or his designee, excluding the day of the appearance, the cabinet head or agency or his designee shall:

- (a) Determine whether to dismiss the employee or to alter, modify, or rescind the intent to dismiss; and
  - (b) Notify the employee in writing of the decision.
- (8) If the cabinet or agency head or his designee determines that the employee shall be dismissed or otherwise penalized, the employee shall be notified in writing of:
- (a) The effective date of his dismissal or other penalization;
  - (b) The specific reason for this action, including:
    - 1. The statutory or regulatory violation;
    - 2. The specific action or activity on which the dismissal or other penalization is based;
    - 3. The date, time, and place of the action or activity; and
    - 4. The name of the parties involved;
  - (c) That he may appeal the dismissal or other penalization to the board within sixty (60) days after receipt of this notification, excluding the day he receives notice.
- (9) A classified employee with status who is demoted, suspended, or otherwise penalized shall be notified in writing of:
- (a) The demotion, suspension, or other penalization;
  - (b) The effective date of the demotion, suspension, or other penalization;
  - (c) The specific reason for the action including:
    - 1. The statutory or regulatory violation;
    - 2. The specific action or activity on which the demotion, suspension, or other penalization is based;
    - 3. The date, time, and place of the action or activity; and
    - 4. The name of the parties involved; and
  - (d) That he has the right to appeal to the board within sixty (60) days, excluding the day that he received notification.
- (10) Any unclassified employee who is dismissed, demoted, suspended, or otherwise penalized for cause may, within thirty (30) days after the dismissal, demotion, suspension, or other form of penalization, appeal to the board for review thereof.
- (11) (a) An employee whose position is reallocated shall be notified in writing by the appointing authority of:
- 1. The reallocation; and
  - 2. His right to request reconsideration by the secretary within ten (10) working days of receipt of the notice, excluding the day he receives notification;
- (b) He shall be provided with a form prescribed by the secretary on which to request reconsideration; and
- (c) The employee shall file a written request for reconsideration of the reallocation of his position with the secretary in a manner and form prescribed by the secretary and shall be given a reasonable opportunity to be heard thereon by the secretary. The secretary shall make a determination within sixty (60) days after the request has been filed by an employee. After reconsideration of the request by the secretary, the employee may appeal to the board.
- (12) Any state employee, applicant for employment, or eligible on a register may appeal to the board on the grounds that his right to inspect or copy records, including preliminary and other supporting documentation, relating to him has been denied, abridged, or impeded by a public agency. The board shall conduct a hearing to determine whether the records related to the employee, applicant, or eligible, and whether his right to inspect or copy these records was denied, abridged, or impeded. If the board determines that the records related to the employee and that the right to inspect or copy these records has been denied, abridged, or impeded, the board shall order the public agency to make them available for inspection and copying and shall charge the cost of the hearing to the public agency. A state employee, an applicant for employment, and an eligible on a register shall not have the right to inspect or to copy any examination materials.

- (13) Any classified employee may appeal to the board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, or age forty (40) and above. Nothing in this section shall be construed to preclude any classified or unclassified employee from filing with the Kentucky Commission on Human Rights a complaint alleging discrimination on the basis of race, color, religion, national origin, sex, disability, or age in accordance with KRS Chapter 344.
- (14) When an eligible's name is removed from a register, the secretary shall notify the eligible of his action and the reasons therefor, together with his right of appeal. An eligible's name shall be restored to the register upon presentation of reasons satisfactory to the secretary or in accordance with the decision of the board.
- (15) (a) Any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may appeal to the board;
- (b) Any applicant whose application for admission to an open-competitive examination has been rejected shall be notified of this rejection and the reasons therefor and may appeal to the board for reconsideration of his qualifications and for admission to the examination. Applicants may be conditionally admitted to an examination by the secretary pending reconsideration by the board;
- (c) Any applicant who has taken an examination may appeal to the board for a review of his rating in any part of the examination to assure that uniform rating procedures have been applied equally and fairly;
- (d) An appeal to the board by applicants or eligibles under subsections (11) and (13) of this section and under this subsection shall be filed in writing with the executive director not later than thirty (30) calendar days after the notification of the action in question was mailed.
- (16) An evaluation may be appealed to the board if an employee has complied with the review procedure established *in subsection (7)(j) of Section 1 of this Act*~~[under KRS 18A.112]~~.
- (17) (a) Appeals to the board shall be in writing on an appeal form prescribed by the board. Appeal forms shall be available at the employee's place of work. The Personnel Cabinet shall be responsible for the distribution of these forms;
- (b) The appeal form shall be attached to any notice, or copy of any notice, of dismissal, demotion, suspension, fine, involuntary transfer, or other penalization, reallocation, or notice of any other action an employee may appeal under the provisions of this section. The appeal form shall instruct the employee to state whether he is a classified or unclassified employee, his full name, his appointing authority, work station address and telephone number, and, if he has retained counsel at the time he files an appeal, the name, address, and telephone number of his attorney;
- (c) The form shall also instruct a classified employee to state the action he is appealing in a short, plain, concise statement of the facts. The form shall instruct an unclassified employee to make a short, plain, concise statement of the reason for the appeal and the cause given for his dismissal; and
- (d) Upon receipt of the appeal by the board, the appointing authority and the Personnel Cabinet shall be notified and the board shall schedule a hearing.
- (18) All administrative hearings conducted by the board shall be conducted in accordance with KRS Chapter 13B.
- (19) (a) The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in writing and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100;
- (b) Any investigation by the board of any matter related to an appeal filed by an employee shall be conducted only upon notice to the employee, the employee's counsel, and the appointing authority. All parties to the appeal shall have access to information produced by the investigations and the information shall be presented at the hearing.
- (20) Each appeal shall be decided individually, unless otherwise agreed by the parties and the board. The board shall not:
- (a) Employ class action procedures; or
- (b) Conduct test representative cases.

- (21) Board members shall abstain from public comment about a pending or impending proceeding before the board. This shall not prohibit board members from making public statements in the course of their official duties or from explaining for public information the procedures of the board.
- (22) An appeal to the board may be heard by the full board or one (1) or more of the following: Its executive director, its general counsel, any nonelected member of the board, or any hearing officer secured by the board pursuant to KRS 13B.030.
- (23)
  - (a) If the board finds that the action complained of was taken by the appointing authority in violation of laws prohibiting favor for, or discrimination against, or bias with respect to, his political or religious opinions or affiliations or ethnic origin, or in violation of laws prohibiting discrimination because of such individual's sex or age or disability, the appointing authority shall immediately reinstate the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal;
  - (b) If the board finds that the action complained of was taken without just cause, the board shall order the immediate reinstatement of the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal;
  - (c) If the board finds that the action taken by the appointing authority was excessive or erroneous in view of all the surrounding circumstances, the board shall direct the appointing authority to alter, modify, or rescind the disciplinary action;
  - (d) In all other cases, the board shall direct the appointing authority to rescind the action taken or otherwise grant specific relief or dismiss the appeal.
- (24) If a final order of the board is appealed, a court shall award reasonable attorney fees to an employee who prevails by a final adjudication on the merits as provided by KRS 453.260. This award shall not include attorney fees attributable to the hearing before the board.
- (25) When any employee is dismissed and not ordered reinstated after the appeal, the board in its discretion may direct that his name be placed on an appropriate reemployment list for employment in any similar position other than the one from which he had been removed.
- (26) After a final decision has been rendered by the board or court, an employee who prevails in his appeal shall be credited with the amount of leave time used for time spent at his hearing before the board or court. Employees who had an insufficient amount of leave time shall be credited with leave time equal to the amount of time spent at their hearings before the board or court.
- (27) If the appointing authority appeals the final order of the board, unless the board rules otherwise, the reinstated employee shall remain in his former position, or a position of like status or pay, until the conclusion of the appeals process, at which time the appointing authority shall take action in accordance with the court order.
- (28) For the purposes of subsections (3), (4), (5), (6), (7), and (8) of this section, the word "agency" means any agency not assigned to a cabinet for organizational purposes.
- (29) Notwithstanding any other prescribed limitation of action, an employee that has been penalized, but has not received a written notice of his or her right to appeal as provided in this section, shall file his or her appeal with the Personnel Board within one (1) year from the date of the penalization or from the date that the employee reasonably should have known of the penalization.

Section 3. KRS 18A.355 is amended to read as follows:

- (1) An annual increment of not less than five percent (5%) of the base salary or wages of each state employee shall be granted to each employee on his anniversary date. The employee's base salary or wages shall be increased by the amount of the annual increment. When any increment due to a promotion, reallocation, reclassification or salary adjustment is granted an employee, the employee's base salary or wages shall be increased by the amount of such increment. An employee's base salary or wages shall not be increased by the amount of lump-sum payment awarded under *subsection (7)(j) of Section 1 of this Act* ~~the provisions of KRS 18A.112 awarded him~~.
- (2) The branch budget recommendation submitted to the General Assembly under KRS Chapter 48 shall include a request for the amount of the annual increment expressed as a percentage of each employee's base salary or

wages and a request for the total appropriation needed to fund the annual increment. The annual increment shall be uniform for all employees. The financial plan enacted under the provisions of KRS 48.300 shall contain the annual increment expressed as a percentage of each employee's base salary or wages, and the total appropriation needed to fund the annual increment.

- (3) The budget reduction plan submitted and enacted under the provisions of KRS Chapter 48 shall provide that a reduction of the annual increment granted under this section shall be made only after other cost savings measures, as provided by KRS 18A.1132, are taken. Any such reduction shall be uniform for all state employees and shall comply with the provisions of this chapter and KRS Chapter 48.

SECTION 4. A NEW SECTION OF KRS CHAPTER 18A IS CREATED TO READ AS FOLLOWS:

***The requirement of a high school diploma, equivalency certificate, or a passing score on the General Educational Development (GED) test in the Highway Equipment Operator series shall not apply to employees hired prior to July 1, 1999.***

Section 5. KRS 64.640 is amended to read as follows:

- (1) Except as otherwise provided in subsection (2) of this section, and excepting officers elected by popular vote, employees of the General Assembly, including employees of the Legislative Research Commission, members of boards and commissions, those officers and employees of Kentucky Educational Television exempt from classified service as provided in KRS 18A.115, presidents and employees of the state universities and the state colleges, and persons employed by the commissioner of parks on a temporary basis under KRS 148.026, the Personnel Cabinet shall prepare a schedule of compensation, payable out of the State Treasury, with a minimum and maximum salary rate, and such intermediate salary rates as are deemed necessary or advisable, for the office or position of employment of every state officer and employee, including specifically the offices and positions of employment in every constitutional administrative department, statutory administrative department, independent agency, or other unit of state government. Such schedules shall be based upon studies of the duties and responsibilities of the offices and positions and upon a comparison with rates being paid for similar or comparable services elsewhere, and in the preparation of such schedules, the Personnel Cabinet shall ascertain and record the duties, responsibilities, and authority pertaining to the various offices and positions in the state service, and classify such positions in the manner provided in KRS 18A.030, 18A.035, 18A.110, 18A.130, 18A.135, and 18A.150 to 18A.160. No such schedule shall become effective until it has been approved by the Governor.
- (2) The Governor shall set the compensation payable out of the State Treasury to each officer or position in the state service, which officer or position heads a statutory administrative department, independent agency, or other unit of state government except for those excluded under subsection (1) of this section. Such compensation shall be based upon studies of the duties and responsibilities and classification of the positions by the Governor and upon a comparison with compensation being paid for similar or comparable services elsewhere, provided, however, such compensation shall not exceed the ***total taxable compensation of the Governor derived from state sources*** ~~(amount provided for compensation to the Governor in KRS 64.480)~~, the provisions of KRS 64.660 to the contrary notwithstanding. ***For the purposes of this section, the total taxable compensation of the Governor from state sources shall include the amount provided for compensation to the Governor under KRS 64.480 and any benefits or discretionary spending accounts that are imputed as taxable income for federal tax purposes.***
- (3) The compensation payable out of the State Treasury to officers and employees subordinate to any office or position covered by subsection (2) of this section shall not exceed the maximum rate established pursuant to subsection (2) of this section for such office or position, except with respect to physicians as provided in KRS 64.655 and employees of the Public Service Commission of Kentucky whose compensation shall be fixed, within constitutional limits, by the Personnel Cabinet with the approval of the Governor as provided in subsection (1) of this section.
- (4) Nothing in this section shall preclude the allowance of maintenance to officers and employees of the state.

Section 6. The following KRS section is repealed:

18A.112 Performance evaluations.

**Approved April 21, 2000**

**CHAPTER 502****(HB 778)**

AN ACT relating to commercial feed.

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

Section 1. KRS 250.601 is amended to read as follows:

- (1) If the director has probable cause ***to believe*** that any of the provisions of KRS 250.491 to 250.631 have been violated, he shall notify the person involved of the alleged violations and designate a time and place for an informal hearing under administrative regulations promulgated by the director. If, after the informal hearing or without the hearing if the person fails to appear, the director determines that a violation has occurred, he may issue a letter of reprimand, ***levy a fine for chronic violators***, or impose any other penalty or sanction authorized under KRS 250.491 to 250.631, ***or under Section 2 of this Act***. Any penalty or sanction imposed may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (2) Nothing in KRS 250.491 to 250.631 shall be construed as requiring the director or his representative to impose a more extreme penalty or sanction as a result of minor violations of KRS 250.491 to 250.631 when he believes the public interest will best be served by the issuance of a letter of reprimand.
- (3) If, after completing the hearing procedure contained in subsection (1) of this section, the director has probable cause to believe that a criminal offense has occurred, he shall report it to the county attorney of the county in which the alleged offense occurred. It shall be the duty of each county attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.
- (4) The director may petition a court of competent jurisdiction to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of KRS 250.491 to 250.631 or any administrative regulation promulgated under KRS 250.491 to 250.631, notwithstanding the existence of other remedies at law. An injunction shall be issued without bond.
- (5) Any person adversely affected by a final order made ***in accordance with***~~in accordance with~~ subsection (1) of this section may bring action in Fayette Circuit Court for judicial review of the final order in accordance with KRS Chapter 13B.
- (6) It shall be unlawful for any person to use to his own advantage, or reveal to other than the director, or officers of the Kentucky agricultural experiment station, or to the courts when relevant in any judicial proceedings, any information acquired under the authority of KRS 250.491 to 250.631, concerning any method, records, formulations, or processes which as a trade secret is entitled to protection.~~Provided, that~~ This prohibition shall not be deemed as prohibiting the director, or his duly authorized agent, from exchanging information of a regulatory nature with duly appointed officials of the United States government, or of other states, who are similarly prohibited by law from revealing this information.

Section 2. KRS 250.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 250.021 to 250.111 and KRS 250.361 to 250.461 shall be fined not less than one hundred dollars (\$100), nor more than seven hundred fifty dollars (\$750).
- (2) Any person who shall impede, hinder, or otherwise prevent, or attempt to prevent, the director or his duly authorized agent in the performance of his duty in connection with this chapter, shall be guilty of a Class A misdemeanor.
- (3) Any person who violates subsection (6) of KRS 250.601 shall be guilty of a Class B misdemeanor.
- (4) ***Except as provided by subsection (3) of this section, any person who violates any of the provisions of KRS 250.491 to 250.631 may be fined up to one thousand dollars (\$1,000) for the third and subsequent violations made within a twenty-four (24) month period.***

**Approved April 21, 2000**

**CHAPTER 503****(HB 822)**

AN ACT relating to taxpayer information.

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

Section 1. KRS 131.081 is amended to read as follows:

The following rules, principles, or requirements shall apply in the administration of all taxes subject to the jurisdiction of the Revenue Cabinet.

- (1) The cabinet shall develop and implement a Kentucky tax education and information program directed at new taxpayers, taxpayer and industry groups, and cabinet employees to enhance the understanding of and compliance with Kentucky tax laws, including the application of new tax legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.
- (2) The cabinet shall publish brief statements in simple and nontechnical language which explain procedures, remedies, and the rights and obligations of taxpayers and the cabinet. These statements shall be provided to taxpayers with the initial notice of audit; each original notice of tax due; each denial or reduction of a refund or credit claimed by a taxpayer; each denial, cancellation, or revocation of any license, permit, or other required authorization applied for or held by a taxpayer; and, if practical and appropriate, in informational publications by the cabinet distributed to the public.
- (3) Taxpayers shall have the right to be assisted or represented by an attorney, accountant, or other person in any conference, hearing, or other matter before the cabinet. The taxpayer shall be informed of this right prior to conduct of any conference or hearing.
- (4) The cabinet shall perform audits and conduct conferences and hearings only at reasonable times and places.
- (5) Taxpayers shall have the right to make audio recordings of any conference with or hearing by the cabinet. The cabinet may make similar audio recordings only if prior written notice is given to the taxpayer. The taxpayer shall be entitled to a copy of this cabinet recording or a transcript as provided in KRS 61.874.
- (6) If any taxpayer's failure to submit a timely return or payment to the cabinet is due to the taxpayer's reasonable reliance on written advice from the cabinet, the taxpayer shall be relieved of any penalty or interest with respect thereto provided the taxpayer requested the advice in writing from the cabinet and the specific facts and circumstances of the activity or transaction were fully described in the taxpayer's request, the cabinet did not subsequently rescind or modify the advice in writing and there were no subsequent changes in applicable laws or regulations or a final decision of a court which rendered the cabinet's earlier written advice no longer valid.
- (7) Taxpayers shall have the right to receive a copy of any audit of the cabinet by the Auditor of Public Accounts relating to the cabinet's compliance with the provisions of KRS 131.041 to 131.081.
- (8) The cabinet shall include with each notice of tax due a clear and concise description of the basis and amount of any tax, penalty, and interest assessed against the taxpayer, and copies of the agent's audit workpapers and the agent's written narrative setting forth the grounds upon which the assessment is made. Taxpayers shall be similarly notified regarding the denial or reduction of any refund or credit claim filed by a taxpayer.
- (9) Taxpayers shall have the right to an installment payment agreement for the payment of delinquent taxes, penalties, and interest owed provided the taxpayer requests the agreement in writing clearly demonstrating his inability to pay in full and that the agreement will facilitate collection by the cabinet of the amounts owed. The cabinet may modify or terminate an installment payment agreement if it determines the taxpayer has not complied with the terms of the agreement; the taxpayers' financial condition has sufficiently changed; the taxpayer fails to provide any requested financial condition update information; the taxpayer gave false or misleading information in securing the agreement; or the taxpayer fails to timely report and pay any other tax due the Commonwealth. The cabinet shall give written notice to the taxpayer at least thirty (30) days prior to modifying or terminating an installment payment agreement unless the cabinet has reason to believe that collection of the amounts owed will be jeopardized in whole or in part by delay.
- (10) The cabinet shall not knowingly authorize, require, or conduct any investigation or surveillance of any person for nontax administration related purposes, except internal security related investigations involving Revenue Cabinet personnel.



- (11) In addition to the circumstances under which an extension of time for filing reports or returns may be granted pursuant to KRS 131.170, taxpayers shall be entitled to the same extension of the due date of any comparable Kentucky tax report or return for which the taxpayer has secured a written extension from the Internal Revenue Service provided the taxpayer notifies the cabinet in writing and provides a copy of the extension at the time and in the manner which the cabinet may require.
- (12) The cabinet shall bear the cost or, if paid by the taxpayer, reimburse the taxpayer for recording or bank charges as the direct result of any erroneous lien or levy by the cabinet, provided the erroneous lien or levy was caused by cabinet error and, prior to issuance of the erroneous lien or levy, the taxpayer timely responded to all contacts by the cabinet and provided information or documentation sufficient to establish his or her position. When the cabinet releases any erroneous lien or levy, notice of the fact shall be mailed to the taxpayer and, if requested by the taxpayer, a copy of the release, together with an explanation, shall be mailed to the major credit reporting companies located in the county where it was filed.
- (13) The cabinet shall not evaluate individual officers or employees on the basis of taxes assessed or collected or impose or suggest tax assessment or collection quotas or goals.
- (14) Taxpayers shall have the right to bring an action for damages against the Commonwealth to the Board of Claims for actual and direct monetary damages sustained by the taxpayer as a result of willful, reckless, and intentional disregard by cabinet employees of the rights of taxpayers as set out in KRS 131.041 to 131.081 or in the tax laws administered by the cabinet. In the awarding of damages pursuant to this subsection, the board shall take into consideration the negligence or omissions, if any, on the part of the taxpayer which contributed to the damages. If any proceeding brought by a taxpayer is ruled frivolous by the board, the cabinet shall be reimbursed by the taxpayer for its costs in defending the action.
- (15) Taxpayers shall have the right to privacy with regard to the information provided on their Kentucky tax returns and reports, including any attached information or documents. Except as provided *in Section 2 of this Act* ~~by KRS 131.190~~, no information pertaining to the returns, reports, or the affairs of a person's business shall be divulged by the cabinet to any person *or be intentionally and without authorization inspected by any present or former secretary or employee of the Revenue Cabinet, member of a county board of assessment appeals, property valuation administrator or employee, or any other person.*

Section 2. KRS 131.190 is amended to read as follows:

- (1) No present or former secretary or employee of the Revenue Cabinet, member of a county board of assessment appeals, property valuation administrator or employee, or any other person, shall *intentionally and without authorization inspect or* divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the cabinet or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns of property for taxation, or any other infraction of the tax laws, nor does it extend to any matter properly entered upon any assessment record, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or his properly authorized agent with information respecting his own return. Further, this prohibition does not preclude the secretary or any employee of the Revenue Cabinet from testifying in any court, or from introducing as evidence returns or reports filed with the cabinet, in an action for violation of state or federal tax laws or in any action challenging state or federal tax laws. The secretary or the secretary's designee may provide an owner of unmined coal, oil or gas reserves, and other mineral or energy resources assessed under KRS 132.820(1), or owners of surface land under which the unmined minerals lie, factual information about the owner's property derived from third-party returns filed for that owner's property, under the provisions of KRS 132.820(2), that is used to determine the owner's assessment. This information shall be provided to the owner on a confidential basis, and the owner shall be subject to the penalties provided in *Section 3(2) of this Act* ~~KRS 131.990(2)~~. The third-party filer shall be given prior notice of any disclosure of information to the owner that was provided by the third-party filer.
- (2) The secretary shall make available any information for official use only and on a confidential basis to the proper officer, agency, board or commission of this state, any Kentucky county, any Kentucky city, any other state, or the federal government, under reciprocal agreements whereby the cabinet shall receive similar or useful information in return.
- (3) Statistics of tax-paid gasoline gallonage reported monthly to the Revenue Cabinet under the gasoline excise tax law may be made public by the cabinet.

- (4) Notwithstanding the provisions of this section to the contrary, information received from the Internal Revenue Service shall not be made available to any other agency of state government, or any county, city, or other state, ***and shall not be inspected intentionally and without authorization by any present secretary or employee of the Revenue Cabinet, or any other person.***
- (5) Statistics of crude oil as reported to the Revenue Cabinet under the crude oil excise tax requirements of KRS Chapter 137 and statistics of natural gas production as reported to the Revenue Cabinet under the natural resources severance tax requirements of KRS Chapter 143A may be made public by the cabinet by release to the Department of Mines and Minerals.

Section 3. KRS 131.990 is amended to read as follows:

- (1) Any person who fails or refuses to obey a subpoena or order of the Kentucky Board of Tax Appeals made pursuant to KRS Chapter 13B shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500).
- (2)
  - (a) ***Any person who violates the intentional unauthorized inspection provisions of Section 2(1) of this Act shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.***
  - (b) ***Any person who violates the provisions of Section 2(1) of this Act by divulging confidential taxpayer information shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both.***
  - (c) ***Any person who violates the intentional unauthorized inspection provisions of Section 2(4) of this Act shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both.***
  - (d) ***Any person who violates the provisions of Section 2(4) of this Act by divulging confidential taxpayer information shall be fined not more than five thousand dollars (\$5,000) or imprisoned for not more than five (5) years, or both.***
  - (e) ***Any present secretary or employee of the Revenue Cabinet, member of a county board of assessment appeals, property valuation administrator or employee, or any other person, who violates the provisions of Section 2(1) or (4) of this Act may, in addition to the penalties imposed under this subsection, be disqualified and removed from office or employment.***~~*Any person who violates any of the provisions of KRS 131.190, except subsection (4) thereof, shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both, and shall be disqualified and removed from office or employment. Any person who violates the provisions of KRS 131.190(4) shall be fined not more than five thousand dollars (\$5,000) or imprisoned for not more than five (5) years or both.*~~
- (3) Any person who willfully fails to comply with the rules and regulations promulgated by the Revenue Cabinet for the administration of delinquent tax collections shall be fined not less than twenty dollars (\$20) nor more than one thousand dollars (\$1,000).
- (4) Any person who fails to do any act required or does any act forbidden by KRS 131.210 shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
- (5) Any person who fails to comply with the provisions of KRS 131.155 shall, unless it is shown to the satisfaction of the cabinet that the failure is due to reasonable cause, pay a penalty of one-half of one percent (0.5%) of the amount that should have been remitted under the provisions of KRS 131.155 for each failure to comply.

**Approved April 21, 2000**

## **CHAPTER 504**

### **(HB 825)**

AN ACT relating to public library services.

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

Section 1. KRS 171.201 is amended to read as follows:

- (1) For grants to public libraries for promoting, aiding, and equalizing public library service in Kentucky, there may be funds appropriated out of the general expenditure fund of the State Treasury.
- (2) In addition to any other funds appropriated to the Department for Libraries and Archives, there shall be appropriated annually to the department out of the general expenditure fund of the State Treasury an amount sufficient to provide the following assistance to local public libraries:
  - (a) The department shall first distribute to each county public library system a foundation grant based upon the county population using the last official census as follows:
    1. Counties with a population of twenty-two thousand (22,000) or less shall receive nine thousand dollars (\$9,000);
    2. Counties with a population between twenty-two thousand one (22,001) and forty-five thousand (45,000) shall receive eight thousand dollars (\$8,000);
    3. Counties with a population over forty-five thousand (45,000) shall receive seven thousand dollars (\$7,000); and
  - (b) The department shall distribute the remaining funds appropriated for this program to each county public library system, based on the county's share of the state population, at a rate of fifty-three cents (\$0.53) per capita in fiscal year 1997-98, seventy-three cents (\$0.73) per capita in fiscal year 1998-99 and each year thereafter to be used for the following purposes:
    1. Purchase, upgrading, and maintenance of the technology necessary to enable the staff and the public to have access to electronic information;
    2. Purchase of library materials and equipment;
    3. Maintenance and operation of bookmobiles and extension programs;
    4. Staff training and compensation;
    5. Building maintenance;
    6. Debt service;
    7. Resource-sharing;
    8. Program development; and
    9. All other local library needs and services; and
  - (c) For counties which do not have a public library, the department shall make the foundation grant and per capita distribution to a recognized library organization for the purpose of providing or establishing countywide public library service under existing departmental guidelines.
- (3) The appropriation necessary to fund the formula foundation grants and a seventy-three cents (\$0.73) per capita distribution shall constitute the base for the agency's biennial budget request for this program.
- (4)
  - (a) *In addition to the foundation grants and per capita distribution to a local public library, there is hereby created within the Department for Libraries and Archives a public library services improvement and equalization fund to assure substantially equal public library services for all citizens of the Commonwealth. The creation of this fund is not intended to limit or prevent any public library from providing services and facilities beyond those assured by the state-supported program.*
  - (b) *It is intended that the proceeds of the fund created under this subsection be used to:*
    1. *Improve early childhood development;*
    2. *Support lifelong learning opportunities;*
    3. *Enhance economic development;*
    4. *Enrich cultural resource opportunities for all Kentuckians; and*
    5. *Expand adult education and adult literacy programs.*
- (5) *Expenditures from the fund created in subsection (4) of this section shall not be made unless those expenditures:*

- (a) *Comply with the categories of allowable costs in subsection (2)(b) of this section; and*
- (b) *Comply with the enterprise information technology architecture and standards developed by the Commonwealth when utilized for technology procurements.*
- (6) (a) *The fund created under subsection (4) of this section shall be distributed based on a formula using the per population assessment and equalization rate of two hundred percent (200%) of the poverty level per annual population assessment produced by the United States Bureau of Census. The exact formula and distribution of the fund shall be set forth in an administrative regulation promulgated by the Department for Libraries and Archives.*
- (b) *A local public library shall not be qualified to receive funds under subsection (4) of this section, if that library's regular annual appropriation in the current fiscal year is less than the appropriation received in the previous fiscal year.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 171 IS CREATED TO READ AS FOLLOWS:

*There is established a public library facilities construction fund to assist local libraries with debt service payments for new library facilities and library improvements. The Department for Library and Archives is authorized to enter into long-term written memoranda of agreement with local libraries or other governing bodies to assist in debt service payments relating to library construction or renovation projects. The agreements shall specify the rights, duties, and obligations of both the local public library, or other governing body, and the department. The department shall promulgate administrative regulations to establish the application process, criteria for selecting projects for assistance, a minimum level of local participation, and the process to be followed in the construction of facilities. The department shall report assistance awards to the Interim Joint Committee on Appropriations and Revenue within thirty (30) days of execution of any memorandum of agreement.*

**Approved April 21, 2000**

**CHAPTER 505**

**(HB 830)**

AN ACT relating to pretrial diversion programs.

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

Section 1. KRS 533.262 is amended to read as follows:

- (1) The pretrial diversion program authorized by KRS 533.250 to 533.260 shall be the sole program utilized in the Circuit Courts of the Commonwealth *except for drug court diversion as approved by the Supreme Court and the Department of Corrections.*
- (2) As of July 15, 1998, the only other pretrial diversion programs utilized by the Commonwealth shall be those authorized by the Kentucky Supreme Court and providing for the pretrial diversion of misdemeanants. Programs existing as of July 15, 1998 may continue for the purpose of supervising persons granted pretrial diversion prior to July 15, 1998, however no new persons shall be admitted to these programs.
- (3) A person who is in a pretrial diversion program as of July 15, 1998 may continue in that program until he or she successfully completes the program or is removed from the program for other reasons, whichever occurs earlier.

**Approved April 21, 2000**

**CHAPTER 506**

**(HB 842)**

AN ACT relating to reorganization.

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

Section 1. KRS 61.935 is repealed, reenacted as a new section of KRS Chapter 11, and amended to read as follows.

The General Assembly finds and declares that:

- (1) The establishment of the ~~position~~~~Office~~ of the Chief Information Officer as the Commonwealth's single point of contact and spokesperson for all matters related to information technology and resources, including policies, standard setting, deployment, strategic and tactical planning, acquisition, management, and operations is necessary and in keeping with the industry trends of the private and public sectors;
- (2) The appropriate use of information technology by the Commonwealth can improve operational productivity, reduce the cost of government, enhance service to customers, and make government more accessible to the public;
- (3) Government-wide planning, investment, protection, and direction for information resources must be enacted to:
  - (a) Ensure the effective application of information technology on state business operations;
  - (b) Ensure the quality, security, and integrity of state business operations; and
  - (c) Provide privacy to the citizens of the Commonwealth;
- (4) The Commonwealth must provide information technology infrastructure, technical directions, and a proficient organizational management structure to facilitate the productive application of information technology and resources to accomplish programmatic missions and business goals;
- (5) Oversight of large scale and government statewide systems or projects is necessary to protect the Commonwealth's investment and to ensure appropriate integration with existing or planned systems;
- (6) A career development plan and professional development program for information technology staff of the executive branch is needed to provide key competencies and adequate on-going support for the information resources of the Commonwealth and to ensure that the information technology staff will be managed as a Commonwealth resource;
- (7) The Commonwealth is in need of information technology advisory capacities to the Governor and the agencies of the executive cabinet;
- (8) Appropriate public-private partnerships to supplement existing resources must be developed as a strategy for the Commonwealth to comprehensively meet its spectrum of information technology and resource needs;~~and~~
- (9) *Technological and theoretical advances in information use are recent in origin, immense in scope and complexity, and change at a rapid rate, which presents Kentucky with the opportunity to provide higher quality, more timely, and more cost-effective government services to ensure standardization, interoperability, and interconnectivity;*
- (10) *The sharing of information resources and technologies among executive branch state agencies is the most cost-effective method of providing the highest quality and most timely government services that would otherwise be cost-prohibitive;*
- (11) *The ability to identify, develop, and implement changes in a rapidly moving field demands the development of mechanisms to provide for the research and development of technologies that address systems, uses, and applications; and*
- (12) The exercise by the chief information officer of powers and authority conferred by *Sections 1 to 9, 15, 20, 22, 23, and 24 of this Act*~~[KRS 61.935 to 61.938]~~ shall be deemed and held to be the performance of essential governmental functions.

SECTION 2. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 9 of this Act, unless the context requires otherwise:*

- (1) *"Communications" or "telecommunications" means any transmission, emission, or reception of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, optical, or other electromagnetic systems, and includes all facilities and equipment performing these functions;*
- (2) *"Geographic information system" or "GIS" means a computerized database management system for the capture, storage, retrieval, analysis, and display of spatial or locationally defined data;*
- (3) *"Information resources" means the procedures, equipment, and software that are designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel;*

- (4) *"Information technology" means data processing and telecommunications hardware, software, services, supplies, facilities, maintenance, and training that are used to support information processing and telecommunications systems to include geographic information systems; and*
- (5) *"Project" means a program to provide information technologies support to functions within an executive branch state agency, which should be characterized by well-defined parameters, specific objectives, common benefits, planned activities, expected outcomes and completion dates, and an established budget with a specified source of funding.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby created within the Office of the Governor an agency of state government known as the Governor's Office for Technology.*
- (2) *The Governor's Office for Technology shall be headed by the chief information officer for the Commonwealth established in Section 6 of this Act.*
- (3) *The Governor's Office for Technology shall consist of the following six (6) executive offices, each headed by an executive director:*
  - (a) *Office of Geographic Information;*
  - (b) *Office of Human Resource Management and Development;*
  - (c) *Office of Administrative Services, consisting of the:*
    - 1. *Division of Financial and Business Management; and*
    - 2. *Division of Asset Management;*
  - (d) *Office of Policy and Customer Relations, consisting of the:*
    - 1. *Division of Planning and Architecture;*
    - 2. *Division of Relationship Management; and*
    - 3. *Division of Information Technology Training;*
  - (e) *Office of Infrastructure Service, consisting of the:*
    - 1. *Division of End User Support;*
    - 2. *Division of Security Services;*
    - 3. *Division of Computing Services; and*
    - 4. *Division of Communication Services; and*
  - (f) *Office of Consulting and Project Management, consisting of the:*
    - 1. *Division of Centers of Expertise;*
    - 2. *Division of Project Office and Integration;*
    - 3. *Division of Human Services Systems;*
    - 4. *Division of Financial Systems;*
    - 5. *Division of Transportation Systems; and*
    - 6. *Division of Workforce Development and General Government Systems.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO READ AS FOLLOWS:

- (1) *The roles and duties of the Governor's Office for Technology shall include but not be limited to:*
  - (a) *Providing technical support and services to all executive agencies of state government in the application of information technology;*
  - (b) *Assuring compatibility and connectivity of Kentucky's information systems;*
  - (c) *Developing strategies and policies to support and promote the effective applications of information technology within state government as a means of saving money, increasing employee productivity,*

*and improving state services to the public, including electronic public access to information of the Commonwealth;*

- (d) Developing, implementing, and managing strategic information technology directions, standards, and enterprise architecture including implementing necessary management processes to assure full compliance with those directions, standards, and architecture. This specifically includes, but is not limited to, directions, standards, and architecture related to the privacy and confidentiality of data collected and stored by state agencies;*
- (e) Promoting effective and efficient design and operation of all major information resources management processes for executive branch agencies, including improvements to work processes;*
- (f) Developing, implementing, and maintaining the technology infrastructure of the Commonwealth;*
- (g) Facilitating and fostering applied research in emerging technologies that offer the Commonwealth innovative business solutions;*
- (h) Reviewing and overseeing large or complex information technology projects and systems for compliance with statewide strategies, policies, and standards, including alignment with the Commonwealth's business goals, investment, and other risk management policies. The chief information officer is authorized to grant or withhold approval to initiate these projects;*
- (i) Integrating information technology resources to provide effective and supportable information technology applications in the Commonwealth;*
- (j) Establishing a central statewide geographic information clearinghouse to maintain map inventories, information on current and planned geographic information systems applications, information on grants available for the acquisition or enhancement of geographic information resources, and a directory of geographic information resources available within the state or from the federal government;*
- (k) Coordinating multiagency information technology projects, including overseeing the development and maintenance of statewide base maps and geographic information systems;*
- (l) Providing access to both consulting and technical assistance, and education and training, on the application and use of information technologies to state and local agencies;*
- (m) In cooperation with other agencies, evaluating, participating in pilot studies, and making recommendations on information technology hardware and software;*
- (n) Providing staff support and technical assistance to the Geographic Information Advisory Council, the Kentucky Information Technology Advisory Council, and the Commercial Mobile Radio Service Emergency Telecommunications Board of Kentucky; and*
- (o) Preparing proposed legislation and funding proposals for the General Assembly that will further solidify coordination and expedite implementation of information technology systems.*

**(2) The Governor's Office for Technology may:**

- (a) Provide general consulting services, technical training, and support for generic software applications, upon request from a local government, if the chief information officer finds that the requested services can be rendered within the established terms of the federally approved cost allocation plan;*
- (b) Promulgate administrative regulations in accordance with KRS Chapter 13A necessary for the implementation of Sections 1 to 9, 15, 20, 22, 23, and 24 of this Act;*
- (c) Solicit, receive, and consider proposals from any state agency, federal agency, local government, university, nonprofit organization, private person, or corporation;*
- (d) Solicit and accept money by grant, gift, donation, bequest, legislative appropriation, or other conveyance to be held, used, and applied in accordance with Sections 1 to 9, 15, 20, 22, 23, and 24 of this Act;*
- (e) Make and enter into memoranda of agreement and contracts necessary or incidental to the performance of duties and execution of its powers, including, but not limited to, agreements or*

*contracts with the United States, other state agencies, and any governmental subdivision of the Commonwealth;*

- (f) Accept grants from the United States government and its agencies and instrumentalities, and from any source, other than any person, firm, or corporation, or any director, officer, or agent thereof that manufactures or sells information resources technology equipment, goods, or services. To these ends, the Governor's Office for Technology shall have the power to comply with those conditions and execute those agreements that are necessary, convenient, or desirable;*
- (g) Purchase interest in contractual services, rentals of all types, supplies, materials, equipment, and other services to be used in the research and development of beneficial applications of information resources technologies. Competitive bids may not be required for:*
  - 1. New and emerging technologies as approved by the chief information officer or her or his designee; or*
  - 2. Related professional, technical, or scientific services, but contracts shall be submitted in accordance with KRS 45A.690 to 45A.725.*
- (3) Nothing in this section shall be construed to alter or diminish the provisions of KRS 171.410 to 171.740 or the authority conveyed by these statutes to the Archives and Records Commission and the Department for Libraries and Archives.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO READ AS FOLLOWS:

- (1) To accomplish the work of the Governor's Office for Technology, all organizational units and administrative bodies, as defined in KRS 12.010, and all members of the state postsecondary education system, as defined in KRS 164.001, shall furnish the Governor's Office for Technology necessary assistance, resources, information, records, and advice as required.*
- (2) The provisions of Sections 1 to 9, 15, 20, 22, 23 and 24 of this Act shall not be construed to grant any authority over the judicial or legislative branches of state government, or agencies thereof, to the Governor's Office for Technology.*
- (3) The information, technology, personnel, agency resources, and confidential records of the Kentucky Retirement Systems and the Kentucky Teachers' Retirement System shall be excluded from the provisions of Sections 1 to 9, 15, 20, 22, 23, and 24 of this Act and shall not be under the authority of the Governor's Office for Technology.*

Section 6. KRS 61.936 is repealed, reenacted as a new section of KRS Chapter 11, and amended to read as follows:

- (1) There is hereby established a position of chief information officer for the Commonwealth. This position shall be exempt from the classified service under KRS 18A.115 and from the salary limitations of KRS 64.640, and shall be bonded commensurate with cabinet secretaries under KRS 62.160. The chief information officer shall be appointed by the Governor and serve in the Governor's Executive Cabinet. The chief information officer shall report to the secretary of the Governor's cabinet concerning his or her responsibilities to provide direction, stewardship, leadership, and general oversight of information technology and information resources. [For purposes of this section, unless the context requires otherwise, "information technology" and "information resources" shall have the same meaning as in KRS 61.942.]*
- ~~*(2)(1)*~~ *The chief information officer shall be the principal adviser to the Governor and the executive cabinet on information technology policy, including policy on the acquisition and management of information technology and resources.*
- ~~*(3)(2)*~~ *The chief information officer shall carry out functions necessary for the efficient, effective, and economical administration of information technology and resources within the executive branch. Roles and duties of the chief information officer shall include but not be limited to:*
  - ~~*(a) Developing strategies and policies to support and promote the effective applications of information technology within state government as a means of saving money, increasing employee productivity, and improving state services to the public, including electronic public access to information of the Commonwealth;*~~



- ~~(b)}~~ Assessing, recommending, and implementing information technology governance and organization design to include effective information technology personnel management practices;
- ~~[(e)]~~ ~~Promoting effective and efficient design and operation of all major information resources management processes for executive branch agencies, including improvements to work processes;~~
- ~~(d)]~~ ~~Overseeing and managing strategic information technology directions, standards, and architecture;]~~
- ~~(b)]~~~~(e)}~~ Integrating information technology and resources plans with agency business plans;
- ~~[(f)]~~ ~~Developing, implementing, and maintaining the technology infrastructure of the Commonwealth;]~~
- ~~(c)]~~~~(g)}~~ Overseeing shared Commonwealth information technology resources and services;
- ~~(d)]~~~~(h)}~~ Performing as the focal point and representative for the Commonwealth in information technology and related areas with both the public and private sector;
- ~~[(i)]~~ ~~Facilitating and fostering applied research in emerging technologies that offer the Commonwealth innovative business solutions;]~~
- ~~(e)]~~~~(j)}~~ Establishing appropriate partnerships and alliances to support the effective implementation of information technology projects in the Commonwealth;
- ~~(f)]~~~~(k)}~~ Identifying information technology applications that should be statewide in scope, and ensuring that these applications are not developed independently or duplicated by individual state agencies of the executive branch;
- ~~(g)]~~~~(l)}~~ Establishing performance measurement and benchmarking policies and procedures;
- ~~[(m)]~~ ~~Reviewing and overseeing large or complex information technology projects and systems for compliance with statewide strategies, policies, and standards, including alignment with Commonwealth's business goals, investment, and other risk management policies. The chief information officer is authorized to grant or withhold approval to initiate these projects;]~~
- ~~(h)]~~~~(n)}~~ Preparing annual reports and plans concerning the status and result of the state's specific information technology plans and submitting these annual reports and plans to the governor and the General Assembly;
- ~~[(o)]~~ ~~Integrating information technology resources to provide effective and supportable information technology applications in the Commonwealth;]~~ and
- ~~(i)]~~~~(p)}~~ Managing the *Governor's Office for Technology*~~[Office of the Chief Information Officer]~~ and its budget.

SECTION 7. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby created the Kentucky Information Technology Advisory Council to:*
  - (a) *Advise the chief information officer for the Commonwealth on approaches to coordinating information technology solutions among libraries, public schools, local governments, universities, and other public entities; and*
  - (b) *Provide a forum for the discussion of emerging technologies that enhance electronic accessibility to various publicly funded sources of information and services.*
- (2) *The Kentucky Information Technology Advisory Council shall consist of:*
  - (a) *The state budget director or a designee;*
  - (b) *The state librarian or a designee;*
  - (c) *One (1) representative from the public universities to be appointed by the Governor from a list of three (3) persons submitted by the Council on Postsecondary Education;*
  - (d) *Three (3) citizen members from the private sector with information technology knowledge and experience appointed by the Governor;*
  - (e) *Two (2) representatives of local government appointed by the Governor;*

- (f) *One (1) representative from the area development districts appointed by the Governor from a list of names submitted by the executive directors of the area development districts;*
  - (g) *One (1) member of the media appointed by the Governor;*
  - (h) *The executive director of the Kentucky Authority for Educational Television;*
  - (i) *The chair of the Public Service Commission or a designee;*
  - (j) *Two (2) members of the Kentucky General Assembly, one (1) from each chamber, selected by the Legislative Research Commission;*
  - (k) *One (1) representative of the Administrative Office of the Courts;*
  - (l) *One (1) representative from the public schools system appointed by the Governor;*
  - (m) *One (1) representative of the Kentucky Chamber of Commerce; and*
  - (n) *The chief information officer for the Commonwealth.*
- (3) *Appointed members of the council shall serve for a term of two (2) years. Members who serve by virtue of an office shall serve on the council while they hold the office.*
  - (4) *Vacancies on the council shall be filled in the same manner as the original appointments. If a nominating organization changes its name, its successor organization having the same responsibilities and purposes shall be the nominating organization.*
  - (5) *Members shall receive no compensation but shall receive reimbursement for actual and necessary expenses in accordance with travel and subsistence requirements established by the Finance and Administration Cabinet.*

Section 8. KRS 61.958 is repealed, reenacted as a new section of KRS Chapter 11, and amended to read as follows:

- (1) There is hereby established a Geographic Information Advisory Council~~[-, referred to in this section and KRS 61.959 as the "council," to the Kentucky Information Resources Management Commission]~~ to advise the **chief information officer**~~[Governor, the General Assembly, the Judicial Branch, and the Kentucky Information Resources Management Commission]~~ on issues *relating*~~[as they relate]~~ to geographic information and geographic information systems.
- (2) The council shall establish and adopt policies and procedures that assist state and local jurisdictions in developing, deploying, and leveraging geographic information resources and geographic information systems technology for the purpose of improving public administration.
- (3) The council shall closely coordinate with users of geographic information systems to establish policies and procedures that insure the maximum use of geographic information by minimizing the redundancy of geographic information and geographic information resources.
- (4) The Geographic Information Advisory Council shall consist of twenty-six (26) members and one (1) legislative liaison. The members shall be knowledgeable in the use and application of geographic information systems technology and shall have sufficient authority within their organizations to influence the implementation of council recommendations.
  - (a) The council shall consist of:
    - 1. The secretary of the Transportation Cabinet or his designee;
    - 2. The secretary of the Cabinet for Health Services and Families and Children or his designee;
    - 3. The director of the Kentucky Geological Survey or his designee;
    - 4. The secretary of the Revenue Cabinet or his designee;
    - 5. The **chief information officer**~~[commissioner of the Department of Information Systems]~~ or **her** or his designee;
    - 6. The secretary of the Economic Development Cabinet or his designee;
    - 7. The commissioner of the Department for Local Government or his designee;

8. The secretary of the Justice Cabinet or his designee;
  9. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council on Postsecondary Education;
  10. The adjutant general of the Department of Military Affairs or his designee;
  11. The commissioner of the Department of Education or his designee;
  12. The secretary of the Natural Resources and Environmental Protection Cabinet or his designee;
  13. The commissioner of the Department of Agriculture or his designee;
  14. The secretary of the Public Protection and Regulation Cabinet or his designee;
  15. The secretary of the Tourism Development Cabinet or his designee;
  16. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky League of Cities;
  17. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky Association of Counties;
  18. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chapter of the American Planning Association;
  19. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chamber of Commerce;
  20. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Association of Land Surveyors;
  21. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Society of Professional Engineers;
  22. One (1) member appointed by the Governor from a list of three (3) persons submitted by the chairman of the Kentucky Board of Registered Geologists; and
  23. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council of Area Development Districts.
- (b) The council shall have one (1) nonvoting legislative liaison, to be appointed by the Legislative Research Commission.
- (5) The council shall select from its membership a chairman and any other officers it considers essential. The council may have committees and subcommittees as determined by the council or an executive committee, if an executive committee exists.
- (6) A member of the council shall not:
- (a) Be an officer, employee, or paid consultant of a business entity that has, or of a trade association for business entities that has, a substantial interest in the geographic information industry and is doing business in the Commonwealth;
  - (b) Own, control, or have directly or indirectly, more than ten percent (10%) interest in a business entity that has a substantial interest in the geographic information industry;
  - (c) Be in any manner connected with any contract or bid for furnishing any governmental body of the Commonwealth with geographic information systems, the computers on which they are automated, or a service related to geographic information systems;
  - (d) Be a person required to register as a lobbyist because of activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have substantial interest in the geographic information industry;
  - (e) Accept or receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise; or
  - (f) Be liable to civil action or any action performed in good faith in the performance of duties as a council member.

- (7) Those council members specified in subsection (4)(a) of this section who serve by virtue of an office shall serve on the council while they hold that office.
- (8) Appointed members of the council shall serve for a term of four (4) years. Vacancies in the membership of the council shall be filled in the same manner as the original appointments. If a nominating organization changes its name, its successor organization having the same responsibilities and purposes shall be the nominating organization.
- (9) The council shall have no funds of its own, and council members shall not receive compensation of any kind from the council.
- (10) A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at council meetings.

Section 9. KRS 61.959 is repealed, reenacted as a new section of KRS Chapter 11, and amended to read as follows:

- (1) The ***Geographic Information Advisory*** Council's duties shall include the following:
  - (a) Overseeing the development and adoption of policies and procedures related to geographic information and geographic information systems;
  - (b) Overseeing the development of a strategy for the implementation and funding of a statewide base map and geographic information system;
  - (c) Overseeing the development and recommending standards on geographic information and geographic information systems for inclusion in the statewide architecture;
  - (d) Overseeing the development and delivery of a statewide geographic information plan and annually reporting to the Governor, the General Assembly, the Judicial Branch, and the ***chief information officer***~~[Kentucky Information Resources Management Commission]~~;
  - (e) Overseeing the development of the geographic information systems training and education plan;
  - (f) Overseeing the assessment of state agency plans for geographic information systems standards compliance;
  - (g) Overseeing the development of operating policies and procedures for the management of the council and any standing or ad hoc committees and associated advisory groups;
  - (h) Promoting collaboration and the sharing of data and data development, as well as other aspects of geographic information systems; and
  - (i) Overseeing the implementation of a pilot project to study the advantages and resources of geographic information system technology.
- (2) The Office of Geographic Information shall provide necessary staff support services to the council. All cabinets, departments, divisions, agencies, and officers of the Commonwealth shall furnish the council necessary assistance, resources, information, records, or advice as it may require to fulfill its duties.

Section 10. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

- 1. The Governor.
- 2. Lieutenant Governor.

3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.
  - (c) Registry of Election Finance.
4. Department of Law.
  - (a) Attorney General.
5. Department of the Treasury.
  - (a) Treasurer.
6. Department of Agriculture.
  - (a) Commissioner of Agriculture.
  - (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.
9. Railroad Commission.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
  - (a) Department of State Police.
  - (b) Department of Criminal Justice Training.
  - (c) Department of Corrections.
  - (d) Department of Juvenile Justice.
  - (e) Office of the Secretary.
  - (f) Offices of the Deputy Secretaries.
  - (g) Office of General Counsel.
  - (h) Division of Kentucky State Medical Examiners Office.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
  - (a) Department of Education.
    - (1) Kentucky Board of Education.
    - (2) Education Professional Standards Board.
  - (b) Department for Libraries and Archives.
  - (c) Kentucky Arts Council.
  - (d) Kentucky Educational Television.
  - (e) Kentucky Historical Society.
  - (f) Kentucky Teachers' Retirement System Board of Trustees.
  - (g) Kentucky Center for the Arts.
  - (h) Kentucky Craft Marketing Program.

- (i) Kentucky Commission on the Deaf and Hard of Hearing.
- (j) Governor's Scholars Program.
- (k) Governor's School for the Arts.
- (l) Operations and Development Office.
- (m) Kentucky Heritage Council.
- (n) Kentucky African-American Heritage Commission.
- (o) Board of Directors for the Center for School Safety.
- 3. Natural Resources and Environmental Protection Cabinet:
  - (a) Environmental Quality Commission.
  - (b) Kentucky Nature Preserves Commission.
  - (c) Department for Environmental Protection.
  - (d) Department for Natural Resources.
  - (e) Department for Surface Mining Reclamation and Enforcement.
  - (f) Office of Legal Services.
  - (g) Office of Information Services.
- 4. Transportation Cabinet:
  - (a) Department of Highways.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Administrative Services.
  - (d) Department of Fiscal Management.
  - (e) Department of Rural and Municipal Aid.
  - (f) Office of General Counsel.
  - (g) Office of Public Affairs.
  - (h) Office of Personnel Management.
  - (i) Office of Minority Affairs.
  - (j) Office of Environmental Affairs.
  - (k) Office of Policy and Budget.
- 5. Cabinet for Economic Development:
  - (a) Department of Administration and Support.
  - (b) Department of Job Development.
  - (c) Department of Financial Incentives.
  - (d) Department of Community Development.
  - (e) Tobacco Research Board.
  - (f) Kentucky Economic Development Finance Authority.
- 6. Public Protection and Regulation Cabinet:
  - (a) Public Service Commission.
  - (b) Department of Insurance.
  - (c) Department of Housing, Buildings and Construction.

- (d) Department of Financial Institutions.
  - (e) Department of Mines and Minerals.
  - (f) Department of Public Advocacy.
  - (g) Department of Alcoholic Beverage Control.
  - (h) Kentucky Racing Commission.
  - (i) Board of Claims.
  - (j) Crime Victims Compensation Board.
  - (k) Kentucky Board of Tax Appeals.
  - (l) Backside Improvement Commission.
  - (m) Office of Petroleum Storage Tank Environmental Assurance Fund.
7. Cabinet for Families and Children:
- (a) Department for Social Insurance.
  - (b) Department for Social Services.
  - (c) Public Assistance Appeals Board.
  - (d) Office of the Secretary.
  - (e) Office of the General Counsel.
  - (f) Office of Program Support.
  - (g) Office of Family Resource and Youth Services Centers.
  - (h) Office of Technology Services.
  - (i) Office of the Ombudsman.
  - (j) Office of Aging Services.
8. Cabinet for Health Services.
- (a) Department for Public Health.
  - (b) Department for Medicaid Services.
  - (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission on Children with Special Health Care Needs.
  - (e) Office of Certificate of Need.
  - (f) Office of the Secretary.
  - (g) Office of the General Counsel.
  - (h) Office of Program Support.
  - (i) Office of the Inspector General.
9. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
  - (b) Office of Management and Budget.
  - (c) Office of Financial Management and Economic Analysis.
  - (d) Office of the Controller.
  - (e) Department for Administration.
  - (f) Department of Facilities Management.

- (g)~~[(h)]~~ ~~Department of Information Systems.~~
- ~~(h)~~ State Property and Buildings Commission.
- ~~(h)~~~~[(i)]~~ Kentucky Pollution Abatement Authority.
- ~~(i)~~~~[(j)]~~ Kentucky Savings Bond Authority.
- ~~(j)~~~~[(k)]~~ Deferred Compensation Systems.
- ~~(k)~~~~[(l)]~~ Office of Equal Employment Opportunity Contract Compliance.
- ~~(l)~~~~[(m)]~~ Office of Capital Plaza Operations.
- ~~(m)~~~~[(n)]~~ County Officials Compensation Board.
- ~~(n)~~~~[(o)]~~ Kentucky Employees Retirement Systems.
- ~~(o)~~~~[(p)]~~ Commonwealth Credit Union.
- ~~(p)~~~~[(q)]~~ State Investment Commission.
- ~~(q)~~~~[(r)]~~ Kentucky Housing Corporation.
- ~~(r)~~~~[(s)]~~ Governmental Services Center.
- ~~(s)~~~~[(t)]~~ Kentucky Local Correctional Facilities Construction Authority.
- ~~(t)~~~~[(u)]~~ Kentucky Turnpike Authority.
- ~~(u)~~~~[(v)]~~ Historic Properties Advisory Commission.
- ~~(v)~~~~[(w)]~~ Kentucky Kare Health Insurance Authority.

10. Labor Cabinet:

- (a) Department of Workplace Standards.
- (b) Department of Workers' Claims.
- (c) Kentucky Labor-Management Advisory Council.
- (d) Occupational Safety and Health Standards Board.
- (e) Prevailing Wage Review Board.
- (f) Workers' Compensation Board.
- (g) Kentucky Employees Insurance Association.
- (h) Apprenticeship and Training Council.
- (i) State Labor Relations Board.
- (j) Kentucky Occupational Safety and Health Review Commission.
- (k) Office of Administrative Services.
- (l) Office of Labor-Management Relations and Mediation.
- (m) Office of General Counsel.
- (n) Workers' Compensation Funding Commission.
- (o) Employers Mutual Insurance Authority.

11. Revenue Cabinet:

- (a) Department of Property Valuation.
- (b) Department of Tax Administration.
- (c) Office of Financial and Administrative Services.
- (d) Department of Law.



- (e) Department of Information Technology.
- (f) Office of Taxpayer Ombudsman.
- 12. Tourism Development Cabinet:
  - (a) Department of Travel.
  - (b) Department of Parks.
  - (c) Department of Fish and Wildlife Resources.
  - (d) Kentucky Horse Park Commission.
  - (e) State Fair Board.
  - (f) Office of Administrative Services.
  - (g) Office of General Counsel.
- 13. Cabinet for Workforce Development:
  - (a) Department for Adult Education and Literacy.
  - (b) Department for Technical Education.
  - (c) Department of Vocational Rehabilitation.
  - (d) Department for the Blind.
  - (e) Department for Employment Services.
  - (f) State Board for Adult and Technical Education.
  - (g) Governor's Council on Vocational Education.
  - (h) The State Board for Proprietary Education.
  - (i) The Foundation for Adult Education.
  - (j) The Kentucky Job Training Coordinating Council.
  - (k) Office of General Counsel.
  - (l) Office of Communication Services.
  - (m) Office of Development and Industry Relations.
  - (n) Office of Workforce Analysis and Research.
  - (o) Office for Administrative Services.
  - (p) Office for Policy and Budget.
  - (q) Office of Personnel Services.
  - (r) Unemployment Insurance Commission.
- 14. Personnel Cabinet:
  - (a) Office of Administrative and Legal Services.
  - (b) Department for Personnel Administration.
  - (c) Department for Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.
  - (e) Kentucky Kare.
  - (f) Division of Performance Management.
  - (g) Division of Employee Records.
  - (h) Division of Staffing Services.

- (i) Division of Classification and Compensation.
- (j) Division of Employee Benefits.
- (k) Division of Communications and Recognition.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Council on Postsecondary Education.
  - (a) Kentucky Commission on Community Volunteerism and Service.
- 3. Department for Local Government.
- 4. Kentucky Commission on Human Rights.
- 5. Kentucky Commission on Women.
- 6. Department of Veterans' Affairs.
- 7. Kentucky Commission on Military Affairs.
- 8. ***The Governor's Office for Technology***~~[Office of the Chief Information Officer].~~

Section 11. KRS 12.023 is amended to read as follows:

The following organizational units and administrative bodies shall be attached to the Office of the Governor:

- (1) Council on Postsecondary Education;
- (2) Department of Military Affairs;
- (3) Department for Local Government;
- (4) Kentucky Commission on Human Rights;
- (5) Kentucky Commission on Women;
- (6) Kentucky Commission on Military Affairs;
- (7) Coal Marketing and Export Council;
- (8) Governor's Office of Child Abuse and Domestic Violence Services;
- (9) ***Governor's Office for Technology***~~[Office of the Chief Information Officer]~~; and
- (10) Office of Coal Marketing and Export.

Section 12. KRS 17.131 is amended to read as follows:

- (1) There is hereby established the Kentucky Unified Criminal Justice Information System, referred to in this chapter as the "system." The system shall be a joint effort of the criminal justice agencies and the courts. Notwithstanding any statutes, administrative regulations, and policies to the contrary, if standards and technologies other than those set ***by the Governor's Office for Technology***~~[out in KRS 61.940 to 61.953]~~ are required, the Commonwealth's chief information officer shall review, expedite, and grant appropriate exemptions to effectuate the purposes of the unified criminal justice information system. Nothing in this section shall be construed to hamper any public officer or official, agency, or organization of state or local government from furnishing information or data that they are required or requested to furnish and which they are allowed to procure by law, to the General Assembly, the Legislative Research Commission, or a committee of either. For the purposes of this section, "criminal justice agencies" include all departments of the Justice Cabinet, the Unified Prosecutorial System, Commonwealth's attorneys, county attorneys, the Transportation Cabinet, the Cabinet for Health Services, and any agency with the authority to issue a citation or make an arrest.
- (2) The program to design, implement, and maintain the system shall be under the supervision of the Uniform Criminal Justice Information System Committee of the Criminal Justice Council. The membership of this committee shall be determined by the council, upon the recommendation of the Governor's chief information officer, who shall chair the committee.

- (3) The committee shall be responsible for recommending standards, policies, and other matters to the secretary of justice for promulgation of administrative regulations in accordance with KRS Chapter 13A to implement the policies, standards, and other matters relating to the system and its operation.
- (4) The committee shall submit recommendations to the Criminal Justice Council and the secretary of justice for administrative regulations to implement the uniform policy required to operate the system. The committee shall implement the uniform policy.
- (5) The uniform policy shall include a system to enable the criminal justice agencies and the courts to share data stored in each other's information systems. Initially, the uniform policy shall maximize the use of existing databases and platforms through the use of a virtual database created by network linking of existing databases and platforms among the various departments. The uniform policy shall also develop plans for the new open system platforms before the existing platforms become obsolete.
- (6) The committee shall be responsible for recommending to the Criminal Justice Council and the secretary of justice any necessary changes in administrative regulations necessary to implement the system. The committee shall also recommend to the Criminal Justice Council, the Chief Justice, and the secretary of justice recommendations for statutory additions or changes necessary to implement and maintain the system. The secretary shall be responsible for reporting approved statutory recommendations to the Governor, the Chief Justice, the Legislative Research Commission, and appropriate committees of the General Assembly.
- (7) The chair of the committee shall report annually to the Criminal Justice Council on the status of the system.
- (8) All criminal justice agencies shall follow the policies established by administrative regulation for the exchange of data and connection to the system.
- (9) The committee shall review how changes to existing criminal justice agency applications impact the new integrated network. Changes to criminal justice agency applications that have an impact on the integrated network shall be coordinated through and approved by the committee.
- (10) Any future state-funded expenditures by a criminal justice agency for computer platforms in support of criminal justice applications shall be reviewed by the committee.
- (11) Any criminal justice agency or officer that does not participate in the criminal justice information system may be denied access to state and federal grant funds.

Section 13. KRS 42.014 is amended to read as follows:

- (1) There is established within the cabinet the Office of Legal and Legislative Services, the Office of Management and Budget, the Office of Financial Management and Economic Analysis, the Office of Capital Plaza Operations, and the Office of the Controller, each of which offices shall be headed by an executive director, the Department for Administration, *and* the Department for Facilities Management, ~~and the Department of Information Systems~~ each of which shall be headed by a commissioner appointed by the secretary, upon the approval of the Governor, and responsible to the secretary. Each of these departments may have at least one (1) major assistant not in the classified service.
- (2) The secretary shall establish the internal organization and assignment of functions which are not established by statute, and shall divide the cabinet into the offices, bureaus, divisions, or other units the secretary deems necessary to perform the functions, powers, and duties of the cabinet, subject to the provisions of KRS Chapter 12.

Section 14. KRS 45.251 is amended to read as follows:

- (1) Expenditures shall be limited to the amounts and purposes for which appropriations are made. All expenditures shall be reflected in the unified and integrated system of accounts as provided by KRS 45.305.
- (2) The Finance and Administration Cabinet shall prescribe all information technology standards, system attributes, and components to be used in, or in conjunction with, the unified accounting system. The components must be consistent with Commonwealth standards contained within the information technology architecture, as provided *by the Governor's Office for Technology* ~~in KRS 61.950~~.
- (3) The Governor, the Chief Justice, and the Legislative Research Commission shall designate the officer or employee authorized to approve advices of employment, purchase orders and contracts, and requisitions for reservation of funds, and no advice, order, contract, or requisition shall be honored as a commitment statement unless the designation has been conveyed to the Finance and Administration Cabinet.

- (4) The Finance and Administration Cabinet may approve for payment any expenditure presented by a budget unit, provided that the Finance and Administration Cabinet is able to determine that the expenditure is to satisfy a liability of the Commonwealth of Kentucky created on behalf of that budget unit in fulfilling the governmental function assigned to that budget unit and that the expenditure is being made from the unexpended balance of a proper allotment.
- (5) Subsidiary records shall be maintained to report the financial operation and condition of each budget unit. These subsidiary records shall be compatible with the unified accounting system prescribed by subsection (1) of this section and by KRS 45.305, and may be on the accrual basis or cash basis. Expenditures may be by prior encumbrances or by straight disbursements. The subsidiary records may be maintained by the Finance and Administration Cabinet and by the budget unit involved. When a budget unit is authorized to maintain subsidiary records, the Finance and Administration Cabinet shall have authority to prescribe the accounting and preauditing procedures. The unified system of accounts shall conform to accepted management and accounting principles.

Section 15. KRS 45.253 is amended to read as follows:

- (1) Revolving accounts may be established by appropriation in a branch budget bill to finance activities which are self-supporting in whole or in part.
- (2) Trust and agency accounts may be established by a branch budget bill to receive and disburse contributions, gifts, donations, devises, and federal appropriations, and, when authorized by law, by depositing all of the fees (which include fees for maintenance in state institutions, incidental fees, tuition fees, fees for board and room, athletics, and student activities), rentals, admittance, sales, licenses collected by law, subventions, and other miscellaneous receipts of budget units.
- (3) The head of the budget unit or other responsible fiscal agent of the unit for which a revolving, trust, or agency account has been established shall deposit with the State Treasury all receipts of the character above described, and the Finance and Administration Cabinet shall credit all receipts to the budget unit and shall keep separate accounting for each account so established.
- (4) The amounts credited to any revolving, trust, or agency account so provided, shall be held available for disbursement for the purpose provided by law and shall not be diverted to any other purpose. Revolving, trust, or agency accounts shall be subject to withdrawal from the State Treasury by the head of each budget unit when actually needed, on requisition to the Finance and Administration Cabinet in the same manner provided by law as other state funds are withdrawn. Funds received from the federal government in the form of grants or otherwise may be expended for the purpose intended even though received in a fiscal year other than that in which the related original encumbrance or expenditure was incurred. Trust and agency funds shall be allotted before an expenditure is made; and the secretary of the Finance and Administration Cabinet may withhold allotment of general fund appropriations to the extent trust and agency funds are available.
- (5) Subject to prior approval by the secretary of the Finance and Administration Cabinet, the Chief Justice, and the Legislative Research Commission for their respective branches, any budget unit which, as an incident to its authorized duties and functions, furnishes requested services or materials to any persons outside state government, where such services or materials are not required by law to be furnished gratuitously, may charge such persons an amount not to exceed the total expense to the budget unit of the services or materials furnished. The receipts from the approved charges shall be credited to the surplus account of the general fund. Payroll deductions for the Kentucky State Police legal fund shall be made without any service fees or charges.
- (6) The ***Governor's Office for Technology***~~[Department of Information Systems]~~ may charge any agency of local government an amount, not to exceed the total expense to the department, for services rendered or materials furnished at the request of the local government agency, unless the services or materials are required by law to be furnished gratuitously. The receipts from the authorized charges shall be deposited in the State Treasury and credited to the trust and agency fund, ***the Governor's Office for Technology's***~~[Department of Information Systems]~~ operating account.
- (7) All receipts which accrue as the result of the ***Governor's Office for Technology's***~~[Department of Information Systems]~~ providing on-line computer access to public records by nongovernment entities shall be deposited in the State Treasury and credited to the trust and agency fund, ***the Governor's Office for Technology's***~~[Department of Information Systems]~~ operating account.

Section 16. KRS 45.750 is amended to read as follows:

(1) As used in KRS 45.760 to 45.810:

- (a) "Committee" means the Capital Projects and Bond Oversight Committee.
- (b) "Capital construction item" means:
  - 1. The construction, reconstruction, acquisition, and structural maintenance of buildings;
  - 2. The installation of utility services, including roads and sewers;
  - 3. The acquisition or improvement of real property;
  - 4. The purchase and installation initially or during major renovation of equipment, facilities, and furnishings of a permanent nature for buildings;
  - 5. The acquisition of any building to be occupied by any:
    - a. Subdivision of state government as defined in KRS 12.010 or enumerated in KRS 12.020;
    - b. Municipal corporation which exercises its authority on a statewide basis including, but not limited to, the Kentucky Employees Retirement System, Teachers' Retirement System of the State of Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky Lottery Corporation, Kentucky Housing Corporation, or any entity with a governing body whose membership is substantially similar to the membership of the governing body of a municipal corporation which exercises its authority on a statewide basis; and
    - c. Institution of higher education.
- (c) "Lease" means any lease, lease-purchase, or lease with an option to purchase of any real property space occupied by:
  - 1. Any entity listed in paragraph (b)5. of this subsection;
  - 2. The legislative branch; or
  - 3. The judicial branch when leased from a private sector landlord.
- (d) "Equipment" means:
  - 1. Any major item of equipment, including aircraft;
  - 2. Any movable furnishing, appurtenance, or other equipment, necessary to make a building operable; and
  - 3. Equipment purchased or otherwise acquired, or equipment to be purchased or otherwise to be acquired, under a lease or lease-purchase contract or agreement or an arrangement equivalent to a lease or lease-purchase contract or agreement.
- (e) "System" means any computer or telecommunications system, as defined in an administrative regulation which shall be promulgated by the ***Governor's Office for Technology***~~[Kentucky Information Resources Management Commission]~~.
- (f) "Capital projects" means, regardless of the source of cash or other consideration:
  - 1. Any capital construction item, or any combination of capital construction items necessary to make a building or utility installation complete, estimated to cost four hundred thousand dollars (\$400,000) or more in cash or other consideration;
  - 2. Any lease of real property space with an annual rental cost exceeding two hundred thousand dollars (\$200,000);
  - 3. The use allowance paid by the judicial branch for a real property space pursuant to KRS 26A.090(2) and 26A.115 when the use allowance for the space exceeds two hundred thousand dollars (\$200,000) on an annual basis;
  - 4. Any item of equipment estimated to cost one hundred thousand dollars (\$100,000) or more in cash or other consideration;

5. Any lease of an item of movable equipment if the annual cost of the lease is one hundred thousand dollars (\$100,000) or more or if the total cost of the lease-purchase or lease with an option to purchase is one hundred thousand dollars (\$100,000) or more; and
  6. Any system estimated to cost four hundred thousand dollars (\$400,000) or more in cash or other consideration.
- (g) "Emergency repair, maintenance, or replacement project" means the maintenance, repair, or reconstruction of a capital construction project or the maintenance, repair, or replacement of a major item of equipment that is:
1. Necessitated by injury or damage resulting from a disaster; or
  2. Necessary to maintain government operations or to prevent or minimize injury or damage that could reasonably be expected to result from an impending disaster; or
  3. Necessitated by an unforeseen mechanical breakdown, electrical breakdown, or structural defect that must be corrected to make a facility or item of equipment usable.
- (h) "Disaster" means a fire, flood, tornado, other natural disaster, riot, enemy attack, sabotage, explosion, power failure, energy shortage, transportation emergency, or other man-caused disaster.
- (i) "Capital construction funds" means any funds used for capital construction, including, but not limited to, appropriated capital construction funds, agency funds, federal funds, private funds, or funds from any source held by an agency for management or investment purposes.
- (j) "Entity head" means the Chief Justice of the Supreme Court, the President of the Senate and the Speaker of the House of Representatives, the secretary of the Finance and Administration Cabinet, the president of any university which complies with KRS 164A.585, 164A.595, and 164A.600, the board of trustees of the Kentucky Employees Retirement System, the board of trustees of the Teachers' Retirement System of the State of Kentucky, the board of directors of the Kentucky Higher Education Student Loan Corporation, the board of directors of the Kentucky Lottery Corporation, or the board of directors of the Kentucky Housing Corporation.
- (2) Except as provided in subsection (3) of this section, KRS 45.760 to 45.810 shall apply to capital projects and bonds for use by:
- (a) The state government;
  - (b) One of its departments or agencies, as defined in KRS 12.010 or enumerated in KRS 12.020;
  - (c) A municipal corporation which exercises its authority on a statewide basis including, but not limited to, the Kentucky Employees Retirement System, Teachers' Retirement System of the State of Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky Lottery Corporation, and Kentucky Housing Corporation; and
  - (d) Institutions of higher education.
- (3) KRS 45.760 to 45.810 shall not apply to:
- (a) Capital projects or bonds used directly in or for the construction or maintenance of roads, including, but not limited to, bulldozers, graders, earth movers, and real estate purchased for rights-of-way; and
  - (b) Political subdivisions, except for those defined in KRS 12.010, enumerated in KRS 12.020, or created as a municipal corporation which exercises its authority on a statewide basis including, but not limited to, the Kentucky Employees Retirement System, Teachers' Retirement System of the State of Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky Lottery Corporation, Kentucky Housing Corporation, or any entity with a governing body whose membership is substantially similar to the membership of the governing body of a municipal corporation which exercises its authority on a statewide basis. However, the provisions of KRS 45.750 to 45.810 shall not apply to acquisition or maintenance of any building or land which is purchased as a legal investment by any of the state retirement systems, which is not to be occupied by the retirement system, and which is financed solely with those assets of the retirement system used for investment purposes.

Section 17. KRS 61.8715 is amended to read as follows:

The General Assembly finds an essential relationship between the intent of this chapter and that of KRS 171.410 to 171.740, dealing with the management of public records, and of *Sections 1 to 9, 15, 20, 22, 23, and 24 of this Act* ~~[KRS 61.940 to 61.957]~~, dealing with the coordination of strategic planning for computerized information systems in state government; and that to ensure the efficient administration of government and to provide accountability of government activities, public agencies are required to manage and maintain their records according to the requirements of these statutes. The General Assembly further recognizes that while all government agency records are public records for the purpose of their management, not all these records are required to be open to public access, as defined in this chapter, some being exempt under KRS 61.878.

Section 18. KRS 65.7623 is amended to read as follows:

- (1) There is hereby created the Commercial Mobile Radio Service Emergency Telecommunications Board of Kentucky, the "CMRS Board," consisting of eight (8) members, appointed by the Governor as follows: three (3) members shall be employed by or representative of the interest of CMRS providers; one (1) member shall be a mayor of a city of the first or second class or urban-county government or their designee containing a public safety answering point; one (1) nonvoting member shall be appointed from a list of local exchange landline telephone companies' representatives submitted by the Kentucky Telephone Association; and one (1) member shall be appointed from lists of candidates submitted to the Governor by the Kentucky Emergency Number Association and the Association of Public Communications Officials. The commissioner of the State Police, or the commissioner's designee, and the CMRS emergency telecommunications administrator also shall be members of the board. Any vacancy on the board shall be filled in the same manner as the original appointment.
- (2) The commissioner and administrator shall serve by virtue of their office. The other members shall be appointed no later than August 15, 1998, for a term of four (4) years and until their successors are appointed and qualified, except that of the first appointments, one (1) shall be for a term of one (1) year, one (1) shall be for a term of two (2) years, one (1) for a term of three (3) years, and two (2) shall be for a term of four (4) years.
- (3) In addition to the administrator, appointed by the Governor under KRS 65.7625, and other staff authorized under KRS 65.7629, the Finance and Administration Cabinet shall provide staff services and carry out administrative duties and functions as directed by the board. The board shall be attached to the *Governor's Office for Technology* ~~[Finance and Administration Cabinet]~~ for administrative purposes only and shall operate as an independent entity within state government.
- (4) The board members shall serve without compensation but shall be reimbursed in accordance with KRS 45.101 for expenses incurred in connection with their official duties as members of the board.
- (5) All administrative costs and expenses incurred in the operation of the board, including payments under subsection (4) of this section, shall be paid from that portion of the CMRS fund that is authorized under KRS 65.7631 to be used by the board for administrative purposes.

Section 19. KRS 156.666 is amended to read as follows:

- (1) There is established the Council for Education Technology which shall be an advisory group attached to the Kentucky Board of Education. The council shall develop a master plan for education technology.
- (2) The council shall consist of the *chief information officer* ~~[Commissioner of the Department of Information Systems]~~, the Secretary of the Education, Arts, and Humanities Cabinet, and the president of the Council on Postsecondary Education who shall serve as ex officio voting members and eight (8) voting members appointed by the Governor within thirty (30) days after April 3, 1992. The members shall be as follows:
  - (a) One (1) member of the Kentucky Board of Education;
  - (b) One (1) member of the House of Representatives;
  - (c) One (1) member of the Senate; and
  - (d) Five (5) citizens of the Commonwealth.

A majority of the membership present at any meeting shall constitute a quorum for the official conduct of business.

- (3) Members shall be appointed for four (4) year terms and may be reappointed. The initial members of the board shall be appointed as follows: two (2) members shall be appointed for terms of two (2) years; two (2) members shall be appointed for terms of three (3) years; and four (4) members shall be appointed for terms of four (4)

years. Members shall receive no compensation but may be reimbursed for actual and necessary expenses in accordance with state laws and regulations.

- (4) Terms of members serving pursuant to KRS 156.665 shall terminate on April 3, 1992.
- (5) Immediately upon receiving notice of the appointment of all members, the chief state school officer shall call an organizational meeting. At this meeting the chief state school officer shall preside as temporary chairman, and the council shall elect from among the members a chairman and any other officers it deems necessary, and define the duties of the officers.
- (6) Meetings shall be held at least two (2) times per year at a time and place designated by the chairman. The Department of Education shall provide staff support for the council.
- (7) The duties and responsibilities of the council shall include, but not be limited to, the following:
  - (a) Developing a long-range master plan for the efficient and equitable use of technology at all levels from primary school through higher education, including vocational and adult education. The plan shall focus on the technology requirements of classroom instruction, literacy laboratories, student record management, financial and administrative management, distance learning, and communications as they relate to the Commonwealth's outcome goals for students as described in KRS 158.6451;
  - (b) Creating, overseeing, and monitoring a well-planned and efficient statewide network of technology services designed to meet the educational and informational needs of the schools;
  - (c) Working with private enterprise to encourage the development of technology products specifically designed to answer Kentucky's educational needs;
  - (d) Encouraging an environment receptive to technological progress in education throughout the Commonwealth;
  - (e) Recommending a policy governing the granting of right of ways for the laying of fiber optic cable in a manner to insure that all of Kentucky's citizens are served equitably, that the fiber optic system is available for educational technology purposes, and that the private and public sectors are partners in the venture; and
  - (f) Receiving, holding, investing, and administering all funds received by the council for the purpose of carrying out its duties and responsibilities, as set out in this section. These funds shall be spent with the aim of achieving equality of education throughout the Commonwealth.

Section 20. KRS 171.420 is amended to read as follows:

The State Archives and Records Commission, is hereby created and shall be a seventeen (17) member body constituted as follows: The state librarian or his designee, who shall be the chairman of the commission, secretary of the Education, Arts, and Humanities Cabinet or his designee, the Auditor of Public Accounts or his designee, the Chief Justice of the Supreme Court or his designee, the director of the Legislative Research Commission or his designee, the Attorney General or his designee, the director of the Office for Policy and Management or his designee, the **chief information officer**~~commissioner of the Department of Information Systems~~ or **her or** his designee, one (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the University of Kentucky, one (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Historical Society, one (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Library Association, one (1) member appointed by the Governor from a list of seven (7) persons with one (1) name submitted by each of the presidents of the state universities and colleges, four (4) citizens-at-large, and one (1) member appointed by the Governor from a list of three (3) persons, with one (1) name submitted by each of the presidents of the Kentucky League of Cities, the Kentucky Association of Counties, and the Kentucky Association of School Administrators. Vacancies shall be filled by the Governor in the same manner as initial appointments are made. All members shall serve for a term of four (4) years, provided that one (1) of the initial appointments shall be for a term of four (4) years, one (1) for three (3) years, one (1) for two (2) years, and one (1) for one (1) year. The commission shall advise the Department for Libraries and Archives on matters relating to archives and records management. The commission shall have the authority to review and approve schedules for retention and destruction of records submitted by state and local agencies. In all cases, the commission shall determine questions which relate to destruction of public records, and their decision shall be binding on the parties concerned and final, except that the commission may reconsider or modify its actions upon the agreement of a simple majority of the membership present and voting.



Section 21. KRS 186A.025 is amended to read as follows:

- (1) (a) The Finance and Administration Cabinet shall have full responsibility and authority for day-to-day administration of the automated system described by this chapter; and
- (b) May request the assistance of any cabinet or department of state government in carrying out its responsibilities under this chapter.
- (2) The ***Governor's Office for Technology***~~[Department of Information Systems]~~ shall assure, to the extent feasible, twenty-four (24) hour, year-round information support to the Department of State Police, and to other law enforcement agencies state and nationwide, regarding vehicles registered and, when required, titled in this state.

Section 22. KRS 186A.040 is amended to read as follows:

- (1) The Department of Vehicle Regulation shall provide and receive information on the insurance status of vehicles registered in the Commonwealth of Kentucky. The department shall provide appropriate insurance information to the ***Governor's Office for Technology***~~[Department of Information Systems]~~ for inclusion in the AVIS database.
- (2) Upon notification to the Department of Vehicle Regulation from an insurance company of cancellation or nonrenewal of a policy pursuant to KRS 304.39-085, the department shall immediately notify the insured. Notification to the insured shall state that the insured's policy is no longer valid and that the insured shall have thirty (30) days to show proof of insurance to the department or the county clerk. The department shall further inform the insured that if evidence of insurance is not received within thirty (30) days the department shall revoke the registration of the motor vehicle until:
  - (a) The person presents proof of insurance to the department or county clerk and pays the reinstatement fee required by KRS 186.180;
  - (b) The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that the failure to maintain motor vehicle insurance on the vehicle specified in the department's notification is the result of the inoperable condition of the motor vehicle;
  - (c) The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that the failure to maintain motor vehicle insurance on the vehicle specified in the department's notification is the result of the seasonal nature of the vehicle. The affidavit shall explain that when the vehicle is out of dormancy and when the seasonal use of the vehicle is resumed, the proper security will be obtained; or
  - (d) The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that he or she requires a registered motor vehicle in order to carry out his or her employment and that the motor vehicle that he or she drives during the course of his or her employment meets the security requirement of subtitle 39 of KRS Chapter 304. The person shall also declare in the affidavit that he or she will operate a motor vehicle only in the course of his or her employment. If a person has his or her motor vehicle registration revoked in accordance with this subsection three (3) times within any twelve (12) month period, the revocations shall constitute a violation of KRS 304.39-080. The department shall notify the county attorney to begin prosecution for violation of subtitle 39 of KRS Chapter 304.
- (3) The Department of Vehicle Regulation shall be responsible for notification to the appropriate county attorney that a motor vehicle is not properly insured, if the insured does not respond to notification set out by subsection (2) of this section. The notice that the department gives to the county attorney in accordance with subsection (2) of this section shall include a certified copy of the person's driving record which shall include:
  - (a) The notice that the department received from an insurance company that a person's motor vehicle insurance policy has been canceled or has not been renewed; and
  - (b) A dated notice that the department sent to the person requiring the person to present proof of insurance to the department or the county clerk.

Upon notification by the department, a county attorney shall immediately begin prosecution of the person who had his or her motor vehicle registration revoked three (3) times within any twelve (12) month period in accordance with subsection (2) of this section.

- (4) The certified copies sent by the department described in subsection (3) of this section, shall be prima facie evidence of a violation of KRS 304.39-080.
- (5) If the insured provides proof of insurance to the department or the clerk within the thirty (30) day notification period, the department shall ensure action is taken to denote a valid insurance policy is in force.

Section 23. KRS 186A.285 is amended to read as follows:

- (1) No person shall, without prior specific written approval of the commissioner of the Department of Vehicle Regulation and the **chief information officer**~~[commissioner of the Department of Information Systems]~~, connect with the automated vehicle registration and titling system, directly or indirectly, by wire, electronic, electromagnetic induction, systemic, or any other means, any device, system or apparatus capable of putting information or electronic signals into, or receiving information or electronic signals from, or blocking, diverting, or altering transmission of data or signals within, the automated vehicle registration and titling system, its components, and its communications network.
- (2) This section does not apply to or prohibit connection of devices or systems to the automated vehicle registration and titling system by persons who are acting in accordance with a contract or agreement with the Commonwealth of Kentucky, which in addition to any other required approval, has been approved in writing by the commissioner of the Department of Vehicle Regulation and the **chief information officer**~~[commissioner of the Department of Information Systems]~~.

Section 24. KRS 194B.102 is amended to read as follows:

- (1) There is hereby created the "Statewide Strategic Planning Committee for Children in Placement" which is administratively attached to the Department for Social Services. The committee shall be composed of the following:
  - (a) Members who shall serve by virtue of their positions: the commissioner of the Department for Social Services, the commissioner of the Department for Public Health, the commissioner of the Department for Mental Health and Mental Retardation Services, the commissioner for the Department for Medicaid Services, the commissioner of the Department for Social Insurance, the commissioner of the Department of Juvenile Justice, the commissioner of the Department of Education, the executive director of the Administrative Office of the Courts, or their designees; and
  - (b) One (1) foster parent selected by the statewide organization for foster parents, one (1) District Judge selected by the Chief Justice of the Kentucky Supreme Court, one (1) parent of a child in placement at the time of appointment to be selected by the secretary of the Cabinet for Families and Children, one (1) youth in placement at the time of the appointment to be selected by the secretary of the Cabinet for Families and Children, and one (1) private child care provider selected by the statewide organization for private child care providers. These members shall serve a term of two (2) years, and may be reappointed.
- (2) The Statewide Strategic Planning Committee for Children in Placement shall, by July 1, 1999, develop a statewide strategic plan for the coordination and delivery of care and services to children in placement and their families. The plan shall be submitted to the Governor, the Chief Justice of the Supreme Court, and the Legislative Research Commission on or before July 1, 1999, and each July 1 thereafter.
- (3) The strategic plan shall, at a minimum, include:
  - (a) A mission statement;
  - (b) Measurable goals;
  - (c) Principles;
  - (d) Strategies and objectives; and
  - (e) Benchmarks.
- (4) The planning horizon shall be three (3) years. The plan shall be updated on an annual basis. Strategic plan updates shall include data and statistical information comparing plan benchmarks to actual services and care provided.
- (5) The Statewide Strategic Planning Committee for Children in Placement shall, in consultation with the commissioner and the statewide placement coordinator as provided for in KRS 199.801, establish a statewide

facilities and services plan that identifies the location of existing facilities and services for children in placement, identifies unmet needs, and develops strategies to meet the needs. The planning horizon shall be five (5) years. The plan shall be updated on an annual basis. The plan shall be used to guide, direct, and, if necessary, restrict the development of new facilities and services, the expansion of existing facilities and services, and the geographic location of placement alternatives.

- (6) The Statewide Strategic Planning Committee for Children in Placement may, through the promulgation of administrative regulations, establish a process that results in the review and approval or denial of the development of new facilities and services, the expansion of existing facilities and services, and the geographic location of any facilities and services for children in placement in accordance with the statewide facilities and services plan. Any process established shall include adequate due process rights for individuals and entities seeking to develop new services, construct new facilities, or expand existing facilities, and shall require the involvement of local communities and other resource providers in those communities.
- (7) As a part of the statewide strategic plan, and in consultation with the ***Governor's Office for Technology***~~[Kentucky Information Resources Management Commission]~~, the Statewide Strategic Planning Committee for Children in Placement shall plan for the development or integration of information systems that will allow information to be shared across agencies and entities, so that relevant data will follow a child through the system regardless of the entity or agency that is responsible for the child. The data produced shall be used to establish and monitor the benchmarks required by subsection (3) of this section. The data system shall, at a minimum, produce the following information on a monthly basis:
  - (a) Number of placements per child;
  - (b) Reasons for placement disruptions;
  - (c) Length of time between removal and establishment of permanency;
  - (d) Reabuse or reoffense rates;
  - (e) Fatality rates;
  - (f) Injury and hospitalization rates;
  - (g) Health care provision rates;
  - (h) Educational achievement rates;
  - (i) Multiple placement rates;
  - (j) Sibling placement rates;
  - (k) Ethnicity matching rates;
  - (l) Family maintenance and preservation rate; and
  - (m) Adoption disruption rates.
- (8) The Statewide Strategic Planning Committee for Children in Placement shall publish an annual report no later than December 1 of each year that includes, but is not limited to, the information outlined in subsection (7) of this section.

Section 25. The following KRS sections are repealed:

- 42.029 Department of Information Systems -- Commissioner and other personnel -- Divisions -- Duties -- Delegation of authority.
- 42.640 Definitions for KRS 42.650.
- 61.937 Authority to enter into memoranda of agreement and contracts.
- 61.938 Office of the Chief Information Officer -- Duties -- Authority for administrative regulations.
- 61.940 Legislative declarations.
- 61.942 Definitions for KRS 61.940 to 61.953.
- 61.945 Kentucky Information Resources Management Commission.
- 61.948 Powers of commission.

61.950 Meetings -- Roles and duties -- Administrative Regulations.

61.951 Office for the Kentucky Information Resources Management Commission -- Executive director.

61.953 Contents of five-year statewide information resources management plan.

61.954 Construction of KRS 61.940 to 61.953 with respect to judicial and legislative branches.

61.955 Communications Advisory Council.

Section 26. The General Assembly confirms Executive Order 99-1359, dated October 6, 1999, to the extent it is not otherwise confirmed or superseded by this Act; and Executive Order 99-1360, dated October 6, 1999, which transfers twenty-seven (27) positions and all records, files, and equipment directly associated with these positions, from the Office of Technology Services within the Cabinet for Families and Children to the Governor's Office for Technology.

**Approved April 21, 2000**

## **CHAPTER 507**

### **(HB 843)**

AN ACT relating to mental health and substance abuse and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 210 IS CREATED TO READ AS FOLLOWS:

*The General Assembly of the Commonwealth of Kentucky hereby finds and declares that:*

- (1) *National initiatives, including the 1999 White House Conference on Mental Health and the 1999 United States Surgeon General's Report on Mental Health, have promoted the concept that mental health is fundamental to health care.*
- (2) *It has been found that:*
  - (a) *The leading causes of disability for individuals age five (5) and older are mental disorders;*
  - (b) *The current mental health and substance abuse system is lacking a comprehensive state plan that would improve the mental health status of the citizens of the Commonwealth; and*
  - (c) *It is necessary to require long-range planning for mental health and substance abuse services.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 210 IS CREATED TO READ AS FOLLOWS:

- (1) *There is created the Kentucky Commission on Services and Supports for Individuals with Mental Illness, Alcohol and Other Drug Abuse Disorders, and Dual Diagnoses. The commission shall consist of:*
  - (a) *The secretary of the Cabinet for Health Services;*
  - (b) *The secretary of the Cabinet for Families and Children;*
  - (c) *The secretary of the Justice Cabinet;*
  - (d) *The commissioner of the Department for Mental Health and Mental Retardation Services;*
  - (e) *The commissioner of the Department for Medicaid Services;*
  - (f) *The commissioner of the Department of Corrections;*
  - (g) *The commissioner of the Department of Juvenile Justice;*
  - (h) *The commissioner of the Department of Education;*
  - (i) *The commissioner of the Department of Vocational Rehabilitation;*
  - (j) *The director of the Protection and Advocacy Division of the Public Protection and Regulation Cabinet;*

- (k) *Three (3) members of the House of Representatives who are members of the Health and Welfare Committee or the Appropriations and Revenue Committee, appointed by the Speaker of the House; and*
- (l) *Three (3) members of the Senate who are members of the Health and Welfare Committee or the Appropriations and Revenue Committee, appointed by the Senate President.*
- (2) *The secretary of the Cabinet for Health Services and one (1) member of the General Assembly appointed to the commission shall serve as co-chairs of the commission.*
- (3) *Members shall serve during their terms of office.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 210 IS CREATED TO READ AS FOLLOWS:

- (1) *The commission created in Section 2 of this Act shall meet as often as necessary to accomplish its purpose but shall meet at least quarterly during the 2000-2001 biennium, and the first meeting shall be held within six (6) months of the effective date of this Act. The commission shall meet at least biennially thereafter, or upon the call of either co-chair, the request of four (4) or more members, or the request of the Governor.*
- (2) *The commission shall receive, integrate, and report, as required by subsection (5) of this section, the findings and recommendations of the regional planning councils established under Section 4 of this Act.*
- (3) *The commission shall serve in an advisory capacity to accomplish the following:*
  - (a) *Based on information provided under subsection (2) of this section:*
    - 1. *Assess the needs statewide of individuals with mental illness, alcohol and other drug abuse disorders, and dual diagnoses;*
    - 2. *Assess the capabilities of the existing statewide treatment delivery system including gaps in services and the adequacy of a safety net system; and*
    - 3. *Assess the coordination and collaboration of efforts between public and private facilities and entities, and the roles of the Department for Mental Health and Mental Retardation and the regional community mental health centers, state hospitals, and other providers;*
  - (b) *Identify funding needs and related fiscal impact, including Medicaid reimbursement, limitations under government programs and private insurance, and adequacy of indigent care;*
  - (c) *Recommend comprehensive and integrated programs for providing mental health and substance abuse services and preventive education to children and youth, utilizing community resources;*
  - (d) *Develop recommendations to decrease the incidence of multiple hospitalizations of individuals with mental illness, alcohol and other drug abuse disorders, and dual diagnoses; and*
  - (e) *Recommend an effective quality assurance and consumer satisfaction monitoring program that includes recommendations as to the appropriate role of persons with mental illness, alcohol and other drug abuse disorders, and dual diagnoses, family members, providers, and advocates in quality assurance efforts.*
- (4) *The commission shall develop a comprehensive state plan that will provide a template for decision-making regarding program development, funding, and the use of state resources for delivery of the most effective continuum of services in integrated statewide settings appropriate to the needs of the individual with mental illness, alcohol and other drug abuse disorders, and dual diagnoses.*
- (5) *Within six (6) months after receiving reports and recommendations from the regional planning councils established under Section 4 of this Act, the co-chairs of the commission shall present the plan to the Governor and the members of the General Assembly. The state plan shall:*
  - (a) *Advise the Governor and the General Assembly concerning the needs statewide of individuals with mental illness, alcohol and other drug disorders, and dual diagnoses; and*
  - (b) *Advise the Governor and the General Assembly on whether the recommendations should be implemented by administrative regulations or proposed legislation for the 2002 General Assembly.*
- (6) *The commission shall review the plan annually and shall submit annual updates no later than October 1 to the Governor and the Legislative Research Commission.*

- (7) *The commission shall cease to exist four (4) years after the effective date of this Act unless otherwise reauthorized by the General Assembly.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 210 IS CREATED TO READ AS FOLLOWS:

- (1) *The regional community mental health-mental retardation boards established under KRS 210.370 shall institute regional planning councils for the purpose of conducting assessment and strategic planning. The councils shall be attached to the community mental health-mental retardation boards for administrative purposes.*
- (2) *A member of the regional community mental health-mental retardation board shall serve as chair of the regional planning council.*
- (3) *The board shall issue invitations to join the council to no less than two (2) representatives of each of the following groups:*
- (a) *Family members of adults and children with mental illness, alcohol and other drug abuse disorders, and dual diagnoses;*
  - (b) *Consumers of mental health and substance abuse services;*
  - (c) *County officials and business leaders;*
  - (d) *Health departments and primary care physicians;*
  - (e) *Advocates and community organizations;*
  - (f) *Educators and school personnel;*
  - (g) *Regional interagency councils established under KRS Chapter 200;*
  - (h) *Law enforcement and court personnel;*
  - (i) *Public and private facilities that provide services for mental health and substance abuse in the region representing inpatient services, outpatient services, residential services, and community-based supportive housing programs; and*
  - (j) *Individuals who provide mental health and substance abuse services in the region.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 210 IS CREATED TO READ AS FOLLOWS:

- (1) *The regional planning councils shall meet as often as necessary to accomplish their purpose.*
- (2) *The regional planning councils shall:*
- (a) *Assess in the region the needs of individuals with mental illness, alcohol and other drug abuse disorders, and dual diagnoses;*
  - (b) *1. Study the regional mental health and substance abuse treatment delivery system;*  
*2. Assess the capacity of and gaps in the existing system, including the adequacy of a safety net system; and*  
*3. Assess the coordination and collaboration of efforts between public and private facilities and entities;*
  - (c) *Develop a regional strategy to increase access to community-based services and supports for individuals with mental illness, alcohol and other drug abuse disorders, and dual diagnoses. The strategies may include:*
    - 1. Exploration of the use of community-based treatment programs;*
    - 2. Access to and funding for the most effective medications;*
    - 3. Promotion of family and consumer support groups statewide; and*
    - 4. Reduction of instances of criminalization of individuals with mental illness, alcohol and other drug abuse disorders, and dual diagnoses;*
  - (d) *Identify funding needs;*

- (e) *Evaluate the access of children and youth to mental health and substance abuse services and preventive programs within the region, including but not limited to those provided by schools, family resource and youth services centers, public and private mental health and substance abuse providers and facilities, physical health care providers and facilities, the faith community, and community agencies;*
  - (f) *Collect and evaluate data regarding individuals with mental illness, alcohol and other drug abuse disorders, and dual diagnoses who experience repeated hospital admissions, involvement with law enforcement, courts, and the judicial system, and repeated referrals from hospitals to community-based services;*
  - (g) *Recommend an effective quality assurance and consumer satisfaction monitoring program; and*
  - (h) *Make recommendations on each subsection of this section to the commission established under Section 2 of this Act within eight (8) months of the effective date of this Act. These recommendations may be incorporated into the regional annual plans required by KRS 210.400.*
- (3) *The regional councils shall cease to exist four (4) years after the effective date of this Act unless otherwise authorized by the General Assembly.*

Section 6. Whereas there exists a critical need to conduct a timely comprehensive review of the mental health and substance abuse treatment service delivery system, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Approved April 21, 2000**

## CHAPTER 508

**(HB 866)**

AN ACT relating to voting locations.

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

Section 1. KRS 118.045 is amended to read as follows:

- (1) Every voting ~~location~~~~[precinct]~~ on the day upon which any election is held shall, during voting hours, display an American flag of dimensions of reasonable size, which shall be firmly attached to the entrance of the voting ~~location~~~~[precinct]~~ so that it will be readily visible to the general public.
- (2) ~~A~~~~The~~ precinct sheriff shall attach the American flag to the entrance of the voting ~~location~~~~[precinct]~~ upon the opening of the polls on the election day and shall remove the same upon the closing of the polls.
- (3) The fiscal court of every county shall purchase out of its general fund sufficient American flags for every ~~entrance to a voting location~~~~[precinct]~~ in that county.

**Approved April 21, 2000**

## CHAPTER 509

**(HB 887)**

AN ACT relating to state purchasing.

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

Section 1. KRS 45A.080 is amended to read as follows:

- (1) Contracts exceeding the amount provided by KRS 45A.100 shall be awarded by competitive sealed bidding unless it is determined in writing that this method is not practicable. Factors to be considered in determining whether competitive sealed bidding is not practicable shall include:
  - (a) Whether specifications can be prepared that permit award on the basis of best value; and
  - (b) The available sources, the time and place of performance, and other relevant circumstances as are appropriate for the use of competitive sealed bidding.

- (2) The invitation for bids shall state that awards shall be made on the basis of best value. *In any contract which is awarded under an invitation to bid which requires delivery by a specified date and imposes a penalty for late delivery, if the delivery is late, the contractor shall be given the opportunity to present evidence that the cause of the delay was beyond his control. If it is the opinion of the purchasing officer that there is sufficient justification for delayed delivery, the purchasing officer may adjust or waive any penalty that is provided for in the contract.*
- (3) Adequate public notice of the invitation for bids shall be given a sufficient time prior to the date set forth for the opening of bids. The notice may include posting on the Internet or publication in a newspaper or newspapers of general circulation in the state as determined by the secretary of the Finance and Administration Cabinet not less than seven (7) days before the date set for the opening of the bids. The provisions of this subsection shall also apply to price contracts and purchase contracts of state institutions of higher education.
- (4) Bids shall be opened publicly at the time and place designated in the invitation for bids. At the time the bids are opened, the purchasing agency shall announce the agency's engineer's estimate, if applicable, and make it a part of the agency records pertaining to the letting of any contract for which bids were received. Each bid, together with the name of the bidder and the agency's engineer's estimate, shall be recorded and be open to public inspection. Electronic bid opening and posting of the required information for public viewing shall satisfy the requirements of this subsection.
- (5) The contract shall be awarded by written notice to the responsive and responsible bidder whose bid offers the best value.
- (6) Correction or withdrawal of bids shall be allowed only to the extent permitted by regulations issued by the secretary.

**Approved April 21, 2000**

## CHAPTER 510

### (HB 895)

AN ACT relating to the purchase of wholesale electric power by municipal electric utilities.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 96 IS CREATED TO READ AS FOLLOWS:

- (1) *A municipal utility that owns or operates an electric utility under KRS 96.550 to 96.900 may authorize:*
  - (a) *Membership and participation in a group purchasing program when the municipal utility deems that the purchase of power through a group purchasing program can affect economy or efficiency in the operations of the municipal utility; or*
  - (b) *The purchase of wholesale electric power for the purpose of resale from any person or entity when the purchase is deemed advantageous to the municipal utility.*
- (2) *"Group purchasing program" means a voluntary program that may consist of both public and private utilities for the purchase of wholesale electric power.*
- (3) *A municipal utility that is purchasing wholesale electric power for resale to the ultimate customers of the municipal utility as provided under subsection (1) of this section shall not be subject to the provisions of KRS 45A.365 and KRS 424.260.*

Section 2. KRS 45A.365 is amended to read as follows:

- (1) All contracts or purchases shall be awarded by competitive sealed bidding, except as otherwise provided by KRS 45A.370 to 45A.385 *and for the purchase of wholesale electric power by municipal utilities as provided in subsection (1) of Section 1 of this Act.*
- (2) The invitation for bids shall state that the award shall be made on the basis of the lowest bid price or the lowest evaluated bid price. If the latter is used, the objective measurable criteria to be utilized shall be set forth in the invitation for bids.
- (3) Adequate public notice of the invitation for bids shall be given prior to the date set forth for the opening of bids. The notice may include posting on the Internet or publication in a newspaper of general circulation in the



local jurisdiction not less than seven (7) days before the date set for the opening of the bids. The public notice shall include the time and place the bids will be opened and the time and place where the specifications may be obtained.

- (4) The bids shall be opened publicly at the time and place designated in the invitation for bids. Each bid, together with the name of the bidder, shall be recorded and be open to public inspection. Electronic bid opening and posting of the required information for public viewing shall satisfy the requirements of this subsection.
- (5) A contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price.
- (6) The local public agency may allow the withdrawal of a bid where there is a patent error on the face of the bid document, or where the bidder presents sufficient evidence, substantiated by bid worksheets, that the bid was based upon an error in the formulation of the bid price.

Section 3. KRS 424.260 is amended to read as follows:

- (1) Except where a statute specifically fixes a larger sum as the minimum for a requirement of advertisement for bids, no city, county, or district, or board or commission of a city or county, or sheriff or county clerk, may make a contract, lease, or other agreement for materials, supplies except perishable meat, fish, and vegetables, equipment, or for contractual services other than professional, involving an expenditure of more than ten thousand dollars (\$10,000) without first making newspaper advertisement for bids.
- (2) If the fiscal court requires that the sheriff or county clerk advertise for bids on expenditures of less than ten thousand dollars (\$10,000), the fiscal court requirement shall prevail.
- (3)
  - (a) Nothing in this statute shall limit or restrict the ability of a local school district to acquire supplies and equipment outside of the bidding procedure if those supplies and equipment meet the specifications of the contracts awarded by the Division of Purchases or a federal, local, or cooperative agency and are available for purchase elsewhere at a lower price. A board of education may purchase those supplies and equipment without advertising for bids if, prior to making the purchases, the board of education obtains certification from the district's finance or purchasing officer that the items to be purchased meet the standards and specifications fixed by state price contract, federal (GSA) price contract, or the bid of another school district whose bid specifications allow other districts to utilize their bids, and that the sales price is lower than that established by the various price contract agreements or available through the bid of another school district whose bid specifications would allow the district to utilize their bid.
  - (b) The procedures set forth in paragraph (a) of this subsection shall not be available to the district for any specific item once the bidding procedure has been initiated by an invitation to bid and a publication of specifications for that specific item has been published. In the event that all bids are rejected, the district may again avail itself of the provisions of paragraph (a) of this subsection.
- (4) This requirement shall not apply in an emergency if the chief executive officer of the city, county, or district has duly certified that an emergency exists, and has filed a copy of the certificate with the chief financial officer of the city, county, or district, or if the sheriff or the county clerk has certified that an emergency exists, and has filed a copy of the certificate with the clerk of the court where his necessary office expenses are fixed pursuant to KRS 64.345 or 64.530, or if the superintendent of the board of education has duly certified that an emergency exists, and has filed a copy of the certificate with the chief state school officer.
- (5) *The provisions of subsection (1) of this section shall not apply for the purchase of wholesale electric power for resale to the ultimate customers of a municipal utility organized under KRS 96.550 to 96.900.*

**Approved April 21, 2000**

## CHAPTER 511

**(HB 897)**

AN ACT relating to utilities and affiliates of utilities.

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

Section 1. KRS 278.010 is amended to read as follows:

As used in KRS 278.010 to 278.450, and in KRS 278.990, unless the context otherwise requires:

- (1) "Corporation" includes private, quasipublic, and public corporations, and all boards, agencies and instrumentalities thereof, associations, joint-stock companies, and business trusts;
- (2) "Person" includes natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest;
- (3) "Utility" means any person except a city, who owns, controls, or operates or manages any facility used or to be used for or in connection with:
  - (a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses;
  - (b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses;
  - (c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;
  - (d) The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation;
  - (e) The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation; or
  - (f) The treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not subject to regulation by a metropolitan sewer district;
- (4) "Retail electric supplier" means any person, firm, corporation, association, or cooperative corporation, excluding municipal corporations, engaged in the furnishing of retail electric service;
- (5) "Certified territory" shall mean the areas as certified by and pursuant to KRS 278.017;
- (6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is being or has been substantially used to supply retail electric service and includes all lines from the distribution substation to the electric consuming facility but does not include any transmission facilities used primarily to transfer energy in bulk;
- (7) "Retail electric service" means electric service furnished to a consumer for ultimate consumption, but does not include wholesale electric energy furnished by an electric supplier to another electric supplier for resale;
- (8) "Electric-consuming facilities" means everything that utilizes electric energy from a central station source;
- (9) "Generation and transmission cooperative", or "G&T", means a utility formed under KRS Chapter 279 that provides electric generation and transmission services;
- (10) "Distribution cooperative" means a utility formed under KRS Chapter 279 that provides retail electric service;
- (11) "Facility" includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility;
- (12) "Rate" means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof;
- (13) "Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure, and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility;
- (14) "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service;
- (15) "Commission" means the Public Service Commission of Kentucky;

- (16) "Commissioner" means one (1) of the members of the commission;~~and~~
- (17) "Demand-side management" means any conservation, load management, or other utility activity intended to influence the level or pattern of customer usage or demand;
- (18) *"Affiliate" means a person that controls or that is controlled by, or is under common control with, a utility;*
- (19) *"Control" means the power to direct the management or policies of a person through ownership, by contract, or otherwise;*
- (20) *"CAM" means a cost allocation manual which is an indexed compilation and documentation of a company's cost allocation policies and related procedures;*
- (21) *"Nonregulated activity" means the provision of competitive retail gas or electric services or other products or services over which the commission exerts no regulatory authority;*
- (22) *"Nonregulated" means that which is not subject to regulation by the commission;*
- (23) *"Regulated activity" means a service provided by a utility, the rates and charges of which are regulated by the commission;*
- (24) *"USoA" means uniform system of accounts which is a system of accounts for public utilities established by the FERC and adopted by the commission;*
- (25) *"Arm's length" means the standard of conduct under which unrelated parties, each party acting in its own best interest, would negotiate and carry out a particular transaction;*
- (26) *"Subsidize" means the recovery of costs or the transfer of value from one class of customer, activity, or business unit that is attributable to another;*
- (27) *"Solicit" means to engage in or offer for sale a good or service, either directly or indirectly and irrespective of place or audience;*
- (28) *"USDA" means the United States Department of Agriculture;*
- (29) *"FERC" means the Federal Energy Regulatory Commission; and*
- (30) *"SEC" means the Securities and Exchange Commission.*

SECTION 2. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

*A utility shall not subsidize a nonregulated activity provided by an affiliate or by the utility itself. The commission shall require all utilities providing nonregulated activities, either directly or through an affiliate, to keep separate accounts and allocate costs in accordance with procedures established by the commission. The commission may promulgate administrative regulations that will assist the commission in enforcing this section.*

SECTION 3. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

- (1) *A utility that engages in a nonregulated activity shall identify all costs of the nonregulated activity and report the costs in accordance with the guidelines in the USoA and the cost allocation methods described in subsection (2) of this section.*
- (2) *In allocating costs between regulated and nonregulated activities, a utility shall utilize one of the following cost allocation methods:*
  - (a) *The fully distributed cost method; or*
  - (b) *A cost allocation method recognized or mandated by the rules of the SEC promulgated pursuant to 15 U.S.C. sec. 79, et seq. or promulgated by the FERC or by the USDA.*
- (3) *A utility's compliance with federal cost allocation methods shall constitute compliance with the provisions of KRS 278.010 to 278.450.*
- (4) *Notwithstanding subsections (1) to (3) of this section, a utility may report an incidental nonregulated activity as a regulated activity if:*
  - (a) *The revenue from the aggregate total of the utility's nonregulated incidental activities does not exceed the lesser of two percent (2%) of the utility's total revenue or one million dollars (\$1,000,000) annually; and*

*(b) The nonregulated activity is reasonably related to the utility's regulated activity.*

- (5) Nothing contained in this section shall be construed as requiring a utility to violate any cost allocation methods required to be employed under any service agreement validly existing as of the effective date of this Act for the term of the existing agreement, except where the commission makes the determination that a service agreement was executed for the purpose of avoiding provisions of KRS 278.010 to 278.450.*

SECTION 4. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

- (1) Any utility that engages in a nonregulated activity whose revenue exceeds the amount provided for incidental nonregulated activities under subsection (4)(a) of Section 3 of this Act, shall develop and maintain a CAM as described in subsections (2) to (5) of this section.*
- (2) A CAM shall contain the following information for a utility's jurisdictional operations in the Commonwealth:*
- (a) A list of regulated and nonregulated divisions within the utility;*
  - (b) A list of all regulated and nonregulated affiliates of the utility to which the utility provides services or products and where the affiliates provide non-regulated activities as defined in subsection (21) of Section 1 of this Act;*
  - (c) A list of services and products provided by the utility, an identification of each as regulated or nonregulated, and the cost allocation method generally applicable to each category;*
  - (d) A list of incidental, nonregulated activities that are subject to the provisions of subsection (4) of Section 3 of this Act;*
  - (e) A description of the nature of transactions between the utility and the affiliate; and*
  - (f) For each USoA account and subaccount, a report that identifies whether the account contains costs attributable to regulated operations and nonregulated operations. The report shall also identify whether the costs are joint costs that cannot be directly identified. A description of the methodology used to apportion each of these cost shall be included and the allocation methodology shall be consistent with the provisions of Section 3 of this Act.*
- (3) Within two hundred seventy (270) days of the effective date of this Act, the utility shall file:*
- (a) A statement with the commission that certifies the CAM has been developed and will be adopted by the management, effective with the beginning of the next calendar year. The statement shall be signed by an officer of the utility; and*
  - (b) One copy of the CAM.*
- (4) Within sixty (60) days of any material change in matters required to be listed in the CAM, the utility shall amend the CAM to reflect the change.*
- (5) The CAM shall be available for public inspection at the utility and at the Commission.*
- (6) The CAM shall be filed as part of the initial filing requirement in a proceeding involving an application for an adjustment in rates pursuant to KRS 278.190.*

SECTION 5. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

- (1) The terms for transactions between a utility and its affiliates shall be in accordance with the following:*
- (a) Services and products provided to an affiliate by the utility pursuant to a tariff shall be at the tariffed rate, with nontariffed items priced at the utility's fully distributed cost but in no event less than market, or in compliance with the utility's existing USDA, SEC, or FERC approved cost allocation methodology.*
  - (b) Services and products provided to the utility by an affiliate shall be priced at the affiliate's fully distributed cost but in no event greater than market or in compliance with the utility's existing USDA, SEC, or FERC approved cost allocation methodology.*
- (2) A utility may file an application with the commission requesting a deviation from the requirements of this section for a particular transaction or class of transactions. The utility shall have the burden of demonstrating that the requested pricing is reasonable. The commission may grant the deviation if it determines the deviation is in the public interest.*

- (3) *Nothing in this section shall be construed to interfere with the commission's requirement to ensure fair, just, and reasonable rates for utility services.*

SECTION 6. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

*In any formal commission proceeding in which cost allocation is at issue, a utility shall provide sufficient information to document that its cost allocation procedures and affiliate transaction pricing are consistent with the provisions of this chapter.*

SECTION 7. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

- (1) *If the commission finds that a utility has not complied with any provision of this chapter for any transaction between a utility and its affiliate, or if a utility has failed to provide sufficient evidence of its compliance, then the commission may:*
- (a) *Access the books and records of a utility's nonregulated affiliate; and*
  - (b) *Order that the costs attached to any transactions be disallowed from rates.*
- (2) *If, after inspecting an affiliate's books and records, the commission finds that a utility has not complied with any provision of KRS 278.010 to 278.450, the commission may perform a financial audit of the utility's affiliate to the extent necessary to ensure compliance with KRS 278.010 to 278.450.*

SECTION 8. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

*The provisions of this section shall govern a public utility company's activities related to the sharing of information, databases, and resources between its employees or an affiliate involved in the marketing or the provision of nonregulated activities and its employees or an affiliate involved in the provision of regulated activities.*

- (1) *A utility and its affiliate shall be separate corporate entities and maintain separate books and records. If a utility and nonregulated affiliate have common officers, directors, or employees, the fees, compensation, and expenses of the individuals involved shall be subject to the cost allocation requirements set forth in Section 3 and Section 5 of this Act. Any utility that provides nonregulated activities shall separately account for all investments, revenues, and expenses in accordance with its filed cost allocation manual.*
- (2) *A utility shall not provide advertising space in its billing envelope to its affiliates or for its nonregulated activities unless it offers the same to competing service providers on the same terms it provides to its affiliates. This subsection applies to nonregulated activities only.*
- (3) *A utility shall not attempt to persuade customers to do business with its affiliates by offering rebates or discounts on tariffed services.*
- (4) *All utility company employees engaged in the merchant function shall abide by all standards promulgated by applicable FERC orders and regulations.*
- (5) *No utility employee shall share any confidential customer information with the utility's affiliates unless the customer has consented in writing, or the information is publicly available or is simultaneously made publicly available.*
- (6) *All dealings between a utility and a nonregulated affiliate shall be at arm's length.*
- (7) *Employees transferring from the utility to an affiliate shall not disclose to the affiliate confidential information or take with them any competitively sensitive materials.*
- (8) *Neither a utility, nor its employees or agents shall solicit business on behalf of an affiliate or for its nonutility services.*
- (9) *A utility that carries out any research and development or joint marketing and promotion with its affiliate for its nonregulated activities shall be subject to the cost allocation requirements set forth in Section 3 of this Act.*
- (10) *Except as provided in subsection (5) of this section, if a utility is engaged in a nonregulated activity, marketing employees for the nonregulated activity shall not have access to the customer information provided to the utility when the customer places an order for regulated service.*
- (11) *A utility shall not provide any type of undue preferential treatment to a nonregulated affiliate to the detriment of a competitor.*

- (12) *A utility shall notify the customer that competing suppliers of a nonregulated service exist if:*
- (a) *The utility receives a request for a recommendation from a customer seeking a specific service which is offered by the utility's affiliate or by the utility itself; and*
  - (b) *The utility mentions itself or its affiliate when making the recommendation to the customer.*
- (13) *The utility's name, trademark, brand, or logo shall not be used by a nonregulated affiliate in any type of visual or audio media without a disclaimer. The commission shall develop specifications for the disclaimer. The disclaimer shall be approved by the commission prior to use in any advertisement by the utility's affiliate.*
- (14) *A utility shall not enter into any arrangements for financing nonregulated activities through an affiliate that would permit a creditor upon default to have recourse to the assets of the utility.*
- (15) *A utility shall inform the commission of all new nonregulated activities begun by itself or by the utility's affiliate within a time to be set by the commission.*
- (16) *Start-up costs associated with the formation of a nonregulated affiliate shall not be included in the utility's rate base.*
- (17) *The commission may require the utility to file annual reports of information related to affiliate transactions when necessary to monitor compliance with these guidelines.*

SECTION 9. A NEW SECTION OF KRS 278.010 to 278.450 IS CREATED TO READ AS FOLLOWS:

*The provisions of Sections 2 to 10 of this Act shall not apply to telecommunications utilities, telecommunications services, nonprofit water or sewer utilities, or water districts. Utilities organized under KRS Chapter 279 shall be exempt from Section 8 of this Act.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any provisions in Section 2 of this Act to the contrary, a utility may apply to the commission for a waiver or deviation from any or all provisions of Sections 2 to 8 of this Act.*
- (2) *The utility's application to the commission shall:*
  - (a) *Demonstrate the basis of the utility's need to be granted a waiver or deviation; and*
  - (b) *Contain, if appropriate, documentation regarding the costs and benefits of compliance with the provisions of Sections 2 to 8 of this Act.*
- (3) *The commission shall grant a waiver or deviation if the commission finds that compliance with the provisions of Sections 2 to 8 of this Act is impracticable or unreasonable. The findings of the commission shall be a final appealable order.*

Section 11. The General Assembly finds that regulated telecommunication providers have expanded into unregulated lines of business, such as the provision of internet and cable television service, which may give them an unfair advantage over existing and new entrants. The General Assembly further finds that it is the intent of KRS 278.514 to grant the Public Service Commission the statutory authority to prohibit subsidization of nonregulated telecommunication services by regulated telecommunications providers. Currently, telecommunications providers are subject to cost allocation and affiliate transaction rules promulgated by the Federal Communications Commission (FCC) that govern accounting standards and pricing relationships between the regulated utility and unregulated programs or affiliates. However, passage of the 1996 Telecommunications Act is making the telecommunications industry more competitive, and formerly regulated telecommunications providers may be subject to new federal rules regarding cost allocation and affiliate transactions.

Section 12. The Special Subcommittee on Energy is directed to study whether an additional statutory remedy is necessary to prevent cross-subsidization of nonregulated telecommunication services, with a particular emphasis on internet service, provided by regulated telecommunications utilities or their affiliates. The Special Subcommittee on Energy shall also determine if regulated telecommunications providers have an undue advantage in the provision of nonregulated services such as internet. The Special Subcommittee shall identify existing federal and state laws, rules and regulations that govern cost allocation, affiliate transaction rules, and a code of conduct between regulated utilities and their nonregulated programs or affiliates. The Special Subcommittee shall also take into account the cost of enforcing and the additional statutory authority that may be required to allow the Public Service Commission to

prevent cross-subsidization while maintaining a level playing field between all providers of unregulated telecommunications services.

Section 13. The Special Subcommittee shall submit a final report that shall include findings and recommendations to the Legislative Research Commission no later than November 15, 2001.

Section 14. Provisions of this bill to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified in Section 11 to 13 of this Act to an interim joint committee or subcommittee thereof, and to designate a study completion date.

**Approved April 21, 2000**

## CHAPTER 512

**(HB 919)**

AN ACT relating to crimes and punishments.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO READ AS FOLLOWS:

- (1) *All offenses classified as violations under this chapter shall be prepayable except for:*
- (a) *An offense where evidence of the commission of the offense, or of another offense, or a deadly weapon or dangerous instrument as defined in KRS 500.080 is seized and the citation is so marked and a court date set;*
  - (b) *An offense is cited with another offense that is not prepayable and the citation is so marked and a court date set; or*
  - (c) *An arrest is made under KRS 431.015.*
- (2) *In the event that a prepayable offense is cited with another offense that is not prepayable, a court appearance shall be required on all of the offenses as required by KRS 431.452.*

Section 2. KRS 150.990 is amended to read as follows:

- (1) Each bird, fish, or animal taken, possessed, bought, sold, or transported and each device used or possessed contrary to the provisions of this chapter or any administrative regulation promulgated by the commission thereunder shall constitute a separate offense. The penalties prescribed in this section shall be for each offense.
- (2) Any person who violates any of the provisions of this chapter or any administrative regulations promulgated by the commission thereunder may, in addition to the penalties provided in subsections (3), (4), (5), (6), (7), and (8) of this section, forfeit his license, or if that person is license exempt, may forfeit the privilege to perform the acts authorized by the license and shall not be permitted to purchase another license or exercise the privileges granted by a license during the same license year. No fines, penalty, or judgment assessed or rendered under this chapter shall be suspended, reduced, or remitted otherwise than expressly provided by law. Any person who violates any administrative regulation which has been or may be promulgated by the commission under any provisions of this chapter shall be subject to the same penalty as is provided for the violation of any provisions of this chapter under which the administrative regulation is promulgated.
- (3) Any person who violates any of the provisions of KRS 150.120, 150.170, 150.280, 150.320, 150.355, 150.362, 150.400, 150.410, 150.415, 150.416, **150.445, 150.450, 150.470**, 150.603, 150.235(1), 150.330(2), or 150.470, or any of the provisions of this chapter or any administrative regulation promulgated by the commission for which no definite fine or imprisonment is fixed shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200).
- (4) Any person who violates any of the provisions of KRS 150.290, 150.300, 150.340, 150.360, 150.362(1) ~~150.445~~, 150.485, 150.600, 150.630, 150.660 ~~150.450(1), 150.470~~, the provisions of KRS 150.195(5) to (8), or KRS 150.660(3) shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200) or be imprisoned for not more than six (6) months, or both. Also, any person violating the provisions of KRS 150.300 shall be assessed treble damages as provided in KRS 150.690 or 150.700.
- (5) Any person who violates any of the provisions of KRS 150.411, 150.412, or 150.417 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

- (6) Any person who violates any of the provisions of KRS 150.183, 150.305, 150.365, 150.370, 150.330(1), or 150.235(2), (3), or (4) shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
- (7) Any person who violates any of the provisions of KRS 150.460 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both, and in addition to these penalties shall be liable to the department in an amount not to exceed the replacement value of the fish and wildlife which has been killed or destroyed.
- (8) Any person who violates the provisions of KRS 150.180, 150.520, 150.525, or administrative regulations issued thereunder shall for the first offense be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000); and shall for a second offense be fined not less than five hundred dollars (\$500) nor more than one thousand five hundred dollars (\$1,500); and for any subsequent offense, be fined two thousand dollars (\$2,000).
- (9) Any person who violates the provisions of KRS 150.520 or administrative regulations issued thereunder shall, if the violation relates to methods of taking mussels, for a first offense be imprisoned in the county jail for no more than thirty (30) days; for a second offense be imprisoned in the county jail for no more than six (6) months; and for any subsequent offense be imprisoned in the county jail for no more than one (1) year. The penalties for violation of subsection (9) shall be in addition to the penalties for violation of subsection (8).
- (10) Any person who violates any of the provisions of KRS 150.4111, 150.640, or subsections (2) or (3) of KRS 150.450 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- (11) Any person who violates any of the provisions of KRS 150.390 or KRS 150.092(4) shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoned for not less than thirty (30) days nor more than one (1) year, or both. In addition to the penalties prescribed above, he shall forfeit his license or, if license exempt, the privilege to perform the acts authorized by the license for a period of one (1) to three (3) years and shall be liable to the department in an amount reasonably necessary to replace any deer, wild turkey, or bear taken in violation of KRS 150.390 and for violations of subsection (4) of KRS 150.092 shall be liable to the landowner or occupant for reasonable compensation for damages. Any person who possesses, takes, or molests a wild elk in violation of KRS 150.390 or administrative regulations adopted under authority of that section shall be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) or imprisoned for up to six (6) months, or both. In addition to these penalties, the person shall pay to the department an amount not to exceed the greater of the replacement cost of the wild elk or double any monetary gain realized from the illegal activity and shall forfeit his or her license, or if license exempt, the privilege to perform the acts authorized by the license for a period of one (1) to three (3) years.
- (12) Any person who violates any of the provisions of KRS 150.090 other than a criminal homicide or an assault against an officer enforcing the provisions of this chapter, KRS Chapter 235, or the administrative regulations issued thereunder shall be guilty of a Class A misdemeanor.
- (13) Any person who commits a criminal homicide or an assault against an officer enforcing the provisions of this chapter, KRS Chapter 235, or the administrative regulations issued thereunder shall be subject to the penalties specified for the offense under KRS Chapter 507 or 508, as appropriate.
- (14) A person shall be guilty of a Class B misdemeanor upon the first conviction for a violation of KRS 150.710. A subsequent conviction shall be a Class A misdemeanor.
- (15) Any person who violates the provisions of KRS 150.092 or the administrative regulations promulgated thereunder for which no other penalty is specified elsewhere in this section shall for the first offense be fined not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300); for the second offense, be fined not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000); and for subsequent offenses, shall forfeit the license, or if license-exempt, the privilege to perform the acts authorized by the license, for one (1) year and shall be fined not less than one thousand dollars (\$1,000) or be imprisoned in the county jail for up to one (1) year, or both. In addition to the penalties prescribed in this subsection, the violator shall be liable to the landowner or tenant for the replacement cost of any property which was damaged or destroyed by his actions.

SECTION 3. A NEW SECTION OF KRS CHAPTER 177 IS CREATED TO READ AS FOLLOWS:

- (1) *All offenses classified as violations under this chapter shall be prepayable except for:*



- (a) *An offense where evidence of the commission of the offense or another offense is seized by the officer and the citation is so marked and a court date set;*
  - (b) *The offense may result in a license suspension or revocation;*
  - (c) *The offense is cited with another offense that is not prepayable; or*
  - (d) *An arrest is made under KRS 431.015.*
- (2) *In the event that a prepayable offense is cited with another offense that is not prepayable, a court appearance shall be required on all of the offenses as required by KRS 431.452.*

Section 4. KRS 177.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 177.230 to 177.310 shall be guilty of a misdemeanor and upon arrest and conviction therefor, shall be punished by a fine of not less than five dollars (\$5) nor more than one hundred dollars (\$100)~~[or by imprisonment in the city or county jail for not less than five (5) days nor more than ninety (90) days, or by both such fine and imprisonment].~~
- (2) Any person who willfully violates any of the provisions of KRS 177.841 to 177.890 shall, in addition to any other penalty herein provided, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (3) In addition to any other penalty provided by KRS 177.910 to 177.950, any person violating any order or provision of KRS 177.910 to 177.950 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000). Each day of violation of the provisions of KRS 177.910 to 177.950 shall constitute a separate offense.
- (4) Any person who violates the weight provisions of KRS 177.9771 shall, upon conviction, be fined in an amount equal to three cents (\$0.03) per pound when the excess is three thousand (3,000) pounds or less, five cents (\$0.05) per pound when the excess exceeds three thousand (3,000) pounds but is less than four thousand (4,000) pounds, seven cents (\$0.07) per pound when the excess exceeds four thousand (4,000) pounds but is less than five thousand (5,000) pounds, and nine cents (\$0.09) per pound when the excess exceeds five thousand (5,000) pounds. In no case shall the fine be less than sixty dollars (\$60) nor more than five hundred dollars (\$500).
- (5) Any person who transports coal in violation of the weight provisions of KRS 189.221 and 189.222 and does not have a current decal or is not transporting coal under a valid cooperative agreement within KRS 177.9771(4)(f), shall, in addition to any applicable penalty prescribed by law, be fined five hundred dollars (\$500) and be required to purchase the decal described in KRS 177.9771(4).
- (6) Any person who violates the provisions of KRS 177.305 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.

SECTION 5. A NEW SECTION OF KRS CHAPTER 189 IS CREATED TO READ AS FOLLOWS:

- (1) *All offenses under this chapter classified as violations shall be prepayable except for:*
  - (a) *Any offense that could result in license suspension or revocation by the court or the Transportation Cabinet;*
  - (b) *Any offense relating to KRS 189.393, 189.520, or 189.580;*
  - (c) *When the defendant is speeding in a restricted zone;*
  - (d) *When the defendant is speeding more than twenty-five (25) miles per hour over the posted speed limit under KRS 189.394;*
  - (e) *An offense where evidence of the offense or of commission of another offense is seized by the officer and the citation is so marked and a court date set;*
  - (f) *The offense is cited with another offense that is not prepayable; or*
  - (g) *An arrest is made under KRS 431.015.*
- (2) *In the event that a prepayable offense is cited with another offense that is not prepayable, a court appearance shall be required on all of the offenses as required by KRS 431.452.*

Section 6. KRS 189.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, ~~189.285~~, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456, and 189.960 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars (\$20) nor more than two thousand dollars (\$2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars (\$11) nor more than thirty dollars (\$30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.
- (2)
  - (a) Any person who violates the weight provisions of KRS 189.212, 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents (\$0.02) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents (\$0.03) per pound when the excess exceeds two thousand (2,000) pounds and is three thousand (3,000) pounds or less, five cents (\$0.05) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (\$0.07) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (\$0.09) per pound when the excess exceeds five thousand (5,000) pounds, but in no case shall the fine be less than sixty dollars (\$60).
  - (b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, 189.490, or the dimension provisions of KRS 189.212, for which another penalty is not specifically provided, ~~shall be guilty of a misdemeanor and~~ shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
  - (c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.
- (3)
  - (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars (\$15).
  - (b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars (\$35) nor more than two hundred dollars (\$200).
- (4)
  - (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
  - (b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
  - (c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.
- (5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) or imprisoned not less than thirty (30) days nor more than sixty (60) days, or both. For each subsequent offense occurring within three (3) years, the person shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.
- (6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars (\$15) in excess of the cost of the repair of the road.
- (7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars (\$20) nor more than fifty dollars (\$50).
- (8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100).

- (9) Any person who violates KRS 189.530 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.
- (10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.
- (11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars (\$30) nor more than one hundred dollars (\$100) for each offense.
- (12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and, in the case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.
- (13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars (\$20) nor more than twenty-five dollars (\$25).
- (15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars (\$100) and, upon subsequent convictions, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for thirty (30) days, or both.
- (17)
  - (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.
  - (b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name the vehicle used in the transportation of inflammable liquids or explosives is licensed, the person shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each violation shall constitute a separate offense.
- (18) Any person who abandons a vehicle upon the right-of-way of a state highway for three (3) consecutive days shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.
- (19) Every person violating KRS 189.393 shall be guilty of a Class B misdemeanor, unless the offense is being committed by a defendant fleeing the commission of a felony offense which the defendant was also charged with violating and was subsequently convicted of that felony, in which case it is a Class A misdemeanor.
- (20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.
- (21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of a regulation shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.
- (22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
- (23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).
- (24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars (\$50).
- (25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars (\$25).
- (26) Any person who violates any of the provisions of KRS 189.125(3), KRS 189.290, KRS 189.300, KRS 189.340, KRS 189.345, KRS 189.370, KRS 189.393, or KRS 189.505, shall, in addition to any other fine imposed by this chapter, pay an additional fee of ten dollars (\$10). Funds collected pursuant to this subsection shall be deposited in the traumatic brain injury trust fund, created pursuant to KRS 211.476, within fourteen (14) days after the end of each quarter, to be used for the purposes set forth in KRS 211.470 to 211.478.

- (27) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.
- (28) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:
- (a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and
  - (b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.
- ~~[(29) Any person who violates the provisions of KRS 189.285 shall have his or her operator's license suspended for a period of ninety (90) days and be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).]~~

SECTION 7. A NEW SECTION OF KRS CHAPTER 235 IS CREATED TO READ AS FOLLOWS:

- (1) *All offenses classified as violations under this chapter shall be prepayable except for:*
- (a) *Violations of KRS 235.240 and 235.285;*
  - (b) *An offense where evidence of the commission of the offense or another offense was seized and the citation is so marked and a court date set;*
  - (c) *The offense is cited with another offense that is not prepayable and the citation is so marked and a court date set; or*
  - (d) *An arrest is made under KRS 431.015.*
- (2) *In the event that a prepayable offense is cited with another offense that is not prepayable, a court appearance shall be required on all of the offenses as required by KRS 431.452.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

- (1) *All offenses classified as violations under this chapter shall be prepayable except:*
- (a) *Any offense which could result in license suspension or revocation by the court;*
  - (b) *An offense where evidence of the offense or of commission of another offense is seized by the officer and the citation is so marked and a court date set;*
  - (c) *The offense is cited with another offense that is not prepayable; or*
  - (d) *An arrest is made under KRS 431.015.*
- (2) *In the event that a prepayable offense is cited with another offense that is not prepayable, a court appearance shall be required on all of the offenses as required by KRS 431.452.*

Section 9. KRS 281.990 is amended to read as follows:

- (1) A person shall be fined not less than twenty-five dollars (\$25) and no more than two hundred dollars (\$200) ~~or imprisoned for not more than thirty (30) days, or both~~, if the person:
- (a) Violates, causes, aids, or abets any violation of the provisions of this chapter, or any order, rule, or administrative regulation lawfully issued pursuant to authority granted by this chapter;
  - (b) Knowingly makes any false or erroneous statement, report, or representation to the Department of Vehicle Regulation with respect to any matter placed under the jurisdiction of the department by this chapter;
  - (c) Knowingly makes any false entry in the accounts or records required to be kept pursuant to the authority granted by this chapter; or
  - (d) Knowingly fails to keep, or knowingly destroys or mutilates, any accounts or records.

Every device to evade or to prevent the application of any provision of this chapter, or any lawful order, rule or administrative regulation of the department issued pursuant thereto, shall constitute a violation thereof.

- (2) (a) Any person who violates KRS 281.615(1) shall be fined not less than two thousand dollars (\$2,000) nor more than three thousand five hundred dollars (\$3,500)~~[-, or imprisoned for not more than thirty (30) days or both].~~
- (b) Any person who operates as a motor carrier in violation of the terms of his or her certificate or permit shall be fined not less than two thousand dollars (\$2,000) nor more than three thousand five hundred dollars (\$3,500)~~[-, or imprisoned for not more than thirty (30) days or both].~~
- (3) In addition to the penalties prescribed in subsection (1) of this section, in case of violation by any person in whose name an industrial bus is licensed, the person shall forfeit all certificates and permits held by him, and shall not be eligible to hold any certificate or permit for a period of five (5) years thereafter.
- (4) A person who violates KRS 281.615(2) shall not be subject to a penalty under this section.

Section 10. KRS 431.015 is amended to read as follows:

- (1) A peace officer may issue a citation instead of making an arrest for a misdemeanor committed in his presence, if there are reasonable grounds to believe that the person being cited will appear to answer the charge. The citation shall provide that the defendant shall appear within a designated time.
- (2) A peace officer may issue a citation instead of making an arrest for a violation committed in his presence but may not make a physical arrest unless there are reasonable grounds to believe that the defendant, if a citation is issued, will not appear at the designated time or unless the offense charged is a violation of KRS ~~189.223~~, 189.290, 189.393, 189.520, 189.580, ~~235.240~~, ~~281.600~~, 511.080, or 525.070 committed in his presence or a violation of KRS 189A.010, not committed in his presence, for which an arrest without a warrant is permitted under KRS 431.005(1)(e).
- (3) If the defendant fails to appear in response to the citation, or if there are reasonable grounds to believe that he will not appear, a complaint may be made before a judge and a warrant shall issue.
- (4) When a physical arrest is made and a citation is issued in relation to the same offense the officer shall mark on the citation, in the place specified for court appearance date, the word "ARRESTED" in lieu of the date of court appearance.

Section 11. KRS 431.452 is amended to read as follows:

- (1) An offense which is designated as subject to prepayment by specific statutory designation may be prepaid by the violator subject to the terms and conditions of the statute involved.
- (2) ***When an offense that is not designated as subject to prepayment by specific statutory designation is cited on the same citation with another offense that is subject to prepayment, the officer shall cite the violator to court for all cited offenses. However, if the offense for which prepayment is not allowed is dismissed by the judge prior to the court date listed on the citation, the offense subject to prepayment by specific statutory designation may be prepaid by the violator, and the violator shall not be required to appear in court.***
- (3) An offense which is designated as subject to prepayment is subject to the following conditions:
  - (a) Designation as subject to prepayment does not preclude a physical arrest by a peace officer for that offense;
  - (b) Designation as subject to prepayment ~~shall~~~~does not~~ preclude a requirement that the defendant make a court appearance~~[- when so indicated]~~ on a uniform citation~~[- when such is required by a peace officer pursuant to KRS 431.015];~~
  - (c) For any offense designated as subject to prepayment the defendant may elect to pay the minimum fine for the offense plus court costs to the circuit clerk before the date of his trial or be tried in the normal manner, unless the citation is marked for mandatory court appearance pursuant to KRS 431.015 ***or subsection (2) of this section, except that the fine for violations of KRS 189.221, 189.222, 189.226, 189.270, or 189.271 shall be in accordance with KRS 189.990(2)(a) and the defendant shall not be allowed to pay the minimum fine as otherwise allowed by this paragraph;***
  - (d) Prepayment of the fine and costs shown on the citation or accompanying schedule shall be considered as a plea of guilty for all purposes.

- ~~(4)(3)~~ When a peace officer issues a uniform citation and no physical arrest is made he shall, where the citation is designated as subject to prepayment, mark the citation as "PAYABLE", ***except as provided in KRS 431.015 or subsection (2) of this section*** ~~unless in his opinion because of the circumstances surrounding the offense:~~
- ~~(a) The commission of the offense created a substantial harm or threat of harm to lives or property; or~~
  - ~~(b) The commission of the offense was, due to the nature of the circumstances, particularly aggravated or flagrant; or~~
  - ~~(c) The defendant was known by the officer to have been convicted of the particular violation on a previous occasion or occasions.~~
- ~~(4) In the event the peace officer determines, pursuant to subsection (3) of this section, that the defendant should appear in court the officer shall mark the citation in such manner as to require court appearance on the appropriate date.~~
- (5) ***The Administrative Office of the Courts, after consultation with the Kentucky State Police, the Transportation Cabinet, the Division of Forestry, the Division of Fish and Wildlife, and a representative of law enforcement shall develop a prepayable fine and cost schedule and a uniform statewide instruction sheet for the Commonwealth.***

Section 12. KRS 24A.175 is amended to read as follows:

- (1) Court costs for a criminal case in the District Court shall be:
  - (a) For an offense for which prepayment is permitted  
~~{under KRS 189.394, 431.451, or 431.452}~~ and for which  
 prepayment has been made prior to trial as required by law ..... \$42.00
  - (b) For an offense for which prepayment is not permitted or  
 has not been made ..... \$67.00
  - (c) Court costs designated in paragraph (b) of this subsection shall include the fee mandated by KRS 346.185.
- (2) There shall be no court costs for a parking citation when:
  - (a) The fine is paid to the clerk before the trial date in the same manner as provided for speeding citations under KRS 189.394(3); and
  - (b) The citation does not involve parking in a fire lane or blocking the traveled portion of the highway.
- (3) Additional costs shall be assessed in District Court criminal matters as follows:
  - (a) Preparing an attestation ..... \$0.50
  - (b) Preparing a certification ..... \$1.00
  - (c) Preparing a copy of a document (per page) ..... \$0.25
- (4) Taxation of costs against a defendant, upon conviction, including persons sentenced to state traffic school as provided under KRS 186.574, shall be mandatory and shall not be probated or suspended.
- (5) The circuit clerk shall, at the time fines and costs are paid over to the state, pay five dollars (\$5) from each court cost collected pursuant to subsection (1) of this section to the county treasurer for use by the fiscal court for the sole purpose of defraying the costs of operation of the county jail and the transportation of prisoners and shall include among his reports to the Administrative Office of the Courts the amounts paid to the county.
- (6) The circuit clerk shall, at the time fines and costs are paid over to the state, pay ten dollars (\$10) from each court cost collected pursuant to subsection (1) of this section to the State Treasury for the benefit and use of the Kentucky Local Correctional Facilities Construction Authority pursuant to KRS 441.625 to 441.695.
- (7) The circuit clerk shall monthly pay five dollars (\$5) from each court cost collected pursuant to subsection (1) of this section to the sheriff for use by the sheriff for providing security services and related activities to the court as provided for in KRS 64.092. The clerk shall include among his reports to the Administrative Office of the Courts the amounts paid to the sheriff.

Section 13. KRS 149.093 is amended to read as follows:

If the violation of any section of this chapter is a misdemeanor and is committed in the presence of a forest warden or other law enforcement officer, and there are reasonable grounds to believe that the person being cited will appear to answer the charge, the warden or officer may, in lieu of a physical arrest directed by KRS 149.090, issue a citation as authorized by KRS 431.015, 431.450~~[-431.451]~~, 431.452, and 431.455. The warden or officer may issue a warning without a penalty in lieu of a citation if the suspected offense is one cited in KRS 149.370, 149.375, 149.385, 149.390, 149.395, 149.400, 149.401, or 149.405.

Section 14. The following KRS section is repealed:

431.451 Delineation of offenses for which fines may and may not be prepaid.

**Approved April 21, 2000**

## **CHAPTER 513**

**(HB 944)**

AN ACT relating to driver training schools.

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

Section 1. KRS 332.030 is amended to read as follows:

- (1) Any person seeking a license to operate, conduct, maintain, or establish a driver training school shall make verified application to the cabinet on forms prepared and furnished by the cabinet. The application shall set forth the following information:
  - (a) The title or name of the school and the names of the owners thereof and, if the owner be a corporation, the names and addresses of the officers thereof;
  - (b) A statement that the owners of the driver training school unless it be a corporation are each 21 years of age or over, are residents of this state, and have been such for at least one (1) year next preceding the application for license, and are each of good moral character;
  - (c) A description of the established place of business together with the hours during which the driver training school is conducted and a description of the equipment and facilities used in driver training;
  - (d) Evidence of liability insurance coverage of the driver training school, the instructor, and students of the driver training school while operating driver training school equipment. Such insurance shall have minimum limits of not less than \$25,000 for bodily injury or death of one (1) person in any one accident and subject to the limit for any one person, \$50,000 for bodily injury or death of two (2) or more persons in any one accident and \$10,000 for damage to the property of others in any one accident. Evidence of insurance coverage shall also provide that the insurance coverage shall not be canceled except after 10 days prior notice in writing by the carrier to the secretary. ***Upon request by an applicant, the Justice Cabinet shall review an application and provide a letter to the applicant that a proposed driver training school has met all preliminary requirements for approval, except the provisions of this paragraph. The letter may be used by the applicant to help secure the liability insurance coverage needed under this paragraph to obtain a license to operate a school. A letter provided under this paragraph shall not be construed as approval to perform driver's training or to operate a school.***
- (2) Each original application for a license to operate a driver training school and each application for renewal of a license to operate a driver training school shall be accompanied by the payment of a fee of \$200 to the cabinet.
- (3) Any person seeking a license to act as a driver training instructor shall make verified application to the cabinet on forms prepared and furnished by the cabinet setting forth that the applicant is twenty-one (21) years of age or older; is of good moral character; is a high school graduate or has the equivalent of a high school education, or has equivalent experience; and holds a current and valid operator's license issued by the cabinet.
- (4) Each original application for a license as a driver training instructor and each application for renewal of a license as a driver training instructor shall be accompanied by the payment of a fee of \$20.00 to the cabinet.

**Approved April 21, 2000**

**CHAPTER 514****(HB 992)**

AN ACT relating to workers' compensation.

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

Section 1. KRS 342.0011 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Injury" means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. "Injury" does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease and damage to a prosthetic appliance, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury.
- (2) "Occupational disease" means a disease arising out of and in the course of the employment.
- (3) An occupational disease as defined in this chapter shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence.
- (4) "Injurious exposure" shall mean that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made.
- (5) "Death" means death resulting from an injury or occupational disease.
- (6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the liability of employers under this chapter and includes a self-insurer.
- (7) "Self-insurer" is an employer who has been authorized under the provisions of this chapter to carry his own liability on his employees covered by this chapter.
- (8) "Department" means the Department of Workers' Claims in the Labor Cabinet.
- (9) "Commissioner" means the commissioner of the Department of Workers' Claims.
- (10) "Board" means the Workers' Compensation Board.
- (11)
  - (a) "Temporary total disability" means the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment;
  - (b) "Permanent partial disability" means the condition of an employee who, due to an injury, has a permanent disability rating but retains the ability to work; and
  - (c) "Permanent total disability" means the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury, except that total disability shall be irrebuttably presumed to exist for an injury that results in:
    1. Total and permanent loss of sight in both eyes;
    2. Loss of both feet at or above the ankle;
    3. Loss of both hands at or above the wrist;



4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at or above the wrist;
  5. Permanent and complete paralysis of both arms, both legs, or one (1) arm and one (1) leg;
  6. Incurable insanity or imbecility; or
  7. Total loss of hearing.
- (12) "Income benefits" means payments made under the provisions of this chapter to the disabled worker or his dependents in case of death, excluding medical and related benefits.
- (13) "Medical and related benefits" means payments made for medical, hospital, burial, and other services as provided in this chapter, other than income benefits.
- (14) "Compensation" means all payments made under the provisions of this chapter representing the sum of income benefits and medical and related benefits.
- (15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical rehabilitation services, medicines, and fittings for artificial or prosthetic devices.
- (16) "Person" means any individual, partnership, including a registered limited liability partnership, limited partnership, limited liability company, firm, association, trust, joint venture, corporation, limited liability company, or legal representative thereof.
- (17) "Wages" means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, fuel, or similar advantages received from the employer, and gratuities received in the course of employment from persons other than the employer as evidenced by the employee's federal and state tax returns.
- (18) "Agriculture" means the operation of farm premises, including the planting, cultivation, producing, growing, harvesting, and preparation for market of agricultural or horticultural commodities thereon, the raising of livestock for food products and for racing purposes, and poultry thereon, and any work performed as an incident to or in conjunction with the farm operations. It shall not include the commercial processing, packing, drying, storing, or canning of such commodities for market, or making cheese or butter or other dairy products for market.
- (19) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this chapter.
- (20) "United States," when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the territories of the United States.
- (21) "Alien" means a person who is not a citizen, a national, or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien.
- (22) "Insurance carrier" means every insurance carrier or insurance company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the Kentucky Employers Mutual Insurance Authority and every group of self-insurers operating under the provisions of this chapter.
- (23) (a) "Severance or processing of coal" means all activities performed in the Commonwealth at underground, auger, and surface mining sites; all activities performed at tipple or processing plants that clean, break, size, or treat coal; and all activities performed at coal loading facilities for trucks, railroads, and barges. Severance or processing of coal shall not include acts performed by a final consumer if the acts are performed at the site of final consumption.
- (b) "Engaged in severance or processing of coal" shall include all individuals, partnerships, including registered limited liability partnerships, limited partnerships, limited liability companies, corporations, joint ventures, associations, or any other business entity in the Commonwealth which has employees on its payroll who perform any of the acts stated in paragraph (a) of this subsection, regardless of whether the acts are performed as owner of the coal or on a contract or fee basis for the actual owner of the coal. A business entity engaged in the severance or processing of coal, including, but not limited to, administrative or selling functions, shall be considered wholly engaged in the severance or processing of coal for the purpose of this chapter. However, a business entity which is engaged in a separate business activity not related to coal, for which a separate premium charge is not made, shall be deemed to be engaged in the severance or processing of coal only to the extent that the number of employees engaged

in the severance or processing of coal bears to the total number of employees. Any employee who is involved in the business of severing or processing of coal and business activities not related to coal shall be prorated based on the time involved in severance or processing of coal bears to his total time.

- (24) "Premium" for every group of self-insurers means any and all assessments levied on its members by such group or contributed to it by the members thereof. For special fund assessment purposes, "premium" also includes any and all membership dues, fees, or other payments by members of the group to associations or other entities used for underwriting, claims handling, loss control, premium audit, actuarial, or other services associated with the maintenance or operation of the self-insurance group.
- (25) (a) "Premiums received" for policies effective on or after January 1, 1994, for insurance companies means direct written premiums as reported in the annual statement to the Kentucky Department of Insurance by insurance companies, except that "premiums received" includes premiums charged off or deferred, and, on insurance policies or other evidence of coverage with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modification, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premiums received" includes the initial premium plus any reimbursements invoiced for losses, expenses, and fees charged under the deductibles. The special fund assessment rates in effect for reimbursements invoiced for losses, expenses, or fees charged under the deductibles shall be those percentages in effect on the effective date of the insurance policy. For policies covering leased employees as defined in KRS 342.615, "premiums received" means premiums calculated using the experience modification factor of each lessee as defined in KRS 342.615 for each leased employee for that portion of the payroll pertaining to the leased employee.
- (b) "Direct written premium" for insurance companies means the gross premium written less return premiums and premiums on policies not taken but including policy and membership fees.
- (c) "Premium," for policies effective on or after January 1, 1994, for insurance companies means all consideration, whether designated as premium or otherwise, for workers' compensation insurance paid to an insurance company or its representative, including, on insurance policies with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modifications, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premium" includes the initial consideration plus any reimbursements invoiced for losses, expenses, or fees charged under the deductibles.

- (d) "Return premiums" for insurance companies means amounts returned to insureds due to endorsements, retrospective adjustments, cancellations, dividends, or errors.
- (26) "Insurance policy" for an insurance company or group self-insurer means the term of insurance coverage commencing from the date coverage is extended, whether a new policy or a renewal, through its expiration, not to exceed the anniversary date of the renewal for the following year.
- (27) "Self-insurance year" for a group self-insurer means the annual period of certification of the group created pursuant to KRS 342.350(4).
- (28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1) shall be the projected value of the employer's workers' compensation claims for the next calendar year as calculated by the commissioner using generally-accepted actuarial methods as follows:
  - (a) The base period shall be the earliest three (3) calendar years of the five (5) calendar years immediately preceding the calendar year for which the calculation is made. The commissioner shall identify each claim of the employer which has an injury date or date of last injurious exposure to the cause of an occupational disease during each one (1) of the three (3) calendar years to be used as the base, and shall assign a value to each claim. The value shall be the total of the indemnity benefits paid to date and projected to be paid, adjusted to current benefit levels, plus the medical benefits paid to date and projected to be paid for the life of the claim, plus the cost of medical and vocational rehabilitation paid to date and projected to be paid. Adjustment to current benefit levels shall be done by multiplying the weekly indemnity benefit for each claim by the number obtained by dividing the statewide average weekly wage which will be in effect for the year for which the premium is being calculated by the statewide average weekly wage in effect during the year in which the injury or date of the last exposure occurred. The total value of the claims using the adjusted weekly benefit shall then be calculated by the commissioner. Values for claims in which awards have been made or settlements reached because of findings of permanent partial or permanent total disability shall be calculated using the mortality and interest discount assumptions used in the latest available statistical plan of the advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The sum of all calculated values shall be computed for all claims in the base period.
  - (b) The commissioner shall obtain the annual payroll for each of the three (3) years in the base period for each employer carrying his own risk from records of the department and from the records of the Department for Employment Services, Cabinet for Workforce Development. The commissioner shall multiply each of the three (3) years of payroll by the number obtained by dividing the statewide average weekly wage which will be in effect for the year in which the premium is being calculated by the statewide average weekly wage in effect in each of the years of the base period.
  - (c) The commissioner shall divide the total of the adjusted claim values for the three (3) year base period by the total adjusted payroll for the same three (3) year period. The value so calculated shall be multiplied by 1.25 and shall then be multiplied by the employer's most recent annualized payroll, calculated using records of the department and the Department for Employment Services data which shall be made available for this purpose on a quarterly basis as reported, to obtain the premium for the next calendar year for assessment purposes under KRS 342.122.
  - (d) For November 1, 1987, through December 31, 1988, premium for each employer carrying his own risk shall be an amount calculated by the board pursuant to the provisions contained in this subsection and such premium shall be provided to each employer carrying his own risk and to the funding commission on or before January 1, 1988. Thereafter, the calculations set forth in this subsection shall be performed annually, at the time each employer applies or renews his application for certification to carry his own risk for the next twelve (12) month period and submits payroll and other data in support of the application. The employer and the funding commission shall be notified at the time of the certification or recertification of the premium calculated by the commissioner, which shall form the employer's basis for assessments pursuant to KRS 342.122 for the calendar year beginning on January 1 following the date of certification or recertification.
  - (e) If an employer having fewer than five (5) years of doing business in this state applies to carry his own risk and is so certified, his premium for the purposes of KRS 342.122 shall be based on the lesser number of years of experience as may be available including the two (2) most recent years if necessary to create a three (3) year base period. If the employer has less than two (2) years of operation in this state available for the premium calculation, then his premium shall be the greater of the value obtained

by the calculation called for in this subsection or the amount of security required by the commissioner pursuant to KRS 342.340(1).

- (f) If an employer is certified to carry his own risk after having previously insured the risk, his premium shall be calculated using values obtained from claims incurred while insured for as many of the years of the base period as may be necessary to create a full three (3) year base. After the employer is certified to carry his own risk and has paid all amounts due for assessments upon premiums paid while insured, he shall be assessed only upon the premium calculated under this subsection.
  - (g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated as set forth in this subsection.
  - (h) Notwithstanding any other provision of this subsection, the premium of any employer authorized to carry its own risk for purposes of assessments due under this chapter shall be no less than thirty cents (\$0.30) per one hundred dollars (\$100) of the employer's most recent annualized payroll for employees covered by this chapter.
- (29) "SIC code" as used in this chapter means the Standard Industrial Classification Code contained in the latest edition of the Standard Industrial Classification Manual published by the Federal Office of Management and Budget.
  - (30) "Investment interest" means any pecuniary or beneficial interest in a provider of medical services or treatment under this chapter, other than a provider in which that pecuniary or investment interest is obtained on terms equally available to the public through trading on a registered national securities exchange, such as the New York Stock Exchange or the American Stock Exchange, or on the National Association of Securities Dealers Automated Quotation System.
  - (31) "Managed health care system" means a health care system that employs gatekeeper providers, performs utilization review, and does medical bill audits.
  - (32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license issued by the Commonwealth.
  - (33) "Objective medical findings" means information gained through direct observation and testing of the patient applying objective or standardized methods.
  - (34) "Work" means providing services to another in return for remuneration on a regular and sustained basis in a competitive economy.
  - (35) "Permanent impairment rating" means percentage of whole body impairment caused by the injury or occupational disease as determined by "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest available edition.
  - (36) "Permanent disability rating" means the permanent impairment rating selected by an ~~arbitrator or~~ administrative law judge times the factor set forth in the table that appears at KRS 342.730(1)(b).

Section 2. KRS 342.020 is amended to read as follows:

- (1) In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease. The employer's obligation to pay the benefits specified in this section shall continue for so long as the employee is disabled regardless of the duration of the employee's income benefits. In the absence of designation of a managed health care system by the employer, the employee may select medical providers to treat his injury or occupational disease. Even if the employer has designated a managed health care system, the injured employee may elect to continue treating with a physician who provided emergency medical care or treatment to the employee. The employer, insurer, or payment obligor acting on behalf of the employer, shall make all payments for services rendered to an employee directly to the provider of the services within thirty (30) days of receipt of a statement for services. The commissioner shall promulgate administrative regulations establishing conditions under which the thirty (30) day period for payment may be tolled. The provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated and every forty-five (45) days thereafter, if appropriate, as long as medical services are rendered. Except as provided in subsection (4) of this section, in no event shall a medical fee exceed the limitations of an

adopted medical fee schedule or other limitations contained in KRS 342.035, whichever is lower. The commissioner may promulgate administrative regulations establishing the form and content of a statement for services and procedures by which disputes relative to the necessity, effectiveness, frequency, and cost of services may be resolved.

- (2) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, medical services and treatment provided under this chapter shall not be subject to copayments or deductibles.
- (3) Employers may provide medical services through a managed health care system. The managed health care system shall file with the Department of Workers' Claims a plan for the rendition of health care services for work-related injuries and occupational diseases to be approved by the commissioner pursuant to administrative regulations promulgated by the commissioner.
- (4) All managed health care systems rendering medical services under this chapter shall include the following features in plans for workers' compensation medical care:
  - (a) Copayments or deductibles shall not be required for medical services rendered in connection with a work-related injury or occupational disease;
  - (b) The employee shall be allowed choice of provider within the plan;
  - (c) The managed health care system shall provide an informal procedure for the expeditious resolution of disputes concerning rendition of medical services;
  - (d) The employee shall be allowed to obtain a second opinion, at the employer's expense, from an outside physician if a managed health care system physician recommends surgery;
  - (e) The employee may obtain medical services from providers outside the managed health care system, at the employer's expense, when treatment is unavailable through the managed health care system;
  - (f) The managed health care system shall establish procedures for utilization review of medical services to assure that a course of treatment is reasonably necessary; diagnostic procedures are not unnecessarily duplicated; the frequency, scope, and duration of treatment is appropriate; pharmaceuticals are not unnecessarily prescribed; and that ongoing and proposed treatment is not experimental, cost ineffective, or harmful to the employee; and
  - (g) Statements for services shall be audited regularly to assure that charges are not duplicated and do not exceed those authorized in the applicable fee schedules.
  - (h) A schedule of fees for all medical services to be provided under this chapter which shall not be subject to the limitations on medical fees contained in this chapter.
  - (i) Restrictions on provider selection imposed by a managed health care system authorized by this chapter shall not apply to emergency medical care.
- (5) Except for emergency medical care, medical services rendered pursuant to this chapter shall be under the supervision of a single treating physician or physicians' group having the authority to make referrals, as reasonably necessary, to appropriate facilities and specialists. The employee may change his designated physician one (1) time and thereafter shall show reasonable cause in order to change physicians.
- (6) When a compensable injury or occupational disease results in the amputation of an arm, leg, or foot, or the loss of hearing, or the enucleation of an eye or loss of teeth, the employer shall pay for, in addition to the other medical, surgical, and hospital treatment enumerated in subsection (1) and this subsection, a modern artificial member and, where required, proper braces as may reasonably be required at the time of the injury and thereafter during disability.
- (7) Upon motion of the employer, with sufficient notice to the employee for a response to be filed, if it is shown to the satisfaction of the administrative law judge ~~or arbitrator~~ by affidavits or testimony that, because of the physician selected by the employee to treat the injury or disease, or because of the hospital selected by the employee in which treatment is being rendered, that the employee is not receiving proper medical treatment and the recovery is being substantially affected or delayed; or that the funds for medical expenses are being spent without reasonable benefit to the employee; or that because of the physician selected by the employee or because of the type of medical treatment being received by the employee that the employer will substantially be prejudiced in any compensation proceedings resulting from the employee's injury or disease; then the administrative law judge ~~or arbitrator~~ may allow the employer to select a physician to treat the employee and

the hospital or hospitals in which the employee is treated for the injury or disease. No action shall be brought against any employer subject to this chapter by any person to recover damages for malpractice or improper treatment received by any employee from any physician, hospital, or attendant thereof.

- (8) An employee who reports an injury alleged to be work-related or files an application for adjustment of a claim shall execute a waiver and consent of any physician-patient, psychiatrist-patient, or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding any other provision in the Kentucky Revised Statutes, any physician, psychiatrist, chiropractor, podiatrist, hospital, or health care provider shall, within a reasonable time after written request by the employee, employer, workers' compensation insurer, special fund, uninsured employers' fund, ~~arbitrator,~~ or the administrative law judge, provide the requesting party with any information or written material reasonably related to any injury or disease for which the employee claims compensation.
- (9) When a provider of medical services or treatment, required by this chapter, makes referrals for medical services or treatment by this chapter, to a provider or entity in which the provider making the referral has an investment interest, the referring provider shall disclose that investment interest to the employee, the commissioner, and the employer's insurer or the party responsible for paying for the medical services or treatment, within thirty (30) days from the date the referral was made.

Section 3. KRS 342.033 is amended to read as follows:

In a claim for benefits, no party may introduce direct testimony from more than two (2) physicians without prior consent from the ~~arbitrator or~~ administrative law judge. The motion requesting additional testimony shall clearly demonstrate the need for such additional testimony. A party may introduce direct testimony from a physician through a written medical report. The report shall become a part of the evidentiary record, subject to the right of an adverse party to object to the admissibility of the report and to cross-examine the reporting physician. The commissioner shall promulgate administrative regulations prescribing the format and content of written medical reports.

Section 4. KRS 342.040 is amended to read as follows:

- (1) Except as provided in KRS 342.020, no income benefits shall be payable for the first seven (7) days of disability unless disability continues for a period of more than two (2) weeks, in which case income benefits shall be allowed from the first day of disability. All income benefits shall be payable on the regular payday of the employer, commencing with the first regular payday after seven (7) days after the injury or disability resulting from an occupational disease, with interest at the rate of twelve percent (12%) per annum on each installment from the time it is due until paid, except that if the ~~arbitrator or~~ administrative law judge determines that a denial, delay, or termination in the payment of income benefits was without reasonable foundation, the rate of interest shall be eighteen percent (18%) per annum. In no event shall income benefits be instituted later than the fifteenth day after the employer has knowledge of the disability or death. Income benefits shall be due and payable not less often than semimonthly. If the employer's insurance carrier or other party responsible for the payment of workers' compensation benefits should terminate or fail to make payments when due, that party shall notify the commissioner of the termination or failure to make payments and the commissioner shall, in writing, advise the employee or known dependent of right to prosecute a claim under this chapter.
- (2) If overdue temporary total disability income benefits are recovered in a proceeding brought under this chapter by an attorney for an employee, or paid by the employer after receipt of notice of the attorney's representation, a reasonable attorney's fee for these services may be awarded. The award of attorney's fees shall be paid by the employer if the ~~arbitrator or~~ administrative law judge determines that the denial or delay was without reasonable foundation. No part of the fee for representing the employee in connection with the recovery of overdue temporary total disability benefits withheld without reasonable foundation shall be charged against or deducted from benefits otherwise due the employee.
- (3) All retraining incentive benefits awarded pursuant to KRS 342.732 shall be payable on the regular payday of the employer, commencing with the second regular payday after the award of the retraining incentive benefit by the ~~arbitrator or~~ administrative law judge becomes final. Retraining incentive benefits shall be due and payable not less often than semimonthly.
- (4) Upon written request of the employee, all payments of compensation shall be mailed to the employee at his last known address.

Section 5. KRS 342.090 is amended to read as follows:

Payment of death benefits in good faith to a supposed dependent or to a dependent subsequent in right to another or other dependents shall protect and discharge the employer and insurer unless and until the lawful dependent or dependents prior in right have given the employer or insurer written notice of his or their claim. In case the employer or insurer is in doubt as to who are dependents or as to their respective rights, the ~~the arbitrator or~~ administrative law judge shall, on application, decide and direct to whom payment shall be made, and payment made under such direction shall release the employer and insurer from all liability. If an appeal is taken from the order of the ~~the arbitrator or~~ administrative law judge directing payment, persons receiving payment under such order shall furnish bond for the protection of adverse claimants pending the outcome of the proceedings.

Section 6. KRS 342.120 is amended to read as follows:

- (1) There is created the Division of the Special Fund in the Department of Workplace Standards which shall be responsible for the administration of the legal representation of the fund and the maintenance of records regarding the payment of claims by the fund. The Division of the Special Fund shall be headed by a director appointed by the commissioner, with the prior written approval of the Governor pursuant to KRS 12.050. The director shall be responsible for overseeing the administration of the legal representation of the fund and the maintenance of records regarding the payment of claims by the fund.
- (2) The special fund shall have no liability upon any claim in which the injury occurred, or for cumulative trauma, the disability became manifest, or, for occupational disease, if the date of injury or last exposure occurred, after December 12, 1996.
- (3) Where the employer has settled its liability for income benefits and thereafter a determination has been made of the special fund's liability, the special fund portion of the benefit rate shall be paid over the maximum period provided for by statute for that disability, with the period of payment beginning on the date settlement was approved by an administrative law judge ~~or arbitrator~~. This provision is remedial and shall apply to all pending and future claims.

Section 7. KRS 342.125 is amended to read as follows:

- (1) Upon motion by any party or upon an ~~an arbitrator's or~~ administrative law judge's own motion, an ~~arbitrator or~~ administrative law judge may reopen and review any award or order on any of the following grounds:
  - (a) Fraud;
  - (b) Newly-discovered evidence which could not have been discovered with the exercise of due diligence;
  - (c) Mistake; and
  - (d) Change of disability as shown by objective medical evidence of worsening or improvement of impairment due to a condition caused by the injury since the date of the award or order.
- (2) No claim which has been previously dismissed or denied on the merits shall be reopened except upon the grounds set forth in this section.
- (3) Except for reopening solely for determination of the compensability of medical expenses, fraud, or conforming the award as set forth in KRS 342.730(1)(c)2., or for reducing a permanent total disability award when an employee returns to work, **or seeking temporary total disability benefits during the period of an award**, no claim shall be reopened more than four (4) years following the date of the original award or order granting or denying benefits, ~~or within two (2) years of such award or order,~~ and no party may file a motion to reopen within **one (1) year** ~~two (2) years~~ of any previous motion to reopen by the same party.
- (4) Reopening and review under this section shall be had upon notice to the parties and in the same manner as provided for an initial proceeding under this chapter. Upon reopening, the ~~the arbitrator or~~ administrative law judge may end, diminish, or increase compensation previously awarded, within the maximum and minimum provided in this chapter, or change or revoke a previous order. The ~~the arbitrator or~~ administrative law judge shall immediately send all parties a copy of the subsequent order or award. Reopening shall not affect the previous order or award as to any sums already paid thereunder, and any change in the amount of compensation shall be ordered only from the date of filing the motion to reopen. No employer shall suspend benefits during pendency of any reopening procedures except upon order of the ~~the arbitrator or~~ administrative law judge.
- (5) (a) Upon the application of the affected employee, and a showing of progression of his previously-diagnosed occupational pneumoconiosis resulting from exposure to coal dust and development of respiratory impairment due to that pneumoconiosis and two (2) additional years of employment in the

Commonwealth wherein the employee was continuously exposed to the hazards of the disease, the ~~arbitrator or~~ administrative law judge may review an award or order for benefits attributable to coal-related pneumoconiosis under KRS 342.732. An application for review under this subsection shall be made within one (1) year of the date the employee knew or reasonably should have known that a progression of his disease and development or progression of respiratory impairment have occurred. Review under this subsection shall include a review of all evidence admitted in all prior proceedings.

- (b) Benefits awarded as a result of a review under this subsection shall be reduced by the amount of retraining incentive benefits or income benefits previously awarded under KRS 342.732. The amount to be deducted shall be subtracted from the total amount awarded, and the remaining amount shall be divided by the number of weeks, for which the award was made, to arrive at the weekly benefit amount which shall be apportioned in accordance with the provisions of KRS 342.316.
- (6) In a reopening or review proceeding where there has been additional permanent partial disability awarded, the increase shall not extend the original period, unless the combined prior disability and increased disability exceeds fifty percent (50%), but less than one hundred percent (100%), in which event the awarded period shall not exceed five hundred twenty (520) weeks, from commencement date of the original disability previously awarded. The law in effect on the date of the original injury controls the rights of the parties.
- (7) Where an agreement has become an award by approval of the ~~arbitrator or~~ administrative law judge, and a reopening and review of that award is initiated, no statement contained in the agreement, whether as to jurisdiction, liability of the employer, nature and extent of disability, or as to any other matter, shall be considered by the ~~arbitrator or the~~ administrative law judge as an admission against the interests of any party. The parties may raise any issue upon reopening and review of this type of award which could have been considered upon an original application for benefits.
- (8) The time limitation prescribed in this section shall apply to all claims irrespective of when they were incurred, or when the award was entered, or the settlement approved. However, claims decided prior to December 12, 1996, may be reopened within four (4) years of the award or order or within four (4) years of December 12, 1996, whichever is later, provided that the exceptions to reopening established in subsections (1) and (3) of this section shall apply to these claims as well.

Section 8. KRS 342.160 is amended to read as follows:

- (1) The benefits in case of death shall be paid to one (1) or more dependents of the deceased employee for the benefit of all the dependents entitled thereto, as determined by the ~~arbitrator or~~ administrative law judge. The dependents to whom payments are made shall apply the same to the use of the persons entitled thereto under this chapter, according to their respective claims on the deceased for support. The compensation of a mentally disabled person shall be paid to his guardian or conservator.
- (2) If the dependents are a widow, widower, or other head of a family of minor children and one (1) or more minor children, it shall be sufficient for the widow, widower, or head of the family to make application for compensation on behalf of all. Where the dependents are mentally incapacitated or are minors the head of whose family is not a dependent, the application may be made by the guardian, conservator, or next friend of such dependents.

Section 9. KRS 342.205 is amended to read as follows:

- (1) After an injury and so long as compensation is claimed, the employee, if requested by a party or by the ~~arbitrator or~~ administrative law judge, shall submit himself to examination, at a reasonable time and place, to a duly-qualified physician or surgeon designated and paid by the requesting party. The employee shall have the right to have a duly-qualified physician or surgeon designated and paid by himself present at the examination, but this right shall not deny the requesting party's physician or surgeon the right to examine the injured employee at all reasonable times and under all reasonable conditions.
- (2) The party requesting an examination pursuant to subsection (1) of this section shall make arrangements to provide all the cost of the examination. The requesting party shall also prepay the cost of transportation of the employee to and from the examination if public transportation is utilized. If the employee uses his own vehicle to travel to and from the examination, the requesting party shall prepay the employee at the state mileage rate. The requesting party shall also reimburse the employee for the cost of meals, lodging, parking, and toll charges upon proof of same by written voucher. The amounts prepaid or reimbursed by the requesting party, as required by this subsection, shall be the same as, and in accordance with, state travel administrative regulations and standards promulgated and established pursuant to KRS Chapter 45.



- (3) If an employee refuses to submit himself to or in any way obstructs the examination, his right to take or prosecute any proceedings under this chapter shall be suspended until the refusal or obstruction ceases. No compensation shall be payable for the period during which the refusal or obstruction continues.
- (4) Any employee receiving benefits under this chapter may be required, upon request of any party, to furnish a sworn affirmed statement of earnings and other supporting information the ~~arbitrator or~~ administrative law judge may require.
- (5) The department shall supply forms for the report.

Section 10. KRS 342.213 is amended to read as follows:

- (1) The Governor shall make all appointments to the board, **and** appoint the administrative law judges ~~and arbitrators~~, and the commissioner of the Department of Workers' Claims, subject to the consent of the Senate in accordance with KRS 11.160, and in accordance with this section, KRS 342.215, 342.228, and 342.230 by choosing from names presented to him by the Workers' Compensation Nominating Commission.
- (2) The Workers' Compensation Nominating Commission shall consist of seven (7) members appointed by the Governor as follows:
  - (a) Two (2) members shall be attorneys experienced in the practice of workers' compensation, one (1) of whom customarily represents claimants, and one (1) of whom customarily represents employers. Both shall serve terms of two (2) years, but their successors shall be appointed to terms of four (4) years.
  - (b)
    1. One (1) member of the political party having the largest number of registered voters and one (1) member of the political party having the second largest number of registered voters shall serve a term of three (3) years; and
    2. Two (2) members of the political party having the largest number of registered voters and one (1) member of the political party having the second largest number of registered voters shall serve a term of four (4) years.
    3. Thereafter, as each term expires, the vacancy so created shall be filled by an appointee from the same political party for a term of four (4) years.
  - (c) Appointments to fill the unexpired term of a member shall be for the remainder of the term.
  - (d) The members shall annually select a chairman of the nominating commission.
- (3) Notwithstanding the provisions of subsection (2) of this section, at least three (3) members of the Workers' Compensation Nominating Commission shall be individuals who directly derive no earned income from the workers' compensation program. In order to satisfy the requirement of this subsection, the Governor may remove any existing member of the Workers' Compensation Nominating Commission and replace that member with an individual who does not derive earned income from the workers' compensation program. On or before March 1, 1997, the Governor shall submit to the Senate a list of the members of the commission identifying the positions they fill and the terms they shall serve in accordance with the provisions of this section.
- (4) The commissioner shall monitor the workload of the administrative law judges ~~and arbitrators~~ and, whenever a vacancy occurs, determine whether filling the position is necessary to expeditious resolution of claims brought under this chapter. One hundred twenty (120) days prior to the expiration of the terms of the administrative law judges ~~and arbitrators~~, and when a vacancy occurs under other circumstances, the commissioner shall certify to the Workers' Compensation Nominating Commission that filling the position is necessary and the Workers' Compensation Nominating Commission shall act to fill only such positions as have been certified as necessary by the commissioner.
- (5)
  - (a) The Workers' Compensation Nominating Commission shall consult with the commissioner, chief administrative law judge, and a member of the Workers' Compensation Board as to the performance in office of **the** administrative law judges ~~and arbitrators~~. The Workers' Compensation Nominating Commission may recommend retention of any sitting administrative law judge ~~or arbitrator~~, or present to the Governor the names of three (3) qualified individuals nominated for the position. The Workers' Compensation Nominating Commission shall report its recommendation for retention to the Governor no later than thirty (30) days after receipt from the commissioner of certification of the necessity to fill the position and shall render to the Governor its list of nominees to fill vacancies within sixty (60) days of receipt of the commissioner's certification. The name of an individual who has been rejected by the Governor when recommended for retention shall not be presented thereafter as a nominee for the same

position. No sitting administrative law judge ~~or arbitrator~~ shall be nominated to fill more than one (1) vacancy except for separate vacancies as an administrative law judge ~~and as an arbitrator~~.

- (b) Within thirty (30) days of receipt of the recommendation, the Governor may reject recommendations of retention, in which event the Workers' Compensation Nominating Commission shall, within thirty (30) days, reconvene and present a list of the names of three (3) nominees for each position for which a recommendation for retention has been rejected by the Governor.
- (6) The Governor shall appoint the commissioner of the Department of Workers' Claims from a list of three (3) names submitted by the nominating commission. The list submitted to the Governor shall contain names of individuals who meet the qualifications and requirements contained in KRS 342.228. The commissioner shall be subject to Senate confirmation in accordance with KRS 11.160.
- (7) (a) The Governor shall appoint the members of the Workers' Compensation Board. The nominating commission shall present to the Governor a list of three (3) candidates for appointment to the board no later than thirty (30) days prior to the expiration of a board member's term. For the purpose of filling vacancies on the board which occur for reasons other than an expiration of term, the nominating commission shall present a list of three (3) names to the Governor no later than sixty (60) days after a vacancy occurs.
- (b) If the Governor fails to appoint a member of the board within thirty (30) days following receipt of a list of names from the nominating commission, the previous appointee may remain in the position until the ninetieth day following the date the nominating commission provided the Governor with its list of names, at which time he shall vacate the position.
- (8) The nominating commission shall meet as often as necessary to perform its responsibilities, and the members shall be reimbursed from funds collected pursuant to KRS 342.122 for necessary expenses in the manner and amounts prescribed for state employees by KRS 45.101 and the administrative regulations promulgated under the authority of that statute. In addition, each member of the nominating commission shall be paid at a rate of one hundred dollars (\$100) per day for each meeting attended, and these expenses shall be financed from funds collected pursuant to KRS 342.122.

Section 11. KRS 342.215 is amended to read as follows:

- (1) The Workers' Compensation Board is hereby created and established. The board shall rule on appeals of decisions rendered by administrative law judges under this chapter. The board shall rule on an appeal of a decision of an administrative law judge no later than sixty (60) days following the date on which the last appeal brief was filed.
- (2) The Workers' Compensation Board shall consist of three (3) members appointed by the Governor. Each member shall hold no other public office and shall devote his full time to the duties of his office.
- (3) ***Of the members of the board appointed under this section, one (1) shall serve a term that shall expire on January 4, 2002; one (1) shall serve a term that shall expire on January 4, 2003; and one (1) shall serve a term that shall expire on January 4, 2004, as designated by the Governor at the time of appointment. Thereafter,*** each term of a board member shall run for four (4) years from the date of expiration of the term for which the member's predecessor was appointed, except that a person appointed to fill a vacancy prior to the expiration of a term shall be appointed for the remainder of the term. The Governor shall not appoint a member of the board to fill the unexpired term of another board member, nor shall the Governor reappoint a member of the board who has been removed from his position prior to the expiration of his term. The members of the board shall have the qualifications required of appeals court judges, except for residence in a district, and shall receive the same salary and shall be subject to the same standards of conduct. The Governor shall designate a member of the board to serve as chairman. Any vacancy in the chairmanship shall be filled by the Governor. The Governor may at any time remove any member for cause after furnishing him with a written copy of the charges against him and giving him a public hearing if he requests it.
- (4) A decision concurred in by any two (2) of the three (3) members shall constitute a decision of the board.
- (5) Members of the Workers' Compensation Board~~[- arbitrators,]~~ and the administrative law judges shall be members of the Kentucky Employees Retirement System.
- ~~((6) The Workers' Compensation Board is abolished effective on July 1, 2000, and as of midnight, June 30, 2000, the terms of all Workers' Compensation Board members shall end. Thereafter, appeals from the final orders of~~

~~administrative law judges shall be directed to the Court of Appeals under the same standards set forth in this chapter for appeals to the Workers' Compensation Board.~~

Section 12. KRS 342.230 is amended to read as follows:

- (1) The commissioner, within the limits of appropriations therefor and except as otherwise specifically provided in this chapter, shall establish and fill any positions, including medical services and advice, necessary to carry on the department's work. The employees of the Department of Workers' Claims, except the commissioner,~~{ arbitrators,}~~ administrative law judges, and board members, shall be members of the classified service.
- (2) The commissioner of the Department of Workers' Claims shall have immediate supervision of the employees of the department, perform duties assigned him, and have complete authority to carry out all the administrative functions relating to the Department of Workers' Claims. The commissioner with the assistance of the board shall train and instruct the administrative law judges~~{ and arbitrators,}~~ on an ongoing basis; assign cases; and monitor the caseloads of the administrative law judges~~{, arbitrators,}~~ and the Workers' Compensation Board to ensure timely disposition of cases; keep and be the custodian of the records of the board ~~and {,}~~ the administrative law judges~~{, and arbitrators,}~~; annually report the activities of the board ~~and the {,}~~ administrative law judges~~{, and arbitrators,}~~ to the Governor; and devote his full time to the duties of his office. The commissioner shall be paid a salary not less than the salary of a member of the board.
- (3) The Governor shall appoint, with the consent of the Senate in accordance with KRS 11.160 for a term of four (4) years, not more than **nineteen (19)**~~{sixteen (16)}~~ administrative law judges, each of whom shall be an attorney and shall have five (5) years' experience in the Commonwealth in the practice of workers' compensation law or a related field, and extensive knowledge of workers' compensation law, and shall be paid the same salary as a Circuit Judge. Each administrative law judge may be employed for additional terms with the consent of the Senate in accordance with KRS 11.160. The Governor, at least thirty (30) days prior to the expiration of a term of an administrative law judge, shall provide the name of the individual whom he intends to appoint to the position to the chairman of the Senate Labor and Industry Committee. These administrative law judges shall conduct hearings, and otherwise supervise the presentation of evidence and perform any other duties assigned to them by statute and shall render final decisions, orders, or awards. Administrative law judges may, in receiving evidence, make rulings affecting the competency, relevancy, and materiality of the evidence about to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case.~~{ To carry out the intent of this chapter and to implement its provisions, the commissioner shall have the authority to assign the duties of an arbitrator to an administrative law judge who shall work in that capacity as deemed necessary by the commissioner.}~~
- (4) To ensure that the administrative law judges~~{ and arbitrators,}~~ perform their responsibilities competently and issue decisions consistent with this chapter, the commissioner shall, at least twice annually, conduct training and education seminars in workers' compensation law; administrative law; and methods and procedures for writing well-reasoned, clear, correct, and concise opinions, orders, or awards.
- (5) The Governor may at any time remove the commissioner or any member of the board. The commissioner may remove any administrative law judge~~{ or arbitrator,}~~. A member of the board or an administrative law judge~~{ or an arbitrator,}~~ may be removed for good cause including: violation of the code of judicial ethics or the code of ethics applicable to the executive branch of the Commonwealth. In addition, an administrative law judge~~{, an arbitrator,}~~ or a member of the board may be removed for the persistent or repeated failure to perform satisfactorily the specific duties assigned in this chapter, including the requirement of timely disposition of cases, review of attorney's fees, and failure to attend training and continuing education programs required by this section.
- (6) Any vacancy in the term of an administrative law judge~~{ or an arbitrator,}~~, which occurs prior to the expiration of the term, shall be filled if necessary by appointment of the Governor in accordance with subsection (3) of this section within sixty (60) days from the date the vacancy occurs, with the consent of the Senate in accordance with KRS 11.160, for the remainder of the term.
- (7) (a) Effective at 12 midnight, December 31, 1997, the terms of administrative law judges who were appointed to fill the five (5) administrative law judge positions which were created in 1990 shall end, and the term of the chief administrative law judge who was appointed under subsection (8) of this section shall end. On January 1, 1998, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to administrative law judges under this chapter.

- (b) Effective at 12 midnight, December 31, 1999, the terms of administrative law judges who were appointed to fill the ten (10) administrative law judge positions which were created in 1987 shall end. On January 1, 2000, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to administrative law judges under this chapter.
- (8) One (1) of the administrative law judges appointed pursuant to this section shall be appointed as a chief administrative law judge, to have the same qualifications, powers, duties, and requirements as those of other administrative law judges. The chief administrative law judge shall not be assigned regular dockets but shall instead assist the commissioner by doing all scheduling of the administrative law judges, handling dockets assigned to the administrative law judges in case of an emergency, providing supervision of the administrative law judges, and providing educational opportunities for the administrative law judges. The chief administrative law judge shall be paid at the same rate as the administrative law judges plus an additional three thousand dollars (\$3,000) per year. At any time the commissioner may replace the chief administrative law judge with one (1) of the other administrative law judges at which time the former chief administrative law judge shall resume the duties assigned to the other administrative law judges pursuant to this chapter. The term of the chief administrative law judge employed in 1994 shall expire on December 31, 1997. On January 1, 1998, the commissioner shall employ a person in this position for a four (4) year term.
- ~~[(9) The Governor shall appoint, with the consent of the Senate in accordance with KRS 11.160 for a term of four (4) years except as set forth in subsection (11) of this section, not more than eight (8) arbitrators, each of whom shall have extensive knowledge in workers' compensation law and shall be paid the same salary as a District Judge. Each arbitrator may be employed for additional terms with the consent of the Senate in accordance with KRS 11.160. The Governor, at least thirty (30) days prior to the expiration of a term of an arbitrator, shall provide the name of the individual he intends to appoint to the position to the chairman of the Senate Economic Development and Labor Committee. The arbitrators shall conduct benefit review conferences, shall supervise the presentation of evidence, and shall render final decisions, orders, and awards. Arbitrators may, in receiving evidence, make rulings affecting the competency, relevancy, and materiality of the evidence about to be presented as will expedite the preparation of the case.]~~
- ~~(10) One (1) of the arbitrators appointed pursuant to this section shall be appointed chief arbitrator and in addition to the duties otherwise assigned arbitrators shall assist the commissioner in the scheduling of the activities of the arbitrators and in the supervision and training of arbitrators. The chief arbitrator shall be paid the same rate as the arbitrators plus an additional two thousand dollars (\$2,000) per year. At any time, the commissioner may replace the chief arbitrator with one (1) of the other arbitrators at which time the former chief arbitrator shall resume the duties assigned to the other arbitrators pursuant to this chapter.~~
- ~~(11) (a) The terms of four (4) arbitrators appointed pursuant to this section shall end at midnight, December 31, 1997. On January 1, 1998, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to arbitrators pursuant to this chapter.~~
- ~~(b) The terms of four (4) arbitrators appointed pursuant to this section shall end at midnight, December 31, 1999. On January 1, 2000, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to arbitrators pursuant to this chapter.]~~

Section 13. KRS 342.240 is amended to read as follows:

The department shall maintain its main office in Frankfort, Kentucky, using suitable rooms and offices belonging to this state, and shall be provided necessary office furniture to be paid for by the state. The commissioner shall provide necessary supplies, books, periodicals, and maps and shall provide a seal for the authentication of orders, awards, or proceedings of the ~~[arbitrators and]~~ administrative law judges, on which shall be inserted the words "Department of Workers' Claims, State of Kentucky, official seal." The board ~~[, the arbitrators,]~~ and the administrative law judges may hold sessions at any place within the state where necessary and shall have power to sue or institute legal proceedings in any court of this state, under existing laws as to jurisdiction of actions. Unless consented to by the commissioner, all actions or proceedings against the board or a member in his official capacity, or against an ~~[arbitrator or]~~ administrative law judge or the commissioner in his official capacity shall be brought in the courts of Franklin County.

Section 14. KRS 342.245 is amended to read as follows:

All proceedings of the board ~~[, arbitrators,]~~ and the administrative law judges shall be recorded in books kept for that purpose by the commissioner, which shall constitute a public record and shall contain an entry of each case, claim, or

proceeding considered, heard or passed upon by each ~~arbitrator,~~ administrative law judge~~,~~ and the board, with the award, finding or decisions made thereon.

Section 15. KRS 342.260 is amended to read as follows:

- (1) The commissioner shall prepare administrative regulations as he considers necessary to carry on the work of the department and the work of the ~~arbitrators and~~ administrative law judges and may promulgate administrative regulations not inconsistent with this chapter and KRS Chapter 13A for carrying out the provisions of this chapter.
- (2) The commissioner shall develop or adopt life expectancy tables for use in making computations for the apportionment of benefits under KRS 342.120, computation of attorneys' fees under KRS 342.320, and for use in all other situations arising under this chapter in which the calculation of a life expectancy is necessary or desirable, including the computation of assessments or reserves for self-insurers. The commissioner may adopt life tables published by the United States Department of Health and Human Services or other life tables developed by a qualified entity, as determined by the commissioner. The life tables designated by the commissioner through administrative regulation in effect as of the date of an opinion, award, or settlement approved by an ~~arbitrator or~~ administrative law judge shall apply to computations concerning that opinion, award, or settlement.
- (3) Processes and procedure under this chapter shall be as summary and simple as reasonably possible. The board or any member thereof or any ~~arbitrator or~~ administrative law judge for the purpose of this chapter, may subpoena witnesses, administer or cause to have administered oaths, and examine or cause to have examined those parts of the books and records of the parties to a proceeding as relate to questions in dispute.
- (4) The sheriff shall serve all subpoenas of the board ~~arbitrators,~~ and administrative law judges and shall receive the same fee as provided by law for like service in civil actions. Each witness who appears in obedience to the subpoena of the board or any ~~arbitrator or~~ administrative law judge shall receive for attendance the fees and mileage for witnesses in civil cases in the Circuit Courts.
- (5) The Circuit Court shall, on application of the board, any member thereof, or any ~~arbitrator or~~ administrative law judge, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers, and records.

Section 16. KRS 342.265 is amended to read as follows:

- (1) If the employee and employer and special fund or any of them reach an agreement conforming to the provisions of this chapter in regard to compensation, a memorandum of the agreement signed by the parties or their representatives shall be filed with the commissioner, and, if approved by an ~~arbitrator or~~ administrative law judge, shall be enforceable pursuant to KRS 342.305. Where all parties have not joined in the settlement agreement, it shall not be approved unless it is certified that the party not participating in the settlement has been served with a copy of the agreement not less than ten (10) days prior to submission of the agreement for approval. This provision shall not be construed to prevent the voluntary payment of compensation for the periods and in the amounts prescribed by this chapter, but nothing shall operate as a final settlement except a memorandum of agreement filed with the commissioner and approved by the ~~arbitrator or~~ administrative law judge. Upon claims settled after December 12, 1996, the special fund shall have the option of settling its liability for income benefits on the same terms as those reached between the employee and employer. Notice of the special fund exercise of the option granted in this subsection shall be made by letter of the director of the special fund mailed to the parties within ten (10) days of receipt by the director of a copy of the agreement.
- (2) Settlement agreements concluded after *the effective date of this Act* ~~March 31, 1997,~~ providing for commuted lump-sum payment of future income benefits which would otherwise be payable in amounts greater than *one hundred* ~~ten~~ dollars ~~(\$100)~~ ~~(\$10)~~ per week shall not be approved unless there is reasonable assurance that the worker will have an adequate source of income during disability. This subsection is remedial and applies to all pending and future claims.
- (3) Upon lump-sum settlement of future periodic payments, the discount rate used in the calculation of the settlement amount shall not exceed a reasonable amount fixed by the commissioner. For settlements approved after December 12, 1996, until December 31, 1997, the true discount rate shall be six percent (6%) compounded annually on each payment. Before January 1 of each year commencing in ~~2001~~ ~~1998~~, the commissioner shall fix the discount rate to be utilized in the succeeding year based *at one-half of one percent (0.5%) below* ~~upon~~ the interest rate paid upon ten (10) year United States Treasury Notes as of ~~August~~ ~~July~~ 1 of the preceding year.

- (4) If the parties have previously filed an agreement which has been approved by the administrative law judge ~~or arbitrator~~, and compensation has been paid or is due in accordance therewith and the parties thereafter disagree, either party may invoke the provisions of KRS 342.125, which remedy shall be exclusive.
- (5) An application for resolution of claim shall be held in abeyance during any period voluntary payments of income benefits are being made under any benefit sections of this chapter to the maximum which the employee's wages shall entitle unless it shall be shown that the prosecution of the employee's claim would be prejudiced by delay.

Section 17. KRS 342.270 is amended to read as follows:

- (1) If the parties fail to reach an agreement in regard to compensation under this chapter, either party may make written application for resolution of claim. The application must be filed within two (2) years after the accident, or, in case of death, within two (2) years after the death, or within two (2) years after the cessation of voluntary payments, if any have been made. When the application is filed by the employee or during the pendency of that claim, he shall join all causes of action against the named employer which have accrued and which are known, or should reasonably be known, to him. Failure to join all accrued causes of action will result in such claims being barred under this chapter as waived by the employee.
- (2) Except with respect to claims for benefits by reason of coal workers' pneumoconiosis, the commissioner shall issue notice of the filing to all parties and shall promptly assign the claim to an **administrative law judge**~~arbitrator for benefit review~~. The **administrative law judge**~~arbitrator~~ shall facilitate the exchange of information pertinent to the claim pursuant to administrative regulations promulgated by the commissioner. Within forty-five (45) days of the date of issuance of the notice required by this section, the employer or carrier shall file notice of claim denial or acceptance, setting forth specifically those material matters which are admitted, those which are denied, and the basis of any denial of the claim.
- (3) ~~(a) The arbitrator shall conduct proceedings as necessary to the resolution of the claim and may order the parties to appear for a benefit review conference, or submit medical reports and other information, or refer the employee for medical evaluation.~~  
~~(b) If an arbitrator determines in his discretion that a pending claim presents factual issues best resolved through hearing before an administrative law judge, the arbitrator may enter an order transferring the claim to an administrative law judge for further proceedings.~~
- ~~(4) Except where compelling circumstances justify delay and except as provided in subsection (3)(b) of this section, the arbitrator shall render a written determination upon all matters at issue within ninety (90) days of the assignment of the claim. Through written order, the arbitrator may grant or deny any benefit afforded by this chapter, including interlocutory relief.~~
- ~~(5) Unless timely appeal is filed as set forth in KRS 342.275, the written determination of the arbitrator shall be a final order enforceable under the provisions of KRS 342.305.~~
- ~~(6) Benefit review conferences shall be held at a place designated by the commissioner, provided that the proceedings shall be held within the boundaries of the Commonwealth.~~
- ~~(7) Within one hundred twenty (120) days of the effective date of this Act~~~~December 12, 1996~~, the commissioner shall promulgate administrative regulations establishing procedures for the resolution of claims~~, which shall include benefit review~~. The administrative regulations promulgated pursuant to the provisions of this subsection shall be effective on an emergency basis and be applied to all pending claims.

Section 18. KRS 342.275 is amended to read as follows:

- ~~(1) Within thirty (30) days after the filing of the benefit review determination with the commissioner, any party may appeal that determination by filing a request for hearing before an administrative law judge. Proceedings before the administrative law judge shall be de novo but subject to penalties for unreasonable proceedings under KRS 342.310.~~
- ~~(2)~~ The commissioner shall promptly issue notice of the assignment of the claim to an administrative law judge, time for presentation of proof and of the time and place of a **benefit review conference**~~hearing~~. The administrative law judge may confer informally with the parties for the purpose of defining and narrowing the issues, discussing settlement, and considering other relevant matters that may aid in the disposition of the case.
- ~~(2)(3)~~ The administrative law judge may grant continuances **or grant or deny any benefits afforded under this chapter, including interlocutory relief**, according to criteria established in administrative regulations

promulgated by the commissioner. The administrative law judge shall render the award, order, or decision within sixty (60) days following the final hearing unless extension is mutually agreed to by all parties. The award, order, or decision, together with a statement of the findings of fact, rulings of law, and any other matters pertinent to the question at issue shall be filed with the record of proceedings, and a copy of the award, order, or decision shall immediately be sent to the parties in dispute.

Section 19. KRS 342.281 is amended to read as follows:

Within fourteen (14) days from the date of the award, order, or decision any party may file a petition for reconsideration of the award, order, or decision of the ~~the [arbitrator or]~~ administrative law judge. The petition for reconsideration shall clearly set out the errors relied upon with the reasons and argument for reconsideration of the pending award, order, or decision. All other parties shall have ten (10) days thereafter to file a response to the petition. The administrative law judge shall be limited in the review to the correction of errors patently appearing upon the face of the award, order, or decision and shall overrule the petition for reconsideration or make any correction within ten (10) days after submission.

Section 20. KRS 342.305 is amended to read as follows:

Any party in interest may file in the Circuit Court of the county in which the injury occurred a certified copy of a memorandum of agreement approved by the ~~the [arbitrator or]~~ administrative law judge, or of an order or decision of the ~~arbitrator,~~ administrative law judge~~[,] or board,~~ or of an award of the ~~the [arbitrator or]~~ administrative law judge unappealed from, or of an award of the board rendered upon an appeal whether or not there is a motion to reopen or review pending under KRS 342.125. The court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same as though it had been rendered in a suit duly heard and determined by that court. Any such judgment, unappealed from or affirmed on appeal or modified in obedience to the mandate of the Court of Appeals, shall be modified to conform to any decision of the ~~the [arbitrator or]~~ administrative law judge ending, diminishing, or increasing any weekly payment under the provisions of KRS 342.125 upon a presentation to it of a certified copy of such decision.

Section 21. KRS 342.310 is amended to read as follows:

- (1) If any ~~[arbitrator,~~ administrative law judge, the board, or any court before whom any proceedings are brought under this chapter determines that such proceedings have been brought, prosecuted, or defended without reasonable ground, he or it may assess the whole cost of the proceedings which shall include actual expenses but not be limited to the following: court costs, travel expenses, deposition costs, physician expenses for attendance fees at depositions, attorney fees, and all other out-of-pocket expenses upon the party who has so brought, prosecuted, or defended them.
- (2) If any ~~[arbitrator,~~ administrative law judge, the board, or any court before whom any proceedings are brought under this chapter determines that a party has committed acts in violation of KRS 342.335(1) or (2), that party may be ordered to make restitution for any compensation paid as a result of the commission of such acts.

Section 22. KRS 342.315 is amended to read as follows:

- (1) The commissioner shall contract with the University of Kentucky and the University of Louisville medical schools to evaluate workers who have had injuries or become affected by occupational diseases covered by this chapter. Referral for evaluation may be made to one (1) of the medical schools whenever a medical question is at issue.
- (2) The physicians and institutions performing evaluations pursuant to this section shall render reports encompassing their findings and opinions in the form prescribed by the commissioner. The clinical findings and opinions of the designated evaluator shall be afforded presumptive weight by ~~by [arbitrators and]~~ administrative law judges and the burden to overcome such findings and opinions shall fall on the opponent of that evidence. When ~~[arbitrators or]~~ administrative law judges reject the clinical findings and opinions of the designated evaluator, they shall specifically state in the order the reasons for rejecting that evidence.
- (3) The commissioner~~[-an arbitrator,]~~ or an administrative law judge may, upon the application of any party or upon his own motion, direct appointment by the commissioner, pursuant to subsection (1) of this section, of a medical evaluator to make any necessary medical examination of the employee. Such medical evaluator shall file with the commissioner within fifteen (15) days after such examination a written report. The medical evaluator appointed may charge a reasonable fee not exceeding fees established by the commissioner for those services.

- (4) Within thirty (30) days of the receipt of a statement for the evaluation, the employer or carrier shall pay the cost of the examination. Upon notice from the commissioner that an evaluation has been scheduled, the insurance carrier shall forward within seven (7) days to the employee the expenses of travel necessary to attend the evaluation at a rate equal to that paid to state employees for travel by private automobile while conducting state business.
- (5) Upon claims in which it is finally determined that the injured worker was not the employee at the time of injury of an employer covered by this chapter, the special fund shall reimburse the carrier for any evaluation performed pursuant to this section for which the carrier has been erroneously compelled to make payment.
- (6) Not less often than annually the designee of the secretary of the Cabinet for Health Services shall assess the performance of the medical schools and render findings as to whether evaluations conducted under this section are being rendered in a timely manner, whether examinations are conducted in accordance with medically recognized techniques, whether impairment ratings are in conformity with standards prescribed by the latest edition available of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association, and whether coal workers' pneumoconiosis examinations are conducted in accordance with the standards prescribed in this chapter.

Section 23. KRS 342.316 is amended to read as follows:

- (1)
  - (a) The employer liable for compensation for occupational disease shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease. During any period in which this section is applicable to a coal mine, an operator who acquired it or substantially all of its assets from a person who was its operator on and after January 1, 1973, shall be liable for, and secure the payment of, the benefits which would have been payable by the prior operator under this section with respect to miners previously employed in the mine if it had not been acquired by such later operator. At the same time, however, this subsection does not relieve the prior operator of any liability under this section. Also, it does not affect whatever rights the later operator might have against the prior operator; and
  - (b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later.
- (2) The procedure with respect to the giving of notice and determination of claims in occupational disease cases and the compensation and medical benefits payable for disability or death due to the disease shall be the same as in cases of accidental injury or death under the general provisions of this chapter, except that notice of claim shall be given to the employer as soon as practicable after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted the disease, or a diagnosis of the disease is first communicated to him, whichever shall first occur.
- (3) The procedure for filing occupational disease claims shall be as follows:
  - (a) The application for resolution of claim shall set forth the complete work history of the employee with a concise description of injurious exposure to a specific occupational disease, together with the name and addresses of the employer or employers with the approximate dates of employment. The application shall also include at least one (1) written medical report supporting his claim. This medical report shall be made on the basis of clinical or X-ray examination performed in accordance with accepted medical standards and shall contain full and complete statements of all examinations performed and the results thereof. The report shall be made by a duly-licensed physician. The commissioner shall promulgate administrative regulations which prescribe the format of the medical report required by this section and the manner in which the report shall be completed.
    1. For coal-related occupational pneumoconiosis claims, each clinical examination shall include a chest X-ray examination as well as spirometric tests when pulmonary dysfunction is alleged.
    2. For other compensable occupational pneumoconiosis claims, each clinical examination shall include a chest X-ray examination and appropriate pulmonary function tests.
  - (b) To be admissible, medical evidence offered in any proceeding under this chapter for determining a claim for occupational pneumoconiosis resulting from exposure to coal dust shall comply with accepted medical standards as follows:



1. Chest X-rays shall be of acceptable quality with respect to exposure and development and shall be indelibly labeled with the date of the X-ray and the name and Social Security number of the claimant. Physicians' reports of X-ray interpretations shall: identify the claimant by name and Social Security number; include the date of the X-ray and the date of the report; classify the X-ray interpretation using the latest ILO Classification and be accompanied by a completed copy of the latest ILO Classification report.
  2. Spirometric testing shall be conducted in accordance with the standards recommended in the latest edition available of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association and the 1978 ATS epidemiology standardization project with the exception that the predicted normal values for lung function shall not be adjusted based upon the race of the subject. The FVC or the FEV1 values shall represent the largest of such values obtained from three (3) acceptable forced expiratory volume maneuvers as corrected to BTPS (body temperature, ambient pressure and saturated with water vapor at these conditions) and the variance between the two (2) largest acceptable FVC values shall be either less than five percent (5%) of the largest FVC value or less than one hundred (100) milliliters, whichever is greater. The variance between the two (2) largest acceptable FEV1 values shall be either less than five percent (5%) of the largest FEV1 value or less than one hundred (100) milliliters, whichever is greater. Reports of spirometric testing shall include a description by the physician of the procedures utilized in conducting such spirometric testing and a copy of the spirometric chart and tracings from which spirometric values submitted as evidence were taken.
  3. The commissioner shall promulgate administrative regulations pursuant to KRS Chapter 13A as necessary to effectuate the purposes of this section. The commissioner shall periodically review the applicability of the spirometric test values contained in the latest edition available of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association and may by administrative regulation substitute other spirometric test values which are found to be more closely representative of the normal pulmonary function of the coal mining population.
  4. The procedure for determination of occupational disease claims shall be as follows:
    - a. Immediately upon receipt of an application for resolution of claim, the commissioner shall notify the responsible employer and all other interested parties and shall furnish them with a full and complete copy of the application.
    - b. The commissioner shall assign the claim to an **administrative law judge**~~arbitrator~~ and shall promptly refer the employee to such physician or medical facility as the commissioner may select for examination. The report from this examination shall be provided to all parties of record. The employee shall not be referred by the commissioner for examination within two (2) years following any prior referral for examination for the same disease.
    - c. Within forty-five (45) days following the notice of filing an application for resolution of claim, the employer or carrier shall notify the commissioner and all parties of record of its acceptance or denial of the claim. A denial shall be in writing and shall state the specific basis for the denial.
    - d. The **administrative law judge**~~arbitrator~~ shall conduct such proceedings as are necessary to resolve the claim and shall have authority to grant or deny any relief, including interlocutory relief, to order additional proof, to conduct a benefit review conference, or to take such other action as may be appropriate to resolve the claim.
    - e. Unless a voluntary settlement is reached by the parties, the **administrative law judge**~~arbitrator~~ shall issue a written determination within ninety (90) days following assignment of the claim. The written determination shall address all contested issues and shall be enforceable under KRS 342.305.
  5. The procedure for appeal from a determination of an **administrative law judge**~~arbitrator~~ shall be as set forth in KRS 342.275.
- (4) (a) The right to compensation under this chapter resulting from an occupational disease shall be forever barred unless a claim is filed with the commissioner within three (3) years after the last injurious

exposure to the occupational hazard or after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted the disease, whichever shall last occur; and if death results from the occupational disease within that period, unless a claim therefor be filed with the commissioner within three (3) years after the death; but that notice of claim shall be deemed waived in case of disability or death where the employer, or his insurance carrier, voluntarily makes payment therefor, or if the incurrence of the disease or the death of the employee and its cause was known to the employer. However, the right to compensation for any occupational disease shall be forever barred, unless a claim is filed with the commissioner within five (5) years from the last injurious exposure to the occupational hazard, except that, in cases of radiation disease or asbestos-related disease, a claim must be filed within twenty (20) years from the last injurious exposure to the occupational hazard.

- (b) Income benefits for the disease of pneumoconiosis resulting from exposure to coal dust or death therefrom shall not be payable unless the employee has been exposed to the hazards of such pneumoconiosis in the Commonwealth of Kentucky over a continuous period of not less than two (2) years during the ten (10) years immediately preceding the date of his last exposure to such hazard, or for any five (5) of the fifteen (15) years immediately preceding the date of such last exposure.
- (5) The amount of compensation payable for disability due to occupational disease or for death from the disease, and the time and manner of its payment, shall be as provided for under the general provisions of the Workers' Compensation Act, but:
  - (a) In no event shall the payment exceed the amounts that were in effect at the time of the last injurious exposure;
  - (b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later; and
  - (c) In case of death where the employee has been awarded compensation or made timely claim within the period provided for in this section, and an employee has suffered continuous disability to the date of his death occurring at any time within twenty (20) years from the date of disability, his dependents, if any, shall be awarded compensation for his death as provided for under the general provisions of the Workers' Compensation Act and in this section, except as provided in KRS 342.750(6).
- (6) If an autopsy has been performed, no testimony relative thereto shall be admitted unless the employer or his representative has available findings and reports of the pathologist or doctor who performed the autopsy examination.
- (7) No compensation shall be payable for occupational disease if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable, falsely represented himself, in writing, as not having been previously disabled, laid off, or compensated in damages or otherwise, because of the occupational disease, or failed or omitted truthfully to state to the best of his knowledge, in answer to written inquiry made by the employer, the place, duration, and nature of previous employment, or, to the best of his knowledge, the previous state of his health.
- (8) No compensation for death from occupational disease shall be payable to any person whose relationship to the deceased, which under the provisions of this chapter would give right to compensation, arose subsequent to the beginning of the first compensable disability, except only for after-born children of a marriage existing at the beginning of such disability.
- (9) Whenever any claimant misconceives his remedy and files an application for adjustment of claim under the general provisions of this chapter and it is subsequently discovered, at any time before the final disposition of the cause, that the claim for injury, disability, or death which was the basis for his application should properly have been made under the provisions of this section, then the application so filed may be amended in form or substance, or both, to assert a claim for injury, disability, or death under the provisions of this section, and it shall be deemed to have been so filed as amended on the date of the original filing thereof, and compensation may be awarded that is warranted by the whole evidence pursuant to the provisions of this chapter. When amendment of this type is submitted, further or additional evidence may be heard when deemed necessary. Nothing this section contains shall be construed to be or permit a waiver of any of the provisions of this chapter with reference to notice of time for filing of a claim, but notice of filing a claim, if given or done, shall be deemed to be a notice of filing of a claim under provisions of this chapter, if given or done within the time required by this subsection.

- (10) When an employee has an occupational disease that is covered by this chapter, the employer in whose employment he was last injuriously exposed to the hazard of the disease, and the employer's insurance carrier, if any, at the time of the exposure, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier, except as otherwise provided in this chapter.
- (11) (a) Income benefits for coal-related occupational pneumoconiosis shall be paid fifty percent (50%) by the Kentucky coal workers' pneumoconiosis fund as established in KRS 342.1242 and fifty percent (50%) by the employer in whose employment the employee was last exposed to the hazard of that occupational disease.
- (b) Compensation for all other occupational disease shall be paid by the employer in whose employment the employee was last exposed to the hazards of the occupational disease.
- (12) A concluded claim for benefits by reason of contraction of coal workers' pneumoconiosis in the severance or processing of coal shall bar any subsequent claim for benefits by reason of contraction of coal workers' pneumoconiosis, unless there has occurred in the interim between the conclusion of the first claim and the filing of the second claim at least two (2) years of employment wherein the employee was continuously exposed to the hazards of the disease in the Commonwealth.

Section 24. KRS 342.320 is amended to read as follows:

- (1) All fees of attorneys and physicians, and all charges of hospitals under this chapter, shall be subject to the approval of an administrative law judge ~~or arbitrator~~ pursuant to the statutes and administrative regulations.
- (2) ***In an original claim***, attorney's fees for services under this chapter on behalf of an employee shall be subject to the following maximum limits:
  - (a) Twenty percent (20%) of the ***first twenty-five thousand dollars (\$25,000) of the award, fifteen percent (15%) of the next ten thousand dollars (\$10,000), and five percent (5%) of the remainder of the award***, not to exceed ***a maximum fee of twelve thousand dollars (\$12,000)***~~two thousand dollars (\$2,000) for services performed up to and including the date of a written determination by the arbitrator~~. This fee shall be paid by the employee from the proceeds of the award or settlement.
  - (b)~~Upon an appeal by an employee from a written determination of an arbitrator or an award or order of an administrative law judge, a fee to be fixed by the administrative law judge upon consideration of the extent, quality, and complexity of services not to exceed twenty percent (20%) of the first twenty five thousand dollars (\$25,000) of any increased income benefits awarded, ten percent (10%) of the next fifteen thousand dollars (\$15,000) of increased income benefits, and five percent (5%) of the remainder of the additional income benefits awarded and not to exceed in all ten thousand dollars (\$10,000). This fee shall be paid by the employee from the proceeds of the award or settlement and shall be in addition to the fee, if any, awarded under paragraph (a) of this subsection.~~
  - (c)~~Upon an appeal by an employer or carrier from a written determination of an arbitrator or an award or order of an administrative law judge, if the employer or carrier does not prevail upon appeal, the administrative law judge shall fix an attorney's fee to be paid by the employer or carrier for the employee's attorney upon consideration of the extent, quality, and complexity of the services rendered not to exceed five thousand dollars (\$5,000) per level of appeal. This attorney's fee shall be in addition to any fee awarded under paragraphs (a) and (b) of this subsection.~~
  - (d)~~Attorney-client employment contracts entered into and signed prior to December 12, 1996, for injuries or date of last exposure occurring prior to December 12, 1996, shall not~~ ***after the effective date of this Act shall*** ~~be subject to the conditions of paragraph (a), (b), and (c) of this subsection, and the law existing at the date of the injury or last exposure to the hazards of an occupational disease shall apply.~~
- (3) In approving an allowance of attorney's fees, the administrative law judge ~~or arbitrator~~ shall consider the extent, complexity, and quality of services rendered, and in the case of death, the Remarriage Tables of the Dutch Royal Insurance Institute. An attorney's fee may be denied or reduced upon proof of solicitation by the attorney. However, this provision shall not be construed to preclude advertising in conformity with standards prescribed by the Kentucky Supreme Court. ~~The date of injury or last exposure shall control the applicable maximum attorney's fee.~~
- (4) No attorney's fee in any case involving benefits under this chapter shall be paid until the fee is approved by the ~~arbitrator or~~ administrative law judge, and any contract for the payment of attorney's fees otherwise than as

provided in this section shall be void. The motion for approval of an attorney's fee shall be submitted within thirty (30) days following finality of the **claim** ~~[written determination of an arbitrator or last appealable order of an administrative law judge]~~. Except when the attorney's fee is to be paid by the employer or carrier, the attorney's fee shall be paid in one (1) of the following ways:

- (a) The employee may pay the attorney's fee out of his personal funds or from the proceeds of a lump-sum settlement; or
  - (b) The ~~[arbitrator or]~~ administrative law judge, upon request of the employee, may order the payment of the attorney's fee in a lump sum directly to the attorney of record and deduct the attorney's fee from the weekly benefits payable to the employee in equal installments over the duration of the award or until the attorney's fee has been paid, commuting sufficient sums to pay the fee.
- (5) At the commencement of the attorney-client relationship, the attorney shall explain to the employee the methods by which this section provides for the payment of the attorney's fee, and the employee shall select the method in which his attorney's fee is to be paid. His selection and statement that he fully understands the method to be used shall be submitted by his attorney, on a notarized form signed by the employee, at the time the motion for approval of the attorney's fee is submitted. The commissioner shall develop the format and content of the form to be used pursuant to this section. The form to be used shall list on its face all options permitted in this section for the payment of an attorney's fees and contain an explanation in nontechnical language of each method.
- (6) The General Assembly declares that by the enactment of KRS 342.316(3), it is the legislative intent to encourage settlement and prompt administrative handling of those claims and thereby reduce expenses to claimants for compensation under the provisions of KRS 342.316, and the administrative law judge ~~and arbitrator~~ shall give due regard to this legislative intent in the handling of uncontested claims and the allowance of attorney's fees therein.
- (7) In a claim that has been reopened pursuant to the provisions of this chapter, an attorney's fee may be awarded by the ~~[arbitrator or]~~ administrative law judge subject to the limits set forth in subsection (2) of this section. In awarding the attorney's fee, the ~~[arbitrator or]~~ administrative law judge shall consider the factors set forth in subsection (3) of this section. If no additional amount is recovered upon reopening, no attorney's fee shall be awarded. No attorney's fee shall be allowed or approved exceeding the amounts provided in subsection (2)(a) ~~(b)~~ of this section applicable to any additional amount recovered.
- (8) Attorney's fees for representing employers in proceedings under this chapter pursuant to contract with the employer shall be subject to approval of the administrative law judge ~~or arbitrator~~ in the same manner as prescribed for attorney representation of employees. Employer attorney's fees are subject to the **limitation of twelve thousand dollars (\$12,000)** ~~[same limitations as to]~~ maximum fees ~~[at each level]~~ except that fees for ~~representation before administrative law judges shall not exceed ten thousand dollars (\$10,000) and fees for representation before arbitrators shall not exceed two thousand dollars (\$2,000). Fees for~~ representing employers shall not be dependent upon the result achieved. ***Employer attorney's fees may be paid on a periodic basis while a claim is adjudicated and the payments need not be approved until the claims resolution process is completed.*** Fees for legal services in presenting a claim for reimbursement to the director of the Kentucky coal workers' pneumoconiosis fund shall not exceed one thousand dollars (\$1,000). All such approved fees shall be paid by the employer and in no event shall exceed the amount the employer agreed by contract to pay.

~~[(9) Notwithstanding any provisions of law to the contrary, the provisions of this chapter shall not be construed or interpreted to prohibit nonattorney representation of injured workers covered by this chapter.]~~

Section 25. KRS 342.325 is amended to read as follows:

All questions arising under this chapter, if not settled by agreement of the parties interested therein, with the approval of the ~~[arbitrator or]~~ administrative law judge, shall be determined by the ~~[arbitrator or]~~ administrative law judge except as otherwise provided in this chapter.

Section 26. KRS 342.435 is amended to read as follows:

Annually on or before the fifteenth day of December, the commissioner shall make a report to the Governor for the preceding fiscal year, which shall include a statement of the number of awards made and of claims rejected by the board and each ~~[arbitrator and]~~ administrative law judge, a general statement of the causes of accident leading to the injuries for which awards were made or rejected claims based, together with any other information which the

commissioner deems proper to call to the attention of the Governor, including any recommendations he may have to make, and it shall be the duty of the commissioner to publish and distribute among employers and employees any general information as to the business transacted by the department as may be useful and necessary. The annual report shall not exceed ten thousand (10,000) copies. All printing of the department shall be done by the contractor or contractors for public printing, subject to the provisions of the general laws governing public printing applicable thereto.

Section 27. KRS 342.700 is amended to read as follows:

- (1) Whenever an injury for which compensation is payable under this chapter has been sustained under circumstances creating in some other person than the employer a legal liability to pay damages, the injured employee may either claim compensation or proceed at law by civil action against the other person to recover damages, or proceed both against the employer for compensation and the other person to recover damages, but he shall not collect from both. If the injured employee elects to proceed at law by civil action against the other person to recover damages, he shall give due and timely notice to the employer and the special fund of the filing of the action. If compensation is awarded under this chapter, the employer, his insurance carrier, the special fund, and the uninsured employer's fund, or any of them, having paid the compensation or having become liable therefor, may recover in his or its own name or that of the injured employee from the other person in whom legal liability for damages exists, not to exceed the indemnity paid and payable to the injured employee, less the employee's legal fees and expense. The notice of civil action shall conform in all respects to the requirements of KRS 411.188(2).
- (2) A principal contractor, intermediate, or subcontractor shall be liable for compensation to any employee injured while in the employ of any one (1) of his intermediate or subcontractors and engaged upon the subject matter of the contract, to the same extent as the immediate employer. Any principal, intermediate, or subcontractor who pays the compensation may recover the amount paid from any subordinate contractor through whom he has been rendered liable under this section. Every claim to compensation under this subsection shall in the first instance be presented to and instituted against the immediate employer, but the proceedings shall not constitute a waiver of the employee's rights to recover compensation under this chapter from the principal or intermediate contractor nor shall the claim be barred by limitations, if the claim is filed against the principal or intermediate contractor within one (1) year after a final unappealed order has been rendered by an ~~arbitrator or~~ administrative law judge determining that immediate employer has insufficient security to pay the full and maximum benefits that could be determined to be due him under this chapter. The collection of full compensation from one employer shall bar recovery by the employee against any other. But he shall not collect from all a total compensation in excess of the amount for which his immediate employer is liable. This subsection shall apply only in cases where the injury occurred on, in, or about the premises on which the principal contractor has undertaken to execute work or which are under his control otherwise or management.
- (3) It shall be considered to be contrary to public policy and unlawful for any owner or employer to require another employer to waive its remedies granted by this section as a condition of receiving a contract or purchase order. Furthermore, in selecting between two (2) or more contractors or suppliers, consideration may not be given by an owner or employer to whether one (1) contractor or supplier voluntarily waives its remedies under this section or offers to accept lesser compensation than another contractor or supplier for that waiver of remedies.

Section 28. KRS 342.710 is amended to read as follows:

- (1) One of the primary purposes of this chapter shall be restoration of the injured employee to gainful employment, and preference shall be given to returning the employee to employment with the same employer or to the same or similar employment.
- (2) The commissioner shall continuously study the problems of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all rehabilitation facilities, both private and public.
- (3) An employee who has suffered an injury covered by this chapter shall be entitled to prompt medical rehabilitation services for whatever period of time is necessary to accomplish physical rehabilitation goals which are feasible, practical, and justifiable. When as a result of the injury he is unable to perform work for which he has previous training or experience, he shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him to suitable employment. In all such instances, the ~~arbitrator or~~ administrative law judge shall inquire whether such services have been voluntarily offered and accepted. The ~~arbitrator or~~ administrative law judge on his own motion, or upon application of any party or carrier, after affording the parties an opportunity to be heard, may refer the

employee to a qualified physician or facility for evaluation of the practicability of, need for, and kind of service, treatment, or training necessary and appropriate to render him fit for a remunerative occupation. Upon receipt of such report, the ~~arbitrator or~~ administrative law judge may order that the services and treatment recommended in the report, or such other rehabilitation treatment or service likely to return the employee to suitable, gainful employment, be provided at the expense of the employer or his insurance carrier. Vocational rehabilitation training, treatment, or service shall not extend for a period of more than fifty-two (52) weeks, except in unusual cases when by special order of the ~~arbitrator or~~ administrative law judge, after hearing and upon a finding, determined by sound medical evidence which indicates such further rehabilitation is feasible, practical, and justifiable, the period may be extended for additional periods.

- (4) Where rehabilitation requires residence at or near the facility or institution, away from the employee's customary residence, reasonable cost of his board, lodging, or travel shall be paid for by the employer or his insurance carrier.
- (5) Refusal to accept rehabilitation pursuant to an order of an ~~arbitrator or~~ administrative law judge shall result in a fifty percent (50%) loss of compensation for each week of the period of refusal.
- (6) The commissioner shall cooperate on a reciprocal basis with the Department of Vocational Rehabilitation and the Department for Employment Services of the Kentucky Cabinet for Workforce Development. In the event medical treatment, medical rehabilitation services, or vocational rehabilitation services are purchased for an injured employee by the Department of Vocational Rehabilitation or Department for Employment Services following the refusal by the employer or his insurance carrier to provide such services, the ~~arbitrator or~~ administrative law judge, after affording the parties an opportunity to be heard, may order reimbursement of the cost of such treatment or services by the employer or his insurance carrier as apportioned in the award. This section shall not be interpreted to require mandatory evaluation of employees based on length of disability. Any administrative regulations promulgated pursuant to this section that require mandatory referral to a qualified rehabilitation counselor shall expire on April 4, 1994.
- (7) An employee who is enrolled and participating in a program of rehabilitation training pursuant to this section may elect to receive an acceleration of benefits as awarded under KRS 342.730. Such acceleration shall be available to the employee during the period of retraining, but in no event shall be paid in a weekly amount greater than sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wage upon which the award is based, not to exceed one hundred percent (100%) of the state average weekly wage. Upon successful completion of the rehabilitation program, the total of all accelerated benefits paid shall be deducted on a dollar-for-dollar basis, without discount, from weekly benefits otherwise due the employee subject to the maximum amount of the award. Such remaining benefits, if any, shall then be divided by the number of weeks remaining payable under the award, and that amount shall be the weekly benefit due the employee. If a program of rehabilitation training is terminated by the employee prior to completion, all sums paid on an accelerated basis shall be discounted at the rate set forth in KRS 342.265 and then deducted on a dollar-for-dollar basis from weekly benefits otherwise due the employee subject to the maximum amount of the award. Such remaining benefits, after the discount, shall be divided by the number of weeks remaining payable under the award, and that amount shall be the weekly benefit due the employee. In no event shall this subsection be construed as requiring payment of benefits in excess of the total of those benefits which would otherwise be payable under the award.

Section 29. KRS 342.715 is amended to read as follows:

Notwithstanding the provisions of KRS 342.730, during the period the employee is eligible for permanent total disability benefits and is actively participating in a vocational or physical rehabilitation program, pursuant to an order of the ~~arbitrator or~~ administrative law judge, the employee's benefits shall be calculated by taking eighty percent (80%) of his average weekly wage, but not more than one hundred percent (100%) of the state's average weekly wage, times the permanent disability rating as determined in this chapter.

Section 30. KRS 342.730 is amended to read as follows:

- (1) Except as provided in KRS 342.732, income benefits for disability shall be paid to the employee as follows:
  - (a) For temporary or permanent total disability, sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined in KRS 342.740 during that disability. Nonwork-related impairment and conditions compensable under

KRS 342.732 and hearing loss covered in KRS 342.7305 shall not be considered in determining whether the employee is totally disabled for purposes of this subsection.

- (b) For permanent partial disability, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by the permanent impairment rating caused by the injury or occupational disease as determined by "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available, times the factor set forth in the table that follows:

AMA Impairment	Factor
0 to 5%	<b>0.65</b> <del>{0.75}</del>
6 to 10%	<b>0.85</b> <del>{1.00}</del>
11 to 15%	<b>1.00</b> <del>{1.25}</del>
16 to 20%	<b>1.00</b> <del>{1.50}</del>
21 to 25%	<b>1.15</b> <del>{1.75}</del>
26 to 30%	<b>1.35</b> <del>{2.00}</del>
31 to 35%	<b>1.50</b> <del>{2.25}</del>
36% and above	<b>1.70</b> <del>{2.50}</del>

Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.

- (c) 1. If, due to an injury, an employee does not retain the physical capacity to return to the type of work that the employee performed at the time of injury, the benefit for permanent partial disability shall be **multiplied by three (3)**~~{one and one-half (1 1/2)}~~ times the amount otherwise determined under paragraph (b) of this subsection, but this provision shall not be construed so as to extend the duration of payments; ~~or~~+
2. If an employee returns to work at a weekly wage equal to or greater than the average weekly wage at the time of injury, the weekly benefit for permanent partial disability **shall be determined**~~{otherwise payable}~~ under paragraph (b) of this subsection~~{shall be reduced by one-half (1/2)}~~ for each week during which that employment is sustained. During any period of cessation of that employment, temporary or permanent, for any reason, with or without cause, payment of weekly benefits for permanent partial disability during the period of cessation shall be **two (2) times the amount otherwise payable under**~~{restored to the rate prescribed in}~~ paragraph (b) of this subsection. ***This provision shall not be construed so as to extend the duration of payments.***
3. ***Recognizing that limited education and advancing age impact an employee's post-injury earning capacity, an education and age factor, when applicable, shall be added to the income benefit multiplier set forth in paragraph (c)1. of this subsection. If at the time of injury, the employee had less than eight (8) years of formal education, the multiplier shall be increased by four-tenths (0.4); if the employee had less than twelve (12) years of education or a high school General Educational Development diploma, the multiplier shall be increased by two-tenths (0.2); if the employee was age sixty (60) or older, the multiplier shall be increased by six-tenths (0.6); if the employee was age fifty-five (55) or older, the multiplier shall be increased by four-tenths (0.4); or if the employee was age fifty (50) or older, the multiplier shall be increased by two-tenths (0.2).***
4. Notwithstanding the provisions of KRS 342.125, a claim may be reopened at any time during the period of permanent partial disability in order to conform the award payments with the requirements of subparagraph 2. of this paragraph.
- (d) For permanent partial disability, if an employee has a permanent disability rating of fifty percent (50%) or less as a result of a work-related injury, the compensable permanent partial disability period shall be

four hundred twenty-five (425) weeks, and if the permanent disability rating is greater than fifty percent (50%), the compensable permanent partial disability period shall be five hundred twenty (520) weeks from the date the impairment or disability exceeding fifty percent (50%) arises. Benefits payable for permanent partial disability shall not exceed ninety-nine percent (99%) of sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage as determined under KRS 342.740 and shall not exceed seventy-five percent (75%) of the state average weekly wage, except for benefits payable pursuant to paragraph (c)1. of this subsection, which shall not exceed one hundred percent (100%) of the state average weekly wage, nor shall benefits for permanent partial disability be payable for a period exceeding five hundred twenty (520) weeks, notwithstanding that multiplication of impairment times the factor set forth in paragraph (b) of this subsection would yield a greater percentage of disability.

- (e) For permanent partial disability, impairment for nonwork-related disabilities, conditions previously compensated under this chapter, conditions covered by KRS 342.732, and hearing loss covered in KRS 342.7305 shall not be considered in determining the extent of disability or duration of benefits under this chapter.
- (2) The period of any income benefits payable under this section on account of any injury shall be reduced by the period of income benefits paid or payable under this chapter on account of a prior injury if income benefits in both cases are for disability of the same member or function, or different parts of the same member or function, and the income benefits payable on account of the subsequent disability in whole or in part would duplicate the income benefits payable on account of the pre-existing disability.
- (3) Subject to the limitations contained in subsection (4) of this section, when an employee, who has sustained disability compensable under this chapter, and who has filed, or could have timely filed, a valid claim in his lifetime, dies from causes other than the injury before the expiration of the compensable period specified, portions of the income benefits specified and unpaid at the individual's death, whether or not accrued or due at his death, shall be paid, under an award made before or after the death, for the period specified in this section, to and for the benefit of the persons within the classes at the time of death and in the proportions and upon the conditions specified in this section and in the order named:
  - (a) To the widow or widower, if there is no child under the age of eighteen (18) or incapable of self-support, benefits at fifty percent (50%) of the rate specified in the award; or
  - (b) If there are both a widow or widower and such a child or children, to the widow or widower, forty-five percent (45%) of the benefits specified in the award, or forty percent (40%) of those benefits if such a child or children are not living with the widow or widower; and, in addition thereto, fifteen percent (15%) of the benefits specified in the award to each child. Where there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided among all the children, share and share alike; or
  - (c) If there is no widow or widower but such a child or children, then to the child or children, fifty percent (50%) of the benefits specified in the award to one (1) child, and fifteen percent (15%) of those benefits to a second child, to be shared equally. If there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided equally among all the children; or
  - (d) If there is no survivor in the above classes, then the parent or parents wholly or partly actually dependent for support upon the decedent, or to other wholly or partly actually dependent relatives listed in paragraph (g) of subsection (1) of KRS 342.750, or to both, in proportions that the commissioner provides by administrative regulation.
  - (e) To the widow or widower upon remarriage, up to two (2) years, benefits as specified in the award and proportioned under paragraphs (a) or (b) of this subsection, if the proportioned benefits remain unpaid, to be paid in a lump sum.
- (4) All income benefits payable pursuant to this chapter shall terminate as of the date upon which the employee qualifies for normal old-age Social Security retirement benefits under the United States Social Security Act, 42 U.S.C. secs. 301 to 1397f, or two (2) years after the employee's injury or last exposure, whichever last occurs. In like manner all income benefits payable pursuant to this chapter to spouses and dependents shall terminate when such spouses and dependents qualify for benefits under the United States Social Security Act by reason of the fact that the worker upon whose earnings entitlement is based would have qualified for normal old-age Social Security retirement benefits.



- (5) All income benefits pursuant to this chapter otherwise payable for temporary total and permanent total disability shall be offset by unemployment insurance benefits paid for unemployment during the period of temporary total or permanent total disability.
- (6) All income benefits otherwise payable pursuant to this chapter shall be offset by payments made under an exclusively employer-funded disability or sickness and accident plan which extends income benefits for the same disability covered by this chapter, except where the employer-funded plan contains an internal offset provision for workers' compensation benefits which is inconsistent with this provision.
- (7) If an employee receiving a permanent total disability award returns to work, that employee shall notify the employer, payment obligor, insurance carrier, or special fund as applicable.

Section 31. KRS 342.732 is amended to read as follows:

- (1) Notwithstanding any other provision of this chapter, income benefits and retraining incentive benefits for occupational pneumoconiosis resulting from exposure to coal dust in the severance or processing of coal shall be paid as follows:
  - (a) If an employee has a radiographic classification of category 1/1 or 1/2, based on the latest ILO International Classification of Radiographics, resulting from exposure to coal dust, which is validated by report of X-ray which conforms to the standards for X-rays contained in subsection (3) of KRS 342.316, and respiratory impairment resulting from exposure to coal-mine dust as evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the "Guides to the Evaluation of Permanent Impairment" of the American Medical Association, the employee shall be awarded a one (1) time only retraining incentive benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage as determined by KRS 342.740 but not more than seventy-five percent (75%) of the state average weekly wage, payable semimonthly for a period not to exceed one hundred four (104) weeks. These benefits shall be paid only while the employee is enrolled and actively and successfully participating as a full-time student taking twenty-four (24) or more instruction hours per week in a bona fide training or education program approved under administrative regulations to be promulgated by the commissioner. The employer shall also pay, directly to the institution conducting the training or education program, instruction, tuition, and material costs not to exceed five thousand dollars (\$5,000). The benefit shall not be paid for a period in which the employee ceases to participate in the program. In no event shall the benefit be paid to the employee while the employee is working in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a). The period of one hundred four (104) weeks during which this benefit is payable shall begin no later than the one-hundred-eightieth day after the order awarding the benefit becomes final. If an employee completes an approved program of training in less than one hundred four (104) weeks and that employee has accepted a bona fide offer of employment at a location more than fifty (50) miles from the employee's usual residence in the field for which the employee has been trained, the employee shall be paid in a lump sum for relocation the lesser of the sum of three thousand dollars (\$3,000) or the amount remaining in unpaid weekly training benefits as provided by this section.
  - (b) If it is determined that an employee has a radiographic classification of category 1/1 or 1/2, based on the latest ILO International Classification of Radiographics and respiratory impairment resulting from exposure to coal dust as evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association, or category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values, there shall be an irrebuttable presumption that the employee has an occupational disability rating of fifty percent (50%) resulting from exposure to coal dust, and the employee shall be awarded an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage multiplied by the disability rating of fifty percent (50%) but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740. The award shall be payable for a period not to exceed four hundred twenty-five (425) weeks, but in no event shall benefits be paid under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

- (c) If it is determined that an employee has a radiographic classification of category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis, based on the latest ILO International Classification of Radiographics, and respiratory impairment as evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association or category 3/2 or 3/3 pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values, there shall be an irrebuttable presumption that the employee is seventy-five percent (75%) disabled resulting from exposure to coal dust and the employee shall be awarded income benefits which shall be equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage multiplied by the disability rating of seventy-five percent (75%) but not to exceed seventy-five percent (75%) of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined by KRS 342.740. The award shall be payable for a period not to exceed five hundred twenty (520) weeks. Income benefits awarded under this paragraph shall be payable to the employee during the disability, but in no event shall benefits be paid under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).
- (d) If it is determined that an employee has radiographic classification of 3/2 or 3/3 occupational pneumoconiosis based on the latest ILO International Classification of Radiographs, and respiratory impairment evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values contained in the latest edition of the "Guides to the Evaluation of Permanent Impairment" of the American Medical Association, or progressive massive fibrosis, based on the latest ILO International Classification of Radiographics, there shall be an irrebuttable presumption that the employee is totally disabled resulting from exposure to coal dust, and the employee shall be awarded income benefits equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the average weekly wage of the state as determined by KRS 342.740. Income benefits awarded under this paragraph shall be payable to the employee during such disability, but in no event shall benefits be paid under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).
- (2) The presence of respiratory impairment resulting from exposure to coal dust shall be established by using the largest forced vital capacity (FVC) value or the largest forced expiratory volume in one second (FEV1) value determined from the totality of all such spirometric testing performed in compliance with accepted medical standards.
- (3) When valid spirometric tests are not provided and a physician certifies to the administrative law judge ~~or arbitrator~~ that spirometric testing is not medically indicated because of the permanent physical condition of the employee, the administrative law judge ~~or arbitrator~~ shall make his decision on the basis of evidence admitted which establishes the existence of a diagnosis of occupational pneumoconiosis and respiratory impairment due to the occupational pneumoconiosis. The evidence submitted by the employee shall include one (1) or more arterial blood gas studies performed in accordance with accepted medical standards. Income benefits shall not be awarded in the absence of valid spirometric tests if the claimant's PO2 arterial blood gas value is equal to or higher than one (1) standard deviation from the normal value obtained by the formula  $(103.5 - 0.42X)$ , where X equals the claimant's age at the time of the arterial blood gas study.
- (4) In no event shall income benefits awarded under this section be stacked or added to income benefits awarded under KRS 342.730 to extend the period of disability.

Section 32. KRS 342.735 is amended to read as follows:

- (1) The commissioner shall promulgate administrative regulations to expedite the payment of temporary total disability and medical expense benefits.
- (2) The commissioner may promulgate administrative regulations incorporating managed care intended to reduce costs or to speed the delivery or payment of medical services to employees receiving medical and related benefits under this chapter.
- (3) The commissioner shall promulgate administrative regulations pursuant to KRS Chapter 13A establishing an expedited method for resolving medical issues prior to the filing of a claim with the Department of Workers' Claims. The administrative regulations shall permit an employee or other interested party, prior to the filing of

a claim, to request a determination by an ~~arbitrator or~~ administrative law judge on medical issues relating to the reasonableness or appropriateness of the proposed medical care or relating to the obligation of the employer or the employer's insurance carrier to make payment of contested medical bills. However, the employee has the burden of proof to show the medical expenses are related to the injury, reasonable and necessary prior to an application of benefits being filed and before an award or order of benefits. Thereafter, the burden is upon the employer. The respondent to the moving party shall be given ten (10) days to answer a request for an expedited determination of medical issues, and the ~~arbitrator or~~ administrative law judge shall issue a ruling within seven (7) days thereafter. The interested parties shall be provided a form to provide to the medical care provider and the completed form filed with the department and served upon the respondent shall initiate the time for response and determination.

Section 33. KRS 342.760 is amended to read as follows:

- (1) There is hereby authorized in the Labor Cabinet an uninsured employers' fund for the purpose of making payments in accordance with the provisions of subsection (4) of this section. The secretary of the Labor Cabinet shall be the custodian of the fund, and all moneys and securities in the fund shall be held in trust by the secretary of the Labor Cabinet and shall not be considered a part of the general funds of the state.
- (2) The secretary of the Labor Cabinet is authorized to disburse moneys from the fund only upon written order of the ~~arbitrator,~~ administrative law judge~~,~~ or the board.
- (3) All amounts collected as fines and penalties under this chapter shall be paid into the uninsured employers' fund.
- (4) The uninsured employers' fund shall be responsible for the payment of compensation when there has been default in the payment of compensation due to the failure of an employer to secure payment of compensation as provided by this chapter. Such employer shall be liable for payment into the fund of all the amounts authorized to be paid therefrom under the authority of this subsection including reimbursement of the special fund of all liability apportioned to it and for the purposes of enforcing this liability the Labor Cabinet, for the benefit of the fund, shall be subrogated to all the rights of the person receiving such compensation from the fund. This provision shall apply to all pending claims upon which a final order has not been entered.
- (5) In furtherance of this purpose, the Attorney General shall appoint a member or members of his staff or special counsel to represent the fund in all proceedings brought to enforce claims against or on behalf of the fund. Necessary expenses for this purpose including salaries of said staff or special counsel shall be borne by the fund. The Labor Cabinet shall be responsible for the administration of the uninsured employers' fund and shall be charged with the conservation of the assets of the fund.
- (6) On December 29, 1987, the liabilities of the uninsured employers' fund and its assets remaining in the State Treasury shall be transferred to the uninsured employers' fund created within the Labor Cabinet pursuant to this section.

Section 34. KRS 342.780 is amended to read as follows:

A claimant may, in the original application for benefits, or any party may, by motion accompanied by proper allegations while the case is still pending, and the ~~arbitrator or~~ administrative law judge shall, upon his own motion at any time before the rendition of the final award, cause the uninsured employers' fund to be made a party to the proceedings if it should appear that the named defendant has failed to secure the payment of compensation as required by KRS 342.340.

Section 35. KRS 342.790 is amended to read as follows:

When an award is made against an employer who:

- (1) Has not secured payment of compensation by either securing insurance coverage or qualifying as a self-insurer; and
- (2) Has not made a deposit of security, indemnity, or bond acceptable to the commissioner to secure the payment of compensation liability; and
- (3) Has failed to make payment of compensation according to the terms of that award,

the award shall constitute a liquidated claim for damages against that employer in an amount commuted to a lump sum which will equal the present value of the total sum of the probable future payments discounted at four percent (4%) true discount compounded annually on each payment, which amount is to be ascertained and fixed by the commissioner, and the commissioner shall certify the same to the Attorney General who shall forthwith institute a

civil action against that employer in the name of the uninsured employers' fund for the collection of that award. In that action, it shall be sufficient for plaintiff to set forth a copy of the award of the ~~the arbitrator or~~ administrative law judge relative to the claim as certified by the commissioner and to state that there is due to plaintiff on account of the opinion, order, or award of the ~~the arbitrator or~~ administrative law judge a specified sum which plaintiff claims with interest. A certified copy of the award in the claim shall be attached to the complaint and shall constitute prima facie evidence of the truth of the facts therein contained.

Section 36. KRS 342.990 is amended to read as follows:

- (1) The commissioner shall initiate enforcement of civil and criminal penalties imposed in this section.
- (2) When the commissioner receives information that he deems sufficient to determine that a violation of this chapter has occurred, he shall seek civil penalties pursuant to subsections (3) to (7) of this section, or criminal penalties pursuant to subsections (8) and (9) of this section, or both.
- (3) The commissioner shall initiate enforcement of a civil penalty by simultaneously citing the appropriate party for the offense and stating the civil penalty to be paid.
- (4) If, within fifteen (15) working days from the receipt of the citation, a cited party fails to notify the commissioner that he intends to contest the citation, then the citation shall be deemed final.
- (5) If a cited party notifies the commissioner that he intends to challenge a citation issued under this section, the commissioner shall cause the matter to be heard as soon as practicable by an administrative law judge and in accordance with the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney representing the commissioner to prove the offense stated in the citation by a preponderance of the evidence. The parties shall stipulate to uncontested facts and issues prior to the hearing before the administrative law judge. The administrative law judge shall issue a ruling within sixty (60) days following the hearing.
- (6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit Court in conformity with KRS 13B.140.
- (7) The following civil penalties shall be applicable for violations of particular provisions of this chapter:
  - (a) Any employer, insurer, or payment obligor subject to this chapter who fails to make a report required by KRS 342.038 within fifteen (15) days from the date it was due, shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense.
  - (b) Any employer, insurer, or payment obligor acting on behalf of an employer who fails to make timely payment of a statement for services under KRS 342.020(1) without having reasonable grounds to delay payment may be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense.
  - (c) Any person who violates KRS 342.020(9), 342.035(2), KRS 342.040, 342.340, 342.400, 342.420, or 342.630 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense. With respect to employers who fail to maintain workers' compensation insurance coverage on their employees, each employee of the employer and each day of violation shall constitute a separate offense. With respect to KRS 342.040, any employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be fined for failure to notify the commissioner of a failure to make payments when due if a report indicating the reason payment of income benefits did not commence within twenty-one (21) days of the date the employer was notified of an alleged work-related injury or disease is not filed with the commissioner within twenty-one (21) days of the date the employer received notice, and if the employee has not returned to work within that period of time. The date of notice indicated in the report filed with the department pursuant to KRS 342.038(1), shall raise a rebuttable presumption of the date on which the employer received notice.
  - (d) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000) for each offense. With respect to KRS 342.395, each required notice of rejection form executed by an employee or potential employee of an employer shall constitute a separate offense.
  - (e) Any person who fails to comply with the data reporting provisions of administrative regulations promulgated by the commissioner pursuant to KRS 342.039, or with utilization review and medical bill audit administrative regulations promulgated pursuant to KRS 342.035(5), shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation.

- (f) Except as provided in paragraph (g) of this subsection, a person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less than or equal to three hundred dollars (\$300) shall be fined per occurrence not more than one thousand dollars (\$1,000) per individual nor five thousand dollars (\$5,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater.
  - (g) Any person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) exceeds three hundred dollars (\$300) shall be fined per occurrence not more than five thousand dollars (\$5,000) per individual nor ten thousand dollars (\$10,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater.
  - (h) Any person who violates the employee leasing provision of this chapter shall be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) for each violation.
  - (i) Any violation of the provisions of this chapter relating to self-insureds shall constitute grounds for decertification of such self-insured, a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) per occurrence, or both.
  - (j) Actions to collect the civil penalties imposed under this subsection shall be instituted in the Franklin District Court and the Franklin Circuit Court.
- (8) The commissioner shall initiate enforcement of a criminal penalty by causing a complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to act on the violation within twenty (20) days following the filing of the complaint, the commissioner shall certify the inaction by the local prosecutor to the Attorney General who shall initiate proceedings to prosecute the violation. The provisions of KRS 15.715 shall not apply to this section.
- (9) The following criminal penalties shall be applicable for violations of particular provisions of this chapter:
- (a) Any person who violates KRS 342.020(9), 342.035(2), 342.040, 342.400, 342.420, or 342.630, shall, for each offense, be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or imprisoned for not less than thirty (30) days nor more than one hundred eighty (180) days, or both.
  - (b) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000), or imprisoned for not less than thirty (30) days nor more than one hundred and eighty (180) days, or both.
  - (c) Any corporation, partnership, sole proprietorship, or other form of business entity and any officer, general partner, agent, or representative of the foregoing who knowingly utilizes or participates in any employee leasing arrangement or mechanism as defined in KRS 342.615 for the purpose of depriving one (1) or more insurers of premium otherwise properly payable or for the purpose of depriving the Commonwealth of any tax or assessment due and owing and based upon said premium shall upon conviction thereof be subject to a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), or imprisonment for not more than one hundred eighty (180) days, or both, for each offense.
  - (d) Notwithstanding any other provisions of this chapter to the contrary, when any employer, insurance carrier, or individual self-insured fails to comply with this chapter for which a penalty is provided in subparagraphs (7), (8), and (9) above, such person, if the person is an owner in the case of a sole proprietorship, a partner in the case of a partnership, a principal in the case of a limited liability company, or a corporate officer in the case of a corporation, who knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be personally and individually liable, both jointly and severally, for the penalties imposed in the above cited subparagraphs. Neither the dissolution nor withdrawal of the corporation, partnership, or other entity from the state, nor the cessation of holding status as a proprietor, partner, principal, or officer shall discharge the foregoing liability of any person.
- (10) Fines paid pursuant to subsections (7) and (9) of this section shall be paid into the special fund.
- (11) In addition to the penalties provided in this section, the commissioner and any ~~arbitrator,~~ administrative law judge, or court of jurisdiction may order restitution of a benefit secured through conduct proscribed by this chapter.

Section 37. KRS 342.0015 is amended to read as follows:

The substantive provisions of 1996 (1st Extra. Sess.) Ky. Acts ch. 1 shall apply to any claim arising from an injury or last exposure to the hazards of an occupational disease occurring on or after December 12, 1996. Procedural provisions of 1996 (1st Extra. Sess.) Ky. Acts ch. 1 shall apply to all claims irrespective of the date of injury or last exposure, including, but not exclusively, the mechanisms by which claims are decided and workers are referred for medical evaluations. The provisions of KRS 342.120(3), 342.125(8), 342.213(2)(e), 342.265, 342.270(3)~~(7)~~, 342.320, 342.610(3), 342.760(4), and 342.990(11) are remedial.

Section 38. KRS 342.165 is amended to read as follows:

- (1) If an accident is caused in any degree by the intentional failure of the employer to comply with any specific statute or lawful administrative regulation made thereunder, communicated to the employer and relative to installation or maintenance of safety appliances or methods, the compensation for which the employer would otherwise have been liable under this chapter shall be increased **thirty percent (30%)**~~fifteen percent (15%)~~ in the amount of each payment. If an accident is caused in any degree by the intentional failure of the employee to use any safety appliance furnished by the employer or to obey any lawful and reasonable order or administrative regulation of the commissioner or the employer for the safety of employees or the public, the compensation for which the employer would otherwise have been liable under this chapter, shall be decreased fifteen percent (15%) in the amount of each payment.
- (2) No compensation shall be payable for work-related injuries if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable falsely represents, in writing, his physical condition or medical history, if all of the following factors are present:
  - (a) The employee has knowingly and willfully made a false representation as to his physical condition or medical history;
  - (b) The employer has relied upon the false representation, and this reliance was a substantial factor in the hiring; and
  - (c) There is a causal connection between the false representation and the injury for which compensation has been claimed.

Section 39. KRS 342.750 is amended to read as follows:

If the injury causes death, income benefits shall be payable in the amount and to or for the benefit of the persons following, subject to the maximum limits specified in subsections (3) and (4) of this section:

- (1)
  - (a) If there is a widow or widower and no children of the deceased, to such widow or widower 50 percent of the average weekly wage of the deceased, during widowhood or widowerhood.
  - (b) To the widow or widower, if there is a child or children living with the widow or widower, 45 percent of the average weekly wage of the deceased, or 40 percent, if such child is not or such children are not living with a widow or widower, and in addition thereto, 15 percent for each child. Where there are more than two (2) such children, the indemnity benefits payable on account of such children shall be divided among such children, share and share alike.
  - (c) Two (2) years' indemnity benefits in one (1) lump sum shall be payable to a widow or widower upon remarriage.
  - (d) To the children, if there is no widow or widower, 50 percent of such wage for one (1) child, and 15 percent for each additional child, divided among such children, share and share alike.
  - (e) The income benefits payable on account of any child under this section shall cease when he dies, marries, or reaches the age of eighteen (18), or when a child over such age ceases to be physically or mentally incapable of self-support, or if actually dependent ceases to be actually dependent, or, if enrolled as a full-time student in any accredited educational institution, ceases to be so enrolled or reaches the age of 22. A child who originally qualified as a dependent by virtue of being less than 18 years of age may, upon reaching age 18, continue to qualify if he satisfies the tests of being physically or mentally incapable of self-support, actual dependency, or enrollment in an educational institution.
  - (f) To each parent, if actually dependent, 25 percent.

- (g) To the brothers, sisters, grandparents, and grandchildren, if actually dependent, 25 percent to each such dependent. If there should be more than one (1) of such dependents, the total income benefits payable on account of such dependents shall be divided share and share alike.
  - (h) The income benefits of each beneficiary under paragraphs (f) and (g) above shall be paid until he, if a parent or grandparent, dies, marries, or ceases to be actually dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of eighteen (18) or if over that age ceases to be physically or mentally incapable of self-support, or ceases to be actually dependent.
  - (i) A person ceases to be actually dependent when his income from all sources exclusive of workers' compensation income benefits is such that, if it had existed at the time as of which the original determination of actual dependency was made, it would not have supported a finding of dependency. In any event, if the present annual income of an actual dependent person including workers' compensation income benefits at any time exceeds the total annual support received by the person from the deceased employee, the workers' compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased employee. In all cases, a person found to be actually dependent shall be presumed to be no longer actually dependent three (3) years after each time as of which the person was found to be actually dependent. This presumption may be overcome by proof of continued actual dependency as defined in this subsection, but full payments shall not be suspended during the pendency of any proceeding to determine dependency.
- (2) Upon the cessation of income benefits under this section to or on account of any person, the income benefits of the remaining persons entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.
  - (3) For the purposes of this section, the average weekly wage of the employee shall be taken as not more than the average weekly wage of the state as determined in KRS 342.740. In no case shall the aggregate weekly income benefits payable to all beneficiaries under this section exceed the maximum income benefit that was or would have been payable for total disability to the deceased, including benefits to his dependents.
  - (4) The maximum weekly income benefits payable for all beneficiaries in case of death shall not exceed 75 percent of the average weekly wage of the deceased as calculated under KRS 342.140, subject to the maximum limits in subsection (3) above. The maximum aggregate limitation shall not operate in case of payment of two (2) years' income benefits to the widow or widower upon remarriage as provided under paragraph (c) of subsection (1) of this section, to prevent the immediate recalculation and payments of benefits to the remaining beneficiaries as provided under subsection (2) of this section, but the weekly income benefits as to such remaining beneficiaries shall not exceed the weekly income benefit that was or would have been payable for total disability to the deceased. The classes of beneficiaries specified in paragraphs (a), (b), and (d) of subsection (1) of this section shall have priority over all other beneficiaries in the apportionment of income benefits. If the provisions of this subsection should prevent payment to other beneficiaries of the income benefits to the full extent otherwise provided for by this section, the gross remaining amount of income benefits payable to such other beneficiaries shall be apportioned by class, proportionate to the interest of each class in the remaining amount. Parents shall be considered to be in one class and those specified in paragraph (f) of subsection (1) in another class.
  - (5) All relations of dependency referred to in this section shall mean dependency existing at the time of the accident to the employee or at the time his disability from an occupational disease began.
  - (6) In addition to other benefits as provided by this chapter, if death occurs within four (4) years of the date of injury as a direct result of a work-related injury, a lump-sum payment of ~~fifty~~~~(twenty-five)~~ thousand dollars ~~(\$50,000)~~~~(\$25,000)~~ shall be made to the deceased's estate, from which the cost of burial and cost of transportation of the body to the employee's place of residence shall be paid. ***Annually, the commissioner shall compute, in accordance with KRS 342.740, the increase or decrease in the state average weekly wage, and consistent therewith, shall adjust the amount of the lump sum payment due under this subsection for injuries occurring in the succeeding year.***
  - (7) All benefits awarded pursuant to this section, other than those provided in subsection (6) of this section, shall be subject to the limitations contained in KRS 342.730(4).

Section 40. The terms of the existing arbitrators are terminated on the effective date of this Act. It is the intent of the General Assembly that on the effective date of this Act, the duties and cases of the arbitrators shall be assigned by the commissioner to the administrative law judges.

**Approved April 21, 2000**

## **CHAPTER 515**

**(HB 999)**

AN ACT relating to insurance for peace officers.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

*When a peace officer specified in KRS 431.007 is lawfully conducting an assistance operation under KRS 431.007, any insurance relative to the performance of his duties, including, but not limited to, worker's compensation, health, liability, and motor vehicle insurance, maintained by the peace officer or the peace officer's employer, shall remain in force.*

**Approved April 21, 2000**

## **CHAPTER 516**

**(HCR 18)**

A CONCURRENT RESOLUTION confirming the appointment of Lydia Carol Gabbard to the Kentucky Board of Education.

WHEREAS, pursuant to KRS 156.029, the Governor has appointed Lydia Carol Gabbard as a member of the Kentucky Board of Education representing the Fifth Supreme Court District for a term expiring April 14, 2002; and

WHEREAS, appointments to the Kentucky Board of Education are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by letter of August 5, 1999, the Governor has delivered Lydia Carol Gabbards' name for confirmation as a member of the Kentucky Board of Education, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Lydia Carol Gabbard meets the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. The House of Representatives and the Senate hereby confirm the reappointment of Lydia Carol Gabbard to the Kentucky Board of Education for a term ending April 14, 2002.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Paul E. Patton, Room 100, State Capitol and Lydia Carol Gabbard, 1006 Highlands Drive, Richmond, Kentucky 40475, in writing, of the General Assembly's action.

**Approved April 21, 2000**



**CHAPTER 517****(HCR 47)**

A CONCURRENT RESOLUTION directing the Legislative Research Commission to establish a Risk Management Technical Study Group to develop a standard set of issues that should be considered in the design and operation of any insurance-type program funded by the Commonwealth.

WHEREAS, programs in the Commonwealth that use government funds to provide insurance, or insurance-like protection to specified individuals, suffer significant problems in achieving that protection in a manner that delivers acceptable quality service at a reasonable cost to the state; and

WHEREAS, these programs share similar problems in establishing sophisticated insurance-type programs without the necessary expertise; and

WHEREAS, the various programs have not developed successful designs for insurance-type programs; and

WHEREAS, insurance-type programs share a consistent set of fairly technical issues and procedures in successful insurance-type-program design, and the study of these issues and procedures would benefit current and future insurance-type programs in the Commonwealth;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. The Legislative Research Commission shall establish a Risk Management Technical Study Group to develop a standard set of issues that should be considered in the design and operation of any insurance-type program funded by the Commonwealth. The study group shall meet beginning not later than October 1, 2000, and shall report back to the Legislative Research Commission with a standard set of guidelines and procedures no later than August 15, 2001.

Section 2. The study group should be composed of twelve technical analysts drawn from the Executive and Legislative Branches, state universities, directors of state insurance-type programs, and the Legislative Research Commission staff. The Legislative Research Commission shall appoint the members of the technical study group.

Section 3. The technical study group is charged to submit a report to the Legislative Research Commission that addresses, to the fullest extent possible, the following questions:

- (a) What are the advantages and disadvantages to the Commonwealth of various insurance payment arrangements, including fee-for-service, capitation, and combination arrangements? Are there new payment arrangements that should be considered?
- (b) What are the financial incentives for recipients and providers under each payment arrangement?
- (c) How does the establishment of the program as an entitlement for recipients change its dynamics?
- (d) What are the key implementation issues associated with each payment arrangement? What is a reasonable time for implementation and what are the minimum staff resources recommended?
- (e) What specific oversight mechanisms are needed in each payment arrangement to safeguard program quality and fiscal accountability? What data collection and analysis protocols are recommended?
- (f) What procedures have been adopted by existing state insurance-type programs that improved their operations and what procedures have proven inadequate? What should we learn from our successes and failures? and
- (g) Should a permanent risk management consulting team be formed in the Executive Branch to advise program managers on technical issues? If so, what should be the makeup of the team and its ongoing responsibilities?

Section 4. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

**Approved April 21, 2000**

**CHAPTER 518****(HCR 88)**

A CONCURRENT RESOLUTION directing a study of the issues of the adequate preparation of elementary and secondary school students for promotion to higher grades, the establishment of appropriate educational criteria for entrance into higher grades, and the remediation rates of students entering postsecondary educational institutions.

WHEREAS, the General Assembly of the Commonwealth of Kentucky has established that public schools shall expect a high level of achievement of all students, and shall develop their students' ability to apply core concepts and principles from mathematics, the sciences, the arts, the humanities, social studies, and practical living studies to situations they will encounter throughout their lives; and

WHEREAS, the ability to apply those concepts and principles is predicated on a student's accumulation of knowledge and the development of critical thinking skills over the course of time; and

WHEREAS, a student who is unprepared for the subject matter presented to him or her in the classroom will be unable to achieve at high levels and is more likely to lack academic motivation; and

WHEREAS, low achieving students are more likely to drop out of school prior to graduation; and

WHEREAS, over thirty-eight percent (38%) of first-time students enrolled in a Kentucky public university in the fall of 1997 required remediation in one or more subjects in order to be adequately prepared for college-level work; and

WHEREAS, the practice of promoting students to a higher grade before they have gained sufficient knowledge and skills to succeed, exacerbates the problem of low student achievement by expecting students to learn subject matter for which they are unprepared; and

WHEREAS, developing a process to assure the level of educational preparedness of students entering grades five, nine, and twelve is a possible way to assist students to achieve academic success, and thereby, success throughout their lives;

NOW, THEREFORE,

*Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:*

Section 1. The Education, Assessment, and Accountability Review Subcommittee shall conduct a study of the issue of the adequate preparation of elementary and secondary school students for promotion to higher grades, and investigate the appropriateness, feasibility, and effectiveness of establishing specific educational criteria for entrance into grades five, nine, and twelve. As part of its study, the subcommittee shall review information regarding the level of remediation required by high school graduates from Kentucky upon entry into postsecondary educational institutions.

Section 2. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a completion date.

**Approved April 21, 2000**

**CHAPTER 519****(HJR 113)**

A JOINT RESOLUTION relating to the recognition of Chief Justice Frederick M. Vinson.

WHEREAS, Kentuckian Abraham Lincoln served as President of the United States, leader of the Executive Branch of the Federal Government, and his service is recognized with a statue in the rotunda of Kentucky's State Capitol; and

WHEREAS, Kentuckian Henry Clay served as Speaker of the House of Representatives, leader of the Legislative Branch of the Federal Government, and his service is recognized with a statue in the rotunda of Kentucky's State Capitol; and

WHEREAS, Kentuckian Fred M. Vinson served as Chief Justice of the United States, leader of the Judicial Branch of the Federal Government, but his service has never been recognized with a statue or bust in Kentucky's State Capitol; and

WHEREAS, Frederick M. Vinson was born January 20, 1890 in Louisa, Kentucky, received his formal education in the public schools of Boyd County and at Centre College, was a veteran of World War I, served as Commonwealth's attorney, was elected to the United States House of Representatives from 1923 to 1938 (except for one two-year period), and served as Judge of the Court of Appeals of the District of Columbia, Chief Judge of the Emergency Court of Appeals for Price Control, Director of Economic Stabilization, Federal Loan Administrator, Director of War Mobilization and Reconversion, and Secretary of the Treasury; and

WHEREAS, Frederick M. Vinson was appointed by President Harry S. Truman to be the thirteenth Chief Justice of the United States; and

WHEREAS, Chief Justice Vinson served from 1946 until his untimely death in 1953, after which he was buried in Pine Hill Cemetery in Louisa, Kentucky; and

WHEREAS, Chief Justice Vinson is one of only sixteen people in the history of the United States to hold the office of Chief Justice of the United States, and he rendered distinguished service to his county, district, state, and nation; and

WHEREAS, the year 2003 will mark the fiftieth anniversary of the death of Chief Justice Frederick M. Vinson;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. The Kentucky Historical Society, the Division of Historic Properties in the Finance and Administration Cabinet, and the Historic Properties Advisory Commission, in consultation with the Court of Justice and the Kentucky Bar Association, shall plan and implement an appropriate recognition of the service and the fiftieth anniversary of the death of Chief Justice Frederick M. Vinson. The recognition may include the commissioning and placement of an appropriate statue or bust of Chief Justice Vinson in an appropriate position of honor in the State Capitol.

Section 2. The Kentucky Historical Society, the Division of Historic Properties, and the Historic Properties Advisory Commission shall jointly report to the 2002 Session of the General Assembly on the plan for recognition of Chief Justice Vinson, including plans or recommendations relating to the placement of a statue or bust of Frederick M. Vinson in the State Capitol.

**Approved April 21, 2000**

## **CHAPTER 520**

### **(HJR 142)**

A JOINT RESOLUTION directing the Cabinet for Economic Development, the Transportation Cabinet, and Department of Education to coordinate their efforts and address the obstacles limiting the effectiveness of economic development efforts in counties with high unemployment, low educational attainment levels, and low per capita income.

WHEREAS, the Cabinet for Economic Development is the primary state agency responsible for creating new jobs and new investment in the Commonwealth; and

WHEREAS, the Cabinet for Economic Development is limited in creating new jobs through economic development by a lack of infrastructure; and

WHEREAS, the Cabinet for Economic Development is limited in creating new jobs through economic development by the educational attainment levels found in many counties in the Commonwealth; and

WHEREAS, despite the economic growth and low unemployment being experienced across the nation and in parts of this Commonwealth, there are still many counties and citizens in need; and

WHEREAS, many counties across the Commonwealth continue to have unemployment rates two and three times the state's average unemployment rate;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. In order to advance economic development, education, and transportation, the Cabinet for Economic Development, the Department of Education, and the Transportation Cabinet shall work together to create a unified plan for increasing levels of assistance to those counties, or districts of two or more counties as determined by the Economic Development Cabinet, with high unemployment, low educational attainment levels, and low per capita income.

**Approved April 21, 2000**

## **CHAPTER 521**

**(HB 608)**

AN ACT relating to the public good.

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

Section 1. KRS 304.17A-005 is amended to read as follows:

As used in this subtitle, unless the context requires otherwise:

- (1) "Association" means an entity, other than an employer-organized association, that has been organized and is maintained in good faith for purposes other than that of obtaining insurance for its members and that has a constitution and bylaws;
- (2) *"At the time of enrollment" means:*
  - (a) *At the time of application for an individual, an association that actively markets to individual members, and an employer-organized association that actively markets to individual members; and*
  - (b) *During the time of open enrollment or during an insured's initial or special enrollment periods for group health insurance.*
- (3) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the insurer to the individual or small group, or employer as defined in KRS 304.17A-0954, with similar case characteristics for health benefit plans with the same or similar coverage;
- ~~(4)(3)}~~ "Bona fide association" means an entity as defined in 42 U.S.C. sec. 300gg-91(d)(3);
- ~~(5)(4)}~~ "Church plan" means a church plan as defined in 29 U.S.C. sec. 1002(33);
- ~~(6)(5)}~~ "COBRA" means any of the following:
  - (a) 26 U.S.C. sec. 4980B other than subsection (f)(1) as it relates to pediatric vaccines;
  - (b) The Employee Retirement Income Security Act of 1974 (29 U.S.C. sec. 1161 et seq. other than sec. 1169); or
  - (c) 42 U.S.C. sec. 300bb;
- ~~(7)(6)}~~ (a) "Creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:
  1. A group health plan;
  2. Health insurance coverage;
  3. Part A or Part B of Title XVIII of the Social Security Act;
  4. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928;
  5. Chapter 55 of Title 10, United States Code;
  6. A medical care program of the Indian Health Service or of a tribal organization;
  7. A state health benefits risk pool;

8. A health plan offered under Chapter 89 of Title 5, United States Code;
  9. A public health plan, as defined in regulations; or
  10. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. sec. 2504(e)).
- (b) This term does not include coverage consisting solely of coverage of excepted benefits as defined in subsection (10) of this section;
- ~~(8)(7)~~ "Eligible individual" means an individual:
- (a) For whom, as of the date on which the individual seeks coverage, the aggregate of the periods of creditable coverage is eighteen (18) or more months and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan. A period of creditable coverage under this paragraph shall not be counted if, after that period, there was a sixty-three (63) day period of time, excluding any waiting or affiliation period, during all of which the individual was not covered under any creditable coverage;
  - (b) Who is not eligible for coverage under a group health plan, Part A or Part B of Title XVIII of the Social Security Act (42 U.S.C. secs. 1395j et seq.), or a state plan under Title XIX of the Social Security Act (42 U.S.C. secs. 1396 et seq.) and does not have other health insurance coverage;
  - (c) With respect to whom the most recent coverage within the coverage period described in paragraph (a) of this subsection was not terminated based on a factor described in KRS 304.17A-240(2)(a), (b), and (c);
  - (d) If the individual had been offered the option of continuation coverage under a COBRA continuation provision or under KRS 304.18-110, who elected the coverage; and
  - (e) Who, if the individual elected the continuation coverage, has exhausted the continuation coverage under the provision or program;
- ~~(9)(8)~~ "Employer-organized association" means any of the following:
- (a) Any entity that was qualified by the commissioner as an eligible association prior to April 10, 1998, and that has actively marketed a health insurance program to its members since September 8, 1996, and which is not insurer-controlled;
  - (b) Any entity organized under KRS 247.240 to 247.370 that has actively marketed health insurance to its members and that is not insurer-controlled; or
  - (c) Any entity that is a bona fide association as defined in 42 U.S.C. sec. 300gg-91(d)(3), whose members consist principally of employers, and for which the entity's health insurance decisions are made by a board or committee, the majority of which are representatives of employer members of the entity who obtain group health insurance coverage through the entity or through a trust or other mechanism established by the entity, and whose health insurance decisions are reflected in written minutes or other written documentation.
- Except as provided in KRS 304.17A-200, 304.17A.210, and 304.17A-220, no employer-organized association shall be treated as an association, small group, or large group under this subtitle;
- ~~(10)(9)~~ "Employer-organized association health insurance plan" means any health insurance plan, policy, or contract issued to an employer-organized association, or to a trust established by one (1) or more employer-organized associations, or providing coverage solely for the employees, retired employees, directors and their spouses and dependents of the members of one (1) or more employer-organized associations;
- ~~(11)(10)~~ "Excepted benefits" means benefits under one (1) or more, or any combination thereof, of the following:
- (a) Coverage only for accident, or disability income insurance, or any combination thereof;
  - (b) Coverage issued as a supplement to liability insurance;
  - (c) Liability insurance, including general liability insurance and automobile liability insurance;
  - (d) Workers' compensation or similar insurance;
  - (e) Automobile medical payment insurance;
  - (f) Credit-only insurance;

- (g) Coverage for on-site medical clinics;
  - (h) Other similar insurance coverage, specified in administrative regulations, under which benefits for medical care are secondary or incidental to other insurance benefits;
  - (i) Limited scope dental or vision benefits;
  - (j) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof;
  - (k) Such other similar, limited benefits as are specified in administrative regulations;
  - (l) Coverage only for a specified disease or illness;
  - (m) Hospital indemnity or other fixed indemnity insurance;
  - (n) Benefits offered as Medicare supplemental health insurance, as defined under section 1882(g)(1) of the Social Security Act;
  - (o) Coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code; and
  - (p) Coverage similar to that in paragraphs (n) and (o) of this subsection that is supplemental to coverage under a group health plan;
- (12)~~(11)~~ "Governmental plan" means a governmental plan as defined in 29 U.S.C. sec. 1002(32);
- (13)~~(12)~~ "Guaranteed acceptance program participating insurer" means an insurer that is required to or has agreed to offer health benefit plans in the individual market to guaranteed acceptance program qualified individuals;
- (14)~~(13)~~ "Guaranteed acceptance program plan" means a health benefit plan in the individual market issued by an insurer that provides health benefits to a guaranteed acceptance program qualified individual and is eligible for assessment and refunds under the guaranteed acceptance program;
- (15)~~(14)~~ "Guaranteed acceptance program" means the Kentucky Guaranteed Acceptance Program established and operated under KRS 304.17A-400 to 304.17A-480;
- (16)~~(15)~~ "Guaranteed acceptance program qualified individual" means an individual who:
- (a) Is not an eligible individual;
  - (b) Is not eligible for or covered by other health benefit plan coverage *or who is a spouse or a dependent of an individual who:*
    - 1. ***Waived coverage under subsection (2) of Section 9 of this Act; or***
    - 2. ***Did not elect family coverage that was available through the association or group market;***
  - (c) Within the previous three (3) years has been diagnosed with or treated for a high-cost condition or has had benefits paid under a health benefit plan for a high-cost condition, or is a high risk individual as defined by the underwriting criteria applied by an insurer under the alternative underwriting mechanism established in KRS 304.17A-430(3);
  - (d) Has been a resident of Kentucky for at least twelve (12) months immediately preceding the effective date of the policy; and
  - (e) Has not had his or her most recent coverage under any health benefit plan terminated or nonrenewed because of any of the following:
    - 1. The individual failed to pay premiums or contributions in accordance with the terms of the plan or the insurer had not received timely premium payments;
    - 2. The individual performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage; or
    - 3. The individual engaged in intentional and abusive noncompliance with health benefit plan provisions;
- (17)~~(16)~~ "Guaranteed acceptance plan supporting insurer" means either an insurer that is not a guaranteed acceptance plan participating insurer or is a stop loss carrier, provided that a guaranteed acceptance plan

supporting insurer shall not include an employer-sponsored self-insured health benefit plan exempted by ERISA;

~~(18)~~~~(17)~~ "Health benefit plan" means any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; provider sponsored integrated health delivery network; a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; health maintenance organization contract; or any health benefit plan that affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky, and does not include policies covering only accident, credit, dental, disability income, fixed indemnity medical expense reimbursement policy, long-term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance, short-term coverage, student health insurance offered by a Kentucky-licensed insurer under written contract with a university or college whose students it proposes to insure, medical expense reimbursement policies specifically designed to fill gaps in primary coverage, coinsurance, or deductibles and provided under a separate policy, certificate, or contract, or coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code;

~~(19)~~~~(18)~~ "Health care provider" or "provider" means any facility or service required to be licensed pursuant to KRS Chapter 216B, pharmacist as defined pursuant to KRS Chapter 315, and any of the following independent practicing practitioners:

- (a) Physicians, osteopaths, and podiatrists licensed under KRS Chapter 311;
- (b) Chiropractors licensed under KRS Chapter 312;
- (c) Dentists licensed under KRS Chapter 313;
- (d) Optometrists licensed under KRS Chapter 320;
- (e) Physician assistants regulated under KRS Chapter 311;
- (f) Nurse practitioners licensed under KRS Chapter 314; and
- (g) Other health care practitioners as determined by the department by administrative regulations promulgated under KRS Chapter 13A;

~~(20)~~~~(19)~~ (a) "High-cost condition" means a covered condition in an individual policy as listed in paragraph (c) of this subsection or as added by the commissioner in accordance with KRS 304.17A-280, but only to the extent that the condition exceeds the numerical score or rating established pursuant to uniform underwriting standards prescribed by the commissioner under paragraph (b) of this subsection that account for the severity of the condition and the cost associated with treating that condition.

- (b) The commissioner by administrative regulation shall establish uniform underwriting standards and a score or rating above which a condition is considered to be high-cost by using:
  - 1. Codes in the most recent version of the "International Classification of Diseases" that correspond to the medical conditions in paragraph (c) of this subsection and the costs for administering treatment for the conditions represented by those codes; and
  - 2. The most recent version of the questionnaire incorporated in a national underwriting guide generally accepted in the insurance industry as designated by the commissioner, the scoring scale for which shall be established by the commissioner.

(c) The diagnosed medical conditions are: acquired immune deficiency syndrome (AIDS), angina pectoris, ascites, chemical dependency cirrhosis of the liver, coronary insufficiency, coronary occlusion, cystic fibrosis, Friedreich's ataxia, hemophilia, Hodgkin's disease, Huntington chorea, juvenile diabetes, leukemia, metastatic cancer, motor or sensory aphasia, multiple sclerosis, muscular dystrophy, myasthenia gravis, myotonia, open heart surgery, Parkinson's disease, polycystic kidney, psychotic disorders, quadriplegia, stroke, syringomyelia, and Wilson's disease;

~~(21)~~~~(20)~~ "Index rate" means, for each class of business as to a rating period, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate;

- (22)~~(21)~~ "Individual market" means the market for the health insurance coverage offered to individuals other than in connection with a group health plan;
- (23)~~(22)~~ "Insurer" means any insurance company; health maintenance organization; self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA; provider-sponsored integrated health delivery network; self-insured employer-organized association, or nonprofit hospital, medical-surgical, dental, or health service corporation authorized to transact health insurance business in Kentucky;
- (24)~~(23)~~ "Insurer-controlled" means that the commissioner has found, in an administrative hearing called specifically for that purpose, that an insurer has or had a substantial involvement in the organization or day-to-day operation of the entity for the principal purpose of creating a device, arrangement, or scheme by which the insurer segments employer groups according to their actual or anticipated health status or actual or projected health insurance premiums;
- (25)~~(24)~~ "Large group" means:
- (a) An employer with fifty-one (51) or more employees; or
  - (b) An affiliated group with fifty-one (51) or more eligible members;
- (26)~~(25)~~ "Managed care" means systems or techniques generally used by third-party payors or their agents to affect access to and control payment for health care services and that integrate the financing and delivery of appropriate health care services to covered persons by arrangements with participating providers who are selected to participate on the basis of explicit standards for furnishing a comprehensive set of health care services and financial incentives for covered persons using the participating providers and procedures provided for in the plan;
- (27)~~(26)~~ "Market segment" means the portion of the market covering one (1) of the following:
- (a) Individual;
  - (b) Small group;
  - (c) Large group; or
  - (d) Association;
- (28)~~(27)~~ "Provider network" means an affiliated group of varied health care providers that is established to provide a continuum of health care services to individuals;
- (29)~~(28)~~ "Provider-sponsored integrated health delivery network" means any provider-sponsored integrated health delivery network created and qualified under KRS 304.17A-300 and KRS 304.17A-310;
- (30)~~(29)~~ "Purchaser" means an individual, organization, employer, association, or the Commonwealth that makes health benefit purchasing decisions on behalf of a group of individuals;
- (31)~~(30)~~ "Rating period" means the calendar period for which premium rates are in effect. A rating period shall not be required to be a calendar year;
- (32)~~(31)~~ "Restricted provider network" means a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of the providers that have entered into a contractual arrangement with the insurer to provide health care services to covered individuals;
- (33)~~(32)~~ "Self-insured plan" means a group health insurance plan in which the sponsoring organization assumes the financial risk of paying for covered services provided to its enrollees;
- (34)~~(33)~~ "Small employer" means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least two (2) but not more than fifty (50) employees on business days during the preceding calendar year and who employs at least two (2) employees on the first day of the plan year;
- (35)~~(34)~~ "Small group" means:
- (a) A small employer with two (2) to fifty (50) employees; or
  - (b) An affiliated group or association with two (2) to fifty (50) eligible members; and
- (36)~~(35)~~ "Standard benefit plan" means the plan identified in KRS 304.17A-250.



Section 2. KRS 304.17A-300 is amended to read as follows:

- (1) A provider-sponsored integrated health delivery network may be created by health care providers for the purpose of providing health care services.
- (2) No person shall in this Commonwealth be, act as, or hold itself out as a provider-sponsored integrated health delivery network unless it holds a certificate of filing from the commissioner. Each provider-sponsored integrated health delivery network that seeks to offer services shall first be certified by the department.
- ~~(3) Notwithstanding subsection (2) of this section, a provider-sponsored integrated health delivery network which holds a certificate of filing from the Kentucky Health Policy Board as of July 15, 1996, shall have one (1) year from July 15, 1996, to comply with the provisions of this subtitle.~~
- ~~(4)}~~ To qualify as a provider-sponsored integrated health delivery network, an applicant shall submit information acceptable to the department to satisfactorily demonstrate that the provider-sponsored integrated health delivery network:
  - (a) Is licensed and in good standing with the licensure boards for participating providers;
  - (b) Has demonstrated the capacity to administer the health plans it is offering;
  - (c) Has the ability, experience, and structure to arrange for the appropriate level and type of health care services;
  - (d) Has the ability, policies, and procedures to conduct utilization management activities;
  - (e) Has the ability to achieve, monitor, and evaluate the quality and cost effectiveness of care provided by its provider network;
  - (f) Is financially solvent;
  - (g) Has the ability to assure enrollees adequate access to providers, including geographic availability and adequate numbers and types;
  - (h) Has the ability and procedures to monitor access to its provider network;
  - (i) Has a satisfactory grievance procedure and the ability to respond to enrollees' inquiries and complaints;
  - (j) Does not limit the participation of any health care provider in its provider network in another provider network;
  - (k) Has the ability and policies that allow patients to receive care in the most appropriate, least restrictive setting;
  - (l) Does not discriminate in enrolling members;
  - (m) Participates in coordination of benefits;
  - (n) Uses standardized electronic claims and billing processes and formats; *and*
  - (o) Discloses to the cooperative reimbursement arrangements with providers~~[- and~~
  - ~~(p) Assures that all services covered by the provider-sponsored integrated health delivery network are available to all persons enrolled in the plan within fifty (50) miles of each person's place of residence, to the extent those services are available within that area, and assures that all services not available therein shall be offered at sites as proximate to the enrollee as possible}.~~
- ~~(4)}~~~~(5)}~~ Fees for the following services shall be paid to the commissioner by every provider-sponsored integrated health delivery network, and the fees shall be the same as those for insurers as specified in Subtitle 4 of this chapter:
  - (a) For filing an application for a certificate of filing or amendment thereto;
  - (b) For filing an annual statement; and
  - (c) For other services deemed necessary by the commissioner.
- ~~(5)}~~~~(6)}~~ Provider-sponsored integrated health delivery networks shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:

- (a) Subtitle 1 -- Scope of Code;
- (b) Subtitle 2 -- Insurance Commissioner;
- (c) Subtitle 3 -- Authorization of Insurers and General Requirements;
- (d) Subtitle 4 -- Fees and Taxes;
- (e) Subtitle 5 -- Kinds of Insurance--Limits of Risk--Reinsurance;
- (f) Subtitle 6 -- Assets and Liabilities;
- (g) Subtitle 7 -- Investments;
- (h) Subtitle 8 -- Administration of Deposits;
- (i) ***Subtitle 9 -- Agents, Consultants, Solicitors and Adjuster;***
- (j) Subtitle 12 -- Trade Practices and Frauds;
- ~~(k)~~ Subtitle 14 -- KRS ***304.14-120 to 304.14-130 and*** 304.14-500 to 304.14-560;
- ~~(l)~~ Subtitle 25 -- Continuity of Management;
- ~~(m)~~ Subtitle 33 -- Insurers Rehabilitation and Liquidation;
- ~~(n)~~ Subtitle 37 -- Insurance Holding Company Systems; and
- ~~(o)~~ Subtitle 99 -- Penalties.

Section 3. KRS 304.17A-330 is amended to read as follows:

All insurers authorized to write health insurance in this state and employer-organized associations that self-insure shall transmit at least annually by ***July 31***~~March 30~~ to the commissioner the following information, in a format prescribed by the commissioner, on their insurance experience in this state for the preceding calendar year:

- (1) Total premium by product type and market segment;
- (2) Total enrollment by product type and market segment;
- (3) Total cost of medical claims filed by product type and market segment;
- (4) Total amount of medical claims paid by the insurer ***and insured*** by product type and market segment;
- (5) Total policies canceled by type and the aggregate reasons therefor; and
- (6) List of total health and medical services paid for, grouped by types of services and costs:
  - (a) Total cost per health and medical service per insured group~~per month~~:
    - 1. Cost paid by insurer;
    - 2. Cost paid by insured; and
  - (b) ***Number of insureds***~~Percentage of insured~~ who received each service.

Section 4. KRS 304.18-120 is amended to read as follows:

- (1) A converted policy issued pursuant to the conversion privilege contained in a group policy providing hospital or surgical expense insurance shall ***not impose a lifetime maximum benefit of less than five hundred thousand dollars (\$500,000)***~~provide on an expense incurred basis, the following minimum benefits:~~
  - ~~(a) Hospital room and board benefits of twenty five dollars (\$25) per day, for a minimum duration of seventy (70) days for any one period of hospital confinement as defined in the converted policy;~~
  - ~~(b) Miscellaneous hospital expense benefits for any one (1) period of hospital confinement in a minimum amount up to twenty (20) times the hospital room and board daily benefit provided under the converted policy;~~
  - ~~(c) Surgical operation expense benefits according to a relative value schedule, or a minimum of two hundred fifty dollars (\$250); and~~
  - ~~(d) The option to continue any existing benefits on account of pregnancy, childbirth, or miscarriage.~~

- (2) *The commissioner by administrative regulation shall establish minimum benefits for a converted policy issued pursuant to the conversion privilege contained in a group health policy.* ~~[The relative values in the surgical schedule shall be consistent with the schedule of operations generally offered by the insurer under group or individual health insurance policies. In the event that the insurer and the group policyholder agree upon one (1) or more additional plans of benefits to be available for converted policies, the applicant for the converted policy may, at his option, elect such a plan in lieu of a converted policy providing the benefits of paragraphs (a), (b) and (c) of subsection (1) of this section. In no event shall the benefits be less than the minimums set forth in subsection (1) of this section.]~~
- (3) ~~In no event need the insurer provide under the converted policy:~~
- ~~(a) Benefits on account of abortion or complications thereof;~~
  - ~~(b) The benefits of paragraphs (a) and (b) of subsection (1) of this section, unless the group policy from which conversion is made provided hospital expense insurance benefits; or~~
  - ~~(c) The benefits of paragraph (c) of subsection (1) of this section, unless the group policy provided surgical expense insurance benefits. Furthermore, the converted policy may contain any exclusion, reduction, or limitation contained in the group policy and any exclusion, reduction or limitation customarily used in individual policies issued by the insurer. With respect to any person who was covered by the group policy, the period specified in the time limit on certain defenses of the incontestable provision of the converted policy shall commence with the date the insurance on such person or member became effective under the group policy.~~
- (4) ~~The converted policy may provide:~~
- ~~(a) That any hospital, surgical, or medical expense benefits otherwise payable thereunder with respect to any person covered thereunder may be reduced by the amount of any such benefits payable under the group policy for the same loss with respect to such person after termination of such person's coverage thereunder. The insurer shall not be entitled to use deterioration of health as the basis for refusing to renew a converted policy;~~
  - ~~(b) For termination of coverage thereunder on any person when he is or could be covered by Medicare (Title XVIII of the United States Social Security Act as added by the Social Security Amendments of 1965 or as later amended or superseded);~~
  - ~~(c) That the insurer may request information in advance of any premium due date of such policy of any person covered thereunder as to whether:~~
    - ~~1. He is covered for similar benefits by another hospital, surgical or medical expense insurance policy or hospital or medical service subscriber contract or medical practice or other prepayment plan or by any other plan or program; or~~
    - ~~2. Similar benefits are provided for, or available to, such person pursuant to, or in accordance with the requirements of, any statute;~~
  - ~~(d) That if any such person is so covered or such statutory benefits are provided or available, and such person fails to furnish the insurer the details of such coverage within thirty one (31) days after the date of such request, the benefits payable under the converted policy may be based on the hospital or surgical or medical expenses actually incurred after excluding expenses to the extent of the amount of benefits provided or available therefor from any of the sources referred to in paragraph (c) of this subsection; and~~
  - ~~(e) For any provisions permitted herein and may also include any other provisions not expressly prohibited by law; and any provision required to be permitted herein may be made a part of any such policy by means of an endorsement or rider.]~~

Section 5. KRS 304.43-030 is amended to read as follows:

- (1) No prepaid dental plan organization shall deliver or issue for delivery in this state any contract describing dental care services available, or any endorsement, rider, or application which becomes a part thereof or any amendment thereto or modification thereof, until a copy of the form or contract or certificate and the schedule of fees or other periodic charges to be paid by the enrollees, has been filed with and approved by the commissioner. Each form, contract, or certificate must contain a complete and clear statement of:

- (a) The dental care services to which the enrollee is entitled;
  - (b) Any limitations on the services, benefits, deductible, or copayments features;
  - (c) Where and in what manner information is available as to how services may be obtained; and
  - (d) Any other provisions pertaining to the delivery of the dental care services.
- (2) At the expiration of sixty (60) days, the form or contract so filed shall be deemed approved unless it has been previously approved or disapproved by order of the commissioner. The commissioner may withdraw approval at any time with cause.
- (3) *The commissioner shall disapprove any form filed under this section, or withdraw any previous approval thereof, on one (1) or more of the following grounds:*
- (a) *If it is in any respect in violation of, or does not comply with, this chapter;*
  - (b) *If it contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract;*
  - (c) *If any title, heading, or other indication of its provisions is misleading, or is printed in such size of type or manner of reproduction as to be substantially illegible.*

SECTION 6. A NEW SECTION OF SUBTITLE 43 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Each prepaid dental plan issuing dental plan contracts in this state shall, before use thereof, file with the commissioner its premium rates and classification of risks pertaining to such contracts. The prepaid dental plan shall adhere to its rates and classifications as filed with the commissioner.*
- (2) *No filing under Section 2 of this Act that contains an increase in premium rates shall become effective until the commissioner has issued an order approving the filing. The commissioner may schedule a hearing within sixty (60) days after receiving a filing under Section 2 of this Act containing a rate increase, and after the hearing shall issue a final order approving or disapproving the filing.*
- (3) *In approving or disapproving a filing under subsection (2) of this section, the commissioner shall consider:*
  - (a) *Whether the benefits provided are reasonable in relation to the premium charged;*
  - (b) *Previous premium rates for contracts to which the filing applies;*
  - (c) *The effect of the increase on policyholders; and*
  - (d) *Whether the prepaid dental plan has computed an enrollee's coinsurance or cost sharing on the basis of the amount actually received by a provider from the prepaid dental plan.*
- (4) *No prepaid dental plan receiving the commissioner's approval of a filing under this section shall submit a new filing containing a rate increase for any of the same contracts until at least six (6) months have elapsed following the effective date of the approved increase.*
- (5) *At any time, the commissioner, after an administrative hearing, may withdraw approval of the rates previously approved under this section if he determines that the benefits are no longer reasonable in relation to the premium charged.*
- (6) *At the expiration of sixty (60) days, the filed premium rates shall be deemed approved unless approved or disapproved by order of the commissioner prior to the expiration of sixty (60) days.*
- (7) *The commissioner may, by administrative regulation, prescribe any additional information related to rates, fees, dues, and other charges deemed necessary and relevant to be included in the filing of forms and rates required by this section.*

Section 7. KRS 304.18-110 is amended to read as follows:

- (1) As used in this section:
  - (a) "Group policy" means group health insurance policies as defined in KRS 304.18-020 and blanket health insurance policies which the commissioner, in his discretion, designates as subject to this section, which:

1. Affect the rights of a Kentucky insured and bear a reasonable relation to Kentucky, regardless of whether delivered or issued for delivery in Kentucky;
  2. Provide hospital or surgical expenses benefits, other than for a specific disease or accidental injury only; and
  3. Are delivered, issued for delivery, or renewed after July 15, 1986;
- (b) "Medicare" means Title XVIII of the United States Social Security Act as amended or superseded.
- (2) Persons insured under group policies have the right upon termination of group membership to continue coverage for themselves and their dependents upon meeting the following conditions:
- (a) The group member has been covered by the group policy or any group policy it replaced for at least three (3) months; and
  - (b) Notice is given to the insurer and payment of the group rate is made to the insurer within thirty-one (31) days after notice pursuant to subsection (9) of this section.
- (3) Continued group health insurance coverage shall terminate on the earlier of:
- (a) The date eighteen (18) months after the date on which the group coverage would otherwise have terminated because of termination of group membership;
  - (b) If the group member fails to make timely payment of premium to the insurance company, the end of the period for which premium payment was made; or
  - (c) The date the group policy is terminated and is not replaced by another group policy within thirty-one (31) days. ***In the case of replacement coverage as provided in subsection (4) of this section, the replaced policy and insurer shall terminate continued group health coverage in the same manner that coverage is terminated for active employees.***
- (4) ***If an employer's group policy is terminated and replaced by a new group policy, subject to the termination provisions contained in subsection (3) of this section, persons under continued group health insurance coverage under the replaced policy at the time of replacement shall be offered continued group health insurance coverage under the subsequent group policy under rules that are no less favorable to the person under continued group coverage than are available to similarly situated eligible employees. This subsection shall not be construed to prevent a change in group health coverage so long as the change does not directly discriminate against persons under continued group coverage and continues on the basis of health status-related factors.***
- (5) ***Nothing in subsection (4) of this section shall be construed to begin a new eighteen (18) months period of continued group health insurance coverage eligibility under paragraph (a) of subsection (3) of this section. This eligibility shall be a continuous period of eighteen (18) consecutive months.*** ~~If a group policy is replaced, persons under continued group health insurance coverage under the replaced policy shall remain under such coverage under the replaced policy until it terminates pursuant to subsection (3) of this section.~~
- ~~(6)~~~~(5)~~ Group members have the right upon termination of coverage under a group policy for any reason to have a conversion health insurance policy providing substantially similar benefits issued to the group member by the insurer upon meeting the following conditions:
- (a) The group member has been covered by the group policy or any policy it replaced for at least three (3) months;
  - (b) The group member must make written application to the insurer for conversion health insurance coverage not later than thirty-one (31) days after notice pursuant to subsection ~~(10)~~~~(9)~~ of this section; and
  - (c) The group member must pay the monthly, quarterly, semiannual, or annual premium, at the option of the applicant, to the insurer not later than thirty-one (31) days after notice pursuant to subsection ~~(10)~~~~(9)~~ of this section.
- ~~(7)~~~~(6)~~ Terms of conversion health insurance coverage:
- (a) Conversion health insurance coverage shall be available without evidence of insurability and shall contain no pre-existing condition limitations;

- (b) The premium for conversion health insurance coverage shall be according to the insurer's table of premium rates in effect on the latter of:
    - 1. The effective date of the converted policy; or
    - 2. The date of application when the premium rate applies to the class of risk to which the covered persons belong, to their ages, and to the form and amount of insurance provided;
  - (c) The conversion health insurance policy shall cover the group member and eligible dependents covered by the group policy on the date coverage under the group policy terminated;
  - (d) The effective date of the conversion health insurance policy shall be the date of termination of coverage under the group policy; and
  - (e) The conversion health insurance policy shall provide benefits substantially similar to those provided by the group policy, but not less than the minimum standards set forth in KRS 304.18-120.
- (8)~~(7)~~ The right to continue group health insurance coverage and the right to conversion health insurance coverage shall also be available:
- (a) To the surviving spouse, at the death of the group member, with respect to the spouse and such children whose coverage under the group policy would terminate or terminates by reason of the death of the group member;
  - (b) To a child solely with respect to himself upon termination of membership in the group or his coverage by reason of operation of the limiting age of coverage under the group policy while covered as a dependent thereunder; or
  - (c) To a former spouse for himself and such children of whom he is awarded custody when coverage under the group policy would terminate or terminates by reason of termination of dependency as defined in the group policy and resulting from an order dissolving the marriage entered by a court of competent jurisdiction.
- (9)~~(8)~~ Continuation of group health insurance coverage or conversion health insurance coverage need not be granted in the following situations:
- (a) The applicant is or could be covered by Medicare;
  - (b) The applicant is or could be covered by another group coverage (insured or uninsured) or, in the case of conversion health insurance coverage, the applicant is ~~is~~ ~~or could be~~ covered by substantially similar benefits by another individual hospital, surgical, or medical expenses insurance policy; or
  - (c) In the case of conversion health insurance coverage, the issuance of conversion health insurance coverage would cause the applicant to be overinsured according to the insurer's standards, taking into account that the applicant is or could be covered by similar benefits pursuant to or in accordance with the requirements of any statute and the individual coverage described in paragraph (b) of this subsection.
- (10)~~(9)~~ Notice of the right to continue group health insurance coverage and the right to conversion health insurance coverage shall be given as follows:
- (a)
    - 1. For group policies delivered, issued for delivery, or renewed after July 15, 1986, the insurer shall give written notice of the right to continue group health insurance coverage and the right to conversion health insurance coverage to any group member entitled to continue coverage or to conversion coverage under this section upon notice from the group policyholder that the group member has terminated membership in the group or upon termination of continued group health insurance coverage. The thirty-one (31) day period of subsections (2)(b) and ~~(6)(5)(b)~~ of this section shall not begin to run until the notice required by this paragraph is mailed or delivered to the last known address of the group member; and
    - 2. Upon replacement of a group policy, the replacing insurer shall determine if there are group members who were covered under the previous group policy who are not covered under the replacing group policy. The replacing insurer shall by writing notify the insurer which issued the previous group policy of such lack of coverage and the insurer which issued the previous group policy shall issue the notice required by paragraph (a) of this subsection;

- (b) If a group member becomes entitled to obtain continued health insurance coverage or conversion health insurance coverage pursuant to this section and if such group member has not been given written notice of these rights pursuant to this subsection, such group member shall have an additional period within which to exercise continuation or conversion rights as follows:

1. The additional period shall expire fifteen (15) days after the group member is given notice, but in no event shall the additional period extend beyond sixty (60) days after the expiration of the thirty-one (31) day period following termination from the group or termination of group coverage;
2. Written notice delivered or mailed to the last known address of the group member shall constitute the giving of notice for the purpose of this paragraph; and
3. If a group member makes application and pays the premium for continued health insurance coverage or conversion health insurance coverage within the additional period allowed by this paragraph, the effective date of continued health insurance coverage shall be the date of termination from the group and the effective date of conversion health insurance coverage shall be the date of termination of group health insurance coverage.

- ~~(11)(10)~~ Before a group policy may be replaced, the employer shall give at least thirty (30) days written notice by certified mail to any employee covered under the replaced policy who will not be covered under the new policy.

Section 8. KRS 304.17A-080 is amended to read as follows:

- (1) There is hereby created and established a Health Insurance Advisory Council whose duties shall be to review and discuss with the commissioner any issues which impact the provision of health insurance in the state. The advisory council shall consist of seven (7) members: the commissioner plus six (6) persons appointed by the Governor with the advice of the commissioner to serve two (2) year terms. The commissioner shall serve as chair of the advisory council.
- (2) The six (6) persons appointed by the Governor with the advice of the commissioner shall be:
  - (a) Two (2) representatives of insurers currently offering health benefit plans in the state;
  - (b) Two (2) practicing health care providers; and
  - (c) Two (2) representatives of purchasers of health benefit plans.
- (3) The council shall:
  - (a) Review and discuss the design of the standard health benefit plan;
  - (b) Review and discuss the rate-filing process for all health benefit plans;
  - (c) Review and discuss the administrative regulations concerning this subtitle to be promulgated by the department;
  - (d) Make recommendations on high-cost conditions as provided in subsection (5) of this section; and
  - (e) Review and discuss other issues at the request of the commissioner.
- (4) The advisory council shall be a budgetary unit of the department which shall pay all of the advisory council's necessary operating expenses and shall furnish all office space, personnel, equipment, supplies, and technical or administrative services required by the advisory council in the performance of the functions established in this section.
- (5) No less than annually, the Health Insurance Advisory Council shall review the list of high-cost conditions established by the commissioner under KRS ~~304.17A-005(20)~~~~[304.17A-005(19)]~~ and 304.17A-280 and recommend changes to the commissioner. The commissioner may accept or reject any or all of the recommendations and may make whatever changes by administrative regulation the commissioner deems appropriate. The council, in making recommendations, and the commissioner, in making changes, shall consider, among other things, actual claims and losses on each diagnosis and advances in treatment of high-cost conditions.
- (6) For each calendar year that the Kentucky Guaranteed Acceptance Program is operating, every insurer shall report to the commissioner and the Health Insurance Advisory Council, in the form and at the time as the

commissioner by administrative regulation may specify, information that the commissioner deems necessary for the council and commissioner to evaluate the list of high-cost conditions as required under this section.

Section 9. KRS 304.17A-210 is amended to read as follows:

Each insurer that issues health benefit plans in the individual market shall be required to issue health benefit plans in the individual market on a guaranteed-issue basis as follows:

- (1) An eligible individual shall be entitled to have coverage issued from the insurer under the standard health benefit plan or any other health benefit plan sold by the insurer in the individual market;
- (2) Except as provided in subsection (3) of this section, an individual who has been a resident of Kentucky for at least twelve (12) months shall be entitled to have coverage issued from the insurer under the standard health benefit plan or any other health benefit plan sold by the insurer in the individual market, ***except that an individual shall not be eligible for coverage if the individual has, or is eligible for, on the date of application for individual coverage, substantially similar coverage under a group contract or policy. If an individual is ineligible for coverage under this subsection, that individual's spouse or dependents shall not be precluded from eligibility for coverage in the individual market. As used in this subsection, "eligible for" includes any individual who was eligible for group coverage but who waived that coverage. That individual shall be ineligible for coverage in the individual market through the period of waived coverage;*** and
- (3) Except as provided in subsection (4) of this section, if the individual is a guaranteed acceptance program qualified individual and the insurer is a guaranteed acceptance program participating insurer, then the individual shall be entitled to have coverage issued under either:
  - (a) The standard health benefit plan; or
  - (b) The insurer's two (2) health benefit plans, other than the standard health benefit plan, sold by it in the individual market in Kentucky, or in the applicable marketing or service area as may be prescribed by the commissioner by administrative regulation, with the largest annual premium volume; except that the insurer shall make all necessary adjustments to the health benefit plans sold so that they qualify as a guaranteed acceptance program plan and can be included in the guaranteed acceptance program risk adjustment process. During the period of July 1, 1998, to June 30, 1999, the guaranteed acceptance program participating insurer may designate upon approval of the commissioner any health benefit plans made generally available to, and actively marketed in, the individual market as this option. The insurer shall make all necessary adjustments to the designated health benefit plans so that they qualify as a guaranteed acceptance program plan and can be included in the guaranteed acceptance program risk adjustment process.
- (4) If the insurer does not generally operate in the individual market and has elected under KRS 304.17A-420(3)(a) to be a guaranteed acceptance program participating insurer without generally operating in the individual market, then an individual who is a guaranteed acceptance program qualified individual shall be entitled to have coverage issued from that insurer only under the standard health benefit plan.
- (5)
  - (a) No insurer, who was not offering health benefit plans in Kentucky on January 1, 1998, shall be required to accept annually under this section individuals who, in the aggregate, would cause the insurer to have a total number of new insureds with high-cost conditions as defined in KRS ~~304.17A-005(19)~~ **304.17A-005(20)** or which exceed an insurer's underwriting guidelines as approved by the commissioner under KRS 304.17A-430(3)(b) per year that is more than one-half of one per cent (0.5%) of the total number of individuals insured by the insurer under individual health benefits plans issued or issued for delivery in the Commonwealth, calculated as of the immediately preceding thirty-first day of December.
  - (b) The commissioner shall, by administrative regulation, establish equitable enrollment limits for the first twelve (12) months, and any remaining portion of the calendar year after the expiration of that twelve (12) month period, in which an insurer first begins doing business in the individual market. These limits shall be based on the insurer's quarterly enrollment in health benefit plans offered in the individual market in the Commonwealth.
  - (c) An officer of the insurer shall certify to the department when it has met the enrollment limit established in this subsection. Upon providing this certification, the insurer shall be relieved of its guaranteed issue requirement under this section for the remainder of the calendar year.
  - (d) If all insurers that are required to offer coverage on a guaranteed-issue basis meet the enrollment limit established in this subsection prior to the end of the calendar year, then all such insurers shall again



accept individuals for guaranteed issue coverage, subject to the enrollment limit established in this subsection.

- (e) If certification of the enrollment limit would leave any county in the Commonwealth without an insurer to provide coverage in the individual market, the commissioner may require any insurer that meets the criteria in KRS 304.17A-420(1) to continue to offer coverage in that county. The commissioner shall proportionally increase the enrollment limit under this subsection for all other insurers that do not meet the criteria of KRS 304.17A-420(1).
- (6) An insurer that elects to use the alternative underwriting mechanism under KRS 304.17A-430(3) shall offer to those insureds who are subject to the alternative underwriting mechanism the standard plan and the two (2) plans offered by the insurer with the largest premium volume for the last calendar year.
- (7) For the purposes of this section and KRS 304.17A-250, insurers whose activities in the individual market are limited to the renewal of health benefit plans issued prior to July 15, 1995, shall not be deemed to be doing business in the individual market.
- (8) Subsections (1) to (7) of this section shall not apply to a health benefit plan offered by an insurer if the coverage is made available in the individual market only through one (1) or more bona fide associations.

Section 10. KRS 304.17A-430 is amended to read as follows:

- (1) A health benefit plan shall be considered a program plan and is eligible for inclusion in calculating assessments and refunds under the program risk adjustment process if it meets all of the following criteria:
  - (a) The health benefit plan was purchased by an individual to provide benefits for only one (1) or more of the following: the individual, the individual's spouse, or the individual's children. Health insurance coverage provided to an individual in the group market or otherwise in connection with a group health plan does not satisfy this criteria even if the individual, or the individual's spouse or parent, pays some or all of the cost of the coverage unless the coverage is offered in connection with a group health plan that has fewer than two (2) participants as current employees on the first day of the plan year;
  - (b) An individual entitled to benefits under the health benefit plan has been diagnosed with a high-cost condition on or before the effective date of the individual's coverage for coverage issued on a guarantee-issue basis after July 15, 1995;
  - (c) The health benefit plan imposes the maximum pre-existing condition exclusion permitted under KRS 304.17A-200;
  - (d) The individual purchasing the health benefit plan is not eligible for or covered by other coverage; and
  - (e) The individual is not a state employee eligible for or covered by the state employee health insurance plan under KRS Chapter 18A.
- (2) Notwithstanding the provisions of subsection (1) of this section, if the total claims paid for the high-cost condition under a program plan for any three (3) consecutive years are less than the premiums paid under the program plan for those three (3) consecutive years, then the following shall occur:
  - (a) The policy shall not be considered to be a program plan thereafter until the first renewal of the policy after there are three (3) consecutive years in which the total claims paid under the policy have exceeded the total premiums paid for the policy and at the time of the renewal the policy also qualifies under subsection (1) as a program plan; and
  - (b) Within the last six (6) months of the third year, the insurer shall provide each person entitled to benefits under the policy who has a high-cost condition with a written notice of insurability. The notice shall state that the recipient may be able to purchase a health benefit plan other than a program plan and shall also state that neither the notice nor the individual's actions to purchase a health benefit plan other than a program plan shall affect the individual's eligibility for plan coverage. The notice shall be valid for six (6) months.
- (3) (a) There is established within the guaranteed acceptance program the alternative underwriting mechanism that a participating insurer may elect to use. An insurer that elects this mechanism shall use the underwriting criteria that the insurer has used for the past twelve (12) months for purposes of the program plan requirement in paragraph (b) of subsection (1) of this section for high risk individuals

rather than using the criteria established in KRS ~~304.17A-005(20)~~~~[304.17A-005(19)]~~ and 304.17A-280 for high cost conditions;

- (b) An insurer that elects to use the alternative underwriting mechanism shall make written application to the commissioner. Before the insurer may implement the mechanism, the insurer shall obtain approval of the commissioner. Annually thereafter, the insurer shall obtain the commissioner's approval of the underwriting criteria of the insurer before the insurer may continue to use the alternative underwriting mechanism.

Section 11. KRS 304.17-312 is amended to read as follows:

As used in KRS 304.17-313,~~[304.17-410,]~~ 304.18-037, 304.32-280, and 304.38-210:

- (1) "Home health agency" means a public agency or private organization, or a subdivision of such an agency or organization which is licensed as a home health agency by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board and is certified to participate as a home health agency under Title XVIII of the Social Security Act.
- (2) "Home health care" means the care and treatment provided by a home health agency which is prescribed and supervised by a physician. The care and treatment shall include but not be limited to one (1) or more of the following:
  - (a) Part-time or intermittent skilled nursing services provided by an advanced registered nurse practitioner, registered nurse, or licensed practical nurse;
  - (b) Physical, respiratory, occupational, or speech therapy;
  - (c) Home health aide services;
  - (d) Medical appliances and equipment, drugs and medication, and laboratory services, to the extent that such items and services would have been covered under the policy if the covered person had been in a hospital.
- (3) "Home health aide services" means those services provided by a home health aide and supervised by a registered nurse which are directed towards the personal care of the patient. Such services shall include but not be limited to the following:
  - (a) Helping the patient with bath, care of mouth, skin, and hair;
  - (b) Helping the patient to the bathroom or in using a bedpan;
  - (c) Helping the patient in and out of bed and assisting with ambulation;
  - (d) Helping the patient with prescribed exercises which the patient and home health aide have been taught by appropriate professional personnel;
  - (e) Assisting with medication ordinarily self-administered that has been specifically ordered by a physician;
  - (f) Performing incidental household services as are essential to the patient's health care at home provided that such services would have been performed if the patient was in a hospital or skilled nursing facility; and
  - (g) Reporting to the professional nurse supervisor changes in the patient's condition or family situation.

Section 12. KRS 18A.229 is amended to read as follows:

- (1) State employees as defined in KRS 18A.228 participating in the health insurance fund authorized in KRS 42.805 shall be given at least three (3) alternative plans from which participation may be chosen. One (1) plan shall require no fixed deductible expenses and reasonable co-payment ratios.
- (2) State employees whose income is at or below one hundred percent (100%) of the nonfarm income official poverty guidelines as determined by the United States Department of Health and Human Services, may choose health insurance benefits *that include, but are not limited to, coverage for emergency medical services and basic inpatient hospital services, which shall include at least fourteen (14) days room and board and at least fifty percent (50%) of the related charges for physician's services*~~[described in KRS 304.18-025(2)(c) and (d)]~~.

SECTION 13. A NEW SECTION OF KRS CHAPTER 304.17A-500 TO 304.17A.570 IS CREATED TO READ AS FOLLOWS:

***A contract executed after January 1, 2001, between a managed care plan and a physician shall not require the mandatory use of a hospitalist.***

Section 14. KRS 304.17A-095 is amended to read as follows:

- (1) (a) Notwithstanding any other provisions of this chapter to the contrary, each insurer that issues, delivers, or renews any health benefit plan ***to any market segment other than a large group*** shall, before use thereof, file with the commissioner its rates, fees, dues, and other charges paid by insureds, members, enrollees, or subscribers, shall submit a copy of the filing to the Attorney General, and shall comply with the provisions of this section. The insurer shall adhere to its rates, fees, dues, and other charges as filed with the commissioner. The insurer may submit new filings from time to time as it deems proper.
- (b) ***Notwithstanding any other provisions of this chapter to the contrary, each insurer that issues, delivers, or renews any health benefit plan to a large group as defined in KRS 304.17A-005 shall file the rating methodology with the commissioner and shall submit a copy of the filing to the Attorney General.***
- (2) (a) A rate filing under this section may be used by the insurer on and after the date of filing with the commissioner prior to approval by the commissioner. A rate filing shall be approved or disapproved by the commissioner within sixty (60) days after the date of filing. Should sixty (60) days expire after the commissioner receives the filing before approval or disapproval of the filing, the filing shall be deemed approved. The commissioner may hold a hearing within sixty (60) days after receiving a filing containing a rate increase. Not less than thirty (30) days in advance of a hearing held under this section, the commissioner shall notify the Attorney General in writing of the hearing. The Attorney General may participate as a health insurance consumer intervenor and be considered a party to the hearing.
- (b) The commissioner shall hold a hearing upon written request, including the reasons for the request, by the Attorney General, provided the request is in accordance with subsection (3) of this section.
- (c) The commissioner shall hold a hearing, unless waived by the health insurer, before ordering a retroactive reduction of rates.
- (d) The hearing shall be a public hearing conducted in accordance with KRS Chapter 13B.
- (e) In the circumstances of a filing that has been deemed approved under paragraph (a) of this subsection, the commissioner shall have the authority to order a retroactive reduction of rates to a reasonable rate if after applying the factors in subsection (3) of this section the commissioner determines that the rates were unreasonable. If the commissioner seeks to order a retroactive reduction of rates and more than one (1) year has passed since the date of the filing, the commissioner shall consider the reasonableness of the rate over the entire period during which the filing has been in effect.
- (3) In approving or disapproving a filing under this section, the commissioner shall consider:
  - (a) Whether the benefits provided are reasonable in relation to the premium or fee charged;
  - (b) Whether the fees paid to providers for the covered services are reasonable in relation to the premium or fee charged;
  - (c) Previous premium rates or fees for the policies or contracts to which the filing applies;
  - (d) The effect of the rate or rate increase on policyholders, enrollees, and subscribers;
  - (e) Whether the rates, fees, dues, or other charges are excessive, inadequate, or unfairly discriminatory; and
  - (f) The effect on the rates of any assessment made under KRS 304.17A-460; and
  - (g) Other factors as deemed relevant by the commissioner.
- (4) The rates for each policyholder shall be guaranteed for twelve (12) months at the rate in effect on the date of issue or date of renewal.
- (5) At any time the commissioner, after a public hearing for which at least thirty (30) days' notice has been given, may withdraw approval of rates or fees previously approved under this section and may order an appropriate

refund or future premium credit to policyholders, enrollees, and subscribers if the commissioner determines that the rates or fees previously approved are in violation of this chapter.

- (6) Each insurer paying a risk assessment under KRS 304.17A-460 may include the amount of the assessment in establishing premium rates filed with the commissioner under this section. The insurer shall identify any assessment allocated.
- (7) The commissioner may by administrative regulation prescribe any additional information related to rates, fees, dues, and other charges as they relate to the factors set out in subsection (3) of this section that he or she deems necessary and relevant to be included in the filings and the form of the filings required by this section.

Section 15. KRS 304.17A-150 is amended to read as follows:

- (1) On and after July 15, 1995, it is an unfair trade practice for an insurer, agent, broker, or any other person in the business of marketing and selling health plans, to commit or perform any of the following acts:
  - (a) Encourage individuals or groups to refrain from filing an application for coverage with the insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or
  - (b) Encourage or direct individuals or groups to seek coverage from another insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or
  - (c) Encourage an employer to exclude an employee from coverage.

The provisions of paragraphs (a) and (b) of this subsection shall not apply to information provided regarding the established geographic service area of an insurer.

- (2) It is an unfair trade practice for an insurer to compensate an agent, broker, or any other person in the business of marketing and selling health plans on the basis of the health status, claims experience, industry, occupation, or geographic location of the insured or prospective insured.
- (3) It shall constitute an unfair trade practice for any insurer, insurance agent, or third-party administrator to refer an individual employee to the Kentucky guaranteed acceptance program or to arrange for an individual employee to apply to that plan, for the purpose of separating an employee from group health insurance coverage provided in connection with the individual's employment.
- (4) ***It is an unfair trade practice for an insurer that offers multiple health benefit plans to require a health care provider, as a condition of participation in a health benefit plan of the insurer, to participate in any of the insurer's other health benefit plans. In addition to the proceedings and penalties provided in this chapter for violation of this provision, a contract provision violating this subsection is void.***
- (5) It is an unfair trade practice for an insurer not to compute an insured's coinsurance or cost sharing on the basis of the amount actually received by a health-care provider from the insurer.
- ~~(6)(5)}~~ The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any insurer that fails to pay an assessment under KRS 304.17A-470. As an alternative, the commissioner may levy a civil penalty on any member insurer that fails to pay the assessment when due. The civil penalty shall not exceed five percent (5%) of the unpaid assessment per month, but no civil penalty shall be less than one hundred dollars (\$100) per month.
- ~~(7)(6)}~~ The remedy provided by KRS 304.12-120 shall be available for conduct proscribed by this section.
- (8) ***It is an unfair claims settlement practice for any person to make claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made in instances in which the insured has a liability under the policy beyond his or her copayment or deductible.***

SECTION 16. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) ***An insurer may delay payment by contesting a clean claim only in the following instances:***
  - (a) ***The insurer has information that another insurer is primarily responsible for the claim;***
  - (b) ***The insurer will conduct a retrospective review of the services identified on the claim;***
  - (c) ***The insurer has information that the claim was submitted fraudulently; or***

- (d) *The covered person's or group's premium has not been paid.*
- (2) (a) *If an insurer routinely requires a provider to submit attachments to the claim containing additional medical information summarizing the diagnosis, the treatment, or services rendered to the covered person before the claim will be paid, the insurer shall identify the specific routinely required information in its provider manual or other document that sets forth the procedure for filing claims with the insurer. The insurer shall provide sixty (60) days' advance written notice of modifications to the provider manual that materially change the type or content of the attachments to be submitted;*
- (b) *If a provider submits a clean claim with the required attachments as specified in the provider manual or other document that sets forth the procedure for filing claims with the insurer, the insurer shall pay or deny the claim within the required claims payment time frame established in this subtitle; and*
- (c) *If an insurer conducts a retrospective review of a claim and requires an attachment not specified in the provider manual or other document that sets forth the procedure for filing claims, the insurer shall:*
  - 1. *Notify the provider, in writing or electronically within the claims payment time frame established in this subtitle, of the service that will be retrospectively reviewed and the specific information needed from the provider regarding the insurer's review of a claim;*
  - 2. *Complete the retrospective review within twenty (20) business days of the insurer's receipt of the medical information described in this subsection; and*
  - 3. *Add interest to the amount of the claim to be paid at a rate of twelve percent (12%) per annum, or at a rate in accordance with this subtitle accruing from the thirty-first day after the claim was received by the insurer through the date upon which the claim is paid.*
- (3) (a) *If a claim or portion thereof is contested by an insurer on the basis that the insurer has not received information reasonably necessary to determine insurer liability for the claim or portion thereof, the insurer shall, within the applicable claims payment time frame established in this subtitle, provide written or electronic notice to the provider, covered person, or insurer, as appropriate, with an itemization of all new, never-before-provided information that is needed; and*
- (b) *The insurer shall pay or deny the claims within thirty (30) calendar days of receiving the additional information described in paragraph (a) of this subsection.*

Section 17. KRS 304.17A-545 as amended by House Bill 525 of the 2000 Regular Session, if that bill becomes law, is further amended to read as follows:

- (1) A managed care plan shall appoint a medical director who:
  - (a) Is a physician licensed to practice in this state;
  - (b) Is in good standing with the State Board of Medical Licensure;
  - (c) Has not had his or her license revoked or suspended, under KRS 311.530 to 311.620;
  - (d) Shall sign any **denial letter required under KRS 304.17A-540**~~decision to deny any health care benefit~~;
  - and
  - (e) Shall be responsible for the treatment policies, protocols, quality assurance activities, and utilization management decisions of the plan.
- (2) The medical director shall ensure that:
  - (a) Any utilization management decision to deny, reduce, or terminate a health care benefit or to deny payment for a health care service because that service is not medically necessary shall be made by a physician, except in the case of a health care service rendered by a chiropractor or optometrist, that decision shall be made respectively by a chiropractor or optometrist duly licensed in Kentucky;
  - (b) A utilization management decision shall not retrospectively deny coverage for health care services provided to a covered person when prior approval has been obtained from the insurer for those services, unless the approval was based upon fraudulent, materially inaccurate, or misrepresented information submitted by the covered person or the participating provider;

- (c) In the case of a managed care plan, a procedure is implemented whereby participating physicians have an opportunity to review and comment on all medical and surgical and emergency room protocols, respectively, of the insurer and whereby other participating providers have an opportunity to review and comment on all of the insurer's protocols that are within the provider's legally authorized scope of practice;
  - (d) The utilization management program is available to respond to authorization requests for urgent services and is available, at a minimum, during normal working hours for inquiries and authorization requests for nonurgent health care services; and
  - (e) In the case of a managed care plan, a covered person is permitted to choose or change a primary care provider from among participating providers in the provider network and, when appropriate, choose a specialist from among participating network providers following an authorized referral, if required by the insurer, and subject to the ability of the specialist to accept new patients.
- (3) A managed care plan shall develop comprehensive quality assurance or improvement standards adequate to identify, evaluate, and remedy problems relating to access, continuity, and quality of health care services. These standards shall be made available to the public during regular business hours and include:
- (a) An ongoing written, internal quality assurance or improvement program;
  - (b) Specific written guidelines for quality of care studies and monitoring, including attention to vulnerable populations;
  - (c) Performance and clinical outcomes-based criteria;
  - (d) A procedure for remedial action to correct quality problems, including written procedures for taking appropriate corrective action;
  - (e) A plan for data gathering and assessment; and
  - (f) A peer review process.
- (4) Each managed care plan shall have a process for the selection of health care providers who will be on the plan's list of participating providers, with written policies and procedures for review and approval used by the plan.
- (a) The plan shall establish minimum professional requirements for participating health care providers. An insurer may not discriminate against a provider solely on the basis of the provider's license by the state;
  - (b) The plan shall demonstrate that it has consulted with appropriately qualified health care providers to establish the minimum professional requirements;
  - (c) The plan's selection process shall include verification of each health care provider's license, history of license suspension or revocation, and liability claims history;
  - (d) A managed care plan shall establish a formal written, ongoing process for the reevaluation of each participating health care provider within a specified number of years after the provider's initial acceptance into the plan. The reevaluation shall include an update of the previous review criteria and an assessment of the provider's performance pattern based on criteria such as enrollee clinical outcomes, number of complaints, and malpractice actions.
- (5) A managed care plan shall not use a health care provider beyond, or outside of, the provider's legally authorized scope of practice.

Section 18. KRS 507.040 is amended to read as follows:

- (1) A person is guilty of manslaughter in the second degree when ~~including, but not limited to, the operation of a motor vehicle,~~ he wantonly causes the death of another person, ***including, but not limited to, situations where the death results from the person's:***
- (a) ***Operation of a motor vehicle; or***
  - (b) ***Leaving a child under the age of eight (8) years in a motor vehicle under circumstances which manifest an extreme indifference to human life and which create a grave risk of death to the child, thereby causing the death of the child.***
- (2) Manslaughter in the second degree is a Class C felony.

Section 19. KRS 165.160 is amended to read as follows:

- (1) Cities of the second, **third, and fourth classes**~~[-class]~~ may establish or acquire by lawful conveyance municipal colleges for the purpose of promoting public education. A college in a city of the second, **third, or fourth** class shall not constitute a municipal college or receive support as provided in KRS 165.170 to 165.190 unless it is controlled by a board of trustees appointed by the mayor and legislative body of the city, and unless its principal work is the maintenance of courses affording instruction in such arts, sciences and professions and conferring such certificates of attainment as are authorized by other similar institutions of learning above the high school grade. No advisory board shall be appointed for any college established pursuant to the provisions of this section, and the board of trustees of the college shall perform the functions of an advisory board in addition to its other functions.
- (2) If the college is supported by a municipal college support district, three (3) members of the board of trustees mentioned in subsection (1) shall be appointed by the governing body of the district.

Section 20. KRS 165.165 is amended to read as follows:

The legislative body of a city of the second, **third, or fourth** class in which a municipal college or junior college exists under the provisions of KRS 165.160 to 165.260 may, for educational purposes, use and employ all the authority contained in KRS 165.080 to 165.140 and 162.340 to 162.380 to issue bonds for the benefit of such college.

Section 21. KRS 165.180 is amended to read as follows:

Any city of the second, **third, or fourth** class having a municipal college may devote to college purposes any funds or properties derived from sources other than taxes levied for special purposes.

Section 22. KRS 165.190 is amended to read as follows:

The legislative body of any city of the second, **third, or fourth** class may appropriate as a site for the buildings and grounds for a municipal college any public grounds of the city not especially appropriated or dedicated to any other use.

Section 23. KRS 165.195 is amended to read as follows:

The board of trustees of a municipal college in a city of the second, **third, or fourth** class may acquire, by purchase or gift, lands and improvements for the purpose of expanding the plant and extending the usefulness of the college, and when unable to agree with the owner of land and improvements necessary for the purposes of the college may proceed to condemn the land and improvements. The condemnation proceedings shall be conducted in the manner provided in the Eminent Domain Act of Kentucky.

SECTION 24. A NEW SECTION OF KRS CHAPTER 165 IS CREATED TO READ AS FOLLOWS:

*It shall be a public purpose for a city of any class to support postsecondary education through the appropriation of funds for postsecondary educational facilities located or to be located within the city and for postsecondary educational programs offered within the city. Nothing in Sections 19 to 24 of this Act shall create an obligation or liability for the Council on Postsecondary Education.*

SECTION 25. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *The "Lung Cancer Research Fund" is created and shall receive funds each year from the tobacco settlement agreement fund created in KRS 248.654 in the amount specified in subsection (5)(b) of Section 2 of House Bill 517 as enacted at the 2000 Regular Session of the General Assembly. The lung cancer research fund shall be used to finance the Lung Cancer Research Project described in subsection (5) of this section. No revenues from the lung cancer research fund shall be allocated until the board has adopted the strategic plan described in subsections (5) and (6) of this section.*
- (2) *A research consortium between the University of Kentucky and the University of Louisville is created and shall be known as the Governance Board of the Lung Cancer Research Project. The consortium shall be attached to the Council on Postsecondary Education for administrative purposes.*
- (3) *The board shall consist of nine (9) members appointed by the Governor as follows:*
  - (a) *Two (2) members shall be from the faculty of the School of Medicine at the University of Kentucky;*
  - (b) *Two (2) members shall be from the faculty of the School of Medicine at the University of Louisville;*
  - (c) *Two (2) members shall be from the Council on Postsecondary Education; and*

- (d) *Three (3) members shall be from the state at large, one (1) of whom shall be appointed chair by the Governor.*
- (4) *Except as provided in paragraphs (a) to (d) of this subsection, the terms of the members shall be for four (4) years and until their successors are appointed and confirmed. A vacancy on the board shall be filled for the remainder of the unexpired term in the same manner as the original appointment. Members may be reappointed. The initial appointments shall be for staggered terms, as follows:*
  - (a) *Two (2) members shall be appointed for one (1) year;*
  - (b) *Two (2) members shall be appointed for two (2) years;*
  - (c) *Two (2) members shall be appointed for three (3) years; and*
  - (d) *Three (3) members shall be appointed for four (4) years.*
- (5) *The Governance Board of the Lung Cancer Research Project shall develop and oversee the implementation of a twenty (20) year strategic plan that utilizes the resources of both the University of Louisville and the University of Kentucky in establishing the Lung Cancer Research Project. The Lung Cancer Research Project shall be a joint program to:*
  - (a) *Develop an expertise in the area of lung cancer research with an immediate focus on early detection and epidemiology and with an ultimate goal of eradication of lung cancer;*
  - (b) *Establish a statewide clinical trial network to make university-based clinical trials available to the community physician in order to bring the most innovative cancer treatments to all Kentuckians in need of these treatments;*
  - (c) *Leverage the resources earmarked for the Lung Cancer Research Project toward the certification of the cancer program at the University of Kentucky and the University of Louisville by the National Cancer Institute as a cancer center; and*
  - (d) *Undertake other initiatives consistent with the strategic plan.*
- (6) *The strategic plan shall identify both short-term and long-term goals and the appropriate oversights to measure progress toward achievement of those goals; it shall be updated every two (2) years.*
- (7) *The Governance Board of the Lung Cancer Research Project shall submit an annual report to the Governor and the Legislative Research Commission by September 1 each year for the preceding fiscal year, outlining its activities and expenditures.*
- (8) *The Auditor of Public Accounts, on an annual basis, shall conduct a thorough review of all expenditures from the lung cancer research fund and, if necessary in the opinion of the Auditor, the operations of the Lung Cancer Research Project and the lung cancer research fund.*

Section 26. KRS 205.5632 is amended to read as follows:

- (1) No prior authorization shall be required for reimbursement of any claim involving any Medicaid-covered new drug that is available after July 15, 1998, for a period of at least twelve (12) months, during which time the Drug Management Review Advisory Board may review the product.
- (2) The Department for Medicaid Services shall promulgate administrative regulations in accordance with KRS Chapter 13A for the drug submission program. Prior to implementation of the administrative regulations, the Drug Management Review Advisory Board shall review the guidelines.
- (3) The Department for Medicaid Services shall, within twenty-four (24) months of July 15, 1998, analyze drug class reviews of all current drugs requiring prior authorization, and shall continue requiring prior authorization by using drug class reviews, safety, utilization factors, and unusual or extreme cost drivers having inappropriate economic impact on the Department for Medicaid Services, until the review criteria are promulgated by administrative regulations according to KRS Chapter 13A, and pursuant to KRS 205.5634(2). At least fifty percent (50%) of class reviews shall be completed within twelve (12) months of July 15, 1998.
- (4) (a) *Federal Food and Drug Administration (FDA) approved prescription drugs that have been determined to be within the same pharmacological category, and that have comparable clinical application, efficacy, and safety, and that are of comparable cost to other FDA-approved prescription drugs that have been placed on the Kentucky Medicaid nonprior-authorized drug file shall be placed on the Kentucky Medicaid nonprior-authorized drug file. Any drug that is removed from prior*



*authorization in accordance with the provisions of this section shall be returned to prior authorization status if the comparable drug that was nonprior-authorized subsequently becomes prior authorized. To assure the cost effective operation of the Medicaid pharmacy program, the department shall file, no later than October 1, 2000, administrative regulations in accordance with KRS Chapter 13A that describe the process that will be employed to describe drug comparability with regard to efficacy, safety, and cost.*

- (b) *For purposes of this subsection, "pharmacological category" means a category of drugs that is characterized as having very similar properties and therapeutic effects upon living organisms.*

SECTION 27. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "adult day health care program" means a program licensed by the Cabinet for Health Services that provides organized health care for its clients during specified daytime hours, that may include continuous supervision to assure that health care needs are being met, supervision of self-administration of medications, and provision of nursing services, personal care services, self-care training, and social and recreational activities for individuals of all ages.*
- (2) *The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish health, safety, and treatment requirements for licensed adult day health care programs. No person, association, corporation, or other organization shall operate or maintain an adult day health care program without first obtaining a license as provided in this section.*
- (3) *The cabinet may issue a license upon request to any adult day health care program meeting the standards required under subsection (2) of this section and administrative regulations promulgated thereunder. The cabinet may deny, revoke, suspend, or modify an adult day health care program license for failure to comply with standards set by the cabinet.*
- (4) *Services provided in an adult day health care program for its clients may include:*
  - (a) *Medical therapeutic services; and*
  - (b) *Physical and speech therapy.*

Section 28. KRS 205.561 is amended to read as follows:

- (1) *The cabinet shall submit an annual report to the Governor and the Legislative Research Commission on the dispensing of prescription medications to persons eligible under KRS 205.560, on or before ~~December~~~~[September]~~ 1 of ~~each~~~~[the]~~ year. ~~Each~~~~[Such]~~ report shall include ***a research study to determine the average cost of dispensing prescription medications***~~[an estimate of the current cost to pharmacies]~~, including associated administrative costs, ***and the average cost of acquiring drugs for***~~[of dispensing prescription medications to]~~ eligible recipients under the provisions of KRS 205.560, the current level of dispensing fee provided by the cabinet, and an estimate of ~~[additional]~~ revenues required to adequately adjust reimbursement to cover costs for ~~[such]~~ pharmacies. The report shall also include current data on the most utilized and abused drugs in Medicaid, a determination of factors causing high drug costs and drug usage rates of Medicaid recipients, objectives and timelines for cost containment in the Medicaid drug program, comparative data from other states, and cost effectiveness of the drug formulary and prior authorization process. The annual report shall be developed with the advice of the Drug Management Review Board created under KRS 205.5636.*
- (2) *Prior to data collection and analysis of any research study to determine the cost of dispensing prescription medications and the cost of acquiring drugs for Medicaid eligible recipients, the Cabinet for Health Services and any person or entity holding a contract to perform the study shall report to the Interim Joint Committee on Health and Welfare regarding the proposed research methodology for carrying out subsection (1) of this section.*
- (3) *Any research study to determine the cost of dispensing prescription medications and the cost of acquiring drugs for Medicaid eligible recipients shall include the following components:*
  - (a) *Recent academic review of the literature, previous research performed for the Department for Medicaid Services, and research from other states to determine the relevant factors or characteristics to include in the study;*
  - (b) *Analysis of relevant factors or characteristics that influence dispensing and acquisition costs including, but not limited to:*
    1. *Urban versus rural location;*

2. *Chain versus independent affiliation;*
  3. *Total prescription volume; and*
  4. *Medicaid volume as a percent of the total volume;*
- (c) *Sufficient representative sample appropriately stratified to make valid estimates of the effects of each of the relevant factors on dispensing and acquisition costs;*
  - (d) *Standard error for each estimate;*
  - (e) *Calculation of a ninety-five percent (95%) confidence interval for each sample estimate;*
  - (f) *Reports of statistical tests of significance at the five percent (5%) significance level to determine if the variation in dispensing and acquisition costs occur across the stratification types included in the study;*
  - (g) *Reports of test results for normality;*
  - (h) *Reports of methods to identify and exclude outliers; and*
  - (i) *Analysis of the cost of administering the prior authorization program by the Department for Medicaid Services and factors which cause a discrepancy between the cost of dispensing prescription medications and the cost of acquiring drugs for Medicaid eligible recipients as compared to the cost of dispensing prescription medications and acquiring drugs for patients within the commercial market.*
- (4) *The findings of any research study and the annual report required under this section shall be used to establish the fees for dispensing prescription medications to Medicaid eligible recipients. The dispensing fees shall reflect the average cost of dispensing prescription medications to Medicaid eligible recipients in accordance with the annual report.*

Section 29. KRS 205.6316 is amended to read as follows:

The Cabinet for Health Services shall review the procedures for medical assistance reimbursement of pharmacists to reduce fraud and abuse. The cabinet shall by promulgation of administrative regulation, pursuant to KRS Chapter 13A, establish the following:

- (1) Point-of-sale computer technology, with integration of data at the physician's office and the pharmacy, that will permit prospective drug utilization review;
- (2) Usage parameters by drug class to enable medical necessity and appropriateness reviews to be conducted prior to payment;
- (3) A dialog among the Department for Medicaid Services, the Kentucky Medical Board of Licensure, and the Kentucky Board of Pharmacy, to develop recommendations for legislation for the 1996 Regular Session of the General Assembly that will strengthen the generic substitution laws for prescription medication; **and**
- (4) A dispensing fee for each prescription in accordance with the findings of the **annual** report submitted by the cabinet pursuant to KRS 205.561.

Section 30. The following KRS sections are repealed:

- 147A.130 Fee to cover administrative costs of health care trusts -- Referral fees prohibited.
- 304.17-410 Department to collect data concerning cost of health insurance -- Report to General Assembly.
- 304.18-025 Health care trust.
- 304.18-055 Pooling of claims experience required.

**Approved April 25, 2000**

**CHAPTER 522****(HB 572)**

AN ACT relating to research, innovation, and technology businesses.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 4 to 17 of this Act, unless the context indicates otherwise:*

- (1) *"Applied research" means those research activities occurring at universities and in private enterprises that have potential commercial application;*
- (2) *"Cluster" means a geographically bound concentration of similar, related, or complementary businesses with active channels for business transactions, communications, and dialogue, that share specialized infrastructure, labor markets, and services, and that are faced with common opportunities and threats;*
- (3) *"Commission" means the Kentucky Innovation Commission;*
- (4) *"Commonwealth" means the Commonwealth of Kentucky;*
- (5) *"Council" means the Council on Postsecondary Education;*
- (6) *"Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, person, group, or other entity engaged in nonretail commerce, agribusiness, trade, or manufacturing;*
- (7) *"Immediate family members" means:*
  - (a) *Spouse and parents-in-law;*
  - (b) *Parents and grandparents;*
  - (c) *Children and their spouses; and*
  - (d) *Siblings and their spouses;*
- (8) *"Kentucky-based company" means a business with its principal place of business in Kentucky or no less than fifty percent (50%) of its property and payroll located in Kentucky;*
- (9) *"Knowledge-based" means driven by knowledge, innovation, and speed;*
- (10) *"Medium-size company" means a business with fifty-one (51) to one hundred fifty (150) employees;*
- (11) *"Qualified company" means an eligible company that may be awarded a funding voucher pending certification;*
- (12) *"Science and technology organization" means an independent, nonprofit or quasi-governmental organization, with a statewide mission, that has a demonstrated history of managing complicated programs in the areas of entrepreneurial innovation, science, and technology advancement;*
- (13) *"Seed funding" means financing that is provided for early-stage development, refinement, and commercialization of a product, process, or innovation through continuing applied research, advancing the patent process, determining commercial and market potential, or moving research toward development of a prototype; and*
- (14) *"Small company" means a firm with fifty (50) or fewer employees.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

*The General Assembly finds that the general welfare and material well-being of the citizens of the Commonwealth depend on immediate action to develop a strong, entrepreneurial economy, characterized by knowledge, innovation, and speed and that it is in the best interest of the Commonwealth to promote research, innovation, and high-technology enterprises that utilize the higher-order skills of an educated workforce. The provisions in Sections 1 to 17, 18, 19, and 20 of this Act shall be liberally construed and applied to advance public purposes.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *There is established the Kentucky Innovation Commission, as an independent advisory commission, consisting of fifteen (15) members as follows:*
  - (a) *The Governor or designee;*
  - (b) *The secretary of the Governor's Executive Cabinet or designee;*
  - (c) *The secretary of the Cabinet for Economic Development or designee;*
  - (d) *The president of the Council on Postsecondary Education or designee;*
  - (e) *The state budget director or designee;*
  - (f) *The Speaker of the House or designee;*
  - (g) *The President of the Senate or designee; and*
  - (h) *Eight (8) at-large members appointed by the Governor as follows:*
    1. *Four (4) members of the private sector possessing extensive experience and expertise relating to managing a high-technology business or engaging in an innovation-driven, knowledge-based enterprise;*
    2. *One (1) member engaged in the business of venture capital;*
    3. *One (1) member of the private sector possessing extensive experience and expertise relating to providing or supporting communications infrastructure; and*
    4. *Two (2) members who are engineers or scientists recognized for their scientific or technological research efforts, or educators with an interest or background in teaching students to become highly skilled workers or entrepreneurs.*
- (2) *The eight (8) at-large members shall serve terms of four (4) years, except that the original appointments shall be staggered so that two (2) appointments shall expire at two (2) years, three (3) appointments shall expire at three (3) years, and three (3) appointments shall expire at four (4) years from the dates of initial appointment.*
- (3) *The commission shall meet quarterly and at other times upon call by the chair.*
- (4) *Eight (8) members shall constitute a quorum for conducting business.*
- (5) *Members shall receive no compensation except that the at-large members shall be reimbursed for actual and necessary travel expenses for attending meetings and performing other official functions, consistent with state reimbursement policy for state employees.*
- (6) *Vacancies shall be filled in the same manner as the original appointment.*
- (7) *The chair and vice chair of the commission shall be appointed by the Governor from the private sector membership.*
- (8) *The commission shall provide ongoing advice, direction, and policy recommendations to the Governor and the General Assembly relating to the status of Kentucky knowledge-driven businesses, research and development initiatives, and related high-skill training and education in the Commonwealth.*
- (9) *The duties and responsibilities of the commission shall be to:*
  - (a) *Promote the cooperation of private and public entities that have the purpose and duty of advancing the knowledge-based economy in the Commonwealth through technological innovation and knowledge transfer;*
  - (b) *Consider performance indicators recommended by public and private experts in and outside of the state in the fields of research and development and economic development, for the purpose of recommending benchmarks. Experts in this state shall include, but not be limited to, representatives from the universities undertaking research and development activities, representatives of the Kentucky Science and Technology Corporation, representatives of targeted technology sectors, representatives of the Cabinet for Economic Development, and representatives of other state agencies having economic development and information technology responsibilities. Outside state experts shall include nationally recognized independent reviewers to assess the competitiveness of technology sectors in this state and the impact of research and development activities on economic development*

*in the Commonwealth. Quantitative and qualitative indicators may include but are not limited to the following:*

1. *Kentucky companies modernizing to become more technologically innovative and globally competitive;*
  2. *Research and development initiatives undertaken at Kentucky universities with federal, state, or private funds;*
  3. *Educational attainment in areas that support the workforce needs of information technology and high-growth knowledge industries;*
  4. *High-technology sectors and companies moving to and operating in the state;*
  5. *Patents filed for technology or knowledge-based commercial products, processes, or services;*
  6. *Businesses using electronic commerce and the communications infrastructure access capacity for Kentucky businesses; and*
  7. *Growth in corporate headquarters, research and development centers, high-income employees, and clustering of related technology industries and suppliers;*
- (c) *Operate as a common strategic umbrella to advocate for the use of federal, state, local government, and private sector funds to create research and development projects, modernize manufacturing facilities, and promote knowledge-based, technology sectors and companies in the Commonwealth; and*
- (d) *Report to the Governor and to the General Assembly annually on performance indicators, recommending benchmarks for measuring progress toward the advancement of the knowledge-based economy, technological innovation, and knowledge transfer, and reporting on the programs and initiatives set forth in Sections 5 to 22 of this Act.*

- (10) *The support staff for the commission shall be from the office of the state budget director.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *The Council on Postsecondary Education shall have all the powers and authority, not explicitly prohibited by statute, necessary and convenient to carry out and effectuate the purposes of Sections 5 to 17 of this Act, including, but not limited to:*
- (a) *Entering into contracts or agreements necessary or incidental to the performance of its duties, functions, and responsibilities; and*
  - (b) *Soliciting, borrowing, accepting, receiving, and expending funds from any public or private source, including, but not limited to, general fund appropriations of the Commonwealth, grants or contributions of money, property, labor, or other things of value to be used to carry out the programs' operations, functions, and responsibilities.*
- (2) *The council may expend money in the funds created in Section 5, Section 9, and Section 13 of this Act for reasonable administrative expenses directly incurred in carrying out the requirements of Sections 5 to 17 of this Act. It is the intent of the General Assembly that the funds created in Section 5, Section 9, and Section 13 of this Act be used, to the fullest extent possible, to directly fund project costs.*
- (3) *The council shall contract with a science and technology organization to administer the programs created in Section 6 and Section 14 of this Act, and may contract with a science and technology organization to administer the programs created in Section 10 and Section 17 of this Act. The council may contract with the Kentucky Science and Technology Corporation to administer these programs. The council shall approve the application criteria, the process for submission of an application, and the structure and type of outside expertise or peer review used in the application review process in the programs created in Section 6, Section 10, and Section 14 of this Act.*
- (4) *No member of the council or the science and technology organization or other administering entity, or their employees or outside experts or their immediate family members, shall directly or indirectly financially benefit in any award, contract, or agreement under the programs.*
- (5) *The council shall submit an annual report to Kentucky Innovation Commission, the Governor, and the General Assembly detailing its work related to the programs created in Section 6, Section 10, Section 14,*

*and Section 17 of this Act. The annual reports shall include reporting on the progress made in achieving each program's purposes, qualitative and quantitative information concerning the applications received, projects approved and undertaken, companies served, and funding amounts invested in each project or program, as appropriate, and findings and recommendations to increase each program's effectiveness in achieving its purposes.*

- (6) *All records related to the administration of the programs created in Section 6, Section 10, Section 14, and Section 17 of this Act shall be deemed property of the council and shall be deemed open records and subject to public inspection under KRS 61.870 to 61.884. Any research that involves or is a patent, trade secret, or other legally protectable interest shall be exempt from inspection until such time as the intellectual property rights have been fully protected.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

*There is established and created in the State Treasury a fund entitled the "Kentucky Research and Development Voucher Fund" for the purpose of enabling small or medium-size, Kentucky-based companies to undertake research and development work in partnership with universities in the Commonwealth. The fund may receive state appropriations, gifts, grants, federal funds, revolving funds, and any other funds both public and private. Moneys deposited in the fund shall be disbursed by the State Treasurer upon the warrant of the secretary of the Finance and Administration Cabinet. Any unallocated or unencumbered balances in the fund shall be invested as provided in KRS 42.500(9), and any income earned from the investments along with the unallotted or unencumbered balances in the fund shall not lapse, and shall be deemed a trust and agency account and made available solely for the purposes and benefits of the Kentucky Research and Development Voucher Program.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *There is created and established in the Council on Postsecondary Education a Kentucky Research and Development Voucher Program to provide vouchers to small and medium-size, Kentucky-based companies to undertake research and development work in partnership with universities in the Commonwealth.*
- (2) *The purpose of the Kentucky Research and Development Voucher Program is to:*
  - (a) *Accelerate knowledge transfer and technological innovation, improve economic competitiveness, and spur economic growth in Kentucky-based companies;*
  - (b) *Support research and development activities that have clear potential to lead to commercially successful products, processes, or services within a reasonable period of time;*
  - (c) *Stimulate growth-oriented enterprises within the Commonwealth;*
  - (d) *Encourage partnerships and collaborative projects between private enterprises, Kentucky's universities, and research organizations; and*
  - (e) *Promote research and development activities that are market-oriented.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *The science and technology organization shall have the authority to review applications, qualify companies, and certify qualified companies.*
- (2) *The science and technology organization shall develop application criteria and an application process subject to the following limitations. The proposed research and development project shall be likely to:*
  - (a) *Produce a measurable result and be technically sound;*
  - (b) *Lead to innovative technology or new knowledge;*
  - (c) *Lead to commercially successful products, processes, or services within a reasonable period of time;*  
*or*
  - (d) *Show significant potential for stimulating economic growth and a reasonable probability to enhance employment opportunities within the Commonwealth.*
- (3) *The applicant shall provide to the science and technology organization an application that shall include, but not be limited to, the following information:*
  - (a) *Verification that the applicant is an eligible company that meets the definition of a Kentucky-based company and medium-size company or small company;*

- (b) *A technical research plan that is sufficient for outside expert review;*
- (c) *A detailed financial analysis that includes the commitment of resources by the applicant and others;*
- (d) *Sufficient detail concerning proposed project partners, type and amount of work to be performed by each partner, and expected product or service with estimated costs to be reflected in the negotiated contract or agreement; and*
- (e) *A statement of the economic development potential of the project.*
- (4) *The science and technology organization shall conduct an independent review with the use of outside experts to evaluate each application. Following the application review, the science and technology organization shall make a determination of the application and may determine that the applicant is a qualified company as defined in Section 1 of this Act.*
- (5) *Upon a qualified company's presentation of a legal agreement or contract meeting the conditions under subsection (6) of this section the science and technology organization shall present both qualified company and university with a certification authorizing voucher funding.*
- (6) *Prior to receiving certification authorizing voucher funding from the science and technology organization, the qualified company shall:*
  - (a) *Negotiate an agreement and funding contract with a university in the Commonwealth that is satisfactory to the science and technology organization, to undertake the research and development work; and*
  - (b) *Provide assurance to the science and technology organization that the university and the qualified company have negotiated the ownership and disposition of patents, royalties, all other intellectual property rights, and equity or related position relating to the contract between the qualifying company and the university.*
- (7) *Prior to certifying a qualified company, the science and technology organization may negotiate with the qualified company the ownership and disposition of patents, royalties, all other intellectual property rights, and an equity or related position on behalf of the Kentucky research and development voucher fund for the sole purpose of reinvesting and sustaining a revolving fund to carry out the provisions of Sections 6, 7, and 8 of this Act.*
- (8) *The science and technology organization, upon approval by the council, shall set forth guidelines as to when and how all areas of the state will be notified about the program's availability and a program schedule, including but not limited to the following:*
  - (a) *A review cycle including:*
    - 1. *A deadline for submission of applications at least biannually; and*
    - 2. *A deadline for reviewing applications of no more than one hundred twenty (120) days after the application submission deadline; and*
  - (b) *A deadline, from the date an applicant is determined to be a qualified company, by which certification shall be made. If certification is not made by that deadline the funding voucher award is made void.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

*Project funding in the Kentucky Research and Development Voucher Fund Program shall have the following limitations:*

- (1) *Voucher award funds from the state fund shall be expended within the university under contract;*
- (2) *The maximum amount of voucher funds awarded to a qualified company shall not exceed one hundred thousand dollars (\$100,000) each year for two (2) years, equal to a maximum of two hundred thousand dollars (\$200,000); and*
- (3) *At a minimum, the qualified company shall match the project award by a one-to-one dollar ratio for each year of the project. The science and technology organization has sole discretion to authorize an in-kind contribution in lieu of part of the industry match if the science and technology organization determines that the financial limitations of the qualified company warrants this authorization.*

## SECTION 9. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

*There is established and created in the State Treasury a fund entitled the "Kentucky Rural Innovation Fund" for the purpose of enabling small, rural Kentucky-based firms to undertake research and development, and entrepreneurial innovation work in partnership with postsecondary institutions in the Commonwealth. The fund may receive state appropriations, gifts, grants, federal funds, revolving funds, and any other funds both public and private. Moneys deposited in the fund shall be disbursed by the State Treasurer upon the warrant of the secretary of the Finance and Administration Cabinet. Any unallocated or unencumbered balances in the fund shall be invested as provided in KRS 42.500(9), and any income earned from the investments along with the unallotted or unencumbered balances in the fund shall not lapse, and shall be deemed a trust and agency account and made available solely for the purposes and benefits of the Kentucky Rural Innovation Program.*

## SECTION 10. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *There is created and established in the Council on Postsecondary Education a Kentucky Rural Innovation Program to provide vouchers to rural Kentucky-based, small companies to undertake research, development, and entrepreneurial innovation work in partnership with Kentucky postsecondary institutions, the Small Business Development Center Network in Kentucky, and other entities engaged in research and development work.*
- (2) *The purpose of the Kentucky Rural Innovation Program is to:*
  - (a) *Accelerate knowledge transfer and technological innovation that improve economic competitiveness and spur economic growth in rural, Kentucky-based, small companies;*
  - (b) *Support entrepreneurial activities that have clear potential to lead to commercially successful products, processes, or services within a reasonable period of time;*
  - (c) *Stimulate growth-oriented enterprises within the Commonwealth;*
  - (d) *Encourage partnerships and collaborative projects between private enterprises, Kentucky's postsecondary institutions, research organizations, and the Small Business Development Center Network in Kentucky; and*
  - (e) *Promote research, development, and entrepreneurial activities that are driven by private sector requirements.*

## SECTION 11. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *The council shall have the authority to review applications, award vouchers to qualifying companies, and certify qualified companies. The council shall develop application criteria and an application process subject to the following limitations. The proposed project shall be likely to:*
  - (a) *Produce a measurable result and be technically sound;*
  - (b) *Lead to innovative technology or new knowledge;*
  - (c) *Lead to commercially successful products, processes, or services within a reasonable period of time;*  
*or*
  - (d) *Show significant potential for stimulating economic growth and a reasonable probability to enhance employment opportunities within rural Kentucky.*
- (2) *The applicant shall provide to the council an application that shall include, but not be limited, to the following information:*
  - (a) *Verification that the applicant is an eligible company, a Kentucky-based company, and a small company, and is located in a rural area of the state;*
  - (b) *Written justification that the project application is consistent with the program purposes;*
  - (c) *A research, development, and entrepreneurial plan that is sufficient in scope for review;*
  - (d) *A financial analysis and resource support plan that includes sufficient commitments by the applicant and others, in addition to an award voucher, providing a reasonable probability of the success of the project endeavor;*



- (e) *Sufficient detail concerning proposed project partners, type and amount of work to be performed by each partner, and expected product or service with estimated costs to be reflected in the negotiated contract or agreement; and*
- (f) *A statement of the economic development potential of the project.*
- (3) *The council shall conduct an independent review with the use of outside experts to evaluate each application. Following the application review, the council shall make a determination of the application and may determine that the applicant is a qualified company as defined in Section 1 of this Act.*
- (4) *Upon a qualified company's presentation of a legal agreement or contract meeting the conditions under subsection (5) of this section the council shall present the qualified company and partnering entities with a certification authorizing voucher funding.*
- (5) *Prior to receiving certification authorizing voucher funding the qualified company shall:*
  - (a) *Negotiate an agreement and funding contract with one (1) or more of Kentucky's postsecondary institutions, the Small Business Development Center Network for approved project activities specified under KRS 154.01-750(4), or other entity engaged in the research and development work, that is satisfactory to the council, to undertake the research and development and entrepreneurial work; and*
  - (b) *Provide assurance to the council that the collaborating parties have adequately addressed the ownership and disposition of patents, royalties, and all other intellectual property rights, and equity or related position relating to the contract between the qualifying company and a partnering entity.*
- (6) *The council shall set forth guidelines as to when and how all areas of the state will be notified about the program availability and guidelines for making application to the program. The council shall determine a deadline, from the date a voucher is awarded, that certification shall be made. If certification is not made by that deadline the voucher award is made void.*
- (7) *Prior to certifying a qualified company, the council may negotiate with the qualified company the ownership and disposition of patents, royalties, all other intellectual property rights, and an equity or related position on behalf of the Kentucky rural innovation fund for the sole purpose of reinvesting and sustaining a revolving fund to carry out the provisions of Sections 10, 11, and 12 of this Act.*
- (8) *The council may, in effectuating the provisions of this section, contract with any public agency, private entity, or science and technology organization to administer and manage the Kentucky Rural Innovation Program.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

*Project funding in the Kentucky Rural Innovation Program shall have the following limitations:*

- (1) *Voucher award funds shall be used as seed funding as defined in Section 1 of this Act;*
- (2) *Voucher award funds may be used for those entrepreneurial training topics specified in KRS Chapter 154.01-750(4), if they meet particular objectives of a qualified company as delineated in the project application; and*
- (3) *The amount of a voucher fund award to a qualified company shall not exceed twenty-five thousand dollars (\$25,000) each year for two (2) years, equal to a maximum of fifty thousand dollars (\$50,000).*

SECTION 13. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

*There is established and created in the State Treasury a fund entitled the "Kentucky Commercialization Fund" to provide development funds for promising technologies developed through the research and development work undertaken at the universities in the Commonwealth. The fund may receive state appropriations, gifts, grants, federal funds, revolving funds, and any other funds both public and private. Moneys deposited in the fund shall be disbursed by the State Treasurer upon the warrant of the secretary of the Finance and Administration Cabinet. Any unallocated or unencumbered balances in the fund shall be invested as provided in KRS 42.500(9), and any income earned from the investments along with the unallotted or unencumbered balances in the fund shall not lapse, and shall be deemed a trust and agency account and made available solely for the purposes and benefits of the Kentucky Commercialization Fund Program.*

SECTION 14. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *There is created and established in the Council on Postsecondary Education a Kentucky Commercialization Fund Program to provide seed funding as defined in Section 1 of this Act, for the development of promising technologies emerging from Kentucky's universities.*
- (2) *The purposes of the Kentucky Commercialization Fund Program is to:*
  - (a) *Accelerate knowledge transfer and technological innovation, improve economic competitiveness, and spur economic growth in Kentucky-based companies;*
  - (b) *Provide seed funding for promising technologies developed in Kentucky's universities;*
  - (c) *Support promising technologies with commercial potential that are in their early stages of development;*
  - (d) *Promote technologies and resources offered by Kentucky's postsecondary institutions to private enterprises; and*
  - (e) *Support the formation and organization of private enterprise that advances commercial applications based on a university's research and development work.*

SECTION 15. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *The science and technology organization shall conduct an outside review to evaluate each proposal.*
- (2) *The science and technology organization shall have the authority to review and provide to the council a reporting of recommended fund projects, which includes a ranking of projects, suggested funding amounts for each project, and reasons for recommending the selected project.*
- (3) *The council shall receive from the science and technology organization a reporting of recommended projects and shall have the final approval on program fund awards.*
- (4) *The science and technology organization shall recommend projects based on proposal applications submitted by Kentucky's universities. The proposals shall be selected on criteria that include, but are not limited to the following:*
  - (a) *Competitive, external peer review;*
  - (b) *Merits of the proposal to meet the program's purposes under subsection (2) of Section 14 of this Act; and*
  - (c) *Potential of the proposal to increase the competitiveness of Kentucky businesses.*
- (5) *Prior to final approval of fund awards, the university submitting the proposal shall provide assurance to the science and technology organization that the collaborating parties have adequately addressed the ownership and disposition of patents, royalties, and all other intellectual property rights, and equity or related position relating to the contract between the qualifying company and a partnering entity.*
- (6) *Prior to approval of funding awards, the science and technology organization may negotiate with the university the ownership and disposition of patents, royalties, all other intellectual property rights, and an equity or related position on behalf of the Kentucky commercialization fund for the sole purpose of reinvesting and sustaining a revolving fund to carry out the provisions of Sections 14, 15, and 16 of this Act.*
- (7) *The science and technology organization, upon approval by the council, shall set forth guidelines as to when and how all areas of the state will be notified about the program availability and a program schedule, including but not limited to the following:*
  - (a) *A review cycle including:*
    1. *A deadline for submission of proposals at least biannually; and*
    2. *A deadline for proposal review of no more than one hundred twenty (120) days after the proposal application submission deadline; and*
  - (b) *A deadline for the awarding of approved projects and program funds.*

SECTION 16. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

*Project funding in the Kentucky Commercialization Fund Program shall have the following limitations:*

- (1) *The maximum amount of funding for a project award shall not exceed seventy-five thousand dollars (\$75,000) each year up to three (3) years, equal to a maximum of two hundred twenty-five thousand dollars (\$225,000); and*
- (2) *The University of Kentucky and the University of Louisville shall be awarded together no more than seventy percent (70%) of fund awards.*

SECTION 17. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *The Council on Postsecondary Education is directed to create nonprofit regional technology corporations. The regional technology corporations shall act as intermediary organizations delivering services and providing resources to knowledge-based clusters, as defined in Section 1 of this Act, primarily in rural areas of Kentucky. Public and private organizations, including comprehensive universities and other postsecondary institutions, may participate in activities organized by the regional technology corporations.*
- (2) *Regional technology corporations shall be organized to support specific clusters, as determined by the council. The council shall not create a regional technology corporation to support and serve a cluster unless it determines that:*
  - (a) *The needs of a particular cluster are sufficient to warrant the creation of a regional technology corporation; and*
  - (b) *The economic impact in the state or region of a particular cluster is sufficient to warrant the creation of a regional technology corporation.*
- (3) *The regional technology corporations may perform services that include, but are not limited to, the following:*
  - (a) *Identify key areas in which the state has comparative advantages and identify the key supplier chains involved;*
  - (b) *Identify ways to link key suppliers and industry anchors to other industries in a matchmaking function;*
  - (c) *Work with economic development recruitment organizations, assisting in identifying and encouraging companies to fill gaps in supplier chains or serve as anchors for cluster development;*
  - (d) *Serve as regional one-stop clearinghouses to cluster companies and related organizations;*
  - (e) *Identify and support the creation of curricula, short courses, certificate programs, and nondegree programs to meet the workforce training needs of promising industries and clusters;*
  - (f) *Support existing industry associations and help create new associations in emerging industries and clusters; and*
  - (g) *Develop regional strategies around the regional technology corporations' purpose to advocate for and secure public and private resources to implement these strategies.*
- (4) *The council may, in effectuating the provisions of this section and for the administration and management related to this section, contract with any public agency, postsecondary institution, private entity, or science and technology organization.*
- (5) *Each regional technology corporation shall report annually and at other times, as required by the council. The regional technology corporation shall report to the council in a manner as prescribed by the council, but reporting shall include information concerning the clusters and companies served, projects undertaken, progress made in achieving its purposes, and recommendations to increase its effectiveness in achieving its purposes.*
- (6) *Funding for the creation and start-up of a regional technology corporation shall be limited to no more than seventy-five thousand dollars (\$75,000) for the first year of operation and fifty thousand dollars (\$50,000) for the second year of operation for a maximum of one hundred twenty-five thousand dollars (\$125,000) from the state fund.*

SECTION 18. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "cluster" and "knowledge-based" shall have the same meaning as in Section 1 of this Act.*

- (2) *In an attempt to accomplish the mission of the Commonwealth's economic development system in KRS 154.01-020 and the purpose of the Kentucky Economic Development Partnership in KRS 154.10-010, the Cabinet for Economic Development shall undertake a strategic technology capacity initiative.*
- (3) *The purposes of the strategic technology capacity initiative within the Cabinet for Economic Development shall be to:*
  - (a) *Focus on the recruitment of research and development companies, organizational units, projects, and activities in the Commonwealth;*
  - (b) *Attract high-technology and research and development centers into Kentucky and support the growth and creation of high-technology, innovative companies from within the Commonwealth; and*
  - (c) *Build and promote the networks of technology-driven and research-intensive industries with their related suppliers, with the goal of creating clusters of innovation-driven industries in Kentucky.*
- (4) *In implementing the strategic technology capacity initiative, the Cabinet for Economic Development shall undertake a study that includes the following:*
  - (a) *An analysis to determine those knowledge-based industry sectors that would be best identified as appropriate targets for economic development recruitment;*
  - (b) *An analysis of supplier chains to the identified industry sectors that would support and enhance the presence of technology-driven industries; and*
  - (c) *A review and detailed survey of the financial needs of those targeted technology-driven industries to determine what changes may be needed in the state's incentive programs and other state support services to industry.*
- (5) *The strategic technology capacity initiative shall utilize the assistance of various departments and functions within the Cabinet for Economic Development, other state government agencies, and other academic and technology-oriented entities to achieve the purposes under subsection (3) of this section.*
- (6) *The Cabinet for Economic Development may enter into contracts or agreements with other private or public entities to study the capacity to attract high-technology and innovative companies and research and development centers to Kentucky and to assist in addressing the unique recruiting issues surrounding attracting these industries.*
- (7) *The Cabinet for Economic Development shall provide to the Kentucky Innovation Commission a report of its strategic technology capacity initiative annually and the results of its study as required in subsection (4) of this section, and shall provide to the Kentucky Innovation Commission additional information and assistance in the completion of its work as required in subsection (9)(b) of Section 3 of this Act.*

SECTION 19. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "cluster" shall have the same meaning as in Section 1 of this Act.*
- (2) *It is the intention of the General Assembly to recognize that a strong manufacturing base for the economy of the Commonwealth requires not only modernization of the production process but also an increase in the number of products developed, so that through the creation of new product lines, additional value-added products, and new manufacturing methods the economy will grow and quality job opportunities will increase. The Cabinet for Economic Development shall support this intention through its authority in KRS 154.12-050 and through its strategic technology capacity initiative in Section 18 of this Act.*
- (3) *The Cabinet for Economic Development shall enter into contracts or agreements with the Kentucky Technology Service, Inc., a nonprofit organization with the mission to assist Kentucky small and medium-size manufacturers to become more competitive in the global marketplace. The contracts or agreements shall require the Kentucky Technology Service, Inc., to undertake the following activities:*
  - (a) *Negotiate contractual agreements with existing manufacturers to deliver modernization services that are likely to lead to the creation of new product lines, additional value-added products, and new manufacturing methods;*
  - (b) *Deliver engineering, technical, and business improvement services in Kentucky manufacturing facilities, through the network of Kentucky Technology Service locations in the state, that lead to the*

*development of new product lines, additional value-added products, and new manufacturing methods;*

- (c) Coordinate services for and support the activities of Kentucky manufacturers that need additional projects, activities, and expertise beyond those available through the Kentucky Technology Service, Inc.;*
- (d) Promote, along with other economic development entities, the development of supplier chains, the linkages among suppliers, and the growth of clusters within the Commonwealth; and*
- (e) Provide to the Cabinet for Economic Development and Kentucky Innovation Commission a report of the advances made in the manufacturing modernization projects initiated.*

SECTION 20. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) As used in this section, "cluster" and "knowledge-based" shall have the same meaning as in Section 1 of this Act.*
- (2) There is established the Office of the Commissioner for the New Economy in the Cabinet for Economic Development. Notwithstanding KRS 154.10-050, the Governor shall nominate the commissioner, who shall be approved by the Kentucky Economic Development Partnership.*
- (3) The duties of the Office of the Commissioner for the New Economy shall include but not be limited to:*
  - (a) Undertake a strategic technology capacity initiative under Section 18 of this Act;*
  - (b) Develop a knowledge-based economy strategy to be presented to the Kentucky Economic Development Partnership and the Kentucky Innovation Commission in Section 18 of this Act;*
  - (c) Oversee the modernization initiative in Section 19 of this Act;*
  - (d) Assist the cabinet in the recruitment of research and development companies;*
  - (e) Assist the cabinet in the attraction of high-technology research and development centers;*
  - (f) Support growth and creation of knowledge-based, innovative companies;*
  - (g) Build and promote networks of technology-driven clusters and research intensive industries;*
  - (h) Administer the high-tech construction pool and the high-tech investment pool; and*
  - (i) Recommend projects to the Kentucky Economic Development Finance Authority for funding through the high-tech construction pool and high-tech investment pool.*
- (4) The high-tech construction pool shall be used for projects with a special emphasis on the creation of high-technology jobs and knowledge-based companies. The commissioner, in administering the high-tech construction pool, shall recommend distribution of funds and projects to the Kentucky Economic Development Finance Authority for its approval. The commissioner shall recommend any designated amount of pool funds to be set aside for any match requirements. Any funds used for matching purposes may include public and private funds.*
- (5) The high-tech investment pool shall be used to build and promote networks to technology-driven industries and research-intensive industries, as well as their related suppliers, with the goal of creating clusters of innovation-driven industries in Kentucky. The commissioner, in administering the high-tech investment pool, shall be authorized to recommend funds to be used to support loans and grants, or to secure an equity position in industrial networks.*
- (6) The Kentucky Economic Development Finance Authority shall assure in their approval of funding of projects that the highest priority is given to knowledge-based companies in fulfillment of the purposes and intentions of the purposes of this section.*

Section 21. The General Assembly directs the Kentucky Science and Technology Corporation to conduct an entrepreneurial audit of appropriate statutes, regulations, and policies that may currently provide obstacles to business development in the information technology and knowledge-based sectors, and to report its findings and recommendations to the General Assembly, the Governor, and Kentucky Innovation Commission no later than September 1, 2001.

Section 22. The General Assembly directs the Kentucky Science and Technology Corporation to create and manage the Kentucky Science and Engineering Foundation as a means to increase Kentucky's capacity to become a leader state in competitive research by attracting more research funding from all sources to the Commonwealth. The Kentucky Science and Engineering Foundation shall be a means to extend and expand the highly successful Kentucky Experimental Program to Stimulate Competitive Research, known as EPSCoR, which has leveraged state matching funds to bring additional federal research dollars to Kentucky, giving a return on the state's investment in this program by a multiple of three for every dollar of state funds invested in EPSCoR. The Kentucky Science and Engineering Foundation, expanding on the existing EPSCoR program and funding, shall be modeled in part on the National Science Foundation and shall make its own investments in peer-reviewed science and engineering research, to accelerate the rate of research and development funds and work to increase the amount of federal and private sector funds for this work in Kentucky.

Section 23. The General Assembly realizes that while certain Kentucky manufacturing sectors have experienced impressive growth in the last two decades, the global economy of the twenty-first century requires profound changes if citizens of the Commonwealth are to be players in the American and world economy. Information technology, communications, and intellectual capital, rather than energy and raw materials, power today's economy. The driving forces of the new economy are ideas, knowledge services, and higher-order skills. The following findings related to the current state of the Commonwealth indicate our need for immediate legislative action:

- (1) In the area of innovation and invention, Kentucky currently underperforms no less than 46 other states in production of patents per million population;
- (2) In the area of education, in 1998 only 4% of Kentucky's twelfth-graders took advanced placement courses in science, and only 44% of these students passed advanced placement science exams, and for the last decade Kentucky has ranked no better than 45th in the number of science and engineering graduate students per 100,000 population;
- (3) In the area of research, Kentucky receives only 2.8 of the Small Business Innovation Research grants per 100,000 population, compared to 116.2 grants in the top-performing states, and for the last decade Kentucky has ranked no better than 46th in research and development expenditures per person; and
- (4) In the area of entrepreneurship, in 1998 Kentucky created only 2.4 new firms per 1,000 state residents compared to leader states creating almost 7 companies per 1,000 residents, and despite recent gains, in 1999 Kentucky ranked 47th in the number of very fast growth companies in the country, and in 1997, Kentucky ranked 48th in self-employment, and Kentucky has had no technology sector initial public offerings issued from 1997 through October 1999.

Section 24. This Act shall be called the Kentucky Innovation Act.

**Approved April 26, 2000**

## **CHAPTER 523**

### **(HJR 85)**

A JOINT RESOLUTION relating to the budget process and declaring an emergency.

WHEREAS, the Constitution of the Commonwealth of Kentucky empowers the General Assembly to make appropriations; and

WHEREAS, the Kentucky Supreme Court recognizes that the budget, which appropriates the revenue of the Commonwealth and which determines how that revenue shall be spent, is fundamentally a legislative matter; and

WHEREAS, the General Assembly has enacted into law the statutory budget process that is primarily codified in KRS Chapter 48; and

WHEREAS, the statutes provide that prior to the passage of a budget bill, the appropriations committees of the General Assembly shall prepare a budget memorandum that shall enumerate the changes made by the appropriations committees in a branch budget recommendation, and that shall explain the changes in detail sufficiently to convey the intent of the appropriations committees; and

WHEREAS, the Kentucky Supreme Court has upheld the use of the budget memorandum as a valid part of the statutory process;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. Any mandates, directives, or initiatives contained in the 2000-2002 Legislative Branch Budget Memorandum shall have the force and effect of law.

Section 2. The staff of the Legislative Research Commission shall have the authority, subject to the approval of the Legislative Research Commission, to make technical or format adjustments to the 2000-2002 Legislative Branch Budget Memorandum that do not alter the sense, meaning, or effect of the 2000-2002 Legislative Branch Budget Bill or the 2000-2002 Legislative Branch Budget Memorandum.

Section 3. The provisions of the 2000-2002 Legislative Branch Budget Memorandum shall not be construed to contain appropriations and, therefore, shall not supersede appropriations contained in the 2000-2002 Legislative Branch Budget Bill or appropriations contained in any other enactment of the 2000 Regular Session of the General Assembly. If any mandate, directive, or initiative contained in the 2000-2002 Legislative Branch Budget Bill conflicts with any mandate, directive, or initiative contained in the 2000-2002 Legislative Branch Budget Memorandum, the mandate, directive, or initiative contained in the 2000-2002 Legislative Branch Budget Bill shall prevail.

Section 4. Whereas the Legislative Branch Budget Bill takes effect upon its passage and approval of the Governor or its otherwise becoming law, an emergency is declared to exist, and this Joint Resolution takes effect upon its passage and approval by the Governor or its otherwise becoming law.

Section 5. The 2000-2002 Legislative Branch Budget Memorandum is as follows:

**Became law April 27, 2000, without Governor's signature**

## CHAPTER 524

### (HJR 84)

A JOINT RESOLUTION relating to the budget process and declaring an emergency.

WHEREAS, the Constitution of the Commonwealth of Kentucky empowers the General Assembly to make appropriations; and

WHEREAS, the Kentucky Supreme Court recognizes that the budget, which appropriates the revenue of the Commonwealth and which determines how that revenue shall be spent, is fundamentally a legislative matter; and

WHEREAS, the General Assembly has enacted into law the statutory budget process that is primarily codified in KRS Chapter 48; and

WHEREAS, the statutes provide that prior to the passage of a budget bill, the appropriations committees of the General Assembly shall prepare a budget memorandum that shall enumerate the changes made by the appropriations committees in a branch budget recommendation, and that shall explain the changes in detail sufficiently to convey the intent of the appropriations committees; and

WHEREAS, the Kentucky Supreme Court has upheld the use of the budget memorandum as a valid part of the statutory process;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. Any mandates, directives, or initiatives contained in the 2000-2002 Judicial Branch Budget Memorandum shall have the force and effect of law.

Section 2. The staff of the Legislative Research Commission shall have the authority, subject to the approval of the Legislative Research Commission, to make technical or format adjustments to the 2000-2002 Judicial Branch Budget Memorandum that do not alter the sense, meaning, or effect of the 2000-2002 Judicial Branch Budget Bill or the 2000-2002 Judicial Branch Budget Memorandum.

Section 3. The provisions of the 2000-2002 Judicial Branch Budget Memorandum shall not be construed to contain appropriations and, therefore, shall not supersede appropriations contained in the 2000-2002 Judicial Branch Budget Bill or appropriations contained in any other enactment of the 2000 Regular Session of the General Assembly. If any mandate, directive, or initiative contained in the 2000-2002 Judicial Branch Budget Bill conflicts with any

mandate, directive, or initiative contained in the 2000-2002 Judicial Branch Budget Memorandum, the mandate, directive, or initiative contained in the 2000-2002 Judicial Branch Budget Bill shall prevail.

Section 4. Whereas the Judicial Branch Budget Bill takes effect upon its passage and approval of the Governor or its otherwise becoming law, an emergency is declared to exist, and this Joint Resolution takes effect upon its passage and approval by the Governor or its otherwise becoming law.

Section 5. The 2000-2002 Judicial Branch Budget Memorandum is as follows:

**Became law April 27, 2000, without Governor's signature**

## **CHAPTER 525**

### **(HJR 83)**

A JOINT RESOLUTION relating to the budget process and declaring an emergency.

WHEREAS, the Constitution of the Commonwealth of Kentucky empowers the General Assembly to make appropriations; and

WHEREAS, the Kentucky Supreme Court recognizes that the budget, which appropriates the revenue of the Commonwealth and which determines how that revenue shall be spent, is fundamentally a legislative matter; and

WHEREAS, the General Assembly has enacted into law the statutory budget process that is primarily codified in KRS Chapter 48; and

WHEREAS, the statutes provide that prior to the passage of a budget bill, the appropriations committees of the General Assembly shall prepare a budget memorandum that shall enumerate the changes made by the appropriations committees in a branch budget recommendation, and that shall explain the changes in detail sufficiently to convey the intent of the appropriations committees; and

WHEREAS, the Kentucky Supreme Court has upheld the use of the budget memorandum as a valid part of the statutory process;

NOW, THEREFORE,

*Be it resolved by the General Assembly of the Commonwealth of Kentucky:*

Section 1. Any mandates, directives, or initiatives contained in the 2000-2002 State/Executive Branch Budget Memorandum shall have the force and effect of law.

Section 2. The staff of the Legislative Research Commission shall have the authority, subject to the approval of the Legislative Research Commission, to make technical or format adjustments to the 2000-2002 State/Executive Branch Budget Memorandum that do not alter the sense, meaning, or effect of the 2000-2002 State/Executive Branch Budget Bill or the 2000-2002 State/Executive Branch Budget Memorandum.

Section 3. The provisions of the 2000-2002 State/Executive Branch Budget Memorandum shall not be construed to contain appropriations and, therefore, shall not supersede appropriations contained in the 2000-2002 State/Executive Branch Budget Bill or appropriations contained in any other enactment of the 2000 Regular Session of the General Assembly. If any mandate, directive, or initiative contained in the 2000-2002 State/Executive Branch Budget Bill conflicts with any mandate, directive, or initiative contained in the 2000-2002 State/Executive Branch Budget Memorandum, the mandate, directive, or initiative contained in the 2000-2002 State/Executive Branch Budget Bill shall prevail.

Section 4. Whereas the State/Executive Branch Budget Bill takes effect upon its passage and approval of the Governor or its otherwise becoming law, an emergency is declared to exist, and this Joint Resolution takes effect upon its passage and approval by the Governor or its otherwise becoming law.

Section 5. The 2000-2002 State/Executive Branch Budget Memorandum is as follows:

**Became law April 27, 2000, without Governor's signature**



**CHAPTER 526****(SB 1)**

AN ACT relating to adult education.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 151B IS CREATED TO READ AS FOLLOWS:

***The General Assembly recognizes that many adults need significant improvement in their knowledge and skills to be full participants in Kentucky's workforce and society, to develop and maintain healthy families, and to continue their education and training as necessary throughout their lifetimes. The General Assembly also recognizes that:***

- (1) Adult illiteracy is a fundamental barrier to every major challenge facing Kentucky, including early childhood education, education reform, economic development, and improving the health and well-being of Kentucky's families and communities;***
- (2) Kentucky must be committed to addressing the low level of education of the adult population from all dimensions of state and local government, all education institutions, business and civic leaders, voluntary organizations, and all others that interact with the problem of adult illiteracy; and***
- (3) Kentucky must have a multi-faceted strategy to address the diverse needs of the undereducated adult population in all counties and regions of the state.***

Section 2. KRS 164.003 is amended to read as follows:

- (1) The General Assembly hereby finds that:
  - (a) The general welfare and material well-being of citizens of the Commonwealth depend in large measure upon the development of a well-educated and highly-trained workforce;
  - (b) The education and training of the current and future workforce of the Commonwealth can provide its businesses and industries with the competitive edge critical to their success in the global economy and must be improved to provide its citizens the opportunity to achieve a standard of living in excess of the national average; and
  - (c) The positive advancement of the welfare of the citizens of the Commonwealth through the transmission of knowledge can only be achieved by the incorporation of ethical standards, the historic American moral principles promoted by the nation's Founding Fathers, into Kentucky public instruction, state educational training, and personal development of its teachers, students, and people, and affirms President George Washington's statement in his September 19, 1796, farewell address: "Of all the dispositions and habits which lead to political prosperity, Religion and morality are indispensable."
- (2) The General Assembly declares on behalf of the people of the Commonwealth the following goals to be achieved by the year 2020:
  - (a) A seamless, integrated system of postsecondary education strategically planned and adequately funded to enhance economic development and quality of life;
  - (b) A major comprehensive research institution ranked nationally in the top twenty (20) public universities at the University of Kentucky;
  - (c) A premier, nationally recognized metropolitan research university at the University of Louisville;
  - (d) Regional universities, with at least one (1) nationally recognized program of distinction or one (1) nationally recognized applied research program, working cooperatively with other postsecondary institutions to assure statewide access to baccalaureate and master's degrees of a quality at or above the national average;
  - (e) A comprehensive community and technical college system with a mission that assures, in conjunction with other postsecondary institutions, access throughout the Commonwealth to a two (2) year course of general studies designed for transfer to a baccalaureate program, the training necessary to develop a workforce with the skills to meet the needs of new and existing industries, and remedial and continuing education to improve the employability of citizens; and

- (f) An efficient, responsive, and coordinated system of **providers**~~{autonomous institutions}~~ that delivers educational services to **all adult** citizens in quantities and of a quality that is comparable to the national average **or above and significantly elevates the level of education of the adults of the Commonwealth.**
- (3) The achievement of these goals will lead to the development of a society with a standard of living and quality of life that meets or exceeds the national average.
- (4) The achievement of these goals will only be accomplished through increased educational attainment at all levels, and contributions to the quality of elementary and secondary education shall be a central responsibility of Kentucky's postsecondary institutions.
- (5) The furtherance of these goals is a lawful public purpose that can best be accomplished by a comprehensive system of postsecondary education with single points of accountability that ensure the coordination of programs and efficient use of resources.

Section 3. KRS 164.020 is amended to read as follows:

The Council on Postsecondary Education in Kentucky shall:

- (1) Develop and implement the strategic agenda with the advice and counsel of the Strategic Committee on Postsecondary Education. The council shall provide for and direct the planning process and subsequent strategic implementation plans based on the strategic agenda as provided in KRS 164.0203;
- (2) Revise the strategic agenda and strategic implementation plan with the advice and counsel of the committee as set forth in KRS 164.004;
- (3) Develop a system of public accountability related to the strategic agenda by evaluating the performance and effectiveness of the state's postsecondary system. The council shall prepare a report in conjunction with the accountability reporting described in KRS 164.095, which shall be submitted to the committee, the Governor, and the General Assembly by December 1 annually. This report shall include a description of contributions by postsecondary institutions to the quality of elementary and secondary education in the Commonwealth;
- (4) Review, revise, and approve the missions of the state's universities and the Kentucky Community and Technical College System. The Council on Postsecondary Education shall have the final authority to determine the compliance of postsecondary institutions with their academic, service, and research missions;
- (5) Establish and ensure that all postsecondary institutions in Kentucky cooperatively provide for an integrated system of postsecondary education. The council shall guard against inappropriate and unnecessary conflict and duplication by promoting transferability of credits and easy access of information among institutions;
- (6) Engage in analyses and research to determine the overall needs of postsecondary education **and adult education** in the Commonwealth;
- (7) Develop plans that may be required by federal legislation. The council shall for all purposes of federal legislation relating to planning be considered the "single state agency" as that term may be used in federal legislation. When federal legislation requires additional representation on any "single state agency," the Council on Postsecondary Education shall establish advisory groups necessary to satisfy federal legislative or regulatory guidelines;
- (8) Determine tuition and approve the minimum qualifications for admission to the state postsecondary educational system. In determining the tuition for non-Kentucky residents, the council shall consider the fees required of Kentucky students by institutions in adjoining states, the resident fees charged by other states, the total actual per student cost of training in the institutions for which the fees are being determined, and the ratios of Kentucky students to non-Kentucky students comprising the enrollments of the respective institutions, and other factors the council may in its sole discretion deem pertinent;
- (9) Devise, establish, and periodically review and revise policies to be used in making recommendations to the Governor for consideration in developing recommendations to the General Assembly for appropriations to the universities,~~{and}~~ the Kentucky Community and Technical College System, **and to support strategies for persons to maintain necessary levels of literacy throughout their lifetimes including, but not limited to, appropriations to the Department for Adult Education and Literacy.** The council has sole discretion, with advice of the Strategic Committee on Postsecondary Education and the executive officers of the postsecondary education system, to devise policies that provide for allocation of funds among the universities and the Kentucky Community and Technical College System;

- (10) Lead and provide staff support for the biennial budget process as provided under KRS Chapter 48, in cooperation with the committee;
- (11)
  - (a) Except as provided in paragraph (b) of this subsection, review and approve all capital construction projects covered by KRS 45.750(1)(f), including real property acquisitions, and regardless of the source of funding for projects or acquisitions. Approval of capital projects and real property acquisitions shall be on a basis consistent with the strategic agenda and the mission of the respective universities and the Kentucky Community and Technical College System.
  - (b) The organized groups that are establishing community college satellites as branches of existing community colleges in the counties of Laurel, Leslie, and Muhlenberg, and that have substantially obtained cash, pledges, real property, or other commitments to build the satellite at no cost to the Commonwealth, other than operating costs that shall be paid as part of the operating budget of the main community college of which the satellite is a branch, are authorized to begin construction of the satellite on or after January 1, 1998;
- (12) Require reports from the executive officer of each institution it deems necessary for the effectual performance of its duties;
- (13) Develop a university track program within the Kentucky Community and Technical College System consisting of sixty (60) hours of instruction that can be transferred and applied toward the requirements for a bachelor's degree at the public universities. The track shall consist of general education courses and pre-major courses as prescribed by the council. Courses in the university track program shall transfer and apply toward the requirements for graduation with a bachelor's degree at all public universities. Successful completion of the university track program shall meet the academic requirement for transfer to a public university as a junior. By fall semester of 1997, requirements for track programs shall be established for all majors and baccalaureate degree programs;
- (14) Define and approve the offering of all postsecondary education technical, associate, baccalaureate, graduate, and professional degree, certificate, or diploma programs in the public postsecondary education institutions. The council shall expedite wherever possible the approval of requests from the Kentucky Community and Technical College System board of regents relating to new certificate, diploma, technical, or associate degree programs of a vocational-technical and occupational nature. Without the consent of the General Assembly, the council shall not abolish or limit the total enrollment of the general program offered at any community college to meet the goal of reasonable access throughout the Commonwealth to a two (2) year course of general studies designed for transfer to a baccalaureate program. This does not restrict or limit the authority of the council, as set forth in this section, to eliminate or make changes in individual programs within that general program;
- (15) Eliminate, in its discretion, existing programs or make any changes in existing academic programs at the state's postsecondary educational institutions, taking into consideration these criteria:
  - (a) Consistency with the institution's mission and the strategic agenda;
  - (b) Alignment with the priorities in the strategic implementation plan for achieving the strategic agenda;
  - (c) Elimination of unnecessary duplication of programs within and among institutions; and
  - (d) Efforts to create cooperative programs with other institutions through traditional means, or by use of distance learning technology and electronic resources, to achieve effective and efficient program delivery;
- (16) Ensure the governing board and faculty of all postsecondary education institutions are committed to providing instruction free of discrimination against students who hold political views and opinions contrary to those of the governing board and faculty;
- (17) Review proposals and make recommendations to the Governor regarding the establishment of new public community colleges, technical institutions, and new four (4) year colleges;
- (18) Postpone the approval of any new program at a state postsecondary educational institution, unless the institution has met its equal educational opportunity goals, as established by the council. In accordance with administrative regulations promulgated by the council, those institutions not meeting the goals shall be able to obtain a temporary waiver, if the institution has made substantial progress toward meeting its equal educational opportunity goals;

- (19) Ensure the coordination, transferability, and connectivity of technology among postsecondary institutions in the Commonwealth including the development and implementation of a technology plan as a component of the strategic agenda;
- (20) Approve the teacher education programs in the public institutions that comply with standards established by the Education Professional Standards Board pursuant to KRS 161.028;
- (21) Constitute the representative agency of the Commonwealth in all matters of postsecondary education of a general and statewide nature which are not otherwise delegated to one (1) or more institutions of postsecondary learning. The responsibility may be exercised through appropriate contractual relationships with individuals or agencies located within or without the Commonwealth. The authority includes, but is not limited to, contractual arrangements for programs of research, specialized training, and cultural enrichment;
- (22) Maintain procedures for the approval of a designated receiver to provide for the maintenance of student records of the public institutions of higher education and the colleges as defined in KRS 164.945, and institutions operating pursuant to KRS 165A.310 which offer collegiate level courses for academic credit, which cease to operate. Procedures shall include assurances that, upon proper request, subject to federal and state laws and regulations, copies of student records shall be made available within a reasonable length of time for a minimum fee;
- (23) Monitor and transmit a report on compliance with KRS 164.351 to the director of the Legislative Research Commission for distribution to the Health and Welfare Committee;
- (24) Develop in cooperation with each state postsecondary educational institution a comprehensive orientation program for new members of the council and the governing boards. The orientation program shall include, but not be limited to, the information concerning the roles of the council, the strategic agenda and the strategic implementation plan, and the respective institution's mission, budget, plans, policies, strengths, and weaknesses;
- (25) Develop a financial reporting procedure to be used by all state postsecondary education institutions to ensure uniformity of financial information available to state agencies and the public;
- (26) Select and appoint a president of the council under KRS 164.013;
- (27) Employ consultants and other persons and employees as may be required for the council's operations, functions, and responsibilities;
- (28) Promulgate administrative regulations, in accordance with KRS Chapter 13A, governing its powers, duties, and responsibilities as described in this section;
- (29) Prepare and present by January 31 of each year an annual status report on postsecondary education in the Commonwealth to the Governor, the Strategic Committee on Postsecondary Education, and the Legislative Research Commission;
- (30) Ensure that the state postsecondary system does not unnecessarily duplicate services and programs provided by private postsecondary institutions and shall promote maximum cooperation between the state postsecondary system and private postsecondary institutions;
- (31) Create advisory groups representing the presidents, faculty, nonteaching staff, and students of the public postsecondary education system and the independent colleges and universities;
- (32) Develop a statewide policy to promote employee and faculty development in all postsecondary institutions through the waiver of tuition for college credit coursework in the public postsecondary education system. Any regular full-time employee of a postsecondary public institution may, with prior administrative approval of the course offering institution, take a maximum of six (6) credit hours per term at any public postsecondary institution. The institution shall waive the tuition up to a maximum of six (6) credit hours per term;~~and~~
- (33) ***Establish a statewide mission for adult education and develop a twenty (20) year strategy, in partnership with the Department for Adult Education and Literacy, under the provisions of Section 4 of this Act for raising the knowledge and skills of the state's adult population. The council shall:***
  - (a) ***Promote coordination of programs and responsibilities linked to the issue of adult education with the Department for Adult Education and Literacy and with other agencies and institutions;***

- (b) *Facilitate the development of strategies to increase the knowledge and skills of adults in all counties by promoting the efficient and effective coordination of all available education and training resources;*
  - (c) *Lead a statewide public information and marketing campaign to convey the critical nature of Kentucky's adult literacy challenge and to reach adults and employers with practical information about available education and training opportunities;*
  - (d) *Establish standards for adult literacy and monitor progress in achieving the state's adult literacy goals, including existing standards that may have been developed to meet requirements of federal law; and*
  - (e) *Administer the adult education and literacy initiative fund created under Section 7 of this Act; and*
- (34) Exercise any other powers, duties, and responsibilities necessary to carry out the purposes of this chapter. Nothing in this chapter shall be construed to grant the Council on Postsecondary Education authority to disestablish or eliminate any college of law which became a part of the state system of higher education through merger with a state college.

Section 4. KRS 164.0203 is amended to read as follows:

- (1) The Council on Postsecondary Education shall adopt a strategic agenda that identifies specific short-term objectives in furtherance of the long-term goals established in KRS 164.003(2).
- (2) (a) The purpose of the strategic agenda is to further the public purposes under KRS 164.003 by creating high-quality, relevant, postsecondary education *and adult education* opportunities in the Commonwealth. The strategic agenda shall:
  - 1. Serve as the public agenda for postsecondary education *and adult education* for the citizens of the Commonwealth, providing statewide priorities and a vision for long-term economic growth;
  - 2. State those important issues and aspirations of the Commonwealth's students, employers, and workforce reflecting high expectations for their performance and the performance of the educational institutions *and providers* that serve them; and
  - 3. Sustain a long-term commitment for constant improvement, while valuing market-driven responsiveness, accountability to the public, technology-based strategies, and incentive-based motivation.
- (b) The council shall develop a strategic implementation plan, which may be periodically revised, to achieve the strategic agenda. The strategic agenda shall serve as a guide for institutional plans and missions.
- (3) The framework for the strategic implementation plan of the strategic agenda shall include the following elements:
  - (a) A mission statement;
  - (b) Goals;
  - (c) Principles;
  - (d) Strategies and objectives;
  - (e) Benchmarks; and
  - (f) Incentives to achieve desired results.
- (4) The implementation plan for the strategic agenda shall take into consideration the value to society of a quality liberal arts education and the needs and concerns of Kentucky's employers.
- (5) The council shall develop benchmarks using criteria that shall include, but not be limited to:
  - (a) Use of the statistical information commonly provided by governmental and regulatory agencies or specific data gathered by authorization of the council;
  - (b) Comparison of regions and areas within the Commonwealth and comparisons of the Commonwealth to other states and the nation; and

- (c) Measures of educational attainment, effectiveness, and efficiency including, but not limited to, those set forth in KRS 164.095.
- (6) The council shall review the goals established by KRS 164.003(2) at least every four (4) years and shall review its implementation plan at least every two (2) years.
- (7) In developing the strategic agenda, the council shall actively seek input from the Department of Education and local school districts to create necessary linkages to assure a smooth and effective transition for students from the elementary and secondary education system to the postsecondary education system. Upon completion of the strategic agenda and strategic implementation plan, the council shall distribute copies to each local school district.
- (8) *The strategic agenda shall include a long-term strategy, developed in partnership with the Department for Adult Education and Literacy, for raising the knowledge and skills of Kentucky's adult population, and ensuring lifelong learning opportunities for all Kentucky adults, drawing on the resources of all state government cabinets and agencies, business and civic leadership, and voluntary organizations.*

Section 5. KRS 164.035 is amended to read as follows:

The Council on Postsecondary Education, *in consultation with the Department for Adult Education and Literacy*, shall *assess the need for technical assistance, training, and other* ~~establish regional advisory groups and shall provide necessary staff~~ support to assist in the development of *adult education and* ~~regional strategies for~~ workforce development that support the state strategic agenda and that include a comprehensive coordinated approach to education and training services. The *council shall promote the involvement of* ~~regional advisory groups shall be encouraged to:~~

- ~~(1) Involve~~ universities; colleges; technical institutions; elementary and secondary educational agencies; labor, business, and industry representatives ~~from regional and state labor market areas~~; community-based organizations; citizens' groups; and other policymakers in the development of the regional strategies ~~;~~ and
- ~~(2) Assist with an annual review of progress toward the regional strategies.~~

Section 6. KRS 151B.120 is amended to read as follows:

- (1) The commissioner of the Department for Adult Education and Literacy and the commissioner of the Department for Technical Education may enter into agreements to train workers for new manufacturing jobs in new or expanding industries characterized by one (1) or more of the following criteria: a high average skill, a high average wage, rapid national growth, or jobs feasible and desirable for location in rural regions. Such agreements shall be subject to review and approval by the *secretary of the Workforce Development Cabinet* ~~State Board for Adult and Technical Education at its next regularly scheduled meeting~~ and shall not be subject to the requirements of KRS 45A.045 and KRS 45A.690 to 45A.725 when awarded on the basis of a detailed training plan approved by the appropriate commissioner. Reimbursement to the industry shall be made upon submission of documents validating actual training expenditure not to exceed the amount approved by the training plan.
- (2) Each commissioner may approve authorization for his department to enter into agreement with industries whereby the industry may be reimbursed directly for the following services:
  - (a) The cost of instructors' salaries when the instructor is an employee of the industry to be served;
  - (b) Cost of only those supplies, materials, and equipment used exclusively in the training program; and
  - (c) Cost of leasing a training facility should a vocational education school or the industrial plant not be available.

Section 7. KRS 151B.142 is repealed, reenacted as a new section of KRS Chapter 164, and amended to read as follows:

- (1) There is created in the *Council on Postsecondary Education* ~~Department of Adult Education and Literacy of the Cabinet for Workforce Development~~, a special fund to be known as the adult education and literacy initiative fund, which shall consist of moneys appropriated by the General Assembly, gifts, grants, other sources of funding, public and private, and interest accrued by the fund. This fund shall not lapse at the end of a fiscal year but shall be carried forward to be used only for the purposes specified in this section. *Moneys accumulated in this fund on the effective date of this Act shall remain in the fund and be transferred to the Council on Postsecondary Education to be used for purposes stated in this section.*

- (2) The purpose of the adult education and literacy initiative fund shall be to ***support strategies for adult education, to provide statewide initiatives for excellence, and to provide funds for research and development activities***~~[provide incentive grants to qualified providers to develop innovative approaches to address problems of adult education and literacy in Kentucky, to develop cost effective delivery systems for adult education and literacy, and to research the effectiveness of different models for providing adult education and literacy programming. Criteria for the incentive grants and the process by which they are awarded shall be developed by the Department for Adult Education and Literacy with the advice of the State Advisory Council for Adult Education and Literacy. The State Board for Adult and Technical Education shall approve the grants to be funded based on the recommendations of the Department for Adult Education and Literacy].~~
- (3) ***The council, in collaboration with the Department for Adult Education and Literacy, shall establish the guidelines for the use, distribution, and administration of the fund, financial incentives, technical assistance, and other support for strategic planning; and guidelines for fiscal agents to assess county and area needs and to develop strategies to meet those needs.***
- (4) ***The fund shall include the following strategies:***
- (a) ***Statewide initiatives. Funds shall be used to encourage collaboration with other organizations, stimulate development of models of adult education programs that may be replicated elsewhere in the state, provide incentives for adults, employers, and providers to encourage adults to establish and accomplish learning contracts, provide incentives to encourage participation in adult education, assist providers of county and area programs in areas of highest need, and for other initiatives of regional or statewide significance as determined by the council. The Collaborative Center for Literacy Development: Early Childhood through Adulthood created under Section 29 of this Act shall evaluate the reading and literacy components of model programs funded under this paragraph.***
- (b) ***Research and demonstration. The funds shall be used to develop:***
1. ***Standards for the preparation, professional development, and support for adult educators with the advice of the Department for Adult Education and Literacy and as compatible with funds provided under Title II of the Federal Workforce Investment Act;***
  2. ***A statewide competency-based certification for transferable skills in the workplace; and***
  3. ***A statewide public information and marketing campaign.***

Section 8. KRS 151B.023 is amended to read as follows:

- (1) The Department for Adult Education and Literacy is hereby created ***to carry out the statewide mission on adult education. The department shall implement the twenty (20) year state strategy to reduce the number of adults at the lowest levels of literacy and most in need of adult education and literacy services.***
- (2) ***The Department for Adult Education and Literacy shall be***~~[and is]~~ attached to the Cabinet for Workforce Development ***for administrative purposes to coordinate adult education services.*** The Department for Adult Education and Literacy shall be composed of the Division of Program Services, the Division of Workforce Investment, and the Division of Management Services. Each division shall be headed by a director appointed by the commissioner of the Department for Adult Education and Literacy, and shall be composed of organizational entities as deemed appropriate by the commissioner of the Department for Adult Education and Literacy as set forth by administrative order.
- (3)~~[(2)]~~ The Department for Adult Education and Literacy shall be headed by a commissioner. The appointment of the commissioner shall be made ~~by~~~~[from a list of three (3) names submitted by the State Board for Adult and Technical Education to]~~ the secretary of the Cabinet for Workforce Development ***with the approval of***~~[and]~~ the Governor.~~[The commissioner shall be appointed by the secretary of the Cabinet for Workforce Development from the list with the approval of the Governor.]~~ The commissioner shall have general supervision and direction over all functions of the department and its employees and shall be responsible for carrying out the programs and policies of the department.~~[The commissioner shall be responsible for implementing policies adopted by the State Board for Adult and Technical Education.]~~ The commissioner may delegate authority to deputies who may then act on his behalf in performing the duties assigned to the department.
- (4)~~[(3)]~~ The department shall have the responsibility for all administrative functions of the state in relation to the management, control, and operation of programs and services in adult education and literacy. When appropriate, the department shall provide education training programs through contracts with private business

and industries. These programs may be on a shared-cost basis or on a total cost recovery basis. The department shall have the authority to enter into agreements or contracts with other government or education agencies, including local school districts, in order to carry out services under its jurisdiction.

(5)~~(4)~~ The Department for Adult Education and Literacy shall be the education agency solely designated for the purpose of developing and approving state plans required by state or federal laws and regulations as prerequisites to receiving federal funds for adult education and literacy.~~[- The department shall be under the jurisdiction of the State Board for Adult and Technical Education for all appropriate purposes under this chapter.]~~ All appropriate rights, responsibilities, and benefits under this chapter governing adult education and literacy personnel and programs shall apply to the Department for Adult Education and Literacy.

(6)~~(5)~~ The commissioner shall, from time to time, prepare or cause to be prepared~~[- and submit for approval and publication by the State Board for Adult and Technical Education.]~~ any bulletins, programs, outlines of courses, placards, and courses of study he deems useful in the promotion of the interests of adult education and literacy.

(7)~~(6)~~ The department, *in consultation with the Council on Postsecondary Education*, shall prepare a biennial budget request *consistent with the statewide mission on adult education*~~[- and submit it for review by the State Board for Adult and Technical Education. The budget shall be forwarded to the secretary of the Cabinet for Workforce Development for review and modification].~~

Section 9. KRS 151B.405 is amended to read as follows:

As used in KRS 151B.400 to 151B.410, unless the context indicates otherwise:

(1) "Adult education" means *for programs funded under the Federal Workforce Investment Act of 1998, services or instruction below the postsecondary level for individuals*~~[- literacy, adult basic, adult secondary, and GED services and instruction below the college level, pursuant to the National Literacy Act, Public Law 102-73, for adults who are not required to be enrolled in school].~~

(a) *Who have attained the age of sixteen (16) years of age;*

(b) *Who are not enrolled or required to be enrolled in secondary school under state law*~~[- nor have a certificate of graduation from a school providing secondary education]; and [- or]~~

(c)~~(b)~~ *Who:*~~[- Have not achieved an equivalent level of education; or]~~

1.~~(c)~~ *Lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society; [- or]*

2.~~(d)~~ *Are unable to speak, read, or write the English language*~~[- with sufficient proficiency to get or retain employment commensurate with their real abilities]; or]~~

3. *Do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education;*

(2) *"Family literacy services" means services that are of sufficient intensity in terms of hours, and of sufficient duration, to assist a family to make sustainable increases in its literacy level, and integrate the activities described in Section 11 of this Act*~~[- "GED" means General Educational Development]; and]~~

(3) "Literacy" means an individual's ability to read, write, and speak in English and compute and solve problems at levels of proficiency necessary to function on the job and in society to achieve one's goals and develop one's knowledge and potential.

Section 10. KRS 151B.410 is amended to read as follows:

(1) The Department for Adult Education and Literacy shall *promulgate necessary administrative regulations and administer a statewide*~~[- an]~~ adult education *and literacy*~~[- learning]~~ system *throughout*~~[- in regions of]~~ the state. The adult education *and literacy*~~[- learning]~~ system shall include diverse educational services provided by credentialed professionals, based on the learners' current needs and a commitment to life-long learning.

(a) Services shall be provided at multiple sites appropriate for adult learning including vocational and technical *colleges*~~[- schools]~~, community colleges, regional universities, adult education centers, *public schools, libraries*, family resource centers, adult correctional facilities,~~[- and]~~ other institutions, *and through the Kentucky Commonwealth Virtual University. Services shall be targeted to communities*



*with the greatest need based on the number of adults at literacy levels I and II as defined by the 1997 Kentucky Adult Literacy Survey and other indicators of need.*

- (b) Access and referral services shall be initiated at multiple points including businesses, educational institutions, labor organizations, employment offices, and government offices.
  - (c) Multiple funding sources, program support, and partnerships to administer the adult education *and literacy*~~[learning]~~ system may include~~[- the Adult Education Act as amended by the National Literacy Act; Kentucky Education Reform Act funded family resource centers; Job Training Partnership Act; Kentucky Bluegrass State Skills Corporation, Job Opportunities and Basic Skills program; adult technical education; community college system; Parent and Child Education programs;]~~ student scholarship and grants; fees for services rendered; and other general, agency, local, *state*, federal, and private funds.
- (2) Services included as part of the adult education *and literacy*~~[learning]~~ system shall include, but not be limited to ~~[-~~
- ~~(a) ]functionally-contexted workplace essential skills training based on employers' needs, leading to a competency-based certificate indicating proficiency in critical thinking, computating, reading, writing, communicating, problem-solving, team-building, and use of technology at various worksites regarding basic skills[;~~
  - ~~(b) ]Literacy and adult basic education which includes learning for those with academic educational skills below the ninth grade level;~~
  - ~~(c) ]Adult secondary education that includes learning above the ninth grade level including GED preparation and the external diploma program, that is a competency based assessment system which credentials mature adults who have acquired high school level skills through life experiences;~~
  - ~~(d) ]Family literacy programs that have a goal of intergenerational transfer of cognitive skills, support of children's education, participation in Kentucky Education Reform Act, and breaking the poverty cycle, by offering basic skills and competencies with parenting, life skills, and parent child interactive activities; and~~
  - ~~(e) ]English as a second language programs for adults who have limited English proficiency.~~
- (3) ~~(a) ]The Department for Adult Education and Literacy within the Cabinet for Workforce Development may establish regional adult education advisory committees, representing adult education practitioners, state vocational technical and community college educators, employment and career advisors, business and industry participants, employees, students, and organized labor.~~
- ~~(b) ]The adult education advisory committees shall meet at least twice a year to:
 
    - ~~1. ]Advise the Department for Adult Education and Literacy on the regional training services and needs in the area of adult education and functionally-contexted workplace essential skills;~~
    - ~~2. ]Report the number and location of referral and access points that have identified an adult population who is or could benefit from service and has an active interest in participation;~~
    - ~~3. ]Report the number and location of entrance points that have identified an adult population who has been referred for service; and~~
    - ~~4. ]Report the number of adults served and the number completing programs, method of payment for services, outcomes of service provision, and career and employment change following program completion[.~~~~
- ~~(3)[(4)] ]In administering an adult education *and literacy* system, the Department for Adult Education and Literacy shall:~~
- ~~(a) ]Assist providers with the development of[Establish regions for purpose of implementing an adult education learning system assisting local programs;~~
  - ~~(b) ]Make provision for[ quality job-specific and workplace essential skills instruction for workers in business and industry, literacy and adult basic education, adult secondary education, including *high school equivalency diploma*[GED] preparation, the external diploma program, English as a second~~

language, and family literacy programs, in cooperation with local business, labor, economic development, educational, employment, and service support entities;

- (b)(e) ~~Provide~~ **Develop** student assessments *of each student's skill and competency level* ~~in coordination with other educational and employment entities,~~ allowing assessments to be shared *with other educational and employment entities* when necessary *for providing* ~~with appropriate personnel for accessing students,~~ additional educational programs, taking into consideration student confidentiality;
- (c)(d) ~~Assist adult educators to meet~~ **Establish** professional *standards* ~~credentials for instructors, and make provision for the development of those providers who have not attained the established credentials;~~
- ~~(e) Develop criteria for certifying adult education providers;~~
- (d)(f) ~~Create an awareness program in cooperation with the Administrative Office of the Courts to ensure that District and Circuit Court Judges are aware of the provisions of KRS 533.200 and the methods to access adult education and literacy programs for persons sentenced under the statute;~~
- (e) Develop administrative regulations ~~for consideration by the Cabinet for Workforce Development and the State Board for Adult and Technical Education,~~ including those for business and industry service participation and mechanisms for service funding through all appropriate federal, state, local, and private resources;
- (f)(g) Require and monitor compliance with *the department's* ~~Cabinet for Workforce Development~~ administrative regulations and policies; and
- (g)(h) Develop and implement performance measures and benchmarks.

Section 11. KRS 158.360 is amended to read as follows:

- (1) ~~The State Board for Adult and Technical Education shall approve grants and authorize the~~ Department for Adult Education and Literacy *shall provide technical assistance to providers to develop family literacy services* ~~to disburse funds to selected local educational agencies, public or private nonprofit agencies, postsecondary educational institutions, and other institutions that have the ability to provide model family literacy services to adults and families. The programs shall be known as Parent and Child Education for Family Independence Programs. The Department for Adult Education and Literacy shall annually report to the State Board for Adult and Technical Education, and the Legislative Research Commission for each grantee, the total funds expended, the number of parents and children served, the number of participants receiving public assistance at the time they enter the program, and the number of participants who have been removed from public assistance because of participation in the program].~~
- (2) The programs shall:
  - (a) Provide parents with instruction in basic academic skills, life skills which include parenting skills, and employability skills;
  - (b) Provide the children with developmentally appropriate educational activities;
  - (c) Provide planned high-quality educational experiences requiring interaction between parents and their children;
  - (d) Be of sufficient intensity and duration to help move families to self-sufficiency and break the cycle of undereducation and poverty; and
  - (e) Be designed to reduce duplication with other educational providers to ensure high quality and efficient services;
- ~~— The programs may operate on a year round basis. The programs may also be blended with other programs as long as all criteria in this subsection are met.~~
- (3) ~~Eligible participants shall be those parents who are sixteen (16) years of age or older, not enrolled in a regular secondary school program, and who do not possess a high school credential, or who have a high school credential but function below a twelfth grade level and their children, age zero (0) to eight (8) years.~~
- (4) ~~Priority in the selection of grant awards shall be based on the county's low level of literacy in the adult population, high numbers of unemployed, and high levels of poverty.~~

- ~~(5) A minimum of five percent (5%) of the funds appropriated to support the Parent and Child Education for Family Independence statewide effort shall be retained by the Department for Adult Education and Literacy to provide a statewide professional staff development program].~~

SECTION 12. A NEW SECTION OF KRS CHAPTER 151B IS CREATED TO READ AS FOLLOWS:

*The General Assembly recognizes the critical condition of the educational level of Kentucky's adult population and seeks to stimulate the attendance at, and successful completion of, programs that provide a high school equivalency diploma. Incentives shall be provided to full-time employees who complete a high school equivalency diploma program within one (1) year and their employers. For purposes of this section "equivalent diploma" means a high school equivalency diploma issued after successful completion of the General Educational Development tests.*

- (1) *The Department for Adult Education and Literacy in conjunction with the Council on Postsecondary Education shall promulgate administrative regulations to establish the operational procedures for this section. The administrative regulations shall include, but not be limited to, the criteria for:*
  - (a) *A learning contract that includes the process to develop a learning contract between the student and the adult education instructor with the employer's agreement to participate and support the student;*
  - (b) *Attendance reports that validate that the student is studying for the high school equivalency diploma during the release time from work;*
  - (c) *Final reports that qualify the student for the tuition discounts under subsection (2)(a) of this section and that qualify the employer for tax credits under subsection (3) of the section.*
- (2) *(a) An individual who has been out of secondary school for at least three (3) years, develops and successfully completes a learning contract that requires a minimum of five (5) hours per week to study for the high school equivalency diploma tests, and passes the tests shall earn a tuition discount of two hundred fifty dollars (\$250) per semester for a maximum of four (4) semesters at one (1) of Kentucky's public postsecondary institutions.*
  - (b) *The department, with the cooperation of the Council on Postsecondary Education, shall work with the postsecondary institutions to establish notification procedures for students who qualify for the tuition discount.*
- (3) *An employer who assists an individual to complete his or her learning contract under the provisions of this section shall receive a state income tax credit for a portion of the released time given to the employee to study for the tests. The application for the tax credit shall be supported with attendance documentation provided by the Department for Adult Education and Literacy and calculated by multiplying fifty percent (50%) of the hours released for study by the student's hourly salary, and not to exceed a credit of one thousand two hundred fifty dollars (\$1250).*

Section 13. KRS 154.12-204 is amended to read as follows:

As used in KRS 154.12-205 to 154.12-208, unless the context requires otherwise:

- (1) "Applicant" means an educational institution, and business or industry that has made joint application for a grant-in-aid as authorized by KRS 154.12-205 to 154.12-208;
- (2) "Board" means the board of directors of the Bluegrass State Skills Corporation;
- (3) "Business and industry" means a private corporation, limited liability company, registered limited liability partnership, institution, firm, person, group, or other entity or association of the same, concerned with commerce, trade, manufacturing, or the provision of services within the Commonwealth, or a public or nonprofit hospital licensed by the Commonwealth, ***or any company whose primary purpose is the sale of goods at retail, if specific funds for grants-in-aid to retail business and industry are appropriated by the General Assembly;***
- (4) "Corporation" means the Bluegrass State Skills Corporation, or BSSC;
- (5) "Educational institution" means a public or nonpublic secondary or post-secondary institution or an independent ***provider***~~institution~~ within the Commonwealth authorized by law to provide a program of skills training or education ~~beyond the secondary school level;~~

- (6) "Grant-in-aid" means funding that is provided to an educational institution and business and industry by the BSSC for the development or expansion of a program as provided in this chapter;
- (7) "Program" or "program of skills training or education consistent with employment needs" means a coordinated course of instruction which is designed to prepare individuals for employment in a specific trade, occupation, or profession. Such instruction may include:
  - (a) Classroom instruction;
  - (b) Classroom-related field, shop, factory, office, or laboratory work; and
  - (c) **Basic skills**, entry level training, job upgrading, retraining, and advance training.
- (8) "Technical assistance" means professional and any other assistance provided by business and industry to an educational institution, which is reasonably calculated to support directly the development and expansion of a particular program as defined herein.

Section 14. KRS 154.12-2084 is amended to read as follows:

As used in KRS 154.12-2084 to 154.12-2089, unless the context requires otherwise:

- (1) "Approved company" means any qualified company seeking to sponsor an occupational upgrade training program or skills upgrade training program for the benefit of one (1) or more of its employees, which is approved by the authority to receive skills training investment credits in accordance with KRS 154.12-2084 to 154.12-2089;
- (2) "Approved costs" means:
  - (a) Fees or salaries required to be paid to instructors who are employees of the approved company, instructors who are full-time, part-time, or adjunct instructors with an educational institution, and instructors who are consultants on contract with an approved company in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company;
  - (b) Administrative fees charged by educational institutions in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company and specifically approved by the Bluegrass State Skills Corporation;
  - (c) The cost of supplies, materials, and equipment used exclusively in an occupational upgrade training program or skills upgrade training program sponsored by an approved company;
  - (d) The cost of leasing a training facility where space is unavailable at an educational institution or at the premises of an approved company in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company;
  - (e) Employee wages to be paid in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company; and
  - (f) All other costs of a nature comparable to those described in this subsection;
- (3) "Bluegrass State Skills Corporation" means the Bluegrass State Skills Corporation created by KRS 154.12-205;
- (4) "Commonwealth" means the Commonwealth of Kentucky;
- (5) "Educational institution" means a public or nonpublic secondary or postsecondary institution or an independent ~~provider[institution]~~ within the Commonwealth authorized by law to provide a program of skills training or education beyond the secondary school level **or to adult persons without a high school diploma or its equivalent**;
- (6) "Employee" means any person:
  - (a) Who is currently a permanent full-time employee of the qualified company; and
  - (b) Who has been employed by the qualified company for the last twelve (12) calendar months immediately preceding the filing of the application for skills training investment credits by the qualified company;

For purposes of this subsection, a "full-time employee" means an employee who has been employed by the qualified company for a minimum of thirty-five (35) hours per week for more than two hundred fifty (250) work days during the most recently ended calendar year and is subject to the tax imposed by KRS 141.020;

- (7) "Occupational upgrade training" means employee training sponsored by a qualified company that is designed to qualify the employee for a promotional opportunity with the qualified company;
- (8) "Preliminarily approved company" means a qualified company seeking to sponsor an occupational upgrade training program or skills upgrade training program, which has received preliminarily approval from the authority under KRS 154.12-2088 to receive a certain maximum amount of skills training investment credits;
- (9) "Qualified company" means any person, corporation, limited liability company, partnership, limited partnership, registered limited liability partnership, sole proprietorship, firm, enterprise, franchise, association, organization, holding company, joint stock company, professional service corporation, or any other legal entity through which business is conducted that has been actively engaged in any of the following qualified activities within the Commonwealth for not less than three (3) consecutive years: manufacturing, including the processing, assembling, production, or warehousing of any property; processing of agricultural and forestry products; telecommunications; health care; product research and engineering; tool and die and machine technology; mining; tourism and operation of facilities to be used in the entertainment, recreation, and convention industry; and transportation in support of manufacturing. Notwithstanding the provisions of this subsection, any company whose primary purpose is the sale of goods at retail shall not constitute a qualified company;
- (10) "Skills upgrade training" means employee training sponsored by a qualified company that is designed to provide the employee with new skills necessary to enhance productivity, improve performance, or retain employment including, but not limited to, technical and interpersonal skills training, and training that is designed to enhance the computer skills, communication skills, problem solving, reading, writing, or math skills of employees who are unable to function effectively on the job due to deficiencies in these areas, ***are unable to advance on the job***, or who risk displacement because their skill deficiencies inhibit their training potential for new technology; and
- (11) "Skills training investment credit" means the credit against Kentucky income tax imposed by KRS 141.020 or 141.040, as provided in KRS 154.12-2086(1).

Section 15. KRS 157.360 is amended to read as follows:

- (1) In determining the cost of the program to support education excellence in Kentucky, the statewide guaranteed base funding level, as defined in KRS 157.320, shall be computed by dividing the amount appropriated for this purpose by the prior year's statewide average daily attendance.
- (2) Each district shall receive an amount equal to the base funding level for each pupil in average daily attendance in the district in the previous year. Each district's base funding level shall be adjusted by the following factors:
  - (a) The number of at-risk students in the district. At-risk students shall be identified as those approved for the free lunch program under state and federal guidelines. The number of at-risk students shall be multiplied by a factor to be established by the General Assembly. Funds generated under this paragraph may be used to pay ***for***:
    - 1. ***Alternative programs for students who are at-risk of dropping out of school before achieving a diploma; and***
    - 2. A hazardous duty pay supplement as determined by the local board of education to the teachers who work in alternative programs with students who are violent or assaultive;
  - (b) The number and types of exceptional children in the district as defined by KRS 157.200. No later than October 1, 1993, specific weights for each category of exceptionality shall be developed by the Department of Education and shall be used in the calculation of the add-on factor for exceptional children. Prior to the development of the necessary weights, the General Assembly shall determine the costs associated with the education of exceptional children based on the count of pupils with different exceptionalities, an appropriate pupil-teacher ratio, and total per-pupil costs; and
  - (c) Transportation costs. The per-pupil cost of transportation shall be calculated as provided by KRS 157.370. No later than October 1, 1991, the Office of Education Accountability's Division of School Finance shall examine the components of the current system for allocating transportation funds, and

recommend any needed changes to the General Assembly, the Governor, and the State Board for Elementary and Secondary Education. Districts which contract to furnish transportation to students attending nonpublic schools may adopt any payment formula which assures that no public school funds are used for the transportation of nonpublic students.

- (3) The program to support education excellence in Kentucky shall be fully implemented by the 1994-95 school year. No district shall receive an annual increase in state funds of less than eight percent (8%) for 1990-91 and five percent (5%) in 1991-92 or more than twenty-five percent (25%) in either year.
- (4)
  - (a) Except for those schools which have implemented school-based decision making, the chief state school officer shall enforce maximum class sizes for every academic course requirement in all grades except in vocal and instrumental music, and physical education classes. Except as provided in subsection (5) of this section, the maximum number of pupils enrolled in a class shall be as follows:
    1. Twenty-four (24) in primary grades (kindergarten through third grade);
    2. Twenty-eight (28) in grade four (4);
    3. Twenty-nine (29) in grades five (5) and six (6);
    4. Thirty-one (31) in grades seven (7) to twelve (12);
  - (b) Except for those schools which have implemented school-based decision making, class size loads for middle and secondary school classroom teachers shall not exceed the equivalent of one hundred fifty (150) pupil hours per day.
  - (c) The chief state school officer, upon approval of the Kentucky Board of Education, shall adopt administrative regulations for enforcing this provision. These administrative regulations shall include procedures for a superintendent to request an exemption from the Kentucky Board of Education when unusual circumstances warrant an increased class size for an individual class. A request for an exemption shall include specific reasons for the increased class size with a plan for reducing the class size prior to the beginning of the next school year. A district shall not receive in any one (1) year exemptions for more classes than enroll twenty percent (20%) of the pupils in the primary grades and grades four (4) through eight (8).
  - (d) In all schools the chief state school officer shall enforce the special education maximum class sizes set by administrative regulations adopted by the Kentucky Board of Education. A superintendent may request an exemption pursuant to paragraph (c) of this subsection. A local school council may request a waiver pursuant to KRS 156.160(2). An exemption or waiver shall not be granted if the increased class size will impede any exceptional child from achieving his individual education program in the least restrictive environment.
- (5) In grades four (4) through six (6) with combined grades, the maximum class size shall be the average daily attendance upon which funding is appropriated for the lowest assigned grade in the class. There shall be no exceptions to the maximum class size for combined classes. In combined classes other than the primary grades, no ungraded students shall be placed in a combined class with graded students. In addition, there shall be no more than two (2) consecutive grade levels combined in any one (1) class in grades four (4) through six (6). However, this shall not apply to schools which have implemented school-based decision making.
- (6) If a local school district, through its admission and release committee, determines that an appropriate program in the least restrictive environment for a particular child with a disability includes either part-time or full-time enrollment with a private school or agency within the state or a public or private agency in another state, the school district shall count as average daily attendance in a public school the time that the child is in attendance at the school or agency, contingent upon approval by the chief state school officer.
- (7) Pupils attending a center for child learning and study established under an agreement pursuant to KRS 65.210 to 65.300 shall, for the purpose of calculating average daily attendance, be considered as in attendance in the school district in which the child legally resides and which is party to the agreement. For purposes of subsection (1) of this section, teachers who are actually employees of the joint or cooperative action shall be considered as employees of each school district which is a party to the agreement.
- (8) Program funding shall be increased when the average daily attendance in any district for the first two (2) months of the current school year is greater than the average daily attendance of the district for the first two (2) months of the previous school year. The program funds allotted the district shall be increased by the percent of

increase. The average daily attendance in kindergarten is the kindergarten full-time equivalent pupils in average daily attendance.

- (9) If the average daily attendance for the current school year in any district decreases by ten percent (10%) or more than the average daily attendance for the previous school year, the average daily attendance for purposes of calculating program funding for the next school year shall be increased by an amount equal to two-thirds ( $\frac{2}{3}$ ) of the decrease in average daily attendance. If the average daily attendance remains the same or decreases in the succeeding school year, the average daily attendance for purposes of calculating program funding for the following school year shall be increased by an amount equal to one-third ( $\frac{1}{3}$ ) of the decrease for the first year of the decline.
- (10) If the percentage of attendance of any school district shall have been reduced more than two percent (2%) during the previous school year, the program funding allotted the district for the current school year shall be increased by the difference in the percentage of attendance for the two (2) years immediately prior to the current school year less two percent (2%).
- (11)
  - (a) Instructional salaries for vocational agriculture classes shall be allotted for twelve (12) months per year. Vocational agriculture teachers shall be responsible for the following program of instruction during the time period beyond the regular school term established by the local board of education: supervision and instruction of students in agriculture experience programs; group and individual instruction of farmers and agribusinessmen; supervision of student members of agricultural organizations who are involved in leadership training or other activity required by state or federal law; or any program of vocational agriculture established by the Division of Secondary Vocational Education in the Department of Education. Salary allotments for vocational agriculture teachers shall be computed by proportionately increasing the salary schedule allocation based on the regular one hundred eighty-five (185) day school year for teachers with comparable qualifications and experience. During extended employment, no vocational agriculture teacher shall receive salary on a day that the teacher is scheduled to attend an institution of higher education class which could be credited toward meeting any certification requirement.
  - (b) Each teacher of agriculture employed shall submit an annual plan for summer program to the local school superintendent for approval. The summer plan shall include a list of tasks to be performed, purposes for each task, and time to be spent on each task. Approval by the local school superintendent shall be in compliance with the guidelines developed by the State Department of Education. The supervision and accountability of teachers of vocational agriculture's summer programs shall be the responsibility of the local school superintendent. The local school superintendent shall submit to the chief state school officer a completed report of summer tasks for each vocational agriculture teacher. Twenty percent (20%) of the approved vocational agriculture programs shall be audited annually by the State Department of Education to determine that the summer plan has been properly executed.
  - (c) For the 1990-91 and the 1991-92 school years, an add-on appropriation shall be made to local school districts which are operating secondary vocational education programs. The amount provided in the budget shall be allocated on a per pupil basis and shall be used to meet the higher per student cost of operating vocational education programs.
- (12)
  - (a) In allotting program funds for home and hospital instruction, statewide guaranteed base funding, excluding the capital outlay, shall be allotted for each child in average daily attendance in the prior school year who has been properly identified according to Kentucky Board of Education administrative regulations. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported monthly on forms provided by the Department of Education; and
  - (b) Pursuant to administrative regulations of the Department of Education, local school districts shall be reimbursed for home and hospital instruction for pupils unable to attend regular school sessions because of short term health impairments. A reimbursement formula shall be established by administrative regulations to include such factors as a reasonable per hour, per child allotment for teacher instructional time, with a maximum number of funded hours per week, a reasonable allotment for teaching supplies and equipment, and a reasonable allotment for travel expenses to and from instructional assignments, but the formula shall not include an allotment for capital outlay. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported monthly on forms provided by the Department of Education.

- (13) Except for those schools which have implemented school-based decision making and the school council has voted to waive this subsection, kindergarten aides shall be provided for each twenty-four (24) full-time equivalent kindergarten students enrolled.

Section 16. KRS 18A.115 is amended to read as follows:

- (1) The classified service to which KRS 18A.005 to 18A.200 shall apply shall comprise all positions in the state service now existing or hereafter established, except the following:
- (a) The General Assembly and employees of the General Assembly, including the employees of the Legislative Research Commission;
  - (b) Officers elected by popular vote and persons appointed to fill vacancies in elective offices;
  - (c) Members of boards and commissions;
  - (d) Officers and employees on the staff of the Governor, the Lieutenant Governor, the Office of the secretary of the Governor's Cabinet, and the Office of Program Administration;
  - (e) Cabinet secretaries, commissioners, office heads, and the administrative heads of all boards and commissions, including the executive director of Kentucky Educational Television;
  - (f) Employees of Kentucky Educational Television who have been determined to be exempt from classified service by the Kentucky Authority for Educational Television, which shall have sole authority over such exempt employees for employment, dismissal, and setting of compensation, up to the maximum established for the executive director and his principal assistants;
  - (g) One (1) principal assistant or deputy for each person exempted under subsection (1)(e) of this section;
  - (h) One (1) additional principal assistant or deputy as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the commissioner approves such an addition on petition of the relevant cabinet secretary or department head and such other principal assistants, deputies, or other major assistants as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the board may approve such an addition or additions on petition of the department head approved by the commissioner;
  - (i) Division directors subject to the provisions of KRS 18A.170. Division directors in the classified service as of January 1, 1980, shall remain in the classified service;
  - (j) Physicians employed as such;
  - (k) One (1) private secretary for each person exempted under subsection (1)(e), (g), and (h) of this section;
  - (l) The judicial department, referees, receivers, jurors, and notaries public;
  - (m) Officers and members of the staffs of state universities and colleges and student employees of such institutions; officers and employees of the Teachers' Retirement System; and officers, teachers, and employees of local boards of education;
  - (n) Patients or inmates employed in state institutions;
  - (o) Persons employed in a professional or scientific capacity to make or conduct a temporary or special inquiry, investigation, or examination on behalf of the General Assembly, or a committee thereof, or by authority of the Governor, and persons employed by state agencies for a specified, limited period to provide professional, technical, scientific, or artistic services under the provisions of KRS 45A.690 to 45A.725;
  - (p) Interim employees;
  - (q) Officers and members of the state militia;
  - (r) State Police troopers and sworn officers in the Department of State Police, Justice Cabinet;
  - (s) University or college engineering students or other students employed part-time or part-year by the state through special personnel recruitment programs; provided that while so employed such aides shall be under contract to work full-time for the state after graduation for a period of time approved by the



commissioner or shall be participants in a cooperative education program approved by the commissioner;

- (t) Superintendents of state mental institutions, including heads of mental retardation centers, and penal and correctional institutions as referred to in KRS 196.180(2);
  - (u) Staff members of the Kentucky Historical Society, if they are hired in accordance with KRS 171.311;
  - (v) County and Commonwealth's attorneys and their respective appointees;
  - (w) Chief district engineers and the state highway engineer;
  - (x) Veterinarians employed as such by the Kentucky State Racing Commission or the Kentucky Harness Racing Commission;
  - (y) Employees of the Kentucky Peace Corps;
  - (z) Employees of the Council on Postsecondary Education; and
  - (aa) Chief information officer of the Commonwealth.
- (2) Nothing in KRS 18A.005 to 18A.200 is intended, or shall be construed, to alter or amend the provisions of KRS 150.022 and 150.061.
  - (3) Nothing in KRS 18A.005 to 18A.200 is intended or shall be construed to affect any nonmanagement, nonpolicy-making position which must be included in the classified service as a prerequisite to the grant of federal funds to a state agency.
  - (4) Career employees within the classified service promoted to positions exempted from classified service shall, upon termination of their employment in the exempted service, revert to a position in that class in the agency from which they were terminated if a vacancy in that class exists. If no such vacancy exists, they shall be considered for employment in any vacant position for which they were qualified pursuant to KRS 18A.130 and 18A.135.
  - (5) Nothing in KRS 18A.005 to 18A.200 shall be construed as precluding appointing officers from filling unclassified positions in the manner in which positions in the classified service are filled except as otherwise provided in KRS 18A.005 to 18A.200.
  - (6) The positions of employees who are transferred, effective July 1, 1998, from the Cabinet for Workforce Development to the Kentucky Community and Technical College System shall be abolished and the employees' names removed from the roster of state employees. Employees that are transferred, effective July 1, 1998, to the Kentucky Community and Technical College System under KRS Chapter 164 shall have the same benefits and rights as they had under KRS Chapter 18A and have under KRS 164.5805; however, they shall have no guaranteed reemployment rights in the KRS Chapter 151B or KRS Chapter 18A personnel systems. An employee who seeks reemployment in a state position under KRS Chapter 151B or KRS Chapter 18A shall have years of service in the Kentucky Community and Technical College System counted towards years of experience for calculating benefits and compensation.
  - (7) ***On August 15, 2000, all certified and equivalent personnel, all unclassified personnel, and all certified and equivalent and unclassified vacant positions in the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B personnel system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. The personnel officers who administer the personnel systems under KRS Chapter 151B and KRS Chapter 18A shall exercise the necessary administrative procedures to effect the change in personnel authority. No certified or equivalent employee in the Department for Adult Education and Literacy shall suffer any penalty in the transfer.***
  - (8) ***On August 15, 2000, secretaries and assistants attached to policymaking positions in the Department for Technical Education and the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. No employee shall suffer any penalty in the transfer.***

Section 17. KRS 151B.010 is amended to read as follows:

As used in this chapter, unless the context indicates otherwise:

- (1) "Appointing authority" means ~~the~~<sup>he</sup> commissioner *for the Department of Technical Education* or any person authorized by ~~the~~<sup>he</sup> commissioner to act on behalf of ~~the department~~<sup>this particular agency of the Cabinet for Workforce Development</sup> with respect to employee appointments, position establishments, payroll documents, reemployment lists, waiver requests, or other position actions. ~~The~~<sup>Such</sup> designation shall be in writing and signed by both the commissioner and ~~the~~<sup>his</sup> designee.
- (2) "Base salary" means the compensation to which an employee is entitled under the salary schedule adopted pursuant to the provisions of KRS 151B.035(3)(i).
- (3) "Board" means the State Board for Adult and Technical Education created by KRS 151B.095.
- (4) "Certified employees" means those employees who fill school or educational assignments requiring the issuance of a certificate. These employees in the ~~Department for Adult Education and Literacy and the~~ Department for Technical Education are subject to personnel administration under this chapter.
- (5) "Class" means a group of positions sufficiently similar as to the duties performed, scope of discretion and responsibility, minimum requirements of training, and other characteristics that the same title and the same schedule of compensation have been or may be applied to each position in the group.
- (6) "Classified" means status as merit system employees under the provisions of KRS Chapter 18A.
- (7) "Continuing status" means the acquisition of tenure with all rights and privileges granted by the provisions of this chapter which must be preceded by four (4) years of successful employment.
- (8) "Demotion" means a change in an employee's position to another class having less discretion or responsibility.
- (9) "Emergency appointment" means employment for a maximum period of sixty (60) days without regard to the certification process for any position in the ~~Department for Adult Education and Literacy and the~~ Department for Technical Education requiring certification or its equivalent.
- (10) "Employee" means a person regularly employed in a position in the ~~Department for Adult Education and Literacy and the~~ Department for Technical Education for which compensation is on a full-time or part-time basis.
- (11) "Equivalent employees" means those employees with educational backgrounds similar to certified personnel in the administration and conduct of educationally related services. These employees in the ~~Department for Adult Education and Literacy and the~~ Department for Technical Education shall be subject to personnel administration under this chapter.
- (12) "Hearing officer" means a member of the board, a person hired for this purpose by personal service contract, or an assistant Attorney General.
- (13) "Index" means the percentage add-on in a salary structure which compensates for the scope of discretion and responsibility of the position.
- (14) "Initial probation" means the one (1) year period following initial appointment of certified and equivalent employees under KRS 151B.070 which requires special observation and evaluation of a person's work and which must be passed successfully before eligibility for renewal of limited status.
- (15) "Limited status" means employment that is renewable on an annual basis.
- (16) "Penalization" means actions including demotion, dismissal, suspension, involuntary transfer, reduction in rank or pay, or the abridgement or denial of rights granted to state employees or other disciplinary actions.
- (17) "Position" means employment involving duties requiring the services of one (1) person.
- (18) "Promotion" means changing an employee from a position in one (1) class to a position in another class carrying a greater scope of discretion and responsibility.
- (19) "Promotional probation" means the twelve (12) month period of service following the promotion of an employee with continuing status which must be successfully completed in order for the employee to remain in the position.
- (20) "Reemployment" means the rehiring of an employee with continuing status who has been laid off.

- (21) "Reemployment list" means the separate list of names of persons who have been separated from certified or equivalent positions in the ~~Department for Adult Education and Literacy and the~~ Department for Technical Education by reason of layoff. Reemployment lists shall be used as provided by the provisions of KRS 151B.080.
- (22) ~~"Region" means a grouping of counties as defined in respective state plans for vocational education.~~
- (23) ~~"Reinstatement" means the restoration of a certified or equivalent employee who has resigned in good standing or who has been ordered reinstated by the board or a court to a position in the former class or to a position of like status and pay.~~
- (23)(24) "Seasonal employees" means employees employed in a seasonal position. Seasonal position means a position that is temporary, and which coincides with a particular season or seasons of the year.
- (24)(25) "Temporary employee" means an employee appointed to a temporary position. Temporary position means a position that is created for a definite period of time.
- (25)(26) "Transfer" means a movement of any certified or equivalent employee from one position to another having the same salary range and the same level of responsibility.
- (26)(27) "Unclassified employee" means any temporary or seasonal employee and any employee in a policymaking position ~~as well as any assistant or secretary attached to the position,~~ who shall be exempt from the state service under KRS Chapter 18A and who is employed in the ~~Department for Adult Education and Literacy and the~~ Department for Technical Education under this chapter.

Section 18. KRS 151B.035 is amended to read as follows:

- (1) The State Board for Adult and Technical Education shall promulgate, by administrative regulations, personnel policies and procedures for all full-time and part-time unclassified employees, certified and equivalent staff, including administrative, teaching, and supervisory staff in the ~~Department for Adult Education and Literacy and the~~ Department for Technical Education central *office and* ~~offices,~~ state-operated vocational facilities ~~and regional staffs~~. All other staff shall remain under the authority of the Kentucky Personnel Cabinet and KRS Chapter 18A. Employees who transfer to or from the KRS Chapter 18A personnel system shall transfer accrued annual, compensatory, and sick leave.
- (2) As provided in this chapter, the State Board for Adult and Technical Education shall promulgate comprehensive administrative regulations for the administration of a personnel system in the ~~Department for Adult Education and Literacy and the~~ Department for Technical Education which are consistent with the provisions of this chapter and with federal standards for state government agencies receiving federal grants.
- (3) The board shall promulgate comprehensive administrative regulations for full-time and part-time certified and equivalent staff governing:
  - (a) Establishment and abolishment of positions;
  - (b) Applications;
  - (c) Certification;
  - (d) Classification and compensation plans;
  - (e) Incentive programs;
  - (f) Selection of employees;
  - (g) Types of appointments;
  - (h) Attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leaves of absence;
  - (i) Preparation, maintenance, and revision of a position classification plan and an equitable salary schedule for certified and equivalent staff based on qualifications, experience, and responsibilities;
  - (j) Extent and duration of the state-operated area vocational education and technology centers' school term, use of school days, and extended employment;
  - (k) Employee evaluations;
  - (l) Programs to improve the work effectiveness of employees including staff development;

- (m) Demotion;
  - (n) Dismissal;
  - (o) Layoffs;
  - (p) Suspensions and other disciplinary measures;
  - (q) Probationary periods, limited employment status, and continuing employment status;
  - (r) Promotion;
  - (s) Transfer;
  - (t) Appeals; and
  - (u) Employee grievances and complaints.
- (4) (a) Administrative regulations promulgated by the board shall comply with the provisions of this chapter and KRS Chapter 13A and shall have the force and effect of law, when approved by the board and after compliance with the provisions of KRS Chapter 13A.
- (b) Administrative regulations promulgated by the board shall not expand or restrict rights granted to, or duties imposed upon, employees and administrative bodies by the provisions of this chapter.
- (c) No administrative body other than the State Board for Adult and Technical Education shall promulgate administrative regulations governing the subject matters specified in this section.
- (d) Policies and procedures for the implementation of administrative regulations shall be developed by the ~~Department for Adult Education and Literacy and the~~ Department for Technical Education.
- (5) The commissioner for ~~Adult Education and Literacy and the commissioner for~~ Technical Education shall be the appointing ~~authority~~**authorities** with respect to all personnel actions for ~~the department~~**the department**~~their respective departments~~. ~~The~~**Each** commissioner may authorize a designee to act on behalf of ~~the~~**this** agency with respect to employee appointments, position establishments, payroll documents, reemployment lists, waiver requests, or other position actions. ~~Any personnel~~**Such** designation shall be in writing. Authority to employ personnel may be delegated to the vocational school management by state board policy and procedure. Any recommendation for employment from the local level shall be based on guidelines promulgated by the state board and shall be contingent upon confirmation by the commissioner and the board.
- (6) The board shall promulgate other administrative regulations to govern its proceedings which relate to certified and equivalent employees and which shall provide for:
- (a) The procedures to be utilized by the board in the conduct of hearings, consistent with KRS Chapter 13B;
  - (b) Discharge, as provided by this section;
  - (c) Imposition, as a disciplinary measure, of a suspension from service without pay for up to thirty (30) working days and, in accordance with the provisions of KRS 151B.055, for the manner of notification of the employee of the discipline and right of appeal;
  - (d) Promotions which shall give appropriate consideration to the applicant's qualifications, record of performance, and conduct;
  - (e) Supplementary information for the salary schedule for certified and equivalent staff including teachers, counselors, administrators, managers, and educational consultants in state-operated vocational technical facilities, field offices, and central office in the ~~Department for Adult Education and Literacy and the~~ Department for Technical Education that shall provide uniformity, recognition of education, teaching, and supervisory experience and use as a base the average salary paid to beginning classroom teachers by all public schools in the state for personnel with comparable qualifications and experience. Indexes may be incorporated in the compensation plan for administrative responsibilities. The salary schedule shall be computed annually, and shall be submitted to and approved by the Governor;
  - (f) Reemployment of laid-off employees in accordance with the provisions of this chapter;
  - (g) Establishment of a plan for resolving employee grievances and complaints. The plan shall not restrict rights granted employees by the provisions of this chapter; and

- (h) Any other administrative regulations not inconsistent with this chapter and KRS Chapter 13A proper and necessary for its enforcement.
- (7) The board shall make investigations, either on petition of a citizen, taxpayer, interested party, or on its own motion, concerning the enforcement and effect of KRS 151B.035 to 151B.090, shall require observance of its provisions and the administrative regulations promulgated pursuant to the provisions of this chapter and KRS Chapter 13A, and shall make investigation as requested by the General Assembly or the Governor and to report thereon.
- (8) The board shall promulgate administrative regulations, pursuant to KRS Chapter 13A, for an appeal system for aggrieved certified or equivalent employees.
- (9) The board shall hear appeals from applicants for positions or from certified, equivalent, and unclassified employees who have been dismissed, demoted, suspended, or otherwise penalized for cause. ***Effective August 15, 2000, appeals from assistants and secretaries in the Department for Technical Education and the Department for Adult Education and Literacy attached to policymaking positions shall be governed by KRS 18A.095, effective August 15, 2000. The State Personnel Board, established in KRS 18A.045, shall hear appeals that are pending as of August 15, 2000, from assistants and secretaries attached to policymaking positions in the Department for Technical Education and personnel in the Department for Adult Education and Literacy.***
- (10) The board may, any statute to the contrary notwithstanding, delegate the conduct of the hearing and the rendition of a recommended order to the full board, to a panel of the board, or to a hearing officer, relative to any hearing appeal, or decision, judicial or quasi-judicial in nature, which the board is empowered or directed, by this or any other chapter, to conduct, hear, or make; provided, however, that the full board as provided by statute, makes the final order, based upon the evidence submitted.
- (11) The board shall promulgate administrative regulations, pursuant to KRS Chapter 13A, governing the unclassified service including the preparation and maintenance of a salary schedule and other administrative regulations authorized by this chapter.
- (12) The annual percentage salary increment for all certified and equivalent employees subject to the personnel system established under this chapter shall be at least equal to that funded and provided for other elementary and secondary teachers.
- (13) The positions of employees who are transferred, effective July 1, 1998, from the Cabinet for Workforce Development to the Kentucky Community and Technical College System shall be abolished and the employees' names removed from the roster of state employees. Employees who are transferred, effective July 1, 1998, to the Kentucky Community and Technical College System under KRS Chapter 164 shall have the same benefits and rights as they had under KRS Chapter 18A and have under KRS 164.5805; however, they shall have no guaranteed reemployment rights in the KRS Chapter 151B or KRS Chapter 18A personnel systems. An employee who seeks reemployment in a state position under KRS Chapter 151B or KRS Chapter 18A shall have years of service in the Kentucky Community and Technical College System counted toward years of experience for calculating benefits and compensation.

Section 19. KRS 151B.040 is amended to read as follows:

- (1) All certified, equivalent, and unclassified employees in the ~~Department for Adult Education and Literacy and the~~ Department for Technical Education shall be:
  - (a) Provided the same health insurance coverage as all other state government employees provided in KRS 18A.225;
  - (b) Eligible to participate in the deferred compensation system provided for all state government employees by KRS 18A.250 to 18A.265;
  - (c) Provided the same life insurance coverage provided all state employees pursuant to KRS 18A.205 to 18A.215;
  - (d) Reimbursed for all reasonable and necessary travel expenses and disbursements incurred or made pursuant to KRS 45.101 in the performance of their official duties; no part of the reimbursement shall be included in or accounted as a part of their salaries;
  - (e) Ensured equal employment opportunity regardless of race, color, religion, national origin, disability, sex, or age; and

- (f) Given those holidays and rights granted state employees pursuant to KRS 18A.190.
- (2) Employees under the jurisdiction of the ~~Department for Adult Education and Literacy and the~~ Department for Technical Education who are members of a state retirement system as of June 30, 1990, shall remain in their respective retirement systems. All new certified and equivalent employees hired by the departments shall be placed in the Kentucky Teacher's Retirement System.

Section 20. KRS 151B.045 is amended to read as follows:

- (1) The records of the ~~Department for Adult Education and Literacy and the~~ Department for Technical Education shall be public records and shall be open to public inspection, as provided in KRS 61.870 to 61.884.
- (2) (a) A personnel file shall be maintained by the departments for each employee. The files maintained by the departments shall be the official personnel file for the employees.
- (b) Each file shall include, but not be limited to, the employee's name, address, title of positions held, classifications, rates of compensation, all changes in status including evaluations, promotions, demotions, layoffs, transfers, disciplinary actions, commendations, and awards. Each file shall contain the complete record and supporting documentation for each personnel action.
- (c) When an employee is reprimanded for misconduct, other infraction, or failure to perform duties in a proper or adequate manner, the supervising employee taking the action shall document the action in detail, and shall provide the employee with a copy of the documentation. The supervising employee shall inform the employee of his *or her* right to prepare a written response to the action taken after the employee has reviewed the written documentation prepared by the supervising employee. The employee's response shall be attached to the documentation prepared by the supervising employee. The supervising employee shall place a copy of the documentation and response in the employee's personnel file and shall transmit a copy to be placed in the central office personnel file of the employee. The supervising employee shall notify the employee that copies of the documentation and the response provided for in this subsection have been placed in the employee's personnel files.
- (3) Upon written request, an employee shall have the right to examine his *or her* personnel file. An employee may comment in writing on any item in the file. ~~The~~*Such* comments shall be made a part of the file and shall be attached to the specific record or document to which they pertain.
- (4) No public agency, as defined by KRS 61.870, and no officer or employee shall deny, abridge, or impede the exercise of the rights granted in any manner by this section and by KRS 61.878.

Section 21. KRS 151B.055 is amended to read as follows:

- (1) All certified and equivalent employees who previously held merit status under KRS Chapter 18A shall become continuing status employees in the ~~Department for Adult Education and Literacy and the~~ Department for Technical Education.
- (2) Prior to dismissal, an employee with continuing status shall be notified in writing of the intent to dismiss. The notice shall also state:
- (a) The specific reasons for dismissal including:
1. The statutory or regulatory violation;
  2. The specific action or activity on which the intent to dismiss is based;
  3. The date, time, and place of the action or activity; and
  4. The name of the parties involved; and
- (b) That the employee has the right to appear personally, or with counsel if counsel has been retained, to reply to the commissioner or ~~a~~*his* designee.
- (3) The departments shall prescribe and distribute a form to be completed and forwarded by an employee who wishes to appear before the commissioner or ~~a~~*his* designee. The form shall be attached to every notice of intent to dismiss, and shall contain written instructions explaining:
- (a) The right granted an employee under the provisions of this section relating to pretermination hearings; and
- (b) The time limits and procedures to be followed by all parties in pretermination hearings.

- (4) No later than five (5) working days after receipt of the notice of intent to dismiss, excluding the day of receipt of notice, the employee may request to appear, personally or with counsel if counsel is retained, to reply to the commissioner for adult and technical education or ~~a~~~~his~~ designee.
- (5) The appearance shall be held six (6) working days after receipt of an employee's request to appear before the commissioner or ~~a~~~~his~~ designee, excluding the day the employee's request is received, unless the employee and the commissioner or ~~a~~~~his~~ designee agree to a later date.
- (6) No later than five (5) working days after the employee appears before the commissioner or ~~a~~~~his~~ designee, excluding the day of the appearance, the commissioner or ~~a~~~~his~~ designee shall:
  - (a) Determine whether to dismiss the employee or to alter, modify, or rescind the intent to dismiss; and
  - (b) Notify the employee in writing of the decision.
- (7) If the commissioner or ~~a~~~~his~~ designee determines that the employee shall be dismissed, the employee shall be notified in writing of:
  - (a) The effective date of dismissal or other penalization;
  - (b) The specific reason for the action, including:
    1. The statutory or regulatory violation;
    2. The specific action or activity on which the dismissal is based;
    3. The date, time, and place of the action or activities; and
    4. The names of the parties involved; and
  - (c) That the employee may appeal the dismissal to the State Board for Adult and Technical Education within thirty (30) days after receipt of this notification, excluding the day the notice is received.
- (8) A certified or equivalent employee with continuing status who is demoted or suspended shall be notified in writing of:
  - (a) The demotion or suspension;
  - (b) The effective date of the demotion or suspension;
  - (c) The specific reason for the action including:
    1. The statutory or regulatory violation;
    2. The specific action or activity on which the demotion or suspension is based;
    3. The date, time, and place of the action or activity; and
    4. The name of the parties involved; and
  - (d) That the employee has the right to appeal to the State Board for Adult and Technical Education within thirty (30) days, excluding the day of receipt of notification.
- (9) Any employee or applicant for employment may appeal to the board on the grounds that the right to inspect or copy records, including preliminary and other supporting documentation, relating to the employee has been denied, abridged, or impeded. The board shall conduct a hearing to determine if the records related to the employee or applicant, and if the right to inspect or copy was denied, abridged, or impeded. If the board determines that the records related to the employee and that the right to inspect or copy the records has been denied, abridged, or impeded, the board shall order that the records be made available for inspection and copying.
- (10) Any certified, equivalent, or unclassified employee may appeal an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, or age to the board. Nothing in this section shall be construed to preclude any employee from filing with the Kentucky Commission on Human Rights a complaint alleging discrimination on the basis of race, color, religion, national origin, sex, disability, or age in accordance with KRS Chapter 344.
- (11) (a) Appeals to the State Board for Adult and Technical Education shall be in writing on an appeal form prescribed by the board. Appeal forms shall be available at the employee's place of work. The

***Department for Technical Education***~~{departments}~~ shall be responsible for the distribution of the forms.

- (b) The appeal form shall be attached to any notice, or copy of the notice, of dismissal, demotion, suspension, involuntary transfer, or other penalization, or notice of any other action an employee may appeal under the provisions of this section.
  - (c) Upon receipt of the appeal by the board, the ~~{appropriate}~~ commissioner shall be notified, and the board shall schedule a hearing that shall be conducted in accordance with KRS Chapter 13B.
- (12) (a) Except as provided in this section, an appeal shall be decided by the board only after a hearing. The board shall not deny, reject, or sustain an appeal, or make any other determination relating to an appeal, except after a hearing is conducted pursuant to the provisions of this section and KRS Chapter 13B.
- (b) The board may deny a hearing to an employee who has failed to file an appeal over which the board has jurisdiction or within the time prescribed by this section and to an unclassified employee who has failed to state the cause for dismissal. The board shall notify the employee of its denial in writing and shall inform the employee of his ***or her*** right to appeal the denial under the provisions of KRS 151B.060.
  - (c) Any investigation by the board of any matter related to an appeal filed by an employee shall be conducted only upon notice to the employee, the employee's counsel, and the appointing authority. All parties to the appeal shall have access to information produced by the investigations and the information shall be presented at the hearing. Any party to the hearing shall be permitted an adequate opportunity to rebut or comment upon the information.
- (13) Each appeal shall be decided individually, unless otherwise agreed by the parties and the board. The board shall not:
- (a) Employ class action procedures; or
  - (b) Conduct test representative cases.
- (14) Board members shall abstain from public comment about a pending or impending proceeding before the board. This shall not prohibit board members from making public statements in the course of their official duties or from explaining for public information the procedures of the board.
- (15) (a) If the board finds that the action complained of was taken by the appointing authority in violation of laws prohibiting favor for, or discrimination against, or bias with respect to political or religious opinions or affiliations or ethnic origin, or in violation of laws prohibiting discrimination because of the individual's sex, age, or disability, the commissioner shall immediately reinstate the employee to his ***or her*** former position or a position of like status and pay, without loss of pay for the period of penalization, or otherwise make the employee whole.
- (b) If the board finds that the action complained of was taken without just cause, the board shall order the immediate reinstatement of the employee to his ***or her*** former position or a position of like status and pay, without loss of pay for the period of penalization, or otherwise make the employee whole;
  - (c) If the board finds that the action taken by the appointing authority was excessive or erroneous in view of all the surrounding circumstances, the board shall alter, modify, or rescind the disciplinary action; and
  - (d) In all other cases, the board shall rescind the action taken or grant other relief to which the employee is entitled.
- (16) If a final order of the board is appealed, a court shall award reasonable attorney's fees to an employee who prevails by a final adjudication on the merits as provided by KRS 453.260. The award shall not include attorney's fees attributable to the hearing before the board.

Section 22. KRS 151B.065 is amended to read as follows:

- (1) (a) When a certified, equivalent, or unclassified employee has been finally ordered reinstated without loss of pay, pursuant to the provisions of KRS 151B.060, the board shall forward a certified copy of the order to the ~~{Department for Adult Education and Literacy or the}~~ ***Department for Technical Education***~~{as appropriate}~~. The department shall process proper payment to the employee for the period of suspension, the payment to be made out of the agency's appropriations. If no funds or insufficient funds are available in the agency's appropriations, then payment shall be made out of the judgments section of the general fund of the biennial state budget.



- (b) Gross moneys which are earned by the employee from other sources during the period of suspension shall set off against the gross sum due the employee, to the extent that the moneys were earned in a number of hours comparable to the length of time the employee would have worked in the previous job where dismissal occurred. The State Board for Adult and Technical Education shall by regulation provide an administrative procedure for determining reasonable earnings to be set off.
- (c) All other deductions shall be deducted as required by law or by other state regulation.
- (2) (a) Both the employee's and employer's contributions to the Kentucky Teachers' Retirement System or the Kentucky Employees Retirement System shall be based upon the gross amount due the employee, before set-off or deduction, except for set-off caused by earnings on which employee and employer contributions to the Kentucky Teachers' Retirement System or the Kentucky Employees Retirement System have been paid.
- (b) Member and employer contributions paid into the system in which the employee participated after dismissal shall be transferred to the system in which the employee participated prior to illegal dismissal. In the event of a difference in member or employer contribution rates between the retirement system under which the member was covered prior to dismissal and the retirement system of participation before reinstatement by the board, the member and employer shall pay or receive a refund in order to adjust their respective contribution to the appropriate rate for the system under which the employee would have participated if dismissal had not occurred.

Section 23. KRS 151B.070 is amended to read as follows:

- (1) All certified and equivalent employees shall serve a one (1) year probationary period for renewal of limited status. An employee may be separated from the position or reduced in class during this initial probationary period and shall not have a right to appeal except as provided in KRS 151B.055. If the employee is separated from the position, notice in writing shall be received at least ten (10) working days prior to separation. A copy of the notification shall be forwarded to the commissioner. Unless the commissioner notifies the employee of separation prior to the end of the initial probationary period, the employee shall be eligible for renewable limited status. Limited status employees are subject to reemployment on an annual basis. ***Limited status employees may be dismissed without cause before the annual anniversary date.***
- (2) After completion of the initial probationary period, the individual shall be considered on limited status until successful completion of the fourth year, at which time the employee may be placed on continuing status.
- (3) An employee who has been assigned continuing status may not be demoted, disciplined, or dismissed without cause except as provided by provisions in this chapter.
- (4) An employee with continuing status who has been promoted shall serve a probationary period of one (1) year in the new position. During the period of promotional probation, the employee shall retain the rights and privileges granted by the provisions of this chapter to continuing status employees.
- (5) During the promotional probationary period, the employee with continuing status may be reverted at the discretion of the appointing authority to a position in the class formerly held.
- (6) A continuing status employee who has been laid off may return to a position with continuing status if an appropriate position is available.

Section 24. KRS 151B.080 is amended to read as follows:

- (1) It shall be unlawful to coerce certified and equivalent employees who may be or who are subject to layoff to resign or retire in lieu of layoff. Dismissals shall comply with applicable statutes and layoffs shall not be utilized as a method of dismissal.
- (2) In the same department, county, and job classification, temporary, emergency, limited status, and probationary employees shall be laid off before permanent full-time or permanent part-time employees with continuing status. The Department ***for Technical Education*** shall not transfer positions, including vacant positions, in order to circumvent the provisions of this section.
- (3) If two (2) or more employees subject to layoff in a layoff plan submitted to the commissioner have the same qualifications and similar performance evaluations, the employee with the lesser seniority shall be laid off first.
- (4) An employee who is laid off shall be placed on a reemployment list for the class of position from which laid off and for any class for which such employee is qualified.

- (5) For a period of three (3) years, laid-off employees shall be considered before any applicant from outside the ~~Department for Adult Education and Literacy or the~~ Department for Technical Education, except another laid-off employee with more seniority who is already on the list.
- (6) For a period of three (3) years, a laid-off employee shall not be removed from the list unless:
  - (a) The laid-off employee notifies ~~the~~~~his~~ department in writing that he *or she* no longer wishes to be considered for a position on the list;
  - (b) Two (2) written offers of appointment are declined, ~~the~~~~such~~ offers to be for a position of the same classification and salary, and located in the same *county or contiguous counties*~~region~~, as the position from which laid off;
  - (c) ***Two (2) written offers to schedule an interview are made and the laid-off employee fails to respond to a certified letter requesting the laid-off employee to schedule an interview within ten (10) working days;***
  - (d) ~~Without good cause,~~ The laid-off employee fails to report for an interview after notification in writing at least ten (10) calendar days prior to the date of the interview;
  - ~~(e)~~~~(d)~~ The laid-off employee cannot be located by postal authorities at the last address provided; or
  - ~~(f)~~~~(e)~~ The laid-off employee has willfully violated the provisions of this chapter.
- (7) When a laid-off employee has accepted a bona fide offer of appointment to any position, effective on a specified date, the employee's name may be removed from the list for all classes for which the maximum salary is the same as or less than that of the class of appointment.
- (8) When a laid-off employee is removed from the reemployment list, the employee shall be notified in writing and shall be notified of the right to appeal to the board under provisions of KRS 151B.055.

Section 25. KRS 151B.085 is amended to read as follows:

- (1) A layoff of an employee with continuing status in *the Department for Technical Education*~~this department~~ due to the abolition of a position, lack of funds, or economic or employment trends resulting in a lack of work or a material change in duties or organization shall comply with the provisions of this section.
- (2) Prior to the notification of layoff and prior to the layoff of an employee, ~~the~~~~at~~ department shall prepare a layoff plan. The plan shall contain the name of the employee and the reasons, in detail, for the layoff. Upon approval of the plan by the ~~appropriate~~ commissioner, the employee shall be notified of the pending layoff, and of:
  - (a) The reason for the layoff;
  - (b) The procedures established by the provisions of KRS 151B.080, and this section for the layoff of employees; and
  - (c) The rights granted employees subject to layoff and to laid-off employees.
- (3)
  - (a) An employee subject to layoff shall be considered for a vacant position within ~~the~~~~his~~ department of the same pay grade, level of duties, and responsibilities for which the employee is qualified.
  - (b) If a vacancy does not exist, the employee shall be considered for any vacant position within his department for which qualifications are held.
- (4) If no position is available to an employee subject to layoff under the procedure established by subsection (3) of this section, the employee shall be notified of the layoff in writing at least thirty (30) days prior to implementation of the layoff.

Section 26. KRS 158.360 is amended to read as follows:

- (1) ~~The State Board for Adult and Technical Education shall approve grants and authorize the~~ Department for Adult Education and Literacy ***shall provide technical assistance to providers to develop family literacy services. The technical assistance shall be evaluated on a regular basis by contracted evaluators outside the department***~~to disburse funds to selected local educational agencies, public or private nonprofit agencies, postsecondary educational institutions, and other institutions that have the ability to provide model family literacy services to adults and families. The programs shall be known as Parent and Child Education for Family Independence Programs. The Department for Adult Education and Literacy shall annually report to the State~~

~~Board for Adult and Technical Education, and the Legislative Research Commission for each grantee, the total funds expended, the number of parents and children served, the number of participants receiving public assistance at the time they enter the program, and the number of participants who have been removed from public assistance because of participation in the program}.~~

- (2) The programs shall:
  - (a) Provide parents with instruction in basic academic skills, life skills which include parenting skills, and employability skills;
  - (b) Provide the children with developmentally appropriate educational activities;
  - (c) Provide planned high-quality educational experiences requiring interaction between parents and their children;
  - (d) Be of sufficient intensity and duration to help move families to self-sufficiency and break the cycle of undereducation and poverty; and
  - (e) Be designed to reduce duplication with other educational providers to ensure high quality and efficient services{;

~~— The programs may operate on a year round basis. The programs may also be blended with other programs as long as all criteria in this subsection are met.~~

- ~~(3) Eligible participants shall be those parents who are sixteen (16) years of age or older, not enrolled in a regular secondary school program, and who do not possess a high school credential, or who have a high school credential but function below a twelfth grade level and their children, age zero (0) to eight (8) years.~~
- ~~(4) Priority in the selection of grant awards shall be based on the county's low level of literacy in the adult population, high numbers of unemployed, and high levels of poverty.~~
- ~~(5) A minimum of five percent (5%) of the funds appropriated to support the Parent and Child Education for Family Independence statewide effort shall be retained by the Department for Adult Education and Literacy to provide a statewide professional staff development program}.~~

Section 27. KRS 164.020 is amended to read as follows:

The Council on Postsecondary Education in Kentucky shall:

- (1) Develop and implement the strategic agenda with the advice and counsel of the Strategic Committee on Postsecondary Education. The council shall provide for and direct the planning process and subsequent strategic implementation plans based on the strategic agenda as provided in KRS 164.0203;
- (2) Revise the strategic agenda and strategic implementation plan with the advice and counsel of the committee as set forth in KRS 164.004;
- (3) Develop a system of public accountability related to the strategic agenda by evaluating the performance and effectiveness of the state's postsecondary system. The council shall prepare a report in conjunction with the accountability reporting described in KRS 164.095, which shall be submitted to the committee, the Governor, and the General Assembly by December 1 annually. This report shall include a description of contributions by postsecondary institutions to the quality of elementary and secondary education in the Commonwealth;
- (4) Review, revise, and approve the missions of the state's universities and the Kentucky Community and Technical College System. The Council on Postsecondary Education shall have the final authority to determine the compliance of postsecondary institutions with their academic, service, and research missions;
- (5) Establish and ensure that all postsecondary institutions in Kentucky cooperatively provide for an integrated system of postsecondary education. The council shall guard against inappropriate and unnecessary conflict and duplication by promoting transferability of credits and easy access of information among institutions;
- (6) Engage in analyses and research to determine the overall needs of postsecondary education **and adult education** in the Commonwealth;
- (7) Develop plans that may be required by federal legislation. The council shall for all purposes of federal legislation relating to planning be considered the "single state agency" as that term may be used in federal legislation. When federal legislation requires additional representation on any "single state agency," the

Council on Postsecondary Education shall establish advisory groups necessary to satisfy federal legislative or regulatory guidelines;

- (8) Determine tuition and approve the minimum qualifications for admission to the state postsecondary educational system. In determining the tuition for non-Kentucky residents, the council shall consider the fees required of Kentucky students by institutions in adjoining states, the resident fees charged by other states, the total actual per student cost of training in the institutions for which the fees are being determined, and the ratios of Kentucky students to non-Kentucky students comprising the enrollments of the respective institutions, and other factors the council may in its sole discretion deem pertinent;
- (9) Devise, establish, and periodically review and revise policies to be used in making recommendations to the Governor for consideration in developing recommendations to the General Assembly for appropriations to the universities, ~~and~~ the Kentucky Community and Technical College System, **and to support strategies for persons to maintain necessary levels of literacy throughout their lifetimes including, but not limited to, appropriations to the Department for Adult Education and Literacy.** The council has sole discretion, with advice of the Strategic Committee on Postsecondary Education and the executive officers of the postsecondary education system, to devise policies that provide for allocation of funds among the universities and the Kentucky Community and Technical College System;
- (10) Lead and provide staff support for the biennial budget process as provided under KRS Chapter 48, in cooperation with the committee;
- (11)
  - (a) Except as provided in paragraph (b) of this subsection, review and approve all capital construction projects covered by KRS 45.750(1)(f), including real property acquisitions, and regardless of the source of funding for projects or acquisitions. Approval of capital projects and real property acquisitions shall be on a basis consistent with the strategic agenda and the mission of the respective universities and the Kentucky Community and Technical College System.
  - (b) The organized groups that are establishing community college satellites as branches of existing community colleges in the counties of Laurel, Leslie, and Muhlenberg, and that have substantially obtained cash, pledges, real property, or other commitments to build the satellite at no cost to the Commonwealth, other than operating costs that shall be paid as part of the operating budget of the main community college of which the satellite is a branch, are authorized to begin construction of the satellite on or after January 1, 1998;
- (12) Require reports from the executive officer of each institution it deems necessary for the effectual performance of its duties;
- (13) Develop a university track program within the Kentucky Community and Technical College System consisting of sixty (60) hours of instruction that can be transferred and applied toward the requirements for a bachelor's degree at the public universities. The track shall consist of general education courses and pre-major courses as prescribed by the council. Courses in the university track program shall transfer and apply toward the requirements for graduation with a bachelor's degree at all public universities. Successful completion of the university track program shall meet the academic requirement for transfer to a public university as a junior. By fall semester of 1997, requirements for track programs shall be established for all majors and baccalaureate degree programs;
- (14) Define and approve the offering of all postsecondary education technical, associate, baccalaureate, graduate, and professional degree, certificate, or diploma programs in the public postsecondary education institutions. The council shall expedite wherever possible the approval of requests from the Kentucky Community and Technical College System board of regents relating to new certificate, diploma, technical, or associate degree programs of a vocational-technical and occupational nature. Without the consent of the General Assembly, the council shall not abolish or limit the total enrollment of the general program offered at any community college to meet the goal of reasonable access throughout the Commonwealth to a two (2) year course of general studies designed for transfer to a baccalaureate program. This does not restrict or limit the authority of the council, as set forth in this section, to eliminate or make changes in individual programs within that general program;
- (15) Eliminate, in its discretion, existing programs or make any changes in existing academic programs at the state's postsecondary educational institutions, taking into consideration these criteria:
  - (a) Consistency with the institution's mission and the strategic agenda;
  - (b) Alignment with the priorities in the strategic implementation plan for achieving the strategic agenda;

- (c) Elimination of unnecessary duplication of programs within and among institutions; and
  - (d) Efforts to create cooperative programs with other institutions through traditional means, or by use of distance learning technology and electronic resources, to achieve effective and efficient program delivery;
- (16) Ensure the governing board and faculty of all postsecondary education institutions are committed to providing instruction free of discrimination against students who hold political views and opinions contrary to those of the governing board and faculty;
  - (17) Review proposals and make recommendations to the Governor regarding the establishment of new public community colleges, technical institutions, and new four (4) year colleges;
  - (18) Postpone the approval of any new program at a state postsecondary educational institution, unless the institution has met its equal educational opportunity goals, as established by the council. In accordance with administrative regulations promulgated by the council, those institutions not meeting the goals shall be able to obtain a temporary waiver, if the institution has made substantial progress toward meeting its equal educational opportunity goals;
  - (19) Ensure the coordination, transferability, and connectivity of technology among postsecondary institutions in the Commonwealth including the development and implementation of a technology plan as a component of the strategic agenda;
  - (20) Approve the teacher education programs in the public institutions that comply with standards established by the Education Professional Standards Board pursuant to KRS 161.028;
  - (21) Constitute the representative agency of the Commonwealth in all matters of postsecondary education of a general and statewide nature which are not otherwise delegated to one (1) or more institutions of postsecondary learning. The responsibility may be exercised through appropriate contractual relationships with individuals or agencies located within or without the Commonwealth. The authority includes, but is not limited to, contractual arrangements for programs of research, specialized training, and cultural enrichment;
  - (22) Maintain procedures for the approval of a designated receiver to provide for the maintenance of student records of the public institutions of higher education and the colleges as defined in KRS 164.945, and institutions operating pursuant to KRS 165A.310 which offer collegiate level courses for academic credit, which cease to operate. Procedures shall include assurances that, upon proper request, subject to federal and state laws and regulations, copies of student records shall be made available within a reasonable length of time for a minimum fee;
  - (23) Monitor and transmit a report on compliance with KRS 164.351 to the director of the Legislative Research Commission for distribution to the Health and Welfare Committee;
  - (24) Develop in cooperation with each state postsecondary educational institution a comprehensive orientation program for new members of the council and the governing boards. The orientation program shall include, but not be limited to, the information concerning the roles of the council, the strategic agenda and the strategic implementation plan, and the respective institution's mission, budget, plans, policies, strengths, and weaknesses;
  - (25) Develop a financial reporting procedure to be used by all state postsecondary education institutions to ensure uniformity of financial information available to state agencies and the public;
  - (26) Select and appoint a president of the council under KRS 164.013;
  - (27) Employ consultants and other persons and employees as may be required for the council's operations, functions, and responsibilities;
  - (28) Promulgate administrative regulations, in accordance with KRS Chapter 13A, governing its powers, duties, and responsibilities as described in this section;
  - (29) Prepare and present by January 31 of each year an annual status report on postsecondary education in the Commonwealth to the Governor, the Strategic Committee on Postsecondary Education, and the Legislative Research Commission;
  - (30) Ensure that the state postsecondary system does not unnecessarily duplicate services and programs provided by private postsecondary institutions and shall promote maximum cooperation between the state postsecondary system and private postsecondary institutions;

- (31) Create advisory groups representing the presidents, faculty, nonteaching staff, and students of the public postsecondary education system and the independent colleges and universities;
- (32) Develop a statewide policy to promote employee and faculty development in all postsecondary institutions through the waiver of tuition for college credit coursework in the public postsecondary education system. Any regular full-time employee of a postsecondary public institution may, with prior administrative approval of the course offering institution, take a maximum of six (6) credit hours per term at any public postsecondary institution. The institution shall waive the tuition up to a maximum of six (6) credit hours per term;~~and~~
- (33) ***Establish a statewide mission for adult education and develop a twenty (20) year strategy, in partnership with the Department for Adult Education and Literacy, for raising the knowledge and skills of the state's adult population. The council shall:***
  - (a) ***Promote coordination of programs and responsibilities linked to the issue of adult education with the Department for Adult Education and Literacy and with other agencies and institutions;***
  - (b) ***Facilitate the development of strategies to increase the knowledge and skills of adults in all counties by promoting the efficient and effective coordination of all available education and training resources;***
  - (c) ***Lead a statewide public information and marketing campaign to convey the critical nature of Kentucky's adult literacy challenge and to reach adults and employers with practical information about available education and training opportunities;***
  - (d) ***Establish standards for adult literacy and monitor progress in achieving the state's adult literacy goals, including existing standards that may have been developed to meet requirements of federal law in conjunction with the Collaborative Center for Literacy Development: Early Childhood through Adulthood; and***
  - (e) ***Administer the adult education and literacy initiative fund created under Section 7 of this Act; and***
- (34) Exercise any other powers, duties, and responsibilities necessary to carry out the purposes of this chapter. Nothing in this chapter shall be construed to grant the Council on Postsecondary Education authority to disestablish or eliminate any college of law which became a part of the state system of higher education through merger with a state college.

Section 28. KRS 164.035 is amended to read as follows:

The Council on Postsecondary Education, ***in consultation with the Department for Adult Education and Literacy and the Collaborative Center for Literacy Development: Early Childhood through Adulthood*** shall ***assess the need for technical assistance, training, and other***~~establish regional advisory groups and shall provide necessary staff~~ support to assist in the development of ***adult education and***~~regional strategies for~~ workforce development that support the state strategic agenda and that include a comprehensive coordinated approach to education and training services. The ***council shall promote the involvement of***~~regional advisory groups shall be encouraged to:~~

- ~~(1) Involve~~ universities; colleges; technical institutions; elementary and secondary educational agencies; labor, business, and industry representatives~~from regional and state labor market areas~~; community-based organizations; citizens' groups; and other policymakers in the development of the regional strategies;~~and~~
- ~~(2) Assist with an annual review of progress toward the regional strategies.~~

Section 29. KRS 164.0207 is amended to read as follows:

- (1) The Collaborative Center for Literacy Development: Early Childhood through Adulthood is created to make available training for educators in reliable, replicable research-based reading models, and to promote literacy development. The center shall be responsible for:
  - (a) Developing and implementing a clearinghouse for information about models addressing reading and literacy from the elementary grades through adult education;
  - (b) Collaborating with public and private institutions of postsecondary education ***and adult education providers*** to provide for teachers and administrators quality preservice and professional development in early reading instruction, including phonics instruction;
  - (c) Assisting districts located in areas with low levels of reading skills to assess and address identified literacy needs;

- (d) Providing professional development and coaching for classroom teachers, ***including adult education teachers***, implementing selected reliable, replicable research-based reading models;
  - (e) Developing and implementing a comprehensive research agenda evaluating the early reading models implemented in Kentucky under KRS 158.792;~~and~~
  - (f) Establishing a demonstration and training site for early literacy located at each of the public universities; ***and***
  - (g) ***Evaluating the reading and literacy components of the model adult education programs funded under the adult education and literacy initiative fund created under Section 7 of this Act.***
- (2) The center shall submit an annual report on its activities to the Governor and the Legislative Research Commission no later than September 1 of each year.
- (3) With the advice of the Department of Adult Education and Literacy in the Cabinet for Workforce Development and the Department of Education, the Council on Postsecondary Education shall develop a process to solicit, review, and approve a proposal for locating the Collaborative Center for Literacy Development at a public institution of postsecondary education. The Council on Postsecondary Education shall approve the location~~no later than October 1, 1998,~~ and monitor the ***progress***~~establishment~~ of the center.

Section 30. The following KRS sections are repealed:

151B.0235 State Advisory Council for Adult Education and Literacy.

151B.140 Statewide adult literacy program.

Section 31. Sections 17 to 22 and 25 of this Act take effect August 15, 2000.

**Approved April 26, 2000**

## CHAPTER 527

(SB 77)

AN ACT relating to the professional preparation of school personnel.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 156 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 3 of this Act, unless the context requires otherwise:*

- (1) ***"Center" means the Center for Middle School Academic Achievement;***
- (2) ***"Fund" means the Teachers' Professional Growth Fund;***
- (3) ***"Middle school" means grades five (5) through eight (8), regardless of school or district configuration; and***
- (4) ***"Reliable, replicable research" means objective, valid, scientific studies that:***
  - (a) ***Include rigorously defined samples of subjects that are sufficiently large and representative to support the general conclusions drawn;***
  - (b) ***Rely on measurements that meet established standards of reliability and validity;***
  - (c) ***Test competing theories, where multiple theories exist; and***
  - (d) ***Are subjected to peer review before results are published.***

SECTION 2. A NEW SECTION OF KRS CHAPTER 156 IS CREATED TO READ AS FOLLOWS:

- (1) ***The Teachers' Professional Growth Fund is hereby created to provide teachers with high quality professional development in content knowledge in the core disciplines of mathematics, science, language arts, and social studies as well as teaching methodologies to impart the content to students. During the years 2000 to 2004, priority for funding shall be given to middle school teachers, and based upon available funds, and in subsequent years, funding shall be made available to teachers in all grade levels in the subject areas listed in this subsection. During the years 2000 to 2002, funds shall be directed to improving the content***

*knowledge of mathematics by middle school teachers, and in subsequent years, the Department of Education, under provisions of this section, shall determine the priority for content emphasis.*

- (2) *The fund may provide moneys to teachers for:*
  - (a) *Tuition reimbursement for successful completion of college or university level courses approved for this purpose by the Education Professional Standards Board;*
  - (b) *Stipends for participation in and successful completion of:*
    1. *College or university courses approved for this purpose by the Education Professional Standards Board;*
    2. *Teacher institutes developed for core content instructors by the Department of Education in compliance with Section 10 of this Act; and*
    3. *Other professional development programs approved by Kentucky Department of Education; and*
  - (c) *Reimbursement for other approved professional development activities throughout the school year, including reimbursement for:*
    1. *Travel to and from professional development workshops; and*
    2. *Travel to and from other schools for the observation of, and consultation with, peer mentors.*
- (3) *The Education Professional Standards Board shall determine the college and university courses for which teachers may receive reimbursement from the fund.*
- (4) *The Department of Education shall:*
  - (a) *Administer the fund;*
  - (b) *Determine the professional development programs for which teachers may receive reimbursement from the fund;*
  - (c) *Determine the level of stipend or reimbursement, subject to the availability of appropriated funds, for particular courses and programs, under subsections 2(a) to 2(c) of this section; and*
  - (d) *Provide an accounting of fund expenditures to the Center for Middle School Academic Achievement, upon request of the center, for use in preparing the center's annual report.*
- (5) *The professional development programs approved by the Department of Education for which teachers may receive support from the fund shall:*
  - (a) *Focus on improving the content knowledge of core discipline teachers;*
  - (b) *Provide instruction on teaching methods, to effectively impart core discipline content knowledge to all students;*
  - (c) *Include intensive training institutes and workshops during the summer;*
  - (d) *Provide programs for the ongoing support of teacher participants throughout the year, which may include:*
    1. *A peer coaching or mentoring, and assessment program; and*
    2. *Planned activities, including:*
      - a. *Follow-up workshops; and*
      - b. *Support networks of teachers of the core disciplines using technologies including, but not limited to, telephone, video, and on-line computer networks; and*
  - (e) *Provide teacher participants with professional development credit toward renewal of certification under the provisions of KRS 161.095, relating to continuing education for teachers.*
- (6) *The Kentucky Board of Education shall specify through promulgation of administrative regulations:*
  - (a) *The application and approval process for receipt of funds;*
  - (b) *The requirements and process for the disbursement of funds; and*



(c) *The number of each kind of approved course for which applicants may receive funds.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 156 IS CREATED TO READ AS FOLLOWS:

- (1) *The Center for Middle School Academic Achievement is created to improve the content knowledge and instructional practice of middle school teachers through the coordination of professional development programs for middle school teachers, the provision of technical assistance to schools and teachers, and the collection and dissemination of information and research regarding effective models of teaching the core disciplines to middle school students.*
- (2) *The center shall:*
  - (a) *Foster collaboration between the center, the Department of Education, the Education Professional Standards Board, postsecondary institutions of education, postsecondary departments or colleges of arts and sciences, and other entities to develop content-based teacher preparation programs and ongoing professional development programs for middle school teachers, aligned with the Department of Education's core content for assessment;*
  - (b) *Assist school districts in assessing and addressing their needs and deficiencies in middle school curriculum and instruction;*
  - (c) *Assist middle school teachers in establishing and maintaining networks of communication to share information regarding middle school instructional practice, curriculum development, and other areas of common interest, building upon existing networks;*
  - (d) *Develop and maintain a clearinghouse for information about:*
    1. *Educational models addressing content knowledge and skills of middle school students, based on reliable, replicable research;*
    2. *Core content achievement levels of Kentucky students in relation to students in other states and other countries; and*
    3. *The relationship between student achievement levels and curriculum content, curriculum structure and alignment with content, teacher training, and teaching methods;*
  - (e) *Develop and implement a research structure, in collaboration with the Department of Education, to evaluate the effectiveness of different middle school instructional models; and*
  - (f) *Submit an annual report to the Governor and the Legislative Research Commission by September 1 of each year. The report shall include information outlining the center's activities, information provided by the Kentucky Department of Education regarding the use of money from the Teachers' Professional Growth Fund, and other information regarding efforts to improve the quality of middle school instruction in Kentucky.*
- (3) *With the advice of the Commissioner of Education and the Education Professional Standards Board, the Council on Postsecondary Education shall develop a process to solicit, review, and approve a proposal for locating the Center for Middle School Academic Achievement at a public or private college or university. The council shall choose a college or university that has demonstrated the coordination of course delivery between the faculties of the college of education and arts and sciences departments within the college or university. The council shall approve the location for the center no later than November 15, 2000.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 156 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Board of Education shall establish statewide standards for evaluation and support for improving the performance of all certified school personnel.*
- (2) *The performance criteria on which teachers and administrators shall be evaluated shall include, but not be limited to:*
  - (a) *Performance of professional responsibilities related to his or her assignment , including attendance and punctuality and evaluating results;*
  - (b) *Demonstration of effective planning of curricula, classroom instruction, and classroom management, based on research-based instructional practices, or school management skills based on validated managerial practices;*

- (c) *Demonstration of knowledge and understanding of subject matter content or administrative functions and effective leadership techniques;*
  - (d) *Promotion and incorporation of instructional strategies or management techniques that are fair and respect diversity and individual differences;*
  - (e) *Demonstration of effective interpersonal, communication, and collaboration skills among peers, students, parents, and others;*
  - (f) *Performance of duties consistent with the goals for Kentucky students and mission of the school, the local community, laws, and administrative regulations;*
  - (g) *Demonstration of the effective use of resources, including technology;*
  - (h) *Demonstration of professional growth;*
  - (i) *Adherence to the professional code of ethics; and*
  - (j) *Attainment of the teacher standards or the administrator standards as established by the Education Professional Standards Board that are not referenced in paragraphs (a) to (i) of this subsection.*
- (3) *The certified employee evaluation programs shall contain the following provisions:*
- (a) *Each certified school employee, including the superintendent, shall be evaluated by a system developed by the local school district and approved by the Kentucky Department of Education.*
  - (b) *The local evaluation system shall include formative evaluation and summative evaluation.*
    - 1. *"Formative evaluation" means a continuous cycle of collecting evaluation information and interacting and providing feedback with suggestions regarding the certified employee's professional growth and performance; and*
    - 2. *"Summative evaluation" means the summary of, and conclusions from, the evaluation data, including formative evaluation data, that:*
      - a. *Occur at the end of an evaluation cycle; and*
      - b. *Include a conference between the evaluator and the evaluated certified employee, and a written evaluation report.*
  - (c) *The Kentucky Board of Education shall adopt administrative regulations, incorporating written guidelines for a local school district to follow in developing, implementing, and revising the evaluation system and shall require the following:*
    - 1. *All evaluations of certified employees below the level of the district superintendent shall be in writing on evaluation forms and under evaluation procedures developed by a committee composed of an equal number of teachers and administrators;*
    - 2. *The immediate supervisor of the certified school employee shall be designated as the primary evaluator. At the request of a teacher observations by other teachers trained in the teacher's content area or curriculum content specialists may be incorporated into the formative process for evaluating teachers;*
    - 3. *All monitoring or observation of performance of a certified school employee shall be conducted openly and with full knowledge of the employee;*
    - 4. *Evaluators shall be trained, tested, and approved in accordance with administrative regulations adopted by the Kentucky Board of Education in the proper techniques for effectively evaluating certified school employees and in the use of the school district evaluation system;*
    - 5. *The evaluation system shall include a plan whereby the person evaluated is given assistance for professional growth as a teacher or administrator. The system shall also specify the processes to be used when corrective actions are necessary in relation to the performance of one's assignment; and*
    - 6. *The training requirement for evaluators contained in subparagraph 4. of this paragraph shall not apply to district board of education members.*

- (4) *A local district may request from the Kentucky Department of Education a waiver from the guidelines and administrative regulations promulgated by the Kentucky Board of Education as required in subsection (3)(c) of this section in order to implement an alternative evaluation plan for employees on continuing contracts. The department shall grant a waiver if the alternative plan provides for a three (3) phase certified employee evaluation plan that includes:*
- (a) *Phase One: Evaluation for Professional Growth.*
    - 1. *Evaluation is based on a wide array of relevant sources and directed toward general and specific recommendations for improvement; and*
    - 2. *Evaluation does not include documentation that might adversely affect employment status.*
  - (b) *Phase Two: Transition.*
    - 1. *Evaluation is for the purpose of intensive scrutiny of job performance;*
    - 2. *Evaluation includes documentation that may lead to adverse employment decisions;*
    - 3. *Assistance and support for improvement shall be provided by the school district; and*
    - 4. *Placement of an individual in the transition phase shall not be subject to appeal, but the employee shall be notified of the decision in writing.*
  - (c) *Phase Three: Evaluation for Deficiency.*
    - 1. *Notwithstanding KRS 161.760, written notice of potential termination, reduction of direct classroom responsibility, or other adverse actions and conditions for job retention are given the employee;*
    - 2. *A clear time frame for proposed actions is provided the employee; and*
    - 3. *The summative evaluation is subject to appeal.*

*An alternative plan for the evaluation of certified personnel shall be proposed to the Kentucky Department of Education if the local district evaluation committee is in support of the plan. Training necessary to implement the alternative plan shall be provided to the principals, supervisory personnel, and the employees to be evaluated. The local district shall provide support to implement the plan. The department shall provide technical assistance to districts wishing to develop alternative evaluation plans.*

- (5) *The Kentucky Board of Education shall establish an appeals procedure for certified school employees who believe that the local school district failed to properly implement the approved evaluation system. The appeals procedure shall not involve requests from individual certified school employees for review of the judgmental conclusions of their personnel evaluations.*
- (6) *The local board of education shall establish an evaluation appeals panel for certified personnel that shall consist of two (2) members elected by the certified employees of the district and one (1) member appointed by the board of education who is a certified employee of the board. Certified employees who think they were not fairly evaluated may submit an appeal to the panel for a timely review of their evaluation. In districts that have adopted an alternative evaluation plan under subsection (4) of this section, the appeal shall only apply to the summative evaluation of Phase Three.*
- (7) *Local school districts with an enrollment of sixty-five thousand (65,000) or more students shall have an evaluation system but shall be exempt from procedures or processes described in this section as long as the plan meets the standards established by the Kentucky Board of Education for local school district evaluation systems. The local plan shall include an appeals process for employees who believe they were not fairly evaluated.*
- (8) *Between July 15, 2000, and June 30, 2001, each school district shall review its local evaluation system to assure that the system is working effectively and to make changes to improve its system.*
- (9) *Beginning with the 2001-2002 school year and subsequent years, the Kentucky Department of Education shall annually provide for on-site visits by trained personnel to a minimum of fifteen (15) school districts to review and insure appropriate implementation of the evaluation system by the local school district. The department shall provide technical assistance to local districts to eliminate deficiencies and to improve the effectiveness of their evaluation systems. The department may implement the requirement in this subsection*

*in conjunction with other requirements, including but not limited to the scholastic audit process required by KRS 158.6455.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

- (1) *By January 1, 2001, the Kentucky Department of Education, with help from representatives of the Education Professional Standards Board, the Council on Postsecondary Education, the Kentucky Higher Education Assistance Authority, the Association of Independent Kentucky Colleges and Universities, public and private not-for-profit postsecondary institutions, and local educational agencies, shall develop a plan, including timelines for implementation, for a multidimensional recruitment and information program, to encourage persons to enter the teaching profession and to seek employment in Kentucky.*
- (2) *The program shall not supplant or diminish current efforts required in KRS 161.165.*
- (3) *The components of the program shall include:*
  - (a) *Early recruitment programs to inform middle and high school students about the potential of teaching as a career;*
  - (b) *Programs to encourage paraprofessionals in schools, as well as other nontraditional students, to pursue additional education to become teachers;*
  - (c) *Programs to enlist highly skilled career employees in specific content areas to pursue teaching as a second career;*
  - (d) *Options for recruiting persons with liberal arts and sciences majors and current students with nondeclared majors into nontraditional and accelerated teacher preparation programs;*
  - (e) *Marketing strategies for informing the public of the importance of high quality teaching to student achievement, the value of teachers to society as a whole, the benefits and rewards of teaching, and the options for entering teacher preparation, including scholarship information; and*
  - (f) *Expanding the Kentucky Department of Education's electronic bulletin board for certified vacancies in local school districts to include an option for potential teachers to voluntarily post their availability for education positions within the state.*
- (4) *No later than March 15, 2001, the Department of Education shall present a status report of the recruitment and information program to the Interim Joint Committee on Education; and no later than October 15, 2001, the Department of Education shall present to the Interim Joint Committee on Education and the Interim Joint Committee on Appropriations and Revenue a summary report with recommendations.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

- (1) *By January 15, 2001, the Education Professional Standards Board shall define "out-of-field" teaching and inform all local school districts of the definition. The board shall review its policies relating to emergency certificates as it develops a definition and consider if these policies contribute to the problem of out-of-field teaching.*
- (2) *By October 15, 2001, the Education Professional Standards Board shall identify every teacher assigned classes out-of-field in the 2001-2002 school year and shall inform the Kentucky Department of Education.*
- (3) *The Kentucky Department of Education shall provide to each school district a summary of the teachers identified as teaching out-of-field and give the district opportunity to correct the situation during the year. No teacher shall be reduced in salary due to being involuntarily moved out-of-field or being hired into a position out of his or her field. Emergency certification shall not be a valid reason for reducing any certified teacher's salary.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

- (1) *The Education Professional Standards Board shall rank teachers as follows:*

*Rank I. Those holding regular certificates and who have a master's degree in a subject field approved by the Education Professional Standards Board or equivalent continuing education and who have earned thirty (30) semester hours of approved graduate work or equivalent continuing education; and those teachers who have met the requirements for Rank II and hold current certification of the National Board for Professional Teaching Standards.*

*Rank II. Those holding regular certificates and who have a master's degree in a subject field approved by the Education Professional Standards Board or equivalent continuing education.*

*Rank III. Those holding regular certificates and who have an approved four (4) year college degree or the equivalent.*

*Rank IV. Those holding emergency certificates and who have ninety-six (96) to one hundred twenty-eight (128) semester hours of approved college training or the equivalent.*

*Rank V. Those holding emergency certificates and who have sixty-four (64) to ninety-five (95) semester hours of approved college training or the equivalent.*

- (2) *In determining ranks, the Education Professional Standards Board shall classify teachers who hold valid certificates in the respective ranks according to approved college semester hours of credit or equivalent continuing education. The board, in defining preparation for certain types of vocational teachers as equivalent to college training, shall give consideration to apprenticeship training and industrial experience.*
- (3) *For purposes of the state salary schedule only as referenced in Section 13 of this Act, rank shall be determined on September 15 of each year.*
- (4) *Nothing in this section shall allow the Education Professional Standards Board by regulation to reclassify downward any teachers in Ranks II or I.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

*No postsecondary education institution shall receive funds from the Council on Postsecondary Education from any trust fund for the purposes of teacher education or model programs of teaching and learning unless the Education Professional Standards Board has certified to the council that the institution has met the following conditions:*

- (1) *The college or university has developed viable partnerships with local school districts and schools;*
- (2) *There is evidence of ongoing dialogue and collaboration among liberal arts and sciences faculty and administrators with faculty and administrators in the department, school, or college of education;*
- (3) *The college or university has demonstrated a commitment to participate in teacher academies;*
- (4) *The college or university has an active recruitment plan for attracting and retaining minority faculty as well as students, and particularly in the department, school, or college of education;*
- (5) *The college or university has initiated the development of incentives or rewards for faculty across the institution to participate in service activities to local schools;*
- (6) *The department, school, or college of education has developed at least one (1) accelerated alternative plan for teacher education or nontraditional program of teacher preparation, or commits to developing an accelerated alternative or nontraditional program;*
- (7) *The department, school, or college of education provides consistent and quality classroom and field experiences, including early practicums and student teaching experience for all students;*
- (8) *The department, school, or college of education has as an element of its curriculum, substantial course work and classroom and field experiences directly addressing teacher training in classroom management;*
- (9) *There are no major accreditation deficiencies; and*
- (10) *The institution has demonstrated at least one (1) or more innovations in teacher education.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *In recognition of valuable service to the preparation of teachers and the need for all teachers to have continual professional growth, a supervising teacher or a resource teacher for teacher interns may, with prior approval of the course-offering institution, take a maximum of six (6) credit hours per term at any public postsecondary institution and pay no tuition. The postsecondary institution shall waive the tuition up to a maximum of six (6) credit hours.*
- (2) *The teachers covered in this section may exercise the tuition-free course option, only if there is available space within a given course offering. A postsecondary institution shall not be required to establish a course to meet teacher requests.*

- (3) *The tuition-free courses may be used to partially satisfy requirements for an advanced degree.*
- (4) *Each public postsecondary education institution shall establish the procedures for implementing the provisions of this section, effective August 1, 2000.*

Section 10. KRS 156.095 is amended to read as follows:

- (1) The Kentucky Department of Education shall establish, direct, and maintain a statewide program of professional development to improve instruction in the public schools.
- (2) Each local school district superintendent shall appoint a certified school employee to fulfill the role and responsibilities of a professional development coordinator who shall disseminate professional development information to schools and personnel. Upon request by a school council or any employees of the district, the coordinator shall provide technical assistance to the council or the personnel that may include *assisting with needs assessments, analyzing school data*, planning and evaluation assistance, *organizing district-wide programs requested by school councils or groups of teachers*, or *other* coordination activities.
  - (a) The manner of appointment, qualifications, and other duties of the professional development coordinator shall be established by Kentucky Board of Education through promulgation of administrative regulations.
  - (b) The local district professional development coordinator shall participate in the Kentucky Department of Education annual training program for local school district professional development coordinators. The training program may include, but not be limited to, the demonstration of various approaches to needs assessment and planning; strategies for implementing long-term, school-based professional development; strategies for strengthening teachers' roles in the planning, development, and evaluation of professional development; and demonstrations of model professional development programs. The training shall include information about teacher learning opportunities relating to the core content standards. The Kentucky Department of Education shall regularly collect and distribute this information.
- (3) The Kentucky Department of Education shall provide or facilitate optional, professional development programs for certified personnel throughout the Commonwealth that are based on the statewide needs of teachers, administrators, and other education personnel. Programs may include classified staff and parents when appropriate. Programs offered or facilitated by the department shall be at locations and times convenient to local school personnel and shall be made accessible through the use of technology when appropriate. They shall include programs that: address the goals for Kentucky schools as stated in KRS 158.6451; engage educators in effective learning processes and foster collegiality and collaboration; and provide support for staff to incorporate newly acquired skills into their work through practicing the skills, gathering information about the results, and reflecting on their efforts. Professional development programs may include, but not be limited to, focus on the following areas:
  - (a) Curriculum content and methods of instruction for each content area;
  - (b) School-based decision making;
  - (c) Performance-based student assessment;
  - (d) Nongraded primary programs;
  - (e) Research-based instructional practices;
  - (f) Instructional uses of technology;
  - (g) Curriculum design to serve the needs of students with diverse learning styles and skills and of students of diverse cultures;
  - (h) Instruction of phonics; and
  - (i) Educational leadership.
- (4) The department shall utilize its regional service centers, in addition to collaboration with postsecondary education institutions, education cooperative and consortia, and professional education organizations, to provide local district personnel with access to high quality programming. The department shall assist school personnel in assessing the impact of professional development on their instructional practices and student learning.

- (5) The department shall assist districts **and school councils** with the development of long-term school and district improvement plans that include multiple strategies for professional development based on the assessment of needs at the school level.
- (a) Professional development strategies may include, but are not limited to, participation in **subject matter academies**, teacher networks, training institutes, workshops, seminars, and study groups; collegial planning; action research; mentoring programs; appropriate university courses; and other forms of professional development.
  - (b) In planning the use of the four (4) days for professional development under KRS 158.070, **school councils and districts shall give** priority ~~shall be given~~ to programs that increase teachers' understanding of curriculum content and methods of instruction appropriate for each content area based on individual school plans. **The district may use** up to one (1) day ~~may be used~~ to provide **district-wide training and** training that is mandated by state or federal law. Only those employees identified in the mandate or affected by the mandate shall be required to attend the training.
  - (c) State funds allocated for professional development ~~shall~~ ~~may~~ be used to support professional development initiatives that are consistent with local **school improvement and professional development** plans **and teachers' individual growth plans**. **The funds may be used** ~~shall~~ throughout the year for all staff, including classified and certified staff and parents on school councils or committees. **A portion of the funds allocated to each school council under Section 14 of this Act may be used to prepare or enhance the teachers' knowledge and teaching practices related to the content and subject matter that are required for their specific classroom assignments.**
- (6) The Department of Education shall **establish an electronic consumer bulletin board that posts information regarding** ~~contract with an outside agency to complete an analysis of the current status of the statewide~~ professional development **providers and programs as a service to school district central office personnel, school councils, teachers, and administrators. Participation on the electronic consumer bulletin board shall be voluntary for professional development providers or vendors, but shall include all programs sponsored by the department. Participants shall provide the following information: program title; name of provider or vendor; qualifications of the presenters or instructors; objectives of the program; program length; services provided, including follow-up support; costs for participation and costs of materials; names of previous users of the program, addresses, and telephone numbers; and arrangements required. Posting information on the bulletin board by the department shall not be viewed as an endorsement of the quality of any specific provider or program.** ~~The analysis shall include a comparison of models of professional development used in high performing and award winning schools. The analysis shall include specific recommendations regarding:~~
- ~~(a) The effective advancement of a supply and demand system for vendors and consumers of professional development; and~~
  - ~~(b) The development and dissemination through the Internet and other appropriate means of consumer information concerning specific professional development opportunities.~~
- ~~— A written report shall be provided to the Department of Education by October 30, 1998. The Department of Education shall publicly report its actions within six (6) months of the release of the recommendations and subsequently issue annual reports on the status of the statewide professional development program.~~
- (7) ~~{During the 1998-1999 and 1999-2000 school years, }~~The Department of Education shall **provide training**~~conduct an intensive statewide professional development program~~ to address the characteristics and instructional needs of exceptional students and students at risk of school failure. The professional development shall be developed to meet the specific needs of all certified and classified personnel depending on their relationship with exceptional students and students at risk of school failure. The professional development for instructional personnel shall be designed to provide and enhance skills of personnel to:
- (a) Improve the academic achievement of exceptional students and students at risk of school failure;
  - (b) Significantly reduce the dropout rate of all students; and
  - (c) Prepare all students for a successful transition to adult life.
- (8) **By July 1, 2001, the department shall establish teacher academies to the extent funding is available in cooperation with postsecondary education institutions for elementary, middle school, and high school faculty in core disciplines, utilizing facilities and faculty from universities and colleges, local school districts, and other appropriate agencies throughout the state. Priority for participation shall be given to**

*those teachers who are teaching core discipline courses for which they do not have a major or minor or the equivalent. Participation of teachers shall be voluntary.*

Section 11. KRS 156.101 is amended to read as follows:

- (1) The purpose of this section is to encourage and require the maintenance and development of effective instructional leadership in the public schools of the Commonwealth and to recognize that principals with the assistance of assistant principals, supervisors of instruction, guidance counselors, and directors of special education have the primary responsibility for instructional leadership in the schools to which they are assigned.
- (2) For the purpose of this section, "instructional leader" shall be defined as an employee of the public schools of the Commonwealth ~~employed holding a valid certificate~~ as a principal, assistant principal, supervisor of instruction, guidance counselor, ~~or~~ director of special education, *or other administrative positions deemed by the Education Professional Standards Board to require an administrative certificate.*
- (3) In order to carry out the purpose of this section, the Kentucky Board of Education shall establish a statewide program to improve and maintain the quality and effectiveness of instructional leadership in the public schools of the Commonwealth.
- (4) The instructional leader improvement program shall contain the following provisions:
  - (a) Each instructional leader employed by the public schools of the Commonwealth shall participate in a continuing intensive training program designed especially for instructional leaders;
  - (b) Every two (2) years each instructional leader shall complete an intensive training program approved by the Kentucky Board of Education to include no *fewer* ~~less~~ than forty-two (42) participant hours of instruction;
  - (c) The Kentucky Board of Education shall prescribe specific criteria for the training program. *The Kentucky Department of Education* ~~and~~ may contract for *specific* ~~the~~ training with qualified agencies or institutions *or approve programs offered by training providers, including local district training programs, except that the department shall insure the requirements of paragraph (d) of this subsection are met;* ~~and~~
  - (d) Completion of the required *forty-two (42)* participant hours shall be reported to the *department* ~~State Department of Education~~ and to the *Education Professional Standards Board by the* local school district. If an instructional leader fails to complete the required hours of training, *the instructional leader* ~~he~~ shall be placed on probation for one (1) year and, if the training is not completed during the probationary period, *the instructional leader's* ~~his~~ certificate shall be revoked *by the Education Professional Standards Board.*
- (5) ~~The Kentucky Department of Education shall ensure that training options in human resource management and conflict resolution techniques are available to education leaders throughout the state. [As a means of improving the educational productivity of Kentucky's public schools, of providing a method by which the citizens of the Commonwealth can be assured of measures of accountability of the performance of certified school employees, and of providing encouragement and incentives for certified school employees to improve their performance, the Kentucky Board of Education shall establish a statewide program for improving the performance of all certified school personnel, including instructional leaders.]~~
- ~~(6) The certified employee evaluation programs shall contain the following provisions:~~
  - ~~(a) Each certified school employee, including the superintendent, shall be evaluated by a system developed by the local school district and approved by the Kentucky Board of Education;~~
  - ~~(b) The local school district shall review the evaluation plan to insure compliance with this section. Upon adoption, revisions to the evaluation plan shall be submitted for approval by the Kentucky Board of Education; and~~
  - ~~(c) The Kentucky Board of Education shall notify local school districts of their responsibilities under this subsection, develop written guidelines for local school districts to follow in developing and implementing an evaluation system and shall require the following:~~
    - ~~1. All evaluations of certified employees below the level of the district superintendent shall be in writing on evaluation forms and under evaluation procedures developed by a committee composed of an equal number of teachers and administrators;~~



- ~~2. The immediate supervisor of the certified school employee shall be designated as the primary evaluator;~~
  - ~~3. All monitoring or observation of performance of a certified school employee shall be conducted openly and with full knowledge of the employee;~~
  - ~~4. Evaluation shall include a conference between the evaluator and the person evaluated;~~
  - ~~5. Evaluators shall be trained, tested, and certified in accordance with regulations adopted by the Kentucky Board of Education in the proper techniques for effectively evaluating certified school employees and in the use of the school district evaluation system;~~
  - ~~6. The evaluation system shall include a plan whereby the person evaluated is given assistance for becoming more proficient as a teacher or administrator; and~~
  - ~~7. The training requirement for evaluators contained in subsection (6)(c)5. of this section shall not apply to district board of education members.~~
- ~~(7) A local district may request from the Kentucky Board of Education a waiver from the guidelines and administrative regulations promulgated by the state board as required in subsection (6) of this section in order to implement an alternative certified evaluation plan for employees on continuing contracts. The board shall grant a waiver if the alternative plan provides for a three (3) phase certified employee evaluation plan that includes:~~
- ~~(a) Phase One (1): Evaluation for Professional Growth.~~
    - ~~1. Evaluation is based on a wide array of relevant sources and directed toward general and specific recommendations for improvement; and~~
    - ~~2. Evaluation does not include documentation that might adversely affect employment status.~~
  - ~~(b) Phase Two (2): Transition.~~
    - ~~1. Evaluation is for the purpose of intensive scrutiny of job performance;~~
    - ~~2. Evaluation includes documentation that may lead to adverse employment decisions;~~
    - ~~3. Assistance and support for improvement shall be provided by the school district; and~~
    - ~~4. Placement of an individual in the transition phase is not subject to appeal, but the employee must be notified of the decision in writing.~~
  - ~~(c) Phase Three (3): Evaluation for Deficiency.~~
    - ~~1. Notwithstanding KRS 161.760, written notice of potential termination, reduction of direct classroom responsibility, or other adverse actions and conditions for job retention are given the employee;~~
    - ~~2. A clear time frame for proposed actions is provided the employee; and~~
    - ~~3. The summative evaluation is subject to appeal.~~
- ~~— An alternative plan for the evaluation of certified personnel shall be proposed to the state board if the local district evaluation committee is in support of the plan. Training necessary to implement the alternative plan shall be provided to the principals, supervisory personnel, and the employees to be evaluated. The local district shall provide support to implement the plan. The Kentucky Department of Education shall provide technical assistance to districts wishing to develop alternative evaluation plans.~~
- ~~(8) The State Department of Education shall visit school districts within the Commonwealth as needed to review and insure implementation of the evaluation system by the local school district. The department shall establish an appeals procedure for certified school employees who feel that the local school district failed to properly implement the approved evaluation system. The appeals procedure shall not involve requests from individual certified school employees for review of the judgmental conclusions of their personal evaluations.~~
  - ~~(9) The State Department of Education shall select and train evaluators from outside each local school district to conduct evaluations as needed of a sample of certified school employees within each district in order to validate the effectiveness and accuracy of the local school districts' evaluators.~~

~~(10) Local school districts with an enrollment of sixty five thousand (65,000) or more students shall be exempt from the requirements of this section except for subsection (11) of this section provided they meet the standards established by the Kentucky Board of Education for local school district evaluation systems.~~

~~(11) The local board of education shall establish an evaluation appeals panel for certified personnel which shall consist of two (2) members elected by the certified employees of the district and one (1) member appointed by the board of education who is a certified employee of the board. Certified employees who think they were not fairly evaluated may submit an appeal to the panel for a timely review of their evaluation. In districts that have adopted an alternative evaluation plan under subsection (7) of this section, the appeal shall only apply to the summative evaluation of Phase Three (3).]~~

~~(6){(12)}~~ This section shall be known as the "Effective Instructional Leadership Act."

Section 12. KRS 157.390 is amended to read as follows:

(1) ***For purposes of the state teacher salary schedule, teachers shall be placed on the schedule based on certification***~~{(a) The chief state school officer, under administrative regulations of the Kentucky Board of Education, shall classify teachers in rank as follows:~~

Rank I. ~~Those holding regular certificates and who have a master's degree in a subject field approved by the Education Professional Standards Board or equivalent continuing education and who have earned thirty (30) semester hours of approved graduate work or equivalent continuing education; those teachers who, as of September 1, 1962, were included in Rank I, having earned twenty four (24) semester hours of additional approved graduate work; and those teachers who have met the requirements for Rank II and hold current certification of the National Board for Professional Teaching Standards.~~

Rank II. ~~Those holding regular certificates and who have a master's degree in a subject field approved by the Education Professional Standards Board or equivalent continuing education.~~

Rank III. ~~Those holding regular certificates and who have an approved four (4) year college degree or the equivalent.~~

Rank IV. ~~Those holding certificates and who have ninety six (96) to one hundred twenty eight (128) semester hours of approved college training or the equivalent.~~

Rank V. ~~Those holding certificates and who have sixty four (64) to ninety five (95) semester hours of approved college training or the equivalent.~~

~~(b) In determining ranks, the chief state school officer, under administrative regulations of the Kentucky Board of Education, shall classify teachers who hold valid certificates in the respective ranks according to approved college semester hours of credit or equivalent continuing education. The chief state school officer, in defining preparation for certain types of vocational teachers as equivalent to college training, shall give consideration to apprenticeship training and industrial experience.~~

~~(c) Nothing in this subsection shall allow the Kentucky Board of Education by regulation to reclassify downward any teachers currently in Ranks I or II.~~

~~(2) The chief state school officer, under administrative regulations of the Kentucky Board of Education, shall classify teachers in each] rank as established by the Education Professional Standards Board under Section 7 of this Act and by their years of experience[ for purposes of the state teacher salary schedule] as follows:~~

1. Zero (0) to three (3) years;
2. Four (4) to nine (9) years;
3. Ten (10) to fourteen (14) years;
4. Fifteen (15) to nineteen (19) years; and
5. Twenty (20) or more years.

~~(2){(3)(a)}~~ The rank and experience of the teacher shall be determined on September 15 *of each year*.

~~{(b) The amount to be included in each school year in the base funding level of a district for teachers' salaries shall be based on the categories of experience in subsection (2) of this section.}~~

- (3)~~(4)~~ The amount to be included in the base funding level for capital outlay shall be determined by multiplying the average daily attendance by the amounts set forth in the biennial budget.
- (4)~~(5)~~ The amount to be included in the public school fund of each district for transportation shall be determined in accordance with the provisions of KRS 157.370.
- (5)~~(6)~~ The total amount of money distributable to each district from the public school fund shall *include the base funding per pupil in average daily attendance, an amount for at-risk students, an amount for the types and numbers of students with disabilities, an amount for students served in home and hospital settings, and be the sum of* the allotments in subsections (3)~~(4)~~ and (4)~~(5)~~ of this section, less the amount of local tax revenues generated for school purposes, up to a maximum equivalent local rate of thirty cents (\$0.30) as defined by KRS 157.615(6).
- (6)~~(7)~~ *A classroom teacher or administrator may be provided additional compensation for serving as a classroom mentor, teaching partner, or professional development leader in core discipline areas including reading, and other subject areas as appropriate to other education professionals in a state approved program or state approved activities. The Kentucky Department of Education shall administer the funds appropriated for these purposes. The Kentucky Board of Education shall promulgate administrative regulations to define the guidelines for programs and activities that qualify for funds including the application and approval process, the individual participant requirements, the amount of compensation, the timelines, and reporting requirements. The board shall solicit recommendations from the Education Professional Standards Board and staff of the Kentucky Department of Education in developing its administrative regulations*~~[create a Kentucky professional compensation plan. The plan shall be designed to compensate all teachers at adequate and competitive salary levels throughout their teaching careers. The plan shall establish progressive salary levels with advancement opportunities based upon the professional skills of the teacher and include education, rank, years of teaching service, related duties, specialized training, nonteaching experience, length of work year, performance, and any other professionally recognized factors which the board considers relevant. The plan shall be developed during the 1992-94 biennium. Development work shall be conducted by Department of Education staff with support from recognized compensation experts, and staff from the Legislative Research Commission, the Office of Education Accountability, and the Governor's Office of Policy and Management. Upon approval by the Kentucky Board of Education, the new plan and its fiscal impact shall be submitted to the General Assembly].~~

Section 13. KRS 158.070 is amended to read as follows:

- (1) The minimum school term shall be one hundred eighty-five (185) days, including no less than the equivalent of one hundred seventy-five (175) six (6) hour instructional days. A board of education may extend its term beyond the minimum term.
- (2) Any local board of education operating its schools on a year-round school program basis shall conform with administrative regulations promulgated and adopted by the Kentucky Board of Education upon the recommendation of the *commissioner of education*~~[chief state school officer]~~, which regulations must be in conformity with the following criteria:
  - (a) The year-round school program shall be operated on a fiscal year beginning July 1 and ending June 30;
  - (b) A pupil's required attendance in school shall be for at least the minimum instructional term; and
  - (c) No teacher shall be required to teach more than the minimum term during the school year.
- (3)
  - (a) Each local board of education shall use four (4) days of the minimum school term for professional development and collegial planning activities for the professional staff without the presence of pupils pursuant to the requirements of KRS 156.095. *At the discretion of the superintendent, one (1) day of professional development may be used for district-wide activities and for training that is mandated by federal or state law. The use of three (3) days shall be planned by each school council, except that the district is encouraged to provide technical assistance and leadership to school councils to maximize existing resources and to encourage shared planning.*
  - (b) A local board may approve a school's flexible professional development plan that permits teachers or other certified personnel within a school to participate in professional development activities outside the days scheduled in the school calendar or the regularly scheduled hours in the school work day and receive credit towards the four (4) day professional development requirement within the minimum one hundred and eighty-five (185) days that a teacher shall be employed.

1. A flexible schedule option shall be reflected in the school's professional development component within the school improvement plan or consolidated plan and approved by the local board. Credit for approved professional development activities may be accumulated in periods of time other than full day segments.
  2. *No teacher or administrator shall be permitted to count participation in a professional development activity under the flexible schedule option unless the activity is related to the teacher's classroom assignment and content area, or the administrator's job requirements, or is required by the school improvement or consolidated plan, or is tied to the teacher's or the administrator's individual growth plan. The supervisor shall give prior approval and shall monitor compliance with the requirements of this paragraph. In the case of teachers, a professional development committee or the school council by council policy may be responsible for reviewing requests for approval.*
- (c) The local board of each school district may use up to a maximum of four (4) days of the minimum school term for holidays; provided, however, any holiday which occurs on Saturday may be observed on the preceding Friday.
  - (d) Each local board may use two (2) days for planning activities without the presence of pupils.
  - (e) Each local board may use the number of days deemed necessary for:
    1. National or state disaster or mourning when proclaimed by the President of the United States or the Governor of the Commonwealth of Kentucky;
    2. Local disaster which would endanger the health or safety of children; and
    3. Mourning when so designated by the local board of education and approved by the Kentucky Board of Education upon recommendation of the **commissioner of education**~~[chief state school officer]~~.
- (4) The Kentucky Board of Education, upon recommendation of the **commissioner of education**~~[chief state school officer]~~, shall adopt administrative regulations governing the use of school days, including days missed from the regular school day as a result of local disaster, as defined in subsection (3)(e)2. of this section, and regulations setting forth the guidelines and procedures to be observed for the approval of the days utilized for the opening and closing of school and the days utilized for professional development and planning activities for the professional staff.
  - (5) In setting the school calendar, school shall be closed for two (2) consecutive days for the purpose of permitting professional school employees to attend statewide professional meetings. These two (2) days for statewide professional meetings shall be scheduled to begin with the first Thursday after Easter, or upon request of the statewide professional education association having the largest paid membership, the **commissioner of education**~~[chief state school officer]~~ may designate alternate dates. The **commissioner of education**~~[chief state school officer]~~ shall designate one (1) additional day during the school year when schools shall be closed to permit professional school employees to participate in regional or district professional meetings. These three (3) days so designated for attendance at professional meetings shall not be counted as a part of the minimum school term. School shall be closed on the day of a regular election, and that day may be used for professional development activities, professional meetings, or parent-teacher conferences.
  - (6) Students applying for excused absence for attendance at the Kentucky State Fair shall be granted one (1) day of excused absence.
  - (7) Schools shall provide continuing education for those students who are determined to need additional time to achieve the outcomes defined in KRS 158.6451, and schools shall not be limited to the minimum school term in providing this education. Continuing education time may include extended days, extended weeks, or extended years. A local board of education may adopt a policy requiring its students to participate in continuing education. The local policy shall set out the conditions under which attendance will be required and any exceptions which are provided. The Kentucky Board of Education shall promulgate administrative regulations establishing criteria for the allotment of grants to local school districts. These grants shall be allotted to school districts to provide instructional programs for pupils who are identified as needing additional time to achieve the outcomes defined in KRS 158.6451. A school district that has a school operating a model early reading program under KRS 158.792 may use a portion of its grant money as part of the matching funds

to provide individualized or small group reading instruction to qualified students outside of the regular classroom during the school day.

- (8) Notwithstanding any other statute, each school term shall include no less than the equivalent of the minimum number of instructional days required by this section.

Section 14. KRS 160.345 is amended to read as follows:

- (1) For the purpose of this section:

- (a) "Minority" means American Indian; Alaskan native; African-American; Hispanic, including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin; Pacific islander; or other ethnic group underrepresented in the school.
- (b) "School" means an elementary or secondary educational institution that is under the administrative control of a principal or head teacher and is not a program or part of another school. The term "school" does not include district-operated schools that are:
  - 1. Exclusively vocational-technical, special education, or preschool programs;
  - 2. Instructional programs operated in institutions or schools outside of the district; or
  - 3. Alternative schools designed to provide services to at-risk populations with unique needs.
- (c) "Teacher" means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers.
- (d) "Parent" means:
  - 1. A parent, stepparent, or foster parent of a student; or
  - 2. A person who has legal custody of a student pursuant to a court order and with whom the student resides.

- (2) By January 1, 1991, each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy may include a requirement that each school council make an annual report at a public meeting of the board describing the school's progress in meeting the educational goals set forth in KRS 158.6451 and district goals established by the board. The policy shall also address and comply with the following:

- (a) Except as provided in paragraph (b)2. of this subsection, each participating school shall form a school council composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. The teacher representatives shall be Kentucky residents. The parent representatives on the council shall not be employees of the district or employees' relatives, nor shall they be a local board member or his spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees.
- (b)
  - 1. The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. ***A teacher elected to a school council shall not be involuntarily transferred during his or her term of office.*** The parent representatives shall be elected for one (1) year terms. The parent members shall be elected by the parents of students preregistered to attend the school during the term of office in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. A school council, once elected, may adopt a policy setting different terms of office for parent and teacher members subsequently elected, but the terms shall not exceed two (2) years nor be consecutive. The principal or head teacher shall be the chair of the school council.
  - 2. School councils in schools having eight percent (8%) or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member. If the council formed under paragraph (a) of this subsection does not have a minority member, the principal, in a timely manner, shall be responsible for carrying out the following:

- a. Organizing a special election to elect an additional member. The principal shall call for nominations and shall notify the parents of the students of the date, time, and location of the election to elect a minority parent to the council by ballot; and
  - b. Allowing the teachers in the building to select one (1) minority teacher to serve as a teacher member on the council. If there are no minority teachers who are members of the faculty, an additional teacher member shall be elected by a majority of all teachers. Term limitations shall not apply for a minority teacher member who is the only minority on faculty.
- (c)
  1. The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.
  2. If a school council establishes committees, it shall adopt a policy to facilitate the participation of interested persons, including, but not limited to, classified employees and parents. The policy shall include the number of committees, their jurisdiction, composition, and the process for membership selection.
- (d) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy.
- (e) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply.
- (f) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals.
- (g) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council.
- (h) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. ***When a vacancy in the school principalship occurs, the school council shall receive training in recruitment and interviewing techniques prior to carrying out the process of selecting a principal. The council shall select the trainer to deliver the training.*** Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. The superintendent shall provide additional applicants upon request when qualified applicants are available.
- (i) The school council shall adopt a policy to be implemented by the principal in the following additional areas:
  1. Determination of curriculum, including needs assessment and curriculum development;
  2. Assignment of all instructional and noninstructional staff time;
  3. Assignment of students to classes and programs within the school;
  4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;
  5. Determination of use of school space during the school day;

6. Planning and resolution of issues regarding instructional practices;
  7. Selection and implementation of discipline and classroom management techniques as a part of a comprehensive school safety plan, including responsibilities of the student, parent, teacher, counselor, and principal;
  8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision; and
  9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal.
- (3) The policy adopted by the local board to implement school-based decision making shall also address the following:
- (a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;
  - (b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;
  - (c) School improvement plans, including the form and function of strategic planning and its relationship to district planning, as well as the school safety plan and requests for funding from the Center for School Safety under KRS 158.446;
  - (d) Professional development plans developed pursuant to KRS 156.095;
  - (e) Parent, citizen, and community participation including the relationship of the council with other groups;
  - (f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;
  - (g) Requirements for waiver of district policies;
  - (h) Requirements for record keeping by the school council; and
  - (i) A process for appealing a decision made by a school council.
- (4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.
- (5) After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision making shall do so. ~~By June 30, 1991, each local board shall submit to the chief state school officer the name of at least one (1) school which shall implement school-based decision making the following school year. The board shall select a school in which two thirds (2/3) of the faculty vote to implement school-based decision making. If no school in the district votes to implement school-based decision making, the local board shall designate one (1) school of its choice.~~ All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon favorable vote of a majority of the faculty at the school and a majority of at least twenty-five (25) voting parents of students enrolled in the school, a school performing above its threshold level requirement as determined by the Department of Education pursuant to KRS 158.6455 may apply to the Kentucky Board of Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. The voting by the parents on the matter of exemption from implementing school-based decision making shall be in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.
- (6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making. School council members elected for the first time shall complete a minimum of six (6) clock hours of training in the process of school-based decision making, *no later than thirty (30) days after the beginning of the service year for which they are elected to serve.*~~and~~ School

council members who have served on a school council at least one (1) year shall complete a minimum of three (3) clock hours of training in the process of school-based decision making ***no later than one hundred twenty (120) days after the beginning of the service year for which they are elected to serve***. School council training required under this subsection shall be conducted by trainers endorsed by the Department of Education, and school council members shall complete the required training no later than thirty (30) days after the beginning of the service year for which they are elected to serve. School council members elected to fill a vacancy shall complete the applicable training within thirty (30) days of their election.

- (7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making including, but not limited to, a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the ***commissioner of education***~~chief state school officer~~ and the Kentucky Board of Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.
- (8) The Kentucky Board of Education, upon recommendation of the ***commissioner of education***~~chief state school officer~~, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council. Included in the school council formula shall be an allocation for professional development that is at least sixty-five percent (65%) of the district's per pupil state allocation for professional development for each student in average daily attendance in the school. The school council shall plan professional development ***in compliance with requirements specified in Section 10 of this Act***~~with the district's coordinator and other~~ School councils ~~of~~ small schools shall be encouraged to work with other school councils to maximize professional development opportunities.
- (9)
  - (a) No board member, superintendent of schools, district employee, or member of a school council shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (i) of subsection (2) of this section.
  - (b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the Kentucky Board of Education.
  - (c) The Kentucky Board of Education shall conduct a hearing in accordance with KRS Chapter 13B for complaints referred by the Office of Education Accountability.
  - (d) If the state board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent, a member of a school council, or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.

Section 15. KRS 161.028 is amended to read as follows:

- (1) The Education Professional Standards Board has the authority and responsibility to:
  - (a) Establish standards and requirements for obtaining and maintaining a teaching certificate;
  - (b) Set standards for, approve, and evaluate college, university, and school district programs for the preparation of teachers and other professional school personnel. ***Program standards shall reflect national standards and shall address, at a minimum, the following:***
    - 1. ***The alignment of programs with the state's core content for assessment as defined in KRS 158.6457;***
    - 2. ***Research-based classroom practices, including effective classroom management techniques;***
    - 3. ***Emphasis on subject matter competency of teacher education students;***
    - 4. ***Methodologies to meet diverse educational needs of all students;***



5. *The consistency and quality of classroom and field experiences, including early practicums and student teaching experiences;*
  6. *The amount of college-wide or university-wide involvement and support during the preparation as well as the induction of new teachers;*
  7. *The diversity of faculty;*
  8. *The effectiveness of partnerships with local school districts; and*
  9. *The performance of graduates on various measures as determined by the board.*
- (c) *Conduct an annual review of diversity in teacher preparation programs;*
  - (d) *Provide assistance to universities and colleges in addressing diversity, which may include researching successful strategies and disseminating the information, encouraging the development of nontraditional avenues of recruitment and providing incentives, waiving administrative regulations when needed, and other assistance as deemed necessary;*
  - (e) *Discontinue approval of programs that do not meet standards or whose graduates do not perform according to criteria set by the board;*
  - ~~(f)(e)~~ Issue, renew, revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of actions regarding any certificate;
  - ~~(g)(d)~~ Develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by an employee certified by the Education Professional Standards Board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure the process does not revictimize the alleged victim or cause harm if an employee is falsely accused;
  - ~~(h)(e)~~ Receive, along with investigators hired by the Education Professional Standards Board, training on the dynamics of sexual misconduct of professionals, including the nature of this abuse of authority, characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedures in sex offense cases, and effective intervention with victims and offenders;
  - ~~(i)(f)~~ *Recommend to the Kentucky Board of Education the essential data elements relating to teacher preparation and certification, teacher supply and demand, teacher attrition, teacher diversity, and employment trends to be included in a state comprehensive data and information system and report the recommendations to the Interim Joint Committee on Education;*
  - (j) ~~Maintain data and~~ Submit reports to the Governor and the Legislative Research Commission *and inform the public on the status of teaching in Kentucky*~~concerning employment trends, including the number of minority certified employees, and the quality of professional preparation programs;~~
  - ~~(k)(g)~~ *Devise a credentialing*~~Reduce and streamline the credential~~ system *that provides alternative routes to gaining certification and*~~to allow~~ greater flexibility in staffing local schools while maintaining standards for teacher competence;
  - ~~(l)(h)~~ Develop a professional code of ethics;
  - ~~(m)(i)~~ *Recruit*, select, and evaluate the executive *director*~~secretary~~ to the board;
  - ~~(n)(j)~~ Approve the biennial budget request~~and advise the commissioner of education on budgetary matters;~~
  - ~~(o)(k)~~ Charge reasonable fees for the issuance, reissuance, and renewal of certificates that are established by administrative regulation. The proceeds shall be used to meet a portion of the costs of the issuance, reissuance, and renewal of certificates, and the costs associated with revoking certificates;~~and~~
  - ~~(p)(l)~~ Waive a requirement that may be established in an administrative regulation promulgated by the board. A request for a waiver shall be submitted to the board, in writing by an applicant for certification, a postsecondary institution, or a superintendent of a local school district, with appropriate justification for the waiver. The board may approve the request if the person or institution seeking the waiver has demonstrated extraordinary circumstances justifying the waiver. Any waiver granted under this

subsection shall be subject to revocation if the person or institution falsifies information or subsequently fails to meet the intent of the waiver;

- (q) *Promote the development of one (1) or more innovative, nontraditional or alternative administrator or teacher preparation programs through public or private colleges or universities, private contractors, the Department of Education, or the Kentucky Commonwealth Virtual University and waive administrative regulations if needed in order to implement the program;*
  - (r) *Grant approval if appropriate of a university's request for an alternative program that enrolls students in a postbaccalaureate teacher preparation program concurrently with employment as a teacher in a local school district. A student in the alternative program shall be granted a temporary provisional certificate and shall be a candidate in the Kentucky Teacher Internship Program, notwithstanding provisions of KRS 161.030. The temporary certificate shall be valid for a maximum of two (2) years, and shall be contingent upon the candidate's continued enrollment in the preparation program and compliance with all requirements established by the board. A professional certificate shall be issued upon the teacher candidate's successful completion of the program, the internship requirements, and all assessments required by the board;*
  - (s) *Grant approval if appropriate of a university's request for an alternative program that enrolls an administrator candidate in a postbaccalaureate administrator preparation program concurrently with employment as an assistant principal, principal, assistant superintendent, or superintendent in a local school district. An administrator candidate in the alternative program shall be granted a temporary provisional certificate and shall be a candidate in the Kentucky Principal Internship Program, notwithstanding provisions of KRS 161.030, or the Superintendent's Assessment process, notwithstanding provisions of KRS 156.111, as appropriate. The temporary certificate shall be valid for a maximum of two (2) years, and shall be contingent upon the candidate's continued enrollment in the preparation program and compliance with all requirements established by the board. A professional certificate shall be issued upon the candidate's successful completion of the program, internship requirements, and assessments as required by the board; and*
  - (t) *Issue orders as necessary in any administrative action before the board.*
- (2) (a) The board shall be composed of seventeen (17) members. The chief state school officer and the president of the Council on Postsecondary Education, or their designees, shall serve as ex officio voting members. The Governor shall make the following fifteen (15) appointments:
- 1. Nine (9) members who shall be teachers representative of elementary, middle or junior high, secondary, special education, and secondary vocational classrooms;
  - 2. Two (2) members who shall be school administrators, one (1) of whom shall be a school principal;
  - 3. One (1) member representative of local boards of education; and
  - 4. Three (3) members representative of postsecondary institutions, two (2) of whom shall be deans of colleges of education at public universities and one (1) of whom shall be the chief academic officer of an independent not-for-profit college or university.
- (b) A vacancy on the board shall be filled in the same manner as the original appointment within sixty (60) days after it occurs. A member shall continue to serve until his successor is named. Any member who, through change of employment status or residence, or for other reasons, no longer meets the criteria for the position to which he was appointed shall no longer be eligible to serve in that position.
- (c) Members of the board shall serve without compensation, but shall be permitted to attend board meetings and perform other board business without loss of income or other benefits.
- (d) A state agency or any political subdivision of the state, including a school district, required to hire a substitute for a member of the board who is absent from his employment while performing board business shall be reimbursed by the board for the actual amount of any costs incurred.
- (e) A chairman shall be elected by and from the membership. A member shall be eligible to serve no more than three (3) one (1) year terms in succession as chairman. The executive secretary shall keep records of proceedings. Regular meetings shall be held at least semiannually on call of the chairman. The Department of Education shall provide staff and support for the board.

- (f) To carry out the functions relating to its duties and responsibilities, the board is empowered to receive donations and grants of funds; to appoint consultants as needed; and to sponsor studies, conduct conferences, and publish information.
- (3) The Education Professional Standards Board shall be the successor to the State Board for Elementary and Secondary Education for purposes of performing the duties authorized in KRS 161.027, 161.028, 161.030, 161.042, 161.044, 161.046, 161.048, 161.049, 161.100, 161.115, 161.120, 161.124, and 161.126. Rules, administrative regulations, and procedures relating to these duties shall not lapse and shall continue in effect until repealed or amended by the Education Professional Standards Board.

**Approved April 26, 2000**

## CHAPTER 528

(SB 225)

AN ACT relating to opportunity zone development.

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

SECTION 1. SUBCHAPTER 23 OF KRS CHAPTER 154 IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

*The General Assembly hereby finds and declares as follows:*

- (1) *That the general welfare and material well-being of the citizens of the Commonwealth, particularly those residing in qualified zones, depends in large measure upon development and growth of manufacturing and service or technology industries in the Commonwealth;*
- (2) *It is in the best interest of the Commonwealth to create new sources of tax revenues for the support of public services, to induce the location and expansion of manufacturing and service or technology industries within qualified zones, and to advance the public purposes of relieving unemployment and providing employment opportunities that would not exist but for the inducements offered by the authority to eligible companies; and*
- (3) *That the authority granted by Sections 1 to 16 of this Act and purposes to be accomplished under Sections 1 to 16 of this Act are proper governmental and public purposes for which public moneys may be expended, and the inducements for the location and expansion of manufacturing and service or technology industries within qualified zones is of paramount importance, for which Sections 1 to 16 of this Act shall be liberally construed and applied to advance public purposes.*

SECTION 2. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 16 of this Act, unless the context clearly indicates otherwise:*

- (1) *"Approved company" means an eligible company that locates an economic development project in a qualified zone, as provided for in Section 6 of this Act;*
- (2) *"Approved costs" means:*
  - (a) *For an approved company that establishes a new manufacturing facility or expands an existing manufacturing facility, the following obligations incurred in its economic development project, including rent under leases subject to subsection (6)(b)4. of this section:*
    - 1. *The cost of labor, contractors, subcontractors, builders, and material workers in connection with the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;*
    - 2. *The cost of acquiring real estate or rights in land and any cost incidental thereto, including recording fees;*
    - 3. *The cost of contract bonds and insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of an economic development project that is not paid by the contractor or contractors or otherwise provided for;*

4. *The cost of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all duties required by or consequent to the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;*
5. *All costs required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, and rehabilitation of an economic development project; and*
6. *All other costs of a nature comparable to those described above; or*
- (b) *For an approved company that establishes a new service or technology business or expands existing service or technology operations, up to a maximum of fifty percent (50%) of the total start-up costs during the term of the service and technology agreement, plus up to a maximum of fifty percent (50%) of the annual rent for each elapsed year of the service and technology agreement;*
- (3) *"Assessment" means the job development assessment fee authorized by Section 11 of this Act;*
- (4) *"Authority" means the Kentucky Economic Development Finance Authority, as created in KRS 154.20-010;*
- (5) *"Commonwealth" means the Commonwealth of Kentucky;*
- (6) *"Economic development project" or "project" means:*
  - (a) *A service or technology activity conducted by an approved company; or*
  - (b) *Any of the following activities of an approved company engaged in manufacturing:*
    1. *The acquisition of or present ownership in any real estate in a qualified zone for the purposes described in Sections 1 to 16 of this Act, which ownership shall include only fee simple ownership of real estate and possession of real estate according to a capital lease as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976;*
    2. *The acquisition or present ownership of improvements or facilities on land that is possessed or is to be possessed by the approved company in a ground lease having a term of sixty (60) years or more; provided, however, that this project shall not include lease payments made under a ground lease for purposes of calculating the tax credits offered under Sections 1 to 16 of this Act;*
    3. *The construction, installation, equipping, and rehabilitation of improvements, fixtures, equipment, and facilities necessary or desirable for improvement of the real estate owned, used, or occupied by the approved company for manufacturing purposes. Construction activities include surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and providing drainage and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electric, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; or similar activities as the authority may determine necessary for construction; and*
    4. *The leasing of real estate and the buildings and fixtures thereon acquired, constructed, and installed with funds from grants under Section 12 of this Act;*
- (7) *"Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other legal entity engaged in manufacturing, or service or technology; however, any company whose primary purpose is retail sales shall not be an eligible company;*
- (8) *"Final approval" means action taken by the authority that authorizes the eligible company to receive inducements in connection with a project under Sections 1 to 16 of this Act;*
- (9) *"Financing agreement" means any agreement entered into, under Section 7 of this Act, on behalf of the authority or other lenders, or both, and an approved company engaged in manufacturing with respect to an economic development project;*
- (10) *"Inducements" means the assessment and the income tax credits allowed to an approved company under Sections 10 and 11 of this Act;*

- (11) *"Local government" means a city, county, or urban-county government;*
- (12) *"Manufacturing" means to make, assemble, process, produce, or perform any other activity that changes the form or conditions of raw materials and other property, and shall include any ancillary activity to the manufacturing process, such as storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, the extraction of minerals or coal, or processing of these resources;*
- (13) *"Preliminary approval" means action taken by the authority that conditions final approval of an eligible company and its economic development project upon satisfaction by the eligible company of the applicable requirements under Sections 1 to 16 of this Act;*
- (14) *"Qualified employee" means an individual subject to Kentucky income tax who has resided in the qualified zone where the project exists for at least twelve (12) consecutive months preceding full-time employment by an approved company;*
- (15) *"Qualified statewide employee" means an individual subject to Kentucky income tax who has resided in any census tract or county in the Commonwealth that meets the criteria in Section 3 of this Act, regardless of whether the tract or county is in a qualified zone, for at least twelve (12) consecutive months preceding full-time employment by an approved company;*
- (16) *"Qualified zone" means any census tract or county certified as such by the authority in Sections 3 and 4 of this Act;*
- (17) *"Relocation costs" mean identified expenditures by an eligible company for moving costs, separation costs, and any other expenditures substantiated by the eligible company that are directly related to a move from an existing location outside of a qualified zone to a qualified zone location;*
- (18) *"Rent" means:*
  - (a) *The actual annual rent or leasing fee paid by an approved company to a bona fide entity negotiated at arms length for the use of a building by the approved company to conduct the approved project for which the inducement has been granted; or*
  - (b) *The fair rental value on an annual basis in a building owned by the approved company of the space used by the approved company to conduct the approved project for which the inducement has been granted as determined by the authority using criteria that are customary in the real estate industry for the type of building being used. The fair rental value shall include an analysis of the cost of amortizing the cost of land and building over the period of time customary in the real estate industry for the type of building and for the land being utilized; and*
  - (c) *Rent shall include the customary cost of occupancy that includes, but is not limited to, property taxes, heating and air conditioning, electricity, sewer, and insurance;*
- (19) *"Service and technology agreement" means any agreement entered into, under Section 8 of this Act, on behalf of the authority, an approved company engaged in service or technology, and third-party lessors, if applicable, with respect to an economic development project;*
- (20) *"Service or technology" means any activity involving the performance of work not otherwise classified by division, including successor divisions of agriculture, forestry and fishing, mining, construction, and manufacturing, in accordance with the "Standard Industrial Classification Manual," as revised by the United States Office of Management and Budget from time to time, or any successor publication; and*
- (21) *"Start-up costs" mean the cost of furnishing and equipping a building for ordinary business functions, including computers, nonrecurring costs of fixed telecommunication equipment, furnishings, office equipment, and relocation costs as verified and approved by the authority in accordance with Section 8 of this Act.*

SECTION 3. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon written application by a county, urban-county government, or city of the first class, the authority shall certify one (1) to five (5) contiguous census tracts or a county certified by the authority in accordance with KRS 154.22-040 as a qualified zone. In the case of certification based on one (1) to five (5) contiguous census tracts, each census tract shall independently meet each of the following criteria, as verified by the Department for Employment Services within the Cabinet for Workforce Development:*

- (a) *A minimum total poverty rate of one hundred fifty percent (150%) of the United States poverty rate as determined by the most recent decennial census;*
  - (b) *An unemployment rate that exceeds the statewide unemployment rate as determined on the basis of the most recent decennial census; and*
  - (c) *A minimum population density of two hundred percent (200%) of the average Kentucky census tract population density as determined by the most recent decennial census.*
- (2) *Census tract information shall be based upon United States census data as set forth in the most recent edition of Census of Population and Housing: Population and Housing Characteristics for Census Tracts and Block Numbering Areas published by the United States Bureau of the Census.*
  - (3) *The authority shall certify no more than one (1) qualified zone within each county of the Commonwealth, except in the case of a county certified under KRS 154.22-040, the entire county shall constitute the qualified zone.*
  - (4) *A qualified zone shall commence on the date of certification by the authority and continue thereafter, except that at the time new decennial census data becomes available, the authority shall decertify any census tract that no longer meets the criteria of subsection (1) of this section for qualified zone status. The authority shall not give preliminary approval to any project in a decertified census tract. An approved company whose project is located in a decertified census tract shall not be eligible for the inducements offered by Sections 1 to 16 of this Act, unless the financing agreement or service and technology agreement is entered into by all parties prior to July 1 of the year following the calendar year in which the authority decertified that tract.*
  - (5) *Decertification of a census tract by the authority under subsection (4) of this section shall not be construed to split a qualified zone, change the boundary of the initial qualified zone, or create more than one (1) qualified zone per county.*
  - (6) *A county, urban-county government, or city of the first class shall have no authority to request decertification of a census tract, and any addition of a census tract requested by a county, urban-county government, or city of the first class under Section 4 of this Act shall be contiguous to a census tract that continues to meet the criteria under this section.*
  - (7) *The authority shall pay its costs of counsel relating to zone certification.*

SECTION 4. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *When new decennial census data becomes available, a county, urban-county government, or city of the first class may apply in writing to the authority for amendment to the boundary of an existing qualified zone. A boundary change to an existing qualified zone shall not become effective until written approval has been granted by the authority.*
- (2) *A county, urban-county government, or city of the first class that applies to the authority to amend the boundary of an existing qualified zone shall certify in writing to the authority the following information:*
  - (a) *Any census tract proposed for amendment is contiguous to the existing qualified zone;*
  - (b) *The census tract proposed for amendment independently meets the population density, unemployment, and poverty requirements set forth in Section 3 of this Act based on decennial census figures; and*
  - (c) *The addition of the census tract or tracts proposed shall not enlarge the qualified zone to more than five (5) census tracts.*

SECTION 5. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *Relevant standards for approval of eligible companies and economic development projects shall include, but are not limited to, creditworthiness of the eligible company, the number of new jobs to be provided by a project to Kentucky residents, and the likelihood that the project will be an economic success.*
- (2) *An eligible company shall certify to the authority by written application that it makes the following commitments in an economic development project:*

- (a) *A minimum investment of one hundred thousand dollars (\$100,000) in the project;*
  - (b) *Creation of a minimum of ten (10) new full-time jobs at the project site for qualified employees;*
  - (c) *A statement that no significant number of existing jobs in the Commonwealth will be lost or adversely affected due to approval of the eligible company and its economic development project; and*
  - (d) *A statement that the economic development project could reasonably and efficiently locate outside the qualified zone and, without the inducements offered by the authority, the eligible company would likely locate outside the zone.*
- (3) (a) *No project that will result in the replacement of an existing manufacturing or service or technology facility existing in the Commonwealth shall be approved by the authority; however, the authority may approve a project if the project:*
- 1. *Rehabilitates a manufacturing or service or technology facility that has not been in operation, or the title to which is vested in one other than the eligible company and that is sold or transferred under a foreclosure ordered by a court of competent jurisdiction or by order of bankruptcy court;*
  - 2. *Replaces a manufacturing or service or technology facility existing in the Commonwealth that been damaged or destroyed by fire, or the title to which shall have been taken under the exercise of the power of eminent domain or is the subject of a nonappealable judgment that grants the power of eminent domain to the authority, in any of these events to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or*
  - 3. *Replaces an existing manufacturing or service or technology facility located in the same qualified zone that cannot be expanded due to the lack of available real estate at or adjacent to the manufacturing or service or technology facility to be replaced. Any economic development project satisfying the requirements of this paragraph of this subsection shall only be eligible for inducements to the extent of the expansion, and no inducements shall be available for the equivalent of the manufacturing or service or technology facility to be replaced.*
- (b) *No economic development project otherwise satisfying the requirements of paragraph (a) of this subsection shall be approved by the authority that results in a lease abandonment or lease termination by the approved company without the consent of the lessor.*

SECTION 6. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *With respect to each eligible company that applies to the authority for inducements, and with respect to the project described in its application, the authority shall request materials and make all inquiries concerning the application the authority deems necessary. Upon review of the application and requested materials, and completion of initial inquiries, the authority may, by resolution of the board of directors, grant preliminary approval to the eligible company. The authority shall approve a report describing the economic development project, that shall set out as follows:*
- (a) *The name, qualified zone location, business, and standard industrial classification of the eligible company;*
  - (b) *The nature of the economic development project;*
  - (c) *The use and projected amounts of the inducements to be available to the eligible company by year; and*
  - (d) *Other information as the authority may require.*
- (2) *After preliminary approval, completion of its loan, other financing or leasing as permitted by subsection (6)(b)4. of Section 2 of this Act by an eligible company engaged in manufacturing activities with respect to its economic development project, and review thereof by the authority, the authority may, by resolution of its board of directors, designate an eligible company to be an approved company, and execute a financing agreement among the eligible company, the authority, lenders, if applicable, and lessor, if applicable.*
- (3) *Within a one (1) year period following preliminary approval of an eligible company engaged in service or technology activities with respect to its economic development project, the authority may designate the*

*eligible company as an approved company and execute a service and technology agreement among the eligible company, the authority, and lessors, if applicable. If final approval of an eligible company does not occur within the one (1) year period as provided in this subsection, then the eligible company's request for designation and project authorization shall be considered denied.*

- (4) *The decision to grant an eligible company the status of an approved company shall be solely that of the authority, which shall base its decision upon consideration of all information provided.*

SECTION 7. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The authority, upon adoption of an authorizing resolution, may enter into a financing agreement with any approved company engaged in manufacturing activities with respect to its economic development project, other lenders, if applicable, and lessor, if applicable. The terms and provisions of each financing agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, subject to the inclusion of the following mandatory provisions:*
- (a) *The term of a financing agreement, that shall commence on the date of the financing agreement, and shall not be longer than the earliest of:*
1. *The maturity of any loan or other financing incurred in connection with the economic development project, except that the financing agreement may terminate upon the earlier prepayment of all loans or other financing incurred in connection with the economic development project;*
  2. *The termination of any lease under subsection (6)(b)4. of Section 2 of this Act; or*
  3. *Ten (10) years from the activation date of the original financing agreement.*
  4. *Nothing in this subsection shall limit the extension of the term of a financing agreement if there is a refinancing of the loans or other financing, or the financing of the balance of the purchase price of an economic development project originally leased in accordance with subsection (6)(b)4. of Section 2 of this Act.*
- (b) *All proceeds of any loan or other financing incurred in connection with the economic development project shall be expended by the approved company within three (3) years from the date of the financing agreement. In the event that all proceeds of any loan or other financing incurred in connection with the economic development project are not fully expended within the three (3) year period, the authorized inducements shall automatically be reduced to and shall not be greater than the amount of proceeds actually expended by the approved company within the three (3) year period;*
- (c) *The approved company may be permitted the following inducements during the term of the financing agreement:*
1. *An income tax credit of up to one hundred percent (100%) of the Kentucky income tax liability imposed by KRS 141.020 or 141.040 that would otherwise be due, determined under Section 17 of this Act, on the income of the approved company generated by or arising out of the economic development project, as limited by the provisions of this section and Section 9 of this Act, and*
  2. *The assessment, if applicable, withheld by the approved company in each year;*
- (d) *The income tax credit for the approved company shall be credited for the fiscal year for which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed in KRS 141.042;*
- (e) *The assessments, if applicable, when added to the credit for the Kentucky income tax as provided in Section 10 of this Act, shall not exceed the total annual payment made under the financing agreement in connection with the project in any year; however, to the extent that this annual payment exceeds credits received and assessments collected in any year, this excess payment may be recouped from excess credits or assessment collections in succeeding years;*
- (f) *If, in any fiscal year of the approved company during which the financing agreement is in effect, the total of the income tax credit granted to the approved company plus the assessments collected from the wages of the qualified statewide employees equals the annual payment in the financing agreement, and if all excess payments in the financing agreement accumulated in prior years have*



*been recouped, the assessments collected from the wages of the qualified statewide employees shall cease for the remainder of that fiscal year, and the approved company shall resume normal personal income tax and occupational license fee withholdings from the qualified statewide employees' wages for the remainder of that fiscal year;*

- (g) *If, in any fiscal year of the approved company during which the financing agreement is in effect, the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the qualified statewide employees exceeds the annual payment in the financing agreement, and if all excess payments in the financing agreement accumulated in prior years have been recouped, the approved company shall pay the excess to the Commonwealth as income tax;*
  - (h) *If, in any fiscal year of the approved company during which the financing agreement is in effect, the assessment collected from the wages of qualified statewide employees exceeds the annual payment in the financing agreement, and if all excess payments in the financing agreement accumulated in prior years have been recouped, the assessment collected from the wages of the qualified statewide employees shall cease for the remainder of that fiscal year, the approved company shall resume normal personal income tax and occupational license fee withholdings from the qualified statewide employees' wages for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for qualified statewide employees' wages next succeeding the first date when the approved company collected excess assessments;*
  - (i) *The financing agreement may be assigned by the approved company only upon the prior written consent of the authority;*
  - (j) *An approved company shall require any lender to the approved company funding loans or other financing incurred in connection with the economic development project to provide written evidence to the authority of payments of all annual debt service to the lender. An approved company shall require any lessor under a lease subject to subsection (6)(b)4. of Section 2 of this Act to provide written evidence to the authority of payment of rent to the lessor. This evidence shall be provided to the authority within forty-five (45) days after the end of each fiscal year during the term of the financing agreement;*
  - (k) *If the total number of qualified employees at the site of the economic development project is less than ten (10), the authorized inducements shall be suspended until at least ten (10) full-time qualified employees are employed by the approved company at the project site;*
  - (l) *If an approved company fails to comply with its respective obligations under the financing agreement or is declared in default under the loans or other financing incurred in connection with the economic development project or the lease under subsection (6)(b)4. of Section 2 of this Act, or if the lender to an approved company or the lessor, as applicable, fails to comply with its requirements set forth in subsection (1)(j) of this section, then the authority, or any of its assignees, shall have the right, at its option, to:*
    - 1. *Suspend the availability of the income tax credits and assessments to the approved company;*
    - 2. *Pursue any remedy provided under the financing agreement, including termination thereof; and*
    - 3. *Pursue any other remedy at law to which it appears entitled; and*
  - (m) *The approved company shall pay all costs of counsel to the authority resulting from approval of its economic development project.*
- (2) *All remedies provided in subsection (1)(l) of this section shall be deemed cumulative.*
- (3) *Under this section, the activation date shall be established by the approved company in the financing agreement, which shall be at any time within a two (2) year period after the date of final approval of the financing agreement by the authority. To implement the activation date, the approved company shall notify the authority, the Kentucky Revenue Cabinet, the approved company's qualified statewide employees, and the affected local jurisdictions, if any, of the activation date when implementation of the inducements authorized in the financing agreement shall occur. If the approved company does not satisfy the minimum investment and minimum employment requirements of Section 5 of this Act by the activation date, then the approved company shall not be entitled to receive inducements under Sections 1 to 16 of this Act until the*

*approved company satisfies the requirements; in any event, the ten (10) year period for the term of the financing agreement shall begin from the activation date. Notwithstanding the previous sentence, if the approved company does not satisfy the minimum investment and minimum employment requirements of Section 5 of this Act within two (2) years from the date of final approval of the financing agreement, then the approved company shall be ineligible to receive inducements under Sections 1 to 16 of this Act.*

SECTION 8. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *Before any approved company engaged in service or technology activity is granted inducements under Sections 1 to 16 of this Act, a service and technology agreement with respect to the approved company's economic development project shall be entered into between the authority and the approved company. The terms and provisions of the service and technology agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, subject to inclusion of the following mandatory provisions:*
  - (a) *The term of the service and technology agreement shall not be longer than ten (10) years from the activation date established by the approved company. The activation date shall be any time within a one (1) year time period after the date of final approval of the service and technology agreement by the authority. In order to implement the activation date, the approved company shall notify the authority, the Kentucky Revenue Cabinet, the qualified statewide employees, and the affected local jurisdictions, if any, of the activation date on which implementation of the inducements authorized in the service and technology agreement shall occur;*
  - (b) *The approved company may be permitted the following inducements during the term of the service and technology agreement:*
    1. *An income tax credit of up to one hundred percent (100%) of the Kentucky income tax liability imposed by KRS 141.020 or 141.040 that would otherwise be due, determined under Section 17 of this Act, on the income of the approved company generated by or arising out of the economic development project, as limited by the provisions of this section and Section 9 of this Act; and*
    2. *The assessment, if applicable, withheld by the approved company in each year;*
  - (c) *The inducements allowed to the approved company shall be subtracted from the approved cost balance in the fiscal year of the approved company for which the tax return of the approved company is filed;*
  - (d) *If the total number of qualified employees at the site of the economic development project is less than ten (10), the authorized inducements shall be suspended until at least ten (10) full-time qualified employees are employed by the approved company at the project site;*
  - (e) *The service and technology agreement may be assigned by the approved company only upon the prior written consent of the authority; and*
  - (f) *The approved company shall pay all costs of counsel to the authority resulting from approval of its economic development project.*
- (4) *Before the end of the first year following the activation date, the authority shall, using data supplied by the approved company, verify and determine the total start-up costs for the approved company's economic development project. The initial approved costs shall be up to a maximum of fifty percent (50%) of the start-up costs.*
- (5) *Each year, during the ten (10) year term of the service and technology agreement, up to fifty percent (50%) of the annualized rent shall be added to the unrecovered balance of approved costs, and the inducements earned shall be subtracted from the approved costs.*
- (6) *If, in any fiscal year of the approved company during which the service and technology agreement is in effect, the accumulated inducements equal the unrecovered remaining balance of the approved costs then expended, the assessments collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, and the approved company shall resume normal personal income tax and occupational license fee withholdings from the qualified statewide employees' wages for the remainder of that fiscal year.*

- (7) *If, in any fiscal year of the approved company during which the service and technology agreement is in effect, the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the qualified statewide employees exceeds the remaining balance of the approved costs then expended, the approved company shall pay the excess to the Commonwealth as income tax.*
- (8) *If, in any fiscal year of the approved company during which the service and technology agreement is in effect, the assessment collected from the wages of the qualified statewide employees exceeds the unrecouped remaining balance of the approved costs then expended, the assessment collected from the wages of the qualified statewide employees shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the qualified statewide employees for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for qualified statewide employees' wages next succeeding the first date when the approved company collected excess assessments.*

SECTION 9. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *If an eligible company operates an existing business in a qualified zone, and wishes to expand that business within the zone, the eligible company may submit an application to the authority to become an approved company under Section 5 of this Act.*
- (2) *If the eligible company under subsection (1) of this section becomes an approved company, the authority shall determine a base level of employment in the Commonwealth, a base level of state income tax liability, and a base level of manufacturing or service or technology activity, as applicable, of the approved company for determining eligible credits for the approved company's project during the term of a financing agreement or service and technology agreement. The base level shall be determined by taking into consideration any seasonal fluctuations or aberrations of employment levels during the preceding three (3) years. Notwithstanding the determination of a base level of employment in the Commonwealth, no qualified statewide employee who is an employee of this business prior to the date of the preliminary approval by the authority as prescribed in Section 6 of this Act shall be subject to assessment.*
- (3) *The authority shall identify, by name, all of the existing qualified statewide employees employed by the eligible company prior to preliminary approval, and these employees shall be exempt from the assessment. If any of these employees cease working in the activity, then another qualified statewide employee shall be added to the base level of employment, based on the earliest date of entry into the work force, and this employee shall be exempt from the assessment. The authority may negotiate with the approved company a different method of determining the base level of employment that would yield a more equitable result for the approved company, the Commonwealth, local jurisdictions, and the qualified statewide employees.*
- (4) *To become eligible for inducements, the approved company shall create and maintain above the base level of employment in the Commonwealth, an increase at the site of the project of at least ten (10) new full-time qualified employees.*
- (5) *The approved company shall continue to pay to the Commonwealth, on an annualized basis during the term of the financing agreement or service and technology agreement, as applicable, the base level of income tax, adjusted on an annual basis to reflect changes in the consumer price index. The excess income tax owed may be offset by the income tax credit provided in Section 10 of this Act.*
- (6) *If any approved company expands in a qualified zone because of an increase in business or because of the commencement of a new line of business, it may be eligible, at the discretion of the authority, to negotiate a separate, additional financing agreement or service and technology agreement to cover the expanded business under the same conditions as authorized for an expansion in this section.*

SECTION 10. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *An approved company engaged in manufacturing or in service or technology activities shall be entitled to an income tax credit equal to one hundred percent (100%) of the income tax liability that would otherwise be due to the Commonwealth from the approved company attributable to its economic development project, as limited by the provisions of Section 9 of this Act.*
- (2) *The Revenue Cabinet of the Commonwealth shall initiate contact and fully cooperate with the authority in the collection of information to determine the fiscal impact of qualified zone inducements on state*

*revenues. The Revenue Cabinet shall certify to the authority, in the form of an annual report, aggregate income tax credits and assessments taken by approved companies with respect to their economic development projects under Sections 1 to 16 of this Act, and certify to the authority when an approved company has taken income tax credits and assessments equal to its total inducements. The Revenue Cabinet shall certify to the authority, upon written request of the authority, the aggregate income tax credits and assessments taken by an approved company with respect to its economic development project under Sections 1 to 16 of this Act.*

SECTION 11. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *If the local jurisdiction in which the economic development project is to be located, approves the assessment in accordance with subsection (8) of this section, then an approved company engaged in either manufacturing or service or technology activities may require each qualified statewide employee, as a condition to employment, to agree to pay a job development assessment fee in an amount determined by the percentage of the local occupational license fee, which shall be one-fifth (1/5) of the total job development assessment fee, plus the Commonwealth's contribution of four-fifths (4/5) of the total job development assessment fee, but in no event to exceed five percent (5%) of the qualified statewide employee's gross wages exclusive of any noncash benefits; provided that each qualified statewide employee paying the assessment shall be entitled to credits against Kentucky income tax as prescribed in subsection (4) of this section and to credits against the local occupational license fee to the extent of the local occupational license fee collected by the local jurisdiction. This assessment shall be deducted by the approved company from wages it pays to qualified statewide employees.*
- (2) *Notwithstanding subsection (1) of this section, if no local occupational license fee is assessed by any local government in which the project is located, the assessment shall be four percent (4%), all of which shall be contributed by the Commonwealth.*
- (3) *Notwithstanding subsection (1) of this section, if a project is located in only one (1) local government and that local government has a local occupational license fee that is less than one percent (1%) and the local government agrees to forego all of its local occupational license fee or if a project is located in multiple local governments and the local governments have in the aggregate local occupational license fees that are less than one percent (1%) and the local governments agree to forego all of their local occupational license fees, then the assessment shall be four percent (4%), all of which shall be contributed by the Commonwealth, plus the percentage of the local occupational license fee or fees, as applicable, that the local government or local governments, as applicable, has or have agreed to forego.*
- (4) *Each qualified statewide employee required to pay this assessment shall be entitled to certain credits, as follows:*
  - (a) *Credit against the required Kentucky income tax withheld from gross wages under Section 18 of this Act equal to the Commonwealth's contribution, but in no event to exceed four percent (4%) of these wages; and*
  - (b) *Credit against the local occupational license fee imposed by any local government in which the project is located in the form of a simultaneous adjustment of the local occupational license fee withheld from gross wages excluding noncash benefits not to exceed one percent (1%) of these wages.*
- (5) *If more than one (1) local government jurisdiction imposes a local occupational license fee and all jurisdictions approve the assessment, then the assessment and employee credit therefor shall be prorated against the local occupational license fees imposed, unless a single local government jurisdiction agrees to forego receipt of its local occupational license fees in an amount equal to one percent (1%) of the qualified statewide employees' wages excluding noncash benefits, in which case no proration need be made.*
- (6) *No credit, or portion thereof, shall be allowed against any occupational license fee imposed by or dedicated solely to the board of education in a local jurisdiction.*
- (7) *An approved company that collects an assessment shall make its payroll, books, and records available to the authority at its request, and shall provide all documentation pertaining to the assessment as the authority may require.*
- (8) *Before any financing agreement or service and technology agreement becomes effective with respect to an assessment, the legislative body of any local government that assesses a local occupational license fee and*

*shall lose revenue as a result of the assessment described in this section shall, by official action, approve the assessment for the benefit of an approved company. However, if a local government does not approve the assessment, then the approved company shall not be permitted to impose the assessment and the qualified statewide employees shall not be permitted to claim credits.*

- (9) *Any assessment of the wages of qualified statewide employees of an approved company engaged in manufacturing activities in connection with their employment at an economic development project in subsection (1) of this section shall permanently lapse as of the date any loans or other financing, as described in Section 7 of this Act, incurred in connection with the economic development project mature or are prepaid in full for an approved company engaged in manufacturing activities or as of any date any lease under subsection (6)(b)4. of Section 2 of this Act terminates.*
- (10) *Any assessment of the wages of qualified statewide employees of an approved company engaged in service or technology activities in connection with their employment at an economic development project shall permanently cease at the expiration of the service and technology agreement.*

SECTION 12. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *Any county, urban-county government, or city of the first class for which the authority has certified a qualified zone may also apply for grant funds to be used for acquisition of and infrastructure improvements to real estate for economic development purposes and construction and installation for industry of buildings and fixtures.*
- (2) *In addition to the inducements taken, an approved company may apply the amount of the inducements taken towards the purchase price of real estate, infrastructure improvements, buildings, and fixtures purchased, as set forth in subsection (1) of this section, by any county, urban-county government, or city of the first class. For these inducements taken to apply to the purchase price, the approved company shall have taken inducements equal to a minimum of fifty percent (50%) of the original cost of this real estate, infrastructure improvements, buildings, and fixtures.*

SECTION 13. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *Approved companies under Sections 1 to 16 of this Act that hire and employ Kentucky Transitional Assistance Program (K-TAP) recipients on a full-time basis shall be eligible, to the extent funds are available, to receive wage subsidies from the Kentucky Cabinet for Families and Children in KRS Chapter 205, Title IV-A of the Federal Social Security Act (Subchapter 4 of Chapter 7 of Title 42, United States Code), and the administrative regulations of the Cabinet for Families and Children that address standards and eligibility requirements for K-TAP and subsidized employment.*
- (2) *The wage subsidy for a K-TAP recipient shall be equal to a proportionate amount of the prevailing wage paid by the approved company to all other employees in the same job classification as the K-TAP recipient for one (1) year as follows:*
  - (a) *A seventy-five percent (75%) subsidy for the first four (4) months of employment;*
  - (b) *A fifty percent (50%) subsidy for the next four (4) months of employment; and*
  - (c) *A twenty-five percent (25%) subsidy for the next four (4) months of employment.*
- (3) *During the period of the wage subsidy, the Cabinet for Families and Children shall reimburse the employer contribution for FICA and Unemployment Insurance made on behalf of K-TAP recipients.*
- (4) *The Cabinet for Families and Children shall collect information to determine the eligibility of recipients and the availability of this subsidy for approved companies.*

SECTION 14. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

*The authority shall establish the procedures and standards for certification of qualified zones, and determination and approval of eligible companies and their projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A.*

SECTION 15. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

*No director or officer of the authority shall be subject to any personal liability or accountability by reason of the execution of any financing agreement or service and technology agreement on behalf of the authority.*

SECTION 16. A NEW SECTION OF SUBCHAPTER 23 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

*Sections 1 to 16 of this Act shall be known as the Kentucky Economic Opportunity Zone Act.*

SECTION 17. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, unless the context requires otherwise:*
  - (a) *"Approved company" shall have the same meaning as set forth in Section 2 of this Act;*
  - (b) *"Economic development project" shall have the same meaning as set forth in Section 2 of this Act; and*
  - (c) *"Tax credit" means the "tax credit" allowed under Sections 1 to 16 of this Act.*
- (2) *An approved company shall determine the income tax credit as provided in this section.*
- (3) *An approved company that is an individual sole proprietorship subject to tax under KRS 141.020, a corporation subject to tax under KRS 141.040(1), or a limited liability company treated as a corporation for federal income tax purposes shall:*
  - (a) *Compute the income tax due at the applicable tax rates as provided by KRS 141.020 or 141.040, on net income as defined by KRS 141.010(11) or taxable net income as defined by KRS 141.010(14), including income from an economic development project; and*
  - (b) *Compute the income tax due at the applicable tax rates as provided by KRS 141.020 or 141.040, on net income as defined by KRS 141.010(11) or taxable net income as defined by KRS 141.010(14), excluding net income attributable to an economic development project.*
  - (c) *The tax credit shall be the amount by which the tax computed under paragraph (a) of this subsection exceeds the tax computed under paragraph (b) of this subsection; however, the credit shall not exceed the limits set forth in Sections 1 to 16 of this Act.*
- (4) *Notwithstanding any other provisions of this chapter, an approved company that is an S-corporation, partnership, registered limited liability partnership, limited liability company treated as a partnership for federal income tax purposes, or trust shall be subject to income tax on the net income attributable to an economic development project at the rates provided in KRS 141.020(2), as follows:*
  - (a) *The amount of the tax credit shall be the same as the amount of the tax computed in this subsection or, upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made in this paragraph shall be in satisfaction of the tax liability of the shareholders, partners, members, or beneficiaries of the S-corporation, partnership, registered limited liability partnership, limited liability company, or trust, and shall be paid on behalf of the shareholders, partners, members, or beneficiaries.*
  - (b) *The tax credit or estimated payment shall not exceed the limits set forth in Sections 1 to 16 of this Act.*
  - (c) *If the tax computed in this section exceeds the credit, the excess shall be paid by the S-corporation, partnership, registered limited liability partnership, limited liability company, or trust at the times provided by KRS 141.160 for filing the returns.*
  - (d) *Any estimated tax payment made by the S-corporation, partnership, registered limited liability partnership, limited liability company, or trust in satisfaction of the tax liability of shareholders, partners, members, or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the shareholder, partner, member, or beneficiary.*
- (5) *Notwithstanding any other provisions of this chapter, the net income subject to tax, the tax credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each shareholder's, partner's, member's, or beneficiary's distributive share of net income or credit of an S-corporation, partnership, registered limited liability partnership, limited liability company, or trust.*

- (6) *If the economic development project is a totally separate facility, net income attributable to the project for the purposes of subsections (3), (4), and (5) of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under this chapter directly attributable to the facility and overhead expenses apportioned to the facility.*
- (7) *If the economic development project is an expansion to a previously existing facility, net income attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under this chapter directly attributable to the facility, and the net income attributable to the economic development project for the purposes of subsections (3), (4), and (5) of this section shall be determined by apportioning the separate accounting net income of the entire facility to the economic development project by a formula approved by the Revenue Cabinet.*
- (8) *If an approved company can show to the satisfaction of the Revenue Cabinet that the nature of the operations and activities of the approved company are such that it is not practical to use the separate accounting method to determine the net income from the facility at which the economic development project is located, the approved company shall determine net income from the economic development project using an alternative method approved by the Revenue Cabinet.*
- (9) *The Revenue Cabinet may issue administrative regulations and require the filing of forms designed by the Revenue Cabinet to reflect the intent of Sections 1 to 16 of this Act and the allowable income tax credit that an approved company may retain under Sections 1 to 16 of this Act.*

Section 18. KRS 141.310 is amended to read as follows:

- (1) Every employer making payment of wages on or after January 1, 1971, shall deduct and withhold upon the wages a tax determined under KRS 141.315 or by the tables authorized by KRS 141.370.
- (2) If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days, including Sundays and holidays, equal to the number of days in the period with respect to which the wages are paid.
- (3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days, including Sundays and holidays, which have elapsed since the date of the last payment of wages by the employer during the calendar year, or the date of commencement of employment with the employer during the year, or January 1 of the year, whichever is the later.
- (4) In determining the amount to be deducted and withheld under this section, the wages may, at the election of the employer, be computed to the nearest dollar.
- (5) The tables mentioned in subsection (1) of this section take into consideration the deductible federal income tax. If Congress changes substantially the federal income tax, the cabinet shall make the change in these tables necessary to compensate for any increase or decrease in the deductible federal income tax.
- (6) The cabinet may permit the use of accounting machines to calculate the proper amount to be deducted from wages when the calculation so permitted produces substantially the same result set forth in the tables authorized by KRS 141.370. Prior approval of the calculation shall be secured from the cabinet at least thirty days before the first payroll period for which it is to be used.
- (7) The cabinet may, by regulations, authorize employers:
  - (a) To estimate the wages which will be paid to any employee in any quarter of the calendar year;
  - (b) To determine the amount to be deducted and withheld upon each payment of wages to the employee during the quarter as if the appropriate average of the wages estimated constituted the actual wages paid; and
  - (c) To deduct and withhold upon any payment of wages to the employee during the quarter the amount necessary to adjust the amount actually deducted and withheld upon the wages of the employee during the quarter to the amount that would be required to be deducted and withheld during the quarter if the payroll period of the employee was quarterly.

- (8) The cabinet may provide by regulation, under the conditions and to the extent it deems proper, for withholding in addition to that otherwise required under this section and KRS 141.315 in cases in which the employer and the employee agree to the additional withholding. The additional withholding shall for all purposes be considered tax required to be deducted and withheld under this chapter.
- (9) Effective January 1, 1992, any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job assessment fee provided in KRS 154.24-110 may offset a portion of the fee against the Kentucky income tax required to be withheld from the employee under this section. The amount of the offset shall be four-fifths (4/5) of the amount of the assessment fee withheld from the employee. If the Kentucky income tax to be withheld from the employee under this section is greater than four-fifths (4/5) of the job assessment fee set forth above, the excess shall be withheld. If the agreement under KRS 154.24-150 is consummated, the offset shall be one hundred percent (100%) of the assessment.
- (10) Any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job development assessment fee provided in KRS 154.22-070 *or KRS 154.28-110* may offset ~~a portion of~~ the fee against the Kentucky income tax required to be withheld from the employee under this section. ~~The amount of the offset shall be equal to the amount of the assessment fee withheld from the employee.~~
- (11) Effective January 1, 1992, any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job assessment fee provided in KRS 154.26-100 may offset a portion of the fee against the Kentucky income tax required to be withheld from the employee under this section. The amount of the offset shall be two-thirds (2/3) of the amount of the assessment fee withheld from the employee. ~~If the Kentucky income tax to be withheld from the employee under this section is greater than two-thirds (2/3) of the job assessment fee set forth above, or four-fifths (4/5) if the agreement under KRS 154.26-090(1)(d)2.b. is consummated, the offset shall be four-fifths (4/5) of the assessment fee the excess shall be withheld.~~
- (12) Any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job development assessment fee provided in *Section 11 of this Act* ~~KRS 154.22-070~~ may offset a portion of the fee against the Kentucky income tax required to be withheld from the employee under this section. The amount of the offset shall be equal to the *Commonwealth's contribution as determined by subsections (1) to (3) of Section 11 of this Act* ~~amount of the assessment fee withheld from the employee~~.
- (13) Any employer required by this section to withhold Kentucky income tax may be required to post a bond with the cabinet. The bond shall be a corporate surety bond or cash. The amount of the bond shall be determined by the cabinet, but shall not exceed fifty thousand dollars (\$50,000).
- (14) The Commonwealth may bring an action for a restraining order or a temporary or permanent injunction to restrain or enjoin the operation of an employer's business until the bond is posted or the tax required to be withheld is paid or both. The action may be brought in the Franklin Circuit Court or in the Circuit Court having jurisdiction of the defendant.

Section 19. KRS 141.350 is amended to read as follows:

The amount deducted and withheld as tax under KRS 141.310 and KRS 141.315 during any calendar year upon the wages of any individual and the amount of credit described in KRS 154.22-070(2), 154.24-110, 154.26-100(2), *KRS 154.28-110 or Section 11 of this Act* ~~or KRS 154.28-090~~ shall be allowed as a credit to the recipient of the income against the tax imposed by KRS 141.020, for taxable years beginning in the calendar year. If more than one (1) taxable year begins in the calendar year, the amount shall be allowed as a credit against the tax for the last taxable year so beginning.

**Approved April 26, 2000**

## **CHAPTER 529**

**(SB 409)**

AN ACT relating to infrastructure projects.

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

**SECTION 1. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO READ AS FOLLOWS:**



- (1) *The General Assembly finds that the work of the Water Resource Development Commission, created by executive order of the Governor and confirmed by the General Assembly in KRS 147A.011, established the necessity of encouraging regionalization, consolidation, and partnerships among governmental agencies, and private parties when appropriate, with the goal of making potable water and wastewater treatment available to all Kentuckians through the maximization of financial resources and the conservation of natural resources of the Commonwealth. Based on these findings, the General Assembly declares that the Kentucky Infrastructure Authority shall implement a program for the provision of water services as authorized in the budget and directed by the General Assembly.*
- (2) *On the effective date of this Act, responsibility for the management and operation of the Water Resource Information System shall be transferred from the Water Resource Development Commission to the authority. The authority shall maintain and, at least annually, update the information contained in this system to ensure its accuracy.*
- (3) *The authority may request all branches of state and local government, including special districts and water districts, to provide information relating to the status of existing plants, the financial condition of existing systems, and the existing regulatory authority held by agencies of government regarding the issue of water resource development and management. All branches of state and local government shall, to the extent reasonable and appropriate, comply with such requests for information.*
- (4) *The authority shall promulgate administrative regulations that require a water supply and distribution system receiving or seeking funding to provide current information regarding the financial, managerial, and technical aspects of its system and, thereafter, to furnish updates to the information so provided.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO READ AS FOLLOWS:

*Within twelve (12) months of the effective date of this Act, each area development district shall establish 2020 water management areas. The entire area within the area development district shall be included in one (1) or more 2020 water management areas. The area development district may determine the boundaries of water management areas by considering geographical or topographical conditions and the potential integration of existing water systems. Where water management areas may lie within more than one (1) area development district, the area development districts shall share planning and plan implementation responsibilities. The area development districts shall develop maps of uniform scale to show, accurately and clearly, the boundaries of the 2020 water management areas.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

- (1) *2020 water management planning councils shall be established for each county with the assistance of the appropriate area development district. Two (2) or more counties may form a multicounty 2020 water management planning council. The planning councils shall, as a minimum, be comprised of the following:*
  - (a) *Each county judge-executive or mayor of an urban-county government, or his or her authorized representative;*
  - (b) *One (1) representative selected by each community public water system, as defined in 401 KAR 8:010 sec. 1(71)(a), that provides water to persons in the county;*
  - (c) *One (1) representative selected by a local health department in the county; and*
  - (d) *One (1) representative selected by each first, second, third, or fourth class city that is not a water supplier or distributor, unless that city chooses to be represented by another member of the planning council.*
- (2) *If, after the 2020 water management planning council appointments have been made, a county judge/executive or mayor of an urban-county government determines that any areas of the county or urban county government remain unrepresented on the planning council, the county judge/executive or mayor of the urban-county government may appoint an individual to represent that area.*
- (3) *The county judge/executive or mayor of an urban-county government or the county judge/executive or the mayor's designated representative shall serve as the chair of the 2020 water management planning council of which either the county judge/executive or the mayor is a member.*
- (4) *Members of the 2020 water management planning councils shall serve without pay, but may be reimbursed by counties or appointing agencies for reasonable expenses incurred to carry out the work of the councils.*

- (5) *The area development districts shall develop a forum for the chairpersons of the 2020 water management planning councils or multicounty planning councils to meet on at least a quarterly basis for the purpose of developing regional service strategies consistent with the findings and purpose set out in Section 1 of this Act.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

- (1) *Each 2020 water management planning council shall by July 1, 2001, develop a plan consistent with the county long-range water supply plan developed under KRS 151.114 and the water supply planning process set out in KRS Chapter 151 and administrative regulations of the cabinet and the purposes set out in Section 1 of this Act. The plan shall include a water needs forecast for the county for dates five (5), ten (10), fifteen (15), and twenty (20) years after the year 2000. The plan shall include a strategy for delivering potable water as needed into the underserved and unserved areas of the county, and shall encourage the merger and consolidation of water systems. The authority may disapprove and direct redevelopment of a plan under this subsection for inconsistencies with the purposes set out in Section 1 of this Act.*
- (2) *The 2020 water management planning councils or multicounty planning councils shall assume the role and function of the planning units established to implement the water supply planning process set out in KRS 151.114 and administrative regulations of the cabinet.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

- (1) *The 2020 water management planning councils, or multicounty planning councils may employ a water service coordinator. Planning councils may jointly employ a water service coordinator. The water service coordinator shall assume the role and function of the county long-range planning representative appointed under KRS 151.114 and the water supply planning process set out in KRS Chapter 151 and administrative regulations of the cabinet. In addition, water service coordinators shall assist the 2020 water planning councils or multicounty planning councils in developing the plans required under Section 4 of this Act.*
- (2) *The Kentucky Infrastructure Authority may establish by administrative regulations a program to provide or supplement funding for a multicounty planning council water service coordinator for a period of three (3) years from the effective date of this Act. There shall be no more than one (1) position funded per area development district.*
- (3) *All state agencies shall cooperate with and assist the 2020 water management planning councils as appropriate to accomplish the purposes set out in Section 1 of this Act.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 151 IS CREATED TO READ AS FOLLOWS:

- (1) *After July 1, 2001, and annually thereafter, each area development district shall review and prioritize the planning councils' plans for underserved and unserved areas within the 2020 water management area for that district. The review and prioritization shall be conducted with the assistance and input of the authority and the water management councils for the counties or multicounty areas within a 2020 water management area. These prioritization plans shall be submitted to the authority for review and approval. The authority may suggest changes necessary for the purpose of qualifying for financial assistance from the 2020 water service account of the Kentucky Infrastructure Authority.*
- (2) *Factors to be considered in prioritizing the plans for underserved and unserved areas within a 2020 water management area include:*
- (a) *The current and potential customer base that would benefit from water service;*
  - (b) *The adequacy, cost-effectiveness, and dependability of water sources, water treatment capacity, and distribution lines that may be used to provide water service; and*
  - (c) *The potential to eliminate or prevent duplication of water distribution lines and facilities that may be used to provide the service.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO READ AS FOLLOWS:

*A 2020 water service account is established within the infrastructure revolving fund. The purpose of the account shall be to assist in making potable water available to all Kentuckians by the year 2020. The authority shall manage the account as funding is authorized by the General Assembly and in a manner to achieve the purposes set out in Section 1 of this Act.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO READ AS FOLLOWS:

- (1) *The authority shall require the following as conditions for receiving assistance from any fund administered by the authority for infrastructure projects related to water service:*
  - (a) *Establishment and use of a financial accounting system that accounts for the operations of water treatment and distribution separately from all other operations of the applicant;*
  - (b) *Establishment of service rates based upon the cost of providing the service; and*
  - (c) *An agreement that the authority may require an audit to be conducted of the applicant at least once every two (2) years.*
- (2) *The authority shall require all applicants within a class to use the same accounting system. The authority may accept present accounting systems in use and applied uniformly to all applicants within a class, for example, the uniform system of accounts established by the National Association of Regulatory Utility Commissioners.*
- (3) *The authority may assist water providers to establish accounting systems that meet the requirements of this section. The authority may provide assistance by paying for third party private contractors or assistance from the Kentucky Auditor of Public Accounts.*
- (4) *The authority may pay for costs related to establishing a new uniform accounting system for the use of governmental agencies that merge or consolidate their water services if:*
  - (a) *The merging or consolidating entities use different accounting systems;*
  - (b) *The merger or consolidation is consistent with a 2020 water management planning council plan as reviewed and prioritized under Section 6 of this Act; and*
  - (c) *At least one (1) governmental agency water system is a partner in the merger or consolidation.*
- (5) *The authority may fund the requirements of this section from the 2020 water service account.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO READ AS FOLLOWS:

- (1) *The authority shall establish a program to assist governmental agencies in detecting water loss from distribution lines. The program may include contracting with third parties to conduct water loss audits and leak detection. The program may include giving low interest loans, on a priority basis established by the authority consistent with the findings and purposes set out in Section 1 of this Act, for the repair or replacement of distribution facilities, deemed reasonable by the authority, undertaken as a result of the water loss audit.*
- (2) *The authority may forgive any amount of a distribution facility repair or replacement loan from the authority remaining unpaid if:*
  - (a) *Within five (5) years of entering into the loan agreement the governmental agency merges with or consolidates with at least one (1) other public or private water supplier; and*
  - (b) *The merger or consolidation is consistent with a 2020 water management planning council plan as reviewed and prioritized under Section 6 of this Act.*
- (3) *The authority may fund the requirements of this section from the 2020 water service account.*

Section 10. KRS 106.200 is amended to read as follows:

No city of the second, third, fourth, fifth or sixth class which owns a waterworks system shall sell, convey, rent, or lease ~~the said~~ system without the assent of a majority of *the legislative body for the city or of* those voting at an election held for that purpose after notice of the election has been published pursuant to KRS Chapter 424. This section shall not apply to the issuance of revenue bonds provided for under the provisions of this chapter.

Section 11. KRS 96.540 is amended to read as follows:

- (1) Except as provided in KRS 96.171 to 96.188, inclusive, and in KRS 96.5405, no city of the second, third, fourth, fifth, or sixth class that owns a ~~waterworks system or~~ lighting system by gas or electricity, shall sell, convey, lease, or encumber the system or the income therefrom without the assent of a majority of the total number of legal voters of the city voting at an election held for that purpose, after notice of the election has been published pursuant to KRS Chapter 424.

- (2) In the case of a city of the fourth, fifth, or sixth class, the election shall be ordered and the election officers shall be selected by the city legislative body, the city clerk shall prepare the question for presentation to the voters, and a tabulation of the vote shall be done by the city legislative body in the presence of the mayor; in all other respects the election shall be conducted under the regular election laws.
- (3) *Except as provided in KRS 96.171 to 96.188, inclusive, and in KRS 96.5405, no city of the second, third, fourth, fifth, or sixth class that owns a waterworks system, shall sell, convey, lease, or encumber the system or the income therefrom without the assent of a majority of the legislative body for the city or of a majority of the total number of legal voters of the city voting at an election held for that purpose, after notice of the election has been published pursuant to KRS Chapter 424.*
- (4) This section shall not apply to the issuance of revenue bonds under the provisions of KRS 96.350 to 96.520.

SECTION 12. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO READ AS FOLLOWS:

- (1) *The authority shall establish an incentive program that allocates funds from the 2020 water service account in a manner that encourages the regionalization, merger, and consolidation of water systems and elimination of structural and administrative duplication. The incentive funds may be used by government owned and private systems.*
- (2) *The incentive program shall target water systems that have high debt, inadequate operational and maintenance resources, high maintenance costs, old and inadequately maintained treatment works, a history of violations of the Division of Water's statutes and administrative regulations due to inadequate operational and maintenance resources, or insufficient financial resources to extend system service to unserved or underserved areas.*
- (3) *In developing the incentives to encourage governmental agencies to merge, regionalize, consolidate, and partner with target systems, the authority shall give the highest funding priority to those projects which have been identified in a 2020 water management planning council plan prioritized under Section 6 of this Act and meet the funding priorities established by the authority.*

SECTION 13. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO READ AS FOLLOWS:

- (1) *The authority shall develop an incentive program that allocates funds from the 2020 water service account to encourage new infrastructure projects to provide service to unserved areas and improve service to underserved areas of the state. The incentives may be used by government owned and private systems.*
- (2) *The incentives shall be developed to give the highest funding priority to those projects that have been identified in a 2020 water management planning council plan prioritized under Section 6 of this Act and meet the funding priorities established by the authority.*

SECTION 14. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO READ AS FOLLOWS:

*The authority may enter into a contract with the Kentucky Geological Survey for the purpose of continuing and expanding the identification and study of the water resource potential of underground coal mines and high yield water wells. The authority may fund the study from the 2020 water service account.*

Section 15. KRS 224A.011 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Administrative fee" means a fee assessed and collected by the authority from borrowers under assistance agreements, to be used for operational expenses of the authority.
- (2) "Applicable interest rate" means the rate of interest which shall be used as part of the repayment criteria for an assistance agreement between a governmental agency and the authority, and shall be determined by the authority pertinent to the source of funds from which the assistance agreement is funded.
- (3) "Assistance agreement" means the agreement to be made and entered into by and between a governmental agency and the authority, as authorized by this chapter, providing for a lease, loan, services, or grant to the governmental agency or for the purchase of obligations issued by the governmental agency, and for the repayment thereof to the authority by the governmental agency.
- (4) "Authority" means the Kentucky Infrastructure Authority, which is created by this chapter.
- (5) "Authority revenues" means the totality of all:

- (a) Service charges;
  - (b) Utility tax receipts, to the extent not otherwise committed and budgeted by the authority during any fiscal period of the authority;
  - (c) Any gifts, grants, or loans received, to the extent not otherwise required to be applied;
  - (d) Any and all appropriations made to the authority by the General Assembly of the Commonwealth of Kentucky, to the extent not otherwise required to be applied;
  - (e) All moneys received in repayment of and for interest on any loans made by the authority to a governmental agency, except as provided in KRS 224A.111, 224A.1115, 224A.112, and 224A.270, or as principal of and interest on any obligations issued by a governmental agency and purchased by the authority, or as receipts under any assistance agreement;
  - (f) The proceeds of bonds or long-term debt obligations of governmental agencies pledged to the payment of bond anticipation notes issued by the authority on behalf of the said governmental agency to provide interim construction financing; and
  - (g) Payments under agreements with any agencies of the state and federal government.
- (6) "Borrower or borrowing entity" means any agency of the state or its political subdivisions, any city, or any special district created under the laws of the state acting individually or jointly under interagency or interlocal cooperative agreements to enter into assistance agreements with the authority.
- (7) "Community flood damage abatement project" means any structural or nonstructural study, plan, design, construction, development, improvement, or other activity to provide for flood control.
- (8) "Construction" means and includes, but is not limited to:
- (a) Preliminary planning to determine the economic and engineering feasibility of infrastructure projects, the engineering, architectural, legal, fiscal, and economic investigations, and studies necessary thereto, and surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary to the construction of infrastructure or solid waste projects;
  - (b) The erection, building, acquisition, alteration, remodeling, improvement, or extension of infrastructure or solid waste projects; and
  - (c) The inspection and supervision of the construction of infrastructure or solid waste projects and all costs incidental to the acquisition and financing of same. This term shall also relate to and mean any other physical devices or appurtenances in connection with, or reasonably attendant to, infrastructure or solid waste projects.
- (9) "Dams" means any artificial barrier, including appurtenant works, which does or can impound or divert water, and which either:
- (a) Is or will be twenty-five (25) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the natural resources cabinet; or
  - (b) Has or will have an impounding capacity at maximum water storage elevation of fifty (50) acre feet or more.
- (10) "Distribution facilities" means all or any part of any facilities, devices, and systems used and useful in obtaining, pumping, storing, treating, and distributing water for agricultural, industrial, commercial, recreational, public, and domestic use.
- (11) "Federal act" means the Federal Clean Water Act (33 U.S.C. secs. 1251 et seq.) as said federal act may be amended from time to time in the future, or any other enactment of the United States Congress providing funds that may assist in carrying out the purposes of the authority.
- (12) "Federally assisted wastewater revolving fund" means that fund which will receive federal and state funds or the proceeds from the sale of revenue bonds of the authority for the purpose of providing loans to finance construction of publicly owned treatment works as defined in Section 212 of the federal act and for the implementation of a management program established under Section 319 of the federal act and for the development and implementation of a conservation and management plan under Section 320 of the federal act.

- (13) "Governmental agency" means any incorporated city or municipal corporation, or other agency, or unit of government within or a department or a cabinet of the Commonwealth of Kentucky, now having or hereafter granted, the authority and power to finance, acquire, construct, or operate infrastructure or solid waste projects. This definition shall specifically apply, but not by way of limitation, to incorporated cities; counties, including any counties containing a metropolitan sewer district; sanitation districts; water districts; water associations if these associations are permitted to issue interest-bearing obligations which interest would be excludable from gross income under Section 103 of the Internal Revenue Code of 1986 as amended; sewer construction districts; metropolitan sewer districts; sanitation taxing districts; and any other agencies, commissions, districts, or authorities (either acting alone, or in combination with one another in accordance with any regional or area compact, or intergovernmental cooperative agreements), now or hereafter established in accordance with the laws of the Commonwealth of Kentucky having and possessing the described powers described in this subsection.
- (14) "Industrial waste" means any liquid, gaseous, or solid waste substances resulting from any process of industry, manufacture, trade, or business, or from the mining or taking, development, processing, or recovery of any natural resources, including heat and radioactivity, together with any sewage as is present therein, which pollutes the waters of the state, and specifically, but not by way of limitation, means heat or thermal differentials created in the waters of the state by any industrial processing, generating, or manufacturing processes.
- (15) "Infrastructure project" means any construction or acquisition of treatment works, distribution facilities, or water resources projects instituted by a governmental agency *or an investor-owned water utility* which is approved by the authority and, if required, by the natural resources cabinet, Public Service Commission, or other agency; solid waste projects; dams; storm water control and treatment systems; gas or electric utility; or any other public utility or public service project which the authority finds would *assist in carrying out the purposes set out in Section 1 of this Act*~~[enhance economic development opportunities in a governmental agency]~~.
- (16) "Infrastructure revolving fund" means that fund which will receive state funds, the proceeds from the sale of revenue bonds of the authority or other moneys earmarked for that fund for the purpose of providing loans or grants to finance construction or acquisition of infrastructure projects as defined in this section.
- (17) "Loan or grant" means moneys to be made available to governmental agencies by the authority for the purpose of defraying all or any part of the total costs incidental to construction or acquisition of any infrastructure project.
- (18) "Market interest rate" means the interest rate determined by the authority under existing market conditions at the time the authority shall provide financial assistance to a governmental agency.
- (19) "Natural resources cabinet" means the Kentucky Natural Resources and Environmental Protection Cabinet, or its successor, said term being meant to relate specifically to the state agency which is designated as the water pollution agency for the Commonwealth of Kentucky, for purposes of the federal act.
- (20) "Obligation of a governmental agency" means a revenue bond, bond anticipation note, revenue anticipation note, lease or other obligation issued by a governmental agency under KRS 58.010 et seq. or other applicable statutes.
- (21) "Person" means any individual, firm, partnership, association, corporation, or governmental agency.
- (22) "Pollution" means the placing of any noxious or deleterious substances ("pollutants"), including sewage and industrial wastes, in any waters of the state or affecting the properties of any waters of the state in a manner which renders the waters harmful or inimical to the public health or to animal or aquatic life, or to the use, present or future, of these waters for domestic water supply, industrial or agricultural purposes, or recreational purposes.
- (23) "Prioritization schedules" means the list of wastewater treatment works, distribution facilities and water resources projects which the natural resources cabinet has evaluated and determined to be of priority for receiving financial assistance from the federally assisted wastewater revolving fund *and the federally assisted drinking water revolving fund*, or the list of infrastructure projects which the ~~authority~~*Department for Local Government* has evaluated and determined to be of priority for receiving financial aid from the infrastructure revolving fund. *The evaluation by the authority of infrastructure projects for water systems shall be undertaken with input from the appropriate area development district.*

- (24) "Solid waste project" means construction, renovation, or acquisition of a solid waste facility which shall be instituted and owned by a governmental agency.
- (25) "Recovered material" means those materials which have known current use, reuse, or recycling potential, which can be feasibly used, reused, or recycled, and which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing but does not include materials diverted or removed for purposes of energy recovery or combustion except refuse-derived fuel (RDF), which shall be credited as a recovered material in an amount equal to that percentage of the municipal solid waste received on a daily basis at the processing facility and processed into RDF; but not to exceed fifteen percent (15%) of the total amount of the municipal solid waste received at the processing facility on a daily basis.
- (26) "Recovered material processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of recovered material but does not mean a solid waste facility if solid waste generated by a recovered material processing facility is managed in accordance with KRS Chapter 224 and administrative regulations adopted by the cabinet.
- (27) "Revenue bonds" means special obligation bonds issued by the authority as provided by the provisions of this chapter, which are not direct or general obligations of the state, and which are payable only from a pledge of, and lien upon, authority revenues as provided in the resolution authorizing the issuance of the bonds, and shall include revenue bond anticipation notes.
- (28) "Service charge" means any monthly, quarterly, semiannual, or annual charge to be imposed by a governmental agency, or by the authority, for any infrastructure project financed by the authority, which service charge arises by reason of the existence of, and requirements of, any assistance agreement.
- (29) "Sewage" means any of the waste products or excrements, or other discharges from the bodies of human beings or animals, which pollute the waters of the state.
- (30) "Solid waste" means "solid waste" as defined by KRS 224.01-010(31)(a).
- (31) "Solid waste facility" means any facility for collection, handling, storage, transportation, transfer, processing, treatment, or disposal of solid waste, whether the facility is associated with facilities generating the waste or otherwise, but does not include a container located on property where the waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility.
- (32) "Solid waste revolving fund" means that fund which shall receive state funds, the proceeds from the sale of revenue bonds of the authority, or other moneys earmarked for the purpose of providing loans or grants to finance solid waste projects defined in this section.
- (33) "State" means the Commonwealth of Kentucky.
- (34) "System" means the system owned and operated by a governmental agency with respect to solid waste projects, treatment works, or infrastructure projects financed as provided by the assistance agreement between the governmental agency and the authority.
- (35) "Treatment works" or "wastewater treatment works" means all or any part of any facilities, devices, and systems used and useful in the storage, treatment, recycling, and reclamation of wastewater or the abatement of pollution, including facilities for the treatment, neutralization, disposal of, stabilization, collecting, segregating, or holding of wastewater, including without limiting the generality of the foregoing, intercepting sewers, outfall sewers, pumping power stations, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof, and any wastewater treatment works, including site acquisition of the land that will be an integral part of the wastewater treatment process, or is used for ultimate disposal of residues resulting from wastewater treatment, together with any other facilities which are deemed to be treatment works in accordance with the federal act.
- (36) "Variable rate revenue bonds" means revenue bonds the rate of interest on which fluctuates either automatically by reference to a predetermined formula or index or in accordance with the standards set forth in KRS 224A.120.
- (37) "Wastewater" means any water or liquid substance containing sewage, industrial waste, or other pollutants or contaminants derived from the prior use of these waters.

- (38) "Water resources" means all waters of the state occurring on the surface, in natural or artificial channels, lakes, reservoirs, or impoundments, and in subsurface aquifers, which are available, or which may be made available to agricultural, industrial, commercial, recreational, public, and domestic users.
- (39) "Water resources project" means any structural or nonstructural study, plan, design, construction, development, improvement, or any other activity including programs for management, intended to conserve and develop the water resources of the state and shall include all aspects of water supply, flood damage abatement, navigation, water-related recreation, and land conservation facilities and measures.
- (40) "Waters of the state" means all streams, lakes, watercourses, waterways, ponds, marshes, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural, surface, or underground waters.
- (41) "Utility tax" means the tax which may be imposed by the authority on every purchase of water or sewer service in the Commonwealth of Kentucky.

Section 16. KRS 224A.030 is amended to read as follows:

- (1) There is hereby created the Kentucky Infrastructure Authority, which authority shall be a body corporate and politic, constituting a public corporation and a governmental agency and instrumentality of the state. All powers, duties, and obligations of the Kentucky Pollution Abatement and Water Resources Finance Authority shall be transferred March 31, 1988, to the Kentucky Infrastructure Authority. The affairs of the authority shall be managed and carried out by a board consisting of **nine (9)**~~eight (8)~~ members. The secretaries of the Economic Development, Finance and Administration~~[-]~~ and Natural Resources and Environmental Protection Cabinets, ***the executive director of the Public Service Commission***~~the vice chairman of the Kentucky Economic Development Partnership or the vice chairman's designee selected from the membership of the Kentucky Economic Development Partnership or the Kentucky Economic Development Finance Authority,~~ and the commissioner of the Department for Local Government shall serve as ex officio members of the authority. ***The secretaries, the executive director, and the commissioner may designate alternates.*** On or before August 1, ***2000***~~1992~~, the Governor shall additionally appoint **five (5)**~~three (3)~~ at large members. ***One (1) member shall be selected from a list of three (3) nominees submitted by the Kentucky Association of Counties, one (1) member selected from a list of three (3) nominees submitted by the Kentucky League of Cities, one (1) member selected from a list of three (3) nominees submitted by the Kentucky Rural Water Association, one (1) member representing for-profit private water companies, and one (1) member selected from a list of three (3) nominees submitted by the Kentucky section of the American Water Works Association. The at-large members***~~who~~ shall serve as follows: ***two (2)***~~one (1)~~ shall serve a term ending June 30, ***2004***~~1996~~; ***two (2)***~~one (1)~~ shall serve a term ending June 30, ***2003***~~1995~~; and one (1) shall serve a term ending June 30, ***2002***~~1994~~. As the terms of the at large members expire, the Governor shall appoint successors for terms of four (4) years and until their successors are appointed. The members shall constitute the Kentucky Infrastructure Authority, with power in that name to contract and be contracted with, sue and be sued, have and use a corporate seal, and exercise, in addition to the powers and functions specifically stated in this chapter, all of the usual powers of private corporations to the extent that the same are not inconsistent with specifically enumerated powers of the authority. In the carrying out of its purposes and the exercise by it of the powers conferred by this chapter, the authority is deemed and declared to be performing essential governmental functions and public purposes of the state.
- (2) The members of the authority shall receive no compensation for their services in said capacity, but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and functions as such members.
- (3) Five (5) members of the authority shall constitute a quorum for the transaction of business, and in the absence of a quorum, one (1) or more members may adjourn from time to time until a quorum is convened.~~[-] The secretary of the Finance and Administration Cabinet shall serve as chairperson.~~ The members of the authority shall choose from their ranks a ***chair and a vice chair***~~chairman~~. The authority shall elect a secretary and a treasurer who shall not be members of the authority, each of whom shall serve at the pleasure of the authority and shall receive compensation as may be determined by the authority.
- (4) The authority shall, for administrative purposes, be attached to the ***Office of the Governor***~~Finance and Administration Cabinet~~, and shall establish and maintain offices in premises which shall be provided for that purpose by the Finance and Administration Cabinet; and the secretary of the authority shall at all times



maintain therein complete records of all of the authority's actions and proceedings which shall constitute public records open to inspection at all reasonable times.

Section 17. KRS 224A.070 is amended to read as follows:

The authority may carry out and perform the following essential governmental functions of statewide import and concern:

- (1) To promulgate administrative regulations and adopt bylaws for the regulation of its affairs and the conduct of its business, which shall define with specificity conditions precedent under which applications for loans or grants may be made and the order of priority upon which applications shall be acted upon;
- (2) To retain an executive director, who shall be experienced and knowledgeable in the fields in which the authority may act, together with other employees, *including for example only, engineers, accountants, and attorneys*, necessary and appropriate to enable the authority to fulfill its duties, functions and responsibilities;
- (3) To adopt a corporate seal;
- (4) To sue and be sued in its own name and to have the right, power, and authority to enforce its obligations and covenants made pursuant to the provisions of this chapter;
- (5) To levy a tax on every purchase of water service and sewer service in the state, such tax to be equal to not more than two percent (2%) of the gross amount of the bill for water services rendered;
- (6) To approve or reject applications made to the authority for loans or grants;
- (7) To lease an infrastructure project or make loans or grants to or purchase or refinance obligations of any governmental agency for the purpose of assisting the governmental agency in the construction of an infrastructure project. A lease, loan, or grant shall be in accordance with the terms and conditions of an assistance agreement by and between the authority and the governmental agency, which shall include the provisions and conditions specified in KRS 224A.100, and such other reasonable terms and conditions as the authority shall determine;
- (8) Without reference to the provisions of KRS Chapter 56, to acquire and hold in the name of the authority, by the exercise of the power of eminent domain pursuant to the Eminent Domain Act of Kentucky, the real property or rights therein, including rights-of-way, easements and licenses, and the personal property reasonably deemed necessary to effectuate the development, implementation, financing, and construction or acquisition of any infrastructure project, and to make the properties available to a governmental agency in connection with an infrastructure project;
- (9) To receive service charges from governmental agencies which have entered into assistance agreements with the authority, in accordance with the terms and conditions of the assistance agreements, and to use and employ the service charges in accordance with the provisions of this chapter, the service charges to constitute authority revenues;
- (10) To enter into and enforce assistance agreements made and entered into with governmental agencies by suit, action, mandamus or other proceedings, including the obtaining by judicial decree of the appointment of a receiver to administer infrastructure projects financed by leases, loans or grants which have been undertaken by governmental agencies;
- (11) To enter into any necessary or required agreement with federal or state agencies or persons to carry out the provisions of this chapter;
- (12) To bid at a competitive public sale of obligations of a governmental agency or negotiate the purchase or sale of obligations of a governmental agency, notwithstanding any other law to the contrary;
- (13) To borrow money and issue negotiable bonds and notes pursuant to this chapter;
- (14) To lend money to governmental agencies or to advance moneys from the infrastructure revolving fund to the federally assisted wastewater revolving fund in order to match federal moneys that may become available;
- (15) To contract with the federal government as to any infrastructure project;
- (16) To participate with the federal government or any of its agencies, the state government or any of its agencies or political subdivisions, or any other person in the construction or repair of any infrastructure project; and

- (17) To have, possess, and exercise all other powers reasonably incident to the carrying out of the duties and responsibilities of the authority.

Section 18. KRS 224A.100 is amended to read as follows:

The authority may enter into assistance agreements with governmental agencies, and governmental agencies may enter into assistance agreements with the authority in connection with infrastructure projects. Each assistance agreement shall be subject to review by the Capital Projects and Bond Oversight Committee of the Legislative Research Commission ~~and before approval by the Finance and Administration Cabinet and the Cabinet for Economic Development,~~ may contain and include such provisions as may be agreed upon by the parties thereto, and shall include and prescribe the following provisions:

- (1) An estimate of the reasonable cost of the infrastructure project, as determined by the authority;
- (2) The amount of the total rentals under any lease of an infrastructure project, loans or grants to be made to the governmental agency, financing payments or obligations of the governmental agency to be purchased by the authority;
- (3) The time or times at which the rentals, loans or grants, financing payments or the purchase price of a governmental agency shall become payable by or to the governmental agency;
- (4) The specific purpose or purposes for which the leased infrastructure project will be used or the proceeds of the purchase of obligations of the governmental agency or loan or grant made pursuant to the assistance agreement shall be expended;
- (5) The conditions under which the leased infrastructure project will be used or the proceeds of the purchase of obligations of the governmental agency or loan or grant may be expended on account of the infrastructure project by the governmental agency;
- (6) An agreement by the governmental agency:
  - (a) To proceed expeditiously with and promptly complete the infrastructure project or cause same to be completed in accordance with plans and specifications approved by federal and state regulatory agencies;
  - (b) To commence or cause to be commenced operation of the infrastructure project on completion of construction, and not to discontinue operations or dispose of such infrastructure project without the approval of the authority;
  - (c) To operate and maintain or cause to be operated and maintained the infrastructure project in accordance with the applicable provisions of federal and state law;
  - (d) To disclose fully to the authority all applications for or award of grants or loans for financial assistance, if any;
  - (e) To provide for the payment of the governmental agency's share of the cost of the infrastructure project, if the entire infrastructure project is not financed by assistance from the authority and describe with specificity the manner in which the governmental agency proposes to finance its share of such cost, if any;
- (7) A provision that, if assistance which was not included in the calculation of the loan or grant payable pursuant to subsection (2) of this section becomes available to the governmental agency, the amount of the assistance from the authority shall be recalculated with the inclusion of the additional assistance, and the governmental agency shall pay to the authority the amount, if any, by which the loan or grant actually made, exceeds the loan or grant as determined by the recalculation;
- (8) The extent to which the assistance from the authority shall be repaid to the authority, which shall not be less than the sum of the following, except as provided under KRS 224A.111, 224A.112, 224A.270, and KRS 224A.1115:
  - (a) The aggregate principal amount of the loan; and
  - (b) Interest on the aggregate balance of the principal amount of the loan from time to time remaining unpaid, computed at the applicable interest rate, plus not to exceed one-quarter of one percent (1/4 of 1%), except as provided for in KRS 224A.111, 224A.112, 224A.270, and KRS 224A.1115;

- (9) The time or times and amounts when the repayments required by subsection (8) of this section shall be made by the governmental agency to the authority;
- (10) The extent to which a service charge shall be imposed by the governmental agency. Any service charge shall be calculated to produce amounts sufficient to meet the repayment schedule prescribed by subsection (8) of this section; and
- (11) An agreement between the governmental agency and the authority that upon any failure of the governmental agency to make payment to the authority in accordance with the time schedule and repayment schedule fixed by the assistance agreement of the amounts prescribed by said schedules, that in such event the authority may, without further action, require the State Treasurer to pay to the authority such amount of other state revenues, tax sharing, or other state aid, with the exception of funds in aid to education and funds derived from motor fuel taxes or vehicle license taxes pursuant to Section 230 of the Constitution of Kentucky, as the governmental agency may thereafter become entitled to receive from the state, until all delinquent payments pursuant to the repayment schedule, plus interest thereon, from the date of each delinquency at the applicable interest rate per annum, shall have been paid.

Section 19. KRS 224A.112 is amended to read as follows:

- (1) The infrastructure revolving fund shall be established in the State Treasury and shall be administered by the authority.
- (2) The fund shall be a dedicated fund and all moneys in the fund shall be dedicated solely to providing financial assistance to governmental agencies, *and investor-owned water systems as provided for in Sections 8, 9, 11, and 12 of this Act*, for the construction or acquisition of infrastructure projects. *The fund shall contain an account called the 2020 water service account. The 2020 water service account shall be managed by the authority as set out in this chapter*~~[when a governmental agency is unable to finance the entire infrastructure project for which it is seeking moneys from its own resources, through commercial credit at reasonable rates and under reasonable terms or through other public grant or loan programs, including the federally assisted wastewater revolving fund].~~
- (3) The financial assistance which may be provided to governmental agencies by the revolving fund shall be limited to:
  - (a) Making loans, on the condition that the loans are made at or below market interest rates, including interest free loans, at terms not to exceed thirty (30) years and that the fund will be credited with all payments of principal and interest on all loans;
  - (b) Purchasing or guaranteeing, or purchasing insurance for, local or state obligations when the action would improve credit market access or reduce interest rates;
  - (c) Providing a source of revenue or security for the payment of principal and interest on bonds or notes issued by the authority or other agencies of the state if the proceeds of the sale of the bonds will be deposited in the fund;
  - (d) Providing moneys with which to carry out the requirements of assistance agreements; and
  - (e) Making grants as funds specifically appropriated for grants or proceeds from the sale of the authority's revenue bonds are available~~[when the authority finds that both a hardship and an extreme health hazard exist].~~
- (4) The revolving fund shall be established, maintained and credited with repayments and the fund balance shall be available in perpetuity for its stated purposes.
- (5) The authority may provide financial assistance from the fund to supplement assistance provided from the federally assisted wastewater revolving fund as created in KRS 224A.111~~[or for any infrastructure projects on the prioritization schedule prepared by the Department for Local Government].~~
- (6) The *authority*~~[Department for Local Government]~~ shall advise governmental agencies of the availability of the infrastructure revolving fund and how moneys may be obtained from the fund.~~[In establishing its prioritization schedule, the Department for Local Government shall consult the Cabinet for Economic Development regarding economic development project criteria, shall give funding consideration to economic development projects recommended by the Cabinet for Economic Development, and shall consider the following factors:~~
  - (a) ~~Local employment;~~

- ~~(b) The relationship of the infrastructure project to the governmental agency's capital investment plan;~~
  - ~~(c) The relationship of the infrastructure project to the governmental agency's economic development;~~
  - ~~(d) The reasonableness of the proposed costs;~~
  - ~~(e) The probable effectiveness of the infrastructure project as proposed; and~~
  - ~~(f) Any other criteria that the Department for Local Government considers advisable.}~~
- (7) The authority may enter into any necessary or required agreement with federal or state agencies or persons to carry out the provisions of this section. ***All state agencies shall cooperate with the authority and share information with the authority as appropriate to accomplish the purposes set out in Section 1 of this Act.***

Section 20. KRS 224A.113 is amended to read as follows:

The authority~~], the Natural Resources Cabinet or the Department for Local Government]~~ may promulgate administrative regulations to implement KRS 224A.111, 224A.1115, and 224A.112.

Section 21. The following KRS section is repealed:

224A.055 Funding consideration of infrastructure projects.

**Approved April 26, 2000**

## **CHAPTER 530**

**(HB 611)**

AN ACT relating to the tobacco Master Settlement Agreement and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 14 of this Act, unless the context requires otherwise:*

- (1) ***"Board" means the Agricultural Development Board created by Section 4 of this Act;***
- (2) ***"Fund" means the agricultural development fund established by an Act of the 2000 Regular Session, which may be called the "Rural Development Fund" in the Act;***
- (3) ***"Subcommittee" means the Tobacco Settlement Agreement Fund Oversight Committee created by Section 12 of this Act;***
- (4) ***"Council" means an agricultural development council required by Section 11 of this Act;***
- (5) ***"Master Settlement Agreement" means the settlement agreement dated November 23, 1998, entered into by the Commonwealth of Kentucky and major United States tobacco product manufacturers; and***
- (6) ***"Phase II Agreement" means the National Tobacco Grower Settlement Trust Agreement dated July 19, 1999, entered into by tobacco states and major tobacco companies to compensate tobacco growers and quota owners for losses resulting from the Master Settlement Agreement.***

SECTION 2. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

- (1) ***Fifty percent (50%) of the moneys received in the tobacco settlement agreement fund, created in KRS 248.654, from Master Settlement Agreement funding on or before June 30, 2000, along with accrued interest, shall be allocated on the effective date of this Act to the agricultural development fund created in House Bill 583 of the 2000 Regular Session of the General Assembly. The moneys received in the agricultural development fund, along with the accrued interest, shall be further allocated as follows:***
  - (a) ***Forty million dollars (\$40,000,000) from the agricultural development fund shall be set aside to supplement Phase II funding as provided in Section 3 of this Act; and***
  - (b) ***The moneys remaining in the agricultural development fund after the Phase II supplement is set aside shall be further allocated as follows:***
    - 1. ***Thirty-five percent (35%) to a "Counties Account" within the fund for distribution to applicants within counties. The amount allocated to each county within the account shall be***

*determined by the formula established in subsection (3) of this section. Counties shall be assured of receiving at least as much as determined by the formula; and*

2. *Sixty-five percent (65%) for other projects throughout the state.*
- (2) *Fifty percent (50%) of the moneys received in the tobacco settlement agreement fund from Master Settlement Agreement funding after June 30, 2000, along with accrued interest, shall be allocated within twenty (20) days of receipt of the moneys to the agricultural development fund created in House Bill 583 of the 2000 Regular Session of the General Assembly. The moneys received in the fund, along with the accrued interest, shall be further allocated as follows:*
  - (a) *For the life of the Phase II payment program, funds in the agricultural development fund shall be set aside first to supplement Phase II funding when needed as outlined in Section 3 of this Act; and*
  - (b) *The moneys remaining in the agricultural development fund after the Phase II supplement is set aside shall be further allocated as follows:*
    1. *Thirty-five percent (35%) to the counties account provided in subsection (1)(b)1. of this section; and*
    2. *Sixty-five percent (65%) for other projects throughout the state.*
- (3) *The allocation within the counties account in the agricultural development fund for each county shall be assured for use in each county and shall be based on the following weighted factors:*
  - (a) *Fifty percent (50%) weight to the county's percentage of the state's tobacco allotment based on 1999 data;*
  - (b) *Twenty-five percent (25%) weight to the county's number of farms with tobacco quotas in the county as a percentage of farms with tobacco quotas statewide, based on 1999 data; and*
  - (c) *Twenty-five percent (25%) weight to the economic impact index for each county which shall be calculated in the following manner:*
    1. *The tobacco income for each county (1997 burley tobacco production times average burley market price) divided by the total personal income for each county. The data used shall reflect the year most recently available for total personal income.*
    2. *The percentage derived in subparagraph 1. of this paragraph (tobacco income as a percentage of total personal income for each county) shall then be summed across all counties.*
    3. *The economic impact index amount shall be each county's tobacco income as a percentage of total personal income, divided by the aggregate percentage stated in subparagraph 2. of this paragraph.*
- (4) *When a county's allocation is exhausted, applicants from that county may apply for funds from the other sixty-five percent (65%) of the moneys in the agricultural development fund. Failure by a county to exhaust its county allocation shall not preclude the county from receiving the benefits of a proposal approved by the board from state funds.*
- (5) *Any funds directly appropriated by the General Assembly shall be assessed against the percentage of funds allocated to the state portion of the agricultural development fund.*
- (6) *Interest earned on any moneys in any fund or account created in Sections 1 to 14 of this Act shall accrue to that fund or account until transferred to another fund or account created or referenced in Sections 1 to 14 of this Act.*
- (7) *None of the moneys left at the end of a fiscal year in any fund or account created or referenced in Sections 1 to 14 of this Act shall lapse, but shall stay with the fund or account as long as the fund or account exists, or until the moneys are transferred to another fund or account created or referenced in Sections 1 to 14 of this Act. In the case of any fund or account created in Sections 1 to 14 of this Act that is terminated with a remaining balance, the balance shall remain in the agricultural development fund.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

- (1) *Forty million dollars (\$40,000,000) of the moneys credited to the agricultural development fund as set out in subsection (1)(a) of Section 2 of this Act shall be set aside to supplement Phase II on the effective date of*

*this Act. Additional funds shall be set aside to supplement Phase II funding as needed from moneys credited to the agricultural development fund after June 30, 2000.*

- (2) Phase II payments shall be supplemented each year for tobacco growers and quota owners so that the total amount available for payment is maintained at one hundred fourteen million dollars (\$114,000,000) each year. If the Phase II supplement set aside referred to in subsection (1) of this section falls below the amount needed to reach the one hundred fourteen million dollar (\$114,000,000) level in any year before the end of the twelve (12) year Phase II funding program, procedures outlined in subsection (3) of this section shall be followed.*
- (3) (a) If the moneys set aside for Phase II supplement before June 30, 2000, become insufficient to continue to meet the yearly one hundred fourteen million dollar (\$114,000,000) funding level, moneys needed to supplement Phase II funding to maintain funding at the 1999 level of one hundred fourteen million dollars (\$114,000,000) per year for each of the remaining eleven (11) years of the Phase II funding program shall continue to be provided to the Phase II set aside from funds received in the tobacco settlement agreement fund after June 30, 2000. As Master Settlement Agreement funding becomes available after June 30, 2000, for calendar year 2001 and each year thereafter for the life of the Phase II payment program, the moneys needed for the Phase II supplement to assure availability of the one hundred fourteen million dollar (\$114,000,000) funding level for that year shall be taken from the agricultural development fund. When a determination is made that funds are needed, funds shall be taken from the agricultural development fund before any other distributions are made following the next master settlement payment in April of each year. On the last year of distribution of the Phase II supplement funds, any excess funds beyond those needed to reach the one hundred fourteen million dollar (\$114,000,000) level shall be returned to the agricultural development fund.*  
*(b) Notwithstanding the provisions of paragraph (a) of this subsection, if the moneys required to supplement the Phase II funding at the one hundred fourteen million dollar (\$114,000,000) level are less than twenty million dollars (\$20,000,000) in a year, the amount shall be deferred to a later year until at least a deficit of twenty million dollars (\$20,000,000) is achieved before supplement payments are made.*
- (4) The Tobacco Settlement Trust Corporation created in House Bill 96 of the 2000 Regular Session of the General Assembly shall provide for distribution of the Phase II supplement funds. The corporation shall use the same formula and process for distribution of the Phase II supplement funds as it uses for distributions under the regular Phase II payment program, except that the corporation shall send the list of supplement payment recipients to the Revenue Cabinet rather than to the trustee of the National Tobacco Grower Settlement Trust. The Revenue Cabinet shall process the information and issue the checks at no charge to the Agricultural Development Board. The Phase II supplement funds shall be identified as supplement funds when distributed to tobacco growers and quota owners.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

- (1) The Agricultural Development Board is created as a political subdivision of the Commonwealth to perform essential governmental and public functions by administering funds to provide economic assistance to the agriculture community of the Commonwealth. The board shall be a public agency within the meaning of KRS 61.805, 61.870, and other applicable statutes.*
- (2) The board shall consist of fifteen (15) members as follows:*
  - (a) Four (4) voting members or their designees, as follows:*
    - 1. The Governor of the Commonwealth of Kentucky, who shall serve as chair;*
    - 2. The Commissioner of the Kentucky Department of Agriculture, who shall serve as vice chair and shall serve as chair in the absence of the Governor;*
    - 3. The secretary of the Cabinet for Economic Development; and*
    - 4. The director of the Cooperative Extension Service; and*
  - (b) Eleven (11) voting members appointed by the Governor, who shall be geographically distributed throughout the state and subject to confirmation by the House of Representatives and Senate as provided in KRS 11.160(2). The members shall be as follows:*

1. *Seven (7) active farmers, at least four (4) of whom shall be from counties that are substantially tobacco-impacted, as determined by a formula that includes tobacco income as a percentage of total personal income in the county, and at least two (2) of whom shall have experience in agricultural diversification;*
  2. *One (1) representative of the Kentucky Farm Bureau;*
  3. *One (1) representative of the Kentucky Chamber of Commerce, who shall be an agribusiness person;*
  4. *One (1) attorney with farm experience and familiarity with agricultural policy; and*
  5. *One (1) agricultural lender.*
- (3) *The members appointed under subsection (2)(b)2. and 3. of this section shall be chosen from a list of three (3) nominees submitted to the Governor by each of the respective organizations.*
- (4) *Consideration shall be given to racial and gender equity in the appointment of board members.*
- (5) *The majority of the voting members shall be active farmers.*
- (6) *Members of the board shall be reimbursed for expenses incurred in the performance of their duties.*
- (7) *Except as provided in paragraphs (a) to (d) of this subsection, the terms of the members appointed by the Governor shall be for four (4) years and until their successors are appointed and confirmed. A vacancy on the board shall be filled for the remainder of the unexpired term in the same manner as the original appointment. Members may be reappointed. The initial appointments shall be for staggered terms, as follows:*
- (a) *Two (2) members shall be appointed for one (1) year;*
  - (b) *Three (3) members shall be appointed for two (2) years;*
  - (c) *Three (3) members shall be appointed for three (3) years; and*
  - (d) *Three (3) members shall be appointed for four (4) years.*
- (8) *The Governor shall convene the first meeting of the board by August 1, 2000.*
- (9) *The board shall meet monthly, or at the call of the chair or a majority of the voting members.*
- (10) *A quorum of the board shall consist of eight (8) voting members. A majority of the voting members present may act upon matters before the board.*
- (11) *The board shall be attached to the Office of the Governor for administrative purposes.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

*The board's duties shall include, but not be limited to:*

- (1) *Administering the agricultural development fund, except as provided in subsection (2) of Section 9 of this Act;*
- (2) *Receiving requests and applications for funds and authorizing the distribution of funds. The board may receive applications from institutions of public postsecondary education for financial and technical assistance in conducting alternative crop development research. The board shall assist the applicants in obtaining any necessary federal permits that may be required to conduct alternative crop research. A recipient institution shall report the status and progress of the alternative crop development research to the board, the Interim Joint Committee on Agriculture and Natural Resources, and the Tobacco Settlement Agreement Fund Oversight Committee. The board shall promulgate administrative regulations relating to growing and researching alternative crops at the selected postsecondary institution, and shall adopt any applicable federal regulations;*
- (3) *Developing guidelines and criteria for eligibility for and disbursement of funds, the types of direct and indirect economic assistance to be awarded, and procedures for applying for funds and reviewing applications for assistance;*
- (4) *Ensuring that each county agricultural development council's plans and county recommendations and applications receive major consideration in decisions on use of a county's funds;*

- (5) *Completing a comprehensive plan:*
- (a) *The comprehensive plan shall propose short-term and long-term goals, strategies, and investments in Kentucky agriculture that will assist farmers in remaining competitive in existing and new enterprises. The comprehensive plan shall identify a diversified mix of enterprises that are profitable to farmers and shall determine the investments necessary to support the viability of those enterprises. The plan shall be reviewed by the General Assembly and the subcommittee created in Section 12 of this Act. The subcommittee may issue comment on the plan. However, the board may act without General Assembly approval;*
  - (b) *As soon as possible following enactment of Sections 1 to 14 of this Act, a plan of action shall be devised to meet the immediate needs of the Commonwealth's farmers and tobacco impacted communities most adversely affected by tobacco losses. A set of priorities shall be established in the plan of action to implement and fund programs to meet those needs as soon as practical; and*
  - (c) *Notwithstanding the provisions of House Bill 583 passed by the 2000 Regular Session of the General Assembly, immediate funding needs may be addressed and funded before a comprehensive or strategic plan is completed. Proposals from an applicant may be approved by the board if they meet the criteria established in Section 7 of this Act;*
- (6) *Preparing a biennial budget request in accordance with KRS Chapter 48;*
- (7) *Working with other governmental agencies to maximize the financial and economic impact that the programs implemented by the board will have and to maximize receipt of federal and other funds to the agriculture community in the Commonwealth;*
- (8) *Promulgating administrative regulations relating to carrying out the purposes of Sections 1 to 14 of this Act;*
- (9) *Hiring a director to carry out the will of the board;*
- (10) *Ensuring the necessary mechanisms are in place for the committees created by Section 8 of this Act to function effectively;*
- (11) *Contracting with other persons or entities if necessary to effectuate the board's purposes and functions;*
- (12) *Enacting bylaws concerning the conduct of the board's business and other administrative procedures as the board deems necessary;*
- (13) *Developing criteria to evaluate the success of the board's programs and expenditures to applicants. The criteria shall be simple, easily measured, and easily understood. Criteria should include number of families farming, increases in farm income attributable to state programs, the number of diversified operations, and the number of different types of diversified efforts within a county, including the efforts that have failed;*
- (14) *Providing reports of each meeting, along with expenditures approved or denied, within thirty (30) days of the meeting, to the Tobacco Settlement Agreement Fund Oversight Committee created by Section 12 of this Act. These reports shall contain detailed information relating to each expenditure by the board and detailed information on each application for funding a project or initiative by the board and decision by the board regarding each proposal, except information that may violate confidentiality. This information shall be provided by electronic format as prescribed by the Legislative Research Commission;*
- (15) *Submitting an annual written report to the Governor, the Commissioner of Agriculture, the Tobacco Settlement Agreement Fund Oversight Committee, and the Legislative Research Commission regarding the administrative, financial, and programmatic activities of the board; and*
- (16) *Making recommendations to the General Assembly through the Legislative Research Commission on possible adjustments to the funding formula for county allocations and the percent allocated to counties as provided in Section 2 of this Act.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

- (1) *Criteria to be used in considering applications for state funds shall include, but not be limited to:*
- (a) *Assistance to tobacco farmers and communities in counties most affected by the loss in tobacco income;*
  - (b) *Assistance to communities most dependent on agriculture;*



- (c) *Enhancement and promotion of agriculture in the Commonwealth;*
  - (d) *Merits of the proposal in the application;*
  - (e) *Compatibility with state and local agriculture-related comprehensive plans;*
  - (f) *Documentation of measures likely to ensure soundness of the proposal such as cash flow, security, market evaluation, and infrastructure considerations;*
  - (g) *Promotion of diversification;*
  - (h) *Regional orientation;*
  - (i) *Cooperation among entities involved in the project and application process; and*
  - (j) *Effect on the economic viability of family farms.*
- (2) *Uses and restrictions on the funds in the counties account shall include, but not be limited to, the following:*
- (a) *Funds may be used for deferred, no-interest, or low-interest venture capital loans to enhance farms' revenues by initiating:*
    - 1. *Current farming techniques or practices improvements; or*
    - 2. *New farming ventures on the farm;*
  - (b) *Funds used for loans shall be administered through a duly licensed or chartered financial institution organized and regulated:*
    - 1. *Under the laws of this state in accordance with KRS Chapter 287; or*
    - 2. *Created by Congress and organized and regulated in accordance with provisions of federal law;*
  - (c) *Terms of the loans may include a limit on deferral of payment of interest or principal to five (5) years, and a limit on the interest rates. Repaid loans and interest shall be credited to the appropriate county's allocation within the counties account;*
  - (d) *Funds may be used as grants for local agricultural economic development projects;*
  - (e) *Funds may be used as grants for water line extension to farms or for a fifty percent (50%) match for water improvements on farms;*
  - (f) *Funds may be used for programs to assist farmers in transitioning from one type of farming to another or from farming to another vocation;*
  - (g) *Local governments may apply for funds to clean up environmental problems created by a farm failure where there is no reasonable prospect that the problem will be cleaned up by a private individual or entity;*
  - (h) *Eligibility for funds in this subsection shall require that:*
    - 1. *Tobacco farmers be given priority;*
    - 2. *Applicants have sufficient equity to assure a reasonable chance of success of the action proposed for funding;*
    - 3. *Small farmers have as equal access to the funds as large farmers; and*
    - 4. *Consideration be given to what percent of a county's allocation of moneys an applicant is requesting; and*
  - (i) *Counties may use their funds for multicounty or regional projects. They may also use their funds to maximize state or federal matching fund programs.*
- (3) *In administering the fund under subsection (1) of Section 5 of this Act, the board shall be governed by the following principles:*
- (a) *Individuals, groups, educational institutions, governmental entities, cooperatives, and other agriculturally related entities are eligible to receive moneys from the fund; and*

- (b) *The board shall receive five hundred thousand dollars (\$500,000) for administrative costs in fiscal year 2001 and six hundred thousand dollars (\$600,000) in fiscal year 2002. These amounts shall include any costs necessary to offset administrative expenses incurred by the county cooperative extension service offices for providing administrative support to the agricultural development councils as provided in Section 11 of this Act.*
- (4) *If the state board recommends that an application not be approved or that it be changed, the applicant may take the application before the oversight subcommittee created in Section 12 of this Act for discussion and possible resolution of differences.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

*Notwithstanding the provisions of Section 2 of House Bill 583, passed in the 2000 Regular Session of the General Assembly, county allocations may be used for projects before the completion of a comprehensive plan or strategic plan as determined by the board or if they fall under the conditions described in subsection (5)(b) or (c) of Section 5 of this Act, or meet the criteria in subsection (2) of Section 6 of this Act.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall create committees, including, but not limited to:*
  - (a) *Access to Capital Committee;*
  - (b) *Environmental Cost Share Committee;*
  - (c) *Marketing and Entrepreneurship Committee;*
  - (d) *Technology, Infrastructure, and Training Committee;*
  - (e) *Farmland Preservation Committee; and*
  - (f) *Technical Issues Advisory Committee.*
- (2) *Each committee shall be composed of board members knowledgeable about the programs being overseen by that committee.*
- (3) *The committees shall assist the board in developing programs and criteria for programs to be considered by the board and may utilize nonboard members with expertise in the jurisdictional area of the committee for assistance. The committees shall make recommendations to the board, and the board shall determine which programs are to be overseen and implemented by the committees. The board shall determine which individual projects in each program are approved.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

*Programs that shall be created by the board and overseen and implemented by the board or committees include:*

- (1) *Programs that receive direct funding from the board:*
  - (a) *A Farm Market Development and Infrastructure Program to develop regional, integrated farm markets, and regional or community capital projects. The board may authorize moneys to the Department of Agriculture for each year of the biennium to be used for agriculture market development and infrastructure; and*
  - (b) *An Agricultural Entrepreneurship Program overseen by the board to support small farm agricultural diversification through technical assistance, business mentoring, and financial incentives.*
- (2) *Programs that receive direct authorization for moneys from the agricultural development fund by the General Assembly may include, but not be limited to:*
  - (a) *An Environmental Stewardship Program to provide cost-share assistance to farmland owners for compliance with the state agriculture water quality plan and other environmental compliance requirements; and*
  - (b) *A Rural Water Line Extension Program to provide municipal water in areas of high agricultural activity or need. Priority shall be given to the tobacco-impacted communities most adversely affected by tobacco losses. The General Assembly shall authorize the issuance of bonds through the Kentucky Infrastructure Authority for this program.*

- (3) *The board may create and fund other agricultural assistance programs in addition to those created under subsection (1) of this section, including an environmental cleanup program for cost-share assistance to tobacco warehouse operators for demolition and abatement of environmental hazards associated with tobacco warehouse structures.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

*The board is authorized to establish a Center for Entrepreneurship to operate under the Agricultural Entrepreneurship Program provided in subsection (1)(b) of Section 9 of this Act. The duties of the center shall include:*

- (1) *Primarily identifying and coordinating with existing agencies in order to develop and deliver entrepreneurial assistance. The center shall be primarily a clearinghouse requiring little or no capital construction;*
- (2) *Assisting local individuals and entities and regional and statewide entities in developing and carrying out entrepreneurial efforts relating to agriculture; and*
- (3) *Advising the Agricultural Development Board on the fiscal soundness and other aspects of entrepreneurial proposals.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

- (1) *Each county shall establish an agricultural development council to evaluate the needs of the local agricultural economy and to devise a plan for the county that would identify programs best suited for the agricultural development of the county. The council shall assist prospective applicants in the council's county in obtaining moneys from the agricultural development fund. Consideration shall be given to racial and gender equity in the appointment of council members. Each council shall consist of eight (8) members as follows:*
  - (a) *Two (2) farmers selected by the Farm Service Agency county committee;*
  - (b) *Two (2) members selected by the board or boards of the soil conservation district or districts serving the county;*
  - (c) *Two (2) members selected by the county extension council, one (1) of whom shall have experience in agricultural diversification; and*
  - (d) *Two (2) young farmers between the ages of twenty-one (21) and forty (40), selected by the six (6) members in paragraphs (a) to (c) of this subsection.*
- (2) *Members of the councils shall be initially appointed by August 1, 2000. These members shall serve until June 30, 2002. On July 1, 2002, and every two (2) years thereafter, members shall be appointed for two (2) year terms.*
- (3) *Each council shall be attached to the county cooperative extension service for administrative support.*
- (4) *Each council shall receive guidance and assistance from the board as the council devises plans and assists applicants as provided in subsection (1) of this section.*
- (5) *Councils shall make applicants aware of criteria for projects set out in Section 6 of this Act.*
- (6) *Councils shall be responsible for developing local strategies for enhancing agricultural opportunities and assisting local farmers.*
- (7) *Each council shall utilize the resources of the Agricultural Entrepreneurship Program created in Section 9 of this Act, the Kentucky Small Business Development Center Network, and the Kentucky Department of Agriculture for assistance and support in aiding prospective applicants in obtaining moneys from the fund.*
- (8) *Each county council shall provide its plan to the board. If the state board recommends changes in the county plan that the council does not agree with, the council may take the plan before the subcommittee created in Section 12 of this Act for discussion and possible resolution of differences.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

- (1) *There is created a permanent subcommittee of the Legislative Research Commission to be known as the Tobacco Settlement Agreement Fund Oversight Committee. The subcommittee shall be composed of twelve (12) members and shall include six (6) members of the House of Representatives and six (6) members of the*

*Senate. The subcommittee shall include members of the minority party as nearly proportional to their membership in the General Assembly as mathematically possible. The Legislative Research Commission shall appoint, from the membership of each house of the General Assembly, the members of the subcommittee for terms of two (2) years. The appointed members shall elect one (1) of their number to serve as chair. Any vacancy that may occur in the membership of the subcommittee shall be filled by the Legislative Research Commission at its next regularly scheduled meeting after the vacancy occurs.*

- (2) *The subcommittee shall meet monthly, or at the call of the chair. The members of the subcommittee shall be compensated for attending meetings as provided in KRS 7.090(3) and 7.110(5).*
- (3) *A quorum of the subcommittee shall consist of seven (7) members. A majority of the members present may act upon matters before the subcommittee.*
- (4) *Any professional, clerical, or other employees required by the subcommittee shall be provided in accordance with KRS 7.090(4) and (5).*
- (5)
  - (a) *Subsections (6) to (10) of this section shall apply only to the expenditures from and projects under the agricultural development fund;*
  - (b) *Subsection (11) shall apply to all expenditures under the tobacco settlement agreement fund created in KRS 248.654; and*
  - (c) *Subsection (12) shall apply to expenditures from the Early Childhood Development fund and the Kentucky Health Care Improvement fund created in House Bill 583 of this 2000 Regular Session.*
- (6) *The subcommittee shall review each project being submitted to the Agricultural Development Board. In reviewing the projects, the subcommittee shall determine whether the criteria or requirements required by Sections 1 to 14 of this Act have been met and whether any other relevant requirements have been met.*
- (7)
  - (a) *If the subcommittee determines that any of the criteria or requirements required by Sections 1 to 14 of this Act, except as provided in subsection (5) of this section, have not been met, the subcommittee may, by majority vote, recommend to the board in writing that a project not be approved.*
  - (b) *If the subcommittee determines that all relevant criteria were met for proposals not approved by the board, the subcommittee may, by majority vote, recommend to the board in writing that the project be approved.*
  - (c) *The reasons for recommending that a project be approved or not approved shall be stated in correspondence from the subcommittee, which shall be issued within thirty (30) days of action of the subcommittee.*
- (8) *If the board proceeds with approval of a project under the agricultural development fund that the subcommittee has recommended in writing not be approved, or refuses to approve a project that the subcommittee has recommended in writing be approved, the board shall provide a written explanation to the subcommittee as to why the board took that action on the project. The written explanation shall be sent within thirty (30) days of receiving the subcommittee's notification.*
- (9) *The subcommittee shall also hear cases that arise under subsection (8) of Section 11 and subsection (4) of Section 6 of this Act. In these cases the subcommittee shall provide a forum for discussion and possible resolution of differences between the board and the affected party. If the differences are not resolved, the subcommittee may, by majority vote, recommend to the board in writing a course of action.*
- (10) *The subcommittee shall maintain records of its findings and determinations. The records shall be transmitted to the appropriate interim joint committees of the Legislative Research Commission within thirty (30) days of making any determination.*
- (11) *The subcommittee shall issue an annual written report to the Legislative Research Commission regarding the findings of the subcommittee.*
- (12) *All expenditures under the Early Childhood Development fund and the Kentucky Health Care Improvement fund created in House Bill 583 of the 2000 Regular Session of the General Assembly shall be reported to the subcommittee. The expenditures shall be submitted in an electronic format in a manner approved by the Legislative Research Commission in order for the Commission to have a repository of information in Master Settlement Agreement funding expenditures.*

SECTION 13. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

*The Kentucky Department of Agriculture may provide technical assistance to local individuals and entities, county rural development advisory councils, and regional entities in developing proposals and in implementing proposals approved by the Agricultural Development Board.*

SECTION 14. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

- (1) *Those agencies and educational institutions that receive agriculturally related funding under the provisions of Sections 1 to 14 of this Act, and those that receive state funding relating to assisting agriculture and farmers in this state shall devote efforts to revitalization and diversification of tobacco farms.*
- (2) *Each agency or institution in subsection (1) of this section shall issue a semiannual report on the details of the efforts it is carrying out to revitalize and diversify tobacco farms. The report shall include details of successes that have been achieved and shall be provided to the subcommittee created in Section 12 of this Act.*

Section 15. KRS 12.023 is amended to read as follows:

The following organizational units and administrative bodies shall be attached to the Office of the Governor:

- (1) Council on Postsecondary Education;
- (2) Department of Military Affairs;
- (3) Department for Local Government;
- (4) Kentucky Commission on Human Rights;
- (5) Kentucky Commission on Women;
- (6) Kentucky Commission on Military Affairs;
- (7) Coal Marketing and Export Council;
- (8) Governor's Office of Child Abuse and Domestic Violence Services;
- (9) Office of the Chief Information Officer;~~[-and]~~
- (10) Office of Coal Marketing and Export; *and*
- (11) *Agricultural Development Board.*

Section 16. As used in subsection (2) of Section 1 of this Act, "agricultural development fund" means the "rural development fund" created in House Bill 583 of this 2000 Regular Session, or a fund created in other legislation of this 2000 Regular Session to receive moneys for agriculture in the tobacco settlement agreement fund established by KRS 248.654. In codifying subsection (2) of Section 1 of this Act, the Reviser of Statutes may substitute the relevant KRS section number for the phrase "Act of the 2000 Regular Session" in that subsection.

Section 17. Whereas it is important to establish the administrative functions of this Act as soon as possible, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved April 26, 2000**

## **CHAPTER 531**

**(SB 113)**

AN ACT relating to the classification of cities.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Indian Hills, in Jefferson County, is such as to justify its being classified as a city of the fourth class; and

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Cave City, in Barren County, is such as to justify its being classified as a city of the fourth class; and

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Horse Cave, in Hart County, is such to justify its being classified as a city of the fourth class;

NOW THEREFORE,

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

Section 1. The City of Indian Hills, in Jefferson County, is transferred from the fifth to the fourth class of cities.

Section 2. The City of Cave City, in Barren County, is transferred from the fifth to the fourth class of cities.

Section 3. The City of Horse Cave, in Hart County, is transferred from the fifth to the fourth class of cities.

**Approved April 26, 2000**

## **CHAPTER 532**

**(SB 34)**

AN ACT relating to state government.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 6 of this Act, unless the context indicates otherwise:*

- (1) *"Board" means the board of directors of the Red Fox Tri-County Cooperative Corporation;*
- (2) *"Corporation" means the Red Fox Tri-County Cooperative Corporation, consisting of Knott, Letcher, and Perry Counties; and*
- (3) *"Project" means the Red Fox Golf Course and Tourism Project.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

*The Red Fox Tri-County Cooperative Corporation, consisting of Knott, Letcher, and Perry Counties, is created and established as an independent, de jure municipal corporation and political subdivision of the Commonwealth that shall be a public body corporate and politic. The corporation shall develop, operate, and manage the Red Fox Golf Course and Tourism Project funded by 1998 Ky. Acts ch. 615, Parts I and X. The corporation shall be attached to the Finance and Administration Cabinet for administrative purposes.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The corporation shall be governed by a board of directors consisting of seven (7) voting members and three (3) ex officio members as follows:*
  - (a) *Three (3) members representing the three (3) county governments, one (1) to be appointed by the county judge/executive of Knott County, one (1) to be appointed by the county judge/executive of Letcher County, and one (1) to be appointed by the county judge/executive of Perry County;*
  - (b) *Three (3) members appointed by the Governor, one (1) each from Knott, Letcher, and Perry Counties;*
  - (c) *The secretary of the Finance and Administration Cabinet, or his or her designee, as a voting member;*
  - (d) *The secretary of the Tourism Development Cabinet, or his or her designee, as an ex officio, nonvoting member;*
  - (e) *The secretary of the Cabinet for Economic Development, or his or her designee, as an ex officio, nonvoting member; and*
  - (f) *The commissioner of the Department for Local Government, or his or her designee, as an ex officio, nonvoting member.*
- (2) *Appointed members shall serve staggered terms of four (4) years beginning August 1, 2000, except that of the initial appointments:*
  - (a) *One (1) member appointed by the Governor and the member appointed by the county judge/executive of Knott County shall each serve a term of four (4) years;*

- (b) *One (1) member appointed by the Governor and the member appointed by the county judge/executive of Letcher County shall each serve a term of three (3) years;*
- (c) *The one (1) member appointed by the county judge/executive of Perry County shall serve a term of two (2) years; and*
- (d) *One (1) member appointed by the Governor shall serve a term of one (1) year.*
- (3) *A member may be removed by the appointing authority only for neglect of duty, misfeasance, or malfeasance and after being afforded an opportunity for a hearing in accordance with KRS Chapter 13B.*
- (4) *Members of the board shall serve without compensation, but shall be reimbursed for actual and necessary travel expenses incurred in the performance of their duties. The reimbursement shall be in accordance with administrative regulations promulgated under KRS Chapter 13A by the Finance and Administration Cabinet.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall develop articles of incorporation and appropriate documentation to establish its existence as a corporation under KRS 58.180.*
- (2) *Five (5) members of the board shall constitute a quorum, with a majority of members present authorized to act upon any matter legally before the corporation.*
- (3) *The board may enact bylaws concerning the election of officers and other administrative procedures it deems necessary.*
- (4) *The board may adopt administrative regulations governing the operation, maintenance, or use of property under its custody and control in accordance with KRS Chapter 13A.*
- (5) *Minutes and records of all meetings of the board shall be retained, and all official actions shall be recorded.*
- (6) *The board may establish an executive committee from among its membership with full authority to act between its meetings to the extent delegated by vote of a majority of the members of the board.*
- (7) *The board may employ a full-time executive director who shall hold office at the board's pleasure.*
  - (a) *The executive director shall act under the direction of the board in employing necessary staff to perform its duties and exercise its powers.*
  - (b) *The executive director shall keep all minutes, records, and orders of the corporation and shall be responsible for the preservation of all of the documents, which shall be public records under KRS 61.870 to 61.884.*
- (8) *The corporation shall be a participating agency in the Kentucky Employees Retirement System. Its employees shall be considered state employees for the purpose of participating in the Kentucky Employees Retirement System and shall be entitled to the requirements and benefits provided to other system participants.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

*The Red Fox Tri-County Cooperative Corporation shall have the following powers and duties:*

- (1) *The corporation shall supervise the design and construction of the Red Fox Golf Course project and shall provide all operation and management functions for the facility and for any other property acquired or leased under its powers established in this section. The corporation shall provide any assistance necessary to the Kentucky Transportation Cabinet in the design and building of roads associated with the project.*
- (2) *The corporation shall promote the growth and development of the project and shall promote tourism and recreation in the area through the project.*
- (3) *The corporation shall have the exclusive control of all functions at the golf course facility.*
- (4) *The corporation shall participate with local hotels and the travel industry to develop tourist packages and additional services to attract tourists to the project.*

- (5) *The corporation may take, acquire, and hold property, and all interests therein, by deed, purchase, gift, devise, bequest, lease, or by transfer from the State Property and Buildings Commission, and may dispose of any property so acquired in any manner by law.*
- (6) *The corporation may levy a surcharge on golf course fees to contribute to operating revenue.*
- (7) *The corporation may sue and be sued and maintain and defend legal actions in its corporate name.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *All revenues derived by the corporation from the use of the Red Fox project, contributions to the Red Fox Tri-County Cooperative Corporation from other sources, and any revenues derived by the corporation from any other source shall be used solely for defraying the expenses of the corporation, including payment on debt; the cost of management and operation of its facilities; the creation of an adequate reserve for repair, replacement, debt service, and capital improvements; the procurement of insurance; and promotional activities.*
- (2) *The Auditor of Public Accounts shall conduct an annual audit of all funds of the corporation and its affiliated entities, if any, and shall report to the Governor and the Legislative Research Commission.*

Section 7. KRS 12.210 is amended to read as follows:

- (1) The Governor, or any department with the approval of the Governor, may employ and fix the term of employment and the compensation to be paid to an attorney or attorneys for legal services to be performed for the Governor or for such department. An attorney hired for the collection of revenue owed to the state by a resident shall not be hired by personal service contract. ~~Before approving the employment of an attorney the Governor shall consult the Attorney General as to whether legal services requested by departments are available in the Attorney General's office.~~ The compensation and expenses of any attorney or attorneys employed under the provisions of this section shall be paid out of the appropriations made to such department as other salaries, compensation and expenses are paid, except when the terms of employment provide that the compensation shall be on a contingent basis, and in such event the attorneys may be paid the amount specified out of the moneys recovered by them or out of the general fund. If the Governor approves the employment, the terms of employment shall be duly entered by executive order upon the executive journal in the Office of the Secretary of State.
- (2) An attorney may be employed pursuant to the provisions of subsection (1) of this section to render legal services for one (1) or more departments, boards, program cabinets, offices or commissions.

Section 8. KRS 12.213 is amended to read as follows:

The Governor shall provide by regulation ~~with advice of the Attorney General,~~ for the defense of employees or former employees of the Commonwealth pursuant to KRS 12.211 to 12.215 by one (1) or more of the following methods:

- (1) By the Attorney General;
- (2) By employing other counsel for this purpose as provided for in KRS 12.210;
- (3) By authorizing the purchase of insurance which requires that the insurer provide or underwrite the cost of the defense; or
- (4) By authorizing defense by counsel assigned to or employed by the department, agency, board, commission, bureau, or authority which employed the person requesting the defense.

Section 9. The General Assembly confirms Executive Order 98-1025, dated August 3, 1998, as amended by Executive Order 98-1143, dated August 24, 1998, to the extent they are not otherwise confirmed or superseded by this Act.

**Approved April 26, 2000**



**CHAPTER 533****(SB 49)**

AN ACT relating to tobacco and declaring an emergency.

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

Section 1. KRS 141.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Secretary" means the secretary of revenue;
- (2) "Cabinet" means the Revenue Cabinet;
- (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 1997, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 1997, that would otherwise terminate, and as modified by KRS 141.0101;
- (4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;
- (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;
- (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;
- (7) "Individual" means a natural person;
- (8) For taxable years beginning on or after January 1, 1974, "federal income tax" means the amount of federal income tax actually paid or accrued for the taxable year on taxable income as defined in Section 63 of the Internal Revenue Code, and taxed under the provisions of this chapter, minus any federal tax credits actually utilized by the taxpayer;
- (9) "Gross income" in the case of taxpayers other than corporations means "gross income" as defined in Section 61 of the Internal Revenue Code;
- (10) "Adjusted gross income" in the case of taxpayers other than corporations means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
  - (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;
  - (b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;
  - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
  - (d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;
  - (e) Exclude Social Security and railroad retirement benefits subject to federal income tax;
  - (f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;
  - (g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;
  - (h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the armed forces of the United States or any dependent of such person who served in Vietnam;

- (i)
  - 1. Exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.
  - 2. The "applicable amount" shall be:
    - a. Twenty-five percent (25%), but not more than six thousand two hundred fifty dollars (\$6,250), for taxable years beginning after December 31, 1994, and before January 1, 1996;
    - b. Fifty percent (50%), but not more than twelve thousand five hundred dollars (\$12,500), for taxable years beginning after December 31, 1995, and before January 1, 1997;
    - c. Seventy-five percent (75%), but not more than eighteen thousand seven hundred fifty dollars (\$18,750), for taxable years beginning after December 31, 1996, and before January 1, 1998; and
    - d. One hundred percent (100%), but not more than thirty-five thousand dollars (\$35,000), for taxable years beginning after December 31, 1997.
  - 3. As used in this paragraph:
    - a. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;
    - b. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code; and
    - c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code;
- (j)
  - 1.
    - a. Exclude the distributive share of a shareholder's net income from an S corporation subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300; and
    - b. Exclude the portion of the distributive share of a shareholder's net income from an S corporation related to a qualified subchapter S subsidiary subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300.
  - 2. The shareholder's basis of stock held in a S corporation where the S corporation or its qualified subchapter S subsidiary is subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300 shall be the same as the basis for federal income tax purposes;
- (k) Exclude for taxable years beginning after December 31, 1998, to the extent not already excluded from gross income, any amounts paid for health insurance which constitutes medical care coverage for the taxpayer, the taxpayer's spouse, and dependents during the taxable year. Any amounts paid by the taxpayer for health insurance that are excluded pursuant to this paragraph shall not be allowed as a deduction in computing the taxpayer's net income under subsection (11) of this section;
- (l) Exclude income received for services performed as a precinct worker for election training or for working at election booths in state, county, and local primary, regular, or special elections;
- (m) Exclude any amount paid during the taxable year for insurance for long-term care as defined in KRS 304.14-600;
- (n) Exclude any capital gains income attributable to property taken by eminent domain;~~and~~
- (o) Exclude any amount received by a producer of tobacco or a tobacco quota owner from *the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on*

~~November 22, 1998[a national settlement agreement between the tobacco industry and the states' Attorneys General or from any federal legislation related to the agreement];~~

- (p) *Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement; and*
  - (q) *Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted from the 1998 to the 1999 calendar year as provided under Pub. L. No. 106-78, Title 8, sec. 803;*
- (11) "Net income" in the case of taxpayers other than corporations means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction allowed by KRS 141.0202 and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
- (a) Any deduction allowed by the Internal Revenue Code for state taxes measured by gross or net income, except that such taxes paid to foreign countries may be deducted;
  - (b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);
  - (c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and
  - (d) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
- (12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:
- (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;
  - (b) Exclude all dividend income received after December 31, 1969;
  - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
  - (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;
  - (e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;
  - (f) Include the amount calculated under KRS 141.205;
  - (g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income;~~and~~
  - (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);

- (i) *Exclude any amount received by a producer of tobacco or a tobacco quota owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;*
  - (j) *Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement; and*
  - (k) *Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted from the 1998 to the 1999 calendar year as provided under Pub. L. No. 106-78, Title 8, sec. 803;*
- (13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202 and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:
- (a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;
  - (b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;
  - (c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;
  - (d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;
  - (e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code); and
  - (f) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
- (14) (a) "Taxable net income," in the case of corporations having property or payroll only in this state, means "net income" as defined in subsection (13) of this section;
- (b) "Taxable net income," in the case of corporations having property or payroll both within and without this state means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120;
- (c) "Property" means either real property or tangible personal property which is either owned or leased. "Payroll" means compensation paid to one (1) or more individuals, as described in KRS 141.120(8)(b). Property and payroll are deemed to be entirely within this state if all other states are prohibited by Public Law 86-272, as it existed on December 31, 1975, from enforcing income tax jurisdiction;
- (d) "Taxable net income" in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year; and
- (e) "Taxable net income" in the case of a corporation that meets the requirements established under Section 856 of the Internal Revenue Code to be a real estate investment trust, means "real estate investment trust taxable income" as defined in Section 857(b)(2) of the Internal Revenue Code;
- (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;

- (16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the secretary, "taxable year" means the period for which such return is made;
- (17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;
- (18) "Nonresident" means any individual not a resident of this state;
- (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;
- (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;
- (21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;
- (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
- (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;
- (24) "Corporations" means "corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;
- (25) "S corporations" means "S corporations" as defined in Section 1361(a) of the Internal Revenue Code. Stockholders of a corporation qualifying as an "S corporation" under this chapter may elect to treat such qualification as an initial qualification under Subchapter S of the Internal Revenue Code Sections.

SECTION 2. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

***The General Assembly finds that the Tobacco Price Support Program administered by the United States Department of Agriculture under 7 U.S.C. sec. 1314 is the best and most efficient means of preserving the economic health of thousands of tobacco farms throughout the United States and throughout Kentucky. Based upon this finding, the General Assembly declares that the Tobacco Task Force shall study methods to support the Tobacco Price Support Program and its continuing role in the economic viability of Kentucky's small tobacco farmer.***

Section 3. (1) The Tobacco Task Force is directed to study the development of contracting for tobacco growing and purchasing, study the effect of tobacco contracting on tobacco income and examine what the role of the state should be with regard to tobacco contracting. The task force shall research the issues and recommend strategies for the General Assembly. The research shall include but not be limited to: monitoring the opening day of the 2000 burley tobacco market; consideration of the treatment of producers, particularly small producers, by the tobacco companies seeking to contract for tobacco in the 2000 tobacco market; holding task force meetings addressing potential discrimination against small tobacco producers because of contracting; hearing testimony from tobacco growers from the various regions of the state regarding contracting; hearing testimony from tobacco companies regarding contracting; structuring a proposed framework for state regulation of tobacco contracting in Kentucky; examining programs in other states regarding contracting for tobacco; and working with other tobacco-producing states to formulate a uniform approach to state regulation of burley tobacco contracting.

- (2) The task force shall hold no less than four (4) meetings to carry out the purposes of subsection (1) of this section. The task force shall, at a minimum, seek testimony from the Kentucky Farm Bureau, the Community Farm Alliance, the Burley Tobacco Growers Cooperative Association, the Council for Burley Tobacco, the University of Kentucky College of Agriculture, the Burley Farmers Advisory Council, small and large tobacco growers from various regions of the state, the tobacco companies who purchase burley tobacco in Kentucky, the Governor's Office of Agriculture Policy, the Department of Agriculture, and other states that have or are proposing similar contracting legislation.
- (3) The task force shall report to the Legislative Research Commission and the Interim Joint Committee on Agriculture and Natural Resources no later than December 15, 2000. In the event that the Federal Tobacco Price Support Program ends before the report is due, the task force shall immediately advise the Legislative Research Commission and the Governor's Office on the steps to take to best protect the interests of the state and the state's tobacco producers.

- (4) Provisions of this Act to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Section 4. The amendments contained in Section 1 of this Act shall retroactively apply to tax years beginning after December 31, 1998.

Section 5. Whereas the filing deadline for income taxes is April 15, an emergency is declared to exist, and Section 1 of this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Approved April 26, 2000**

## **CHAPTER 534**

**(SB 256)**

AN ACT relating to juvenile justice.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

- (1) *Any county, urban-county, or charter county may apply to the Department of Juvenile Justice to construct, operate, or contract for the operation of a youth alternative center.*
- (2) *The youth alternative center shall be a nonsecure facility and shall be under the jurisdiction of that governing body, subject to the provisions of this chapter.*
- (3) *The youth alternative center shall be used only for the detention of juveniles. The youth alternative center shall not be part of a county jail or other facility that houses adult offenders.*
- (4) *The youth alternative center may be used as a place of detention for juveniles by order of a court prior to adjudication and after adjudication regardless of whether the child is a status offender, public offender, or youthful offender.*

Section 2. KRS 15A.040 is amended to read as follows:

- (1) The Criminal Justice Council shall advise and recommend to the Governor and the General Assembly policies and direction for long-range planning regarding all elements of the criminal justice system. The council shall review and make written recommendations on subjects including but not limited to administration of the criminal justice system, the rights of crime victims, sentencing issues, capital litigation, a comprehensive strategy to address gangs and gang problems, and the Penal Code. Recommendations for these and all other issues shall be submitted to the Governor and the Legislative Research Commission at least six (6) months prior to every regular session of the Kentucky General Assembly. The council shall:
  - (a) Make recommendations to the justice secretary with respect to the award of state and federal grants and ensure that the grants are consistent with the priorities adopted by the Governor, the General Assembly, and the council;
  - (b) Conduct comprehensive planning to promote the maximum benefits of grants;
  - (c) Develop model criminal justice programs;
  - (d) Disseminate information on criminal justice issues and crime trends;
  - (e) Work with community leaders to assess the influence of gangs and the problems that gangs cause for local communities, assist local communities in mobilizing community resources to address their problems, sponsor multidisciplinary training to help communities focus on proven strategies to address gang problems, and conduct an ongoing assessment of gang problems in local communities;
  - (f) Recommend any modifications of law necessary to insure that the laws adequately address problems identified in local communities relating to gangs;
  - (g) Provide technical assistance to all criminal justice agencies;
  - (h) Review and evaluate proposed legislation affecting criminal justice; and

- (i) All reports and proposed legislation shall be presented to the Interim Joint Committee on Judiciary not later than July 1 of the year prior to the beginning of each regular session of the General Assembly.
- (2) Membership of the Criminal Justice Council shall consist of the following:
  - (a) The secretary of the Justice Cabinet or his designee;
  - (b) The director of the Administrative Office of the Courts or his designee;
  - (c) The Attorney General or his designee;
  - (d) Two (2) members of the House of Representatives as designated by the Speaker of the House;
  - (e) Two (2) members of the Senate as designated by the President of the Senate;
  - (f) A crime victim, as defined in KRS Chapter 346, to be selected and appointed by the Governor;
  - (g) A victim advocate, as defined in KRS 421.570, to be selected and appointed by the Governor;
  - (h) A Kentucky college or university professor specializing in criminology, corrections, or a similar discipline to be selected and appointed by the Governor;
  - (i) The public advocate or his designee;
  - (j) The president of the Kentucky Sheriffs' Association;
  - (k) The commissioner of state police or his designee;
  - (l) A person selected by the Kentucky State Lodge of the Fraternal Order of Police;
  - (m) The president of the Kentucky Association of Chiefs of Police;
  - (n) A member of the Prosecutors Advisory Council as chosen by the council;
  - (o) The Chief Justice or a justice or judge designated by him;
  - (p) One (1) member of the Kentucky Association of Criminal Defense Lawyers, appointed by the president of the organization;
  - (q) One (1) member of the Kentucky Jailers' Association appointed by the president of the organization;
  - (r) One (1) member of the Circuit Clerks' Association;
  - (s) Three (3) criminal law professors, one each from the University of Kentucky College of Law, the Louis D. Brandeis School of Law at the University of Louisville, and the Salmon P. Chase College of Law at Northern Kentucky University, to be selected and appointed by the Governor;
  - (t) One (1) District Judge, designated by the Chief Justice;
  - (u) One (1) Circuit Judge, designated by the Chief Justice;
  - (v) One (1) Court of Appeals Judge, designated by the Chief Justice;
  - (w) One (1) representative from an organization dedicated to restorative principles of justice involving victims, the community, and offenders;~~and~~
  - (x) One (1) individual with a demonstrated commitment to youth advocacy, to be selected and appointed by the Governor;
  - (y) *The commissioner of the Department of Juvenile Justice or his designee;*
  - (z) *The commissioner of the Department of Corrections, or his designee; and*
  - (aa) *The commissioner of the Department of Criminal Justice Training or his designee.*
- (3) The secretary of justice shall serve ex officio as chairman of the council. Each member of the council shall have one (1) vote. Members of the council shall serve without compensation but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties.
- (4) The council shall meet at least once every three (3) months.
- (5) The council may hold additional meetings:
  - (a) On the call of the chairman;

- (b) At the request of the Governor to the chairman; or
  - (c) At the written request of the members to the chairman, signed by a majority of the members.
- (6) Two-thirds (2/3) members of the council shall constitute a quorum for the conduct of business at a meeting.
  - (7) Failure of any member to attend two (2) meetings within a six (6) month period shall be deemed a resignation from the council and a new member shall be named by the appointing authority.
  - (8) The council is authorized to establish committees and appoint additional persons who may not be members of the council as necessary to effectuate its purposes, including but not limited to:
    - (a) Uniform Criminal Justice Information System committee;
    - (b) Committee on sentencing; and
    - (c) Penal Code committee.
  - (9) The council's administrative functions shall be performed by a full-time executive director appointed by the secretary of the Justice Cabinet and supported by the administrative, clerical, and other staff as allowed by budgetary limitations and as needed to fulfill the council's role and mission and to coordinate its activities.

Section 3. KRS 15A.067 is amended to read as follows:

- (1) As used in this section, "facility" means any of the facilities specified in KRS 15A.200 operated by a political subdivision of the Commonwealth of Kentucky for the care of juveniles alleged to be delinquent or adjudicated delinquent.
- (2) There is established within the Department of Juvenile Justice, a Division of Educational Services, that shall be responsible for **ensuring** the delivery of appropriate educational programs to incarcerated youth. Each facility shall provide educational services to ~~youth [adjudicated delinquents]~~ who may be ordered by the court to remain in the juvenile detention facility for an indeterminate period.
- (3) Any other statutes to the contrary notwithstanding, the Department of Juvenile Justice shall have access to all educational records, public or private, of any juvenile in a facility or program or informal adjustment authorized by law.
- (4) The Division of Educational Services shall ensure that all incarcerated youth be provided appropriate screening and educational programs as follows:
  - (a) For students identified before incarceration as having an educational disability, the Division of Educational Services shall make specially designed instruction and related services available as required by Kentucky Board of Education administrative regulations applicable to students with disabilities.
  - (b) For students incarcerated for more than fourteen (14) days, the division shall ensure that appropriate screening is provided to all youth. Screening shall include, but not be limited to, seeking the juvenile's educational record.
  - (c) For students incarcerated for more than thirty (30) days, the division shall ensure that all youth are provided an appropriate education.
- (5) The Department of Juvenile Justice shall be responsible for providing, in its contracts with private juvenile detention facilities and county jails, the specific obligations of those entities to provide educational services to incarcerated juveniles consistent with this section, including funding provisions.
- (6) The Department of Education and all local school district administrators shall cooperate with officials responsible for the operation of juvenile detention facilities and with the Division of Educational Services to ensure that all documents necessary to establish educational status and need shall follow the students who are being held in these facilities so the students can be afforded educational opportunities.
- (7)
  - (a) Upon disposition by the juvenile court that an adjudicated juvenile shall stay in a juvenile detention facility for any period of time, the facility shall notify the juvenile's last resident school district of the student's whereabouts.
  - (b) Within five (5) days after the juvenile is released, the Division of Educational Services shall notify the district in which the student will reside of the youth's release and educational status and forward any educational records.



- (8) The Department of Juvenile Justice shall, after consultation with the Department of Education, promulgate an administrative regulation for the effective implementation of this section.

Section 4. KRS 15A.200 is amended to read as follows:

As used in KRS 15A.210 to 15A.240 and KRS 15A.990:

- (1) "Certified juvenile~~[-holding]~~ facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training developed and approved by, the Department of Juvenile Justice after consultation with other appropriate state agencies;
- (2) "Intermittent holding facility" means a physically secure setting, ***approved by the Department of Juvenile Justice***, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners ***in which a child accused of a public offense may be detained for a period not to exceed seventy-two (72) hours, exclusive of weekends and holidays, prior to a detention hearing as provided in KRS 610.265, and*** in which children are supervised and observed on a regular basis ***by certified juvenile facility staff. Employees of jails who meet the qualifications of the Department of Juvenile Justice may supervise juvenile as well as adult prisoners;***
- (3) "Juvenile holding facility" means a physically secure setting, approved by the Department of Juvenile Justice, which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation between juvenile and adult facility spatial areas, and which is staffed exclusively by sufficient certified juvenile~~[-holding]~~ facility staff to provide twenty-four (24) hours-per-day, supervision. Employees of jails who meet the qualifications of the Department of Juvenile Justice may supervise juvenile as well as adult prisoners;~~[-and]~~
- (4) "Secure juvenile detention facility" means any facility used for the secure detention of children other than a jail, police station, lockup, intermittent holding facility, or any building which is a part of or attached to any facility in which adult prisoners are confined or which shares staff with a facility in which adult prisoners are confined; ***and***
- (5) ***"Youth alternative center" means a nonsecure facility, approved by the Department of Juvenile Justice, for the nonsecure detention of juveniles.***

Section 5. KRS 600.010 is amended to read as follows:

- (1) KRS Chapters 600 to 645 shall be known as the Kentucky Unified Juvenile Code.
- (2) KRS Chapters 600 to 645 shall be interpreted to effectuate the following express legislative purposes:
  - (a) The Commonwealth shall direct its efforts to promoting protection of children; to the strengthening and encouragement of family life for the protection and care of children; to strengthen and maintain the biological family unit; and to offer all available resources to any family in need of them;
  - (b) It also shall be declared to be the policy of this Commonwealth that all efforts shall be directed toward providing each child a safe and nurturing home;
  - (c) The court shall show that other less restrictive alternatives have been attempted or are not feasible in order to insure that children are not removed from families except when absolutely necessary;
  - (d) Any child brought before the court under KRS Chapters 600 to 645 shall have a right to treatment reasonably calculated to bring about an improvement of his condition;~~[-and]~~
  - (e) ***KRS Chapter 635 shall be interpreted to promote the best interests of the child through providing treatment and sanctions to reduce recidivism and assist in making the child a productive citizen by advancing the principles of personal responsibility, accountability, and reformation, while maintaining public safety, and seeking restitution and reparation;***
  - (f) ***KRS Chapter 640 shall be interpreted to promote public safety and the concept that every child be held accountable for his or her conduct through the use of restitution, reparation, and sanctions, in an effort to rehabilitate delinquent youth; and***
  - (g) It shall further be the policy of this Commonwealth to provide judicial procedures in which rights and interests of all parties, including the parents ***and victims***, are recognized and all parties are assured prompt and fair hearings. Unless otherwise provided, such protections belong to the child individually and may not be waived by any other party.

Section 6. KRS 600.020 is amended to read as follows:

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

- (1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child:
  - (a) Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;
  - (b) Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;
  - (c) Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005(12);
  - (d) Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;
  - (e) Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;
  - (f) Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;
  - (g) Abandons or exploits the child; or
  - (h) Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;
- (2) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet;
- (3) "Cabinet" means the Cabinet for Families and Children;
- (4) "Certified juvenile holding facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training developed and approved by, the Department of Juvenile Justice after consultation with other appropriate state agencies;
- (5) "Child" means any person who has not reached his eighteenth birthday unless otherwise provided;
- (6) "Child-caring facility" means any facility or group home other than a state facility, Department of Juvenile Justice contract facility or group home, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility;
- (7) "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;
- (8) "Clinical treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;
- (9) "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Families and Children, Department of Juvenile Justice, or another facility or agency until the child attains the age of eighteen (18) unless the commitment is discharged under KRS Chapter 605 or the committing court terminates or extends the order;
- (10) "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the Department of Juvenile Justice or the cabinet, which is located within a reasonable proximity of the

child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;

- (11) "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;
- (12) "Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;
- (13) "Court-designated worker" means that organization or individual delegated by the administrative office of the courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;
- (14) "Deadly weapon" has the same meaning as it does in KRS 500.080;
- (15) "Department" means the Department for Social Services;
- (16) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;
- (17) "Detain" means, upon a valid court order, to confine a child pending further proceedings in an intermittent holding facility, a juvenile holding facility, a secure juvenile detention facility, or an alternative form of detention;
- (18) "Diversion agreement" means an agreement entered into between a court-designated worker and a child charged with the commission of offenses set forth in KRS Chapters 630 and 635, the purpose of which is to serve the best interest of the child and to provide redress for those offenses without court action and without the creation of a formal court record;
- (19) "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;
- (20) "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in the child's ability to function within a normal range of performance and behavior with due regard to his age, development, culture, and environment as testified to by a qualified mental health professional;
- (21) "Family service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;
- (22) "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;
- (23) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;
- (24) "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;
- (25) "Habitual truant" means any child who has been found by the court to have been absent from school without valid excuse for three (3) or more days during a one (1) year period or tardy for three (3) or more days on at least three (3) occasions during a one (1) year period;
- (26) "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;
- (27) "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;
- (28) "Informal adjustment" means an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;

- (29) "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;
- (30) "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, in which children are supervised and observed on a regular basis;
- (31) "Juvenile holding facility" means a physically secure setting, approved by the Department of Juvenile Justice, which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile holding facility staff to provide twenty-four (24) hours per day supervision. Employees of jails who meet the qualifications of the Department of Juvenile Justice may supervise juvenile as well as adult prisoners;
- (32) "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; and is conducted at the suitable available facility closest to the child's place of residence;
- (33) "Motor vehicle offense" means any violation of the nonfelony provisions of KRS Chapters 186, 189 or 189A, KRS 177.300, 304.39-110, or 304.39-117;
- (34) "Near fatality" means an injury that, as certified by a physician, places a child in serious or critical condition;
- (35) "Needs of the child" means necessary food, clothing, health, shelter, and education.
- (36) "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;
- (37) "Parent" means the biological or adoptive mother or father of a child;
- (38) "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;
- (39) "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;
- (40) "Physical injury" means substantial physical pain or any impairment of physical condition;
- (41) "Public offense action" means an action, excluding contempt, brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;
- (42) "Qualified mental health professional" means:
  - (a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;
  - (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;
  - (c) A licensed psychologist at the doctoral level or certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under KRS Chapters 600 to 645;
  - (d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center; or

- (e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;
- (43) "Residential treatment facility" means a facility or group home with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of children;
- (44) "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;
- (45) "School personnel" means those certified persons under the supervision of the local public or private education agency;
- (46) "Secretary" means the secretary of the Cabinet for Families and Children;
- (47) "Secure juvenile detention facility" means any facility used for the secure detention of children other than a jail, police station, lockup, intermittent holding facility, or any building which is a part of, or attached to, any facility in which adult prisoners are confined or which shares staff with a facility in which adult prisoners are confined;
- (48) "Secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;
- (49) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily member or organ;
- (50) "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions in which the parent, guardian, or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;
- (51) "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;
- (52) "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew or possession of alcoholic beverages;
- (53) "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;
- (54) "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;
- (55) "Youth alternative center" means a nonsecure facility, approved by the Department of Juvenile Justice, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in *Section 1 of this Act* ~~KRS 610.267 and the administrative regulations promulgated thereunder~~; and
- (56) "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

Section 7. KRS 605.080 is amended to read as follows:

- (1) Any child ordered to be transported, by a committing *or sentencing* court, shall be transported by the sheriff or the jailer of that county. Any other law enforcement agency may enter into agreements with the court, sheriff, or jailer to transport juveniles.

- (2) Any peace officer who conveys a child from the committing court or from the detention facility of the committing court to a residential treatment facility or other facility operated by the Department of Juvenile Justice or the cabinet shall be allowed an amount prescribed by regulation adopted by the Finance and Administration Cabinet calculated by the nearest traveled route, and shall be paid for all necessary expenses for feeding, lodging, and transporting the child. The officer shall make out a full account of all expenses so incurred by him and give the distance traveled. The account shall be verified by the officer upon oath before the District Court and certified by the circuit clerk to the Department of Juvenile Justice or the cabinet, as appropriate, for payment out of funds appropriated to the Department of Juvenile Justice or the cabinet for this purpose. The child's presence shall be necessary at a postdispositional proceeding only as required by court order for good cause. Transportation shall be provided as in subsection (1) of this section and expenses for transportation of a child to a proceeding from a residential treatment facility or other facility operated by the Department of Juvenile Justice or the cabinet shall be paid out of the State Treasury.
- (3) No child shall be transported to any residential treatment facility or other facility, pursuant to order of any court or direction of the cabinet, unless accompanied by an attendant of the same gender, or, when authorized in writing by the court, the Department of Juvenile Justice, or the cabinet, by a parent, grandparent, or adult brother or sister.
- (4) The agent of any residential treatment facility or other facility which receives a child transported to the facility shall report any violation of subsection (2) of this section to the Commonwealth's attorney of the judicial circuit in which the facility is located.
- (5) The Department of Juvenile Justice or the cabinet may pay the necessary traveling expenses of children committed to it for care and treatment from their homes to the residential treatment facility or other facility or home to which they are committed, and the traveling expenses of such children from the facility or home to their homes when discharged or placed on supervised placement.

Section 8. KRS 610.170 is amended to read as follows:

If it appears from the investigation required in KRS 610.100 or otherwise that the parent or other person exercising custodial control or supervision of any child, or the estate of any child, who has been found to fall within the purview of KRS Chapters 600 to 645 and who has been left in his own home or in the home of a relative, placed on probation or placed in a foster home or boarding home, or in the care of a public or private facility or agency, or the Department of Juvenile Justice or the cabinet, is able to contribute to the support of the child, the court shall enter an order requiring the parent or estate to pay a reasonable sum for the support, maintenance, or education of the child. The order shall direct that the money be paid to the circuit clerk to be disbursed as ordered by the court or be paid to the person, facility, agency, or the Department of Juvenile Justice or cabinet to which the child was committed or probated. On application and on such notice as the court may direct, the court may make alterations in the requirement for contribution. The court may issue such orders necessary to compel payment of the sum due. The enforcement of a sentence imposed on a parent who fails to comply with the order of the court may be suspended at the discretion of the court, but the suspension may be revoked at the discretion of the court upon the failure of the parent to obey further orders of the court. This section shall not apply when the parent or other person exercising custodial control or supervision of the child was the victim of the child's criminal conduct *under KRS Chapters 635 or 640*, or filed the complaint against the child *under other provisions of the Unified Juvenile Code*.

Section 9. KRS 610.220 is amended to read as follows:

- (1) ***Except as otherwise provided by statute***, if an officer takes or receives a child into custody, the child may be held at a police station, secure juvenile detention facility, juvenile holding facility, intermittent holding facility, ***youth alternative center***, the offices of the court-designated worker, or, as necessary, in a hospital or clinic for the following purposes:
  - (a) Identification and booking;
  - (b) Attempting to notify the parents or person exercising custodial control or supervision of the child, a relative, guardian, or other responsible person;
  - (c) Photographing;
  - (d) Fingerprinting;
  - (e) Physical examinations, including examinations for evidence;
  - (f) Evidence collection, including scientific tests;

- (g) Records checks;
  - (h) Determining whether the child is subject to trial as an adult; and
  - (i) Other inquiries of a preliminary nature.
- (2) A child may be held in custody pursuant to this section for a period of time not to exceed two (2) hours, unless an extension of time is granted. Permission for an extension of time may be granted by the court, trial commissioner, or court-designated worker pursuant to KRS 610.200(5)(d) and the child may be retained in custody in facilities listed in subsection (1) of this section for the period of retention.

Section 10. KRS 610.310 is amended to read as follows:

- (1) When the ***mental or physical*** health ~~or physical condition~~ of any child before the juvenile court requires it, the court may order the child to be placed in a public or private hospital or institution for ***examination, evaluation,*** treatment, or care~~. In order to ascertain the physical condition of a child, the court may cause the child to be examined~~ by a health officer, ***comprehensive care center,*** ~~or~~ children's clinic, or any reputable physician ***or psychologist*** who will conduct the examination. ***The cabinet and the Department of Juvenile Justice may furnish services under agreements with the individual juvenile courts. For this purpose, any county judge/executive or chief executive officer of an urban-county or charter county government may enter into a contract on behalf of his or her county with the cabinet or the Department of Juvenile Justice for the furnishings of these services.***
- (2) The court may order or consent to necessary medical treatment, including surgical procedures, except for the purpose of abortion, electroshock therapy or psychosurgery as provided in KRS Chapter 645, or sterilization, after a hearing conducted to determine the necessity of such treatment or procedure. In making the order, the court may take into consideration the religious beliefs and practices of the child and his parents or guardian. Reasonable notice, taking into account any emergency circumstances, shall be provided to the parents, guardian or person exercising custodial control or supervision of the child to enable them to attend the hearing.

Section 11. KRS 635.020 is amended to read as follows:

- (1) If, prior to an adjudicatory hearing, there is a reasonable cause to believe that a child before the court has committed a felony other than those described in subsections (2) and (3) of this section, a misdemeanor, or a violation, the court shall initially proceed in accordance with the provisions of this chapter.
- (2) If a child charged with a capital offense, Class A felony, or Class B felony, had attained age fourteen (14) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (3) If a child charged with a Class C or Class D felony has on one (1) prior separate occasion been adjudicated a public offender for a felony offense and had attained the age of sixteen (16) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (4) Any other provision of KRS Chapters ~~610 to 645~~ **610 to 645** to the contrary notwithstanding, if a child charged with a felony in which a firearm, ***whether functional or not,*** was used in the commission of the offense had attained the age of fourteen (14) years at the time of the commission of the alleged offense, he shall be transferred to the Circuit Court for trial as an adult if, following a preliminary hearing, the District Court finds probable cause to believe that the child committed a felony, that a firearm was used in the commission of that felony, and that the child was fourteen (14) years of age or older at the time of the commission of the alleged felony. If convicted in the Circuit Court, he shall be subject to the same penalties as an adult offender, except that until he reaches the age of eighteen (18) years, he shall be confined in a secure detention facility for juveniles or for youthful offenders, unless the provisions of KRS 635.025 apply or unless he is released pursuant to expiration of sentence or parole, and at age eighteen (18) he shall be transferred to an adult facility operated by the Department of Corrections to serve any time remaining on his sentence.
- (5) If a child previously convicted as a youthful offender under the provisions of KRS Chapter 640 is charged with a felony allegedly committed prior to his eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.

- (6) A child who is charged as is provided in subsection (2) of this section and is also charged with a Class C or D felony, a misdemeanor, or a violation arising from the same course of conduct shall have all charges included in the same proceedings; and the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (7) If a person who is eighteen (18) or older and before the court is charged with a felony that occurred prior to his eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (8) All offenses arising out of the same course of conduct shall be tried with the felony arising from that course of conduct, whether the charges are adjudicated under this chapter or under KRS Chapter 640 and transferred to Circuit Court.

Section 12. KRS 635.025 is amended to read as follows:

- (1) Upon motion of the Department of Juvenile Justice, the sentencing Circuit Court may, after notice and hearing, order a youth, transferred under KRS 635.020(4), committed to an adult facility operated by the Department of Corrections if it is established by a preponderance of the evidence that the juvenile:
  - (a) By his or her violent behavior, injured or endangered the life or health of another youthful offender or staff members in the facility or program;
  - (b) Escaped from the facility or program from which the juvenile is being held ~~on more than one (1) occasion~~;
  - (c) By his or her actions, caused disruption in the facility or program by encouraging other residents to engage in violent behavior which has injured or endangered the life or health of other residents or staff of the facility or program;
  - (d) By his or her actions, caused disruption in the facility or program, smuggled contraband into the facility or program, caused contraband to be smuggled into the facility or program, or engaged in other types of behavior which have endangered the life or health of other residents or staff of the facility or program; or
  - (e) By his or her actions has established a pattern of disruptive behavior not conducive to the established policies and procedures of the program.
- (2) The hearing described in subsection (1) of this section shall be held in the sentencing Circuit Court within ten (10) days of the filing of the motion provided for in subsection (1) of this section.
- (3) Upon a youth's admission to a facility or program operated by the Department of Juvenile Justice, the department shall advise that youth of the provisions of this section.
- (4) Upon motion of the Department of Juvenile Justice, the sentencing Circuit Court may, after notice and hearing, order a youth committed to the Department of Corrections, if the Department of Juvenile Justice establishes by a preponderance of the evidence that the youth is mentally ill, dangerous to himself or others, and cannot be adequately treated in the program. The court shall presume that a youth is mentally ill if the youth has pled guilty to, or has been convicted of, a felony and has been found by the court or jury to be guilty but mentally ill.
- (5) Any youth remanded to the Department of Corrections under any provision of this chapter shall not later be placed in a facility operated by the Department of Juvenile Justice.

Section 13. KRS 635.055 is amended to read as follows:

No child who is found to be in contempt of court shall be committed as a public offender as a result of such finding, nor detained because of such finding in a facility other than a secure juvenile detention facility, ~~or~~ juvenile holding facility, **youth alternative center, or an alternative to detention program approved by the Department of Juvenile Justice.**

Section 14. KRS 635.070 is amended to read as follows:

~~The governing authorities of the~~ Department of Juvenile Justice ~~agency, or facility~~ may discharge the child ~~unless the court directs otherwise. Prior to discharge, two (2) weeks~~ **from commitment after providing fourteen (14) days**



**prior** written notice~~[shall be given]~~ to the committing court, to the legal representative of the child, and to the county attorney of the county in which the committing court presides, ***which may object to the discharge by holding a court review under KRS 610.120.*** During the period of commitment or placement, the court may review a dispositional order and may continue or terminate such order as the court deems essential to the best interests of the child.~~[In committing a child to a child-caring facility or a child-placing agency, the court shall select one (1) that is approved by the Department of Juvenile Justice, and children committed to such a facility or agency shall be subject to the visitation and supervision of a probation officer of the Department of Juvenile Justice.]~~

Section 15. KRS 635.100 is amended to read as follows:

- (1) Any child committed to the Department of Juvenile Justice who is placed in a treatment facility or program and who escapes or is absent without leave shall be taken into custody and returned to the custody of the Department of Juvenile Justice by any juvenile probation officer or by any peace officer on direction of the Department of Juvenile Justice.
- (2) Any child committed to the Department of Juvenile Justice who is placed on supervised placement by the Department of Juvenile Justice and who violates the terms or conditions of supervised placement may be~~taken into custody and~~ returned to active custody of the Department of Juvenile Justice ***and may be taken into custody*** by any juvenile probation officer or by any peace officer on direction of the Department of Juvenile Justice.
- (3) ~~A[The] child[ may be]~~ taken into custody ***may be and*** held in a Department of Juvenile Justice facility, program, or contract facility, prior to the administrative hearing, provided a preliminary hearing is held by a person designated by the Department of Juvenile Justice within five (5) days, ***exclusive of weekends and holidays***, of the holding, ***unless the child or his representative request or agree to a longer period of time***, to determine if there is probable cause to believe that the child violated his supervised placement conditions and, if so, to determine if the best interest of the child requires that the child be held in custody pending an administrative hearing pursuant to subsection (4) of this section. The child and his parent or other person exercising custodial control or supervision shall be given an opportunity to be heard and to be represented by counsel at the preliminary hearing.
- (4) If the child is returned to the active custody of the Department of Juvenile Justice ***as provided in subsection (3) of this section***~~[pending a hearing, before readmitting the child to a treatment program pursuant to this section, except as provided in subsection (3) of this section,]~~ an administrative hearing shall be held within ten ~~(10)[working]~~ days, ***exclusive of weekends and holidays***, of the preliminary hearing unless the child and his representative request or agree to a longer period of time. The hearing shall be held by one (1) hearing officer designated by the Department of Juvenile Justice to hear such matters at which time the child and his parent or other person exercising custodial control or supervision shall be given an opportunity to be heard and be represented by counsel.
- (5) ***The Department shall have the power to administer oaths and to issue subpoenas compelling the attendance of witnesses as it may deem necessary to the case of any child before it. Disobedience of a subpoena may be punished as contempt of court, after a hearing before the committing juvenile court.***
- (6) Administrative hearings conducted under this section and administrative regulations promulgated under this section shall be exempt from the requirements of KRS Chapter 13B.
- ~~(7)[(6)]~~ The Department of Juvenile Justice ~~shall[may]~~ promulgate administrative regulations to ***govern at least the following aspects of this section:***
  - (a) ***Commissioner's warrant;***
  - (b) ***Procedural aspects of the hearing;***
  - (c) ***Burden of proof;***
  - (d) ***Standard of proof; and***
  - (e) ***Administrative appeal process***

~~[implement the provisions of this chapter].~~

Section 16. KRS 640.010 is amended to read as follows:

- (1) For children who are alleged to be youthful offenders by falling in the purview of KRS 635.020(2), (3), (5), (6), (7), **or** (8),~~[(or) (9)]~~ the court shall at arraignment assure that the child's rights as specified in KRS 610.060 have been explained and followed.
- (2) In the case of a child alleged to be a youthful offender by falling within the purview of KRS 635.020(2), (3), **(5)**, (6), (7), **or** (8),~~[(or) (9)]~~ the District Court shall, upon motion by the county attorney to proceed under this chapter, and after the county attorney has consulted with the Commonwealth's attorney, conduct a preliminary hearing to determine if the child should be transferred to Circuit Court as a youthful offender. The preliminary hearing shall be conducted in accordance with the Rules of Criminal Procedure.
  - (a) At the preliminary hearing, the court shall determine if there is probable cause to believe that an offense was committed, that the child committed the offense, and that the child is of sufficient age and has the requisite number of prior adjudications, if any, necessary to fall within the purview of KRS 635.020.
  - (b) If the District Court determines probable cause exists, the court shall consider the following factors before determining whether the child's case shall be transferred to the Circuit Court:
    1. The seriousness of the alleged offense;
    2. Whether the offense was against persons or property, with greater weight being given to offenses against persons;
    3. The maturity of the child as determined by his environment;
    4. The child's prior record;
    5. The best interest of the child and community;
    6. The prospects of adequate protection of the public;
    7. The likelihood of reasonable rehabilitation of the child by the use of procedures, services, and facilities currently available to the juvenile justice system; and
    8. Evidence of a child's participation in a gang.
  - (c) If, following the completion of the preliminary hearing, the District Court finds, after considering the factors enumerated in paragraph (b) of this subsection, that two (2) or more of the factors specified in paragraph (b) of this subsection are determined to favor transfer, the child may be transferred to Circuit Court, and if the child is transferred the District Court shall issue an order transferring the child as a youthful offender and shall state on the record the reasons for the transfer. The child shall then be proceeded against in the Circuit Court as an adult, except as otherwise provided in this chapter.
  - (d) If, following completion of the preliminary hearing, the District Court is of the opinion, after considering the factors enumerated in paragraph (b) of this subsection, that the child shall not be transferred to the Circuit Court, the case shall be dealt with as provided in KRS Chapter 635.
- (3) If the child is transferred to Circuit Court under this section and the grand jury does not find that there is probable cause to indict the child as a youthful offender, as defined in KRS 635.020(2), (3), (5), (6), (7), and (8), but does find that there is probable cause to indict the child for another criminal offense, the child shall not be tried as a youthful offender in Circuit Court but shall be returned to District Court to be dealt with as provided in KRS Chapter 635.

Section 17. KRS 640.050 is amended to read as follows:

- (1) Any period of probation or conditional discharge required by the sentencing court to be served shall be supervised~~[(as the court may determine by written order)]~~ by:
  - (a) The Department of Juvenile Justice, **if the youthful offender is under the age of eighteen (18)**;
  - (b) The Department of Corrections, **upon the youthful offender attaining the age of eighteen (18)**; or
  - (c) The designated representative of either of the above.
- (2) The Department of Juvenile Justice may make recommendations to the Circuit Court concerning the disposition of the youthful offender.

~~[(3) The court may order any of the above alternatives without regard to the age of the youthful offender.]~~

Section 18. KRS 640.070 is amended to read as follows:

- (1) Upon motion of the Department of Juvenile Justice, the sentencing Circuit Court may, after notice and hearing, order a youthful offender committed to an adult facility operated by the Department of Corrections if it is established by a preponderance of the evidence that the youthful offender has:
  - (a) By his violent behavior, injured or endangered the life or health of another youthful offender or staff members in the facility or program;
  - (b) Escaped from the facility or program from which he is being held ~~[- on more than one (1) occasion];~~
  - (c) By his actions, caused disruption in the facility or program by encouraging other residents to engage in violent behavior which has injured or endangered the life or health of other residents or staff of the facility or program;
  - (d) By his actions, caused disruption in the facility or program, smuggled contraband into the facility or program, caused contraband to be smuggled into the facility or program, or engaged in other types of behavior which have endangered the life or health of other residents or staff of the facility or program;  
or
  - (e) By his actions has established a pattern of disruptive behavior not conducive to the established policies and procedures of the program.
- (2) The hearing shall be held in the sentencing Circuit Court within ten (10) days of the filing of the motion provided for in subsection (1) of this section.
- (3) Upon admission to a facility or program operated by the Department of Juvenile Justice, the department shall advise the youthful offender of the provisions of this section.
- (4) Upon motion of the Department of Juvenile Justice, the sentencing Circuit Court may, after notice and hearing, order a youthful offender committed to the Department of Corrections if it is established by a preponderance of the evidence that the youthful offender is mentally ill and is dangerous to himself or others, and cannot be adequately treated in the youthful offender program. It shall be presumed that a youthful offender is mentally ill if he has pled guilty to or has been convicted of a felony and has been found by the court or jury to be guilty but mentally ill.
- (5) Any youth remanded to the Department of Corrections under any provision of this chapter shall not later be placed in a facility operated by the Department of Juvenile Justice.

Section 19. KRS 605.110 is amended to read as follows:

- (1) Unless provided otherwise, when any child committed to the Department of Juvenile Justice or the cabinet requires medical or surgical care or treatment, the Department of Juvenile Justice or the cabinet may provide the same or arrange for the furnishing thereof by other public or private agencies, and may give consent to the medical or surgical treatment. For this purpose, the services and facilities of local health officers and departments shall be made available, at a cost not to exceed the Medicaid reimbursement rate, to the Department of Juvenile Justice or the cabinet, and as far as practicable, any publicly-owned hospital shall provide hospitalization without charge for any such child who is a resident of the political subdivision by which the hospital is owned or operated. This section does not authorize nor shall permission be granted for abortion or sterilization.
- (2) Any child placed in a foster home by an agency duly authorized in KRS Chapter 620 to place a child in a foster home shall receive a complete medical, visual, and dental examination by a professional authorized by the Kentucky Revised Statutes to conduct such examinations. Arrangements for a child placed in a foster home to receive such examinations shall be made within two (2) weeks of his placement in a foster home and not less than every twelve (12) months thereafter.
- (3) Children maintained in any of the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet shall, so far as possible, receive a common school education.
  - (a) The Kentucky Educational Collaborative for State Agency Children shall be established to serve children in facilities and programs operated or contracted by the Department of Juvenile Justice or the Cabinet for Families and Children, residential, day treatment, clinical, and group home programs. All policies and procedures necessary to educate state agency children shall be approved by the Kentucky Board of Education. All duties, responsibilities, rights, and privileges specifically imposed on or granted to the local education administration units shall be imposed on or granted to the Department of Juvenile Justice or the Cabinet for Families and Children and contracted agencies with regard to educating

agency children. Classrooms for the Kentucky Educational Collaborative for State Agency Children shall be within or near the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet. The Kentucky Department of Education, the Department of Juvenile Justice, and the Cabinet for Families and Children, Department for Social Services, shall develop a biennial plan regarding the educational needs and provisions of educational programs, with emphasis on the coordination of all treatment services and funds available to provide for the education of state agency children. The biennial plan shall include strategies to assure that teacher preparation programs include content related to working with state agency children and that adequate professional development opportunities for better meeting the needs of these students are available for teachers and schools.

- (b) Teachers and other staff shall be hired on contract through a local school district or if ~~a~~~~the~~ local school district is not willing to participate, teachers ~~may~~~~shall~~ be hired by the Kentucky Educational ~~Collaborative~~~~Cooperative~~ for State Agency Children ***or a contract may be entered into with a private provider of educational services***. All certified educational staff ~~hired by~~~~of~~ the Kentucky Educational ~~Collaborative~~~~Cooperative~~ for State Agency Children shall be members of the Kentucky Teachers' Retirement System.
- (c) Beginning July 1, 1993, the Kentucky Education Collaborative for State Agency Children shall be financed through:
  - 1. The amount generated by state agency children under the Support Education Excellence in Kentucky program as provided in KRS 157.360 for the guaranteed base and adjustments for the number of at-risk students, exceptional students, and transportation costs;
  - 2. A per-pupil distribution of professional development funds with the collaborative serving as a consortium for state agency children;
  - 3. A per-pupil distribution of technology funds in accordance with the state education technology plan pursuant to KRS 156.670 and the formula for the distribution of funds to local school districts;
  - 4. A per-pupil distribution of textbook funds pursuant to KRS 157.100 and 157.190;
  - 5. The funding for school services for state agency children authorized by KRS 158.135; and
  - 6. Other grants and entitlements, including federal funds, identified in the implementation plan developed pursuant to paragraph (f) of this subsection for the education of Kentucky's children.
- (d) The commissioner of Juvenile Justice and the secretary of the Cabinet for Families and Children shall promulgate administrative regulations, pursuant to KRS Chapter 13A, with the assistance of the Kentucky Department of Education and upon recommendation of the Kentucky Board of Education regarding the governance, curriculum, and other topics necessary to educate state agency children. The regulations shall:
  - 1. Provide for the development and implementation of interagency agreements that:
    - a. Define the financial responsibility of each state and local agency for providing services to state agency children;
    - b. Establish procedures for resolving interagency disputes among agencies that are parties to the agreements; and
  - 2. Provide procedures for the implementation of the Kentucky statutes regarding school-based decision making, student outcomes, accountability, assessment, rewards and sanctions, technology, staff development, salaries, and the development of coordinated individual treatment, education, and transition plans to ensure compliance with present education and treatment laws and regulations specific to the needs of children in the programs of the Cabinet for Families and Children.
- (e) When the placement of a state agency child is changed so that the state agency child must transfer from one school or educational facility to a different school or educational facility, the school or educational facility that the state agency child is leaving shall, within two (2) days of the state agency child leaving, prepare an educational passport for the child, which shall be delivered to the cabinet or the Department of Juvenile Justice. The cabinet or the Department of Juvenile Justice shall, within two (2) days of

enrolling a state agency child in a new school or educational facility, present the educational passport to the receiving school or educational facility.

- (f) The commissioner of Juvenile Justice and the secretary of the Cabinet for Families and Children and the commissioner of the state Department of Education shall initiate development of a plan for implementation of the Kentucky Educational Collaborative for State Agency Children.

Section 20. The following KRS section is repealed:

610.267 Youth alternative centers.

**Approved April 26, 2000**

## **CHAPTER 535**

**(SB 313)**

AN ACT relating to operator's licenses.

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

Section 1. KRS 186.412 is amended to read as follows:

- (1) A person under the age of twenty-one (21) at the time of application for an instruction permit may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least one hundred eighty (180) days. A person who is at least twenty-one (21) years of age at the time of application for an instruction permit may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least thirty (30) days. The person shall apply for an operator's license in the office of the circuit clerk of the county where he lives. The application form shall require the applicant's full legal name and signature, date of birth, Social Security number, sex, present resident address, other information necessary to permit the application to also serve as an application for voter registration, and brief physical description of the applicant. If the person is not a United States citizen, the application form shall be accompanied by a photographic copy of the person's employment authorization card, visa card to enter the United States, or permanent residency card issued by the United States Department of Immigration Services and, if applicable, a photographic copy of the person's international driving permit. All applications shall state:
- (a) If the applicant has previously been licensed as an operator and by what nation or state; and
- (b) Other information the cabinet may require by administrative regulation promulgated pursuant to KRS Chapter 13A.
- (2) The Transportation Cabinet shall issue a plastic laminated operator's license bearing a color photograph of the applicant. The photograph shall be taken by the circuit clerk so that one (1) exposure will photograph the applicant and the application simultaneously, using the process determined under provisions of KRS 186.413. When taking the photograph, the applicant shall be prohibited from wearing sunglasses or any other attire that obscures any features of the applicant's face as determined by the clerk. The clerk shall require an applicant to remove sunglasses or other obscuring attire before taking the photograph required by this subsection. Any person who refuses to remove sunglasses or other attire prohibited by this section as directed by the clerk shall be prohibited from receiving an operator's license. The plastic laminated operator's license issued by the cabinet shall not contain the applicant's Social Security number. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A that develop a numbering system that uses an identification system other than Social Security numbers. The license shall also designate by color coding and use the phrase "under 21" if the licensee is under the age of twenty-one (21); "CDL" if the license is issued pursuant to KRS Chapter 281A; or "under 21 CDL" if the licensee holds a commercial driver's license issued pursuant to KRS Chapter 281A and is under the age of twenty-one (21).
- (3) ~~After January 1, 1996, a person may, before the renewal date for his operator's license, request a circuit clerk to issue a new plastic laminated operator's license that does not contain the person's Social Security number. The person shall be charged the fee established by KRS 186.531 for renewing an operator's license if the person requests a license pursuant to this subsection.~~
- (4) Every applicant shall make oath to the circuit clerk as to the truthfulness of the statements contained in the form.

- (4)(5) The clerk may, after determining that the applicant has fully complied with the law governing applications, issue a temporary operator's license to be valid for not more than ninety (90) days. The temporary license shall be valid in lieu of the permanent license during the certification period and shall be destroyed upon receipt of the permanent operator's license.
- (5)(6) The circuit clerk shall issue a color photo nondriver's identification card to any person who resides in the county who applies in person in the office of the circuit clerk. A nondriver's identification card shall be subject to the provisions of this section. An application for a nondriver's identification card shall be accompanied by a signed Social Security card and a birth certificate, or other proof of the applicant's date of birth provided under subsection (1) of this section. If the person is not a United States citizen, an application for a nondriver's identification card shall be accompanied by a photographic copy of the person's employment authorization card, visa card to enter the United States, or permanent residency card issued by the United States Department of Immigration Services. The application shall require the applicant to provide his or her full legal name and most current resident address that may include, but is not limited to, a mailing address, post office box, or an address provided on a voter registration card. If an applicant for a nondriver's identification card is under the age of twenty-one (21), the applicant's most current resident address shall be required unless a current resident address is not available, in which case a mailing address, post office box, or an address provided on a voter registration card may be used. Every applicant for a nondriver's identification card shall make an oath to the circuit clerk as to the truthfulness of the statements contained on the application form. If the applicant is not the legal possessor of the address provided on the application form, the applicant shall swear that he has permission from the legal possessor to use the address for purposes of obtaining the nondriver's identification card. The nondriver's identification card shall designate by color coding and by use of the phrase "under 21" if the applicant is under the age of twenty-one (21).
- (6)(7) ~~Military personnel and other~~ Licensed drivers temporarily out-of-county may be issued a license without a photograph. The license shall show in the space provided for the photograph the legend "valid without photo and signature."
- (7) *If a citizen of the Commonwealth currently serving in the United States military is stationed or assigned to a base or other location outside the boundaries of the Commonwealth, the citizen may renew a Class D operator's license issued under this section by mail. If the citizen was issued an "under 21" operator's license, upon the date of his or her twenty-first birthday, the "under 21" operator's license may be renewed for an operator's license that no longer contains the outdated reference to being "under 21".*
- (8) *A citizen of the Commonwealth renewing an operator's license by mail under subsection (7) of this section may have a personal designee apply to the circuit clerk on behalf of the citizen to renew the citizen's operator's license. An operator's license being renewed by mail under subsection (7) of this section shall be issued a license without a photograph. The license shall show in the space provided for the photograph the legend "valid without photo and signature".*
- (9) If a citizen of the Commonwealth has been serving in the United States military and has allowed his operator's license to expire, he shall, within ninety (90) days of returning to the Commonwealth, be permitted to renew his license without having to take a written test or road test. A citizen who does not renew his license within ninety (90) days of returning to the Commonwealth shall be required to comply with the provisions of this chapter governing renewal of a license that has expired. If a citizen of the Commonwealth has been issued an "under 21" or "under 21 CDL" operator's license and the person is unable to renew the license on the date of his twenty-first birthday, the "under 21" or "under 21 CDL" operator's license shall be valid for ninety (90) days beyond the date of the person's twenty-first birthday.
- (10)(8) The cabinet shall provide on each license to operate motor vehicles, motorcycles, and mopeds a space for the licensed driver's:
- (a) Blood type;
  - (b) Medical insignia if the person provides evidence that a medical identification bracelet noting specific physical ailments or a drug allergy is being worn or other proof as may be required by the cabinet; and
  - (c) A statement whereby the owner of the license may certify in the presence of two (2) witnesses his willingness to make an anatomical gift under KRS 311.195.
- (11)(9) If the motor vehicle operator denotes a physical ailment or drug allergy on the operator's license, he may apply for and shall receive, for a fee of one dollar (\$1) paid to the circuit clerk, a medical insignia decal that may be affixed to the lower left side of the front windshield of a motor vehicle.

- (12)~~(10)~~ An operator's license pursuant to this section shall be designated a Class D license.
- (13)~~(11)~~ A person shall not have more than one (1) license.
- (14)~~(12)~~ Upon marriage, a woman applying for an operator's license or a color photo nondriver's identification card shall provide the circuit clerk with her marriage license and complete an affidavit form provided by the circuit court clerk. She shall have the following choices in regard to her full legal name as required in subsections (1) and (6) of this section:
- (a) Use her husband's last name;
  - (b) Retain her maiden name;
  - (c) Use her maiden name hyphenated with her husband's last name;
  - (d) Use her maiden name as a middle name and her husband's last name as her last name; or
  - (e) In the case of a previous marriage, retain that husband's last name.

Section 2. KRS 186.410 is amended to read as follows:

- (1) Every person except those exempted by KRS 186.420 and KRS 186.430 shall before operating a motor vehicle, motorcycle, or moped upon a highway secure an operator's license as provided in this chapter.
- (2) All original, renewal, and duplicate licenses for the operation of motor vehicles, motorcycles, or mopeds shall be issued by the Transportation Cabinet. Applications for renewal licenses shall be made every four (4) years ***within thirty (30) days after the birth date***~~[during the birth month]~~ of the applicant. A license shall not be issued until the application has been certified by the cabinet.
- (3) All color photo nondriver identification cards shall be valid for four (4) years from the date of issuance.
- (4) A person may, at any time between the age of sixteen (16) and eighteen (18), enroll in one (1) of the following driver training programs:
  - (a) The person may enroll in a driver's education course administered by a school district; or
  - (b) The person may enroll in a driver training school licensed pursuant to KRS Chapter 332 which offers a course meeting or exceeding the minimum standards established by the Transportation Cabinet; or
  - (c) The person may seek to enroll in state traffic school before the person's eighteenth birthday. Persons enrolling in state traffic school pursuant to this paragraph shall not be required to pay a fee.
- (5) If, for any reason, a person fails to successfully complete the required driver training pursuant to subsection (4) of this section within one (1) year of being issued an operator's license, the Transportation Cabinet shall enroll the person in state traffic school and cancel or suspend the operator's driving privileges until the person completes state traffic school.

**Approved April 26, 2000**

## CHAPTER 536

**(SB 315)**

AN ACT relating to reorganization.

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

Section 1. KRS 61.935 is repealed, reenacted as a new section of KRS Chapter 11, and amended to read as follows.

The General Assembly finds and declares that:

- (1) The establishment of the ***position***~~[Office]~~ of the Chief Information Officer as the Commonwealth's single point of contact and spokesperson for all matters related to information technology and resources, including policies, standard setting, deployment, strategic and tactical planning, acquisition, management, and operations is necessary and in keeping with the industry trends of the private and public sectors;

- (2) The appropriate use of information technology by the Commonwealth can improve operational productivity, reduce the cost of government, enhance service to customers, and make government more accessible to the public;
- (3) Government-wide planning, investment, protection, and direction for information resources must be enacted to:
  - (a) Ensure the effective application of information technology on state business operations;
  - (b) Ensure the quality, security, and integrity of state business operations; and
  - (c) Provide privacy to the citizens of the Commonwealth;
- (4) The Commonwealth must provide information technology infrastructure, technical directions, and a proficient organizational management structure to facilitate the productive application of information technology and resources to accomplish programmatic missions and business goals;
- (5) Oversight of large scale and government statewide systems or projects is necessary to protect the Commonwealth's investment and to ensure appropriate integration with existing or planned systems;
- (6) A career development plan and professional development program for information technology staff of the executive branch is needed to provide key competencies and adequate on-going support for the information resources of the Commonwealth and to ensure that the information technology staff will be managed as a Commonwealth resource;
- (7) The Commonwealth is in need of information technology advisory capacities to the Governor and the agencies of the executive cabinet;
- (8) Appropriate public-private partnerships to supplement existing resources must be developed as a strategy for the Commonwealth to comprehensively meet its spectrum of information technology and resource needs;~~[-and]~~
- (9) *Technological and theoretical advances in information use are recent in origin, immense in scope and complexity, and change at a rapid rate, which presents Kentucky with the opportunity to provide higher quality, more timely, and more cost-effective government services to ensure standardization, interoperability, and interconnectivity;*
- (10) *The sharing of information resources and technologies among executive branch state agencies is the most cost-effective method of providing the highest quality and most timely government services that would otherwise be cost-prohibitive;*
- (11) *The ability to identify, develop, and implement changes in a rapidly moving field demands the development of mechanisms to provide for the research and development of technologies that address systems, uses, and applications; and*
- (12) The exercise by the chief information officer of powers and authority conferred by *Sections 1 to 9, 15, 20, 22, 23, and 24 of this Act* ~~[KRS 61.935 to 61.938]~~ shall be deemed and held to be the performance of essential governmental functions.

SECTION 2. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 9 of this Act, unless the context requires otherwise:*

- (1) *"Communications" or "telecommunications" means any transmission, emission, or reception of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, optical, or other electromagnetic systems, and includes all facilities and equipment performing these functions;*
- (2) *"Geographic information system" or "GIS" means a computerized database management system for the capture, storage, retrieval, analysis, and display of spatial or locationally defined data;*
- (3) *"Information resources" means the procedures, equipment, and software that are designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel;*
- (4) *"Information technology" means data processing and telecommunications hardware, software, services, supplies, facilities, maintenance, and training that are used to support information processing and telecommunications systems to include geographic information systems; and*
- (5) *"Project" means a program to provide information technologies support to functions within an executive branch state agency, which should be characterized by well-defined parameters, specific objectives,*



*common benefits, planned activities, expected outcomes and completion dates, and an established budget with a specified source of funding.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby created within the Office of the Governor an agency of state government known as the Governor's Office for Technology.*
- (2) *The Governor's Office for Technology shall be headed by the chief information officer for the Commonwealth established in Section 6 of this Act.*
- (3) *The Governor's Office for Technology shall consist of the following six (6) executive offices, each headed by an executive director:*
  - (a) *Office of Geographic Information;*
  - (b) *Office of Human Resource Management and Development;*
  - (c) *Office of Administrative Services, consisting of the:*
    1. *Division of Financial and Business Management; and*
    2. *Division of Asset Management;*
  - (d) *Office of Policy and Customer Relations, consisting of the:*
    1. *Division of Planning and Architecture;*
    2. *Division of Relationship Management; and*
    3. *Division of Information Technology Training;*
  - (e) *Office of Infrastructure Service, consisting of the:*
    1. *Division of End User Support;*
    2. *Division of Security Services;*
    3. *Division of Computing Services; and*
    4. *Division of Communication Services; and*
  - (f) *Office of Consulting and Project Management, consisting of the:*
    1. *Division of Centers of Expertise;*
    2. *Division of Project Office and Integration;*
    3. *Division of Human Services Systems;*
    4. *Division of Financial Systems;*
    5. *Division of Transportation Systems; and*
    6. *Division of Workforce Development and General Government Systems.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO READ AS FOLLOWS:

- (1) *The roles and duties of the Governor's Office for Technology shall include but not be limited to:*
  - (a) *Providing technical support and services to all executive agencies of state government in the application of information technology;*
  - (b) *Assuring compatibility and connectivity of Kentucky's information systems;*
  - (c) *Developing strategies and policies to support and promote the effective applications of information technology within state government as a means of saving money, increasing employee productivity, and improving state services to the public, including electronic public access to information of the Commonwealth;*
  - (d) *Developing, implementing, and managing strategic information technology directions, standards, and enterprise architecture including implementing necessary management processes to assure full compliance with those directions, standards, and architecture. This specifically includes, but is not*

*limited to, directions, standards, and architecture related to the privacy and confidentiality of data collected and stored by state agencies;*

- (e) Promoting effective and efficient design and operation of all major information resources management processes for executive branch agencies, including improvements to work processes;*
  - (f) Developing, implementing, and maintaining the technology infrastructure of the Commonwealth;*
  - (g) Facilitating and fostering applied research in emerging technologies that offer the Commonwealth innovative business solutions;*
  - (h) Reviewing and overseeing large or complex information technology projects and systems for compliance with statewide strategies, policies, and standards, including alignment with the Commonwealth's business goals, investment, and other risk management policies. The chief information officer is authorized to grant or withhold approval to initiate these projects;*
  - (i) Integrating information technology resources to provide effective and supportable information technology applications in the Commonwealth;*
  - (j) Establishing a central statewide geographic information clearinghouse to maintain map inventories, information on current and planned geographic information systems applications, information on grants available for the acquisition or enhancement of geographic information resources, and a directory of geographic information resources available within the state or from the federal government;*
  - (k) Coordinating multiagency information technology projects, including overseeing the development and maintenance of statewide base maps and geographic information systems;*
  - (l) Providing access to both consulting and technical assistance, and education and training, on the application and use of information technologies to state and local agencies;*
  - (m) In cooperation with other agencies, evaluating, participating in pilot studies, and making recommendations on information technology hardware and software;*
  - (n) Providing staff support and technical assistance to the Geographic Information Advisory Council, the Kentucky Information Technology Advisory Council, and the Commercial Mobile Radio Service Emergency Telecommunications Board of Kentucky; and*
  - (o) Preparing proposed legislation and funding proposals for the General Assembly that will further solidify coordination and expedite implementation of information technology systems.*
- (2) The Governor's Office for Technology may:*
- (a) Provide general consulting services, technical training, and support for generic software applications, upon request from a local government, if the chief information officer finds that the requested services can be rendered within the established terms of the federally approved cost allocation plan;*
  - (b) Promulgate administrative regulations in accordance with KRS Chapter 13A necessary for the implementation of Sections 1 to 9, 15, 20, 22, 23, and 24 of this Act;*
  - (c) Solicit, receive, and consider proposals from any state agency, federal agency, local government, university, nonprofit organization, private person, or corporation;*
  - (d) Solicit and accept money by grant, gift, donation, bequest, legislative appropriation, or other conveyance to be held, used, and applied in accordance with Sections 1 to 9, 15, 20, 22, 23, and 24 of this Act;*
  - (e) Make and enter into memoranda of agreement and contracts necessary or incidental to the performance of duties and execution of its powers, including, but not limited to, agreements or contracts with the United States, other state agencies, and any governmental subdivision of the Commonwealth;*
  - (f) Accept grants from the United States government and its agencies and instrumentalities, and from any source, other than any person, firm, or corporation, or any director, officer, or agent thereof that manufactures or sells information resources technology equipment, goods, or services. To these ends,*

*the Governor's Office for Technology shall have the power to comply with those conditions and execute those agreements that are necessary, convenient, or desirable;*

- (g) *Purchase interest in contractual services, rentals of all types, supplies, materials, equipment, and other services to be used in the research and development of beneficial applications of information resources technologies. Competitive bids may not be required for:*
  - 1. *New and emerging technologies as approved by the chief information officer or her or his designee; or*
  - 2. *Related professional, technical, or scientific services, but contracts shall be submitted in accordance with KRS 45A.690 to 45A.725.*

- (3) *Nothing in this section shall be construed to alter or diminish the provisions of KRS 171.410 to 171.740 or the authority conveyed by these statutes to the Archives and Records Commission and the Department for Libraries and Archives.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO READ AS FOLLOWS:

- (1) *To accomplish the work of the Governor's Office for Technology, all organizational units and administrative bodies, as defined in KRS 12.010, and all members of the state postsecondary education system, as defined in KRS 164.001, shall furnish the Governor's Office for Technology necessary assistance, resources, information, records, and advice as required.*
- (2) *The provisions of Sections 1 to 9, 15, 20, 22, 23, and 24 of this Act shall not be construed to grant any authority over the judicial or legislative branches of state government, or agencies thereof, to the Governor's Office for Technology.*
- (3) *The information, technology, personnel, agency resources and confidential records of Kentucky Retirement Systems and Kentucky Teachers' Retirement Systems are excluded from the provisions of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 15, 20, 22, 23, and 24 of this Act and shall not be under the authority of the Governor's Office for Technology.*

Section 6. KRS 61.936 is repealed, reenacted as a new section of KRS Chapter 11, and amended to read as follows:

- (1) There is hereby established a position of chief information officer for the Commonwealth. This position shall be exempt from the classified service under KRS 18A.115 and from the salary limitations of KRS 64.640, and shall be bonded commensurate with cabinet secretaries under KRS 62.160. The chief information officer shall be appointed by the Governor and serve in the Governor's Executive Cabinet. The chief information officer shall report to the secretary of the Governor's cabinet concerning his or her responsibilities to provide direction, stewardship, leadership, and general oversight of information technology and information resources. ~~For purposes of this section, unless the context requires otherwise, "information technology" and "information resources" shall have the same meaning as in KRS 61.942.~~
- ~~(2)(1)~~ The chief information officer shall be the principal adviser to the Governor and the executive cabinet on information technology policy, including policy on the acquisition and management of information technology and resources.
- ~~(3)(2)~~ The chief information officer shall carry out functions necessary for the efficient, effective, and economical administration of information technology and resources within the executive branch. Roles and duties of the chief information officer shall include but not be limited to:
  - ~~(a) Developing strategies and policies to support and promote the effective applications of information technology within state government as a means of saving money, increasing employee productivity, and improving state services to the public, including electronic public access to information of the Commonwealth;~~
  - ~~(b)~~ Assessing, recommending, and implementing information technology governance and organization design to include effective information technology personnel management practices;
  - ~~(c) Promoting effective and efficient design and operation of all major information resources management processes for executive branch agencies, including improvements to work processes;~~
  - ~~(d) Overseeing and managing strategic information technology directions, standards, and architecture;~~

- ~~(b)(e)~~ Integrating information technology and resources plans with agency business plans;
- ~~[(f) Developing, implementing, and maintaining the technology infrastructure of the Commonwealth;]~~
- ~~(c)(g)~~ Overseeing shared Commonwealth information technology resources and services;
- ~~(d)(h)~~ Performing as the focal point and representative for the Commonwealth in information technology and related areas with both the public and private sector;
- ~~[(i) Facilitating and fostering applied research in emerging technologies that offer the Commonwealth innovative business solutions;]~~
- ~~(e)(j)~~ Establishing appropriate partnerships and alliances to support the effective implementation of information technology projects in the Commonwealth;
- ~~(f)(k)~~ Identifying information technology applications that should be statewide in scope, and ensuring that these applications are not developed independently or duplicated by individual state agencies of the executive branch;
- ~~(g)(l)~~ Establishing performance measurement and benchmarking policies and procedures;
- ~~[(m) Reviewing and overseeing large or complex information technology projects and systems for compliance with statewide strategies, policies, and standards, including alignment with Commonwealth's business goals, investment, and other risk management policies. The chief information officer is authorized to grant or withhold approval to initiate these projects;]~~
- ~~(h)(n)~~ Preparing annual reports and plans concerning the status and result of the state's specific information technology plans and submitting these annual reports and plans to the governor and the General Assembly;
- ~~[(o) Integrating information technology resources to provide effective and supportable information technology applications in the Commonwealth;]~~ and
- ~~(i)(p)~~ Managing the *Governor's Office for Technology*~~[Office of the Chief Information Officer]~~ and its budget.

SECTION 7. A NEW SECTION OF KRS CHAPTER 11 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby created the Kentucky Information Technology Advisory Council to:*
  - (a) *Advise the chief information officer for the Commonwealth on approaches to coordinating information technology solutions among libraries, public schools, local governments, universities, and other public entities; and*
  - (b) *Provide a forum for the discussion of emerging technologies that enhance electronic accessibility to various publicly funded sources of information and services.*
- (2) *The Kentucky Information Technology Advisory Council shall consist of:*
  - (a) *The state budget director or a designee;*
  - (b) *The state librarian or a designee;*
  - (c) *One (1) representative from the public universities to be appointed by the Governor from a list of three (3) persons submitted by the Council on Postsecondary Education;*
  - (d) *Three (3) citizen members from the private sector with information technology knowledge and experience appointed by the Governor;*
  - (e) *Two (2) representatives of local government appointed by the Governor;*
  - (f) *One (1) representative from the area development districts appointed by the Governor from a list of names submitted by the executive directors of the area development districts;*
  - (g) *One (1) member of the media appointed by the Governor;*
  - (h) *The executive director of the Kentucky Authority for Educational Television;*
  - (i) *The chair of the Public Service Commission or a designee;*

- (j) *Two (2) members of the Kentucky General Assembly, one (1) from each chamber, selected by the Legislative Research Commission;*
  - (k) *One (1) representative of the Administrative Office of the Courts;*
  - (l) *One (1) representative from the public schools system appointed by the Governor;*
  - (m) *One (1) representative of the Kentucky Chamber of Commerce; and*
  - (n) *The chief information officer for the Commonwealth.*
- (3) *Appointed members of the council shall serve for a term of two (2) years. Members who serve by virtue of an office shall serve on the council while they hold the office.*
  - (4) *Vacancies on the council shall be filled in the same manner as the original appointments. If a nominating organization changes its name, its successor organization having the same responsibilities and purposes shall be the nominating organization.*
  - (5) *Members shall receive no compensation but shall receive reimbursement for actual and necessary expenses in accordance with travel and subsistence requirements established by the Finance and Administration Cabinet.*

Section 8. KRS 61.958 is repealed, reenacted as a new section of KRS Chapter 11, and amended to read as follows:

- (1) There is hereby established a Geographic Information Advisory Council~~[referred to in this section and KRS 61.959 as the "council," to the Kentucky Information Resources Management Commission]~~ to advise the *chief information officer*~~[Governor, the General Assembly, the Judicial Branch, and the Kentucky Information Resources Management Commission]~~ on issues *relating*~~[as they relate]~~ to geographic information and geographic information systems.
- (2) The council shall establish and adopt policies and procedures that assist state and local jurisdictions in developing, deploying, and leveraging geographic information resources and geographic information systems technology for the purpose of improving public administration.
- (3) The council shall closely coordinate with users of geographic information systems to establish policies and procedures that insure the maximum use of geographic information by minimizing the redundancy of geographic information and geographic information resources.
- (4) The Geographic Information Advisory Council shall consist of twenty-six (26) members and one (1) legislative liaison. The members shall be knowledgeable in the use and application of geographic information systems technology and shall have sufficient authority within their organizations to influence the implementation of council recommendations.
  - (a) The council shall consist of:
    - 1. The secretary of the Transportation Cabinet or his designee;
    - 2. The secretary of the Cabinet for Health Services and Families and Children or his designee;
    - 3. The director of the Kentucky Geological Survey or his designee;
    - 4. The secretary of the Revenue Cabinet or his designee;
    - 5. The *chief information officer*~~[commissioner of the Department of Information Systems]~~ or *her* or his designee;
    - 6. The secretary of the Economic Development Cabinet or his designee;
    - 7. The commissioner of the Department for Local Government or his designee;
    - 8. The secretary of the Justice Cabinet or his designee;
    - 9. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council on Postsecondary Education;
    - 10. The adjutant general of the Department of Military Affairs or his designee;
    - 11. The commissioner of the Department of Education or his designee;

12. The secretary of the Natural Resources and Environmental Protection Cabinet or his designee;
  13. The commissioner of the Department of Agriculture or his designee;
  14. The secretary of the Public Protection and Regulation Cabinet or his designee;
  15. The secretary of the Tourism Development Cabinet or his designee;
  16. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky League of Cities;
  17. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky Association of Counties;
  18. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chapter of the American Planning Association;
  19. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chamber of Commerce;
  20. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Association of Land Surveyors;
  21. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Society of Professional Engineers;
  22. One (1) member appointed by the Governor from a list of three (3) persons submitted by the chairman of the Kentucky Board of Registered Geologists; and
  23. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council of Area Development Districts.
- (b) The council shall have one (1) nonvoting legislative liaison, to be appointed by the Legislative Research Commission.
- (5) The council shall select from its membership a chairman and any other officers it considers essential. The council may have committees and subcommittees as determined by the council or an executive committee, if an executive committee exists.
- (6) A member of the council shall not:
- (a) Be an officer, employee, or paid consultant of a business entity that has, or of a trade association for business entities that has, a substantial interest in the geographic information industry and is doing business in the Commonwealth;
  - (b) Own, control, or have directly or indirectly, more than ten percent (10%) interest in a business entity that has a substantial interest in the geographic information industry;
  - (c) Be in any manner connected with any contract or bid for furnishing any governmental body of the Commonwealth with geographic information systems, the computers on which they are automated, or a service related to geographic information systems;
  - (d) Be a person required to register as a lobbyist because of activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have substantial interest in the geographic information industry;
  - (e) Accept or receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise; or
  - (f) Be liable to civil action or any action performed in good faith in the performance of duties as a council member.
- (7) Those council members specified in subsection (4)(a) of this section who serve by virtue of an office shall serve on the council while they hold that office.
- (8) Appointed members of the council shall serve for a term of four (4) years. Vacancies in the membership of the council shall be filled in the same manner as the original appointments. If a nominating organization changes its name, its successor organization having the same responsibilities and purposes shall be the nominating organization.

- (9) The council shall have no funds of its own, and council members shall not receive compensation of any kind from the council.
- (10) A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at council meetings.

Section 9. KRS 61.959 is repealed, reenacted as a new section of KRS Chapter 11, and amended to read as follows:

- (1) The ***Geographic Information Advisory*** Council's duties shall include the following:
  - (a) Overseeing the development and adoption of policies and procedures related to geographic information and geographic information systems;
  - (b) Overseeing the development of a strategy for the implementation and funding of a statewide base map and geographic information system;
  - (c) Overseeing the development and recommending standards on geographic information and geographic information systems for inclusion in the statewide architecture;
  - (d) Overseeing the development and delivery of a statewide geographic information plan and annually reporting to the Governor, the General Assembly, the Judicial Branch, and the ***chief information officer***~~[Kentucky Information Resources Management Commission]~~;
  - (e) Overseeing the development of the geographic information systems training and education plan;
  - (f) Overseeing the assessment of state agency plans for geographic information systems standards compliance;
  - (g) Overseeing the development of operating policies and procedures for the management of the council and any standing or ad hoc committees and associated advisory groups;
  - (h) Promoting collaboration and the sharing of data and data development, as well as other aspects of geographic information systems; and
  - (i) Overseeing the implementation of a pilot project to study the advantages and resources of geographic information system technology.
- (2) The Office of Geographic Information shall provide necessary staff support services to the council. All cabinets, departments, divisions, agencies, and officers of the Commonwealth shall furnish the council necessary assistance, resources, information, records, or advice as it may require to fulfill its duties.

Section 10. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily-authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

- 1. The Governor.
- 2. Lieutenant Governor.
- 3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.
  - (c) Registry of Election Finance.
- 4. Department of Law.

- (a) Attorney General.
  - 5. Department of the Treasury.
    - (a) Treasurer.
  - 6. Department of Agriculture.
    - (a) Commissioner of Agriculture.
    - (b) Kentucky Council on Agriculture.
  - 7. Superintendent of Public Instruction.
  - 8. Auditor of Public Accounts.
  - 9. Railroad Commission.
- II. Program cabinets headed by appointed officers:
- 1. Justice Cabinet:
    - (a) Department of State Police.
    - (b) Department of Criminal Justice Training.
    - (c) Department of Corrections.
    - (d) Department of Juvenile Justice.
    - (e) Office of the Secretary.
    - (f) Offices of the Deputy Secretaries.
    - (g) Office of General Counsel.
    - (h) Division of Kentucky State Medical Examiners Office.
    - (i) Parole Board.
    - (j) Kentucky State Corrections Commission.
    - (k) Commission on Correction and Community Service.
  - 2. Education, Arts, and Humanities Cabinet:
    - (a) Department of Education.
      - (1) Kentucky Board of Education.
      - (2) Education Professional Standards Board.
    - (b) Department for Libraries and Archives.
    - (c) Kentucky Arts Council.
    - (d) Kentucky Educational Television.
    - (e) Kentucky Historical Society.
    - (f) Kentucky Teachers' Retirement System Board of Trustees.
    - (g) Kentucky Center for the Arts.
    - (h) Kentucky Craft Marketing Program.
    - (i) Kentucky Commission on the Deaf and Hard of Hearing.
    - (j) Governor's Scholars Program.
    - (k) Governor's School for the Arts.
    - (l) Operations and Development Office.
    - (m) Kentucky Heritage Council.



- (n) Kentucky African-American Heritage Commission.
- (o) Board of Directors for the Center for School Safety.
- 3. Natural Resources and Environmental Protection Cabinet:
  - (a) Environmental Quality Commission.
  - (b) Kentucky Nature Preserves Commission.
  - (c) Department for Environmental Protection.
  - (d) Department for Natural Resources.
  - (e) Department for Surface Mining Reclamation and Enforcement.
  - (f) Office of Legal Services.
  - (g) Office of Information Services.
- 4. Transportation Cabinet:
  - (a) Department of Highways.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Administrative Services.
  - (d) Department of Fiscal Management.
  - (e) Department of Rural and Municipal Aid.
  - (f) Office of General Counsel.
  - (g) Office of Public Affairs.
  - (h) Office of Personnel Management.
  - (i) Office of Minority Affairs.
  - (j) Office of Environmental Affairs.
  - (k) Office of Policy and Budget.
- 5. Cabinet for Economic Development:
  - (a) Department of Administration and Support.
  - (b) Department of Job Development.
  - (c) Department of Financial Incentives.
  - (d) Department of Community Development.
  - (e) Tobacco Research Board.
  - (f) Kentucky Economic Development Finance Authority.
- 6. Public Protection and Regulation Cabinet:
  - (a) Public Service Commission.
  - (b) Department of Insurance.
  - (c) Department of Housing, Buildings and Construction.
  - (d) Department of Financial Institutions.
  - (e) Department of Mines and Minerals.
  - (f) Department of Public Advocacy.
  - (g) Department of Alcoholic Beverage Control.
  - (h) Kentucky Racing Commission.

- (i) Board of Claims.
  - (j) Crime Victims Compensation Board.
  - (k) Kentucky Board of Tax Appeals.
  - (l) Backside Improvement Commission.
  - (m) Office of Petroleum Storage Tank Environmental Assurance Fund.
7. Cabinet for Families and Children:
- (a) Department for Social Insurance.
  - (b) Department for Social Services.
  - (c) Public Assistance Appeals Board.
  - (d) Office of the Secretary.
  - (e) Office of the General Counsel.
  - (f) Office of Program Support.
  - (g) Office of Family Resource and Youth Services Centers.
  - (h) Office of Technology Services.
  - (i) Office of the Ombudsman.
  - (j) Office of Aging Services.
8. Cabinet for Health Services.
- (a) Department for Public Health.
  - (b) Department for Medicaid Services.
  - (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission on Children with Special Health Care Needs.
  - (e) Office of Certificate of Need.
  - (f) Office of the Secretary.
  - (g) Office of the General Counsel.
  - (h) Office of Program Support.
  - (i) Office of the Inspector General.
9. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
  - (b) Office of Management and Budget.
  - (c) Office of Financial Management and Economic Analysis.
  - (d) Office of the Controller.
  - (e) Department for Administration.
  - (f) Department of Facilities Management.
  - (g) ~~Department of Information Systems.~~
  - ~~(h)~~ State Property and Buildings Commission.
  - ~~(h)~~~~(i)~~ Kentucky Pollution Abatement Authority.
  - ~~(i)~~~~(j)~~ Kentucky Savings Bond Authority.
  - ~~(j)~~~~(k)~~ Deferred Compensation Systems.

- (~~k~~)(~~l~~) Office of Equal Employment Opportunity Contract Compliance.
  - (~~l~~)(~~m~~) Office of Capital Plaza Operations.
  - (~~m~~)(~~n~~) County Officials Compensation Board.
  - (~~n~~)(~~o~~) Kentucky Employees Retirement Systems.
  - (~~o~~)(~~p~~) Commonwealth Credit Union.
  - (~~p~~)(~~q~~) State Investment Commission.
  - (~~q~~)(~~r~~) Kentucky Housing Corporation.
  - (~~r~~)(~~s~~) Governmental Services Center.
  - (~~s~~)(~~t~~) Kentucky Local Correctional Facilities Construction Authority.
  - (~~t~~)(~~u~~) Kentucky Turnpike Authority.
  - (~~u~~)(~~v~~) Historic Properties Advisory Commission.
  - (~~v~~)(~~w~~) Kentucky Kare Health Insurance Authority.
10. Labor Cabinet:
- (a) Department of Workplace Standards.
  - (b) Department of Workers' Claims.
  - (c) Kentucky Labor-Management Advisory Council.
  - (d) Occupational Safety and Health Standards Board.
  - (e) Prevailing Wage Review Board.
  - (f) Workers' Compensation Board.
  - (g) Kentucky Employees Insurance Association.
  - (h) Apprenticeship and Training Council.
  - (i) State Labor Relations Board.
  - (j) Kentucky Occupational Safety and Health Review Commission.
  - (k) Office of Administrative Services.
  - (l) Office of Labor-Management Relations and Mediation.
  - (m) Office of General Counsel.
  - (n) Workers' Compensation Funding Commission.
  - (o) Employers Mutual Insurance Authority.
11. Revenue Cabinet:
- (a) Department of Property Valuation.
  - (b) Department of Tax Administration.
  - (c) Office of Financial and Administrative Services.
  - (d) Department of Law.
  - (e) Department of Information Technology.
  - (f) Office of Taxpayer Ombudsman.
12. Tourism Development Cabinet:
- (a) Department of Travel.
  - (b) Department of Parks.

- (c) Department of Fish and Wildlife Resources.
  - (d) Kentucky Horse Park Commission.
  - (e) State Fair Board.
  - (f) Office of Administrative Services.
  - (g) Office of General Counsel.
13. Cabinet for Workforce Development:
- (a) Department for Adult Education and Literacy.
  - (b) Department for Technical Education.
  - (c) Department of Vocational Rehabilitation.
  - (d) Department for the Blind.
  - (e) Department for Employment Services.
  - (f) State Board for Adult and Technical Education.
  - (g) Governor's Council on Vocational Education.
  - (h) The State Board for Proprietary Education.
  - (i) The Foundation for Adult Education.
  - (j) The Kentucky Job Training Coordinating Council.
  - (k) Office of General Counsel.
  - (l) Office of Communication Services.
  - (m) Office of Development and Industry Relations.
  - (n) Office of Workforce Analysis and Research.
  - (o) Office for Administrative Services.
  - (p) Office for Policy and Budget.
  - (q) Office of Personnel Services.
  - (r) Unemployment Insurance Commission.
14. Personnel Cabinet:
- (a) Office of Administrative and Legal Services.
  - (b) Department for Personnel Administration.
  - (c) Department for Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.
  - (e) Kentucky Kare.
  - (f) Division of Performance Management.
  - (g) Division of Employee Records.
  - (h) Division of Staffing Services.
  - (i) Division of Classification and Compensation.
  - (j) Division of Employee Benefits.
  - (k) Division of Communications and Recognition.
- III. Other departments headed by appointed officers:
- 1. Department of Military Affairs.

2. Council on Postsecondary Education.
  - (a) Kentucky Commission on Community Volunteerism and Service.
3. Department for Local Government.
4. Kentucky Commission on Human Rights.
5. Kentucky Commission on Women.
6. Department of Veterans' Affairs.
7. Kentucky Commission on Military Affairs.
8. ***The Governor's Office for Technology***~~[Office of the Chief Information Officer].~~

Section 11. KRS 12.023 is amended to read as follows:

The following organizational units and administrative bodies shall be attached to the Office of the Governor:

- (1) Council on Postsecondary Education;
- (2) Department of Military Affairs;
- (3) Department for Local Government;
- (4) Kentucky Commission on Human Rights;
- (5) Kentucky Commission on Women;
- (6) Kentucky Commission on Military Affairs;
- (7) Coal Marketing and Export Council;
- (8) Governor's Office of Child Abuse and Domestic Violence Services;
- (9) ***Governor's Office for Technology***~~[Office of the Chief Information Officer]; [and]~~
- (10) Office of Coal Marketing and Export; ***and***
- (11) ***Kentucky Agency for Substance Abuse Policy.***

Section 12. KRS 17.131 is amended to read as follows:

- (1) There is hereby established the Kentucky Unified Criminal Justice Information System, referred to in this chapter as the "system." The system shall be a joint effort of the criminal justice agencies and the courts. Notwithstanding any statutes, administrative regulations, and policies to the contrary, if standards and technologies other than those set ***by the Governor's Office for Technology***~~[out in KRS 61.940 to 61.953]~~ are required, the Commonwealth's chief information officer shall review, expedite, and grant appropriate exemptions to effectuate the purposes of the unified criminal justice information system. Nothing in this section shall be construed to hamper any public officer or official, agency, or organization of state or local government from furnishing information or data that they are required or requested to furnish and which they are allowed to procure by law, to the General Assembly, the Legislative Research Commission, or a committee of either. For the purposes of this section, "criminal justice agencies" include all departments of the Justice Cabinet, the Unified Prosecutorial System, Commonwealth's attorneys, county attorneys, the Transportation Cabinet, the Cabinet for Health Services, and any agency with the authority to issue a citation or make an arrest.
- (2) The program to design, implement, and maintain the system shall be under the supervision of the Uniform Criminal Justice Information System Committee of the Criminal Justice Council. The membership of this committee shall be determined by the council, upon the recommendation of the Governor's chief information officer, who shall chair the committee.
- (3) The committee shall be responsible for recommending standards, policies, and other matters to the secretary of justice for promulgation of administrative regulations in accordance with KRS Chapter 13A to implement the policies, standards, and other matters relating to the system and its operation.
- (4) The committee shall submit recommendations to the Criminal Justice Council and the secretary of justice for administrative regulations to implement the uniform policy required to operate the system. The committee shall implement the uniform policy.

- (5) The uniform policy shall include a system to enable the criminal justice agencies and the courts to share data stored in each other's information systems. Initially, the uniform policy shall maximize the use of existing databases and platforms through the use of a virtual database created by network linking of existing databases and platforms among the various departments. The uniform policy shall also develop plans for the new open system platforms before the existing platforms become obsolete.
- (6) The committee shall be responsible for recommending to the Criminal Justice Council and the secretary of justice any necessary changes in administrative regulations necessary to implement the system. The committee shall also recommend to the Criminal Justice Council, the Chief Justice, and the secretary of justice recommendations for statutory additions or changes necessary to implement and maintain the system. The secretary shall be responsible for reporting approved statutory recommendations to the Governor, the Chief Justice, the Legislative Research Commission, and appropriate committees of the General Assembly.
- (7) The chair of the committee shall report annually to the Criminal Justice Council on the status of the system.
- (8) All criminal justice agencies shall follow the policies established by administrative regulation for the exchange of data and connection to the system.
- (9) The committee shall review how changes to existing criminal justice agency applications impact the new integrated network. Changes to criminal justice agency applications that have an impact on the integrated network shall be coordinated through and approved by the committee.
- (10) Any future state-funded expenditures by a criminal justice agency for computer platforms in support of criminal justice applications shall be reviewed by the committee.
- (11) Any criminal justice agency or officer that does not participate in the criminal justice information system may be denied access to state and federal grant funds.

Section 13. KRS 42.014 is amended to read as follows:

- (1) There is established within the cabinet the Office of Legal and Legislative Services, the Office of Management and Budget, the Office of Financial Management and Economic Analysis, the Office of Capital Plaza Operations, and the Office of the Controller, each of which offices shall be headed by an executive director, the Department for Administration, *and* the Department for Facilities Management, ~~and the Department of Information Systems~~ each of which shall be headed by a commissioner appointed by the secretary, upon the approval of the Governor, and responsible to the secretary. Each of these departments may have at least one (1) major assistant not in the classified service.
- (2) The secretary shall establish the internal organization and assignment of functions which are not established by statute, and shall divide the cabinet into the offices, bureaus, divisions, or other units the secretary deems necessary to perform the functions, powers, and duties of the cabinet, subject to the provisions of KRS Chapter 12.

Section 14. KRS 45.251 is amended to read as follows:

- (1) Expenditures shall be limited to the amounts and purposes for which appropriations are made. All expenditures shall be reflected in the unified and integrated system of accounts as provided by KRS 45.305.
- (2) The Finance and Administration Cabinet shall prescribe all information technology standards, system attributes, and components to be used in, or in conjunction with, the unified accounting system. The components must be consistent with Commonwealth standards contained within the information technology architecture, as provided *by the Governor's Office for Technology* ~~in KRS 61.950~~.
- (3) The Governor, the Chief Justice, and the Legislative Research Commission shall designate the officer or employee authorized to approve advices of employment, purchase orders and contracts, and requisitions for reservation of funds, and no advice, order, contract, or requisition shall be honored as a commitment statement unless the designation has been conveyed to the Finance and Administration Cabinet.
- (4) The Finance and Administration Cabinet may approve for payment any expenditure presented by a budget unit, provided that the Finance and Administration Cabinet is able to determine that the expenditure is to satisfy a liability of the Commonwealth of Kentucky created on behalf of that budget unit in fulfilling the governmental function assigned to that budget unit and that the expenditure is being made from the unexpended balance of a proper allotment.

- (5) Subsidiary records shall be maintained to report the financial operation and condition of each budget unit. These subsidiary records shall be compatible with the unified accounting system prescribed by subsection (1) of this section and by KRS 45.305, and may be on the accrual basis or cash basis. Expenditures may be by prior encumbrances or by straight disbursements. The subsidiary records may be maintained by the Finance and Administration Cabinet and by the budget unit involved. When a budget unit is authorized to maintain subsidiary records, the Finance and Administration Cabinet shall have authority to prescribe the accounting and preauditing procedures. The unified system of accounts shall conform to accepted management and accounting principles.

Section 15. KRS 45.253 is amended to read as follows:

- (1) Revolving accounts may be established by appropriation in a branch budget bill to finance activities which are self-supporting in whole or in part.
- (2) Trust and agency accounts may be established by a branch budget bill to receive and disburse contributions, gifts, donations, devises, and federal appropriations, and, when authorized by law, by depositing all of the fees (which include fees for maintenance in state institutions, incidental fees, tuition fees, fees for board and room, athletics, and student activities), rentals, admittance, sales, licenses collected by law, subventions, and other miscellaneous receipts of budget units.
- (3) The head of the budget unit or other responsible fiscal agent of the unit for which a revolving, trust, or agency account has been established shall deposit with the State Treasury all receipts of the character above described, and the Finance and Administration Cabinet shall credit all receipts to the budget unit and shall keep separate accounting for each account so established.
- (4) The amounts credited to any revolving, trust, or agency account so provided, shall be held available for disbursement for the purpose provided by law and shall not be diverted to any other purpose. Revolving, trust, or agency accounts shall be subject to withdrawal from the State Treasury by the head of each budget unit when actually needed, on requisition to the Finance and Administration Cabinet in the same manner provided by law as other state funds are withdrawn. Funds received from the federal government in the form of grants or otherwise may be expended for the purpose intended even though received in a fiscal year other than that in which the related original encumbrance or expenditure was incurred. Trust and agency funds shall be allotted before an expenditure is made; and the secretary of the Finance and Administration Cabinet may withhold allotment of general fund appropriations to the extent trust and agency funds are available.
- (5) Subject to prior approval by the secretary of the Finance and Administration Cabinet, the Chief Justice, and the Legislative Research Commission for their respective branches, any budget unit which, as an incident to its authorized duties and functions, furnishes requested services or materials to any persons outside state government, where such services or materials are not required by law to be furnished gratuitously, may charge such persons an amount not to exceed the total expense to the budget unit of the services or materials furnished. The receipts from the approved charges shall be credited to the surplus account of the general fund. Payroll deductions for the Kentucky State Police legal fund shall be made without any service fees or charges.
- (6) The ***Governor's Office for Technology***~~[Department of Information Systems]~~ may charge any agency of local government an amount, not to exceed the total expense to the department, for services rendered or materials furnished at the request of the local government agency, unless the services or materials are required by law to be furnished gratuitously. The receipts from the authorized charges shall be deposited in the State Treasury and credited to the trust and agency fund, ***the Governor's Office for Technology's***~~[Department of Information Systems]~~ operating account.
- (7) All receipts which accrue as the result of the ***Governor's Office for Technology's***~~[Department of Information Systems]~~ providing on-line computer access to public records by nongovernment entities shall be deposited in the State Treasury and credited to the trust and agency fund, ***the Governor's Office for Technology's***~~[Department of Information Systems]~~ operating account.

Section 16. KRS 45.750 is amended to read as follows:

- (1) As used in KRS 45.760 to 45.810:
  - (a) "Committee" means the Capital Projects and Bond Oversight Committee.
  - (b) "Capital construction item" means:
    1. The construction, reconstruction, acquisition, and structural maintenance of buildings;

2. The installation of utility services, including roads and sewers;
  3. The acquisition or improvement of real property;
  4. The purchase and installation initially or during major renovation of equipment, facilities, and furnishings of a permanent nature for buildings;
  5. The acquisition of any building to be occupied by any:
    - a. Subdivision of state government as defined in KRS 12.010 or enumerated in KRS 12.020;
    - b. Municipal corporation which exercises its authority on a statewide basis including, but not limited to, the Kentucky Employees Retirement System, Teachers' Retirement System of the State of Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky Lottery Corporation, Kentucky Housing Corporation, or any entity with a governing body whose membership is substantially similar to the membership of the governing body of a municipal corporation which exercises its authority on a statewide basis; and
    - c. Institution of higher education.
- (c) "Lease" means any lease, lease-purchase, or lease with an option to purchase of any real property space occupied by:
1. Any entity listed in paragraph (b)5. of this subsection;
  2. The legislative branch; or
  3. The judicial branch when leased from a private sector landlord.
- (d) "Equipment" means:
1. Any major item of equipment, including aircraft;
  2. Any movable furnishing, appurtenance, or other equipment, necessary to make a building operable; and
  3. Equipment purchased or otherwise acquired, or equipment to be purchased or otherwise to be acquired, under a lease or lease-purchase contract or agreement or an arrangement equivalent to a lease or lease-purchase contract or agreement.
- (e) "System" means any computer or telecommunications system, as defined in an administrative regulation which shall be promulgated by the ***Governor's Office for Technology***~~[Kentucky Information Resources Management Commission]~~.
- (f) "Capital projects" means, regardless of the source of cash or other consideration:
1. Any capital construction item, or any combination of capital construction items necessary to make a building or utility installation complete, estimated to cost four hundred thousand dollars (\$400,000) or more in cash or other consideration;
  2. Any lease of real property space with an annual rental cost exceeding two hundred thousand dollars (\$200,000);
  3. The use allowance paid by the judicial branch for a real property space pursuant to KRS 26A.090(2) and 26A.115 when the use allowance for the space exceeds two hundred thousand dollars (\$200,000) on an annual basis;
  4. Any item of equipment estimated to cost one hundred thousand dollars (\$100,000) or more in cash or other consideration;
  5. Any lease of an item of movable equipment if the annual cost of the lease is one hundred thousand dollars (\$100,000) or more or if the total cost of the lease-purchase or lease with an option to purchase is one hundred thousand dollars (\$100,000) or more; and
  6. Any system estimated to cost four hundred thousand dollars (\$400,000) or more in cash or other consideration.



- (g) "Emergency repair, maintenance, or replacement project" means the maintenance, repair, or reconstruction of a capital construction project or the maintenance, repair, or replacement of a major item of equipment that is:
    - 1. Necessitated by injury or damage resulting from a disaster; or
    - 2. Necessary to maintain government operations or to prevent or minimize injury or damage that could reasonably be expected to result from an impending disaster; or
    - 3. Necessitated by an unforeseen mechanical breakdown, electrical breakdown, or structural defect that must be corrected to make a facility or item of equipment usable.
  - (h) "Disaster" means a fire, flood, tornado, other natural disaster, riot, enemy attack, sabotage, explosion, power failure, energy shortage, transportation emergency, or other man-caused disaster.
  - (i) "Capital construction funds" means any funds used for capital construction, including, but not limited to, appropriated capital construction funds, agency funds, federal funds, private funds, or funds from any source held by an agency for management or investment purposes.
  - (j) "Entity head" means the Chief Justice of the Supreme Court, the President of the Senate and the Speaker of the House of Representatives, the secretary of the Finance and Administration Cabinet, the president of any university which complies with KRS 164A.585, 164A.595, and 164A.600, the board of trustees of the Kentucky Employees Retirement System, the board of trustees of the Teachers' Retirement System of the State of Kentucky, the board of directors of the Kentucky Higher Education Student Loan Corporation, the board of directors of the Kentucky Lottery Corporation, or the board of directors of the Kentucky Housing Corporation.
- (2) Except as provided in subsection (3) of this section, KRS 45.760 to 45.810 shall apply to capital projects and bonds for use by:
- (a) The state government;
  - (b) One of its departments or agencies, as defined in KRS 12.010 or enumerated in KRS 12.020;
  - (c) A municipal corporation which exercises its authority on a statewide basis including, but not limited to, the Kentucky Employees Retirement System, Teachers' Retirement System of the State of Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky Lottery Corporation, and Kentucky Housing Corporation; and
  - (d) Institutions of higher education.
- (3) KRS 45.760 to 45.810 shall not apply to:
- (a) Capital projects or bonds used directly in or for the construction or maintenance of roads, including, but not limited to, bulldozers, graders, earth movers, and real estate purchased for rights-of-way; and
  - (b) Political subdivisions, except for those defined in KRS 12.010, enumerated in KRS 12.020, or created as a municipal corporation which exercises its authority on a statewide basis including, but not limited to, the Kentucky Employees Retirement System, Teachers' Retirement System of the State of Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky Lottery Corporation, Kentucky Housing Corporation, or any entity with a governing body whose membership is substantially similar to the membership of the governing body of a municipal corporation which exercises its authority on a statewide basis. However, the provisions of KRS 45.750 to 45.810 shall not apply to acquisition or maintenance of any building or land which is purchased as a legal investment by any of the state retirement systems, which is not to be occupied by the retirement system, and which is financed solely with those assets of the retirement system used for investment purposes.

Section 17. KRS 61.8715 is amended to read as follows:

The General Assembly finds an essential relationship between the intent of this chapter and that of KRS 171.410 to 171.740, dealing with the management of public records, and of *Sections 1 to 9, 15, 20, 22, 23, and 24 of this Act* [KRS 61.940 to 61.957], dealing with the coordination of strategic planning for computerized information systems in state government; and that to ensure the efficient administration of government and to provide accountability of government activities, public agencies are required to manage and maintain their records according to the requirements of these statutes. The General Assembly further recognizes that while all government agency records are

public records for the purpose of their management, not all these records are required to be open to public access, as defined in this chapter, some being exempt under KRS 61.878.

Section 18. KRS 65.7623 is amended to read as follows:

- (1) There is hereby created the Commercial Mobile Radio Service Emergency Telecommunications Board of Kentucky, the "CMRS Board," consisting of eight (8) members, appointed by the Governor as follows: three (3) members shall be employed by or representative of the interest of CMRS providers; one (1) member shall be a mayor of a city of the first or second class or urban-county government or their designee containing a public safety answering point; one (1) nonvoting member shall be appointed from a list of local exchange landline telephone companies' representatives submitted by the Kentucky Telephone Association; and one (1) member shall be appointed from lists of candidates submitted to the Governor by the Kentucky Emergency Number Association and the Association of Public Communications Officials. The commissioner of the State Police, or the commissioner's designee, and the CMRS emergency telecommunications administrator also shall be members of the board. Any vacancy on the board shall be filled in the same manner as the original appointment.
- (2) The commissioner and administrator shall serve by virtue of their office. The other members shall be appointed no later than August 15, 1998, for a term of four (4) years and until their successors are appointed and qualified, except that of the first appointments, one (1) shall be for a term of one (1) year, one (1) shall be for a term of two (2) years, one (1) for a term of three (3) years, and two (2) shall be for a term of four (4) years.
- (3) In addition to the administrator, appointed by the Governor under KRS 65.7625, and other staff authorized under KRS 65.7629, the Finance and Administration Cabinet shall provide staff services and carry out administrative duties and functions as directed by the board. The board shall be attached to the **Governor's Office for Technology**~~[Finance and Administration Cabinet]~~ for administrative purposes only and shall operate as an independent entity within state government.
- (4) The board members shall serve without compensation but shall be reimbursed in accordance with KRS 45.101 for expenses incurred in connection with their official duties as members of the board.
- (5) All administrative costs and expenses incurred in the operation of the board, including payments under subsection (4) of this section, shall be paid from that portion of the CMRS fund that is authorized under KRS 65.7631 to be used by the board for administrative purposes.

Section 19. KRS 156.666 is amended to read as follows:

- (1) There is established the Council for Education Technology which shall be an advisory group attached to the Kentucky Board of Education. The council shall develop a master plan for education technology.
- (2) The council shall consist of the **chief information officer**~~[Commissioner of the Department of Information Systems]~~, the Secretary of the Education, Arts, and Humanities Cabinet, and the president of the Council on Postsecondary Education who shall serve as ex officio voting members and eight (8) voting members appointed by the Governor within thirty (30) days after April 3, 1992. The members shall be as follows:
  - (a) One (1) member of the Kentucky Board of Education;
  - (b) One (1) member of the House of Representatives;
  - (c) One (1) member of the Senate; and
  - (d) Five (5) citizens of the Commonwealth.

A majority of the membership present at any meeting shall constitute a quorum for the official conduct of business.

- (3) Members shall be appointed for four (4) year terms and may be reappointed. The initial members of the board shall be appointed as follows: two (2) members shall be appointed for terms of two (2) years; two (2) members shall be appointed for terms of three (3) years; and four (4) members shall be appointed for terms of four (4) years. Members shall receive no compensation but may be reimbursed for actual and necessary expenses in accordance with state laws and regulations.
- (4) Terms of members serving pursuant to KRS 156.665 shall terminate on April 3, 1992.
- (5) Immediately upon receiving notice of the appointment of all members, the chief state school officer shall call an organizational meeting. At this meeting the chief state school officer shall preside as temporary chairman,

and the council shall elect from among the members a chairman and any other officers it deems necessary, and define the duties of the officers.

- (6) Meetings shall be held at least two (2) times per year at a time and place designated by the chairman. The Department of Education shall provide staff support for the council.
- (7) The duties and responsibilities of the council shall include, but not be limited to, the following:
  - (a) Developing a long-range master plan for the efficient and equitable use of technology at all levels from primary school through higher education, including vocational and adult education. The plan shall focus on the technology requirements of classroom instruction, literacy laboratories, student record management, financial and administrative management, distance learning, and communications as they relate to the Commonwealth's outcome goals for students as described in KRS 158.6451;
  - (b) Creating, overseeing, and monitoring a well-planned and efficient statewide network of technology services designed to meet the educational and informational needs of the schools;
  - (c) Working with private enterprise to encourage the development of technology products specifically designed to answer Kentucky's educational needs;
  - (d) Encouraging an environment receptive to technological progress in education throughout the Commonwealth;
  - (e) Recommending a policy governing the granting of right of ways for the laying of fiber optic cable in a manner to insure that all of Kentucky's citizens are served equitably, that the fiber optic system is available for educational technology purposes, and that the private and public sectors are partners in the venture; and
  - (f) Receiving, holding, investing, and administering all funds received by the council for the purpose of carrying out its duties and responsibilities, as set out in this section. These funds shall be spent with the aim of achieving equality of education throughout the Commonwealth.

Section 20. KRS 171.420 is amended to read as follows:

The State Archives and Records Commission, is hereby created and shall be a seventeen (17) member body constituted as follows: The state librarian or his designee, who shall be the chairman of the commission, secretary of the Education, Arts, and Humanities Cabinet or his designee, the Auditor of Public Accounts or his designee, the Chief Justice of the Supreme Court or his designee, the director of the Legislative Research Commission or his designee, the Attorney General or his designee, the director of the Office for Policy and Management or his designee, the **chief information officer**~~commissioner of the Department of Information Systems~~ or **her or** his designee, one (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the University of Kentucky, one (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Historical Society, one (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Library Association, one (1) member appointed by the Governor from a list of seven (7) persons with one (1) name submitted by each of the presidents of the state universities and colleges, four (4) citizens-at-large, and one (1) member appointed by the Governor from a list of three (3) persons, with one (1) name submitted by each of the presidents of the Kentucky League of Cities, the Kentucky Association of Counties, and the Kentucky Association of School Administrators. Vacancies shall be filled by the Governor in the same manner as initial appointments are made. All members shall serve for a term of four (4) years, provided that one (1) of the initial appointments shall be for a term of four (4) years, one (1) for three (3) years, one (1) for two (2) years, and one (1) for one (1) year. The commission shall advise the Department for Libraries and Archives on matters relating to archives and records management. The commission shall have the authority to review and approve schedules for retention and destruction of records submitted by state and local agencies. In all cases, the commission shall determine questions which relate to destruction of public records, and their decision shall be binding on the parties concerned and final, except that the commission may reconsider or modify its actions upon the agreement of a simple majority of the membership present and voting.

Section 21. KRS 186A.025 is amended to read as follows:

- (1) (a) The Finance and Administration Cabinet shall have full responsibility and authority for day-to-day administration of the automated system described by this chapter; and
- (b) May request the assistance of any cabinet or department of state government in carrying out its responsibilities under this chapter.

- (2) The ***Governor's Office for Technology***~~[Department of Information Systems]~~ shall assure, to the extent feasible, twenty-four (24) hour, year-round information support to the Department of State Police, and to other law enforcement agencies state and nationwide, regarding vehicles registered and, when required, titled in this state.

Section 22. KRS 186A.040 is amended to read as follows:

- (1) The Department of Vehicle Regulation shall provide and receive information on the insurance status of vehicles registered in the Commonwealth of Kentucky. The department shall provide appropriate insurance information to the ***Governor's Office for Technology***~~[Department of Information Systems]~~ for inclusion in the AVIS database.
- (2) Upon notification to the Department of Vehicle Regulation from an insurance company of cancellation or nonrenewal of a policy pursuant to KRS 304.39-085, the department shall immediately notify the insured. Notification to the insured shall state that the insured's policy is no longer valid and that the insured shall have thirty (30) days to show proof of insurance to the department or the county clerk. The department shall further inform the insured that if evidence of insurance is not received within thirty (30) days the department shall revoke the registration of the motor vehicle until:
  - (a) The person presents proof of insurance to the department or county clerk and pays the reinstatement fee required by KRS 186.180;
  - (b) The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that the failure to maintain motor vehicle insurance on the vehicle specified in the department's notification is the result of the inoperable condition of the motor vehicle;
  - (c) The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that the failure to maintain motor vehicle insurance on the vehicle specified in the department's notification is the result of the seasonal nature of the vehicle. The affidavit shall explain that when the vehicle is out of dormancy and when the seasonal use of the vehicle is resumed, the proper security will be obtained; or
  - (d) The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that he or she requires a registered motor vehicle in order to carry out his or her employment and that the motor vehicle that he or she drives during the course of his or her employment meets the security requirement of subtitle 39 of KRS Chapter 304. The person shall also declare in the affidavit that he or she will operate a motor vehicle only in the course of his or her employment. If a person has his or her motor vehicle registration revoked in accordance with this subsection three (3) times within any twelve (12) month period, the revocations shall constitute a violation of KRS 304.39-080. The department shall notify the county attorney to begin prosecution for violation of subtitle 39 of KRS Chapter 304.
- (3) The Department of Vehicle Regulation shall be responsible for notification to the appropriate county attorney that a motor vehicle is not properly insured, if the insured does not respond to notification set out by subsection (2) of this section. The notice that the department gives to the county attorney in accordance with subsection (2) of this section shall include a certified copy of the person's driving record which shall include:
  - (a) The notice that the department received from an insurance company that a person's motor vehicle insurance policy has been canceled or has not been renewed; and
  - (b) A dated notice that the department sent to the person requiring the person to present proof of insurance to the department or the county clerk.

Upon notification by the department, a county attorney shall immediately begin prosecution of the person who had his or her motor vehicle registration revoked three (3) times within any twelve (12) month period in accordance with subsection (2) of this section.

- (4) The certified copies sent by the department described in subsection (3) of this section, shall be prima facie evidence of a violation of KRS 304.39-080.
- (5) If the insured provides proof of insurance to the department or the clerk within the thirty (30) day notification period, the department shall ensure action is taken to denote a valid insurance policy is in force.

Section 23. KRS 186A.285 is amended to read as follows:

- (1) No person shall, without prior specific written approval of the commissioner of the Department of Vehicle Regulation and the **chief information officer**~~[commissioner of the Department of Information Systems]~~, connect with the automated vehicle registration and titling system, directly or indirectly, by wire, electronic, electromagnetic induction, systemic, or any other means, any device, system or apparatus capable of putting information or electronic signals into, or receiving information or electronic signals from, or blocking, diverting, or altering transmission of data or signals within, the automated vehicle registration and titling system, its components, and its communications network.
- (2) This section does not apply to or prohibit connection of devices or systems to the automated vehicle registration and titling system by persons who are acting in accordance with a contract or agreement with the Commonwealth of Kentucky, which in addition to any other required approval, has been approved in writing by the commissioner of the Department of Vehicle Regulation and the **chief information officer**~~[commissioner of the Department of Information Systems]~~.

Section 24. KRS 194B.102 is amended to read as follows:

- (1) There is hereby created the "Statewide Strategic Planning Committee for Children in Placement" which is administratively attached to the Department for Social Services. The committee shall be composed of the following:
  - (a) Members who shall serve by virtue of their positions: the commissioner of the Department for Social Services, the commissioner of the Department for Public Health, the commissioner of the Department for Mental Health and Mental Retardation Services, the commissioner for the Department for Medicaid Services, the commissioner of the Department for Social Insurance, the commissioner of the Department of Juvenile Justice, the commissioner of the Department of Education, the executive director of the Administrative Office of the Courts, or their designees; and
  - (b) One (1) foster parent selected by the statewide organization for foster parents, one (1) District Judge selected by the Chief Justice of the Kentucky Supreme Court, one (1) parent of a child in placement at the time of appointment to be selected by the secretary of the Cabinet for Families and Children, one (1) youth in placement at the time of the appointment to be selected by the secretary of the Cabinet for Families and Children, and one (1) private child care provider selected by the statewide organization for private child care providers. These members shall serve a term of two (2) years, and may be reappointed.
- (2) The Statewide Strategic Planning Committee for Children in Placement shall, by July 1, 1999, develop a statewide strategic plan for the coordination and delivery of care and services to children in placement and their families. The plan shall be submitted to the Governor, the Chief Justice of the Supreme Court, and the Legislative Research Commission on or before July 1, 1999, and each July 1 thereafter.
- (3) The strategic plan shall, at a minimum, include:
  - (a) A mission statement;
  - (b) Measurable goals;
  - (c) Principles;
  - (d) Strategies and objectives; and
  - (e) Benchmarks.
- (4) The planning horizon shall be three (3) years. The plan shall be updated on an annual basis. Strategic plan updates shall include data and statistical information comparing plan benchmarks to actual services and care provided.
- (5) The Statewide Strategic Planning Committee for Children in Placement shall, in consultation with the commissioner and the statewide placement coordinator as provided for in KRS 199.801, establish a statewide facilities and services plan that identifies the location of existing facilities and services for children in placement, identifies unmet needs, and develops strategies to meet the needs. The planning horizon shall be five (5) years. The plan shall be updated on an annual basis. The plan shall be used to guide, direct, and, if necessary, restrict the development of new facilities and services, the expansion of existing facilities and services, and the geographic location of placement alternatives.

- (6) The Statewide Strategic Planning Committee for Children in Placement may, through the promulgation of administrative regulations, establish a process that results in the review and approval or denial of the development of new facilities and services, the expansion of existing facilities and services, and the geographic location of any facilities and services for children in placement in accordance with the statewide facilities and services plan. Any process established shall include adequate due process rights for individuals and entities seeking to develop new services, construct new facilities, or expand existing facilities, and shall require the involvement of local communities and other resource providers in those communities.
- (7) As a part of the statewide strategic plan, and in consultation with the ***Governor's Office for Technology***~~[Kentucky Information Resources Management Commission]~~, the Statewide Strategic Planning Committee for Children in Placement shall plan for the development or integration of information systems that will allow information to be shared across agencies and entities, so that relevant data will follow a child through the system regardless of the entity or agency that is responsible for the child. The data produced shall be used to establish and monitor the benchmarks required by subsection (3) of this section. The data system shall, at a minimum, produce the following information on a monthly basis:
- (a) Number of placements per child;
  - (b) Reasons for placement disruptions;
  - (c) Length of time between removal and establishment of permanency;
  - (d) Reabuse or reoffense rates;
  - (e) Fatality rates;
  - (f) Injury and hospitalization rates;
  - (g) Health care provision rates;
  - (h) Educational achievement rates;
  - (i) Multiple placement rates;
  - (j) Sibling placement rates;
  - (k) Ethnicity matching rates;
  - (l) Family maintenance and preservation rate; and
  - (m) Adoption disruption rates.
- (8) The Statewide Strategic Planning Committee for Children in Placement shall publish an annual report no later than December 1 of each year that includes, but is not limited to, the information outlined in subsection (7) of this section.

SECTION 25. A NEW SECTION OF KRS CHAPTER 12 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in Sections 25 to 27 of this Act, "KY-ASAP" means the Kentucky Agency for Substance Abuse Policy.*
- (2) *The Kentucky Agency for Substance Abuse Policy is created and attached for administrative purposes to the Office of the Governor. KY-ASAP shall be headed by an executive director with experience in overseeing programs involving tobacco and substance abuse and shall have other staff as necessary to conduct its affairs.*
- (3) *KY-ASAP shall administer an endowment from interest generated through funds appropriated or gifts, donations, or funds received from any source. KY-ASAP may expend endowment principal, if necessary in its discretion, to carry out the purposes of Sections 25 to 27 of this Act. These expenditures from the endowment principal are hereby appropriated for this purpose.*
- (4) (a) *The eighteen (18) member KY-ASAP Board is created to oversee the activities of KY-ASAP. Membership of the board shall be appointed by the Governor and shall consist of the following:*
  - 1. *One (1) member representing the Kentucky Family Resource Youth Services Coalition, or a designee;*
  - 2. *One (1) member representing the Kentucky Health Department Association, or a designee;*

3. *The secretary of the Cabinet for Health Services, or designee;*
  4. *The secretary of the Justice Cabinet, or a designee;*
  5. *The secretary of the Cabinet for Families and Children, or a designee;*
  6. *One (1) member representing the Division of Substance Abuse within the Department for Mental Health and Mental Retardation Services, Cabinet for Health Services, or a designee;*
  7. *The commissioner of the Department for Public Health, Cabinet for Health Services, or a designee;*
  8. *The commissioner of the Department of Alcoholic Beverage Control, or a designee;*
  9. *The commissioner of the Department of Education;*
  10. *The director of the Administrative Office of the Courts, or a designee;*
  11. *One (1) member representing the Kentucky Association of Regional Programs, or a designee;*
  12. *One (1) member representing the Kentucky Heart Association, or a designee;*
  13. *One (1) member representing the Kentucky Lung Association, or a designee;*
  14. *One (1) member representing the Kentucky Cancer Society, or a designee;*
  15. *Two (2) members representing local tobacco addiction and substance abuse advisory and coordination boards; and*
  16. *Two (2) members representing private community-based organizations, whether for-profit or nonprofit, with experience in programs involving smoking cessation or prevention or alcohol or substance abuse prevention and treatment.*
- (b) *Members shall serve for a term of four (4) years, may be reappointed, and may serve no more than two (2) consecutive terms. Members shall not be compensated but shall receive reimbursement for expenses incurred while performing board business.*
- (c) *The board shall meet at least quarterly. A quorum of ten (10) members shall be required for the transaction of business. Meetings shall be held at the call of the chair, or upon the written request of two (2) members to the chair.*
- (d) *The board shall:*
1. *Oversee deposits and expenditures from the endowment;*
  2. *Request, in its discretion, an audit relating to the expenditure of endowment funds;*
  3. *Receive quarterly reports from the executive director regarding KY-ASAP's activities;*
  4. *Progress toward development and implementation of the strategic plan;*
  5. *Recommend to KY-ASAP the most efficient means for using public funds to coordinate, supplement, and support high quality and ongoing programs of all public agencies and private service providers related to smoking cessation and prevention and alcohol and substance abuse prevention and treatment;*
  6. *Recommend matters for review and analysis by KY-ASAP; and*
  7. *Perform other duties as necessary for the oversight of KY-ASAP.*
- (5) *KY-ASAP shall promote the implementation of research-based strategies that target Kentucky's youth and adult populations.*
- (6) *KY-ASAP shall vigorously pursue the philosophy that tobacco in the hands of Kentucky's youth is a drug abuse problem because of the addictive qualities of nicotine, and because tobacco is the most prevalent gateway drug that leads to later and escalated drug and alcohol abuse.*

SECTION 26. A NEW SECTION OF KRS CHAPTER 12 IS CREATED TO READ AS FOLLOWS:

*KY-ASAP shall:*

- (1) *Develop a strategic plan to reduce the prevalence of smoking and drug and alcohol abuse among both the youth and adult populations in Kentucky;*
- (2) *Monitor the data and issues related to youth alcohol and tobacco access, smoking cessation and prevention, and substance abuse policies, their impact on state and local programs, and their flexibility to adapt to the needs of local communities and service providers;*
- (3) *Make policy recommendations to be followed to the extent permitted by budgetary restrictions and federal law, by executive branch agencies that work with smoking cessation and prevention and alcohol and substance abuse issues to ensure the greatest efficiency in agencies and to ensure that a consistency in philosophy will be applied to all efforts undertaken by the administration in initiatives related to smoking cessation and prevention and alcohol and substance abuse;*
- (4) *Identify existing resources in each community that advocate or implement programs for smoking cessation or prevention, or drug and alcohol abuse prevention, education, or treatment;*
- (5) *Encourage coordination among public and private, state and local, agencies, organizations, and service providers, and monitor related programs;*
- (6) *Act as the referral source of information, utilizing existing information clearinghouse resources within the Department for Public Health and CHAMPIONS for a Drug Free Kentucky Office, relating to youth tobacco access, smoking cessation and prevention, and substance abuse prevention, cessation, and treatment programs. KY-ASAP shall identify gaps in information referral sources;*
- (7) *Search for grant opportunities for existing programs within the Commonwealth;*
- (8) *Make recommendations to state and local agencies and local tobacco addiction and substance abuse advisory and coordination boards;*
- (9) *Observe programs from other states;*
- (10) *Coordinate services among local and state agencies, including, but not limited to, the Justice Cabinet, the Cabinet for Health Services, the Cabinet for Families and Children, the Department of Agriculture, the Public Protection and Regulation Cabinet, the Administrative Office of the Courts, and the Education, Arts, and Humanities Cabinet;*
- (11) *Assure the availability of training, technical assistance, and consultation to local service providers for programs funded by the Commonwealth that provide services related to tobacco addiction, smoking cessation or prevention, or alcohol or substance abuse;*
- (12) *Review existing research on programs related to smoking cessation and prevention and substance abuse prevention and treatment;*
- (13) *Comply with any federal mandate regarding smoking cessation and prevention and substance abuse, to the extent authorized by state statute;*
- (14) *Establish a mechanism to coordinate the distribution of funds to support any local prevention, treatment, and education program based on the strategic plan developed in subsection (1) of this section that could encourage smoking cessation and prevention through efficient, effective, and research-based strategies;*
- (15) *Oversee a school-based initiative that links schools with community-based agencies and health departments to implement School Programs to Prevent Tobacco Use, based upon the model recommended by the Centers for Disease Control and Prevention. To the extent permitted by resources, the initiative shall involve input by and services from each of the family resource and youth services centers, regional prevention centers, and existing school-based antidrug programs;*
- (16) *Work with community-based organizations to encourage them to work together to establish comprehensive tobacco addiction and substance abuse prevention education programs and carry out the strategic plan developed in this section. These organizations shall be encouraged to partner with district and local health departments and community mental health centers to plan and implement interventions to reach youths before tobacco addiction and substance abuse become a problem in their lives;*
- (17) *Coordinate media campaigns designed to demonstrate the negative impact of smoking and the increased risk of tobacco addiction, substance abuse, and the development of other disease in children, young people, and adults. To accomplish this objective, KY-ASAP shall work with local media to reach all segments of the community quickly and efficiently;*



- (18) *Certify to the Governor and the General Assembly during the budget request process established under KRS Chapter 48 the extent to which each entity receiving state funds has cooperated with KY-ASAP, coordinated with community resources, and vigorously pursued the philosophy of KY-ASAP;*
- (19) *Promulgate any administrative regulations necessary to implement Sections 25 to 27 of this Act; and*
- (20) *Report to the Legislative Research Commission and Governor by October 1, 2000, regarding the proper organization of state government agencies that will provide the greatest coordination of services, and report semi annually to the Legislative Research Commission and Governor on the proper organization structure, devising and implementing an accountability system to be designed to ensure efficiency and efficacy of services and grants, and on other matters as requested by the Legislative Research Commission and Governor.*

SECTION 27. A NEW SECTION OF KRS CHAPTER 12 IS CREATED TO READ AS FOLLOWS:

- (1) *KY-ASAP shall establish in each county a local tobacco addiction and alcohol and substance abuse advisory and coordination board to assist in planning, overseeing, and coordinating the implementation of local programs related to smoking cessation and prevention and alcohol and substance abuse prevention, cessation, and treatment, although a single board may be established for multiple counties to ensure a comprehensive range of services. The board shall assist with the coordination of programs provided by public and private entities. If the existing programs of private service providers are of high quality, KY-ASAP shall concentrate on providing missing elements and support for those providers. The Cabinet for Health Services shall support the communities' efforts.*
- (2) *KY-ASAP shall consult with community leaders to solicit the names of residents from the community to serve on each advisory and coordination board. KY-ASAP shall request from each board the submission of reasonable reports on the effectiveness, efficiency, and efforts of each local program, including recommendations for increased or decreased funding, and KY-ASAP shall supply information as necessary to the advisory and coordination board to enable it to carry out its functions.*
- (3) *KY-ASAP shall provide incentives to encourage multicounty advisory and coordination board requests and shall establish a single board to represent all counties making the request. Priority in establishing a board shall be given to existing regional prevention centers or coalitions, community organizations, or local Kentucky Incentives for Prevention (KIP) project coalitions. Membership shall consist of residents from each of the counties.*
- (4) *Each advisory and coordination board shall develop a long-term community strategy that is designed to reduce the incidence of youth and young adult smoking and tobacco addiction, promote resistance to smoking, reduce the incidence of substance abuse, and promote effective treatment of substance abuse. All county resources, both private and public, for-profit and nonprofit, shall be considered in developing this strategy.*
  - (a) *Employers, local leaders, schools, family resource and youth services centers, health care providers and institutions, economic developers, and other relevant local and regional entities shall be consulted in the development of the strategy.*
  - (b) *An assessment of needs and available services shall be included in the strategy.*

Section 28. KRS 222.021 is amended to read as follows:

- (1) There is hereby created within the Cabinet for Health Services a Substance Abuse, Pregnancy, and Women of Childbearing Age Work Group. The work group shall carry out the planning and coordinating activities of the Commonwealth with regard to *smoking cessation and prevention and* substance dependency and abuse among pregnant women and other women of childbearing age.
- (2) The work group shall be appointed by the secretary for health services and be composed of, but not restricted to, a representative of the *Kentucky Agency for Substance Abuse Policy*; Cabinet for Health Services, Department for Public Health, Division of Maternal and Child Health Services; Department for Social Services; Department for Social Insurance; Department for Mental Health and Mental Retardation Services, Division of Substance Abuse and Division of Mental Health; Department for Medicaid Services; Justice Cabinet, Department of State Police, Drug Enforcement, Special Investigations Unit; Department of Education, Division of Program Resources; Office of the Attorney General; Office for a Drug Free Kentucky; Kentucky Commission on Women; Regional Community Mental Health and Mental Retardation System; University of Kentucky Institute on Women and Substance Abuse; University of Louisville, School of Medicine, Department

of Pediatrics; University of Kentucky Medical Center, Department of Obstetrics and Gynecology; local or district health department; Kentucky Psychological Association; Kentucky Pharmacists Association; Kentucky Hospital Association; Kentucky Nurses Association; and the Kentucky Medical Association; Kentucky Chapter of the National Association of Social Workers; Kentucky Association of Addiction Professionals; Kentucky Prevention Network; Coalition for Women's Substance Abuse Services; Kentucky Women's Advocates; Kentucky Youth Advocates; Kentucky Chapter of the March of Dimes; Foster Parent Association; and the Homeless Coalition.

- (3) The Substance Abuse, Pregnancy, and Women of Childbearing Age Work Group shall be chaired jointly by the Director of the Division of Substance Abuse and another member of the work group who has been elected by the membership of the work group. The work group shall meet at least quarterly and shall periodically assess the extent of **smoking abuse and** alcohol and other substance dependency and abuse among Kentucky women who are pregnant and other women of childbearing age; identify, develop, and coordinate resources available and needed within the Commonwealth for any woman who is pregnant or of childbearing age and at risk of **smoking abuse and** alcohol and substance dependency or abuse; and identify, develop, and coordinate resources available and needed for infants and children exposed to alcohol, **smoking**, or drugs in utero or through alcohol, **smoking**, or drug abuse in the home.
- (4) The work group shall make a biennial report, no later than January 1 of each odd-numbered year, of its activities and any recommendations to the Secretary of the Cabinet for Health Services and the Legislative Research Commission.
- (5) The provisions of subsections (1) to (4) of this section, creating a Substance Abuse, Pregnancy, and Women of Childbearing Age Work Group shall expire on July 15, 2002. As of that date, the Substance Abuse, Pregnancy, and Women of Childbearing Age Work Group shall cease to exist.

Section 29. KRS 222.037 is amended to read as follows:

- (1) The Cabinet for Health Services may establish four (4) or more pilot projects within the Commonwealth to demonstrate the effectiveness of different methods of providing community services to prevent **smoking and** alcohol and substance abuse by pregnant females; improving agency coordination to better identify the pregnant **smoker and** substance abuser and other females who have **smoking and** substance abuse problems; linking with community services and treatment for the chemically dependent woman, her children, and other family members; and gaining access to early intervention services for infants in need.
- (2) The cabinet may use any state appropriation and any gifts, grants, or federal funds that become available for the purposes of implementing the provisions of this section.

Section 30. KRS 222.211 is amended to read as follows:

- (1) The cabinet shall, *in conjunction with KY-ASAP and in furtherance of the strategic plan developed in Section 26 of this Act*, coordinate matters affecting **tobacco addiction and** alcohol and other drug abuse in the Commonwealth and shall assure that there is the provision of prevention, intervention, and treatment services for both juveniles and adults to address the problems of **tobacco addiction and** alcohol and other drug abuse within individuals, families, and communities; that the coordination of these matters shall be done in cooperation with public and private agencies, business, and industry; and that technical assistance, training, and consultation services shall be provided within budgetary limitations when required. The cabinet may promulgate administrative regulations under KRS Chapter 13A to carry out its powers and duties under this chapter. The cabinet shall utilize community mental health centers and existing facilities and services within the private sector when possible. The cabinet shall be responsible for assuring that the following services are available:

(a)~~(1)~~ Primary prevention services directed to the general population and identified target groups for the purposes of avoiding the onset of **tobacco addiction and** alcohol and other drug abuse related problems and enhancing the general level of health of the target groups. The purpose of the services shall be to provide individuals with the information and skills necessary to make healthy decisions regarding the use or nonuse of **tobacco**, alcohol, and other drugs as well as to influence environmental factors, such as social policies and norms which will support healthy lifestyle;

(b)~~(2)~~ Intervention services for the purpose of identifying, motivating, and referring individuals in need of **tobacco addiction and** alcohol and other drug abuse education or treatment services. Services may be provided in settings such as industry and business, schools, health, and social service agencies;

- (c)~~[(3)]~~ Detoxification services on a twenty-four (24) hour basis in or near population centers which meet the immediate medical and physical needs of persons intoxicated from the use of alcohol or drugs, or both, including necessary diagnostic and referral services. The services shall be provided in either a hospital or a licensed alcohol and other drug abuse program;
- (d)~~[(4)]~~ Rehabilitation services offered on an inpatient or outpatient basis for the purposes of treating an individual's alcohol and other drug abuse problem. The services shall be provided in a licensed alcohol and other drug abuse program;
- (e)~~[(5)]~~ Therapeutic services to family members of alcohol and other drug abusers for the purpose of reducing or eliminating dysfunctional behavior that may occur within individuals who are emotionally, socially, and sometimes physically dependent on an alcohol or other drug abuser. The services shall be offered primarily on a outpatient basis;
- (f)~~[(6)]~~ Inpatient psychiatric services for those alcohol and other drug abusers whose diagnosis reflects both serious mental health disturbances as well as alcohol and other drug abuse disorders;
- (g)~~[(7)]~~ Training programs for personnel working in the field of prevention, intervention, and treatment of *tobacco addiction and* alcohol and other drug abuse problems; and
- (h)~~[(8)]~~ Driving under the influence services to include assessment, education, and treatment for persons convicted of operating a motor vehicle, while under the influence of alcohol or other substance which may impair driving ability, pursuant to KRS Chapter 189A.

- (2) *The cabinet shall comply with all policy recommendations of KY-ASAP, and shall honor requests for information from the Kentucky Agency for Substance Abuse Policy created under Section 25 of this Act.*

Section 31. To the extent possible and as necessary to implement the provisions of this Act, the Governor shall utilize the existing infrastructure of the CHAMPIONS for a Drug Free Kentucky Office.

SECTION 32. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 32 to 36 of this Act:*

- (1) *"Access" means the ability to receive, use, and manipulate data and operate controls included in information technology to be in compliance with nationally accepted accessibility and usability standards such as those established by Section 255 of the Federal Telecommunications Act of 1996 and Section 508 of the Federal Workforce Investment Act of 1998;*
- (2) *"Individual with a disability" means an individual who is considered to have a disability for the purpose of any federal or state law, and who is or would be able by information access assistive technology to maintain a level of functioning or to achieve a greater level of functioning in any major life activity;*
- (3) *"Blind or visually impaired individual" means an individual who:*
  - (a) *Has a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision so that the widest diameter of the visual field subtends an angle no greater than twenty (20) degrees;*
  - (b) *Has a medically indicated expectation of visual deterioration; or*
  - (c) *Has a medically diagnosed limitation in visual functioning that restricts the individual's ability to read and write standard print at levels expected of individuals of comparable ability;*
- (4) *"Covered entity" means the state or any state-assisted organization;*
- (5) *"Deaf" or "hard of hearing" means persons who have hearing disorders and includes people who cannot hear and understand speech clearly through the ear alone, with or without hearing aids;*
- (6) *"Information technology" means all electronic information processing hardware and software, including but not limited to telecommunications and any electronic information equipment or interconnected system that is used in the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of audio, video, graphics, and text;*
- (7) *"Assistive technology" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, customized, fabricated, or is otherwise an alternative means that is used to increase, maintain, or improve functional capabilities of individuals with disabilities;*

- (8) *"Nonvisual" means output methods not requiring sight, including but not limited to synthesized speech and Braille;*
- (9) *"State" means the Commonwealth of Kentucky or any of its departments, agencies, public bodies, or other instrumentalities;*
- (10) *"State-assisted organization" means a college, university, nonprofit organization, person, political subdivision, school system, or other entity supported in whole or in part by state funds;*
- (11) *"Telecommunications" means the transmission of information, images, pictures, voice, or data by radio, video, or other electronic or impulse means; and*
- (12) *"Undue burden" means significant difficulty or expense, including but not limited to a difficulty or expense associated with technical feasibility.*

SECTION 33. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

*The head of each covered entity shall ensure that information technology equipment and software used by the entity's employees, program participants, and the general public:*

- (1) *Provide individuals with disabilities, including blind or visually impaired, or deaf or hard of hearing, with access, including but not limited to interactive use of equipment and services, that is equivalent to the access provided individuals who are not disabled, blind or visually impaired, or deaf or hard of hearing;*
- (2) *Are designed to present information, including but not limited to prompts used for interactive communication, in formats intended for both visual and nonvisual use; and*
- (3) *Have been purchased under a contract that includes the technology access clause required by Section 34 of this Act.*

SECTION 34. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

*The Finance and Administration Cabinet shall develop a technology access clause which shall be in compliance with Section 255 of the Federal Telecommunication Act of 1996 and with Section 508 of the Federal Workforce Investment Act of 1998 and shall establish alternative, including nonvisual, access standards for use in the procurement of information technology by covered entities in accordance with the following requirements:*

- (1) *The technology access clause shall require compliance with the standards established under this section. Except as otherwise provided in Section 35 of this Act, the technology access clause shall be included in all contracts entered into after the effective date of this Act for the procurement of information technology by, or for the use of, covered entities.*
- (2) *The alternative and nonvisual access standards shall include the specifications necessary to meet the requirements of Section 33 of this Act. The standards shall include the following minimum specifications:*
  - (a) *Effective, interactive control and use of technology, including the operating system, applications programs, and format of the data presented shall be readily achievable by alternative and nonvisual means;*
  - (b) *The technology equipped for alternative and nonvisual access shall be compatible with information technology used by other individuals with whom the person with a disability, including the blind or visually impaired individual, must interact;*
  - (c) *Alternative and nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and*
  - (d) *The technology for alternative or nonvisual access shall have the capability of providing equivalent access by nonvisual or other alternative means to telecommunications or other interconnected network services used by persons who are not disabled.*

SECTION 35. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

- (1) *For the purpose of procurement, the head of any covered entity may, with respect to access software or peripheral devices and other assistive technology pertinent to individuals with disabilities access to information technology obtained following the effective date of this Act, approve the exclusion of the technology access clause if the cost of the software or peripheral devices or other assistive technology for the covered entity presents an undue burden.*

- (2) *The head of any covered entity shall not approve the exclusion of the technology access clause from any contract with respect to:*
- (a) *The compatibility of standard operating systems and software with nonvisual access or other assistive software, peripheral devices, or any assistive technology; or*
  - (b) *The initial design, development, and installation of information systems, including the design and procurement of interactive equipment and software.*
- (3) *Nothing in this section shall require the installation of software or peripheral devices for nonvisual or alternative access if the information technology is being used by individuals who are not blind, visually impaired, or otherwise disabled. However, the applications programs and underlying operating system, including the format of the data, used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.*
- (4) *Information technology purchased prior to the effective date of this Act shall be brought into compliance with Sections 32 to 36 of this Act when the covered entity upgrades or replaces the existing equipment or software. Nothing in Sections 32 to 36 of this Act shall be construed or interpreted to require the replacement or upgrade of existing equipment or software.*

SECTION 36. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

*Any person injured by a violation of Sections 32 to 36 of this Act may bring an action for injunctive relief in the Circuit Court of the county in which the person resides or in which the covered entity is located. An action for injunctive relief shall be commenced within four (4) years after the cause of action accrues. A cause of action for a continuing violation of Sections 32 to 36 of this Act shall accrue at the time of the latest occurrence of the violation.*

Section 37. The following KRS sections are repealed:

- 42.029 Department of Information Systems -- Commissioner and other personnel -- Divisions -- Duties -- Delegation of authority.
- 42.640 Definitions for KRS 42.650.
- 61.937 Authority to enter into memoranda of agreement and contracts.
- 61.938 Office of the Chief Information Officer -- Duties -- Authority for administrative regulations.
- 61.940 Legislative declarations.
- 61.942 Definitions for KRS 61.940 to 61.953.
- 61.945 Kentucky Information Resources Management Commission.
- 61.948 Powers of commission.
- 61.950 Meetings -- Roles and duties -- Administrative Regulations.
- 61.951 Office for the Kentucky Information Resources Management Commission -- Executive director.
- 61.953 Contents of five-year statewide information resources management plan.
- 61.954 Construction of KRS 61.940 to 61.953 with respect to judicial and legislative branches.
- 61.955 Communications Advisory Council.

Section 38. The General Assembly confirms Executive Order 99-1359, dated October 6, 1999, and Executive Order 99-1465, dated November 1, 1999, to the extent they are not otherwise confirmed or superseded by this Act; and Executive Order 99-1360, dated October 6, 1999, which transfers twenty-seven (27) positions and all records, files, and equipment directly associated with these positions, from the Office of Technology Services within the Cabinet for Families and Children to the Governor's Office for Technology.

**Approved April 26, 2000**

## CHAPTER 537

## (SB 332)

AN ACT relating to the confinement of prisoners in county jails.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

- (1) *A prisoner in a county jail shall be required by the sentencing court to reimburse the county for expenses incurred by reason of the prisoner's confinement as set out in this section, except for good cause shown.*
- (2) (a) *The jailer may adopt, with the approval of the county's governing body, a prisoner fee and expense reimbursement policy, which may include, but not be limited to, the following:*
  1. *An administrative processing or booking fee;*
  2. *A per diem for room and board of not more than fifty dollars (\$50) per day or the actual per diem cost, whichever is less, for the entire period of time the prisoner is confined to the jail;*
  3. *Actual charges for medical and dental treatment; and*
  4. *Reimbursement for county property damaged or any injury caused by the prisoner while confined to the jail.*
- (b) *Rates charged may be adjusted in accordance with the fee and expense reimbursement policy based upon the ability of the prisoner confined to the jail to pay, giving consideration to any legal obligation of the prisoner to support a spouse, minor children, or other dependents. The prisoner's interest in any jointly owned property and the income, assets, earnings, or other property owned by the prisoner's spouse or family shall not be used to determine a prisoner's ability to pay.*
- (3) *The jailer or his designee may bill and attempt to collect any amount owed which remains unpaid. The governing body of the county may, upon the advice of the jailer, contract with one (1) or more public agencies or private vendors to perform this billing and collection. Within twelve (12) months after the date of the prisoner's release from confinement, the county attorney, jailer, or the jailer's designee, may file a civil action to seek reimbursement from that prisoner for any amount owed which remains unpaid.*
- (4) *Any fees or reimbursement received under this section shall be forwarded to the county treasurer for placement in the jail's budget.*
- (5) *The governing body of the county may require a prisoner who is confined in the county jail to pay a reasonable fee, not exceeding actual cost, for any medical treatment or service received by the prisoner. However, no prisoner confined in the jail shall be denied any necessary medical care because of inability to pay.*
- (6) *Payment of any required fees may be automatically deducted from the prisoner's property or canteen account. If the prisoner has no funds in his account, a deduction may be made creating a negative balance. If funds become available or if the prisoner reenters the jail at a later date, the fees may be deducted from the prisoner's property or canteen account.*
- (7) *Prior to the prisoner's release, the jailer or his designee may work with the confined prisoner to create a reimbursement plan to be implemented upon the prisoner's release. At the end of the prisoner's incarceration, the prisoner shall be presented with a billing statement produced by the jailer or designee. After the prisoner's release, the jailer or his designee may, after negotiation with the prisoner, release the prisoner from all or part of the prisoner's repayment obligation if the jailer believes that the prisoner will be unable to pay the full amount due.*
- (8) *No per diem shall be charged to any prisoner who is required to pay a work release fee pursuant to KRS 439.179, a prisoner that has been ordered to pay a reimbursement fee by the court pursuant to KRS 534.045, or that the Department of Corrections is financially responsible for housing.*
- (9) *No medical reimbursement, except that provided for in KRS 441.045, shall be charged to any prisoner that the Department of Corrections is financially responsible for housing.*

Approved April 26, 2000

**CHAPTER 538****(SB 335)**

AN ACT relating to certified surgical assistants.

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

Section 1. KRS 216B.015 is amended to read as follows:

Except as otherwise provided, for purposes of this chapter, the following definitions shall apply:

- (1) "Abortion facility" means any place in which an abortion is performed;
- (2) "Administrative regulation" means a regulation adopted and promulgated pursuant to the procedures in KRS Chapter 13A;
- (3) "Affected persons" means the applicant; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health facilities within that geographic area; health facilities located in the health service area in which the project is proposed to be located which provide services similar to the services of the facility under review; health facilities which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future; the cabinet and third-party payors who reimburse health facilities for services in the health service area in which the project is proposed to be located;
- (4) "Applicant" means any physician's office requesting a major medical equipment expenditure of one million five hundred thousand dollars (\$1,500,000) or more after July 15, 1996, adjusted annually, or any person, health facility, or health service requesting a certificate of need or license;
- (5) "Cabinet" means the Cabinet for Health Services;
- (6) "Capital expenditure" means an expenditure made by or on behalf of a health facility which:
  - (a) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance or is not for investment purposes only;
  - (b) Is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part thereof;
- (7) "Capital expenditure minimum" means one million five hundred thousand dollars (\$1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether an expenditure exceeds the expenditure minimum, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the improvement, expansion, or replacement of any plant or any equipment with respect to which the expenditure is made shall be included. Donations of equipment or facilities to a health facility which if acquired directly by the facility would be subject to review under this chapter shall be considered a capital expenditure, and a transfer of the equipment or facilities for less than fair market value shall be considered a capital expenditure if a transfer of the equipment or facilities at fair market value would be subject to review;
- (8) "Certificate of need" means an authorization by the cabinet to acquire, to establish, to offer, to substantially change the bed capacity, or to substantially change a health service as covered by this chapter;
- (9) ***"Certified surgical assistant" means a certified surgical assistant or certified first assistant who is certified by the National Surgical Assistant Association on the Certification of Surgical Assistants, the Liaison Council on Certification of Surgical Technologists, or the American Board of Surgical Assistants. The certified surgical assistant is an unlicensed health-care provider who is directly accountable to a physician licensed under KRS Chapter 311 or, in the absence of a physician, to a registered nurse licensed under KRS Chapter 314;***
- (10) "Formal review process" means the ninety (90) day certificate-of-need review conducted by the cabinet;
- ~~(11)~~~~(10)~~ (11) "Health facility" means any institution, place, building, agency, or portion thereof, public or private, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care and includes alcohol abuse, drug abuse, and mental health services. This shall include, but shall not be limited to, health facilities and health services commonly referred to as

hospitals, psychiatric hospitals, physical rehabilitation hospitals, chemical dependency programs, tuberculosis hospitals, skilled nursing facilities, nursing facilities, nursing homes, personal care homes, intermediate care facilities, family care homes, primary care centers, rural health clinics, outpatient clinics, ambulatory care facilities, ambulatory surgical centers, emergency care centers and services, ambulance providers, hospices, community mental health and mental retardation centers, home health agencies, kidney disease treatment centers and freestanding hemodialysis units, facilities and services owned and operated by health maintenance organizations directly providing health services subject to certificate of need, and others providing similarly organized services regardless of nomenclature;

~~(12)(11)~~ "Health services" means clinically related services provided within the Commonwealth to two (2) or more persons, including, but not limited to, diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services;

~~(13)(12)~~ *"Intraoperative surgical care" includes the practice of surgical assisting in which the certified surgical assistant is working under the direction of the operating physician as a first or second assist, and which may include the following procedures:*

- (a) Positioning the patient;*
- (b) Preparing and draping the patient for the operative procedure;*
- (c) Observing the operative site during the operative procedure;*
- (d) Providing the best possible exposure of the anatomy incident to the operative procedure;*
- (e) Assisting in closure of incisions and wound dressings;*
- (f) Performing any task, within the role of an unlicensed assistive person, required by the operating physician incident to the particular procedure being performed;*

~~(14)~~ "Major medical equipment" means equipment which is used for the provision of medical and other health services and which costs in excess of the medical equipment expenditure minimum. For purposes of this subsection, "medical equipment expenditure minimum" means one million five hundred thousand dollars (\$1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether medical equipment has a value in excess of the medical equipment expenditure minimum, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of the equipment shall be included;

~~(15)(13)~~ "Nonsubstantive review" means an expedited review conducted by the cabinet of an application for a certificate of need as authorized under KRS 216B.095;

~~(16)(14)~~ "Nonclinically-related expenditures" means expenditures for:

- (a) Repairs, renovations, alterations, and improvements to the physical plant of a health facility which do not result in a substantial change in beds, a substantial change in a health service, or the addition of major medical equipment, and do not constitute the replacement or relocation of a health facility; or
- (b) Projects which do not involve the provision of direct clinical patient care including, but not limited to, the following:
  - 1. Parking facilities;
  - 2. Telecommunications or telephone systems;
  - 3. Management information systems;
  - 4. Ventilation systems;
  - 5. Heating or air conditioning, or both;
  - 6. Energy conservation; or
  - 7. Administrative offices;

~~(17)(15)~~ "Party to the proceedings" means the applicant for a certificate of need and any affected person who appears at a hearing on the matter under consideration and enters an appearance of record;

~~(18)(16)~~ "Person" means an individual, a trust or estate, a partnership, a corporation, an association, a group, state, or political subdivision or instrumentality including a municipal corporation of a state;



- ~~(19)~~~~(17)~~ "Record" means, as applicable in a particular proceeding:
- (a) The application and any information provided by the applicant at the request of the cabinet;
  - (b) Any information provided by a holder of a certificate of need or license in response to a notice of revocation of a certificate of need or license;
  - (c) Any memoranda or documents prepared by or for the cabinet regarding the matter under review which were introduced at any hearing;
  - (d) Any staff reports or recommendations prepared by or for the cabinet;
  - (e) Any recommendation or decision of the cabinet;
  - (f) Any testimony or documentary evidence adduced at a hearing;
  - (g) The findings of fact and opinions of the cabinet or the findings of fact and recommendation of the hearing officer; and
  - (h) Any other items required by administrative regulations promulgated by the cabinet;
- ~~(20)~~~~(18)~~ "Secretary" means the secretary of the Cabinet for Health Services;
- ~~(21)~~~~(19)~~ "State health plan" means the document prepared triennially, updated annually, and approved by the Governor;
- ~~(22)~~~~(20)~~ "Substantial change in a health service" means:
- (a) The addition of a health service for which there are review criteria and standards in the state health plan;
  - (b) The addition of a health service subject to licensure under this chapter; or
  - (c) The reduction or termination of a health service which had previously been provided in the health facility;
- ~~(23)~~~~(21)~~ "Substantial change in bed capacity" means the addition, reduction, relocation, or redistribution of beds by licensure classification within a health facility;
- ~~(24)~~~~(22)~~ "Substantial change in a project" means a change made to a pending or approved project which results in:
- (a) A substantial change in a health service, except a reduction or termination of a health service;
  - (b) A substantial change in bed capacity, except for reductions;
  - (c) A change of location; or
  - (d) An increase in costs greater than the allowable amount as prescribed by regulation;
- ~~(25)~~~~(23)~~ "To acquire" means to obtain from another by purchase, transfer, lease, or other comparable arrangement of the controlling interest of a capital asset or capital stock, or voting rights of a corporation. An acquisition shall be deemed to occur when more than fifty percent (50%) of an existing capital asset or capital stock or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one person from another person;
- ~~(26)~~~~(24)~~ "To batch" means to review in the same review cycle and, if applicable, give comparative consideration to all filed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area;
- ~~(27)~~~~(25)~~ "To establish" means to construct, develop, or initiate a health facility;
- ~~(28)~~~~(26)~~ "To obligate" means to enter any enforceable contract for the construction, acquisition, lease, or financing of a capital asset. A contract shall be considered enforceable when all contingencies and conditions in the contract have been met. An option to purchase or lease which is not binding shall not be considered an enforceable contract; and
- ~~(29)~~~~(27)~~ "To offer" means, when used in connection with health services, to hold a health facility out as capable of providing, or as having the means of providing, specified health services.

Section 2. KRS 216B.160 is amended to read as follows:

All health care facilities and services licensed under this chapter shall include in their policies and procedures a care delivery model based on patient needs which includes but is not limited to:

- (1) Defined roles and responsibilities of licensed and unlicensed health care personnel;
- (2) *A policy that establishes the credentialing, oversight, appointment, and reappointment of the certified surgical assistant and for granting, renewing, and revising of the certified surgical assistant's clinical privileges;*
- (3) A staffing plan that specifies staffing levels of licensed and unlicensed personnel required to safely and consistently meet the performance and clinical outcomes-based standards as outlined in the facility's or service's quality improvement plan;
- ~~(4)(3)}~~ A staffing model that is developed and implemented in an interdisciplinary and collaborative manner;
- ~~(5)(4)}~~ A policy and method that incorporates at least four (4) components in an ongoing assessment done by the registered nurse of the severity of the patient's disease, patient condition, level of impairment or disability, and the specific unit patient census to meet the needs of the individual patient in a timely manner; and
- ~~(6)(5)}~~ A staffing model that supports the delivery of patient care services with an appropriate mix of licensed health care personnel that will allow them to practice according to their legal scope of practice, and for nurses, the professional standards of practice referenced in KRS Chapter 314, and facility and service policies.

If a nursing facility, intermediate care facility, or skilled care facility meets the most current state or federal regulations which address safe and consistent staffing levels of licensed and unlicensed personnel, those shall suffice for compliance with the standards in this section. ***This section shall not be interpreted as requiring any health care facility to develop a policy or a procedure for a service not offered by the facility.***

SECTION 3. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

***Notwithstanding any provision of law, a health plan issued or renewed on or after July 15, 2000, that provides coverage for surgical first assisting or intraoperative surgical care benefits or services shall be construed as providing coverage for a certified surgical assistant who performs services as identified in subsection (13) of Section 1 of this Act.***

**Approved April 26, 2000**

## **CHAPTER 539**

**(SB 394)**

AN ACT relating to economic development.

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

Section 1. KRS 154.22-100 is amended to read as follows:

- (1) If an approved company's financing agreement in effect prior to July 15, 1996, stipulates that the approved company elects to impose a six percent (6%) job development assessment fee pursuant to KRS 154.22-070 as in effect prior to July 15, 1996, the approved company, subject to provisions of subsection (2) of this section, may elect to change the job development fee rate from six percent (6%) as prescribed in KRS 154.22-070 as in effect prior to July 15, 1996, to four percent (4%) as set forth in KRS 154.22-070.
- (2) An approved company may elect to reduce the job assessment fee rate as prescribed in subsection (1) of this section if the financing agreement respecting the approved company's approved project is amended upon written approval of all parties thereto, ~~provided, however, the approval is granted by June 30, 1997, and~~ the approved company attests in writing to the satisfaction of the authority that the approved company has not entered into any other agreement by which the company has pledged the proceeds of a six percent (6%) job development assessment fee as partial or full payment of any debt or other obligation to any other party.

**Approved April 26, 2000**

## CHAPTER 540

## (HB 415)

AN ACT relating to insurance.

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

Section 1. KRS 304.20-040 is amended to read as follows:

(1) As used in this section:

- (a) "Policy" means an automobile liability insurance policy, delivered or issued for delivery in this state, insuring a single individual or husband and wife resident of the same household, as named insured, and under which the insured vehicles therein designated are of the following types only:
    - 1. A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others;
    - 2. Any other four-wheel motor vehicle with a load capacity of fifteen hundred (1,500) pounds or less which is not used in the occupation, profession, or business of the insured; provided, however, that this section shall not apply:
      - a. To any policy issued under an automobile assigned risk plan;
      - b. To any policy insuring more than four (4) automobiles; or
      - c. To any policy covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards;
  - (b) "Automobile liability insurance policy" includes only coverage for bodily injury and property damage liability, basic reparations benefits, and the provisions therein, if any, relating to medical payments, uninsured motorists coverage, ***underinsured motorists coverage***, and automobile physical damage coverage;
  - (c) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term; provided, however, that any policy with a policy period or term of less than three (3) months shall for the purpose of this section be considered as if written for a policy period or term of three (3) months. Provided, further, that any policy written for a term longer than one (1) year or any policy with no fixed expiration date, shall for the purpose of this section, be considered as if written for successive policy periods or terms of one (1) year, and the policy may be terminated at the expiration of any annual period upon giving seventy-five (75) days' notice of ~~nonrenewal~~***cancellation*** prior to the anniversary date; ~~and the cancellation shall not be subject to any other provisions of this section; and~~
  - (d) "Nonpayment of premium" means failure of the named insured to discharge when due any of his obligations in connection with the payment of premiums on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit;
  - (e) ***"Declination " or "decline" means either the refusal of an insurer to issue an automobile liability insurance policy upon receipt of a written nonbinding application or written request for coverage from its agent or an applicant, or refusal of an agent to transmit to an insurer a written nonbinding application or written request for coverage received from an applicant. The offering of insurance coverage with a company within an insurance group that is different from the company requested on the nonbinding application or written request for coverage, or the offering of insurance upon different terms than requested in the nonbinding application or written request for coverage, shall be considered to be a declination; and***
  - (f) ***"Agent" includes, but is not limited to, surplus lines broker.***
- (2) (a) A notice of cancellation of a policy shall be effective only if it is based on one (1) or more of the following reasons:

1. Nonpayment of premium;~~{or}~~
  2. The driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty (180) days immediately preceding its effective date;
  3. *Discovery of fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy, or in presenting a claim under the policy;*
  4. *Discovery of willful acts or omissions on the part of the named insured that increase any hazard insured against; or*
  5. *A determination by the commissioner that the continuation of the policy would place the insurer in violation of this chapter or the rules or administrative regulations of the commissioner;*
- (b) This subsection shall not apply to any policy or coverage which has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy;
- (c) Modification of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars (\$100) shall not be deemed a cancellation of the coverage or of the policy; and
- (d) This subsection shall not apply to nonrenewal.
- (3) No notice of cancellation of a policy to which subsection (2) of this section applies shall be effective unless mailed or delivered by the insurer to the named insured at least twenty (20) days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium at least fourteen (14) days' notice of cancellation accompanied by the reason therefor shall be given. This subsection shall not apply to renewals.
- ~~(4) No insurer shall refuse to renew a policy of automobile insurance solely because of the age of the insured.~~
- ~~(5)}~~ No insurer *or agent* shall *decline*, refuse to renew, or cancel a policy of automobile insurance solely because:
- (a) Of the credit history, or lack of credit history, of the *applicant or* insured;
  - (b) The *applicant or* insured has previously obtained automobile coverage *through a residual market mechanism or* from a carrier providing nonstandard coverage;~~{or}~~
  - (c) The *applicant or* insured has sustained one (1) or more losses that immediately result from a natural cause without the intervention of any person and that could not have been prevented by the exercise of prudence, diligence, and care;
  - (d) *Of the race, religion, nationality, ethnic group, age, sex, or marital status of the applicant or named insured; or*
  - (e) *Another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured.*
- ~~(5)}~~~~(6)}~~ No insurer shall fail to renew a policy unless it shall mail or deliver to the named insured, at the address shown in the policy, at least seventy-five (75) days' advance notice of its intention not to renew. *If notice is not provided, coverage shall be deemed to be renewed for the ensuing policy period upon payment of the appropriate payment under the same terms and conditions, until the named insured has accepted replacement coverage with another insurer, or until the named insured has agreed to the nonrenewal.*
- (6) *The transfer of a policyholder between companies within the same insurance group shall be considered a nonrenewal.*
- (7) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of the renewal.
- (8) If the insurer has manifested its willingness to renew by mailing or delivering a renewal notice, bill, certificate, or policy to the first-named insured at his last known address at least thirty (30) days before the end of the current policy period with the amount of the renewal premium charge and its due date clearly set forth therein,

then the policy shall expire and terminate without further notice to the insured on the due date, unless the renewal premium is received by the insurer or its authorized agent on or before that date. When any policy terminates pursuant to this subsection because the renewal premium was not received on or before the due date, the insurer shall, within fifteen (15) days, deliver or mail to the first-named insured at his last known address a notice that the policy was not renewed and the date on which the coverage under it ceased to exist.

- (9) (a) Proof of mailing of renewal premium to the insurer or its agent, when authorized, on or before the due date, shall constitute a presumption of receipt pursuant to subsection (8) of this section.
- (b) Proof of mailing of notice of cancellation or of intention not to renew or of reasons for cancellation or nonrenewal to the named insured at the address shown in the policy shall be sufficient proof of notice.
- (10) No insurer shall impose or request an additional premium higher than its standard premium for automobile insurance, cancel or refuse to issue a policy, or refuse to renew a policy solely because the insured or the applicant is an individual with a disability, so long as the disability does not substantially impair the person's mechanically assisted driving ability.
- (11) When an automobile liability insurance policy is canceled other than for nonpayment of premium, or in the event of failure to renew a policy of automobile liability insurance, the insurer shall notify the named insured of his possible eligibility for automobile liability insurance coverage through the Kentucky automobile assigned risk plan. The notice shall accompany or be included in the notice of cancellation or the notice of intent not to renew. The notice shall also inform the insured that he may, within **seven (7)**~~four (4)~~ days, request the commissioner in writing to determine whether there is sufficient reason to cancel or not to renew the policy. Within fourteen (14) days of receiving such a written request, the commissioner shall send his findings to the insurer and to the insured. When he sends his findings, the commissioner shall notify both parties of their right to request a hearing under KRS 304.2-310(2)(b) **and KRS Chapter 13B**. The party requesting the hearing shall give the commissioner written confirmation of attendance at the hearing not more than five (5) days before, nor less than forty-eight (48) hours before, the scheduled hearing. If the requesting party fails to give the required written confirmation, the commissioner shall cancel the hearing.
- (12) The reason for nonrenewal or cancellation shall accompany or be included in the notice of nonrenewal or cancellation.
- (13) Except where the maximum limits of coverage have been purchased, every notice of first renewal shall include a provision or be accompanied by a notice stating in substance that added uninsured motorists, underinsured motorists, and personal injury protection coverages may be purchased by the insured.
- (14) There shall be no liability on the part of and no cause of action of any nature shall arise against the commissioner or against any insurer, its authorized representative, its agents, its employees, or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal, for any statement made by any of them in any written notice of cancellation or nonrenewal, or in any other communication, oral or written, specifying the reasons for cancellation or nonrenewal, or the providing of information pertaining thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith.
- (15) (a) ***If the commissioner determines that an insurer has violated any provision of this section, the commissioner may require the insurer to:***
  - 1. ***Accept the application or written request for insurance coverage at a rate and on the same terms and conditions as are available to other risks similarly situated;***
  - 2. ***Reinstate insurance coverage to the end of the policy period; or***
  - 3. ***Continue insurance coverage at a rate and on the same terms and conditions as are available to other risks similarly situated;***
- (b) ***As to any person who has violated any provisions of this section, the commissioner may:***
  - 1. ***Issue a cease and desist order to restrain the person from engaging in practices that violate this section;***
  - 2. ***Suspend or revoke the person's license or certificate of authority;***
  - 3. ***Assess a civil penalty against the person in accordance with KRS 304.99-020; or***
  - 4. ***Take any combination of the actions specified in this paragraph.***

Section 2. KRS 304.20-320 is amended to read as follows:

- (1) Declinations. An applicant may request in writing an explanation of a declination. The insurer shall provide a prompt written response to such inquiries.
- (2) Cancellations.
  - (a) A notice of cancellation of insurance subject to KRS 304.20-300 to 304.20-350 by an insurer shall be in writing, shall be delivered to the named insured or mailed to the named insured at the last known address of the named insured, shall state the effective date of the cancellation, and shall be accompanied by a written explanation of the specific reason or reasons for the cancellation;~~and~~
  - (b) The notice of cancellation referred to in paragraph (a) of this subsection shall be mailed or delivered by the insurer to the named insured at least fourteen (14) days prior to the effective date of the cancellation if the cancellation is for nonpayment of premium or occurs within sixty (60) days of the date of issuance of the policy. Such notice of cancellation shall be mailed or delivered by the insurer to the named insured at least seventy-five (75) days prior to the effective date of the cancellation if the policy has been in effect more than sixty (60) days; **and**
  - (c) ***Proof of mailing of notice of cancellation or of reasons for cancellation to the named insured at the address shown in the policy shall be sufficient proof of notice.***
- (3) Nonrenewals.
  - (a) No insurer shall refuse to renew a property or casualty insurance policy subject to KRS 304.20-300 to 304.20-350 unless at least seventy-five (75) days before the end of the policy period as described in KRS 304.20-310(1), the insurer shall mail or deliver to the named insured, at the last known address of the named insured, written notice of the insurer's intention not to renew the policy upon expiration of the current policy period with a written explanation of the specific reason or reasons for the nonrenewal;
  - (b) If notice is not provided pursuant to paragraphs (a) and (b) of this subsection, coverage shall be deemed to be renewed for the ensuing policy period upon payment of the appropriate premium under the same terms and conditions, and subject to the provisions of KRS 304.20-330, until the named insured has accepted replacement coverage with another insurer, or until the named insured has agreed to the nonrenewal;
  - (c) If the insurer has manifested its willingness to renew by mailing or delivering of a renewal notice, bill, certificate, or policy to the first named insured at his last known address at least thirty (30) days before the end of the current policy period with the amount of the renewal premium charge and its due date clearly set forth therein, then the policy shall expire and terminate without further notice to the insured on the due date unless the renewal premium is received by the insurer or its authorized agent on or before that date. When any policy terminates pursuant to this subsection because the renewal premium was not received on or before the due date, the insurer shall, within fifteen (15) days, deliver or mail to the first named insured at his last known address a notice that the policy was not renewed and the date on which the coverage under it ceased to exist;~~and~~
  - (d) Proof of mailing of renewal premium to the insurer or its agent, when authorized, on or before the due date shall constitute a presumption of receipt pursuant to paragraph (c) of this subsection; **and**
  - (e) ***Proof of mailing of notice of intention not to renew or of reasons for nonrenewal to the named insured at the address shown in the policy shall be sufficient proof of notice.***
- (4) No insurer shall increase the premium for a property or casualty insurance policy subject to KRS 304.20-300 to 304.20-350 more than twenty-five percent (25%) of the premium for the preceding policy term for like coverage and like risks unless at least seventy-five (75) days before the end of the policy period as described in KRS 304.20-310(1), the insurer shall mail or deliver to the named insured, at the last known address of the named insured, a notice for the renewal premium amount and the insurer shall mail or deliver to its agent, if any, a duplicate notice of the premium amount. In order to comply with this requirement, the insurer may extend the period of coverage of the current policy at the expiring premium.

Section 3. KRS 304.20-340 is amended to read as follows:

The declination or termination of a policy of insurance subject to KRS 304.20-300 to 304.20-350 by an insurer or agent is prohibited if the declination or termination is:

- (1) Based solely upon the race, religion, nationality, ethnic group, age, sex, or marital status of the applicant or named insured;
- (2) Based solely upon the lawful occupation or profession of the applicant or named insured, except that this provision shall not apply to an insurer which limits its market to one (1) lawful occupation or profession or to several related lawful occupations or professions or to an insurer that does not provide the kind of insurance sought by the applicant;
- (3) Based solely upon the age or location of the residence or property of the applicant or named insured, unless such decision is for a business purpose which is not a mere pretext for unfair discrimination;
- (4) Based solely upon the fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured;
- (5) Based solely upon the fact that the applicant or named insured previously obtained insurance through a residual market mechanism;
- ~~(6) Based solely upon the credit history, or lack of credit history, of the insured;~~
- ~~(7)~~ Based solely upon the fact that the **applicant or named** insured has previously obtained property or casualty insurance from a carrier providing nonstandard coverage; or
- ~~(7)~~~~(8)~~ Based solely upon the fact that the **applicant or named** insured has sustained one (1) or more losses that immediately result from a natural cause without the intervention of any person and that could not have been prevented by the exercise of prudence, diligence, and care.

Section 4. KRS 304.20-042 is amended to read as follows:

- (1) No insurer shall **decline to issue, cancel, nonrenew, or otherwise terminate**~~refuse to issue automobile or~~ property and casualty insurance **contracts covering personal risks**~~to an applicant~~ solely because of ~~the~~ credit history, or lack of credit history~~, of the applicant~~.
- (2) **For purposes of this section, "personal risks" shall have the meaning as defined in KRS 304.13-011.**

Section 5. KRS 304.20-310 is amended to read as follows:

As used in KRS 304.20-320 to 304.20-350:

- (1) "Renewal" or "to renew" means the issuance and delivery by an insurer at the end of a policy period or term of a policy superseding a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of an existing policy beyond its policy period or term. For the purpose of KRS 304.20-320 to 304.20-350, any policy period or term of less than six (6) months shall be considered to be a policy period or term of six (6) months and any policy period or term of more than one (1) year or any policy with no fixed expiration date shall be considered a policy period or term of one (1) year;
- (2) "Nonpayment of premium" means the failure of the named insured to discharge any obligation in connection with the payment of premiums on property or casualty insurance subject to KRS 304.20-320 to 304.20-350, whether such payments are directly payable to the insurer or its agent or indirectly payable under a premium finance plan or extension of credit. "Nonpayment of premium" shall include failure to pay dues or fees where payment of such dues or fees is a prerequisite to obtaining or continuing property or casualty insurance coverage;
- (3) "Termination" means either a cancellation or nonrenewal of property or casualty insurance coverage in whole or in part. A cancellation occurs during the policy period or term as set forth in subsection (1) of this section. A nonrenewal occurs at the end of the policy period or term as set forth in subsection (1) of this section. For the purpose of KRS 304.20-320 to 304.20-350, the transfer of a policyholder between companies within the same insurance group shall be considered a termination, but requiring a reasonable deductible, reasonable changes in the amount of insurance, or reasonable reductions in policy limits or coverage shall not be considered a termination if such requirements are directly related to an increased hazard involved and are made on the renewal date for the policy;
- (4) "Declination" means either the refusal of an insurer to issue a property or casualty insurance policy upon receipt of a written nonbinding application or written request for coverage from its agent or an applicant, or refusal of an agent to transmit to an insurer a written nonbinding application or written request for coverage received from an applicant. For the purposes of KRS 304.20-320 to 304.20-350, the offering of insurance coverage with a company within an insurance group which is different from the company requested on the

nonbinding application or written request for coverage, ~~or for~~ the offering of insurance upon different terms than requested in the nonbinding application or written request for coverage, shall be considered to be a declination; and

- (5) "Agent" includes, but is not limited to, surplus lines ~~broker~~~~brokers~~.

**Approved April 26, 2000**

## **CHAPTER 541**

### **(HB 430)**

AN ACT relating to the administration of justice and declaring an emergency.

WHEREAS, the 1998 General Assembly created nine (9) family court pilot projects and nine (9) new judgeships which were designated as family court judgeships; and

WHEREAS two (2) of these judgeships, one each in Floyd County (31st Judicial Circuit) and Christian County (3rd Judicial Circuit) were created in the 1998 Judicial Branch Conference Budget Report to 1998 Ky. Acts ch. 604; and

WHEREAS the Judicial Branch Conference Budget Report expires June 30, 2000; and

WHEREAS the Kentucky Supreme Court has certified the necessity for these two (2) judgeships;

NOW, THEREFORE,

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

Section 1. KRS 23A.040 is amended to read as follows:

The following judicial circuits are entitled to two (2) judges and shall have two (2) numbered divisions of the Circuit Court:

(1) Second Judicial Circuit.

(2) ~~Third Judicial Circuit.~~

~~(3) Sixth Judicial Circuit.~~

~~(3) ~~(4) Ninth Judicial Circuit.~~~~

~~(5) Eleventh Judicial Circuit.~~

**(4) Twelfth Judicial Circuit.**

~~(5) ~~(6)~~ Fourteenth Judicial Circuit.~~

~~(6) ~~(7)~~ Seventeenth Judicial Circuit.~~

**(7) Twenty-first Judicial Circuit.**

(8) Twenty-fourth Judicial Circuit.

(9) Twenty-seventh Judicial Circuit.

~~(10) Thirty-first Judicial Circuit.~~

~~(10) ~~(11)~~ Thirty-second Judicial Circuit.~~

~~(11) ~~(12)~~ Thirty-fourth Judicial Circuit.~~

~~(12) ~~(13)~~ Forty-sixth Judicial Circuit.~~

~~(13) ~~(14)~~ Fifty-fourth Judicial Circuit.~~

Section 2. KRS 23A.045 is amended to read as follows:

The following judicial circuits are entitled to three (3) Circuit Judges and shall have three (3) numbered divisions of the Circuit Court:

(1) **Third Judicial Circuit.**



- (2) Eighth Judicial Circuit.
- (3) ***Ninth Judicial Circuit.***
- (4)~~(2)~~ Twenty-fifth Judicial Circuit.
- (5)~~(3)~~ Twenty-eighth Judicial Circuit.
- (6) ***Thirty-first Judicial Circuit.***
- (7)~~(4)~~ Thirty-fifth Judicial Circuit.
- (8)~~(5)~~ Forty-eighth Judicial Circuit.

Section 3. KRS 24A.030 is amended to read as follows:

The state is divided into judicial districts, each to be composed of the following counties:

- (1) First Judicial District. Fulton and Hickman.
- (2) Second Judicial District. McCracken.
- (3) Third Judicial District. Christian.
- (4) Fourth Judicial District. Hopkins.
- (5) Fifth Judicial District. Crittenden, Union and Webster.
- (6) Sixth Judicial District. Daviess.
- (7) Seventh Judicial District. Logan and Todd.
- (8) Eighth Judicial District. Warren.
- (9) Ninth Judicial District. Hardin.
- (10) Tenth Judicial District. Hart and Larue.
- (11) Eleventh Judicial District. Green, Marion, Taylor and Washington.
- (12) Twelfth Judicial District. Henry, Oldham and Trimble.
- (13) Thirteenth Judicial District. Garrard, Jessamine and Lincoln.
- (14) Fourteenth Judicial District. Bourbon, Scott and Woodford.
- (15) Fifteenth Judicial District. Carroll, Grant and Owen.
- (16) Sixteenth Judicial District. Kenton.
- (17) Seventeenth Judicial District. Campbell.
- (18) Eighteenth Judicial District. Harrison, Nicholas, Pendleton and Robertson.
- (19) Nineteenth Judicial District. Bracken, Fleming and Mason.
- (20) Twentieth Judicial District. Greenup and Lewis.
- (21) Twenty-first Judicial District. Bath, Menifee, Montgomery and Rowan.
- (22) Twenty-second Judicial District. Fayette.
- (23) Twenty-third Judicial District. Estill, Lee and Owsley.
- (24) Twenty-fourth Judicial District. Lawrence, Johnson and Martin.
- (25) Twenty-fifth Judicial District. Clark and Madison.
- (26) Twenty-sixth Judicial District. Harlan.
- (27) Twenty-seventh Judicial District. Knox and Laurel.
- (28) Twenty-eighth Judicial District. Pulaski and Rockcastle.
- (29) Twenty-ninth Judicial District. Adair, ***and*** Casey~~L, Cumberland and Monroe~~.

- (30) Thirtieth Judicial District. Jefferson.
- (31) Thirty-first Judicial District. Floyd.
- (32) Thirty-second Judicial District. Boyd.
- (33) Thirty-third Judicial District. Perry.
- (34) Thirty-fourth Judicial District. Whitley and McCreary.
- (35) Thirty-fifth Judicial District. Pike.
- (36) Thirty-sixth Judicial District. Magoffin and Knott.
- (37) Thirty-seventh Judicial District. Carter, Elliott and Morgan.
- (38) Thirty-eighth Judicial District. Butler, Edmonson, Ohio and Hancock.
- (39) Thirty-ninth Judicial District. Breathitt, Wolfe and Powell.
- (40) Fortieth Judicial District. Clinton, Russell and Wayne.
- (41) Forty-first Judicial District. Clay, Jackson and Leslie.
- (42) Forty-second Judicial District. Calloway.
- (43) Forty-third Judicial District. Barren and Metcalfe.
- (44) Forty-fourth Judicial District. Bell.
- (45) Forty-fifth Judicial District. Muhlenberg and McLean.
- (46) Forty-sixth Judicial District. Breckinridge, Grayson, and Meade.
- (47) Forty-seventh Judicial District. Letcher.
- (48) Forty-eighth Judicial District. Franklin.
- (49) Forty-ninth Judicial District. Allen and Simpson.
- (50) Fiftieth Judicial District. Boyle and Mercer.
- (51) Fifty-first Judicial District. Henderson.
- (52) Fifty-second Judicial District. Graves.
- (53) Fifty-third Judicial District. Shelby, Anderson and Spencer.
- (54) Fifty-fourth Judicial District. Boone and Gallatin.
- (55) Fifty-fifth Judicial District. Bullitt.
- (56) Fifty-sixth Judicial District. Caldwell, Livingston, Lyon and Trigg.
- (57) Fifty-seventh Judicial District. Nelson.
- (58) Fifty-eighth Judicial District. Marshall.
- (59) Fifty-ninth Judicial District. Ballard and Carlisle.
- (60) *Sixtieth Judicial District. Cumberland and Monroe.***

Section 4. KRS 24A.050 is amended to read as follows:

The following judicial districts are entitled to two (2) District Judges and shall have two (2) numbered divisions of the District Court:

- (1) Third Judicial District.
- (2) Fourth Judicial District.
- (3) Ninth Judicial District.
- (4) Eleventh Judicial District.
- (5) Twelfth Judicial District.

- (6) Thirteenth Judicial District.
- (7) Fourteenth Judicial District.
- (8) Fifteenth Judicial District.
- (9) Eighteenth Judicial District.
- (10) Twenty-first Judicial District.
- (11) Twenty-fourth Judicial District.
- (12) Twenty-seventh Judicial District.
- (13) Twenty-eighth Judicial District.
- (14) ~~Twenty-ninth Judicial District.~~
- ~~(15)~~ Thirty-first Judicial District.
- ~~(15)~~~~(16)~~ Thirty-second Judicial District.
- ~~(16)~~~~(17)~~ Thirty-fourth Judicial District.
- ~~(17)~~~~(18)~~ Thirty-fifth Judicial District.
- ~~(18)~~~~(19)~~ Thirty-eighth Judicial District.
- ~~(19)~~~~(20)~~ Fortieth Judicial District.
- ~~(20)~~~~(21)~~ Forty-first Judicial District.
- ~~(21)~~~~(22)~~ Forty-third Judicial District.
- ~~(22)~~~~(23)~~ Forty-sixth Judicial District.
- ~~(23)~~~~(24)~~ Forty-eighth Judicial District.
- ~~(24)~~~~(25)~~ Fiftieth Judicial District.
- ~~(25)~~~~(26)~~ Fifty-first Judicial District.
- ~~(26)~~~~(27)~~ Fifty-third Judicial District.
- ~~(27)~~~~(28)~~ Fifty-fourth Judicial District.
- ~~(28)~~~~(29)~~ Fifty-fifth Judicial District.
- ~~(29)~~~~(30)~~ Fifty-sixth Judicial District.

Section 5. (1) The present District Judge who resides in the Twenty-ninth Judicial District as amended by Section 3 of this Act shall remain the District Judge for the Twenty-ninth Judicial District.

(2) The present District Judge of the former Twenty-ninth Judicial District who resides in the Sixtieth Judicial District as created by Section 3 of this Act shall become the District Judge for the Sixtieth Judicial District.

(3) No new vacancy shall be created by Section 3 of this Act. Each present District Judge shall serve the district, as amended or created by Section 3 of this Act, in which he resides for the remainder of his present elected term.

Section 6. KRS 532.031 is amended to read as follows:

- (1) A person may be found by the sentencing judge to have committed an offense specified below as a result of a hate crime if the person intentionally because of race, color, religion, sexual orientation, or national origin of another individual or group of individuals violates a provision of any one (1) of the following:
  - (a) KRS 508.010, 508.020, ~~or~~ 508.025, **or 508.030**;
  - (b) KRS 508.050 or 508.060;
  - (c) KRS 508.100 or 508.110;
  - (d) KRS 509.020;

- (e) KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.100, or 510.110;
  - (f) KRS 512.020, 512.050, or 512.060;
  - (g) KRS 513.020, 513.030, or 513.040; or
  - (h) KRS 525.020, 525.050, 525.060, 525.070, or 525.080.
- (2) At sentencing, the sentencing judge shall determine if, by a preponderance of the evidence presented at the trial a hate crime was a primary factor in the commission of the crime by the defendant. If so, the judge shall make a written finding of fact and enter that in the court record and in the judgment rendered against the defendant.
  - (3) The finding that a hate crime was a primary factor in the commission of the crime by the defendant may be utilized by the sentencing judge as the sole factor for denial of probation, shock probation, conditional discharge, or other form of nonimposition of a sentence of incarceration.
  - (4) The finding by the sentencing judge that a hate crime was a primary factor in the commission of the crime by the defendant may be utilized by the Parole Board in delaying or denying parole to a defendant.

Section 7. Whereas the action taken in this Act is necessary to effectuate provisions of the Judicial Branch budget for the 2000-2002 fiscal biennium, an emergency is declared to exist, and Sections 1 to 5 of this Act take effect July 1, 2000.

**Approved April 26, 2000**

## CHAPTER 542

### (HB 511)

AN ACT relating to the executive branch ethics code.

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

Section 1. KRS 11A.211 is amended to read as follows:

- (1) Each executive agency lobbyist, employer, and real party in interest shall file with the commission within ten (10) days following the engagement of an executive agency lobbyist, an initial registration statement showing all of the following:
  - (a) The name, business address, and occupation of the executive agency lobbyist;
  - (b) The name and business address of the employer and of any real party in interest on whose behalf the executive agency lobbyist is acting, if it is different from the employer. However, if a trade association or other charitable or fraternal organization that is exempt from federal income taxation under Section 501(c) of the Internal Revenue Code is the employer, the statement need not list the names and addresses of every member of the association or organization, so long as the association or organization itself is listed;
  - (c) A brief description of the executive agency decision to which the engagement relates;
  - (d) The name of the executive agency or agencies to which the engagement relates; and
  - (e) Certification by the employer and executive agency lobbyist that the information contained in the registration statement is complete and accurate.
- (2) In addition to the initial registration statement required by subsection (1) of this section, each executive agency lobbyist, employer, and real party in interest shall file with the commission, not later than the last day of ~~January and~~ July of each year, an updated registration statement that confirms the continuing existence of each engagement described in an initial registration statement and that lists the specific executive agency decisions the executive agency lobbyist sought to influence under the engagement during the period covered by the updated statement, and with it any statement of expenditures required to be filed by KRS 11A.216 and any details of financial transaction required to be filed by KRS 11A.221.
- (3) If an executive agency lobbyist is engaged by more than one (1) employer, the executive agency lobbyist shall file a separate initial and updated registration statement for each engagement. If an employer engages more than one (1) executive agency lobbyist, the employer shall file only one (1) updated registration statement

under subsection (2) of this section, which shall contain the information required by subsection (2) of this section regarding all executive agency lobbyists engaged by the employer.

- (4) (a) A change in any information required by subsection (1)(a), (b), (c), (d), or (2) of this section shall be reflected in the next updated registration statement filed under subsection (2) of this section.
- (b) Within thirty (30) days following the termination of an engagement, the executive agency lobbyist who was employed under the engagement shall file written notice of the termination with the commission.
- (5) No registration fee shall be charged for filing a registration statement.
- (6) Upon registration pursuant to this section, an executive agency lobbyist shall be issued a card annually by the commission showing the executive agency lobbyist is registered. The registration card shall be valid from the date of its issuance through the thirty-first day of ~~July~~~~January~~ of the following year.
- (7) The commission shall review each registration statement filed with the commission under this section to determine if the statement contains all of the required information. If the commission determines the registration statement does not contain all of the required information or that an executive agency lobbyist, employer, or real party in interest has failed to file a registration statement, the commission shall send written notification of the deficiency by certified mail to the person who filed the registration statement or to the person who failed to file the registration statement regarding the failure. Any person so notified by the commission shall, not later than fifteen (15) days after receiving the notice, file a registration statement or an amended registration statement that includes all of the required information. If any person who receives a notice under this subsection fails to file a registration statement or an amended registration statement within the fifteen (15) day period, the commission may initiate an investigation of the person's failure to file. If the commission initiates an investigation pursuant to this section, the commission shall also notify each elected executive official and the secretary of each cabinet listed in KRS 12.250 of the pending investigation.
- (8) ***In the biennial report published under KRS 11A.110(13)***~~[On or before the fifteenth day of March of each year]~~, the commission shall, in the manner and form the commission determines, ***include***~~[publish]~~ a report containing statistical information on the registration statements filed under this section during the preceding ***biennium***~~[year]~~.
- (9) If an employer who engages an executive agency lobbyist, or a real party in interest on whose behalf the executive agency lobbyist was engaged is the recipient of a contract, grant, lease, or other financial arrangement pursuant to which funds of the state or of an executive agency are distributed or allocated, the executive agency or any aggrieved party may consider the failure of the real party in interest, the employer, or the executive agency lobbyist to comply with this section as a breach of a material condition of the contract, grant, lease, or other financial arrangement.
- (10) Executive agency officials may require certification from any person seeking the award of a contract, grant, lease, or financial arrangement that the person, his employer, and any real party in interest are in compliance with this section.

Section 2. KRS 11A.216 is amended to read as follows:

- (1) Each executive agency lobbyist, employer, and real party in interest shall file with the commission, with the updated registration statement required by KRS 11A.211(2), a statement of expenditures as specified in subsections (2) and (3) of this section. An executive agency lobbyist shall file a separate statement of expenditures under this section for each employer engaging him.
- (2) (a) In addition to the information required by paragraph (b) of this subsection, a statement filed by an executive agency lobbyist shall show the total amount of expenditures made by the lobbyist during the reporting period covered by the statement by the executive agency lobbyist.
- (b) 1. If, during a ~~fiscal~~~~calendar~~ year, the real party in interest, the employer or any executive agency lobbyist he engaged made expenditures to, or on behalf of a particular elected executive official, the secretary of a cabinet listed in KRS 12.250, a particular executive agency official, or a particular member of the staff of any of those officials, the real party in interest, employer or executive agency lobbyist also shall state the name of the official or employee on whose behalf the expenditures were made, the total amount of the expenditures made, a brief description of the expenditures made, and the approximate date the expenditures were made.

2. Expenditures shall be reported on the expenditure statement for the reporting period that includes the date on which the expenditure was made.
- (3) (a) In addition to the information required by subsection (2)(b) of this section, a statement filed by a real party in interest or an employer shall show the total amount of expenditures during the period covered by the statement. As used in this subsection, "expenditures" does not include the expenses of maintaining office facilities or support services for executive agency lobbyists.
- (b) An employer or real party in interest shall not be required to show any expenditure on a statement filed under this subsection if the expenditure is reported on a statement filed under subsection (2)(a) or (b) of this section by an executive agency lobbyist engaged by the employer.
- (4) Any statement required to be filed under this section shall be filed at the times specified in KRS 11A.211. Each statement shall cover expenditures made during the *prior fiscal year*~~[six (6) calendar month period that ended on the last day of the month immediately preceding the month in which the statement is required to be filed]~~.
- (5) If it is impractical or impossible for an executive agency lobbyist, employer, or real party in interest to determine exact dollar amounts or values of expenditures, reporting of good faith estimates, based on reasonable accounting procedures, constitutes compliance with this section.
- (6) Executive agency lobbyists, employers, and real parties in interest shall retain receipts or maintain records for all expenditures that are required to be reported pursuant to this section. These receipts or records shall be maintained for a period ending on the *thirtieth*~~[thirty first]~~ day of *June*~~[December]~~ of the second *fiscal*~~[calendar]~~ year after the year in which the expenditure was made.
- (7) At least ten (10) days before the date on which the statement is filed, each employer, executive agency lobbyist, or real party in interest who is required to file an expenditure statement under subsection (2)(b) of this section shall deliver a copy of the statement, or the portion showing the expenditure, to the official or employee who is listed in the statement as having received the expenditure or on whose behalf it was made.

Section 3. KRS 11A.221 is amended to read as follows:

- (1) Any executive agency lobbyist who has had any financial transaction with, or for the benefit of, an elected executive official, the secretary of a cabinet listed in KRS 12.250, an executive agency official, or any member of the staff of any of those officials shall describe the details of the transaction, including the name of the official or employee, the purpose and nature of the transaction, and the date it was made or entered into, in a statement filed with the commission with the updated registration statement required by KRS 11A.211(2). Each statement shall describe each financial transaction that occurred during the *prior fiscal year*~~[six (6) calendar month period that ended on the last day of the month immediately preceding the month in which the statement is required to be filed]~~.
- (2) Except as provided in subsection (5) of this section, any employer who has had any financial transaction with or for the benefit of an elected executive official, the secretary of a cabinet listed in KRS 12.250, an executive agency official, or any member of the staff of any of those officials shall describe the details of the transaction, including the name of the official or employee, the purpose and nature of the transaction, and the date it was made or entered into, in a statement filed with the commission with the updated registration statement required by KRS 11A.211(2). The statement shall be filed at the times specified in KRS 11A.211. Each statement shall describe each financial transaction that occurred during the *prior fiscal year*~~[six (6) calendar month period that ended on the last day of the month immediately preceding the month in which the statement is required to be filed]~~.
- (3) Except as provided in subsection (6) of this section, any real party in interest who has had any financial transaction with or for the benefit of any elected executive official, the secretary of a cabinet listed in KRS 12.250, an executive agency official, or any member of the staff of any of those officials shall describe the details of the transaction, including the name of the official or employee, the purpose and nature of the transaction, and the date it was made or entered into, in a statement filed with the commission with the updated registration statement required by KRS 11A.211(2). The statement shall be filed at the times specified in KRS 11A.211. Each statement shall describe each financial transaction that occurred during the *prior fiscal year*~~[six (6) calendar month period that ended on the last day of the month immediately preceding the month in which the statement is required to be filed]~~.
- (4) At least ten (10) days before the date on which the statement is filed, each employer, executive agency lobbyist, or real party in interest who is required to file a statement describing a financial transaction under this

section shall deliver a copy of the statement to the official or employee with whom or for whose benefit the transaction was made.

- (5) An employer shall not be required to file any statement under this section or to deliver a copy of the statement to an official or employee with whom or for whose benefit the transaction was made if the financial transaction to which the statement pertains is reported by an executive agency lobbyist engaged by the employer.
- (6) A real party in interest shall not be required to file any statement under this section or to deliver a copy of the statement to an official or employee with whom or for whose benefit the transaction was made if the financial transaction to which the statement pertains is reported by an executive agency lobbyist who is acting on behalf of the real party in interest.

Section 4. KRS 11A.241 is amended to read as follows:

- (1) The commission shall keep on file the statements required by KRS 11A.211, 11A.216, and 11A.221. These statements are public records and open to public inspection, and the commission shall computerize them so the information contained in them is readily accessible to the general public. The commission shall provide copies of the statements to the public on request and may charge a reasonable fee not to exceed the cost of copying and delivering the statement.
- (2) Not later than the last day of ~~February and~~ August of each year, the commission shall compile from the registration statements filed with it a complete and updated list of registered executive agency lobbyists and their employers, and real parties in interest and distribute the list to each elected executive branch official and the secretary of each cabinet listed in KRS 12.250, who shall distribute the list to the appropriate personnel under their jurisdiction. The commission shall provide copies of the list to the public upon request and may charge a reasonable fee not to exceed the cost of copying and delivering the list.
- (3) The commission shall maintain a list of all executive agency lobbyists. The commission shall provide copies of the list to the public on request and may charge a reasonable fee not to exceed the cost of copying and delivering the document.
- (4) The commission shall prescribe and make available an appropriate form for the filings required by KRS 11A.211, 11A.216, and 11A.221. The form shall contain the following notice in boldface type: "ANY PERSON WHO KNOWINGLY FILES A FALSE STATEMENT IS IN VIOLATION OF STATE LAW AND SUBJECT TO FINES AND OTHER PENALTIES."
- (5) Any rules adopted by the commission to implement KRS 11A.201 to 11A.246 shall be adopted by administrative regulations promulgated in accordance with KRS Chapter 13A.
- (6) The commission shall publish a handbook that explains in clear and concise language the provisions of KRS 11A.201 to 11A.246 and make it available free of charge to executive agency lobbyists, employers, real parties in interest, and any other interested persons.

Section 5. KRS 11A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Business" means any corporation, limited liability corporation, partnership, limited liability partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit;
- (2) "Commission" means the Executive Branch Ethics Commission;
- (3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;
- (4) "Family" means spouse and children, as well as a person who is related to a public servant as any of the following, whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister;
- (5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received;

- (6) "Income" means any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of compensation or any combination thereof;
- (7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the Kentucky Board of Education, the State Board for Adult and Technical Education, the Council on Postsecondary Education, and any person who holds a personal service contract to perform on a full-time basis for a period of time not less than six (6) months a function of any position listed in this subsection;
- (8) "Official duty" means any responsibility imposed on a public servant by virtue of his position in the state service;
- (9) "Public servant" means:
  - (a) The Governor;
  - (b) The Lieutenant Governor;
  - (c) The Secretary of State;
  - (d) The Attorney General;
  - (e) The Treasurer;
  - (f) The Commissioner of Agriculture;
  - (g) The Auditor of Public Accounts;
  - (h) Each Railroad Commissioner; and
  - (i) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;
- (10) "Agency" means every state office, cabinet, department, board, commission, public corporation, or authority in the executive branch of state government. A public servant is employed by the agency by which his appointing authority is employed, unless his agency is attached to the appointing authority's agency for administrative purposes only, or unless the agency's characteristics are of a separate independent nature distinct from the appointing authority and it is considered an agency on its own, such as an independent department;
- (11) "Lobbyist" means any person employed as a legislative agent as defined in KRS 6.611(22) or any person employed as an executive agency lobbyist as defined in KRS 11A.201(8);
- (12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes, opposes, or acts;
- (13) "Candidate" means those persons who have officially filed candidacy papers or who have been nominated by their political party pursuant to KRS 118.105, 118.115, 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to (h) of this section;
- (14) "Does business with" or "doing business with" means contracting, entering into an agreement, leasing, or otherwise exchanging services or goods with a state agency in return for payment by the state, including accepting a grant, but not including accepting a state entitlement fund disbursement;
- (15) "Public agency" means any governmental entity;
- (16) "Appointing authority" means the agency head or any person whom he has authorized by law to act on behalf of the agency with respect to employee appointments;~~{and}~~
- (17) "Represent" means to attend an agency proceeding, write a letter, or communicate with an employee of an agency on behalf of someone else ; *and*
- (18) *"Sporting event" means any professional or amateur sport, athletic game, contest, event, or race involving machines, persons, or animals, for which admission tickets are offered for sale and that is viewed by the public.*



Section 6. KRS 11A.045 is amended to read as follows:

- (1) No public servant, his spouse, or dependent child knowingly shall accept tangible gifts or gratuities totaling a value greater than twenty-five dollars (\$25) in a single calendar year, or travel expenses, meals, alcoholic beverages, lodging or honoraria of any value, from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the agency in which the public servant is employed or which he supervises, or from any group or association which has as its primary purpose the representation of those persons or businesses. The following items are exempt:
  - (a) Coffee, soft drinks, pastries, hors d'oeuvres, or similar refreshments;
  - (b) Food consumed at a public event to which twenty-five (25) or more individuals are in attendance if that event is also open to participants other than public servants and members of the donor's industry;
  - (c) Meals, beverages, and free admission to an event if the public servant, as a part of his official duty, is a speaker or has a significant role in the program;
  - (d) A campaign contribution to an employee's own campaign if in compliance with KRS Chapters 121 and 121A and all other campaign finance laws;
  - (e) A gift from a family member who is not acting as an intermediary for a person from whom the gift would be otherwise prohibited;
  - (f) Food, clothing, and shelter in times of natural disaster or other emergency;
  - (g) Door prizes, if also open to persons other than public servants and members of the donor's industry and if all participants have an equal chance of receiving the prize;
  - (h) Gifts which are modest, reasonable, and customary, received on special occasions such as marriage or retirement;
  - (i) Awards of modest and reasonable value which are publicly received in recognition of public or charitable service, such as plaques;
  - (j) Prizes awarded based solely on skill, such as those received in golf or tennis tournaments, if those tournaments are open to participants other than public servants and members of the donor's industry;
  - (k) Meals at conferences or seminars which are included as part of the dues paid or registration fee and which are available to all attendees; and
  - (l) A single copy of a textbook received by an educator for review.
- (2) ***Nothing in KRS Chapter 11A shall prohibit or restrict the allocation of or acceptance by a public servant of a ticket for admission to a sporting event if the ticket or admission is paid for by the public servant at face value or is paid for at face value by the individual to whom the ticket is allocated.***
- (3) Nothing in KRS 11A.001 to 11A.110 shall prohibit or restrict the acceptance by a public servant of the Cabinet for Economic Development or by any other public servant working directly with the cabinet on an economic incentive package of anything of economic value as a gift or gratuity, if the gift or gratuity:
  - (a) Was not solicited by the public servant;
  - (b) Was accepted by the public servant in the performance of his or her official duties and in compliance with guidelines to be established by the Kentucky Economic Development Partnership which shall include requirements that all gifts or gratuities of a reportable value under KRS 11A.050(3)(k) be registered with the Kentucky Economic Development Partnership and with the Executive Branch Ethics Commission and that all tangible property with a value in excess of twenty-five dollars (\$25), other than food and beverages consumed on the premises, shall be turned over to the Cabinet for Economic Development within thirty (30) days of receipt. In filing reports of gifts or gratuities with the Executive Branch Ethics Commission, the Cabinet for Economic Development may delete information identifying the donors if the cabinet believes identification of the donors would damage economic development; and
  - (c) Was not accepted under circumstances which would create a violation of KRS Chapter 521.

**CHAPTER 543****(HB 541)**

AN ACT relating to corporate income tax and declaring an emergency.

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

Section 1. KRS 141.200 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
  - (a) "Affiliated group" means affiliated group as defined in Section 1504(a) of the Internal Revenue Code and related regulations;
  - (b) "Consolidated return" means a Kentucky corporation income tax return filed by members of an affiliated group in accordance with this section. The determinations and computations required by this chapter shall be made in accordance with the provisions of Section 1502 of the Internal Revenue Code and related regulations, except as required by differences between this chapter and the Internal Revenue Code. Corporations exempt from taxation under KRS 141.040 shall not be included in the return;
  - (c) "Separate return" means a Kentucky corporation income tax return in which only the transactions and activities of a single corporation are considered in making all determinations and computations necessary to calculate taxable net income, tax due, and credits allowed in accordance with the provisions of this chapter.
- (2) Every corporation doing business in this state, except those exempt from taxation under KRS 141.040, shall, for each taxable year, file a separate return unless the corporation was, for any part of the taxable year, a member of an affiliated group electing to file a consolidated return in accordance with subsection (3) of this section.
- (3)
  - (a) An affiliated group, whether or not filing a federal consolidated return, may elect to file a consolidated return which includes all members of the affiliated group.
  - (b) An affiliated group electing to file a consolidated return under paragraph (a) of this subsection shall be treated for all purposes as a single corporation under the provisions of this chapter. All transactions between corporations included in the consolidated return shall be eliminated in computing net income in accordance with KRS 141.010(13), and in determining the property, payroll, and sales factors in accordance with KRS 141.120.
  - (c) Any election made in accordance with paragraph (a) of this subsection shall be made on a form prescribed by the cabinet and shall be submitted to the cabinet on or before the due date of the return including extensions for the first taxable year for which the election is made.
  - (d) Any election to file a consolidated return pursuant to paragraph (a) of this subsection shall be binding on both the cabinet and the affiliated group for a period beginning with the first month of the first taxable year for which the election is made and ending with the conclusion of the taxable year in which the ninety-sixth consecutive calendar month expires.
  - (e) For each taxable year for which an affiliated group has made an election in accordance with paragraph (a) of this subsection, the consolidated return shall include all corporations which are members of the affiliated group.
- (4) Each corporation included as part of an affiliated group filing a consolidated return shall be jointly and severally liable for the income tax liability computed on the consolidated return, except that any corporation which was not a member of the affiliated group for the entire taxable year shall be jointly and severally liable only for that portion of the Kentucky consolidated income tax liability attributable to that portion of the year that the corporation was a member of the affiliated group.
- (5) Every corporation return or report required by this chapter shall be executed by one (1) of the following officers of the corporation: the president, vice president, secretary, treasurer, assistant secretary, assistant treasurer, or chief accounting officer. The Revenue Cabinet may require a further or supplemental report of further information and data necessary for computation of the tax.

- (6) In the case of a corporation doing business in this state that carries on transactions with stockholders or with other corporations related by stock ownership, by interlocking directorates, or by some other method, the cabinet shall require information necessary to make possible accurate assessment of the income derived by the corporation from sources within this state. To make possible such assessment, the cabinet may require the corporation to file supplementary returns showing information respecting the business of any or all individuals and corporations related by one (1) or more of these methods to the corporation. The cabinet may require the return to show in detail the record of transactions between the corporation and any or all other related corporations or individuals.
- (7) ***For any taxable year ending on or after December 31, 1995, except as provided under subsection (3) of this section, nothing in this chapter shall be construed as allowing or requiring the filing of:***
- (a) ***A combined return under the unitary business concept; or***
- (b) ***A consolidated return.***
- (8) ***No assessment of additional tax due for any taxable year ending on or before December 31, 1995, made after December 22, 1994, and based on requiring a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return, shall be effective or recognized for any purpose.***
- (9) ***No claim for refund or credit of a tax overpayment for any taxable year ending on or before December 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return, shall be effective or recognized for any purpose.***
- (10) ***No corporation or group of corporations shall be allowed to file a combined return under the unitary business concept or a consolidated return for any taxable year ending before December 31, 1995, unless on or before December 22, 1994, the corporation or group of corporations filed an initial or amended return under the unitary business concept or consolidated return for a taxable year ending before December 22, 1994.***
- (11) ***This section shall not be construed to limit or otherwise impair the cabinet's authority under KRS 141.205.***

Section 2. KRS 141.120 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
- (a) "Business income" means income arising from transactions and activity in the regular course of a trade or business of the corporation and includes income from tangible and intangible property if the acquisition, management, or disposition of the property constitutes integral parts of the corporation's regular trade or business operations;
- (b) "Commercial domicile" means the principal place from which the trade or business of the corporation is managed;
- (c) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid or payable to employees for personal services;
- (d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, investment company, or any type of insurance company;
- (e) "Nonbusiness income" means all income other than business income;
- (f) "Public service company" means any business entity subject to taxation under KRS 136.120;
- (g) "Sales" means all gross receipts of the corporation not allocated under subsections (3) through (7) of this section;
- (h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.
- (2) Any corporation which is required by KRS 141.010(14)(b) to allocate and apportion its net income shall allocate and apportion its net income as provided in this section.

- (3) Rents and royalties from real, intangible or tangible personal property, capital gains and losses, interest, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (4) through (7) of this section.
- (4)
  - (a) Net rents and royalties from real property located in this state are allocable to this state.
  - (b) Net rents and royalties from tangible personal property are allocable to this state if and to the extent that the property is utilized in this state; or in their entirety if the corporation's commercial domicile is in this state and the corporation is not organized under the laws of or taxable in the state in which the property is utilized.
  - (c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the corporation, the tangible personalty is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.
  - (d) Net rents and royalties from intangible personal property located in this state are allocable to this state. For purposes of this section, royalties from property leased in Kentucky shall be considered as royalties from intangible personal property.
- (5)
  - (a) Capital gains and losses from sales or other dispositions of real property located in this state are allocable to this state.
  - (b) Capital gains and losses from sales or other dispositions of tangible personal property are allocable to this state if the property had a situs in this state at the time of the sale, or the corporation's commercial domicile is in this state and the corporation is not taxable in the state in which the property had a situs.
  - (c) Capital gains and losses from sales or other dispositions of intangible personal property are allocable to this state if the corporation's commercial domicile is in this state.
- (6) Interest is allocable to this state if the corporation's commercial domicile is in this state.
- (7)
  - (a) Patent and copyright royalties are allocable to this state if and to the extent that the patent or copyright is utilized by the payer in this state; or if and to the extent that the patent or copyright is utilized by the payer in a state in which the corporation is not taxable and the corporation's commercial domicile is in this state.
  - (b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the corporation's commercial domicile is located.
  - (c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the corporation's commercial domicile is located.
- (8) Except as provided for in subsection (9) of this section, all business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3); provided, however, that effective with taxable years beginning after July 31, 1985, in lieu of the equally weighted three (3) factor apportionment fraction based on property, payroll, and sales, an apportionment fraction composed of a sales factor representing fifty percent (50%) of the fraction, a property factor representing twenty-five percent (25%) of the fraction, and a payroll factor representing twenty-five percent (25%) of the fraction shall be used.
  - (a) The property factor is a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the corporation's real and tangible personal property owned or rented and used during the tax period; provided, however, that property which has been

certified as a pollution control facility as defined in KRS 224.01-300 shall be excluded from the property factor.

1. Property owned is valued at its original cost. If the original cost of any property is not determinable or is nominal or zero (0) the property shall be valued by the cabinet pursuant to administrative regulations promulgated by the cabinet. Property rented is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals, provided that the rental and subrentals are reasonable. If the cabinet determines that the annual rental or subrental rate is unreasonable, or if a nominal or zero (0) rate is charged, the cabinet may determine and apply the rental rate as will reasonably reflect the value of the property rented by the corporation.
  2. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the cabinet may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the property.
- (b) The payroll factor is a fraction, the numerator of which is the total amount paid or payable in this state during the tax period by the corporation for compensation, and the denominator of which is the total compensation paid or payable by the corporation everywhere during the tax period. Compensation is paid or payable in this state if:
1. The individual's service is performed entirely within the state;
  2. The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or
  3. Some of the service is performed in the state and the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.
- (c) 1. The sales factor is a fraction, the numerator of which is the total sales of the corporation in this state during the tax period, and the denominator of which is the total sales of the corporation everywhere during the tax period.
2. Sales of tangible personal property are in this state if:
- a. The property is delivered or shipped to a purchaser, other than the United States government, or to the designee of the purchaser within this state regardless of the f.o.b. point or other conditions of the sale; or
  - b. The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the purchaser is the United States government.
3. Sales, other than sales of tangible personal property, are in this state if the income-producing activity is performed in this state; or the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.
- (9) (a) If the allocation and apportionment provisions of this section do not fairly represent the extent of the corporation's business activity in this state, the corporation may petition for or the cabinet may require, in respect to all or any part of the corporation's business activity, if reasonable:
1. Separate accounting;
  2. The exclusion of any one (1) or more of the factors;
  3. The inclusion of one (1) or more additional factors which will fairly represent the corporation's business activity in this state; or
  4. The employment of any other method to effectuate an equitable allocation and apportionment of income.
- (b) A corporation may elect the allocation and apportionment methods for the corporation's business income provided for in subparagraphs 1. and 2. of this paragraph. The election, if made, shall be irrevocable for a period of five years.

1. All business income derived directly or indirectly from the sale of management, distribution, or administration services to or on behalf of regulated investment companies, as defined under the Internal Revenue Code of 1986, as amended, including trustees, and sponsors or participants of employee benefit plans which have accounts in a regulated investment company, shall be apportioned to this state only to the extent that shareholders of the investment company are domiciled in this state as follows:
    - a. Total business income shall be multiplied by a fraction, the numerator of which shall be Kentucky receipts from the services for the tax period and the denominator of which shall be the total receipts everywhere from the services for the tax period.
    - b. For purposes of subdivision a. of this subparagraph, Kentucky receipts shall be determined by multiplying total receipts for the tax period from each separate investment company for which the services are performed by a fraction. The numerator of the fraction shall be the average of the number of shares owned by the investment company's shareholders domiciled in this state at the beginning of and at the end of the investment company's taxable year, and the denominator of the fraction shall be the average of the number of the shares owned by the investment company shareholders everywhere at the beginning of and at the end of the investment company's taxable year.
    - c. Nonbusiness income shall be allocated to this state as provided in subsections (4) through (7) of this section.
  2. All business income derived directly or indirectly from the sale of securities brokerage services by a business which operates within the boundaries of any area of the Commonwealth, which on June 30, 1992, was designated as a Kentucky Enterprise Zone, as defined in KRS 154.655(2), shall be apportioned to this state only to the extent that customers of the securities brokerage firm are domiciled in this state. The portion of business income apportioned to Kentucky shall be determined by multiplying the total business income from the sale of these services by a fraction determined in the following manner:
    - a. The numerator of the fraction shall be the brokerage commissions and total margin interest paid in respect of brokerage accounts owned by customers domiciled in Kentucky for the brokerage firm's taxable year; and
    - b. The denominator of the fraction shall be the brokerage commissions and total margin interest paid in respect of brokerage accounts owned by all of the brokerage firm's customers for that year.
    - c. Nonbusiness income shall be allocated to this state as provided in subsections (4) through (7) of this section.
- (10) Public service companies and financial organizations required by KRS 141.010(14)(b) to allocate and apportion net income shall allocate and apportion such income as follows:
- (a) Nonbusiness income shall be allocated to this state as provided in subsections (4) through (7) of this section.
  - (b) Business income shall be apportioned to this state by multiplying the business income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three (3); provided, however, that effective with taxable years beginning after July 31, 1985, in lieu of the equally weighted three (3) factor apportionment fraction based on property, payroll, and sales, an apportionment fraction composed of a sales factor representing fifty percent (50%) of the fraction, a property factor representing twenty-five percent (25%) of the fraction, and a payroll factor representing twenty-five percent (25%) of the fraction shall be used. The payroll factor shall be determined as provided in subsection (8)(b) of this section. The property factor and sales factor shall be determined as provided by administrative regulations promulgated by the cabinet.
  - (c) An affiliated group electing to file a consolidated return under KRS 141.200(3) that includes a public service company or financial organization shall determine the amount of payroll to be included in the apportionment factor as provided in subsection (8)(b) of this section. The amount of property and sales of the public service company or financial organization to be included in the apportionment factors of

the affiliated group shall be determined in accordance with administrative regulations promulgated by the cabinet under paragraph (b) of this subsection.

~~[(11) Nothing in this section shall be construed as allowing or requiring the filing of a combined return under the unitary business concept or a consolidated return.]~~

Section 3. The provisions of subsection (7) of Section 1 of this Act shall apply retroactively for taxable years ending on or after December 31, 1995. The provisions of subsections (8) to (11) of Section 1 of this Act shall apply retroactively for all taxable years ending before December 31, 1995.

Section 4. Whereas the fiscal year begins on July 1 and the General Assembly finds that it is critical that this Act take effect at the beginning of the fiscal year, an emergency is declared to exist, and this Act takes effect July 1, 2000.

**Approved April 26, 2000**

## CHAPTER 544

### (HB 576)

AN ACT making appropriations for operations, maintenance, and support of the legislative branch of the Commonwealth of Kentucky.

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

#### PART I

#### OPERATING BUDGET

Funds are appropriated to the Legislative Research Commission out of the General Fund, restricted funds accounts, or federal funds accounts for the fiscal year beginning July 1, 2000, and ending June 30, 2001, and for the fiscal year beginning July 1, 2001, and ending June 30, 2002, in the following discrete sums, or so much thereof as may be necessary. Each appropriation is made by the source of respective fund or funds accounts to be used for the purposes of the legislative branch of government of the Commonwealth of Kentucky.

	2000-01	2001-02
1. General Assembly		
General Fund	9,812,300	13,312,300
Restricted Funds	153,500	97,300
Total	9,965,800	13,409,600

The above General Fund appropriation to the General Assembly includes funds for the Legislators Retirement Plan in each fiscal year and provides for the continuation of the annual cost of living adjustment authorized for the 1998-2000 biennium. Notwithstanding KRS 6.190, 6.213, and 6A.020, the daily compensation provided by KRS 6.190 and 6A.020 and the interim expense allowance provided by KRS 6.213 for members of the General Assembly shall be as authorized for the 1998-2000 biennium and shall continue as adjusted on January 1, 2001, and January 1, 2002, by the all urban consumer price index (CPI-U) not to exceed 5 percent (5%) per annum but not less than zero percent (0%) per annum.

	2000-01	2001-02
2. Legislative Research Commission		
General Fund	26,638,100	27,304,100
Restricted Funds	2,200	2,200
Total	26,640,300	27,306,300

The total number of permanent full-time employees hired by the Legislative Research Commission with the above appropriation shall not exceed 261 in fiscal year 2000-2001 and 261 in fiscal year 2001-2002. Within this total, the permanent full-time employees assigned specifically to the House members of the Legislative Research Commission shall not exceed 19 and the permanent full-time employees assigned specifically to the Senate members of the Legislative Research Commission shall not exceed 10.

The above General Fund appropriation includes \$150,000 in fiscal year 2001-2002 for the capital project authorized in the Capital Projects Budget, Part II. Project funds may be transferred to the Capital Construction Fund.

#### TOTAL - OPERATING BUDGET

	2000-01	2001-02
General Fund	36,450,400	40,616,400
Restricted Funds	155,700	99,500
<b>TOTAL</b>	<b>36,606,100</b>	<b>40,715,900</b>

Notwithstanding the provisions of KRS 45.229, any unexpended balance remaining at the close of fiscal year 1999-2000 shall not lapse but shall continue into the 2000-2001 fiscal year and any unexpended balance in any succeeding fiscal year shall not lapse, but shall continue into the following fiscal year.

#### PART II

#### CAPITAL PROJECTS BUDGET

	2000-01	2001-02
1. Legislative Research Commission		
a. Printing/color duplicating machine		
General Fund		150,000
<b>TOTAL</b>		<b>150,000</b>

The amount listed above is not in addition to the funds appropriated in the Operating Budget, Part I.

#### TOTALS - LEGISLATIVE BRANCH BUDGET

	2000-01	2001-02
General Fund	36,450,400	40,616,400
Restricted Funds	155,700	99,500
<b>TOTAL</b>	<b>36,606,100</b>	<b>40,715,900</b>

#### PART III

#### GENERAL PROVISIONS

1. The Director of the Legislative Research Commission with the approval of the Legislative Research Commission may expend any of the funds appropriated for legislative operation and administration in any lawful manner and for any legal purpose which the Commission shall authorize or direct. No executive agency of state government shall have the power to restrict or limit the expenditure of funds appropriated to the legislative branch of government.

2. The Director of the Legislative Research Commission shall submit monthly to the Legislative Research Commission a report listing all travel expenses reimbursed, travel related per diem, and any other travel related reimbursement for each General Assembly member and each employee of the Legislative Research Commission who was reimbursed during the previous month.

3. No member of the General Assembly except members of the Legislative Research Commission shall receive in any one fiscal year per diem compensation in excess of 7 days in connection with out-of-state travel unless prior written approval has been received from the Legislative Research Commission.

4. Appropriation items and sums in this Act conform to KRS 48.311. If any section, any subsection, or any provisions thereof shall be invalid or unconstitutional, the decision of the courts shall not affect or impair any of the remaining sections, subsections, or provisions.

5. Any appropriation item and sum in this Act and in an appropriation provision in another act of the 2000 Regular Session of the General Assembly which constitute a duplicate appropriation shall be governed by KRS 48.312.



6. KRS 48.313 shall control when a total, subtotal, or subtotal figure in this Act conflicts with the sum of the appropriations of which it consists.

7. Proposed revisions to restricted funds and federal funds appropriations in this Act shall be made and reported pursuant to KRS 48.630(10). The Director of the Legislative Research Commission shall notify on a timely basis the Legislative Research Commission of the most current estimates of anticipated receipts for the affected fiscal year and an accompanying statement which explains such variations from the anticipated amount.

8. The Legislative Research Commission shall cause the Director of the Legislative Research Commission to prepare a final budget document reflecting the 2000-2002 biennial budget of the legislative branch. A copy shall be provided to the Legislative Research Commission and an informational copy shall be furnished to the Finance and Administration Cabinet within sixty (60) days of the adjournment of the 2000 Regular Session of the General Assembly.

9. Notwithstanding KRS 6.220, in lieu of stationery, there shall be allowed to each member of the House of Representatives the sum of two hundred fifty dollars (\$250) and to each member of the Senate the sum of five hundred dollars (\$500). This allowance shall be paid out of the State Treasury at the beginning of the session.

#### PART IV

#### BUDGET REDUCTION OR SURPLUS EXPENDITURE PLAN

The legislative branch shall participate in any Budget Reduction Plan or Surplus Expenditure Plan in accordance with the provisions of KRS Chapter 48.

**Approved April 26, 2000**

### CHAPTER 545

#### (HB 577)

AN ACT making appropriations for the operations, maintenance, support, and functioning of the judicial branch of the government of the Commonwealth of Kentucky and its various officers, boards, commissions, subdivisions, and other state supported activities.

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

#### PART I

#### OPERATING BUDGET

There is appropriated out of the General Fund, restricted funds accounts, or federal funds accounts for the fiscal year beginning July 1, 2000, and ending June 30, 2001, and for the fiscal year beginning July 1, 2001, and ending June 30, 2002, in the following sums to be used for the purposes of the judicial branch of the government of the Commonwealth of Kentucky including the Supreme Court, Court of Appeals, Circuit Court, District Court, the Administrative Office of the Courts, pretrial services, juvenile services, judicial boards and commissions, the State Law Library, judicial retirement, local facilities fund, local facilities use allowance contingency fund, and for services performed by the Circuit Clerks' offices, including both Circuit and District Court support.

##### 1. Court of Justice

	2000-01	2001-02
General Fund	135,769,500	143,131,900
Restricted Funds	8,031,200	8,207,300
Federal Funds	2,083,300	1,734,700
Total	145,884,000	153,073,900

Funds are included to provide a five percent (5%) salary adjustment in fiscal year 2000-2001 and in fiscal year 2001-2002 for nonelected court personnel. Included are funds to provide for a five percent (5%) salary adjustment for justices and judges in fiscal year 2000-2001 and a five percent (5%) adjustment for the justices and judges in fiscal year 2001-2002. Also included are funds for the salaries of the circuit clerks in fiscal year 2000-2001 and fiscal year 2001-2002 as provided for in the Judicial Branch Budget.

Notwithstanding KRS 23A.040 and KRS 23A.045, the Circuit Court judgeships in Floyd County (31st Circuit) and Christian County (3rd Circuit) created by the 1998 General Assembly are established as family court judgeships. General Fund amounts are included in fiscal year 2000-2001 and fiscal year 2001-2002 to provide for the continuation of these judgeships and related family court pilot projects.

Notwithstanding KRS 24A.100, included in the above General Fund appropriation is \$178,300 in each fiscal year to increase the statutory maximum salary of trial commissioners.

b. Local Facilities Fund

	2000-01	2001-02
General Fund	38,509,200	45,245,200

The use allowance for the Fayette County Courthouse is contingent upon Short Street in Lexington, Kentucky, remaining open to vehicular traffic.

Included in the above appropriation are moneys to compensate local units of government for providing court space and for costs incurred in the development of local court facilities as defined in KRS Chapter 26A and provided in Part II of this Act, and to perform all other acts required or authorized by KRS Chapter 26A.

Notwithstanding KRS 45.229, any unexpended balance remaining at the close of fiscal year 1999-2000 shall not lapse and shall continue into fiscal year 2000-2001, and any unexpended balance at the close of fiscal year 2000-2001 shall not lapse and shall be continued into fiscal year 2001-2002.

c. Local Facilities Use Allowance Contingency Fund

	2000-01	2001-02
General Fund	-0-	-0-

Notwithstanding KRS 45.229, General Fund support totaling \$414,500 in fiscal year 1999-2000 shall not be expended, but be continued into fiscal year 2000-2001 and appropriated to the Local Facilities Fund. Notwithstanding KRS 45.229, any remaining unexpended balance shall not lapse, but be continued into fiscal year 2000-2001, and any remaining unexpended balance at the close of fiscal year 2000-2001 shall not lapse, but be continued into fiscal year 2001-2002 to provide for cost overruns in authorized court facilities projects not to exceed fifteen percent (15%) of the use allowance.

Total Court of Justice

	2000-01	2001-02
General Fund	174,278,700	188,377,100
Restricted Funds	8,031,200	8,207,300
Federal Funds	2,083,300	1,734,700
Total	184,393,200	198,319,100

2. Judicial Form Retirement System

	2000-01	2001-02
General Fund	4,196,700	4,213,400

General Fund amounts are included to provide for the 1999 actuarial assessed needs of the Judicial Form Retirement System. Included in the above General Fund appropriation is \$420,000 in each fiscal year for the senior status program for special judges in accordance with legislation enacted by the 2000 Regular Session of the General Assembly.

TOTAL - OPERATING BUDGET

	2000-01	2001-02
General Fund	178,475,400	192,590,500
Restricted Funds	8,031,200	8,207,300
Federal Funds	2,083,300	1,734,700

TOTAL	188,589,900	202,532,500
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## PART II

## CAPITAL PROJECTS BUDGET

## 1. Local Facility Projects

The multiyear schedule for the use allowance payments for the capital costs for each local facility is contained in the Judicial Branch Budget.

a.	Casey County - Project Scope	6,837,200
b.	Magoffin County - Project Scope	7,606,200
c.	Knott County - Project Scope	6,903,200
d.	Bullitt County - Project Scope	14,336,600
e.	Wayne County - Project Scope	7,399,300
f.	Johnson County - Project Scope	7,461,200
g.	Perry County - Project Scope	8,490,200
h.	Muhlenberg County - Project Scope	6,958,500
i.	Clay County - Project Scope	7,075,800
j.	Simpson County - Project Scope	7,263,700
k.	Breathitt County - Project Scope	6,735,400
l.	Metcalf County - Project Scope	5,439,300
m.	Carter County - Project Scope	7,472,100
n.	Cumberland County - Project Scope	5,560,200
o.	Nelson County - Project Scope	12,553,800
p.	Boone County - Additional Scope	8,328,100
q.	Bourbon County - Additional Scope	2,400,000
r.	Christian County - Additional Scope	8,284,200
s.	Harlan County - Additional Scope	5,070,400
t.	Harrison County - Additional Scope	3,079,700
u.	Franklin County - Lease Office Space (Millcreek Park)	
v.	Franklin County - Lease Court of Appeals (Democrat Drive)	
w.	Jefferson County - Courts Parking Lease	

For any court facility project which is occupied and use allowance funding is insufficient, the use allowance payments shall be approved from the Local Facilities Use Allowance Contingency Fund. If funds are not available in the Local Facilities Use Allowance Contingency Fund, the use allowance payments shall be deemed a necessary governmental expense. (General Fund Surplus Account, KRS 48.700)

New courthouse projects are authorized in Casey, Magoffin, Knott, Bullitt, Wayne, Johnson, Perry, Muhlenberg, Clay, Simpson, Breathitt, Metcalfe, Carter, Cumberland, and Nelson Counties. General Fund support to provide use allowance payments and related operating expenses for these projects is deferred to the 2002-2004 fiscal biennium pending action of the 2002 General Assembly.

## TOTAL - JUDICIAL BRANCH BUDGET

	2000-01	2001-02
General Fund	178,475,400	192,590,500
Restricted Funds	8,031,200	8,207,300

Federal Funds	2,083,300	1,734,700
TOTAL	188,589,900	202,532,500

## PART III

## GENERAL PROVISIONS

1. The Director of the Administrative Office of the Courts with the approval of the Chief Justice may expend any of the funds appropriated for the court operation and administration in any lawful manner and for any legal purpose that the Chief Justice shall authorize or direct. No executive agency of state government shall have the power to restrict or limit the expenditure of funds appropriated to the judicial branch of government.

2. The Court of Justice shall not incur any obligation for any program against the General Fund appropriations contained in this Act unless that program may be reasonably determined to have been contemplated by the proposed judicial budget, as modified and enacted, and supported by the statutory budget memorandum and other pertinent records.

3. Appropriation items and sums in this Act conform to KRS 48.311. If any section, any subsection, or any provisions thereof shall be invalid or unconstitutional, the decision of the courts shall not affect or impair any of the remaining sections, subsections, or provisions.

4. Any appropriation item and sum in this Act and in an appropriation provision in another act of the 2000 General Assembly which constitutes a duplicate appropriation shall be governed by KRS 48.312.

5. KRS 48.313 shall control when a total or subtotal figure in this Act conflicts with the sum of the appropriations of which it consists.

6. Notwithstanding KRS 45.229, any unexpended balance remaining in the Court's restricted funds accounts or federal funds accounts at the close of the fiscal years ending June 30, 2000, and June 30, 2001, shall not lapse and shall continue into the next fiscal year.

7. Proposed revisions to restricted funds and federal funds appropriations in this Act shall be made and reported pursuant to KRS 48.630(10). The Director of the Administrative Office of the Courts shall notify on a timely basis the Legislative Research Commission of the most current estimates of anticipated receipts for the affected fiscal year and an accompanying statement which explains such variations from the anticipated amount.

8. The Chief Justice shall cause the Director of the Administrative Office of the Courts to prepare a final budget document reflecting the 2000-2002 biennial budget of the Court of Justice. A copy shall be provided to the Legislative Research Commission and an informational copy shall be furnished to the Finance and Administration Cabinet within sixty (60) days of the adjournment of the 2000 Regular Session of the General Assembly.

9. The Chief Justice shall establish rules of procedure on matters relating to the design, financing, and construction of court facilities. The Administrative Office of the Courts shall oversee the design, financing, and construction of court facilities. Capital costs, for the purpose of computing the maximum annual use allowance, shall not exceed the project scope as authorized by the General Assembly in this judicial branch budget unless increased and approved through the procedures outlined below.

The Administrative Office of the Courts shall assess the need for construction or renovation of court facilities throughout the Commonwealth and develop a project program for the construction or renovation of those court facilities that the Administrative Office of the Courts determines to be most in need of construction or renovation. Based on a needs assessment, the Administrative Office of the Courts shall develop a prioritized list of proposed court facilities projects and submit the list to the Chief Justice for approval and to the Court Facilities Standards Committee for informational purposes only. Upon approval by the Chief Justice, the Administrative Office of the Courts shall submit the prioritized list to the Capital Planning Advisory Board, by April 15 of 2001, in accordance with KRS 7A.120.

The Administrative Office of the Courts shall develop and maintain uniform contracts to be used by local units of government when procuring architectural, construction, financial, or other services relating to court facilities projects authorized by the General Assembly. Each county with a court project authorized by the 2000 General Assembly shall enter into a written memorandum of agreement with the Administrative Office of the Courts. Before the Administrative Office of the Courts submits its next budget request for court projects under KRS 48.050, each local unit of government that is expected to participate in financing a requested court project shall enter into a written memorandum of agreement with the Administrative Office of the Courts. The agreements shall be developed by the Administrative Office of the Courts, and shall specify the rights, duties, and obligations of the local unit of

government and the Administrative Office of the Courts relating to the project, and shall be contingent upon the project's authorization by the General Assembly.

No contract, and no modification to any contract, relating to the design, financing, or construction of court facilities projects authorized by the General Assembly shall be executed unless first reviewed and approved by the Administrative Office of the Courts. All court facilities projects, beginning with those authorized by the 2000 General Assembly, shall comply with the Kentucky standards for court facilities to be established by the Chief Justice and the Administrative Office of the Courts.

The use allowance in the judicial branch budget recommendation submitted under KRS 48.100 shall be determined as if bonds will be issued for a term of twenty (20) years at the prevailing market rate, computed from the estimated date that the Court of Justice will occupy the facility. If the market rate for the bonds assumed in the budget recommendation, including that in the recommendation for FY 2001-2002, has increased when the bonds are to be sold, the director of the Administrative Office of the Courts may approve an extension in the bond term, up to a total of twenty-five (25) years, but only as necessary to keep the annual use allowance within the budgeted amount. All bonds issued by any local unit of government for court facilities projects shall be limited to the term approved by the Administrative Office of the Courts.

Before approving any bond issue for a term exceeding twenty-five (25) years, the director of the Administrative Office of the Courts shall submit a proposal for the extended term to the Interim Joint Committee on Appropriations and Revenue and the Capital Projects and Bond Oversight Committee. The proposal shall include a statement of the necessity for the extended bond term and the impact of the extended term on the project's budgeted scope and authorized annual use allowance. Within thirty (30) days after receiving a proposal to extend a bond term beyond twenty-five (25) years, the Interim Joint Committee on Appropriations and Revenue and the Capital Projects and Bond Oversight Committee shall either approve or disapprove the proposal and shall then promptly notify the director of the Administrative Office of the Courts. If either committee disapproves the proposal, the director of the Administrative Office of the Courts shall take one (1) of the following actions and shall notify the committee of its decision in writing within thirty (30) days:

- (a) Disapprove and take no further action on the proposal;
- (b) Revise the proposal to comply with the committee's objections; or
- (c) Determine to approve and proceed with the proposal over the committee's objection.

The Court of Justice may agree to increase the budgeted scope of a court project or project pool authorized by the General Assembly, and may draw from the local facilities use allowance contingency fund to cover any resulting increase in the budgeted annual use allowance, if and only if:

- (a) The appropriate unit of government first submits a proposal for the increase to the Court Facilities Standards Committee, and the Court Facilities Standards Committee approves the increase; and
- (b) The annual use allowance for the project or project pool, adjusted for the proposed increase in scope, would not exceed the annual use allowance specified for that project or project pool in the multiyear use allowance schedule set out in the judicial branch budget bill or memorandum by more than fifteen percent (15%).

Before the Court of Justice gives final approval to an increase in the budgeted scope of an authorized project or project pool listed in a judicial branch budget bill which would result in an increased use allowance, the director of the Administrative Office of the Courts shall submit a proposal for the increase to the Capital Projects and Bond Oversight Committee at least fourteen (14) days prior to the committee meeting. Within thirty (30) days after receiving a proposal to increase the use allowance, the Capital Projects and Bond Oversight Committee shall either approve or disapprove the proposal and shall then promptly notify the director of the Administrative Office of the Courts of its decision. If the Capital Projects and Bond Oversight Committee disapproves the proposal, the director of the Administrative Office of the Courts shall take one (1) of the following actions and shall notify the committee of its decision in writing within thirty (30) days of receiving the committee's notice of disapproval:

- (a) Revise the proposal to comply with the committee's objections;
- (b) Cancel and take no further action on the proposal; or
- (c) Determine to implement the proposal over the committee's objection.

The Administrative Office of the Courts shall report to the Capital Projects and Bond Oversight Committee within thirty (30) days any action taken by the Court of Justice to approve a scope increase of a project within a pool which would increase the use allowance for that project. The Capital Projects and Bond Oversight Committee shall

maintain records of proposals, findings, decisions, and actions taken under this section. When appropriate, the committee shall provide this information to other legislative committees or to the General Assembly. The Administrative Office of the Courts shall provide to the Capital Projects and Bond Oversight Committee, at the committee's January, April, July, and October regular meetings, a status report on the progress of all incomplete court facilities projects.

On August 1 of each year, the Administrative Office of the Courts shall prepare a financial report on the court facility use allowance contingency fund for the fiscal year ending on June 30 of that year. The report shall include explanations, allotments, expenditures, encumbrances, and the available balance.

Upon request of the Administrative Office of the Courts, the Department for Local Government shall evaluate the financial condition of any local unit of government selected to participate in a court facilities construction or renovation project, and shall certify to the Administrative Office of the Courts the local unit of government's ability to participate in the project.

10. a. A fiscal court, by ordinance, may assess additional fees and costs, for the purpose of paying expenses for courthouses, bonds related to them, and administration thereof in Circuit Court and District Court:

(1) In civil cases, a fee of up to twenty-five dollars (\$25) may be added to filing fees.

(2) In criminal cases, a cost of up to twenty-five dollars (\$25) may be added to the court costs that the defendant is required to pay.

(3) In civil cases that are appealed from Circuit Court to the Court of Appeals, a fee of up to twenty-five dollars (\$25) may be added to the filing fees.

(4) In all traffic offenses, a fee of up to ten dollars (\$10) may be added to the court costs for each traffic offense.

(5) In probate cases, a filing fee of up to ten dollars (\$10) may be added to each filing fee.

(6) In misdemeanor cases, a cost of up to twenty dollars (\$20) may be added to the court costs.

(7) In small claims, a fee of up to ten dollars (\$10) may be added to all filing fees.

(8) In civil cases, a fee of up to ten dollars (\$10) may be added to all filing fees.

b. A fiscal court, by ordinance, may assess additional fees on subpoena and civil summons service by the local sheriff, for the purpose of paying expenses for courthouses, bonds related to them, and administration thereof. The fees may be added as follows:

(1) In addition to the fees normally charged for the service of a subpoena, the person requesting service may be charged a fee of up to ten dollars (\$10).

(2) In addition to the fees normally charged for the service of a civil summons, the person requesting service may be charged a fee of up to ten dollars (\$10).

11. Funding for the Commonwealth's ten family courts has been granted with the intention that the Family Court Pilot Project be continued during fiscal year 2000-2001 and fiscal year 2001-2002. Continuation of the Family Court Pilot Project is in recognition that nine such family courts, located in geographically diverse locations across Kentucky, have been in operation for less than two years and additional time and experience are required to properly assess the success of the Family Court Project.

#### PART IV

#### BUDGET REDUCTION OR SURPLUS EXPENDITURE PLAN

The Judicial Branch shall participate in any Budget Reduction Plan or Surplus Expenditure Plan in accordance with the provisions of KRS Chapter 48.

**Approved April 26, 2000**

## CHAPTER 546

(HB 583)

AN ACT relating to proceeds from the Tobacco Master Settlement Agreement, and declaring an emergency.

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

Section 1. KRS 248.654 is amended to read as follows:

There is established in the State Treasury a permanent and perpetual fund to be known as the "Tobacco Settlement Agreement Fund" to which shall be credited any funds designated to the Commonwealth from the *master settlement agreement signed on November 22, 1998, between the participating tobacco manufacturers and the forty (40) settling states*~~[tobacco settlement agreement]~~ or related federal legislation. *All investment income earned from moneys deposited in the fund prior to the effective date of this Act and after the effective date of this Act shall accrue to the fund.* Any funds designated to the Commonwealth from the settlement agreement or related federal legislation *and all investment income accruing to the fund* shall not be expended until appropriated by the General Assembly. The General Assembly's highest priority for distributing any funds from this account shall be for tobacco farmers and tobacco-impacted communities and health-related areas. *Moneys in the fund, including all investment income accruing to the fund, shall be distributed within twenty (20) days of the effective date of this Act and within twenty (20) days of receipt of any moneys deposited to the fund after the effective date of this Act as follows:*

- (1) *Fifty percent (50%) to the rural development fund created in Section 2 of this Act;*
- (2) *Twenty-five percent (25%) to the early childhood development fund created in Section 3 of this Act; and*
- (3) *Twenty-five percent (25%) to the Kentucky health care improvement fund created in Section 4 of this Act.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

*There is established in the State Treasury a fund to be known as the "Rural Development Fund." This fund shall exist for the purpose of receipt and expenditure of moneys to improve and promote agricultural development for residents of the Commonwealth. The fund may receive state appropriations, gifts, grants, and federal funds and shall be disbursed by the State Treasurer upon the warrant of the chair of the rural development board. Before and after July 1, 2000, fifty percent (50%) of the proceeds in the tobacco settlement agreement fund shall be deposited in this fund as provided under Section 1 of this Act. All investment income earned from moneys deposited in the fund shall accrue to the fund. The moneys in the fund shall not lapse at the close of any fiscal year but shall be carried forward in the next fiscal year for the purpose of the fund. The board shall develop and oversee the implementation of a strategic plan. The strategic plan shall identify both short-term and long-term goals and the appropriate oversights to measure progress toward achievement of those goals, and it shall be updated every two (2) years. The board shall submit an annual report to the Governor and the Legislative Research Commission by September 1 of each year for the preceeding fiscal year, outlining its activities and expenditures. The Auditor of Public Accounts, on an annual basis, shall conduct a thorough review of all expenditures from the fund and, if necessary in the opinion of the Auditor, an audit of the operations of the fund. No money in the fund shall be allocated until the board has adopted a strategic plan.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO READ AS FOLLOWS:

*There is established in the State Treasury a fund to be known as the "Early Childhood Development Fund." This fund shall exist for the purpose of receipt and expenditure of moneys to improve and promote early childhood development for children of the Commonwealth. The fund may receive state appropriations, gifts, grants, and federal funds and shall be disbursed by the State Treasurer upon the warrant of the chair of the early childhood development board. Beginning July 1, 2000, twenty-five percent (25%) of the proceeds from the tobacco settlement agreement fund shall be deposited in this fund as provided under Section 1 of this Act. All investment income earned from moneys deposited in the fund shall accrue to the fund. The moneys in the fund shall not lapse at the close of any fiscal year but shall be carried forward in the next fiscal year for the purpose of the fund. The board shall develop and oversee the implementation of a strategic plan. The strategic plan shall identify both short-term and long-term goals and the appropriate oversights to measure progress toward achievement of those goals, and it shall be updated every two (2) years. The board shall submit an annual report to the Governor and the Legislative Research Commission by September 1 of each year for the preceeding fiscal year, outlining its activities and expenditures. The Auditor of Public Accounts, on an annual basis, shall conduct a thorough review of all expenditures from the fund and, if necessary in the opinion of the Auditor, an audit of the operations of the fund. No money in the fund shall be allocated until the board has adopted a strategic plan.*

## SECTION 4. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

*There is established in the State Treasury a fund to be known as the "Kentucky Health Care Improvement Fund." This fund shall exist for the purpose of receipt and expenditure of moneys to improve health care and access to health insurance residents of the Commonwealth. The fund may receive state appropriations, gifts, grants, and federal funds and shall be disbursed by the State Treasury upon the warrant of the secretary of the Cabinet for Health Services. Beginning July 1, 2000, twenty-five percent (25%) of the proceeds from the tobacco settlement agreement fund shall be deposited in this fund as provided under Section 1 of this Act. All investment income earned from moneys deposited in the fund shall accrue to the fund. The moneys in the fund shall not lapse at the close of any fiscal year but shall be carried forward in the next fiscal year for the purpose of the fund. The board shall develop and oversee the implementation of a strategic plan. The strategic plan shall identify both short-term and long-term goals and the appropriate oversights to measure progress toward achievement of those goals, and it shall be updated every two (2) years. The board shall submit an annual report to the Governor and the Legislative Research Commission by September 1 of each year for the preceeding fiscal year, outlining its activities and expenditures. The Auditor of Public Accounts, on an annual basis, shall conduct a thorough review of all expenditures from the fund and, if necessary in the opinion of the Auditor, an audit of the operations of the fund. No money in the fund shall be allocated until the board has adopted a strategic plan.*

## SECTION 5. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *The "Lung Cancer Research Fund" is created and shall receive funds each year from the Kentucky Health Care Improvement Fund. The lung cancer research fund shall be used to finance the Lung Cancer Research Project described in subsection (5) of this section. No revenues from the lung cancer research fund shall be allocated until the board has adopted the strategic plan described in subsections (5) and (6) of this section.*
- (2) *A research consortium between the University of Kentucky and the University of Louisville is created and shall be known as the Governance Board of the Lung Cancer Research Project. The consortium shall be attached to the Council on Postsecondary Education for administrative purposes.*
- (3) *The board shall consist of nine (9) members appointed by the Governor as follows:*
  - (a) *Two (2) members shall be from the faculty of the School of Medicine at the University of Kentucky;*
  - (b) *Two (2) members shall be from the faculty of the School of Medicine at the University of Louisville;*
  - (c) *Two (2) members shall be from the Council on Postsecondary Education; and*
  - (d) *Three (3) members shall be from the state at large, one (1) of whom shall be appointed chair by the Governor.*
- (4) *Except as provided in paragraphs (a) to (d) of this subsection, the terms of the members shall be for four (4) years and until their successors are appointed and confirmed. A vacancy on the board shall be filled for the remainder of the unexpired term in the same manner as the original appointment. Members may be reappointed. The initial appointments shall be for staggered terms, as follows:*
  - (a) *Two (2) members shall be appointed for one (1) year;*
  - (b) *Two (2) members shall be appointed for two (2) years;*
  - (c) *Two (2) members shall be appointed for three (3) years; and*
  - (d) *Three (3) members shall be appointed for four (4) years.*
- (5) *The Governance Board of the Lung Cancer Research Project shall develop and oversee the implementation of a twenty (20) year strategic plan that utilizes the resources of both the University of Louisville and the University of Kentucky in establishing the Lung Cancer Research Project. The Lung Cancer Research Project shall be a joint program to:*
  - (a) *Develop an expertise in the area of lung cancer research with an immediate focus on early detection and epidemiology and with an ultimate goal of eradication of lung cancer;*
  - (b) *Establish a statewide clinical trial network to make university-based clinical trials available to the community physician in order to bring the most innovative cancer treatments to all Kentuckians in need of these treatments;*



- (c) *Leverage the resources earmarked for the Lung Cancer Research Project toward the certification of the cancer program at the University of Kentucky and the University of Louisville by the National Cancer Institute as a cancer center; and*
- (d) *Undertake other initiatives consistent with the strategic plan.*
- (6) *The strategic plan shall identify both short-term and long-term goals and the appropriate oversights to measure progress toward achievement of those goals; it shall be updated every two (2) years.*
- (7) *The Governance Board of the Lung Cancer Research Project shall submit an annual report to the Governor and the Legislative Research Commission by September 1 each year for the preceding fiscal year, outlining its activities and expenditures .*
- (8) *The Auditor of Public Accounts, on an annual basis, shall conduct a thorough review of all expenditures from the lung cancer research fund and, if necessary in the opinion of the Auditor, the operations of the Lung Cancer Research Project and the lung cancer research fund.*

Section 6. Fifty percent of the proceeds of the tobacco settlement agreement fund on the effective date of this Act, and of any additions thereto prior to July 1, 2000, shall be deposited in the rural development fund established by Section 2 of this Act for the purpose set forth in that section for that fund.

Section 7. Whereas the Commonwealth's next fiscal year begins on July 1 and the General Assembly finds that it is critical that the provisions of this Act take effect prior to the beginning of the new fiscal year, an emergency is declared to exist and this Act takes effect its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved April 26, 2000**

## **CHAPTER 547**

**(HB 996)**

AN ACT relating to revenue and taxation and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, unless the context requires otherwise:*
  - (a) *"Approved company" means a company approved under Section 2 of this Act and subject to license tax under KRS 136.070;*
  - (b) *"Economic revitalization project" shall have the same meaning as set forth in Section 2 of this Act; and*
  - (c) *"Tax credit" means the tax credit allowed in subsection (1)(b)2. of Section 3 of this Act.*
- (2) *An approved company shall:*
  - (a) *Compute the company's total license tax due as provided by KRS 136.070; and*
  - (b) *Compute the license tax due excluding the capital attributable to an economic revitalization project.*
- (3) *The tax credit shall be the amount by which the tax computed under subsection (2)(a) of this section exceeds the tax computed under subsection (2)(b) of this section; however, the credit shall not exceed the limits set forth in Section 3 of this Act.*
- (4) *The capital attributable to an economic revitalization project shall be determined by a formula approved by the Revenue Cabinet.*
- (5) *The Revenue Cabinet may promulgate administrative regulations and require the filing of forms designed by the Revenue Cabinet to reflect the intent of KRS 154.26-010 to 154.26-100 and the allowable income tax credit which an approved company may retain under KRS 154.26-010 to 154.26-100.*

Section 2. KRS 154.26-010 is amended to read as follows:

As used in KRS 154.26-015 to 154.26-100, unless the context clearly indicates otherwise:

- (1) "Agreement" means a revitalization agreement entered into, pursuant to KRS 154.26-090, on behalf of the authority and an approved company with respect to an economic revitalization project;
- (2) "Agribusiness" means any activity involving the processing of raw agricultural products, including timber, or the providing of value-added functions with regard to raw agricultural products;
- (3) "Appropriation agreement" means an agreement entered into, pursuant to KRS 154.26-090(1)(d)2.b., among the approved company, the authority, and local governmental entities with respect to appropriations by these local governmental entities for the benefit of the approved company;
- (4) "Approved company" means any eligible company approved by the authority pursuant to KRS 154.26-080 requiring an economic revitalization project;
- (5) "Approved costs" means:
  - (a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;
  - (b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;
  - (c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;
  - (d) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;
  - (e) All costs required for the installation of utilities, including, but not limited to, water, sewer, sewer treatment, gas, electricity, communications, and railroads, and including off-site construction of the facilities paid for by the approved company; and
  - (f) All other costs comparable with those described above;
- (6) "Assessment" means the job revitalization assessment fee authorized by KRS 154.26-100;
- (7) "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;
- (8) "Commonwealth" means the Commonwealth of Kentucky;
- (9) "Economic revitalization project" or "project" means the acquisition, construction, equipping, and rehabilitation of machinery and equipment, constituting fixtures or otherwise, and with respect thereto, the construction, rehabilitation, and installation of improvements of facilities necessary or desirable for the acquisition, construction, installation, and rehabilitation of the machinery and equipment, including surveys; installation of utilities, including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are utilized to improve the economic situation of the approved company to allow the approved company to remain in operation and retain or create jobs;
- (10) "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity employing or intending to employ full-time a minimum of twenty-five (25) persons engaged in manufacturing or agribusiness operations at the same facility, whether owned or leased, located and operating within the Commonwealth on a permanent basis for a reasonable period of time preceding the request for approval by the authority of an economic revitalization project, including facilities where manufacturing or agribusiness operations has been temporarily suspended and which meets the standards promulgated by the authority pursuant to KRS 154.26-080;
- (11) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under this subchapter;
- (12) "Inducements" means the Kentucky ~~income~~ tax credit and the job revitalization assessment fee as prescribed in KRS 154.26-090 and 154.26-100;

- (13) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing that results in a change in the condition of the property and any related activity or function, together with the storage, warehousing, distribution, and related office facilities;
- (14) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements under this subchapter; and
- (15) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.010, or any board, commission, institution, or division exercising any function of the state which is not an independent municipal corporation or political subdivision.

Section 3. KRS 154.26-090 is amended to read as follows:

- (1) The authority, upon adoption of its final approval, may enter into, with any approved company, an agreement with respect to its project. The terms and provisions of each agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:
  - (a) The agreement shall set a date by which the approved company will have completed the project. Within three (3) months of the completion date, the approved company shall document the actual cost of the project in a manner acceptable to the authority. The authority may employ an independent consultant or utilize technical resources to verify the cost of the project. The approved company shall reimburse the authority for the cost of the consultant;
  - (b) In consideration of the execution of the agreement, the approved company may be permitted during the time not to exceed ten (10) years during which the agreement is in effect, which time shall commence on the date of the agreement for purposes of the inducements:
    - 1. A credit against the Kentucky income tax imposed by KRS 141.020 or 141.040 on the income of the approved company generated by or arising out of the economic revitalization project as determined under KRS 141.403;~~plus~~
    - 2. *A credit against the Kentucky license tax imposed by KRS 136.070 on the capital of the approved company generated by or arising out of the economic revitalization project as determined under Section 1 of this Act; plus*
    - 3. The aggregate assessment withheld by the approved company in each year;
  - (c) The~~income~~ tax credit allowed to the approved company shall be equal to the lesser of the total amount of the tax liability or fifty percent (50%) of the approved cost that has not yet been recovered, which fifty percent (50%) shall be reduced by any recovery through the collection of assessments and appropriations made under any appropriation agreement. The credit shall be allowed for each fiscal year of the approved company during the term of the agreement and for which a tax return of the approved company is filed until the entire fifty percent (50%) of the approved cost has been received through a combination of credits, assessments, if assessments are elected to be imposed, and appropriations made under any appropriation agreement. The approved company shall not be required to pay estimated income tax payments as prescribed under KRS 141.044 or 141.305 on income from the economic revitalization project. Ninety (90) days after the filing of the tax return of the approved company, the Revenue Cabinet of the Commonwealth shall certify to the authority for the preceding fiscal year of an approved company for which a return was filed with respect to an economic revitalization project of the approved company the state~~income~~ tax liability of the approved company receiving inducements under KRS 154.26-015 to 154.26-100 and the amount of any tax credits taken pursuant to this section;
  - (d) The agreement shall provide that:
    - 1. The term shall not be longer than the earlier of:
      - a. The date on which the approved company has received inducements or withholds assessments equal to fifty percent (50%) of the approved costs of its economic revitalization project; or
      - b. Ten (10) years from the date of the execution of the agreement.

2. Prior to execution of the agreement, the eligible company shall secure from all local governmental authorities responsible for collecting local occupational license fees one (1) of the following:

- a. A resolution or order of the local governmental entities acknowledging and consenting to the termination or partial termination of the receipt of local occupational license fees paid by the approved company on behalf of its employees to the local government entities resulting from the execution of the agreement; or
- b. In lieu of the credit against the local occupational license fee, an appropriation agreement with the authority and the local governmental entities by which the local governmental entities will appropriate funds in an amount equal to the amount of the credit of the local occupational license fee for the benefit of the approved company in a manner consistent with the applicable state laws.

If more than one (1) local occupational license fee is imposed upon the employees of the approved company, the assessment imposed upon the employees shall be credited against the local occupational license fee and shall be apportioned to each local occupational license fee according to each local occupational license fee's proportion to the total of all local occupational license fees for such employees. No credit, or portion thereof shall be allowed against any local occupational license fee imposed by or dedicated solely to a local board of education.

3. If in any fiscal year of the approved company during which the agreement is in effect the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the employees exceeds fifty percent (50%) of the approved costs then expended, the approved company shall pay the excess to the Commonwealth as income tax.

4. If in any fiscal year of the approved company during which the agreement is in effect the assessment collected from the wages of the employees exceeds fifty percent (50%) of the approved costs then expended, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees' wages next succeeding the first date when the approved company collected excess assessments.

- (e) All proceeds of any loan or other financing incurred in connection with the economic revitalization project shall be expended by the approved company within five (5) years from the date of the revitalization agreement. In the event that all proceeds of any loan or other financing incurred in connection with the economic revitalization project are not fully expended within the five (5) year period, the authorized inducements shall automatically be reduced to and shall not be greater than the amount of proceeds actually expended by the approved company within the five (5) year period.

- (2) If the approved company elects to utilize the assessment as prescribed in KRS 154.26-100, a vote of the employees shall be taken by the approved company to approve or disapprove the withholding of the assessment. The vote shall be conducted in a manner approved by the authority.
- (3) If the approved company elects to utilize the assessment, neither the appropriation agreement, if it is so used, nor the agreement shall be executed unless the assessment is approved by a majority of the employees voting. If the approved company elects not to utilize the assessment, no employee vote shall be required for the execution of the agreement.
- (4) A majority vote of the employees of the approved company voting in favor of the assessment shall authorize the approved company to invoke the assessment on all employees of the approved company.
- (5) Notwithstanding the provisions of this section, no approved company shall assess the wages of an employee who is party to an individual employment contract with the approved company, or the wages of an employee whose wages will fall below applicable federal or state minimum wage standards if the job revitalization assessment fee is imposed.
- (6) Neither the appropriation agreement nor the agreement shall be transferable or assignable by the approved company without the expressed written consent of the authority.

Section 4. KRS 154.26-100 is amended to read as follows:

- (1) The approved company may require that each employee subject to the income tax imposed by KRS 141.020, whose job was preserved or created as a result of the project, as a condition of employment or the retention of employment, agree to pay an assessment, not to exceed, during any fiscal year of the approved company, six percent (6%) of the gross wages of each employee subject to the income tax imposed by KRS 141.020 whose job was retained or created as a result of the project. However, if the appropriation agreement is consummated, the assessment shall be five percent (5%) of each employee's gross wages subject to the income tax imposed by KRS 141.020.
- (2) Each assessed employee shall be entitled to a credit against his Kentucky income tax required to be withheld under KRS 141.310 equal to two-thirds (2/3) of the assessment; or if the appropriation agreement is consummated, the credit shall be equal to four-fifths (4/5) of the assessment.
- (3) Each assessed employee also shall be entitled to a credit against his local occupational license fee in the form of a simultaneous adjustment of his local occupational license fee withholding equal to one-sixth (1/6) of the assessment, unless the appropriation agreement is consummated.
- (4) If an approved company shall elect to impose the assessment as a condition of employment or the retention of employment, it shall deduct the assessment from each paycheck of each employee subject to subsections (2) and (3) of this section.
- (5) Any approved company collecting an assessment as provided in subsection (1) of this section shall make its payroll books and records available to the authority at such reasonable times as the authority shall request, and shall file with the authority the documentation respecting the assessment the authority may require.
- (6) Any assessment of the wages of the employees of an approved company pursuant to subsection (1) of this section shall permanently lapse upon expiration or termination of the agreement.
- (7) Ninety (90) days after the filing of the tax return of the approved company, the Revenue Cabinet shall certify to the authority the Kentucky ~~income~~ tax liability for the preceding fiscal year of the approved company for which the return was filed of each approved company with respect to an economic development project financed through the issuance of bonds, loans, or other financing incurred in connection with the economic development project and the amounts of any tax credits and job revitalization assessment fees taken pursuant to KRS 154.26-010, 154.26-080, 154.26-090, and this section.

Section 5. KRS 139.050 is amended to read as follows:

- (1) "Gross receipts" means the total amount of the sale, lease, or rental price, as the case may be, of "retail sales," or "sales at retail," valued in money, whether received in money or otherwise, without any deduction on account of any of the following:
  - (a) The cost of the property sold. However, in accordance with rules and administrative regulations as the cabinet may prescribe, a deduction may be taken if the retailer has purchased property for some purpose other than resale, has reimbursed his vendor for tax which the vendor is required to pay to the state, or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property;
  - (b) The cost of the materials used, labor or service cost, interest paid, losses, or any other expense;
  - (c) The cost of transportation of the property prior to its sale to the purchaser; *or*
  - (d) ***Any charge for bundled transactions, where goods and services are sold as a single package for one (1) price.***
- (2) The total amount of the sale or lease or rental price includes all of the following:
  - (a) Any services that are a part of the sale;
  - (b) All receipts, cash, credits, and property of any kind;
  - (c) Any amount for which credit is allowed by the seller to the purchaser, other than credit for property traded when the property so traded is of like kind and character to the property purchased and the property traded is held for resale.

- (3) "Gross receipts" do not include any of the following:
- (a) Cash discounts allowed and taken on sales (provided that premium or trading stamps shall not be considered as cash discounts);
  - (b) Sale price of property returned by customers when the full sale price is refunded either in cash or credit; but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned;
  - (c) The price received for labor or services used in installing or applying the property sold;
  - (d) The amount of any tax (not including, however, any manufacturer's excise or import duty) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer;
  - (e) Sales of gasoline and special fuels subjected to tax under KRS Chapter 138;
  - (f) The sales price of any motor vehicle as defined by KRS 138.450 which is registered for use on the public highways and upon which any applicable tax levied under KRS 138.460 has been paid; or, the sales price of vehicles defined under KRS 189.010(12) and 189.010(17);
  - (g) Sales of distilled spirits, wine, and malt beverages not consumed on the premises licensed for their sale under the provisions of KRS Chapter 243;
  - (h) ***Amounts received for communications services utilized in providing a prepaid calling arrangement as defined in Section 7 of this Act.***
- (4) For purposes of the sales tax, if the retailer establishes to the satisfaction of the cabinet that the sales tax has been added to the total amount of the sale price and has not been absorbed by the retailer, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

Section 6. KRS 139.100 is amended to read as follows:

- (1) "Retail sale" or "sale at retail" means:
- (a) 1. A sale for any purpose other than resale in the regular course of business of tangible personal property, or
  - 2. The furnishing of the facilities and services mentioned in subsection (2) of this section;
  - (b) The delivery in this state of tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer pursuant to a retail sale made by a retailer not engaged in business in this state. The person making the delivery shall include the retail selling price of the property in his gross receipts.
- (2) "Retail sale" or "sale at retail" shall include but shall not be limited to the following:
- (a) The rental of any room or rooms, lodgings, or accommodations furnished by any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration. The tax shall not apply, however, to rooms, lodgings, or accommodations supplied for a continuous period of thirty (30) days or more to an individual;
  - (b) The furnishing of sewer services ~~and intrastate telephonic and telegraphic communications and services~~;
  - (c) The sale of admissions, except, those taxed under KRS 138.480;
  - (d) ***The furnishing of communications services to a service address in this state, regardless of where those services are billed or paid, when the communications service:***
    - 1. ***Originates and terminates in this state;***
    - 2. ***Originates in this state; or***
    - 3. ***Terminates in this state.***

- (3) *For the purposes of this chapter "communications service" means the provision, transmission, conveyance, or routing, for a consideration, of voice, data, video, or any other information or signals of the purchaser's choosing to a point, or between or among points, specified by the purchaser, by or through any electronic, radio, light, fiber optics, or any similar medium or method now in existence or later devised. Communications service includes, but is not limited to, local telephone services, long-distance telephone services, telegraph services, teletypewriter services, teleconferencing services, private line services involving a direct channel specifically dedicated to a customer's use between specific points, channel services involving a path of communications between two (2) or more points, data transport services involving the movement of encoded information between points by means of any electronic, radio, or other medium or method, caller ID services, voice mail and other electronic messaging services, mobile communications service, and Internet telephony involving telephone service in which messages originate or terminate over the public switched telephone network but are transmitted in part using transmission control protocol, Internet protocol, or other similar means. Communications service does not include any of the following if the charges for the goods or services are separately itemized on the bill provided to the purchaser:*
- (a) *Information services;*
  - (b) *Internet access;*
  - (c) *Installation, reinstallation, or maintenance of wiring or equipment on a customer's premises. However, this provision does not apply to any charge attributable to the connection, movement, change, or termination of a communication service;*
  - (d) *The sale of directory and other advertising and listing services;*
  - (e) *The sale of one-way paging services;*
  - (f) *Billing and collection services provided to another communications service provider; or*
  - (g) *Cable service, satellite broadcast, satellite master antenna television, and wireless cable service, including direct to home satellite service as defined in Section 602 of the Federal Cable Act of 1996.*
- (4) *For the purposes of this chapter, "service address" means:*
- (a) *The location of communications equipment from which communications service is originated or at which communications service is received by the purchaser. In the event that this is not a defined location, as in the case of mobile phones, paging systems, maritime systems, air-to-ground systems, third number and calling card calls, service address means the location of the purchaser's primary use of the communications equipment, as determined by telephone number, authorization code, the purchaser's billing address, or other street address provided by the purchaser as the location of primary use, but the address must be within the licensed service area of the communications service provider;*
  - (b) *In the case of a communications service paid through a credit or payment mechanism that does not relate to a service address, such as a bank, travel, debit, or credit card, the service address is deemed to be the address of the origination of the communications service; and*
  - (c) *In the case of mobile communications service provided under intercarrier roaming agreements, the service address shall be deemed to be the physical location of the serving carrier's switch that originates or terminates the call.*

Section 7. KRS 139.160 is amended to read as follows:

"Tangible personal property" means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses and includes natural, artificial and mixed gas, electricity, ~~and~~ water, and prepaid calling arrangements. For the purposes of this chapter, the term "prepaid calling arrangements" means any right to purchase communications service, which must be paid in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed. Prepaid calling arrangement includes, but is not limited to, prepaid cards and prepaid accounts which are decremented as calls take place.

SECTION 8. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO READ AS FOLLOWS:

- (1) *For the purpose of this section, "gross receipts" means:*
- (a) *Sales of tangible personal property in this state if:*

1. *The property is delivered or shipped to a purchaser, other than the United States government, or to the designee of the purchaser within this state regardless of the f.o.b. point or other conditions of the sale; or*
  2. *The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the purchaser is the United States government; and*
- (b) *Sales other than sales of tangible personal property in this state if the income-producing activity is performed in this state; or the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on cost of performance, or gross receipt allocation method as provided by statute and elected by the taxpayer.*
- (2) *Any business whose communications service, subject to the sales tax imposed under KRS Chapter 139 and deducted for federal income tax purposes, exceeds five percent (5%) of the business's Kentucky gross receipts during the preceding calendar year is entitled to a refundable credit. The refundable credit shall be equal to the sales tax paid on the difference by which the communications service purchased by the business exceeds five percent (5%) of the business's Kentucky gross receipts.*
  - (3) *Any business that qualifies for the refundable credit authorized by subsection (2) of this section shall make an annual application for the refund on or after June 1, 2002, and on or after every June 1 thereafter. The application shall be made to the cabinet on forms as the cabinet may prescribe and shall contain any information deemed necessary for the cabinet to determine the business's eligibility to receive a refund.*
  - (4) *Notwithstanding the provisions of KRS 134.580 to the contrary, the cabinet, upon receipt of a properly documented refund application, shall cause a timely refund to be made directly to the business. Interest shall not be allowed or paid on any refund made under this section.*
  - (5) *Any refund application submitted under this section is subject to examination by the cabinet. The examination shall occur within four (4) years from the date the refund application is received by the cabinet. Any overpayment resulting from the examination shall be repaid to the State Treasury. In addition, the amount required to be repaid is subject to the interest provisions of KRS 131.183 and to the penalty provisions of KRS 131.180.*
  - (6) *If a business owns directly or indirectly fifty percent (50%) or more of another business, the credit computed under subsection (2) of this section shall be computed on a combined basis, excluding any intercompany Kentucky gross receipts.*

Section 9. KRS 139.510 is amended to read as follows:

- (1) *The tax levied by KRS 139.310 shall not apply with respect to the storage, use or other consumption of tangible personal property in this state upon which a tax substantially identical to the tax levied under KRS 139.200 (not including any special excise taxes such as are imposed on alcoholic beverages, cigarettes and the like) equal to or greater than the amount of tax imposed by KRS 139.310 has been paid in another state. Proof of payment of such tax shall be according to rules and regulations of the cabinet. If the amount of tax paid in another state is not equal to or greater than the amount of tax imposed by KRS 139.310, then the taxpayer shall pay to the cabinet an amount sufficient to make the tax paid in the other state and in this state equal to the amount imposed by KRS 139.310. No credit shall be given under this section for sales taxes paid in another state if that state does not grant credit for sales taxes paid in this state.*
- (2) *To prevent actual multistate taxation of a communications service subject to taxation under this chapter, any provider or purchaser, upon proof that the provider or purchaser has paid a tax in another state on the same communication services, shall be allowed a credit against the tax imposed by this chapter to the extent of the amount of the tax legally paid in the other state.*

Section 10. KRS 341.270 is amended to read as follows:

- (1) Except as otherwise provided in this section, each employer's contribution rate shall be three percent (3%). Effective for employers who become subject to this chapter on or after January 1, 1999, except as otherwise provided in this section, each employer's contribution rate shall be two and seven-tenths percent (2.7%).
- (2) Except as otherwise provided in this section, no subject employer's contribution rate shall be less than two and seven-tenths percent (2.7%), unless he has been an employer subject to the provisions of this chapter for twelve (12) consecutive calendar quarters ended as of the computation date. In any calendar year in which the rate schedule prescribed in paragraph (3)(a) of this section is in effect, no subject employer who was assigned an



entry rate of three percent (3.0%) under the provisions of subsection (1) of this section prior to January 1, 1999, shall have a contribution rate less than two and eight hundred fifty-seven thousandths percent (2.857%), unless subject to this chapter for the minimum time period specified above.

- (3) For the calendar year ~~2001~~~~1999~~ and each calendar year thereafter, employer contribution rates shall be determined in accordance with "Table A" set out in subsection (4) of this section. For each calendar year, the secretary shall determine the rate schedule to be in effect based upon the "trust fund balance" as of December 31 of the preceding year. If ~~the~~~~such~~ "trust fund balance":
- (a) Equals or exceeds one and eighteen hundredths percent (1.18%) of the total wages paid in covered employment in the state during the state fiscal year ended as of June 30 of that year, the rates listed in the "Trust Fund Adequacy Rates" schedule of "Table A" shall be in effect.
  - (b) Equals or exceeds three hundred fifty million dollars (\$350,000,000) but is less than the amount required to effectuate the "Trust Fund Adequacy Rates" schedule as provided in paragraph (a) of this subsection, the rates listed in "Schedule A" of "Table A" shall be in effect.
  - (c) Equals or exceeds two hundred seventy-five million dollars (\$275,000,000) but is less than three hundred fifty million dollars (\$350,000,000), the rates listed in "Schedule B" of "Table A" shall be in effect.
  - (d) Equals or exceeds two hundred fifty million dollars (\$250,000,000) but is less than two hundred seventy-five million dollars (\$275,000,000), the rates listed in "Schedule C" of "Table A" shall be in effect.
  - (e) Equals or exceeds one hundred fifty million dollars (\$150,000,000) but is less than two hundred fifty million dollars (\$250,000,000), the rates listed in "Schedule D" of "Table A" shall be in effect.
  - (f) Is less than one hundred fifty million dollars (\$150,000,000), the rates listed in "Schedule E" of "Table A" shall be in effect.
- (4) For the calendar year 1982 and each calendar year thereafter, contribution rates shall be determined upon the basis of an individual employer's reserve ratio as of the computation date and the schedule of rates established under subsection (3) of this section. Except as otherwise provided in this section, the contribution rate for each subject employer for the calendar year immediately following the computation date shall be the rate in that "Schedule" of "Table A," as set out below, effective with respect to ~~the~~~~such~~ calendar year, which appears on the same line as his reserve ratio as shown in the "Employer Reserve Ratio" column of the same table.

TABLE A  
Rate Schedule

Employer Reserve Ratio	Trust Fund Adequacy Rates	A	B	C	D	E
8.0% and over	<del>0.000%</del> <del>[0.157%]</del>	0.30%	0.40%	0.50%	0.60%	1.00%
7.0% but under 8.0%	<del>0.000%</del> <del>[0.257%]</del>	0.40%	0.50%	0.60%	0.80%	1.05%
6.0% but under 7.0%	<del>0.008%</del> <del>[0.357%]</del>	0.50%	0.60%	0.70%	0.90%	1.10%
5.0% but under 6.0%	<del>0.208%</del> <del>[0.557%]</del>	0.70%	0.80%	1.00%	1.20%	1.40%
4.6% but under 5.0%	<del>0.508%</del> <del>[0.857%]</del>	1.00%	1.20%	1.40%	1.60%	1.80%
4.2% but under 4.6%	<del>0.808%</del> <del>[1.157%]</del>	1.30%	1.50%	1.80%	2.10%	2.30%
3.9% but under 4.2%	<del>1.008%</del> <del>[1.357%]</del>	1.50%	1.70%	2.20%	2.40%	2.70%
3.6% but under 3.9%	<del>1.308%</del> <del>[1.657%]</del>	1.80%	1.80%	2.40%	2.60%	3.00%
3.2% but under 3.6%	<del>1.508%</del> <del>[1.857%]</del>	2.00%	2.10%	2.50%	2.70%	3.10%
2.7% but under 3.2%	<del>1.608%</del> <del>[1.957%]</del>	2.10%	2.30%	2.60%	2.80%	3.20%
2.0% but under 2.7%	<del>1.708%</del> <del>[2.057%]</del>	2.20%	2.50%	2.70%	2.90%	3.30%
1.3% but under 2.0%	<del>1.808%</del> <del>[2.157%]</del>	2.30%	2.60%	2.80%	3.00%	3.40%

0.0% but under 1.3%	<b>1.908%</b> <del>[2.257%]</del>	2.40%	2.70%	2.90%	3.10%	3.50%
-0.5% but under -0.0%	6.500%	6.50%	6.75%	7.00%	7.25%	7.50%
-1.0% but under -0.5%	6.750%	6.75%	7.00%	7.25%	7.50%	7.75%
-1.5% but under -1.0%	7.000%	7.00%	7.25%	7.50%	7.75%	8.00%
-2.0% but under -1.5%	7.250%	7.25%	7.50%	7.75%	8.00%	8.25%
-3.0% but under -2.0%	7.500%	7.50%	7.75%	8.00%	8.25%	8.50%
-4.0% but under -3.0%	7.750%	7.75%	8.00%	8.25%	8.50%	8.75%
-6.0% but under -4.0%	8.250%	8.25%	8.50%	8.75%	9.00%	9.25%
-8.0% but under -6.0%	8.500%	8.50%	8.75%	9.00%	9.25%	9.50%
Less than -8.0%.	9.000%	9.00%	9.25%	9.50%	9.75%	10.00%

(5) As used in this section and elsewhere in this chapter, unless the context clearly requires otherwise:

- (a) "Trust fund balance" means the amount of money in the unemployment insurance fund, less any unpaid advances made to the state under Section 1201 of the Social Security Act. In determining the amount in the fund as of a given date all money received by the department ~~on that~~~~as of such~~ date shall be considered as being in the fund on ~~that~~~~such~~ date.
- (b) "Total wages" means all remuneration for services, as defined in KRS 341.030(1) to (7), paid by subject employers.
- (c) An employer's "reserve ratio" means the percentage ratio of his reserve account balance as of the computation date to his taxable payrolls for the twelve (12) consecutive calendar quarters ended as of September 30 immediately preceding the computation date.
- (d) For the purposes of this section, an employer's "reserve account balance" means the amount of contributions credited to his reserve account as of the computation date, less the benefit charges through September 30 immediately preceding the computation date. If benefits charged to an account exceed contributions credited to ~~the~~~~such~~ account, ~~the~~~~such~~ account shall be considered as having a debit balance and a reserve ratio of "less than zero."
- (e) "Computation date" is October 31 of each calendar year prior to the effective date of new rates of contributions.

Section 11. KRS 341.380 is amended to read as follows:

- (1) All benefits shall be paid through employment offices, or such other agencies as may be designated by regulations of the secretary. Claims for all payments of benefits shall be made in accordance with regulations of the secretary.
- (2) The weekly benefit rate payable to an eligible worker for weeks of unemployment shall, except as provided in KRS 341.390, be an amount equal to one and one hundred eighty-five one-thousandths percent (1.185%) of his total base-period wages, except that no worker's weekly benefit amount shall be less than thirty-nine dollars (\$39), nor more than the maximum rate as determined in accordance with subsection (3) of this section. For claims effective on or after January 1, ~~2001~~~~1999~~, the weekly benefit rate shall, except as provided in KRS 341.390, be **one and three thousand seventy-eight ten thousandths percent (1.3078%)**~~one and two hundred thirty-five thousandths percent (1.235%)~~ of his total base-period wages, except that no worker's weekly benefit amount shall be less than thirty-nine dollars (\$39) nor more than the maximum rate as determined in accordance with subsection (3) of this section~~[- provided, however, that the tax rate schedule prescribed in KRS 341.270(3)(a) is in effect in that year. If that rate schedule is not in effect in calendar year 1999 but takes effect in a subsequent calendar year, the increase in the weekly benefit rate calculation shall apply to claims effective on or after January 1 of the year in which that rate schedule is in effect].~~
- (3) Prior to the first day of July of each year the secretary shall determine the average weekly wage for insured employment by dividing the average monthly employment, as obtained by dividing the total monthly employment reported by subject employers for the preceding calendar year by twelve (12), into the total wages reported by such employers for such calendar year and dividing by fifty-two (52). Fifty-five percent (55%) of the amount thus obtained, adjusted to the nearest multiple of one dollar (\$1), shall constitute the maximum

weekly benefit rate for those workers whose benefit year commences on or after the first day of July of such year and prior to the first day of July of the next following year; beginning in calendar year 1999, or any subsequent year in which the increase in the weekly benefit rate calculation set forth in subsection (2) of this section should take effect, sixty-two percent (62%) of the average weekly wage, adjusted to the nearest multiple of one dollar (\$1), shall constitute the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July of that year and prior to the first day of July of the next following year; except that for the benefit years beginning on or after July 1, 1982, if the "trust fund balance" as of December 31 immediately preceding the benefit year is less than one hundred twenty million dollars (\$120,000,000), the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate. If such "trust fund balance" as of December 31 immediately preceding the benefit year:

- (a) Equals or exceeds one hundred twenty million dollars (\$120,000,000), but is less than one hundred fifty million dollars (\$150,000,000), the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate by more than six percent (6%). The rate thus determined shall be adjusted to the nearest multiple of one dollar (\$1);
  - (b) Equals or exceeds one hundred fifty million dollars (\$150,000,000), but is less than two hundred fifty million dollars (\$250,000,000), the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate by more than eight percent (8%). The rate thus determined shall be adjusted to the nearest multiple of one dollar (\$1);
  - (c) Equals or exceeds two hundred fifty million dollars (\$250,000,000), but is less than two hundred seventy-five million dollars (\$275,000,000), the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate by more than ten percent (10%). The rate thus determined shall be adjusted to the nearest multiple of one dollar (\$1);
  - (d) Equals or exceeds two hundred seventy-five million dollars (\$275,000,000), but is less than three hundred fifty million dollars (\$350,000,000), the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate by more than twelve percent (12%). The rate thus determined shall be adjusted to the nearest multiple of one dollar (\$1); and
  - (e) Is such that it resulted in the establishment of an employer contribution rate schedule, as provided for in KRS 341.270, for the current calendar year which has a higher minimum rate than the schedule in effect for the immediately preceding calendar year, the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate.
- (4) The maximum amount of benefits payable to any worker within any benefit year shall be the amount equal to whichever is the lesser of:
- (a) Twenty-six (26) times his weekly benefit rate; or
  - (b) One-third (1/3) of his base-period wages, except that no worker's maximum amount shall be less than fifteen (15) times his weekly benefit rate. Such maximum amount, if not a multiple of one dollar (\$1), shall be adjusted to the nearest multiple of one dollar (\$1).

Section 12. KRS 341.510 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section and except ~~the[such]~~ money as has been credited to the account of this state in the unemployment trust fund under the provisions of Section 903 of the Social Security Act as amended, and appropriated by legislative action authorized thereunder for administrative expenses, money shall be requisitioned from the state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the secretary. The secretary, through the State Treasurer acting as his fiscal agent, shall from time to time requisition from the unemployment trust fund ~~the[such]~~ amounts not exceeding the amounts standing to this state's accounts therein, as he considers necessary for the payment of benefits for a reasonable future period.
- (2) The Governor may, at any time, pursuant to Section 1202 of the Social Security Act, request that funds be transferred from this state's account in the unemployment trust fund for repayment of part or all of that balance of advances made to the state under Section 1201 of the Social Security Act.
- (3) Upon receipt thereof the Treasurer shall deposit ~~the[such]~~ money in the benefit account and shall issue his vouchers for the payment of benefits solely from ~~the[such]~~ benefit account. Expenditures of ~~the[such]~~ money in the benefit account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All vouchers issued by the Treasurer for the payment

of benefits and refunds shall bear the signature of the Treasurer and the approval in writing of the secretary of the Finance and Administration Cabinet.

- (4) Any balance of money requisitioned from the unemployment trust fund that remains unclaimed or unpaid in the benefit account after the expiration of the period for which ~~the [such]~~ sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of benefits during succeeding periods, or, in the discretion of the secretary, shall be redeposited with the secretary of the federal Treasury to the credit of this state's account in the unemployment trust fund, as provided in KRS 341.500.
- (5) ***Notwithstanding the provisions of subsection (1) of this section to the contrary, money credited to the state under Section 903 of the Social Security Act, as amended with respect to federal fiscal years 1999, 2000, and 2001, shall be used solely for the administration of the unemployment insurance program and not subject to appropriation by the General Assembly.***

Section 13. Sections 1 to 4 of this Act shall apply for taxable years beginning on or after December 31, 1999.

Section 14. Sections 5 to 9 of this Act shall be effective January 1, 2001.

**Approved April 26, 2000**

## **CHAPTER 548**

**(SB 58)**

AN ACT relating to higher education finance.

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

Section 1. KRS 164.5161 is amended to read as follows:

- (1) ***"Educational institution" means an in-state public or private postsecondary educational institution.***
- (2) The General Assembly of the Commonwealth of Kentucky establishes the National Guard Tuition Award Program to provide ~~[enlisted]~~ members of the Kentucky National Guard the opportunity to attend ~~an in-state [a state]~~ educational institution. ***The tuition paid shall be up to or equal to the in-state full or part-time tuition rate of the institution the member attends except that tuition paid in support of a member attending a private postsecondary educational institution shall be up to or equal to the average in-state full or part-time tuition rate of a public university or community college. Until the appropriation for the tuition assistance program of the Department of Military Affairs is first fully funded by the General Assembly, tuition for a member to attend a private institution shall not be paid.*** The tuition award program shall be established in the Kentucky Higher Education Assistance Authority.
- (3)~~(2)~~ The Kentucky Higher Education Assistance Authority pursuant to KRS Chapter 13A, shall promulgate administrative regulations necessary to the financial management of the tuition award program.
- (4)~~(3)~~ The Department of Military Affairs, pursuant to KRS Chapter 13A, shall promulgate administrative regulations concerning the eligibility of members to participate in the tuition award program established in this section.

**Approved April 26, 2000**

## **CHAPTER 549**

**(HB 502)**

AN ACT relating to appropriations providing financing for the operations, maintenance, support, and functioning of the government of the Commonwealth of Kentucky and its various officers, cabinets, departments, boards, commissions, institutions, subdivisions, agencies, and other state-supported activities.

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

### **PART I**

#### **OPERATING BUDGET**

There is appropriated out of the General Fund, Road Fund, restricted funds accounts, or federal funds accounts for the fiscal year ending June 30, 2000, and for the fiscal year beginning July 1, 2000, and ending June 30, 2001, and for the fiscal year beginning July 1, 2001, and ending June 30, 2002, the following discrete sums, or so much thereof as may be necessary. Appropriated funds are included pursuant to KRS 48.700 and 48.710. Each appropriation is made by source of respective fund or funds accounts. Appropriations for the following officers, cabinets, departments, boards, commissions, institutions, subdivisions, agencies, and budget units of the state government, and any and all other activities of the government of the Commonwealth, are subject to the provisions of Chapters 12, 42, 45, and 48 of the Kentucky Revised Statutes and compliance with the conditions and procedures set forth in this Act.

#### A. GOVERNMENT OPERATIONS

##### Budget Units

##### 1. EXECUTIVE OFFICE OF THE GOVERNOR

###### a. Office of the Governor

	2000-01	2001-02
General Fund	8,138,800	8,521,000
Restricted Funds	1,197,600	950,000
Federal Funds	373,400	261,700
Total	9,709,800	9,732,700

Included in the above General Fund appropriation in each year of the biennium is \$18,000 for the Governor's expense allowance and \$10,000 for the Lieutenant Governor's expense allowance to meet additional expenses associated with the position of Governor of Kentucky and the position of Lieutenant Governor as specified in KRS 64.710.

Included in the above General Fund appropriation is \$40,000 in each fiscal year and included in the above Federal Funds appropriation is \$150,000 in each fiscal year for the Headstart Collaborative Program.

###### b. Office of State Budget Director

	1999-00	2000-01	2001-02
General Fund	200,000	4,383,900	3,868,300
Restricted Funds		924,000	963,000
Total	200,000	5,307,900	4,831,300

Included in the above General Fund appropriation is \$750,000 in fiscal year 2000-2001 for the Performance Budgeting Pilot Project. Notwithstanding KRS 45.229, any unexpended balance of funds appropriated for the Performance Budgeting Pilot Project in fiscal year 2000-2001 shall not lapse and shall be carried forward into fiscal year 2001-2002 to continue support of the Performance Budgeting Pilot Project.

###### c. State Planning Fund

	2000-01	2001-02
General Fund	500,000	500,000

The Governor is authorized to expend funds for the improvement and advancement of governmental purposes and activities. Included in the above General Fund appropriation is a \$50,000 grant in each fiscal year to be awarded to the Bluegrass State Games to assist with planning and production of the games.

##### TOTAL - EXECUTIVE OFFICE OF THE GOVERNOR

	1999-00	2000-01	2001-02
General Fund	200,000	13,022,700	12,889,300
Restricted Funds		2,121,600	1,913,000
Federal Funds		373,400	261,700
TOTAL	200,000	15,517,700	15,064,000

## 2. GOVERNOR'S OFFICE OF TECHNOLOGY

	2000-01	2001-02
General Fund	-0-	1,267,000
Restricted Funds	61,690,600	63,420,700
Road Funds	125,000	125,000
Total	61,815,600	64,812,700

Included in the above Restricted Funds appropriation is \$520,000 in fiscal year 2000-2001 and \$536,000 in fiscal year 2001-2002 to fund the operating costs of the Office for Geographic Information Systems. These receipts will be derived from any state agency or university that directly benefits from the implementation of the Geographic Information Systems basemap technology. The Office of Geographic Information Systems shall recommend, and the Chief Information Officer (CIO) shall approve, the cost allocation plan. Upon approval by the CIO, the agencies and universities shall pay their proportional share of the plan.

There is established in the Governor's Office of Technology the Office of Statewide 911 Coordination. Included in the above Restricted Funds appropriation is \$200,000 in each fiscal year for the Office of Statewide 911 Coordination.

The General Fund appropriation above represents debt service on the Unified Criminal Justice Information System, Maintaining Kentucky Spatial Data Infrastructure, and the Statewide Microwave Network Maintenance.

## 3. GOVERNOR'S OFFICE OF VETERANS' AFFAIRS

	2000-01	2001-02
General Fund	7,484,300	14,139,800
Restricted Funds	12,456,700	16,357,600
Total	19,941,000	30,497,400

Included in the above General Fund appropriation is \$203,400 in fiscal year 2000-2001 and \$3,527,300 in fiscal year 2001-2002 for personnel and operating costs for the Eastern Kentucky Veterans' Center; \$203,400 in fiscal year 2000-2001 and \$3,445,900 in fiscal year 2001-2002 for personnel and operating costs for the Western Kentucky Veterans' Center; \$381,000 in each fiscal year for additional staffing for the Commissioner's Office and Field Services; and \$206,000 in fiscal year 2001-2002 for personnel and operating costs for the Western Kentucky Veterans' Cemetery.

Included in the above General Fund appropriation in fiscal year 2001-2002 is \$66,000 for debt service.

Included in the above General Fund appropriation in fiscal year 2000-2001 is \$312,000 grant funds for the World War II War Memorial in Washington, D. C.

## 4. SECRETARY OF STATE

	2000-01	2001-02
General Fund	2,425,100	2,491,400
Restricted Funds	154,000	165,000
Total	2,579,100	2,656,400

In accordance with the provision of KRS 14.140, at the close of fiscal year 1999-2000, any Restricted Funds amount received in the Limited Liability Companies program in excess of \$154,000 shall be transferred to the General Fund. At the close of fiscal year 2000-2001, any Restricted Funds amount received in the Limited Liability Companies program in excess of \$165,000 shall be transferred to the General Fund.

## 5. BOARD OF ELECTIONS

	2000-01	2001-02
General Fund	3,542,500	3,945,600
Restricted Funds	40,000	60,000

Total	3,582,500	4,005,600
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Included in the above General Fund appropriation is \$2,126,800 in fiscal year 2000-2001 and \$2,461,000 in fiscal year 2001-2002 to pay the state's share of county election expenses (KRS 117.345) and the state's share of voter registration expenses (KRS 116.145 and KRS 117.343). Included in the above General Fund appropriation, and subject to passage of enabling legislation, \$150,000 is appropriated in fiscal year 2000-2001 and \$152,700 in fiscal year 2001-2002 to provide an increase to all eligible precincts for election expenses. Additionally, as part of this legislation, the recommended maximum state payment rate is increased from the current level of \$255 to \$300 per precinct per election to each precinct using voting machines. Any amount that the state is required to pay in excess of the above amounts under the provisions of KRS 116.145 and KRS 117.343 shall be deemed necessary governmental expenses and shall be paid from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705).

Included in the above General Fund appropriation is \$4,000 in fiscal year 2000-2001 to pay the expense incurred every year of a Presidential election. In accordance with KRS 118.455 the state is required to pay per diem and mileage costs to each elector of President and Vice President of the United States, for each day they are at the State Capitol as an elector.

Special elections and additional precincts created by redistricting shall be deemed necessary governmental expenses and be paid from the General Fund Surplus Account (KRS 48.700).

#### 6. TREASURY

	2000-01	2001-02
General Fund	2,239,200	2,402,000
Restricted Funds	791,900	731,900
Total	3,031,100	3,133,900

Included in the Restricted Funds appropriation above is a nonrevenue recurring transfer from the Unclaimed Property Fund. In each year of the 2000-2002 biennium, \$731,900 is appropriated to provide funding for services performed by the Unclaimed Property Division of the Treasury Department.

#### 7. ATTORNEY GENERAL

	2000-01	2001-02
General Fund	13,066,000	13,751,400
Restricted Funds	7,542,300	7,796,900
Federal Funds	2,494,300	2,584,000
Total	23,102,600	24,132,300

Included in the above Restricted Funds appropriation is \$119,400 in fiscal year 2000-2001 and \$123,000 in fiscal year 2001-2002 for debt service in the Uninsured Employers Fund related to court-ordered interest payments in workers' compensation settlement cases.

#### 8. UNIFIED PROSECUTORIAL SYSTEM

##### a. Commonwealth's Attorneys

	2000-01	2001-02
General Fund	22,052,000	23,503,400
Restricted Funds	322,500	179,900
Federal Funds	629,200	608,300
Total	23,003,700	24,291,600

Included in the above General Fund appropriation is \$564,700 in fiscal year 2000-2001 and \$592,900 in fiscal year 2001-2002 to allow part-time Commonwealth's Attorneys to become full-time.

Notwithstanding KRS 15.757(2), a circuit may revert to part-time status at the option of a newly elected Commonwealth's Attorney if the circuit has been authorized to become full-time effective on or after January 1, 2001,

based upon a request from the part-time Commonwealth's Attorney who does not seek reelection for the term beginning January 1, 2001, and the newly elected Commonwealth's attorney notifies the Prosecutors Advisory Council on or before November 15, 2000.

Included in the above General Fund appropriation is \$208,500 in fiscal year 2000-2001 and \$627,100 in fiscal year 2001-2002 for salary improvements. No funds shall be expended for salary improvements until the Prosecutors Advisory Council reviews the salary levels of the elected Commonwealth's Attorneys' employees, establishes a salary enhancement plan, and reports its findings to the Interim Joint Committee on Appropriations and Revenue.

Included in the above General Fund appropriation is \$436,900 in each fiscal year to provide funds to support physician, sexual assault nurse examiner, emergency room charges, and lab fees for sexual assault victims' exams.

Included in the above General Fund appropriation is \$299,700 in each fiscal year to provide each Commonwealth's Attorney the sum of \$1,000 each month, which is declared to be the equivalent of the minimum sum that each Commonwealth's Attorney will expend each month in the performance of the official duties directed to be performed for the Commonwealth, notwithstanding KRS 15.755(6).

b. County Attorneys

	2000-01	2001-02
General Fund	19,772,000	21,085,200
Restricted Funds	42,600	40,400
Federal Funds	251,900	264,100
Total	20,066,500	21,389,700

Included in the above General Fund appropriation is \$163,900 in fiscal year 2000-2001 and \$533,900 in fiscal year 2001-2002 for salary improvements. No funds shall be expended for salary improvements until the Prosecutors Advisory Council reviews the salary levels of the elected County Attorneys' employees, establishes a salary enhancement plan, and reports its findings to the Interim Joint Committee on Appropriations and Revenue.

Included in the above General Fund appropriation is \$360,000 in each fiscal year to provide each County Attorney the sum of \$500 each month, which is declared to be the equivalent of the minimum sum that each County Attorney will expend each month in the performance of the official duties directed to be performed for the Commonwealth, notwithstanding KRS 15.765(2).

TOTAL - UNIFIED PROSECUTORIAL SYSTEM

	2000-01	2001-02
General Fund	41,824,000	44,588,600
Restricted Funds	365,100	220,300
Federal Funds	881,100	872,400
TOTAL	43,070,200	45,681,300

9. AUDITOR OF PUBLIC ACCOUNTS

	2000-01	2001-02
General Fund	5,895,400	5,911,600
Restricted Funds	4,709,000	4,405,000
Total	10,604,400	10,316,600

Notwithstanding KRS 43.200, no funding is provided for Auditor's scholarships.

Including in the above General Fund appropriation is \$120,000 in fiscal year 2000-2001 to support the Performance Budgeting Pilot Project. Notwithstanding KRS 45.229, any unexpended funds for the Performance Budgeting Pilot Project shall be continued into fiscal year 2001-2002.

10. AGRICULTURE

	2000-01	2001-02
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General Fund	20,214,100	21,167,400
Restricted Funds	2,386,500	2,541,300
Federal Funds	2,035,000	2,034,800
Total	24,635,600	25,743,500

Included in the above General Fund appropriation is \$100,000 in each fiscal year for the Agriculture/Economic Development joint trade office in Mexico. Notwithstanding KRS 45.229, any unexpended funds for the Mexico Trade Office shall be continued into the succeeding fiscal year, and the Cabinet for Economic Development shall assist in seeking and obtaining matching funds for the joint office.

Included in the above General Fund appropriation is \$500,000 in each fiscal year for the Youth Tobacco Enforcement Program pursuant to KRS 438.330 and KRS 438.335. The Department of Alcoholic Beverage Control shall jointly participate in the program's enforcement.

Included in the above General Fund appropriation is \$500,000 in fiscal year 2000-2001 and \$500,000 in fiscal year 2001-2002 to fund grants to local government animal shelters and humane societies.

Included in the above General Fund appropriation is \$467,300 in fiscal year 2000-2001 and \$478,500 in fiscal year 2001-2002 for the Breathitt Veterinary Center. Notwithstanding KRS 48.130 and 48.600, there shall be no reduction in funding.

#### 11. MILITARY AFFAIRS

	1999-2000	2000-01	2001-02
General Fund		10,899,500	11,170,300
Restricted Funds	2,000,000	16,695,200	17,055,100
Federal Funds		9,175,000	9,395,200
Total	2,000,000	36,769,700	37,620,600

There is appropriated from the General Fund the necessary funds to be expended, subject to the conditions and procedures provided in this Act, which are required as a result of the Governor's call of the Kentucky National Guard to active duty when an emergency or exigent situation has been declared to exist by the Governor. These necessary funds shall be made available from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705).

There is appropriated from the General Fund the necessary funds, subject to the conditions and procedures in this Act, which are required to match federal aid to which the state would be eligible in the event of a presidentially-declared disaster or emergency. These necessary funds shall be made available from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705).

Included in the above General Fund appropriation is an additional amount of \$100,000 in fiscal year 2000-2001 and \$200,000 in fiscal year 2001-2002 for Disaster and Emergency Management County Offices.

Included in the above General Fund appropriation is \$23,000 in fiscal year 2001-2002 for debt service.

Included in the above General Fund appropriation is \$100,000 in fiscal year 2000-2001 for the Military Burial Honors Program. Notwithstanding KRS 45.229, any unexpended balance of funds appropriated for the Military Burial Honors Program in fiscal year 2000-2001 shall not lapse and shall be carried forward into fiscal year 2001-2002 to continue support of the Military Burial Honors Program.

#### 12. PERSONNEL BOARD

	2000-01	2001-02
General Fund	583,600	595,400
Restricted Funds	5,000	6,100
Total	588,600	601,500

#### 13. LOCAL GOVERNMENT

	1999-2000	2000-01	2001-02
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General Fund		11,452,900	12,189,300
Restricted Funds		665,400	671,400
Federal Funds	175,000	47,080,800	44,080,800
Total	175,000	59,199,100	56,941,500

Included in the above General Fund appropriation is \$606,000 in fiscal year 2001-2002 for debt service.

#### 14. SPECIAL FUNDS

##### a. Local Government Economic Assistance Fund

	2000-01	2001-02
General Fund	27,375,600	28,996,400

Provided in the above General Fund appropriation is an additional \$500,000 in fiscal year 2001-2002 to be distributed in accordance with KRS 42.455.

##### b. Local Government Economic Development Fund

	2000-01	2001-02
General Fund	33,305,300	36,708,600

The above appropriations from the General Fund are based on the official estimate of the Secretary of the Finance and Administration Cabinet for severance tax collections during the biennium, distributed in accordance with KRS 42.450 to 42.495. Moneys transferred from the General Fund to the Local Government Economic Development Fund shall be calculated at the percentage of forty percent (40%) effective July 1, 2000, and forty-four percent (44%) effective July 1, 2001, notwithstanding provisions set forth in KRS 42.4582. If actual severance tax receipts are different from the official estimate, the amount to be allotted to the Local Government Economic Assistance Fund shall be determined in accordance with KRS 42.450 to 42.495 and the amount to be allotted to the Local Government Economic Development Fund shall continue to be calculated at the percentages specified in this paragraph and otherwise in accordance with KRS 42.450 to 42.495.

Notwithstanding KRS 42.4582, the quarterly calculation and transfer of moneys from the General Fund to the Local Government Economic Development Fund pursuant to KRS 42.4582 shall be made only after each quarterly installment of the annual appropriation of \$1,420,000 in fiscal year 2000-2001 and \$1,379,500 in fiscal year 2001-2002 has been credited to the Osteopathic Scholarship program within the Kentucky Higher Education Assistance Authority.

Notwithstanding KRS 42.4585, the quarterly calculation and transfer of funds pursuant to KRS 42.4585 shall be made only after each quarterly installment of the annual appropriation of \$1,000,000 in fiscal year 2000-2001 and \$1,000,000 in fiscal year 2001-2002 has been credited to the Trover Clinic Grant within the Department for Local Government.

Notwithstanding KRS 42.4585, effective July 1, 2001, the amount transferred annually from the Local Government Economic Development Fund (LGEDF) into the Local Government Economic Assistance Fund (LGEAF) under the provisions of KRS 42.4585 shall not be less than an amount equal to fourteen percent (14%) of the severance and processing taxes on coal collected annually and otherwise in accordance with KRS 42.450 to 42.495.

Notwithstanding KRS 42.4592, the quarterly calculation of the allocation of moneys to coal producing counties through the Local Government Economic Development Fund pursuant to KRS 42.4592 shall be made only after each quarterly installment of the annual appropriation of \$461,000 in fiscal year 2000-2001 and \$472,000 in fiscal year 2001-2002 has been transferred as Restricted Funds to the East Kentucky Corporation through a grant from the Cabinet for Economic Development in each year of the biennium.

Notwithstanding KRS 42.4592, the quarterly calculation of the allocation of moneys to coal producing counties through the Local Government Economic Development Fund pursuant to KRS 42.4592 shall be made only after each quarterly installment of the annual appropriation of \$458,000 in fiscal year 2000-2001 and \$467,000 in fiscal year 2001-2002 has been transferred as Restricted Funds to the West Kentucky Corporation through a grant from the Cabinet for Economic Development in each year of the biennium.

Notwithstanding KRS 42.4592, the quarterly calculation of the allocation of moneys to coal producing counties through the Local Government Economic Development Fund pursuant to KRS 42.4592 shall be made only after each quarterly installment of the annual appropriation of \$880,000 in fiscal year 2000-2001 and \$811,000 in fiscal year 2001-2002, has been transferred as Restricted Funds to the Coal County Development Office within the Cabinet for Economic Development.

Notwithstanding KRS 42.4592, the quarterly calculation for the allocation of moneys to coal producing counties through the Local Government Economic Development Fund pursuant to KRS 42.4592 shall be made only after each quarterly installment of the annual appropriation of \$537,600 in fiscal year 2000-2001 and \$550,500 in fiscal year 2001-2002 has been credited to the Kentucky Appalachian Commission and Appalachian Regional Commission related expenditures.

Notwithstanding KRS 42.4586, the quarterly calculation of the allocation of moneys to coal producing counties through the Local Government Economic Development Fund pursuant to KRS 42.4592 shall be made only after each quarterly installment of the annual appropriation of \$938,300 in fiscal year 2000-2001 and \$960,800 in fiscal year 2001-2002 has been credited to the Secondary Wood Products Development Fund in each year of the biennium.

Notwithstanding KRS 42.4588(2) and (4), beginning in fiscal year 1999-2000 and continuing in fiscal year 2000-2001 and fiscal year 2001-2002, twenty percent (20%) of the payments from the following LGEDF counties will be set aside for job training grants within coal counties: Bell, Boyd, Breathitt, Carter, Clay, Daviess, Floyd, Harlan, Henderson, Hopkins, Johnson, Knott, Knox, Lawrence, Lee, Leslie, Letcher, McLean, Magoffin, Martin, Muhlenberg, Ohio, Owsley, Perry, Pike, Union, Webster, Whitley, and Wolfe. Union County will not participate in the program in fiscal year 1999-2000. The Coal County Development office will administer the job training grant program.

Pursuant to the authority given in KRS 42.485, the continuing appropriation amount from fiscal year 1999-2000 to fiscal year 2000-2001 and from fiscal year 2000-2001 to fiscal year 2001-2002 shall equal the dollar amount that the Local Government Economic Development and Local Government Economic Assistance Funds have the statutory authority to expend.

c. Area Development Fund

	2000-01	2001-02
General Fund	3,000,000	1,000,000

Notwithstanding KRS 48.185, funds appropriated from the General Fund for the Area Development Fund shall be limited to these amounts.

TOTAL - SPECIAL FUNDS

	2000-01	2001-02
General Fund	63,680,900	66,705,000

15. COMMISSION ON HUMAN RIGHTS

	1999-2000	2000-01	2001-02
General Fund		2,036,000	2,088,300
Restricted Funds		12,000	12,400
Federal Funds	181,000	129,400	170,800
Total	181,000	2,177,400	2,271,500

16. COMMISSION ON WOMEN

	2000-01	2001-02
General Fund	262,500	269,900
Restricted Funds		3,200
Federal Funds	100	100
Total Fund	262,600	273,200

17. KENTUCKY RETIREMENT SYSTEMS

	2000-01	2001-02
Restricted Funds	11,713,400	13,863,000
18. REGISTRY OF ELECTION FINANCE		
	2000-01	2001-02
General Fund	482,900	1,557,200
Restricted Funds	200,000	20,000
Total	682,900	1,577,200

Notwithstanding KRS 45.229, \$1,000,000 of the General Fund appropriation from fiscal year 1999-2000 shall not lapse and shall carry forward to fiscal year 2000-2001.

It is the intent of the General Assembly that the Election Campaign Finance Fund be supported and continued.

19. OCCUPATIONAL AND PROFESSIONAL BOARDS AND COMMISSIONS

a. Board of Accountancy

	2000-01	2001-02
Restricted Funds	782,300	723,900

b. Alcohol and Drug Counselors

	2000-01	2001-02
Restricted Funds	78,300	89,700

c. Board of Architects

	2000-01	2001-02
Restricted Funds	204,700	218,800

d. Board of Art Therapists

	2000-01	2001-02
Restricted Funds	9,600	11,100

e. Kentucky Athletic Commission

	2000-01	2001-02
Restricted Funds	118,700	130,900

f. Board of Auctioneers

	2000-01	2001-02
Restricted Funds	340,600	351,000

g. Board of Barbering

	2000-01	2001-02
Restricted Funds	210,700	209,000

h. Board of Chiropractic Examiners

	2000-01	2001-02
Restricted Funds	162,400	173,800

i. Board of Dentistry

	2000-01	2001-02
Restricted Funds	436,300	461,500

j. Board of Dietitians and Nutritionists

		2000-01	2001-02
	Restricted Funds	58,800	68,000
k.	Board of Embalmers and Funeral Directors		
		2000-01	2001-02
	Restricted Funds	202,400	209,900
l.	Board of Engineers and Land Surveyors		
		2000-01	2001-02
	Restricted Funds	1,092,400	1,134,100
m.	Board of Fee-Based Pastoral Counselors		
		2000-01	2001-02
	Restricted Funds	17,200	20,600
n.	Board of Geologists		
		2000-01	2001-02
	Restricted Funds	142,600	155,800
o.	Board of Hairdressers and Cosmetologists		
		2000-01	2001-02
	Restricted Funds	981,800	1,041,300
p.	Board of Hearing Instrument Specialists		
		2000-01	2001-02
	Restricted Funds	53,000	61,100
q.	Board of Interpreters for Deaf and Hard of Hearing		
		2000-01	2001-02
	Restricted Funds	71,400	79,500
r.	Board of Landscape Architects		
		2000-01	2001-02
	Restricted Funds	51,800	54,200
s.	Board of Marriage and Family		
		2000-01	2001-02
	Restricted Funds	64,100	72,500
t.	Board of Medical Licensure		
		2000-01	2001-02
	Restricted Funds	1,759,200	1,827,300
u.	Board of Nursing		
		2000-01	2001-02
	Restricted Funds	3,277,700	3,354,100

Included in the above Restricted Funds appropriation is \$200,000 in each fiscal year for the Nursing Incentive Scholarship Program.

v.	Nursing Home Administrators Licensure Board		
		2000-01	2001-02

	Restricted Funds	85,000	89,000
w.	Board of Occupational Therapy		
		2000-01	2001-02
	Restricted Funds	66,800	76,600
x.	Board of Ophthalmic Dispensers		
		2000-01	2001-02
	Restricted Funds	46,800	55,200
y.	Board of Optometric Examiners		
		2000-01	2001-02
	Restricted Funds	146,700	143,800
z.	Board of Pharmacy		
		2000-01	2001-02
	Restricted Funds	752,800	786,600
aa.	Board of Physical Therapy		
		2000-01	2001-02
	Restricted Funds	297,800	301,100
ab.	Board of Podiatry		
		2000-01	2001-02
	Restricted Funds	13,500	13,500
ac.	Board of Professional Counselors		
		2000-01	2001-02
	Restricted Funds	42,000	46,800
ad.	Board of Psychology		
		2000-01	2001-02
	Restricted Funds	195,600	207,900
ae.	Real Estate Appraisers Board		
		2000-01	2001-02
	Restricted Funds	495,500	511,700
af.	Real Estate Commission		
		2000-01	2001-02
	Restricted Funds	1,888,800	1,911,400
Included in the above Restricted Funds appropriation is \$797,500 in fiscal year 2000-2001 and \$800,000 in fiscal year 2001-2002 for Real Estate Education and Recovery.			
ag.	Board of Respiratory Care		
		2000-01	2001-02
	Restricted Funds	100,600	111,300
ah.	Board of Social Workers		
		2000-01	2001-02
	Restricted Funds	123,000	140,000

ai.	Board of Speech Pathologists and Audiologists		
		2000-01	2001-02
	Restricted Funds	96,900	109,000
aj.	Board of Veterinary Examiners		
		2000-01	2001-02
	Restricted Funds	175,000	197,900
TOTAL - OCCUPATIONAL AND PROFESSIONAL BOARDS AND COMMISSIONS			
		2000-01	2001-02
	Restricted Funds	14,642,800	15,149,900
20.	GOVERNMENTAL SERVICES CENTER		
		2000-01	2001-02
	Restricted Funds	1,478,000	1,512,000
21.	EXECUTIVE BRANCH ETHICS COMMISSION		
		2000-01	2001-02
	General Fund	295,000	310,000
	Restricted Funds	6,000	10,000
	Total	301,000	320,000
22.	MISCELLANEOUS APPROPRIATIONS		
a.	Judgments		
		2000-01	2001-02
	General Fund	25,000,000	-0-
<p>The above appropriation is for the payment of judgments as may be rendered against the Commonwealth by courts and orders of the State Personnel Board and where applicable, shall be subject to the provisions of KRS Chapter 45, and for the payment of medical malpractice judgments against the University of Kentucky and the University of Louisville in accordance with KRS 164.941 and 164.892. Notwithstanding KRS 45.229, any remaining appropriation in the Judgments account at the end of fiscal year 1999-2000 or fiscal year 2000-2001 shall not lapse but shall be carried forward into fiscal years 2000-2001 and 2001-2002, respectively.</p>			
b.	Attorney General Expense		
		1999-00	2000-01
	General Fund	470,000	225,000
c.	Board of Claims Awards		
		2000-01	2001-02
	General Fund	600,000	600,000
<p>Funds are appropriated from the General Fund for the repayment of awards or judgments made by the Board of Claims against departments, boards, commissions, and other agencies maintained by appropriations out of the General Fund. However, awards under \$1,500, in cases where the operating agency admits negligence, shall be paid from funds available for the operations of the agency.</p>			
d.	Guardian Ad Litem		
		2000-01	2001-02
	General Fund	2,000,000	2,000,000

Included in the above appropriation is funding for fees to be paid to the guardian ad litem appointed by the court pursuant to KRS 311.732. The fee shall be fixed by the court and shall not exceed \$500.

e.	Prior Year Claims		
		2000-01	2001-02
	General Fund	400,000	400,000

f.	Unredeemed Checks Refunded		
		2000-01	2001-02
	General Fund	500,000	500,000

Checks written by the State Treasurer and not cashed within the statutory period may be presented to the State Treasurer for reissuance in accordance with KRS 41.370.

g.	Involuntary Commitments ICF/MR		
		2000-01	2001-02
	General Fund	50,000	50,000

h.	Frankfort in Lieu of Taxes		
		2000-01	2001-02
	General Fund	195,000	195,000

i.	Frankfort Cemetery		
		2000-01	2001-02
	General Fund	2,500	2,500

j.	Police Officers and Firefighters--Life Insurance		
		2000-01	2001-02
	General Fund	250,000	250,000

Funds are appropriated for payment of benefits for state and local police officers and firefighters in accordance with KRS 61.315.

k.	Master Commissioners--Employers Retirement		
		2000-01	2001-02
	General Fund	240,000	264,000

l.	Master Commissioner--Social Security		
		2000-01	2001-02
	General Fund	216,000	226,000

m.	Workers' Compensation		
		2000-01	2001-02
	General Fund	288,000	288,000

Funds are appropriated for workers' compensation premiums for fee officers in counties over 70,000 in population.

n.	Medical Malpractice Liability Insurance Reimbursements		
		2000-01	2001-02
	General Fund	50,000	50,000

o.	Blanket Employee Bonds		
	General Fund	200,000	-0-

TOTAL - MISCELLANEOUS APPROPRIATIONS



	1999-00	2000-01	2001-02
General Fund	470,000	30,216,500	5,050,500

Included in the above appropriations is \$0 in fiscal year 2000-2001 and \$0 in fiscal year 2001-2002 for refunding money paid into the State Treasury, which may later be determined not to be a lawful collection by the state. No money shall be refunded, however, after it has been paid into the State Treasury except by authority of the head of the department or agency to whom the money was originally paid and with the approval of the Secretary of the Finance and Administration Cabinet, subject to the conditions and procedures provided in this Act.

Funds required to pay the costs of items included within the Miscellaneous Appropriations category are appropriated, and any required expenditure over the above amounts is to be paid first from the General Fund Surplus Account (KRS 48.700) if available or from any available balance in either the Judgments budget unit appropriation or the Budget Reserve Trust Fund Account (KRS 48.705), subject to the conditions and procedures provided in this Act.

#### TOTAL - GOVERNMENT OPERATIONS

	1999-00	2000-01	2001-02
General Fund	670,000	229,623,100	222,490,000
Restricted Funds	2,000,000	137,675,500	145,914,800
Federal Funds	356,000	62,169,100	59,399,800
Road Funds		125,000	125,000
TOTAL	3,026,000	429,592,700	427,929,600

#### B. CABINET FOR ECONOMIC DEVELOPMENT

##### 23. a. SECRETARY

	2000-01	2001-02
General Fund	1,955,000	1,392,000
Restricted Funds	3,163,000	3,000,000
Total	5,118,000	4,392,000

Included in the above Restricted Funds appropriation is \$461,000 in fiscal year 2000-2001 and \$472,000 in fiscal year 2001-2002 for the East Kentucky Jobs Creation Corporation and \$458,000 in fiscal year 2000-2001 and \$467,000 in fiscal year 2001-2002 for the West Kentucky Jobs Creation Corporation. Both Corporations are required to submit a quarterly financial and status report to the Legislative Research Commission and to the Interim Joint Committee on Appropriations and Revenue. Also included in the above Restricted Funds appropriation is \$880,000 in fiscal year 2000-2001 and \$811,000 in fiscal year 2001-2002 for the Coal County Development Office. Notwithstanding KRS 42.4592, the Restricted Funds appropriations for the East Kentucky Corporation, the West Kentucky Corporation and the Coal County Development Office will be funded from the Local Government Economic Development Fund prior to any other statutory distribution from the Local Government Economic Development Fund.

Included in the above Restricted Funds appropriation is \$300,000 for the Kentucky Technology Service Grant program each fiscal year of the biennium.

Included in the Restricted Funds appropriation above is \$381,000 each fiscal year for the Louisville Waterfront Development Corporation.

Included in the above General Fund appropriation is \$250,000 in fiscal year 2000-2001 for the Strategic Technology Capacity Initiative Study. Notwithstanding KRS 45.229, any funds remaining at the end of fiscal year 2000-2001 shall not lapse but shall be carried forward into fiscal year 2001-2002.

Included in the above General Fund appropriation is \$350,000 in fiscal year 2000-2001 that will be used to support the Manufacturing Modernization Project that is part of the Knowledge-Based Economy Initiative embodied in House Bill 572 as considered by the 2000 Regular Session of the General Assembly. Notwithstanding KRS 45.229, any funds remaining at the end of fiscal year 2000-2001 shall not lapse but shall be carried forward into fiscal year 2001-2002.

Included in the Restricted Funds appropriation above is \$683,000 in fiscal year 2000-2001 and \$569,000 in fiscal year 2001-2002 for the Office of Commissioner for the New Economy.

b. Administration and Support

	2000-01	2001-02
General Fund	2,104,500	2,198,700
Restricted Funds	160,000	160,000
Total	2,264,500	2,358,700

c. Business Development

	2000-01	2001-02
General Fund	2,503,400	2,571,800

d. Financial Incentives

	2000-01	2001-02
General Fund	3,669,400	3,693,200
Restricted Funds	1,768,000	1,834,000
Total	5,437,400	5,527,200

The General Fund appropriation for fiscal year 1999-2000 and for fiscal year 2000-2001 for the Bluegrass State Skills Corporation shall be continued and not lapse to the General Fund Surplus Account, notwithstanding KRS 45.229.

Notwithstanding KRS 154.12-207, the Secretary is directed to take such action as may be necessary to execute contractual agreements for designated skills training and education projects for which funds have been specifically appropriated.

No commitment for employee training shall be made beyond the ability of the Cabinet to fund the project within the appropriation for the current biennium.

Balances remaining in the Special Revenue Fund accounts after all appropriations authorized in this bill are funded, shall lapse to the Deferred Maintenance Account at the end of each fiscal year.

The Bluegrass State Skills Corporation shall submit a quarterly financial report to the Governor's Office for Policy and Management, the Legislative Research Commission, and the Interim Joint Committee on Appropriations and Revenue.

e. Community Development

	2000-01	2001-02
General Fund	2,951,100	3,068,100
Restricted Funds	188,000	456,000
Federal Funds	160,000	160,000
Total	3,299,100	3,684,100

f. Debt Service

	2000-01	2001-02
General Fund		612,000

TOTAL - CABINET FOR ECONOMIC DEVELOPMENT

	2000-01	2001-02
General Fund	13,183,400	13,535,800
Restricted Funds	5,279,000	5,450,000
Federal Funds	160,000	160,000

TOTAL	18,622,400	19,145,800
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## C. EDUCATION

## 24. EDUCATION

## Budget Units

## a. Support Education Excellence in Kentucky (SEEK) Program

	2000-01	2001-02
General Fund	2,208,786,300	2,236,293,600

Accumulated earnings for the Common School Fund shall be transferred in each fiscal year to the Support Education Excellence in Kentucky program.

The above appropriations include \$1,572,050,600 in fiscal year 2000-2001 and \$1,594,762,000 in fiscal year 2001-2002 for the base SEEK program as defined by KRS 157.360. Funds appropriated to the Support Education Excellence in Kentucky program shall be allotted to school districts in accordance with KRS 157.310 to 157.440, except that the total of the funds allotted shall not exceed the appropriations for this purpose except as provided in this Act. Included in the appropriation for base SEEK is \$194,322,200 in fiscal year 2000-2001 and \$198,876,200 in fiscal year 2001-2002 for pupil transportation, notwithstanding KRS 157.360(2)(c).

Included in the above appropriation is \$125,929,500 in fiscal year 2000-2001 and \$121,121,800 in fiscal year 2001-2002 for the Tier I component as established by KRS 157.440.

Included in the above appropriation is \$2,381,200 in fiscal year 2000-2001 and \$2,416,900 in fiscal year 2001-2002 for vocational transportation.

Included in the above appropriation is \$20,468,500 in fiscal year 2000-2001 and \$21,452,600 in fiscal year 2001-2002 to provide secondary vocational education in state-operated vocational schools.

Included in the above appropriation is \$47,640,800 in fiscal year 2000-2001 and \$44,809,300 in fiscal year 2001-2002 to provide facilities equalization funding pursuant to the provisions of KRS 157.620 and KRS 157.440.

Included in the above appropriation is \$245,993,500 in fiscal year 2000-2001 and \$252,854,800 in fiscal year 2001-2002 to enable local school districts to provide the employer match for qualified employees as provided for by KRS 161.550.

## b. Executive Policy and Management

	2000-01	2001-02
General Fund	2,637,700	2,676,900
Restricted Funds	427,200	425,400
Federal Funds	538,600	551,500
Total	3,603,500	3,653,800

## c. Management Support Services

	2000-01	2001-02
General Fund	399,499,900	429,519,300
Restricted Funds	3,090,500	2,989,500
Federal Funds	172,455,500	176,555,400
Total	575,045,900	609,064,200

Included in the above General Fund appropriation is \$20,000,000 in fiscal year 2000-2001 and \$15,000,000 in fiscal year 2001-2002 for the education technology escrow account.

Included in the above General Fund appropriation is \$10,800,000 in each fiscal year for reimbursement to local school districts for the Out-of-District Children Program.

Included in the above General Fund appropriation is \$261,274,800 in fiscal year 2000-2001 and \$289,848,100 in fiscal year 2001-2002 to provide health and life insurance coverage for employees of local school districts.

Included in the above General Fund appropriation is \$2,463,700 in fiscal year 2000-2001 and \$2,522,900 in fiscal year 2001-2002 to enable the Department of Education to provide the employer match for qualified employees as provided by KRS 161.550.

Included in the above General Fund appropriation is \$1,283,000 in fiscal year 2001-2002 for debt service on new projects.

Included in the above General Fund appropriation is \$1,500,000 in each fiscal year for the Community Education Program.

d. Learning Support Services

	1999-00	2000-01	2001-02
General Fund	865,400	184,960,800	192,607,700
Restricted Funds		3,604,200	3,571,300
Federal Funds		292,032,300	298,881,900
Total	865,400	480,597,300	495,060,900

Included in the above General Fund appropriation is \$10,000,000 in each fiscal year for the school rewards escrow account. The above General Fund appropriation includes \$40,000 in fiscal year 2000-2001 and \$40,000 in fiscal year 2001-2002 for the Kentucky Headstart Collaboration Project. These funds, as well as \$150,000 in Federal Funds in each fiscal year, shall be transferred to the Governor's Office of Early Childhood Development. The above General Fund appropriation includes \$3,850,000 in fiscal year 2000-2001 and \$3,850,000 in fiscal year 2001-2002 for technical education equalization. Also included in the above General Fund appropriation is \$5,742,200 in fiscal year 2000-2001 and \$5,974,800 in fiscal year 2001-2002 for the Kentucky School for the Blind, and \$9,226,500 in fiscal year 2000-2001 and \$9,668,300 in fiscal year 2001-2002 for the Kentucky School for the Deaf.

Included in the above General Fund appropriation is \$50,000 in each fiscal year to support a Community After School Program in local school district number 441. Also included in the above General Fund appropriation is \$50,000 in each fiscal year to support a Community After School Program in local school district number 365.

Included in the above General Fund appropriation are funds for Extended School Services. Notwithstanding any statute or administrative regulation to the contrary, school district number 255, school district number 465, and school number 105 in school district number 275 shall be allowed to use their allocated Extended School Services program funds in a manner that will best meet the needs of their particular students.

Included in the above General Fund appropriation is \$750,000 in fiscal year 2000-2001 and \$1,250,000 in fiscal year 2001-2002 for the establishment of a Professional Growth Fund and \$500,000 in fiscal year 2001-2002 for a Professional Development Leadership and Mentor Fund. The Commissioner of the Department of Education may transfer any available funds between the Professional Growth Fund and the Professional Development Leadership Mentor Fund as needed to satisfy the demand and need to support the respective teacher programs.

TOTAL - EDUCATION

	1999-00	2000-01	2001-02
General Fund	865,400	2,795,884,700	2,861,097,500
Restricted Funds		7,121,900	6,986,200
Federal Funds		465,026,400	475,988,800
TOTAL	865,400	3,268,033,000	3,344,072,500

D. EDUCATION, ARTS AND HUMANITIES CABINET

Budget Units

25. OFFICE OF THE SECRETARY

	2000-01	2001-02
General Fund	2,769,500	3,251,500
Restricted Funds	70,400	70,400

Total	2,839,900	3,321,900
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Included in the above General Fund appropriation is \$4,100 in fiscal year 2000-2001 and \$4,200 in fiscal year 2001-2002 for operating expenses related to the Martin Luther King Jr. Commission.

Included in the above General Fund appropriation is \$1,231,400 in fiscal year 2000-2001 and \$1,570,000 in fiscal year 2001-2002 for the Governor's Scholars Program.

Included in the above General Fund appropriation is \$400,000 in fiscal year 2000-2001 and \$405,000 in fiscal year 2001-2002 for the Governor's School for the Arts.

#### 26. KENTUCKY ARTS COUNCIL

	2000-01	2001-02
General Fund	4,801,700	4,895,500
Restricted Funds	448,500	456,500
Federal Funds	600,000	611,300
Total	5,850,200	5,963,300

#### 27. TEACHERS' RETIREMENT SYSTEM

	2000-01	2001-02
General Fund	75,829,500	82,222,300
Restricted Funds	5,696,400	6,021,000
Total	81,525,900	88,243,300

General Fund moneys are appropriated to comply with the obligations of the state under the Teachers' Retirement System statutes as provided in KRS 161.220 to 161.716, notwithstanding the provisions of KRS 161.550.

The above General Fund appropriation, in conjunction with those included elsewhere within this Act for the Teachers' Retirement System, is based upon estimated funds needed to meet the requirements of KRS 161.220 to 161.716, notwithstanding KRS 161.550. If these combined General Fund appropriations are in excess of these requirements, the excess funds shall lapse to the credit of the General Fund.

In accordance with KRS 161.420, in each fiscal year an amount not greater than four percent (4%) of the receipts of the state accumulation fund shall be set aside into the expense fund or expended for the administration of the retirement system. No General Fund moneys are provided in fiscal year 2000-2001 or fiscal year 2001-2002 for the cost of administration.

Included in the above General Fund appropriation is \$2,311,500 in fiscal year 2000-2001 and \$5,925,000 in fiscal year 2001-2002 to provide, when combined with the annual one and one-half percent (1.5%) retirement allowance increase as provided for under KRS 161.620, a total increase in retirement allowances of eligible system members and beneficiaries of two and three-tenths percent (2.3%) in fiscal year 2000-2001 and an additional two and one-half percent (2.5%) in fiscal year 2001-2002.

Included in the above General Fund appropriation is \$3,698,800 in fiscal year 2000-2001 and \$7,886,400 in fiscal year 2001-2002 to provide the cost of amortizing the requirements of KRS 161.155 (sick leave) for members retiring during the 2000-2002 biennium.

#### 28. SCHOOL FACILITIES CONSTRUCTION COMMISSION

	2000-01	2001-02
General Fund	72,145,200	79,030,500

Included in the above General Fund appropriation is \$70,107,700 in fiscal year 2000-2001 and \$70,687,300 in fiscal year 2001-2002 for debt service for bonds previously issued.

Included in the above General Fund appropriation is \$1,800,000 in fiscal year 2000-2001 and \$8,100,000 in fiscal year 2001-2002 for debt service for previously authorized bonds.

The School Facilities Construction Commission is authorized to make an additional \$100,000,000 in offers of assistance during the 2000-2002 biennium in anticipation of debt service availability during the 2002-2004 biennium. No bonded indebtedness based on the above amount is to be incurred during the 2000-2002 biennium.

29. DEAF AND HARD OF HEARING

	2000-01	2001-02
General Fund	875,700	898,600
Restricted Funds	200,000	200,000
Total	1,075,700	1,098,600

30. KENTUCKY HERITAGE COUNCIL

	2000-01	2001-02
General Fund	978,100	977,600
Restricted Funds	246,800	256,300
Federal Funds	795,800	795,800
Total	2,020,700	2,029,700

Included in the above General Fund appropriation is \$50,000 in fiscal year 2000-2001 for Underground Railroad research and documentation.

31. KENTUCKY EDUCATIONAL TELEVISION

	2000-01	2001-02
General Fund	15,141,900	17,063,300
Restricted Funds	1,146,300	1,226,500
Federal Funds	700,000	700,000
Total	16,988,200	18,989,800

Included in the above General Fund appropriation is \$1,564,000 in fiscal year 2001-2002 for debt service on new projects.

32. KENTUCKY HISTORICAL SOCIETY

	2000-01	2001-02
General Fund	6,260,200	6,502,700
Restricted Funds	521,400	643,400
Federal Funds	111,100	413,100
Total	6,892,700	7,559,200

33. LIBRARIES AND ARCHIVES

a. General Operations

	2000-01	2001-02
General Fund	6,796,100	7,663,300
Restricted Funds	1,822,600	1,879,700
Federal Funds	1,684,900	1,724,700
Total	10,303,600	11,267,700

Included in the above General Fund appropriation is \$230,000 in fiscal year 2001-2002 for debt service on new projects.

b. Direct Local Aid

	2000-01	2001-02
General Fund	6,675,500	6,675,500
Restricted Funds	9,000	9,000
Federal Funds	576,000	576,000
Total	7,260,500	7,260,500

Included in the above General Fund appropriation is \$3,669,500 in each fiscal year to award per capita grants at the rate of seventy-three cents, notwithstanding KRS 171.201.

#### TOTAL - LIBRARIES AND ARCHIVES

	2000-01	2001-02
General Fund	13,471,600	14,338,800
Restricted Funds	1,831,600	1,888,700
Federal Funds	2,260,900	2,300,700
Total	17,564,100	18,528,200

#### 34. KENTUCKY CENTER FOR THE ARTS

	2000-01	2001-02
General Fund	640,500	655,900

#### 35. ENVIRONMENTAL EDUCATION COUNCIL

	2000-01	2001-02
Restricted Funds	150,000	150,000

#### TOTAL - EDUCATION, ARTS, AND HUMANITIES CABINET

	2000-01	2001-02
General Fund	192,913,900	209,836,700
Restricted Funds	10,311,400	10,912,800
Federal Funds	4,467,800	4,820,900
TOTAL	207,693,100	225,570,400

#### E. CABINET FOR FAMILIES AND CHILDREN

##### Budget Units

#### 36. COMMUNITY BASED SERVICES

	2000-01	2001-02
General Fund	273,910,800	291,008,400
Restricted Funds	93,280,100	98,550,000
Federal Funds	432,119,000	445,034,700
Total	799,309,900	834,593,100

The Department for Community Based Services shall reimburse citizen members of the Public Assistance Appeals Board an amount not to exceed \$75 per day plus travel expenses.

Due to the demands placed upon the Cabinet to meet the increasing participation rates required for welfare reform, and in order to meet the state match requirements for the Welfare to Work Program, any General Fund appropriation, excluding Salary Improvement provisions as provided in Part IX of this Act, unexpended in fiscal year 1999-2000 of up to \$8,500,000 and in fiscal year 2000-2001 of up to \$2,500,000 shall not lapse and shall be carried forward into the next fiscal year, notwithstanding KRS 45.229, in compliance with the General Provisions of this Act.

## 37. ADMINISTRATION SERVICES

	2000-01	2001-02
General Fund	30,439,400	31,231,100
Restricted Funds	4,183,400	4,168,700
Federal Funds	36,047,700	37,636,000
Total	70,670,500	73,035,800

Included in the above General Fund appropriation is \$226,800 in fiscal year 2000-2001 and \$232,200 in fiscal year 2001-2002, and in the Federal Funds appropriation is \$2,970,700 in fiscal year 2000-2001 and \$2,978,400 in fiscal year 2001-2002 for the Kentucky Commission on Community Volunteerism and Service which was transferred from the Council on Postsecondary Education to the Cabinet for Families and Children by Executive Order 2000-8.

Included in the above General Fund appropriation is \$69,000 in fiscal year 2001-2002 for debt service.

## 38. DISABILITY DETERMINATIONS

	2000-01	2001-02
Restricted Funds	74,000	75,800
Federal Funds	37,418,900	38,559,100
Total Funds	37,492,900	38,634,900

## TOTAL - CABINET FOR FAMILIES AND CHILDREN

	2000-01	2001-02
General Fund	304,350,200	322,239,500
Restricted Funds	97,537,500	102,794,500
Federal Funds	505,585,600	521,229,800
Total	907,473,300	946,263,800

## F. FINANCE AND ADMINISTRATION CABINET

## 39. FINANCE AND ADMINISTRATION CABINET

## Budget Units

## a. General Administration

	2000-01	2001-02
General Fund	12,267,800	12,438,400
Restricted Funds	3,484,000	3,644,000
Federal Funds	58,148,000	58,197,000
Total	73,899,800	74,279,400

Included in the above General Fund appropriation is \$200,000 in fiscal year 2000-2001 and \$200,000 in fiscal year 2001-2002 for the Affordable Housing Trust Fund which shall be matched equally from the Kentucky Housing Corporation Housing Assistance Fund.

## b. Debt Service

	2000-01	2001-02
General Fund	216,527,000	244,703,000
Road Fund	3,665,000	3,668,000
Total	220,192,000	248,371,000



Included in the above General Fund appropriation is \$5,700,000 in fiscal year 2000-2001 and \$34,072,000 in fiscal year 2001-2002 for new debt service.

c. Administration

	2000-01	2001-02
General Fund	3,776,100	3,789,600
Restricted Funds	9,039,000	9,121,000
Road Fund	277,000	283,000
Total	13,092,100	13,193,600

d. Facilities Management

	2000-01	2001-02
General Fund	8,598,300	8,822,300
Restricted Funds	20,634,000	21,014,000
Total	29,232,300	29,836,300

e. County Costs

	1999-00	2000-01	2001-02
General Fund	1,632,000	18,899,000	20,881,000
Restricted Funds		1,327,000	1,327,000
Total	1,632,000	20,226,000	22,208,000

Included in the above General Fund appropriation is \$5,431,000 in fiscal year 2000-2001 and \$5,431,000 in fiscal year 2001-2002 for base court revenue. Funds required to pay county costs other than base court revenue funded by the General Fund are appropriated and additional funds may be allotted from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705) by the Secretary of the Finance and Administration Cabinet, subject to the conditions and procedures provided in this Act.

Notwithstanding KRS 23A.205 as amended by Senate Bill 326 of the 2000 Regular Session of the General Assembly, KRS 64.092, or any other statute to the contrary, the Circuit Clerk shall monthly pay \$7 from each court cost collected pursuant to KRS 23A.205(1) to the Finance and Administration Cabinet for the purpose of compensating sheriffs on a statewide basis for attending court and providing security services in compliance with KRS 64.092.

f. County Fees

	1999-00	2000-01	2001-02
Restricted Funds	16,154,100	71,212,900	74,664,400

TOTAL - FINANCE AND ADMINISTRATION CABINET

	1999-00	2000-01	2001-02
General Fund	1,632,000	260,068,200	290,634,300
Restricted Funds	16,154,100	105,696,900	109,770,400
Federal Funds		58,148,000	58,197,000
Road Fund		3,942,000	3,951,000
TOTAL	17,786,100	427,855,100	462,552,700

G. CABINET FOR HEALTH SERVICES

Budget Units

40. MEDICAID SERVICES

a. Administration

	2000-01	2001-02
General Fund	17,323,700	18,079,900
Restricted Funds	13,941,000	13,771,600
Federal Funds	31,595,800	31,476,900
Total	62,860,500	63,328,400

If any portion of the General Fund appropriation in either fiscal year is deemed to be in excess of the necessary expenses for administration of the Department, the amount may be used for Medicaid Benefits, in accordance with statutes governing the functions and activities of the Department for Medicaid Services. In no instance shall these excess funds be used without prior written approval of the State Budget Director of the Governor's Office for Policy and Management to:

- (1) Establish a new program;
- (2) Expand the services of an existing program; or
- (3) Increase rates or payment levels in an existing program.

Any transfer authorized under this section shall be approved by the Secretary of the Finance and Administration Cabinet upon recommendation of the State Budget Director of the Governor's Office for Policy and Management.

b. Benefits

	2000-01	2001-02
General Fund	708,895,000	764,493,300
Restricted Funds	226,448,500	213,744,900
Federal Funds	2,255,936,100	2,356,956,600
Total	3,191,279,600	3,335,194,800

These funds are to be used for the payment of benefits in accordance with the statutes governing the functions and activities of the Department for Medicaid Services.

Any General Fund appropriation unexpended in fiscal years 1999-2000 and 2000-2001 shall not lapse, but shall be carried forward into the next fiscal year, notwithstanding KRS 45.229.

If any portion of the General Fund appropriation in either fiscal year is deemed to be in excess of the necessary expenses for Medicaid Benefits, an amount up to \$4,000,000 may be used for Medicaid Administration, in accordance with statutes governing the functions and activities of the Department for Medicaid Services. In no instance shall these excess funds be used without prior written approval of the State Budget Director of the Governor's Office for Policy and Management. Any transfer authorized under this section shall be approved by the Secretary of the Finance and Administration Cabinet upon recommendation of the State Budget Director of the Governor's Office for Policy and Management.

41. PUBLIC HEALTH

	1999-00	2000-01	2001-02
General Fund		64,514,400	65,028,100
Restricted Funds		12,830,200	15,427,900
Federal Funds	437,500	122,036,400	122,032,300
Total	437,500	199,381,000	202,488,300

Notwithstanding other provisions to the contrary, the Secretary shall promulgate such administrative regulations as may be required to prescribe user fee amounts which are provided in the applicable agency fund appropriations.

42. MENTAL HEALTH/MENTAL RETARDATION

	2000-01	2001-02
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General Fund	172,231,600	182,904,300
Restricted Funds	146,559,800	153,172,900
Federal Funds	45,587,300	45,723,600
Total	364,378,700	381,800,800

Included in the above General Fund appropriation is \$702,000 in fiscal year 2001-2002 for debt service on new projects.

43. CHILDREN WITH SPECIAL HEALTH CARE NEEDS

	2000-01	2001-02
General Fund	5,943,000	6,176,100
Restricted Funds	3,495,100	3,179,000
Federal Funds	4,668,800	4,669,000
Total	14,106,900	14,024,100

44. CERTIFICATE OF NEED

	2000-01	2001-02
Restricted Funds	462,600	484,700

45. AGING SERVICES

	2000-01	2001-02
General Fund	25,019,800	25,584,200
Restricted Funds	4,965,500	5,471,300
Federal Funds	17,153,800	17,148,600
Total	47,139,100	48,204,100

46. ADMINISTRATIVE SUPPORT

	2000-01	2001-02
General Fund	10,018,100	10,352,100
Restricted Funds	7,056,000	7,876,500
Federal Funds	10,561,800	10,618,200
Total	27,635,900	28,846,800

The Secretary shall be authorized to promulgate such administrative regulations as may be required to prescribe user fee amounts which are reflected in the Restricted Funds appropriations above.

The enacted fiscal year 1999-2000 appropriation in House Bill 321 (1998 Ky. Acts ch. 615) includes \$65,700 from the General Fund which is authorized to be provided to the new Office of Women's Health, which is being established within the Administrative Support appropriation unit in accordance with KRS 194A.095, from the Office of Certificate of Need.

Included in the above General Fund appropriation is \$384,000 in fiscal year 2001-2002 for debt service on new projects.

TOTAL - CABINET FOR HEALTH SERVICES

	2000-01	2001-02
General Fund	1,003,945,600	1,072,618,000
Restricted Funds	415,758,700	413,128,800
Federal Funds	437,500	2,487,540,000
		2,588,625,200

TOTAL	437,500	3,907,244,300	4,074,372,000
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## H. JUSTICE CABINET

## 47. JUSTICE OPERATIONS

## Budget Units

## a. Justice Administration

	2000-01	2001-02
General Fund	7,788,900	7,664,100
Restricted Funds	1,657,400	1,619,000
Federal Funds	13,087,800	13,087,800
Total	22,534,100	22,370,900

Included in the above General Fund appropriation is \$1,106,400 in fiscal year 2000-2001 and \$1,133,000 in fiscal year 2001-2002 for operation of the State Parole Board.

Included in the above General Fund appropriation is \$1,500,000 in each fiscal year to provide free civil legal services for indigents.

Included within the above Restricted Funds appropriation is \$330,000 in fiscal year 2000-2001 and \$330,000 in fiscal year 2001-2002 to support the Criminal Justice Council. These Restricted Funds shall come from the Kentucky Law Enforcement Foundation Program Fund (KLEFPF). Any provisions to the contrary codified in KRS 15.430, 42.190, or 136.392 are suspended.

Included in the above General Fund appropriation is \$125,000 in fiscal year 2000-2001 and \$125,000 in fiscal year 2001-2002 for a non-recurring grant to the Urban League of Lexington-Fayette County Construction Training Project.

## b. State Police

	2000-01	2001-02
General Fund	81,836,200	89,633,100
Restricted Funds	5,431,900	5,274,800
Federal Funds	9,960,600	8,144,700
Road Fund	30,000,000	30,000,000
Total	127,228,700	133,052,600

Included in the above General Fund appropriation is \$271,000 in fiscal year 2001-2002 for new debt service to fund the portion of the Unified Criminal Justice Information System related to the State Police database operations.

There is appropriated from the General Fund to the Department of State Police, subject to the conditions and procedures provided in this Act, funds which are required as a result of the Governor's call of the Kentucky State Police to extraordinary duty when an emergency situation has been declared to exist by the Governor. Funding is authorized to be provided from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705).

## c. Criminal Justice Training

	2000-01	2001-02
Restricted Funds	31,768,900	33,362,500
Federal Funds	1,190,000	1,190,000
Total	32,958,900	34,552,500

Included in the above appropriation is \$19,537,000 in fiscal year 2000-2001 and \$19,985,200 in fiscal year 2001-2002 for training incentive payments pursuant to KRS 15.430 and KRS 15.440 from receipts pursuant to KRS 136.392. Notwithstanding KRS 15.460(1), included in the above Restricted Funds appropriation is \$716,400 in fiscal year 2000-2001 and \$733,200 in fiscal year 2001-2002 for an increase in training incentive payments to each

participant. The increase equates to \$100 per qualified individual in fiscal year 2000-2001 for a total of \$3,100 in fiscal year 2000-2001 and \$3,100 in fiscal year 2001-2002 for each participant.

Also included in the appropriation above is \$3,165,000 for debt service in fiscal year 2000-2001 and \$3,165,000 in fiscal year 2001-2002 for bonds previously issued. New debt service in the amount of \$707,000 in fiscal year 2001-2002 is appropriated and included above for a new Law Enforcement Physical Training Facility on the campus of Eastern Kentucky University.

Notwithstanding KRS 15.430, 42.190, or 136.392, funds unexpended at the end of fiscal year 1999-2000 and fiscal year 2000-2001 shall not lapse but shall be carried forward into the following fiscal year.

d. Juvenile Justice

	2000-01	2001-02
General Fund	76,858,000	92,568,000
Restricted Funds	16,789,800	18,550,000
Federal Funds	19,812,000	19,312,000
Total	113,459,800	130,430,000

Included in the above General Fund appropriation is \$2,925,000 in fiscal year 2001-2002 for debt service for the construction of a secure juvenile detention facility in Fayette County, a combined residential/detention facility in Hardin County, an educational building addition at Woodsbend Youth Development Center in Morgan County, and a replacement facility (up to 100 beds) for three existing juvenile treatment centers in Jefferson County.

Included in the above General Fund appropriation is \$3,796,200 in fiscal year 2000-2001 and \$9,520,500 in fiscal year 2001-2002 to increase detention subsidies provided to counties from \$40 per day to \$60 per day in fiscal year 2000-2001 and \$80 per day in fiscal year 2001-2002.

TOTAL - JUSTICE OPERATIONS

	2000-01	2001-02
General Fund	166,483,100	189,865,200
Restricted Funds	55,648,000	58,806,300
Road Fund	30,000,000	30,000,000
Federal Funds	44,050,400	41,734,500
Total	296,181,500	320,406,000

48. CORRECTIONS

Budget Units

a. Corrections Management

	2000-01	2001-02
General Fund	15,123,400	26,459,700
Restricted Funds	12,679,100	13,241,200
Federal Funds	1,224,400	224,500
Total	29,026,900	39,925,400

Included in the above General Fund appropriation is \$10,178,000 in fiscal year 2001-2002 for new debt service related to renovation or construction of correctional facilities.

b. Community Services and Local Facilities

	2000-01	2001-02
General Fund	73,994,600	80,272,300
Restricted Funds	625,000	625,000

	Total	74,619,600	80,897,300
c.	Adult Correctional Institutions		
		2000-01	2001-02
	General Fund	182,603,000	193,614,500
	Restricted Funds	4,428,800	4,458,600
	Federal Funds	150,000	150,000
	Total	187,181,800	198,223,100
d.	Local Jail Support		
		2000-01	2001-02
	General Fund	14,918,100	15,276,100

Included in the General Fund appropriation is \$909,300 in fiscal year 2000-2001 and \$931,100 in fiscal year 2001-2002 for medical care contracts to be distributed, upon approval of the Department of Corrections, to counties by the formula codified in KRS 441.206; \$307,200 in fiscal year 2000-2001 and \$314,600 in fiscal year 2001-2002 is provided, on a partial reimbursement basis, for medical claims in excess of the statutory threshold pursuant to KRS 441.045. The funding support for medical contracts and catastrophic medical expenses for indigents shall be maintained in discrete accounts. Any medical claim which exceeds the statutory threshold may be reimbursed for that amount in excess of the statutory threshold. In no event shall this apply to expenses of an elective, as opposed to emergency, basis, and expenses shall be paid according to the Kentucky Medical Assistance Schedule.

#### TOTAL - CORRECTIONS

		2000-01	2001-02
	General Fund	286,639,100	315,622,600
	Restricted Funds	17,732,900	18,324,800
	Federal Funds	1,374,400	374,500
	Total	305,746,400	334,321,900

#### TOTAL - JUSTICE CABINET

		2000-01	2001-02
	General Fund	453,122,200	505,487,800
	Restricted Funds	73,380,900	77,131,100
	Federal Funds	45,424,800	42,109,000
	Road Fund	30,000,000	30,000,000
	TOTAL	601,927,900	654,727,900

#### I. LABOR

##### 49. LABOR CABINET

##### Budget Units

a.	General Administration and Support		
		2000-01	2001-02
	General Fund	545,600	558,700
	Restricted Funds	5,291,800	5,384,200
	Total	5,837,400	5,942,900
b.	Workplace Standards		
		2000-01	2001-02

General Fund	2,024,800	2,080,700
Restricted Funds	131,541,200	130,275,200
Federal Funds	3,453,000	3,453,000
Total	137,019,000	135,808,900
c. Workers' Claims		
	2000-01	2001-02
Restricted Funds	14,942,300	15,806,800
d. Kentucky Occupational Safety and Health Review Commission		
	2000-01	2001-02
Restricted Funds	429,800	443,100
TOTAL - LABOR CABINET		
	2000-01	2001-02
General Fund	2,570,400	2,639,400
Restricted Funds	152,205,100	151,909,300
Federal Funds	3,453,000	3,453,000
TOTAL	158,228,500	158,001,700

## Budget Unit

## 50. KENTUCKY WORKERS' COMPENSATION FUNDING COMMISSION

	2000-01	2001-02
General Fund	19,000,000	19,000,000
Restricted Funds	135,957,600	136,075,500
Total	154,957,600	155,075,500

Notwithstanding KRS 342.122, the Kentucky Workers' Compensation Funding Commission is authorized to finance a portion of the Mines and Minerals budget through Special Fund assessments. Funds in the amounts of \$793,600 in fiscal year 2000-2001 and \$854,900 in fiscal year 2001-2002 shall be transferred to Mines and Minerals.

## TOTAL - LABOR

	2000-01	2001-02
General Fund	21,570,400	21,639,400
Restricted Funds	288,162,700	287,984,800
Federal Funds	3,453,000	3,453,000
TOTAL	313,186,100	313,077,200

## J. NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

## 51. NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

## Budget Units

## a. General Administration and Support

	2000-01	2001-02
General Fund	9,365,300	9,655,800
Restricted Funds	443,100	426,600
Federal Funds	1,758,000	1,826,500

Total	11,566,400	11,908,900
b. Environmental Protection		
	2000-01	2001-02
General Fund	23,730,500	24,530,100
Restricted Funds	20,834,300	21,391,100
Federal Funds	17,807,300	17,904,600
Total	62,372,100	63,825,800

Notwithstanding KRS 224.43-320, no funds are provided in the above appropriations for the assignment of full-time inspectors to each municipal solid waste landfill operating in the Commonwealth.

Included in the above General Fund appropriation is \$206,000 in fiscal year 2001-2002 in debt service for a \$2,000,000 new bond authorization for state-owned dam repairs.

c. Natural Resources		
	2000-01	2001-02
General Fund	14,592,800	15,741,400
Restricted Funds	5,198,000	5,215,100
Federal Funds	4,032,900	3,768,600
Total	23,823,700	24,725,100

Included in the above General Fund appropriation is \$705,000 in fiscal year 2001-2002 for debt service for \$5,604,000 in new bond authorizations. This appropriation provides \$416,000 for debt service to support Bonds totaling \$4,100,000 for the Black Mountain Preservation Project and \$289,000 for debt service to support Bonds totaling \$1,504,000 for the Forestry Radio Equipment.

Not less than \$240,000 of the General Fund appropriation for each fiscal year shall be set aside for emergency forest fire suppression. There is appropriated from the General Fund the necessary funds, subject to the conditions and procedures provided in this Act, which are required as a result of emergency fire suppression activities in excess of the \$240,000 amount. Fire suppression costs in excess of \$240,000 annually shall be deemed necessary governmental expenses and shall be paid from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705).

d. Surface Mining Reclamation and Enforcement		
	2000-01	2001-02
General Fund	10,263,500	10,754,800
Restricted Funds	6,184,000	6,533,900
Federal Funds	16,245,500	16,719,600
Total	32,693,000	34,008,300

Included in the General Fund appropriation is \$675,000 in each fiscal year for the return of permit and acreage fees per KRS 350.139; any required expenditure for this purpose in excess of this amount in either fiscal year is appropriated to the department, subject to the conditions and procedures of this Act.

e. Abandoned Mine Land Reclamation Projects		
	2000-01	2001-02
Federal Funds	22,000,000	22,000,000

The above appropriations represent estimates of the funds to be received and expended for this program. If additional funds become available, the funds are appropriated subject to the conditions and procedures provided in this Act.

TOTAL - NATURAL RESOURCES AND ENVIRONMENTAL



## PROTECTION CABINET

	2000-01	2001-02
General Fund	57,952,100	60,682,100
Restricted Funds	32,659,400	33,566,700
Federal Funds	61,843,700	62,219,300
TOTAL	152,455,200	156,468,100

## Budget Units

## 52. KENTUCKY RIVER AUTHORITY

	2000-01	2001-02
General Fund	377,900	543,000
Restricted Funds	1,345,600	1,579,900
Total	1,723,500	2,122,900

Included in the above Restricted Funds appropriation is \$203,000 in fiscal year 2000-2001 and \$406,000 in fiscal year 2001-2002 for debt service for \$4,000,000 in previously authorized bonds for the Water Release System and Lock 6 Repairs. General Fund debt service funds of \$156,000 is included in fiscal year 2001-2002 to support Bond Funds totaling \$1,500,000.

## 53. ENVIRONMENTAL QUALITY COMMISSION

	2000-01	2001-02
General Fund	267,000	258,200
Restricted Funds	6,600	1,000
Total	273,600	259,200

## 54. KENTUCKY NATURE PRESERVES COMMISSION

	2000-01	2001-02
General Fund	918,500	931,700
Restricted Funds	338,300	321,700
Federal Funds	25,000	25,000
Total	1,281,800	1,278,400

## TOTAL - NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

	2000-01	2001-02
General Fund	59,515,500	62,415,000
Restricted Funds	34,349,900	35,469,300
Federal Funds	61,868,700	62,244,300
TOTAL	155,734,100	160,128,600

## K. PERSONNEL CABINET

## 55. PERSONNEL CABINET

## Budget Units

## a. General Operations

	1999-00	2000-01	2001-02
General Fund	7,000,000	3,430,600	3,920,200

Restricted Funds	4,000,000	10,293,100	10,386,000
Total	11,000,000	13,723,700	14,306,200

Notwithstanding KRS 18A.015(2), (3), and (4), the Personnel Cabinet shall collect \$5.00 per month per employee eligible for health insurance coverage in the state group for those agencies utilizing the state payroll system and \$4.00 per employee eligible for health insurance coverage in the state group utilizing their own payroll system from all employers of state employees defined in KRS 18A.225(1)(b) for duly authorized use by the Personnel Cabinet in administering its statutory and administrative responsibilities, including but not limited to administration of the Commonwealth's health insurance program. Members of the state group utilizing the state payroll system will pay \$5.00 per month beginning January 1, 2000.

Included in the above General Fund appropriation is \$389,000 in fiscal year 2001-2002 for debt service on a new personnel payroll system.

b. Public Employees Deferred Compensation Authority

	2000-01	2001-02
Restricted Funds	4,915,600	5,740,700

c. Workers' Compensation Benefits and Reserve

	2000-01	2001-02
Restricted Funds	15,382,700	15,901,500

The above appropriations represent estimates of the funds necessary to operate this program. If additional funds are required to adequately maintain this program, the necessary Restricted Funds are appropriated, subject to the conditions and procedures provided in this Act.

TOTAL - PERSONNEL CABINET

	1999-00	2000-01	2001-02
General Fund	7,000,000	3,430,600	3,920,200
Restricted Funds	4,000,000	30,591,400	32,028,200
TOTAL	11,000,000	34,022,000	35,948,400

L. POSTSECONDARY EDUCATION

Budget Units

56. COUNCIL ON POSTSECONDARY EDUCATION

	2000-01	2001-02
General Fund	72,173,800	124,558,400
Restricted Funds	3,785,900	5,380,100
Federal Funds	1,100,000	1,100,000
Total	77,059,700	131,038,500

The General Assembly reaffirms its commitment to the spirit, intent, and goals of the Kentucky Postsecondary Education Improvement Act of 1997. The General Assembly recognizes the continued need to provide improved access to postsecondary education for all of Kentucky's citizens. The General Assembly continues to encourage collaboration among all of the state postsecondary institutions. The General Assembly supports the budget recommendations on the Council on Postsecondary Education.

Included in the above appropriation is \$6,564,600 in fiscal year 2000-2001 and \$2,626,200 in fiscal year 2001-2002 for the Experimental Program to Stimulate Competitive Research (EPSCoR) program. Notwithstanding the provisions of KRS 45.229, funding for the EPSCoR program in fiscal year 2000-2001 not to exceed \$2,000,000 shall continue into fiscal year 2001-2002 for this purpose.

Included in the above General Fund appropriation is \$48,600,000 in fiscal year 2000-2001 and \$104,650,000 in fiscal year 2001-2002 for the Strategic Investment and Incentive Funding Program as established by the Postsecondary Education Improvement Act of 1997.

Included in the above appropriation is \$3,000,000 each fiscal year for the Center for Literacy Development and the Early Reading Incentive Fund, of which \$600,000 each year is provided to the Center for Literacy Development for the Reading Recovery Teacher Leader Training program for public postsecondary education institutions and the eight Regional Services Centers established by KRS 156.017.

The following trust funds and dollar amounts make up the Strategic Investment and Incentive Trust Funding Program for fiscal year 2000-2001 and 2001-2002. Included in the above appropriation is \$1,650,000 in fiscal year 2000-2001 and \$1,650,000 in fiscal year 2001-2002 for the Research Challenge Trust Fund. Included in the above appropriation is \$2,850,000 in fiscal year 2000-2001 and \$12,850,000 in fiscal year 2001-2002 for the Regional University Excellence Trust Fund. Included in the above appropriation in fiscal year 2001-2002 is \$7,500,000 for the Technology Initiative Trust Fund. Included in the above appropriation is \$20,900,000 in fiscal year 2001-2002 for the Physical Facilities Trust Fund. Included in the above appropriation is \$13,500,000 in fiscal year 2000-2001 and \$9,500,000 in fiscal year 2001-2002 for the Postsecondary Workforce Development Trust Fund. Included in the above appropriation is \$22,350,000 in fiscal year 2000-2001 and \$37,500,000 in fiscal year 2001-2002 for the Student Financial Aid and Advancement Trust Fund. Included in the above appropriation is \$7,000,000 in fiscal year 2000-2001 and \$12,000,000 in fiscal year 2001-2002 for the Adult Education and Literacy Trust Fund. Included in the above appropriation is \$4,250,000 in fiscal year 2001-2002 for the Science and Technology Trust Fund.

Included in the above appropriation for the Research Challenge Trust Fund is \$1,650,000 in fiscal year 2000-2001 for the Enrollment Growth and Retention Program of which \$1,200,000 shall be allocated to the University of Kentucky and \$450,000 to the University of Louisville. Included in the above appropriation for the Research Challenge Trust Fund is \$1,650,000 in fiscal year 2001-2002 for the Enrollment Growth and Retention Program. Notwithstanding KRS 164.7917(1)(b) and (c), the guidelines regarding matching requirements and distribution of funding to the University of Kentucky and the University of Louisville shall be made by the Council on Postsecondary Education.

Included in the above appropriation for the Regional University Excellence Trust Fund is \$2,850,000 in fiscal year 2000-2001 for the Enrollment Growth and Retention Program, which shall be allocated as follows: \$850,000 to Eastern Kentucky University; \$400,000 to Kentucky State University; \$350,000 to Morehead State University; \$200,000 to Murray State University; \$350,000 to Northern Kentucky University; and \$700,000 to Western Kentucky University. Included in the above appropriation for the Regional University Excellence Trust Fund is \$2,850,000 in fiscal year 2001-2002 for the Enrollment Growth and Retention Program, that notwithstanding KRS 164.7919(1)(b) and (c), shall be distributed based on guidelines developed by the Council on Postsecondary Education.

Included in the above appropriation for the Regional University Excellence Trust Fund is \$10,000,000 in fiscal year 2001-2002 for the Action Agenda Program that shall be allocated among the comprehensive universities as prescribed by KRS 164.7919(1)(b). The Council on Postsecondary Education is encouraged to allocate \$4,000,000 of the Action Agenda Program funding to initiatives addressing issues of teacher quality, pre-service training and in-service professional development, as identified by the recommendations of the Teacher Quality Task Force.

Included in the above General Fund appropriation for the Technology Initiative Trust Fund is \$3,800,000 in fiscal year 2001-2002 for debt service for the Equipment Replacement Pool authorized in Part II, \$1,200,000 in fiscal year 2001-2002 for expansion of Communications Network Infrastructure used by postsecondary education and \$1,000,000 in fiscal year 2001-2002 for the Faculty Development Program.

Included in the above appropriation for the Physical Facilities Trust Fund is \$3,018,000 in fiscal year 2001-2002 for debt service to support the Capital Renewal and Maintenance Pool authorized in Part II, \$10,436,000 in fiscal year 2001-2002 for debt service to support Renovation, Replacement and Infrastructure Projects at various institutions as authorized in Part II, and \$7,446,000 in fiscal year 2001-2002 for debt service to support New Construction Projects as authorized in Part II.

Included in the above appropriations for the Student Financial Aid and Advancement Trust Fund is \$22,350,000 in fiscal year 2000-2001 and \$37,500,000 in fiscal year 2001-2002 to meet the funding requirements of Senate Bill 21 as enacted by the 1998 General Assembly. Notwithstanding the provisions of Senate Bill 21 as enacted by the 1998 General Assembly, funding in excess of the scholarship requirements may be used for the Kentucky National Guard Tuition Assistance Program, the Council on Postsecondary Education Contract Spaces Program, the Council on Postsecondary Education Public Communication Campaign, and the Collaborative Center for Literacy Development. Merit scholarship dollars for the Kentucky Educational Excellence Scholarship (KEES) program will be made available to all students who qualify in accordance with the provisions of Senate Bill 21 as enacted by the 1998 General Assembly as the highest priority use of these funds.

Included in the above appropriations for the Postsecondary Workforce Development Trust Fund is \$3,500,000 in fiscal year 2000-2001 for the Enrollment Growth and Retention Program to be allocated to the Kentucky Community and Technical College System. Included in the above appropriations for the Postsecondary Workforce Development Trust Fund is \$3,500,000 in fiscal year 2001-2002 for the Enrollment Growth and Retention Program that shall be distributed to the Kentucky Community and Technical College System based on guidelines developed by the Council on Postsecondary Education. Included in the above appropriations for the Postsecondary Workforce Development Trust Fund is \$6,000,000 in fiscal year 2000-2001 and \$6,000,000 in fiscal year 2001-2002 for the Workforce Training Program. Funding for the Workforce Training Program shall be used for worker training programs on a nonrecurring basis and shall not be used to establish permanent Kentucky Community and Technical College System (KCTCS) program offerings. The Council on Postsecondary Education is encouraged to allocate up to \$2,000,000 each year of the Workforce Training Program appropriations for high-tech training consistent with the proposed Knowledge Based Economy Initiative. Included in the above appropriations for the Postsecondary Workforce Development Trust Fund is \$4,000,000 in fiscal year 2000-2001 to continue implementation of the administrative information software systems necessary for KCTCS to function as an institution in the Kentucky system of postsecondary education.

Appropriations to the Science and Technology Trust Fund are provided to implement the recommendations included in the Kentucky Science and Technology Strategy developed by the Kentucky Science and Technology Corporation for which responsibility is assigned to the Council on Postsecondary Education. Included in the above appropriation for the Science and Technology Trust Fund is \$3,000,000 in fiscal year 2001-2002 to support advanced scientific research at all the universities to be allocated by the Council on Postsecondary Education. Included in the above appropriation for the Science and Technology Trust Fund is \$750,000 in fiscal year 2001-2002 for technology transfer of research into marketable products. Included in the above appropriation for the Science and Technology Trust Fund is \$500,000 in fiscal year 2001-2002 for the establishment of regional postsecondary-based corporations to help rural industries access new markets.

Included in the above appropriation for the Science and Technology Trust Fund is \$250,000 in fiscal year 2000-2001 that is designated to be used to conduct an entrepreneurial audit, which will be used to develop the Knowledge-Based Economy Initiative embodied in House Bill 572 as considered by the 2000 Regular Session of the General Assembly. Included in the above appropriation for the Science and Technology Trust Fund is \$1,000,000 in fiscal year 2000-2001 that is designated to be used to support the rural innovation fund that is part of the Knowledge-Based Economy Initiative.

Included in the above appropriations for the Adult Education and Literacy Trust Fund is \$2,000,000 in fiscal year 2000-2001 and \$2,000,000 in fiscal year 2001-2002 to support county and regional strategies, statewide initiatives, and research and development activities. Included in the above appropriations for the Adult Education and Literacy Trust Fund is \$5,000,000 in fiscal year 2000-2001 and \$10,000,000 in fiscal year 2001-2002 for additional services as determined by the statewide strategic agenda to be developed by the Council on Postsecondary Education in collaboration with the Department for Adult Education and Literacy. Funding in the Adult Education and Literacy Trust Fund shall be used to fund the \$250 per semester tuition discount scholarships for eligible students as provided in proposed legislation. Included in the above appropriations for the Adult Education and Literacy Trust Fund is \$225,000 in fiscal year 2000-2001 and \$232,000 in fiscal year 2001-2002 for new staff positions in the Council on Postsecondary Education to fulfill responsibilities assigned in proposed legislation.

#### 57. KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

	2000-01	2001-02
General Fund	49,100,000	49,379,500
Restricted Funds	36,565,300	46,507,900
Federal Funds	1,100,000	1,200,000
Total	86,765,300	97,087,400

Included in the above Restricted Funds appropriation is \$1,983,300 in fiscal year 2000-2001 and \$2,022,500 in fiscal year 2000-2002 for the Teacher's Scholarship Program. Included in the above Restricted Funds appropriation is \$1,000,000 each fiscal year for the Kentucky Higher Education Assistance Authority's Work Study Program.

Included in the above General Fund appropriation is \$14,304,000 in fiscal year 2000-2001 and \$14,400,000 in fiscal year 2001-2002 for the Kentucky Tuition Grant program.

Included in the above General Fund appropriation is \$1,420,000 in fiscal year 2000-2001 and \$1,379,500 in fiscal year 2001-2002 for the Osteopathic Medicine Scholarship. Notwithstanding KRS 164.7891, scholarships will be computed in both years based on the average public school tuition cost.

Included in the above Restricted Funds appropriation is \$696,000 in fiscal year 2000-2001 and \$721,200 in fiscal year 2001-2002 for administrative costs associated with the Kentucky Educational Excellence Scholarship.

The Kentucky Educational Excellence Scholarship (KEES) program is appropriated \$16,193,500 in fiscal year 2000-2001 and \$24,556,900 in fiscal year 2001-2002 from Restricted Funds. In the 2000-2002 biennium, funds from the Merit Scholarship Trust Fund shall also be used for other programs. The Secretary of Finance shall assure, however, that the KEES program will be made available to all students who qualify in accordance with the provisions of Senate Bill 21 as enacted by the 1998 Regular Session of the General Assembly as a highest priority use of the funds. In the event that the actual dollars realized are insufficient to fund all of the programs funded through the Merit Scholarship Fund, the Secretary shall determine how the funds shall be allocated among the remaining programs after the KEES obligation has been met with the second highest priority accorded to full funding of the Contract Spaces Program in the Council on Postsecondary Education.

Included in the above Restricted Funds appropriation is \$1,736,000 in fiscal year 2000-2001 and \$1,972,900 in fiscal year 2001-2002 for the National Guard Tuition program. These funds are derived from the Merit Scholarship program.

Included in the above General Fund appropriation is \$33,376,000 in fiscal year 2000-2001 and \$33,600,000 in fiscal year 2001-2002 for the College Access Program.

Nothing in the foregoing shall be construed to limit the Authority's capability to use these funds to match Federal Funds, make grant awards, or promulgate administrative regulations that conform to requirements of federal laws and regulations for full participation in federally funded student financial assistance programs.

The General Fund appropriation shall be used solely for the purpose of making awards to students.

Any General Fund appropriation to the Kentucky Higher Education Assistance Authority that is unexpended in fiscal years 1999-2000 or 2000-2001 shall not lapse and shall be carried forward into the next fiscal year, notwithstanding KRS 45.229.

Included in the above Restricted Funds appropriation is \$906,000 in fiscal year 2001-2002 for debt service for the previously authorized new Kentucky Higher Education Assistance Authority building.

#### 58. EASTERN KENTUCKY UNIVERSITY

	2000-01	2001-02
General Fund	67,392,100	72,435,200
Restricted Funds	87,345,700	91,149,300
Federal Funds	32,194,100	33,349,800
Total	186,931,900	196,934,300

Included in the above General Fund appropriation is \$3,427,800 in fiscal year 2000-2001 and \$4,325,200 in fiscal year 2001-2002 for debt service for previously issued bonds.

#### 59. KENTUCKY STATE UNIVERSITY

	2000-01	2001-02
General Fund	21,864,700	22,717,900
Restricted Funds	17,181,800	18,332,300
Federal Funds	12,527,900	12,828,700
Total	51,574,400	53,878,900

Included in the above General Fund appropriation is \$2,236,500 in fiscal year 2000-2001 and \$2,244,500 in fiscal year 2001-2002 for debt service for previously issued bonds.

#### 60. MOREHEAD STATE UNIVERSITY

2000-01	2001-02
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General Fund	40,326,200	41,030,700
Restricted Funds	39,385,000	41,158,700
Federal Funds	33,664,200	35,973,100
Total	113,375,400	118,162,500

Included in the above General Fund appropriation is \$2,138,500 in fiscal year 2000-2001 and \$884,200 in fiscal year 2001-2002 for debt service for previously issued bonds.

61. MURRAY STATE UNIVERSITY

	2000-01	2001-02
General Fund	47,714,400	50,737,100
Restricted Funds	52,018,600	53,972,400
Federal Funds	7,782,100	8,137,700
Total	107,515,100	112,847,200

Included in the above General Fund appropriation is \$1,163,400 in fiscal year 2000-2001 and \$1,886,300 in fiscal year 2001-2002 for debt service for previously issued bonds.

62. NORTHERN KENTUCKY UNIVERSITY

	2000-01	2001-02
General Fund	39,821,300	44,613,400
Restricted Funds	57,123,800	60,333,300
Federal Funds	6,457,300	6,457,300
Total	103,402,400	111,404,000

Included in the above General Fund appropriation is \$5,033,500 in fiscal year 2000-2001 and \$5,043,000 in fiscal year 2001-2002 for debt service for previously issued bonds.

63. UNIVERSITY OF KENTUCKY

	2000-01	2001-02
General Fund	307,830,100	322,210,600
Restricted Funds	764,923,800	786,522,500
Federal Funds	90,943,600	92,677,100
Total	1,163,697,500	1,201,410,200

Included in the above General Fund appropriation is \$11,242,200 in fiscal year 2000-2001 and \$11,285,500 in fiscal year 2001-2002 for debt service for previously issued bonds.

Included in the above General Fund appropriation is \$7,832,000 in fiscal year 2000-2001 and \$8,593,700 in fiscal year 2001-2002 to support the operations of the Lexington Community College.

Included in the above Restricted Funds appropriation is \$12,458,700 in fiscal year 2000-2001 and \$12,944,800 in fiscal year 2001-2002 to support the operations of the Lexington Community College.

Included in the above Federal Funds appropriation is \$4,281,800 in fiscal year 2000-2001 and \$4,297,300 in fiscal year 2001-2002 to support the operations of the Lexington Community College.

Included in the above General Fund appropriation is \$300,000 in each fiscal year for the Engineering Education Enhancement Program to be used by the professional engineering school in acquiring needed academic equipment, developing and implementing programs to attract or retain outstanding faculty, and developing programs to assist research activities by faculty. The General Fund appropriation related to Engineering Education Enhancement is contingent upon the University raising and committing to eligible engineering school initiatives \$2 in nonstate funds for each \$1 in state General Fund appropriation. Eligible nonstate funds must be raised after July 1,

2000. Allotment of this appropriation is contingent upon certification by the Council on Postsecondary Education that necessary conditions have been met.

64. UNIVERSITY OF LOUISVILLE

	2000-01	2001-02
General Fund	172,153,200	179,478,800
Restricted Funds	265,936,700	270,892,800
Federal Funds	28,166,200	28,842,100
Total	466,256,100	479,213,700

Included in the above General Fund appropriation is \$11,316,600 in fiscal year 2000-2001 and \$11,331,500 in fiscal year 2001-2002 for debt service for previously issued bonds. Also included in the above General Fund appropriation is \$16,540,200 in fiscal year 2000-2001 and \$17,052,900 in fiscal year 2001-2002 to fulfill the Commonwealth's contractual obligation relating to indigent care furnished via the Quality and Charity Care Trust Agreement.

The General Fund appropriation related to the Quality and Charity Care Trust Agreement in the first year of the biennium shall continue into the second year for this purpose, notwithstanding KRS 45.229. Any unused portion of the General Fund appropriation relating to the Quality and Charity Care Trust Agreement shall lapse to the credit of the General Fund at the end of fiscal year 2001-2002.

Included in the above General Fund appropriation is \$300,000 in each fiscal year for the Engineering Education Enhancement Program to be used by the professional engineering school in acquiring needed academic equipment, developing and implementing programs to attract or retain outstanding faculty, and developing programs to assist research activities by faculty. The General Fund appropriation related to Engineering Education Enhancement is contingent upon the University raising and committing to eligible engineering school initiatives \$2 in nonstate funds for each \$1 in state General Fund appropriation. Eligible nonstate funds must be raised after July 1, 2000. Allotment of this appropriation is contingent upon certification by the Council on Postsecondary Education that necessary conditions have been met.

65. WESTERN KENTUCKY UNIVERSITY

	2000-01	2001-02
General Fund	64,328,400	67,701,700
Restricted Funds	74,472,800	81,219,000
Federal Funds	26,191,200	31,992,000
Total	164,992,400	180,912,700

Included in the above General Fund appropriation is \$3,944,100 in fiscal year 2000-2001 and \$2,592,600 in fiscal year 2001-2002 for debt service for previously issued bonds.

66. KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

	2000-01	2001-02
General Fund	170,101,400	184,748,000
Restricted Funds	103,788,300	109,093,600
Federal Funds	67,872,800	69,501,700
Total	341,762,500	363,343,300

Included in the above General Fund appropriation is \$10,678,100 in fiscal year 2000-2001 and \$10,712,900 in fiscal year 2001-2002 for debt service for previously issued bonds.

TOTAL - POSTSECONDARY EDUCATION

	2000-01	2001-02
General Fund	1,052,805,600	1,159,611,300

Restricted Funds	1,502,527,700	1,564,561,900
Federal Funds	307,999,400	322,059,500
TOTAL	2,863,332,700	3,046,232,700

## M. PUBLIC PROTECTION AND REGULATION CABINET

## Budget Units

## 67. BOARD OF CLAIMS/CRIME VICTIMS' COMPENSATION

	2000-01	2001-02
General Fund	692,500	622,700
Restricted Funds	2,111,800	2,097,100
Federal Funds	400,000	425,900
Total	3,204,300	3,145,700

## 68. ALCOHOLIC BEVERAGE CONTROL

	1999-00	2000-01	2001-02
General Fund		1,447,700	1,441,800
Restricted Funds	57,200	4,542,900	4,609,400
Federal Funds		532,900	558,400
Total	57,200	6,523,500	6,609,600

The Department shall receive funds from the Department of Agriculture and cooperate with the Department of Agriculture in order to implement laws relating to the sale and use of tobacco products, pursuant to KRS 438.330.

## 69. FINANCIAL INSTITUTIONS

	2000-01	2001-02
Restricted Funds	8,841,600	9,075,400

Included in the above appropriation is a transfer of \$900,000 in each fiscal year to the General Fund, notwithstanding KRS 287.485.

## 70. KENTUCKY RACING COMMISSION

	2000-01	2001-02
General Fund	389,500	422,800
Restricted Funds	14,504,100	14,147,200
Total	14,893,600	14,570,000

## 71. HOUSING, BUILDINGS AND CONSTRUCTION

	2000-01	2001-02
General Fund	3,631,100	3,804,000
Restricted Funds	31,719,500	32,096,500
Total	35,350,600	35,900,500

Under the provisions of the Firefighters Foundation Program Fund, an eligible local unit of government shall be entitled to receive a supplement to each qualified firefighter's annual base salary from the Firefighters Foundation Program Fund, to be paid to each firefighter in addition to his or her regular salary as prescribed by KRS 95A.250. The supplemental payments per qualified professional firefighter shall increase to \$3,100 in fiscal year 2000-2001, which is continued in fiscal year 2001-2002. Notwithstanding KRS 136.392, the power of the Secretary of the Revenue Cabinet to adjust the insurance surcharge rate is suspended. Notwithstanding KRS 42.190 and 95A.220(2), all funds remaining at the end of fiscal year 1999-2000 and fiscal year 2000-2001 in accounts established pursuant to KRS 95A.220(1) and 95A.262 shall not lapse.



## 72. INSURANCE

## a. General Operations

	2000-01	2001-02
Restricted Funds	16,543,200	17,760,300

## b. Health Purchasing Alliance

	2000-01	2001-02
Restricted Funds	377,500	377,400

TOTAL - INSURANCE	16,920,700	18,137,700
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## 73. MINES AND MINERALS

	2000-01	2001-02
General Fund	9,762,000	9,913,100
Restricted Funds	1,741,500	1,919,000
Federal Funds	589,500	589,200
Total	12,093,000	12,421,300

Notwithstanding KRS 353.590, the following fee shall be charged: oil gas permit transfer - \$25.

Notwithstanding KRS 342.122, the Kentucky Workers' Compensation Funding Commission will finance a portion of the Mines and Minerals budget through Special Fund assessments. Funds in the amounts of \$793,600 in fiscal year 2000-2001 and \$854,000 in fiscal year 2001-2002 shall be transferred to Mines and Minerals.

## 74. PUBLIC ADVOCACY

	1999-00	2000-01	2001-02
General Fund	745,500	22,380,000	24,821,100
Restricted Funds		2,984,100	2,972,600
Federal Funds		908,400	953,800
Total	745,500	26,272,500	28,747,500

## 75. PUBLIC SERVICE COMMISSION

	2000-01	2001-02
General Fund	10,636,700	11,009,700
Restricted Funds	24,000	24,000
Federal Funds	215,500	225,500
Total	10,876,200	11,259,200

Included in the above General Fund appropriation is \$589,000 in each fiscal year for debt service on bonds for the new office building authorized by the 1996 General Assembly.

Any General Fund appropriation to the Public Service Commission that is unexpended in fiscal years 1999-2000 or 2000-2001 shall not lapse and shall be carried forward into the next fiscal year, notwithstanding KRS 45.229.

## 76. SECRETARY

## a. General Operations

	2000-01	2001-02
Restricted Funds	2,020,000	2,087,700

## b. Petroleum Storage Tank Environmental Assurance Fund

	2000-01	2001-02
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Restricted Funds	42,719,000	44,114,800
<b>TOTAL - SECRETARY</b>	<b>44,739,000</b>	<b>46,202,500</b>

## 77. BOARD OF TAX APPEALS

	2000-01	2001-02
General Fund	459,400	468,300

## 78. CHARITABLE GAMING

	2000-01	2001-02
Restricted Funds	3,229,700	3,307,900

**TOTAL - PUBLIC PROTECTION AND REGULATION CABINET**

	1999-00	2000-01	2001-02
General Fund	745,500	49,398,900	52,503,500
Restricted Funds	57,200	131,358,900	134,589,300
Federal Funds		2,646,300	2,752,800
<b>TOTAL</b>	<b>802,700</b>	<b>183,404,100</b>	<b>189,845,600</b>

**N. REVENUE**

## Budget Units

## 79. REVENUE CABINET

	2000-01	2001-02
General Fund	63,789,700	67,177,200
Restricted Funds	3,800,000	3,581,500
Road Fund	1,385,000	1,418,000
<b>Total</b>	<b>68,974,700</b>	<b>72,176,700</b>

Notwithstanding KRS 136.392, the insurance surcharge rate shall be calculated at a rate to provide sufficient funds in the 2000-2002 fiscal biennium for the Firefighters Foundation Program Fund and the Kentucky Law Enforcement Foundation Program Fund, including the administration of training programs, pay supplements prescribed by statute, and debt service for the respective program funds specified in KRS 15.410 to 15.510, KRS 42.190, KRS 95A.220, and KRS 95A.262 in fiscal year 2000-2001 and fiscal year 2001-2002. The calculation of sufficient funds for the above-named programs shall include any Restricted Funds carried forward from fiscal years 2000-2001 and 2001-2002 provided by the General Assembly in this Act.

The above Road Fund appropriation represents the cost of the Road Fund Compliance and Motor Vehicle Property Tax programs within the Revenue Cabinet and is to be used exclusively for that purpose.

Notwithstanding the provisions of KRS 134.400, the administration of the Delinquent Tax Fund is in the Department of Property Valuation. Proceeds shall be deposited to this account except that the first \$100,000 shall be deposited exclusively to the General Fund. Also included in the Revenue Cabinet's Restricted Funds appropriation is \$90,000 in fiscal year 2000-2001 and \$290,000 in fiscal year 2001-2002 from the accumulated balance in the Delinquent Tax Fund account for the administrative activities of the Revenue Cabinet.

## 80. PROPERTY VALUATION ADMINISTRATORS

	2000-01	2001-02
General Fund	25,048,200	26,368,800
Restricted Funds	3,240,500	3,271,900
<b>Total</b>	<b>28,288,700</b>	<b>29,640,700</b>

Notwithstanding the provisions of KRS 18A.110 to 18A.355 and KRS 61.510 to 61.705, included in the above Restricted Funds appropriation are funds to allow Property Valuation Administrators and their Deputies to receive

lump-sum payments for accrued annual leave and compensatory time when separated from employment because of termination by the employer, resignation, retirement, or death.

**TOTAL - REVENUE CABINET**

	2000-01	2001-02
General Fund	88,837,900	93,546,000
Restricted Funds	7,040,500	6,853,400
Road Fund	1,385,000	1,418,000
<b>TOTAL</b>	<b>97,263,400</b>	<b>101,817,400</b>

**O. TOURISM DEVELOPMENT CABINET**

**Budget Units**

**81. OFFICE OF THE SECRETARY**

	1999-00	2000-01	2001-02
General Fund		1,529,700	1,873,200
Restricted Funds	3,800		100,000
<b>Total</b>	<b>3,800</b>	<b>1,529,700</b>	<b>1,973,200</b>

Included in the General Fund appropriation is \$270,000 in each fiscal year for Outdoor Drama Grants.

Included in the above appropriation for fiscal year 2001-2002 is General Fund support totaling \$300,000 and Restricted Fund support totaling \$100,000 for the Artisans Center.

Included in the General Fund appropriation is \$200,000 in each fiscal year to establish and administer a Certified Retirement Community Program.

**82. BREAKS INTERSTATE PARK**

	2000-01	2001-02
General Fund	250,000	250,000

An appropriation up to \$250,000 in each fiscal year is provided contingent upon the Commonwealth of Virginia providing an appropriation which would be matched dollar for dollar up to the maximum amount. Any portion not matched by the Commonwealth of Virginia shall lapse to the General Fund at the close of each fiscal year.

**83. TRAVEL DEVELOPMENT**

	1999-00	2000-01	2001-02
General Fund		7,237,300	7,427,000
Restricted Funds	20,600	4,000	4,000
Federal Funds	34,100		
<b>Total</b>	<b>54,700</b>	<b>7,241,300</b>	<b>7,431,000</b>

Included in the General Fund appropriation is \$2,719,000 in fiscal year 2000-2001 and \$2,784,000 in fiscal year 2001-2002 for the Comprehensive Advertising Contract and \$800,000 in each fiscal year for the Local and Regional Matching Funds Program.

**84. PARKS**

	1999-00	2000-01	2001-02
General Fund		27,303,800	28,486,100
Restricted Funds	1,397,500	48,062,500	49,491,900
<b>Total</b>	<b>1,397,500</b>	<b>75,366,300</b>	<b>77,978,000</b>

Included in the above General Fund appropriation is \$56,000 in fiscal year 2001-2002 for debt service.

Included in the above General Fund appropriation is \$200,000 in fiscal year 2000-2001 for upgrades at White Hall State Historic Site and \$10,000 in fiscal year 2000-2001 to preserve, fence, and advertise the Jenny Wiley burial site.

85. KENTUCKY HORSE PARK

	2000-01	2001-02
General Fund	1,378,000	1,680,700
Restricted Funds	4,917,000	4,960,100
Total	6,295,000	6,640,800

Included in the above General Fund appropriation is \$43,000 in fiscal year 2001-2002 for debt service.

Included in the above General Fund appropriation is \$12,000 each fiscal year to support settlement on lease agreement.

86. KENTUCKY STATE FAIR BOARD

	2000-01	2001-02
General Fund	407,000	407,000
Restricted Funds	27,952,200	28,972,500
Total	28,359,200	29,379,500

Included in the Restricted Funds appropriation is \$371,000 in each year of the biennium for debt service for Project 55.

Included in the General Fund appropriation is \$407,000 in each year of the biennium for the North American International Livestock Exposition.

87. FISH AND WILDLIFE RESOURCES

	2000-01	2001-02
Restricted Funds	25,250,500	26,015,600
Federal Funds	7,000,000	7,000,000
Total	32,250,500	33,015,600

TOTAL-TOURISM DEVELOPMENT CABINET

	1999-00	2000-01	2001-02
General Fund		38,105,800	40,124,000
Restricted Funds	1,421,900	106,186,200	109,544,100
Federal Funds	34,100	7,000,000	7,000,000
TOTAL	1,456,000	151,292,000	156,668,100

P. TRANSPORTATION CABINET

88. TRANSPORTATION CABINET

Budget Units

a. Air Transportation

	2000-01	2001-02
Restricted Funds	5,531,200	5,532,200
Federal Funds	8,286,600	8,286,600
Total	13,817,800	13,818,800

Notwithstanding KRS 183.525(5), the Restricted Fund appropriation above includes operational costs of the program.

b. Revenue Sharing

	2000-01	2001-02
Road Fund	217,866,000	222,637,800

1. Included in the above Road Fund appropriation is \$82,403,500 in fiscal year 2000-2001 and \$84,215,200 in fiscal year 2001-2002 for the County Road Aid program in accordance with KRS 177.320, 179.410, 179.415, and 179.440. Notwithstanding KRS 177.320(2), the above amount has been reduced by \$38,000 in fiscal year 2000-2001 and \$38,000 in fiscal year 2001-2002 which has been appropriated to the Highways appropriation unit for the support of the Kentucky Transportation Center.

2. Included in the above Road Fund appropriation is \$99,965,000 in fiscal year 2000-2001 and \$102,162,800 in fiscal year 2001-2002 for the Rural Secondary program in accordance with KRS 177.320, 177.330, 177.340, 177.350, and 177.360. Notwithstanding KRS 177.320(1), the above amount has been reduced by \$46,000 in fiscal year 2000-2001 and \$46,000 in fiscal year 2001-2002 which has been appropriated to the Highways appropriation unit for the support of the Kentucky Transportation Center.

3. Included in the above Road Fund appropriation is \$34,672,500 in fiscal year 2000-2001 and \$35,434,800 in fiscal year 2001-2002 for the Municipal Road Aid program in accordance with KRS 177.365 to 177.369. Notwithstanding KRS 177.365(1), the above amount has been reduced by \$16,000 in fiscal year 2000-2001 and \$16,000 in fiscal year 2001-2002 which has been appropriated to the Highways appropriation unit for the support of the Kentucky Transportation Center.

4. Included in the above Road Fund appropriation is \$825,000 in each fiscal year for the Energy Recovery Road Fund in accordance with KRS 177.977 to 177.981.

c. Rail Transportation

	2000-01	2001-02
General Fund	75,300	78,100

The above General Fund appropriation is for the Kentucky Railroad Commission.

d. Public Transportation

	2000-01	2001-02
General Fund	6,786,100	6,019,100
Restricted Funds	829,600	858,300
Federal Funds	7,740,000	8,044,000
Total	15,355,700	14,921,400

Included in the above General Fund appropriation is \$2,750,000 in fiscal year 2000-2001 and \$3,000,000 in fiscal year 2001-2002 for nonpublic school transportation, and \$820,000 in each fiscal year for the TARC Transportation Tomorrow Study in Jefferson County.

Included in the above General Fund appropriation is \$918,600 in fiscal year 2000-2001 to match Federal Funds for LEXTRAN in Fayette County during fiscal biennium 2000-2002. The sum of \$266,100 is provided in fiscal year 2000-2001. Notwithstanding KRS 45.229, \$652,500 of this appropriation shall be continued into fiscal year 2001-2002 for the above purpose.

e. Highways

	2000-01	2001-02
Restricted Funds	61,224,000	62,494,400
Federal Funds	486,500,000	495,300,000
Road Fund	614,124,100	628,911,200
Total	1,161,848,100	1,186,705,600

1. Included in the above Road Fund appropriation is \$268,077,400 in fiscal year 2000-2001 and \$274,385,900 in fiscal year 2001-2002 for the State Funded Construction Program.

Included in the State Funded Construction Program is \$64,500,000 in fiscal year 2000-2001 and \$66,000,000 in fiscal year 2001-2002 from the Road Fund for the State Resurfacing Program.

Included in the State Funded Construction Program is \$500,000 in each fiscal year from the Road Fund for the Specialized Contracts account.

Included in the State Funded Construction Program is \$167,077,400 in fiscal year 2000-2001 and \$170,885,900 in fiscal year 2001-2002 from the Road Fund for state construction projects in the 2000-2002 Biennial Highway Construction Program.

2. Projects in the enacted 1998-2000 Biennial Highway Construction Plan are so listed in order to continue their current authorization into the 2000-2002 biennium, and are reauthorized in this Act.

Included in the State Funded Construction Program is \$36,000,000 in fiscal year 2000-2001 and \$37,000,000 in fiscal year 2001-2002 for the Highway Construction Contingency Account.

3. Notwithstanding KRS 177.320(4), included in the above Road Fund appropriation is \$290,000 in fiscal year 2000-2001 and \$290,000 in fiscal year 2001-2002 for the Kentucky Transportation Center.

4. Notwithstanding KRS 48.710, Restricted Funds are appropriated in the amount of \$1,500,000 in each fiscal year from the sale of surplus equipment to purchase new highway equipment.

f. Vehicle Regulation

	2000-01	2001-02
Restricted Funds	2,925,000	2,975,600
Federal Funds	2,225,000	2,225,000
Road Fund	29,193,200	30,009,100
Total	34,343,200	35,209,700

g. Debt Service

	2000-01	2001-02
Road Fund	167,275,700	169,854,300

1. Included in the above Road Fund appropriation is \$620,600 in fiscal year 2000-2001 and \$620,600 in fiscal year 2001-2002 for toll road lease rental payments.

2. Included in the above Road Fund appropriation is \$36,066,600 in fiscal year 2000-2001 and \$12,350,400 in fiscal year 2001-2002 for Resource Recovery Road lease rental payments. The Secretary of the Transportation Cabinet shall use Road Fund resources to meet the lease rental payments to the Kentucky Turnpike Authority for Resource Recovery Road projects in the amount certified by the Transportation Cabinet, pursuant to KRS 143.090. However, if Road Fund resources are not sufficient to meet lease rental payments, the additional amount required to meet the obligation shall be transferred from the proceeds of the tax levied on the severance or processing of coal by KRS 143.020.

3. Included in the above Road Fund appropriation is \$130,588,500 in fiscal year 2000-2001 and \$156,883,300 in fiscal year 2001-2002 for Economic Development Road lease rental payments relating to projects financed by Economic Development Road Revenue Bonds previously issued by the Turnpike Authority of Kentucky.

4. Any moneys not required to meet lease-rental payments or to meet the administrative costs of the Turnpike Authority shall be transferred to the State Construction account.

5. Notwithstanding KRS 175.505, no portion of the revenues to the state Road Fund provided by the adjustments in KRS 138.220(2), excluding KRS 177.320 and 177.365, shall accrue to the Debt Payment Acceleration Fund account during the 2000-2002 biennium.

h. General Administration and Support

	2000-01	2001-02
Restricted Funds	23,953,400	22,819,200

Road Fund	66,261,800	71,342,200
Total	90,215,200	94,161,400

Included in the above Road Fund appropriation is \$6,852,000 in fiscal year 2000-2001 and \$9,691,000 in fiscal year 2001-2002 for debt service for previously authorized bonds to construct a new Transportation Cabinet Office Building and parking structure.

i. Judgments

Road Fund resources required to pay judgments shall be transferred from the State Construction Account at the time when actual payments must be disbursed from the State Treasury.

Notwithstanding KRS 45.229, any funds not expended by June 30, 2001, shall not lapse and shall carry forward to fiscal year 2001-2002 and remain available throughout the 2000-2002 biennium.

TOTAL - TRANSPORTATION CABINET

	2000-01	2001-02
General Fund	6,861,400	6,097,200
Restricted Funds	94,463,200	94,679,700
Federal Funds	504,751,600	513,855,600
Road Fund	1,094,720,800	1,122,754,600
TOTAL	1,700,797,000	1,737,387,100

Q. WORKFORCE DEVELOPMENT CABINET

Budget Units

89. GENERAL ADMINISTRATION AND PROGRAM SUPPORT

	1999-00	2000-01	2001-02
General Fund		2,668,700	2,694,700
Restricted Funds	400,000	6,102,300	6,327,700
Federal Funds		614,000	288,200
Total	400,000	9,385,000	9,310,600

Included in the above General Fund appropriation is \$700,000 in each fiscal year for operation of the School-to-Careers system. The Cabinet will have sole responsibility for the initiative, notwithstanding any provisions of KRS 151B.250, KRS 151B.255, KRS 158.760 and KRS 158.7603 to the contrary.

90. STATE BOARD FOR ADULT AND TECHNICAL EDUCATION

	2000-01	2001-02
General Fund	31,200	32,000

91. TECHNICAL EDUCATION

	2000-01	2001-02
General Fund	20,690,100	21,925,200
Restricted Funds	17,647,700	18,346,300
Federal Funds	10,338,400	10,369,200
Total	48,676,200	50,640,700

Included in the above General Fund appropriation is \$1,807,500 in each fiscal year for equipment procurement.

Included in the above is \$70,000 each fiscal year for a Secondary School Technology Program in Morgan County. Also included in the above is \$70,000 each fiscal year for a Middle School Technology Program in Montgomery County.

## 92. ADULT EDUCATION AND LITERACY

	2000-01	2001-02
General Fund	11,005,200	11,360,300
Restricted Funds	83,300	74,300
Federal Funds	11,096,900	10,520,400
Total	22,185,400	21,955,000

## 93. VOCATIONAL REHABILITATION

	1999-00	2000-01	2001-02
General Fund		10,729,800	11,160,100
Restricted Funds	500,000	2,847,200	3,116,900
Federal Funds		38,341,700	39,242,200
Total	500,000	51,918,700	53,519,200

## 94. DEPARTMENT FOR THE BLIND

	2000-01	2001-02
General Fund	2,069,600	1,739,100
Restricted Funds	1,475,700	1,436,200
Federal Funds	7,231,900	7,502,400
Total	10,777,200	10,677,700

## 95. STATE BOARD FOR PROPRIETARY EDUCATION

	2000-01	2001-02
Restricted Funds	116,100	119,400

## 96. TEACHERS' RETIREMENT-EMPLOYER'S CONTRIBUTION

	2000-01	2001-02
General Fund	4,639,200	4,750,600

The above General Fund appropriation includes the employer match for salaries paid to Workforce Development Cabinet employees who participate in the Teachers' Retirement System. This match shall be forwarded to the Teachers' Retirement System pursuant to KRS 161.560.

## 97. TRAINING AND REEMPLOYMENT

	1999-00	2000-01	2001-02
Restricted Funds	50,000	67,500	51,500
Federal Funds		62,768,200	58,762,000
Total	50,000	62,835,700	58,813,500

## 98. EMPLOYMENT SERVICES

	2000-01	2001-02
General Fund	613,500	628,200
Restricted Funds	14,544,700	11,832,000
Federal Funds	304,227,200	304,472,900
Total	319,385,400	316,933,100



Notwithstanding KRS 341.835, funds from the Unemployment Insurance Penalty and Interest Account in the Unemployment Compensation Administration Fund shall be used during each fiscal year by the Department for Employment Services to operate employment and training programs.

There is appropriated out of the Federal Funds made available to Kentucky under Section 903 of the Social Security Act, as amended, the sum of \$1,000,000 during the 2000-2002 biennium to be used under the direction of the Department for Employment Services for the purpose of administration of its unemployment compensation law and public employment offices.

#### TOTAL - WORKFORCE DEVELOPMENT CABINET

	1999-00	2000-01	2001-02
General Fund		52,447,300	54,290,200
Restricted Funds	950,000	42,884,500	41,304,300
Federal Funds		434,618,300	431,157,300
TOTAL	950,000	529,950,100	526,751,800

#### PART II

#### CAPITAL PROJECTS BUDGET

Moneys in the Capital Construction Fund are appropriated for the following capital projects subject to the conditions and procedures in this Act. Items listed without appropriated amounts are previously authorized for which no additional amount is required. These items are listed in order to continue their current authorization into the 2000-2002 biennium. Unless otherwise specified, reauthorized projects shall conform to the original authorization enacted by the General Assembly.

#### A. GOVERNMENT OPERATIONS

Budget Unit	2000-01	2001-02
1. Treasury Department		
a. Laser Check Printers - Lease		
Capital Construction Surplus	248,000	248,000
2. Attorney General <sup>1</sup>		
3. Unified Prosecutorial System		
a. Jefferson County - Lease		
4. Governor's Office for Technology		

For the major equipment purchases displayed in this section as funded from Restricted Funds, it is anticipated that these funds shall be transferred from the Operating Budget as funds are available and needed.

a. Statewide Microwave Network Maintenance	
Bond Funds	2,500,000
b. Unified Criminal Justice System	
Bond Funds	4,585,000

<sup>1</sup> **Legislative Research Commission Note (5/15/2000).** In the introduced, General Assembly, and Free Conference Committee Report versions of House Bill 502, a line reading "a. Capital Complex East Franklin County - Lease" appeared after this line, but the quoted text did not print in the enrolled version of the bill sent to the Governor although that text in fact remained in the electronic document that was being printed. It is clear from the corresponding text of the executive branch budget memorandum (2000 Ky. Acts ch. 525 at 2059) that this item in the Attorney General appropriation unit "authorize[d] the lease of real property in Franklin County with a cost that exceeds \$200,000 per year." KRS 48.300(3) provides that "[i]n administering the provisions of a branch budget bill, a branch head shall interpret provisions of the branch budget bill in conformity with the budget memorandum."

c.	Maintaining the Kentucky Spatial Data Infrastructure		
	Bond Funds	700,000	
	Federal Funds	649,600	
	Other Funds	100,000	
	Total	1,449,600	
d.	Kentucky Information Highway Upgrade/Expansion		
	Restricted Funds	3,500,000	
e.	Enterprise Server Complex Upgrade		
	Restricted Funds	2,985,000	
f.	Disk Storage Upgrade		
	Restricted Funds	887,000	
g.	Enterprise Server Complex Upgrade		
	Restricted Funds	1,755,000	
h.	Tape Storage Upgrade		
	Restricted Funds	645,000	
i.	Disk Storage Upgrade		
	Restricted Funds	887,000	
j.	Enterprise High-Speed Printer Replacement		
	Restricted Funds	645,000	
k.	Tape Storage Upgrade		
	Restricted Funds	645,000	
l.	Franklin County - Lease (100 Fair Oaks)		
5.	Department of Agriculture		
a.	Large Truck Scale Unit		
	Restricted Funds (\$210,000 - FY 1999-2000)		
b.	Franklin County - Department of Agriculture Building Lease		
6.	Department of Military Affairs		
a.	Environmental Pool		
	Bond Funds	174,000	
	Federal Funds	635,000	
	Total	809,000	
b.	Maintenance Pool - Bluegrass Station		
	Restricted Funds	200,000	700,000
c.	Maintenance Pool		
	Investment Income	950,000	1,000,000
d.	Aircraft Maintenance Pool		
	Investment Income	400,000	400,000

e.	Runway/Parallel Taxiway Pavement/Apron Rehabilitation	
	Federal Funds	1,265,000
	Capital Construction Surplus	141,000
	Total	1,406,000
7.	Governor's Office of Veterans' Affairs	
a.	Eastern Kentucky Veterans' Center - Additional	
	Bond Funds	328,000
	Federal Funds	1,056,000
	Total	1,384,000
b.	Western Kentucky Veterans' Center - Additional	
	Bond Funds	229,000
	Federal Funds	502,000
	Total	731,000
c.	Western Kentucky Veterans' Cemetery	
	Federal Funds	2,725,000
	Capital Construction Surplus	100,000
	Total	2,825,000
8.	Local Government	
a.	Renaissance Kentucky	
	Bond Funds	6,000,000
b.	Grant County Animal Shelter	
	General Fund	50,000
c.	City of Pleasureville Fire Department	
	General Fund	12,000
d.	New Liberty Fire Department	
	General Fund	10,000
e.	Owen County Volunteer Fire Department	
	General Fund	10,000
f.	City of Ravenna Fire Department Building	
	General Fund	20,000
g.	City of Frankfort Log Cabin Restoration Project	
	General Fund	50,000
h.	Graves County DAV #106 Building Renovation and Property Acquisition	
	General Fund	25,000
i.	Corbin Regional Animal Shelter	
	General Fund	100,000
j.	City of Irvine Fire Department Aerial Truck	
	General Fund	65,000

The above General Fund grant appropriations are non-recurring.

9. Kentucky Retirement Systems

- a. Franklin County - Lease (Perimeter Park West Number One)
  - b. Franklin County - Lease ( Perimeter Park West Number Two)
  - c. Information Technology System Upgrade
- |                  |         |
|------------------|---------|
| Restricted Funds | 250,000 |
|------------------|---------|

B. CABINET FOR ECONOMIC DEVELOPMENT

Budget Unit	2000-01	2001-02
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1. Economic Development Projects

- a. Economic Development Bond Pool
 

Reauthorization (\$32,203,000 - Bond Funds)	
Bond Funds - Additional	4,000,000

Included in the above appropriation are the following projects: Grayson Lake-Golf Course Development, \$4,500,000; Southeast Kentucky Center for Business Technology and Innovation, Madison County, \$4,000,000; South Central Kentucky Technology Center, Warren County, \$4,000,000; Northeast Kentucky Regional Industrial Park Authority, East Park Industrial, Technology and Innovation Training Center, Boyd County, \$2,000,000; Tourism Development Loan Program, \$1,500,000; City of Prestonsburg sidewalks and mountain top project improvements, \$1,000,000; Morgan County regional water lines, \$1,000,000; and Blue Licks Lodge-Food Service expansions and Daniel Boone Cabin Preservation, \$750,000.

- b. Economic Opportunity Zones
 

Bond Funds	2,000,000
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- c. High Tech Construction Pool
 

Restricted Funds	20,000,000
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- d. High Tech Investment Pool
 

Restricted Funds	20,000,000
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Notwithstanding KRS 154.12-100(6), the amounts shown above reflect project amounts.

C. EDUCATION

Budget Unit	2000-01	2001-02
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1. Department of Education

- a. Kentucky School for the Deaf Fire Safety/Dorm Renovation
 

Bond Funds	1,250,000
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- b. Kentucky School for the Deaf Steam Line Replacement
 

Emergency Repair, Maintenance and	
Replacement Funds	1,700,000
- c. Maintenance Pool
 

Investment Income	292,000	785,000
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- d. Kentucky School for the Blind Roofing and Weatherproofing
 

Bond Funds	1,122,000
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- e. Kentucky School for the Deaf Roof Replacements
 

Bond Funds	850,000
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f. Jackson County Area Vocational School

Reauthorization

g. Educational Professional Standards Board System Infrastructure/

Database System

Bond Funds 2,900,000

h. Educational Professional Standards Board System Infrastructure

Bond Funds 2,000,000

#### D. EDUCATION, ARTS, AND HUMANITIES CABINET

Budget Unit	2000-01	2001-02
1. Libraries and Archives		
a. Document Management Digitization System		
Bond Funds	1,188,000	
b. Feasibility Study - New Archives Building		
General Fund	200,000	
2. Kentucky Educational Television		
a. DTV-HDTV Broadcast Transmission		
Bond Funds	12,700,000	
b. NTSC Transmitters		
Bond Funds	2,800,000	
3. Kentucky Center for the Arts		
a. Maintenance Pool		
Investment Income	150,000	150,000
4. Teachers' Retirement System		
a. Imaging System		
Reauthorization (\$700,000 - Restricted Funds)		
5. School Facilities Construction Commission		
Bond Funds	92,000,000	
Reauthorization (\$17,000,000 - Bond Funds)		

#### E. CABINET FOR FAMILIES AND CHILDREN

Budget Unit	2000-01	2001-02
1. Administration Services		
a. Maintenance Pool		
Investment Income	300,000	525,000
b. L & N Building - Elevator Upgrade		
Deferred Maintenance	1,000,000	
c. Owensboro Office Building - HVAC and Interior Renovation		
Deferred Maintenance	1,500,000	
d. Children's Advocacy Centers		

Bond Funds	640,000
e. Disability Determinations Client System Upgrade	
Federal Funds	300,000
f. Various Leases - Eleven Counties	

## F. FINANCE AND ADMINISTRATION CABINET

Budget Unit	2000-01	2001-02
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## 1. General Administration

a. Kentucky Infrastructure Authority - Wastewater Revolving Loan and Grant Fund-A (Wastewater Fund-A1; Water Supply Fund-A2) Reauthorization (\$8,542,000 - Bond Funds)	
Bond Funds - Additional	7,000,000

The Bond Funds appropriated above are the required state match for the federal program. The Federal Funds associated with the program are appropriated in the operating budget to comply with the Federal Cash Management Act.

Included in the above Bond Funds appropriation is the funding required in each fiscal year for the state match necessary to receive Federal Funds for the Rural Communities Hardship Grants program administered by the Natural Resources and Environmental Protection Cabinet.

The Kentucky Infrastructure Authority is authorized to expend the cash balances from loan repayments on deposit at the trustee bank for financial assistance, in the form of low interest loans, to governmental agencies for professional planning and preliminary engineering design work required for eligible Fund A wastewater projects.

b. KIA - Water Resources Development	
Bond Funds	50,000,000

The Kentucky Infrastructure Authority may use funds available in the Infrastructure Revolving Fund to develop a program for construction of water projects. The Kentucky Infrastructure Authority shall establish project prioritization criteria which shall include consideration of whether the applicant has received written notice of a water system deficiency from the Natural Resources and Environmental Cabinet. All water projects to be funded in accordance with the above shall only be expended pursuant to the policies and procedures of the Kentucky Infrastructure Authority.

c. Kentucky Infrastructure Authority - Fund F Loans - Drinking Water Reauthorization (\$5,000,000 - Bond Funds)	
Bond Funds	6,000,000

The Bond Funds appropriated above are the required state match for the federal program. The Federal Funds associated with the program are appropriated in the operating budget to comply with the Federal Cash Management Act.

d. Red Fox Golf Course Reauthorization (\$5,400,000 - Multiple Funds)	
e. Pike County Civic Center Reauthorization (\$12,500,000 - Multiple Funds)	
f. Meade County Waterline Extension Reauthorization (\$2,500,000 - Restricted Funds)	
g. Hindman Sewer Infrastructure Reauthorization (\$3,000,000 - Restricted Funds)	

- h. Midway Wastewater Treatment Plant  
Reauthorization (\$3,500,000 - Restricted Funds)
- i. Richmond Sewer Infrastructure  
Reauthorization (\$4,000,000 - Restricted Funds)
- j. West Louisville Environmental Justice/Air Pollution Project  
Reauthorization (\$300,000 - General Fund)
- k. Estill County Board of Education Project  
Reauthorization (\$75,000 - General Fund)
- l. Kentucky Infrastructure Authority -  
Fund B Waterline/Sewer Grant Program  
Restricted Funds 3,925,000

Notwithstanding KRS 224A.112, the Kentucky Infrastructure Authority is authorized to expend the cash balances from loan repayments on deposit at the trustee bank for financial assistance in the form of grants, totaling \$650,000 to the Green River State Park-Horton Camp Infrastructure, \$75,000 to the Fleming County Water Commission for the Multi-County Water Study, \$50,000 to the Fleming County Fiscal Court for the "201" Sewer Planning Study, \$500,000 for Lewis County water and sewer projects, \$500,000 for Green County water and sewer projects, \$750,000 for the Larue water line extension, \$250,000 for Carroll County water and sewer upgrades, \$50,000 for the Pike County-Taylor Fork water line, \$200,000 to the Southern Madison Water District, \$500,000 to the Henderson County Water District, \$300,000 for the Spurlock and Little Mud Creek water extension, \$25,000 to the City of Wurtland in Greenup County for water projects, \$25,000 to the City of Raceland in Greenup County for water projects, \$25,000 to the City of Worthington in Greenup County for water projects, and \$25,000 to the City of Flatwoods in Greenup County for water projects.

- m. Rural Development Bond Fund  
Bond Funds 25,000,000
- n. New Office Building - Feasibility Study - Alternative Construction
- o. Improvements at Fishtrap Reservoir/Mountain Water District  
Reauthorization/Reallocation (\$1,000,000 - Restricted Funds)

## 2. Department for Administration

For the major equipment purchases displayed in this section as Restricted Funds supported projects, it is anticipated that these funds shall be transferred from the Operating Budget as funds are available and needed.

- a. Two High Speed Inserters  
Restricted Funds 600,000
- b. Bar Code Printing and Sorting Equipment  
Reauthorization (\$390,700 - Restricted Funds)
- c. Network Publishing Equipment  
Restricted Funds 581,000
- d. Franklin County - Lease (Postal Services)
- e. Franklin County - Lease (300 Myrtle Avenue)

## 3. Department for Facilities Management

- a. Kentucky State Capitol Complex -  
Historic Restoration Design Infrastructure  
Bond Funds 19,125,000

b.	Kentucky History Center Area Restoration		
	Bond Funds	4,000,000	
c.	Sprinkler Recall/Replacement		
	Bond Funds	1,500,000	
d.	Statewide Property Acquisition/Demolition Fund		
	Bond Funds	5,000,000	
e.	Elevator/Escalator Modernization - State Buildings		
	Deferred Maintenance	2,000,000	
f.	Federally Mandated CFC Phaseout		
	Deferred Maintenance	1,000,000	
g.	ADA Compliance		
	Deferred Maintenance	1,000,000	
h.	Maintenance Pool - Statewide Deferred		
	Investment Income	1,000,000	
i.	Capital Construction and Equipment Purchase Contingency Fund		
	Investment Income	2,000,000	
j.	Emergency Repair, Maintenance, and Replacement Fund		
	Investment Income	714,000	
k.	Maintenance Pool		
	Investment Income	3,375,000	3,875,000
	Restricted Funds	1,400,000	300,000
	Total	4,775,000	4,175,000
4.	Lottery Corporation		
a.	Contingency on Property		
	Other Funds	2,500,000	
b.	Potential Buyout of On-Line Gaming System		
	Other Funds	18,450,000	
c.	Probability Games Implementation		
	Other Funds	5,643,000	
d.	Instant Ticket Machines		
	Other Funds	2,125,000	
e.	Pull Tab Ticket Vending Machines		
	Other Funds	4,473,000	
f.	Data Processing, Telecommunications and Related Equipment		
	Other Funds	3,750,000	
g.	Upgrade to Distributed Processing Model		
	Other Funds	150,000	



The Kentucky Lottery Corporation may acquire properties related to the consolidation of the Kentucky Lottery's facilities assuming one or more of the properties becomes available for purchase. The purchase price of the properties shall not exceed \$2,500,000 in the aggregate.

#### G. CABINET FOR HEALTH SERVICES

Budget Unit	2000-01	2001-02
1. Department for Mental Health/Mental Retardation Services		
a. New Power Plant - Western State Hospital		
Bond Funds	3,880,000	
b. Boiler Replacement - Central State Hospital		
Bond Funds	2,457,000	
c. Miscellaneous Roof Replacement/Repair Pool		
Bond Funds	500,000	
d. Maintenance Pool		
Investment Income	700,000	1,840,000
e. Water Piping Replacement System - Eastern State Hospital		
Emergency Repair, Maintenance and		
Replacement Fund	850,000	
f. Statewide Chiller Replacement		
Emergency Repair, Maintenance and		
Replacement Fund	839,000	
g. Franklin County - Lease (Fair Oaks Building)		
2. Administrative Support		
a. Statewide Public Health System		
Bond Funds	2,000,000	
b. Children's Health Information System		
Capital Construction Surplus	1,200,000	

#### H. JUSTICE CABINET

Budget Unit	2000-01	2001-02
1. Department of State Police		
a. Maintenance Pool		
Investment Income	200,000	250,000
b. Unified Criminal Justice Information		
Bond Funds	1,402,000	
c. New Ion Coupled Plasma/Mass Spec. Trace Unit		
Capital Construction Surplus	330,000	
d. Facial Recognition Pilot Project - Unified		
Criminal Justice Information System		
Restricted Funds	150,300	
Federal Funds	451,000	

	Total	601,300	
e.	Mugshot Expansion - Sex Offender Registry System		
	Federal Funds	519,000	
f.	LaGrange Communications Tower		
	General Fund	175,000	
g.	Hazard Communications Tower		
	General Fund	200,000	
h.	Forward Looking Infrared (FLIR) Device		
	Federal Funds	154,800	
2.	Department of Juvenile Justice		
a.	Maintenance Pool		
	Investment Income	400,000	500,000
b.	Secure Juvenile Detention Center - Fayette County		
	Bond Funds	6,700,000	
c.	Combined Residential/Detention Facility - Hardin County		
	Bond Funds	11,211,000	
d.	Woodsbend Youth Development Center Education Addition - Morgan County		
	Bond Funds	1,101,000	
e.	Replacement Facility (up to 100 beds) - Jefferson County		
	Bond Funds	10,000,000	
f.	Morehead Youth Development Center Cottage Renovation		
	Restricted Funds	145,000	
	Federal Funds	1,300,000	
	Total	1,445,000	
g.	Mayfield Youth Development Center Education Addition		
	Restricted Funds	110,000	
	Federal Funds	990,000	
	Total	1,100,000	
h.	Owensboro Treatment Center Education Addition		
	Restricted Funds	110,000	
	Federal Funds	990,000	

	Total	1,100,000	
i.	Green River Youth Development Center		
	Education Addition - Butler County		
	Restricted Funds	60,000	
	Federal Funds	540,000	
	Total	600,000	
j.	Secure Juvenile Detention Facility -		
	Boyd County		
	Reauthorization (\$5,357,000 - Bond Funds)		
	Federal Funds - Additional	700,000	
3.	Department of Criminal Justice Training		
a.	Law Enforcement Basic Training Complex		
	Additional Funding		
	Agency Bond Funds	7,000,000	
4.	Department of Corrections		
a.	Maintenance Pool		
	Investment Income	1,400,000	2,000,000
b.	Kentucky State Reformatory - Exterior Stabilization		
	of Administration Building		
	Emergency Repair, Maintenance and		
	Replacement Fund	1,600,000	
c.	Blackburn Correction Complex - Roof Replacement		
	Bond Funds	1,400,000	
d.	New Medium Security Prison/Design/Build - Elliott County		
	Bond Funds	87,408,000	
Funds are appropriated for the design/build method of construction or the conventional construction method for the Elliott County Prison project not to exceed the total Bond Funds appropriation of \$87,408,000.			
Funds are appropriated in the above appropriation to facilitate connecting the prison to the upgraded wastewater treatment plant in the City of Sandy Hook.			
e.	Kentucky State Reformatory - New Gas Fired Boiler Plant		
	Bond Funds	7,000,000	
f.	Kentucky Correctional Institution for Women - Phase II Expansion -		
	Design only		
	Bond Funds	900,000	
g.	Western Kentucky Correctional Complex - 44-Bed Segregation Unit		
	Bond Funds	4,300,000	
h.	Corr/Optical Imaging		
	Restricted Funds	560,000	536,000
i.	Kentucky State Reformatory - Two Transportation Buses		

- |    |   |         |
|----|---|---------|
|    | Restricted Funds  | 620,000 |
| j. | Correctional Industries Warehouse/Office Complex<br>Reauthorization |         |
| k. | Jefferson County - Lease (Probation and Parole)                     |         |

## I. LABOR CABINET

Budget Unit	2000-01	2001-02
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- |    |                                    |  |
|----|------------------------------------|--|
| 1. | General Administration and Support |  |
| a. | Franklin County - Lease            |  |
| 2. | Workers' Claims                    |  |
| a. | Franklin County - Lease            |  |

## J. NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Budget Unit	2000-01	2001-02
-------------	---------	---------

- |    |  |           |           |
|----|--|-----------|-----------|
| 1. | General Administration and Support   |           |           |
| a. | Kentucky Heritage Land Conservation Fund -<br>Reauthorization                                |           |           |
|    | Restricted Funds - Additional  | 5,160,000 | 5,160,000 |
| b. | Maintenance Pool   |           |           |
|    | Investment Income  | 100,000   | 115,000   |
| 2. | Department for Environmental Protection  |           |           |
| a. | State-Owned Dam Repair -<br>Reauthorization  |           |           |
|    | Bond Funds - Additional  | 2,000,000 |           |
| b. | State-Funded Leaking Underground Storage Tanks -<br>Reauthorization                          |           |           |
|    | Restricted Funds - Additional  | 500,000   | 500,000   |
| c. | Hazardous Waste Management Fund -<br>Reauthorization   |           |           |
|    | Restricted Funds - Additional  | 2,100,000 | 2,100,000 |
| d. | Franklin County - Lease (Ash Properties)   |           |           |
| e. | Franklin County - Lease (Air Quality)  |           |           |
| f. | Maxey Flats Replacement Structures<br>Emergency, Repair, Maintenance<br>and Replacement Fund | 390,000   |           |
| 3. | Department for Natural Resources   |           |           |
| a. | Black Mountain Preservation Project<br>Bond Funds  | 4,100,000 |           |
| b. | Forestry Radio Equipment<br>Bond Funds   | 1,504,000 |           |

4.	Department for Surface Mining Reclamation and Enforcement		
a.	Franklin County - Lease (Hudson Hollow)		
5.	Kentucky River Authority		
a.	Locks and Dams - Acquisition Reauthorization		
b.	Kentucky River Parks Reauthorization		
c.	Kentucky River Water Release System and Lock 6 Repairs - Reauthorization (\$4,000,000 - Agency Bonds)		
d.	Kentucky River Water Storage Enhancements		
	Restricted Funds	2,270,000	
	Bond Funds	1,500,000	
	Total	3,770,000	
6.	Kentucky Nature Preserves Commission		
a.	Nature Preserves Acquisition Fund - Reauthorization		
	Other Funds - Additional	300,000	300,000

## K. PERSONNEL CABINET

Budget Unit	2000-01	2001-02
1.	Personnel	
a.	Franklin County - Lease	
b.	On-line Access to Employee Records	
	Bond Funds	550,000
c.	New Personnel Payroll System	
	Bond Funds	1,450,000

## L. POSTSECONDARY EDUCATION

Budget Unit	2000-01	2001-02
1.	Council on Postsecondary Education	
a.	Capital Renewal & Maintenance Pool	
	Bond Funds	30,000,000
b.	Agency Bond Pool	
	Agency Bonds	35,000,000
c.	Equipment Replacement Pool	
	Bond Funds	20,000,000
2.	Kentucky Higher Education Assistance Authority	
a.	Kentucky Higher Education Assistance Authority Office Building Reauthorization	
b.	Information Technology Systems Upgrade	

	Restricted Funds	650,000	
c.	Imaging System Upgrade		
	Restricted Funds		125,000
d.	Franklin County - Lease		
3.	Eastern Kentucky University		
a.	Business and Technology Building		
	Bond Funds	5,000,000	
	Restricted Funds	10,000,000	
	Total	15,000,000	

Notwithstanding KRS 45.750 to 45.810, the scope of this project is authorized to the extent funds are available.

b.	Minor Projects Maintenance		
	Restricted Funds	6,000,000	
c.	E & G Life Safety Begley Elevator		
	Restricted Funds	750,000	
d.	Student Housing Fire Safety		
	Restricted Funds	2,000,000	
e.	Property Acquisition		
	Restricted Funds	3,000,000	
f.	Dormitory Renovation, Combs Hall		
	Restricted Funds	5,000,000	
g.	Greek Row		
	Restricted Funds	4,000,000	
h.	Watts Property (Elmwood) Renovation		
	Restricted Funds	2,000,000	
i.	Health Education Center - Phase I		
	Bond Funds	7,000,000	
This authorization allows the University to accomplish Phase I of a two-phase project to construct a Health Education Center. Phase I involves the planning, design, and partial construction of both phases. The funding provided allows completion of all design work in anticipation of full project.			
j.	Fourier Transformer Nuclear Magnetic Resonance Spectrometer		
	Restricted Funds	135,000	
k.	Electronic Security System for Law Library		
	Restricted Funds	110,000	
l.	Minor Projects Equipment		
	Restricted Funds	2,500,000	2,500,000
4.	Kentucky State University		
a.	Hathaway Hall Renovation		
	Bond Funds	3,796,000	

b.	Pedestrian Mall		
	Restricted Funds	771,000	
c.	Young Hall		
	Restricted Funds	3,672,000	
d.	Chillier Additions		
	Restricted Funds		2,254,200
e.	Guaranteed Energy Savings Project		
	Restricted Funds		2,500,000
f.	Capital Renewal Projects		
	Restricted Funds		1,000,000
g.	Cooperative Extension Expansion Projects		
	Federal Funds	995,000	497,500
h.	Roof Repair and Replacement Project		
	Restricted Funds		600,000
i.	Carver Hall Renovation		
	Bond Funds	5,000,000	
j.	Aquaculture Classroom and Lab Facility		
	Federal Funds	650,000	
k.	University Motor Coaches		
	Restricted Funds	800,000	
5.	Morehead State University		
a.	Americans with Disabilities Act Compliance - E & G		
	Restricted Funds	901,500	891,500
b.	Americans with Disabilities Act Compliance - Aux.		
	Restricted Funds	785,000	775,000
c.	1990 Clean Air Act Amendment Compliance		
	Restricted Funds	1,100,000	
d.	Life Safety: Claypool-Young Art Building		
	Restricted Funds	420,000	
e.	Capital Renewal - E & G Facilities		
	Restricted Funds	2,150,100	2,149,900
f.	Life Safety: Auxiliary Facilities		
	Restricted Funds	2,030,000	
g.	Land Acquisitions Related to Campus Master Plan		
	Restricted Funds	1,337,000	
h.	Student Center Renovation & Expansion - Phase I		
	Bond Funds	10,000,000	

This authorization allows the University to accomplish Phase I of a two-phase project to construct a Student Center Renovation and Expansion. Phase I involves the planning, design, and partial construction of both phases. The funding provided allows completion of all design work in anticipation of full project.

i.	Artificial Turf Replacement		
	Restricted Funds (\$1,000,000 - FY 1999-2000)		
j.	Central Campus Reconstruction		
	Restricted Funds	650,000	
k.	Construction of Family Housing Complexes		
	Restricted Funds	2,000,000	2,000,000
l.	Capital Renewal - Auxiliary Facilities		
	Restricted Funds	1,150,000	1,150,000
m.	Guaranteed Energy Savings		
	Restricted Funds	2,000,000	
n.	Life Safety: E & G Facilities		
	Restricted Funds	720,000	
o.	Radiological Technology Initiatives		
	Restricted Funds	859,000	
p.	Instructional and Support Equipment		
	Restricted Funds	1,434,100	
q.	Tour Bus		
	Restricted Funds	330,000	
r.	Nuclear Magnetic Resonance Apparatus		
	Restricted Funds	210,000	
s.	Instructional Technology Initiatives		
	Restricted Funds	2,009,600	
t.	HPLC-Mass Spectrometer		
	Restricted Funds	140,000	
u.	Microcomputer/LANs/Peripherals-Instructional		
	Restricted Funds	2,000,000	
v.	Library Automation & Inf. Support Initiatives		
	Restricted Funds	920,000	
w.	Admin. & Office Systems Support Initiatives		
	Restricted Funds	1,300,000	
x.	Networking/Infrastructure Initiatives		
	Restricted Funds	2,180,000	
y.	Telecommunications Systems		
	Restricted Funds	2,000,000	
6.	Murray State University		
a.	Woods Academic/Student Services Building		



	Restricted Funds	2,000,000
b.	Electrical Distribution Upgrade	
	Restricted Funds	3,330,000
c.	Replace High Voltage Feeder	
	Restricted Funds	1,141,000
d.	National Scouting Museum, BAs Phase III Reauthorization	
e.	Replace Clark Hall	
	Restricted Funds	8,000,000
f.	Replace Central Plant Boiler	
	Restricted Funds	666,000
g.	Replace Physical Plant Electrical Substation	
	Restricted Funds	796,000
h.	Replace Campus Telephone Cable	
	Restricted Funds	1,708,000
i.	Asbestos Abatement: E & G Pool	
	Restricted Funds	272,500
j.	CFC Compliance: E & G Chillers Replacement	
	Restricted Funds	585,000
k.	Pogue Electric and HVAC Renovation	
	Restricted Funds	750,000
l.	Central Plant - Add Chiller	
	Restricted Funds	630,000
m.	New Science Building	
	Bond Funds	13,000,000

This authorization allows the University to accomplish Phase I of a two-phase project to construct a New Science Building. Phase I involves the planning, design and partial construction of both phases. The funding provided allows completion of all design work in anticipation of full project.

n.	Land Acquisition Pool	
	Restricted Funds	500,000
o.	Guaranteed Energy Savings Project	
	Restricted Funds	2,000,000
p.	Upgrade Highway 121 Electrical Substation	
	Restricted Funds	1,000,000
q.	Price Doyle HVAC Replacement & Energy Retrofit	
	Restricted Funds	750,000
r.	Capital Renewal: E & G Pool < \$400,000	
	Restricted Funds	2,705,000
s.	Capital Renewal: H & D Pool < \$400,000	

	Restricted Funds	195,000	
t.	Winslow Cafeteria - Replacement Mechanical Equipment		
	Restricted Funds		500,000
u.	Elizabeth College - Renovate HVAC System		
	Restricted Funds	1,200,000	
v.	Heater College - Renovate HVAC System		
	Restricted Funds	800,000	
w.	White College - Renovate HVAC System		
	Restricted Funds	1,000,000	
x.	White College - Replace Domestic Water Piping		
	Restricted Funds	500,000	
y.	Regents College - Replace Domestic Water Piping		
	Restricted Funds	500,000	
z.	Regents College - Renovate HVAC System		
	Restricted Funds	1,000,000	
aa.	Applied Science - Electrical Upgrade		
	Restricted Funds	850,000	
ab.	Wells Hall - Electrical Upgrade		
	Restricted Funds	600,000	
ac.	Sparks Hall - Electrical Upgrade		
	Restricted Funds	952,000	
ad.	Sparks Hall - Renovate HVAC System		
	Restricted Funds	500,000	
ae.	General Services - Renovate HVAC System		
	Restricted Funds	500,000	
af.	Special Education Bldg. - Renovate HVAC System		
	Restricted Funds	500,000	
ag.	Deferred Maintenance: E & G Pool		
	Restricted Funds	864,000	
ah.	Deferred Maintenance: H & D Pool		
	Restricted Funds	930,000	
ai.	Life Safety: E & G Pool		
	Restricted Funds	852,000	
aj.	Life Safety: H & D Pool		
	Restricted Funds	40,000	
ak.	ADA Compliance: Arch Barriers E & G Pool		
	Restricted Funds	2,092,000	
al.	ADA Compliance: Elev. Ctrls./Modify E & G		

	Restricted Funds	1,013,000	
am.	ADA Compliance: Arch Barriers H & D Pool		
	Restricted Funds	175,000	300,000
an.	Asbestos Abatement: H & D Pool		
	Restricted Funds	321,000	395,000
ao.	E & G Projects Less Than \$400,000		
	Restricted Funds	792,000	
ap.	Stereo Lithograph		
	Restricted Funds	500,000	
aq.	Recording/Playback Lab & Special Instrument Repl.		
	Restricted Funds		188,000
ar.	Replace Home Economics Appliances, etc.		
	Restricted Funds		120,000
as.	Optics Lab Equipment		
	Federal Funds		85,000
	Restricted Funds		85,000
	Total		170,000
at.	Dark Room Scanner		
	Restricted Funds		120,000
au.	Materials Testing Machine		
	Restricted Funds	240,000	
av.	Campus Network Distribution System		
	Restricted Funds	3,000,000	
aw.	Centralized Support System		
	Restricted Funds	1,850,000	
ax.	Network Nine Residence Halls		
	Restricted Funds	1,300,000	
7.	Northern Kentucky University		
a.	Covington Campus Privatization		
	Other Funds	11,000,000	
b.	Alumni & Faculty/Staff Center		
	Other Funds	4,000,000	
c.	Safety Lighting		
	Restricted Funds	910,000	
d.	Nunn Hall Mechanical Upgrade		
	Restricted Funds	500,000	
e.	Minor Projects Pool (2000-2002)		
	Restricted Funds	2,170,000	

f.	Old Science Renovation (Design Phase)	
	Bond Funds	1,000,000
g.	Land Acquisition (2000-2002)	
	Restricted Funds	4,000,000
h.	Classroom/Technology Initiative	
	Restricted Funds	3,000,000
i.	Boiler/Chiller Replacement	
	Restricted Funds	1,500,000
j.	Elevator Upgrade	
	Restricted Funds	600,000
k.	New Power Plant	
	Bond Funds	12,000,000
l.	Master Plan Initiatives Phase I	
	Restricted Funds	1,500,000
m.	Chilled Water System Redesign	
	Restricted Funds	400,000
n.	Refurbish Nunn Hall	
	Restricted Funds	600,000
o.	New Residence Hall	
	Other Funds	15,000,000
p.	Greenhouse	
	Other Funds	500,000
q.	Ultracentrifuge	
	Restricted Funds	100,000
r.	Planetarium Equipment	
	Other Funds	750,000
s.	Coach Bus	
	Restricted Funds	330,000
t.	Gas Chromatograph/Mass Spectrometer	
	Restricted Funds	145,000
u.	NMR Spectrometer	
	Restricted Funds	385,000
v.	New Press	
	Restricted Funds	235,000
w.	Data Storage System	
	Restricted Funds	130,000
x.	Automated Tape System	
	Restricted Funds	155,000

- y. Metropolitan Education & Training Center -Lease
  - z. Residential Village Breezeway Structural Repair Project
- Restricted Funds (\$950,000 - FY 1999-2000)

8. University of Kentucky

- a. Chilled Water Additions
 

Restricted Funds	784,000
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- b. Storm Sewer Improvements, Funkhouser
 

Restricted Funds	910,000
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- c. Chiller Replacement - Cooling #3
 

Restricted Funds	2,500,000
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- d. Electrical Substation Upgrade
 

Restricted Funds	3,600,000
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- e. Steam and Condensate Pipe Repair Phase I
 

Restricted Funds	2,352,000
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- f. Substation #2 Renovation
 

Restricted Funds	2,520,000
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- g. Pollution Controls, Central Heating Plant #2
 

Restricted Funds	1,494,000
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- h. Steam and Condensate Pipe Improvements Phase II
 

Restricted Funds	2,494,000
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- i. Cooling Plant #1 Expansion
 

Restricted Funds	14,755,000
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- j. Central Heating Plant #2 Improvements
 

Restricted Funds	1,247,000
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- k. Chilled Water Piping Addition to Pit
 

Restricted Funds	1,174,000
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- l. Upgrade Chilled Water Systems at Medical Center
 

Restricted Funds	3,450,000
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- m. Steam Line Expansion - Medical Center
 

Restricted Funds	2,867,000
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- n. Sanitary Line Project
 

Restricted Funds	2,360,000
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- o. Communication Project
 

Restricted Funds	1,735,000
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- p. Medical Center Library Information Center
 

Restricted Funds	3,000,000
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- q. Nursing Building Elevator Controls Upgrade
 

Restricted Funds	500,000
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r.	Outpatient Clinic Expansion	
	Restricted Funds	1,000,000
s.	Energy Performance Contracting ( Medical Center)	
	Restricted Funds	10,000,000
t.	Academic and Research Renovation II (COM)	
	Restricted Funds	500,000
u.	Retrofitting of Research Facilities	
	Restricted Funds	480,000
v.	Research Space Enhancement	
	Restricted Funds	600,000
w.	Medical Center Security Improvement Measures, PH	
	Restricted Funds	600,000
x.	Communication Infrastructure, Phase I	
	Restricted Funds	800,000
y.	Departmental Upgrading	
	Restricted Funds	750,000
z.	Research Lab Fit-Up (Aging/Allied Health)	
	Restricted Funds	7,000,000
aa.	Biomedical Sciences Research Building	
	Bond Funds	39,000,000
	Agency Bonds	26,000,000
	Total	65,000,000
ab.	Land Acquisition	
	Restricted Funds	4,000,000
ac.	Lancaster Aquatics Center Expansion	
	Restricted Funds	2,750,000
ad.	Student Housing/Fraternity House Replacement	
	Restricted Funds	6,000,000
ae.	Parking #2 Expansion/Renovation/Replacement	
	Agency Bonds	11,000,000
af.	Police/Parking Building	
	Restricted Funds	2,300,000
ag.	Commonwealth Stadium Field Renovation	
	Restricted Funds	1,500,000
ah.	Women's Basketball Office Renovation	
	Restricted Funds	550,000
ai.	Commonwealth Stadium Field Light Replacement	
	Restricted Funds	1,500,000

aj.	KGS Well Sample and Core Repository Building		
	Restricted Funds	2,545,000	
ak.	Environmental Institute		
	Restricted Funds	2,500,000	
al.	Life Safety Pool		
	Restricted Funds	2,145,000	
am.	Handicapped Access Pool		
	Restricted Funds	350,000	
an.	Deferred Maintenance Pool		
	Restricted Funds	2,095,000	
ao.	Life Safety - Lex Campus Fume Hoods - Phase III		
	Restricted Funds	3,205,000	
ap.	Life Safety - Lex Campus - Asbestos Abatement I		
	Restricted Funds	500,000	
aq.	Life Safety - Underground Storage Tanks		
	Restricted Funds	927,000	
ar.	Capital Renewal Pool		
	Restricted Funds	12,268,000	
as.	Renovation of Biological Sciences Research Space		
	Restricted Funds	1,430,000	
at.	Keeneland Hall - HVAC		
	Agency Bonds	2,821,000	
au.	Jewell Hall - HVAC		
	Agency Bonds	1,040,000	
av.	Boyd Hall - HVAC		
	Agency Bonds	1,633,000	
aw.	Renovation of Funkhouser - Phase IV		
	Restricted Funds		770,000
ax.	Chemistry Laboratory Renovation		
	Restricted Funds	1,155,000	
ay.	Gatton College Addition for Int'l Business and Management		
	Restricted Funds		1,725,000
az.	Cooperstown - Phase IV		
	Agency Bonds	1,313,000	
ba.	Seaton Center Addition/Renovation		
	Agency Bonds	15,350,000	
bb.	School of Library and Information Science		
	Restricted Funds	750,000	

bc.	Nursing Unit Modification IX	
	Restricted Funds	3,780,000
bd.	Nursing Unit Modification X	
	Restricted Funds	3,780,000
be.	Diagnostic Services Upgrade IX	
	Restricted Funds	1,575,000
bf.	Outpatient Services II	
	Restricted Funds	5,040,000
bg.	Diagnostic Services Upgrade X	
	Restricted Funds	1,155,000
bh.	Implementation of Land Use Plan III	
	Restricted Funds	2,625,000
bi.	Parking Structure III	
	Restricted Funds	7,350,000
bj.	Building Connectors II	
	Restricted Funds	2,200,000
bk.	Energy Performance Contracting	
	Restricted Funds	20,000,000
bl.	Implementation of Land Use Plan II	
	Restricted Funds	2,500,000
bm.	Limited Stay Facility	
	Restricted Funds	5,460,000
bn.	Building/Site Upgrade II	
	Restricted Funds	710,000
bo.	Hospital Kitchen Renovation I	
	Restricted Funds	1,050,000
bp.	Hospital Kitchen Renovation II	
	Restricted Funds	546,000
bq.	Markey Fourth Floor Renovation	
	Restricted Funds	3,990,000
br.	Imaging Services	
	Restricted Funds	3,675,000
bs.	Diagnostic Services Upgrade VIII	
	Restricted Funds	1,100,000
bt.	Intra-Hospital Transportation Systems III	
	Restricted Funds	735,000
bu.	Parking Structure I	
	Restricted Funds	6,600,000



bv.	Biohazard/Environmental Protection I	
	Restricted Funds	1,575,000
bw.	Materials Handling Storage/Distribution Center	
	Restricted Funds	1,019,000
bx.	Parking Structure II	
	Restricted Funds	6,930,000
by.	Data Systems Expansion I	
	Restricted Funds	595,000
bz.	Biohazard/Environmental Protection II	
	Restricted Funds	1,575,000
ca.	Intra-Hospital Transportation System IV	
	Restricted Funds	735,000
cb.	HVAC Upgrade	
	Restricted Funds	3,500,000
cc.	Data Systems Expansion II	
	Restricted Funds	641,000
cd.	Building/Site Upgrade III	
	Restricted Funds	767,000
ce.	Hospital Parking Expansion	
	Restricted Funds	3,100,000
cf.	Nutrition Services Upgrade	
	Restricted Funds	1,050,000
cg.	Outpatient Care Facility	
	Restricted Funds	3,500,000
ch.	Support Services Upgrade	
	Restricted Funds	2,415,000
ci.	Utility System Upgrade V	
	Restricted Funds	1,680,000
cj.	Patient Care Facility/Women's Cancer Center	
	Restricted Funds	9,200,000
ck.	Energy Performance Contracting (Lexington Campus)	
	Restricted Funds	50,000,000
cl.	Stiff Testing Machine	
	Restricted Funds	140,000
cm.	Hydro Flume	
	Restricted Funds	130,000
cn.	High Resolution Mass Spectrometer	

	Restricted Funds	500,000
co.	High Temperature Optical Microscope	
	Restricted Funds	105,000
cp.	Holographic System with Image Analyzer	
	Restricted Funds	110,000
cq.	High Resolution STEM 400KV	
	Restricted Funds	1,500,000
cr.	Studio Recording Equipment	
	Restricted Funds	113,000
cs.	Tinius Olsen Ductometer	
	Restricted Funds	100,000
ct.	High Pressure Liquid Chromatography	
	Federal Funds	100,000
	Restricted Funds	100,000
	Total	200,000
cu.	High Power CO2 Laser	
	Restricted Funds	250,000
cv.	Freeze-Thaw Apparatus	
	Restricted Funds	100,000
cw.	X-Ray Laue Unit - Single Crystal	
	Restricted Funds	150,000
cx.	Thermal Analyzer and Powder Diffractometer	
	Restricted Funds	310,000
cy.	Sterilizing/Cleaning System	
	Restricted Funds	234,000
cz.	Solids NMR Spectrometer	
	Restricted Funds	900,000
da.	Environmental Test System	
	Restricted Funds	125,000
db.	Upgrade of 400 MHz Nuclear Magnetic Resonance	
	Federal Funds	340,000
	Restricted Funds	160,000
	Total	500,000
dc.	Electron Spin Resonance Instrument	
	Federal Funds	135,000
	Restricted Funds	65,000
	Total	200,000
dd.	Ultra High Vacuum Chamber	

	Federal Funds	170,000
	Restricted Funds	80,000
	Total	250,000
de.	Laser System	
	Federal Funds	170,000
	Restricted Funds	80,000
	Total	250,000
df.	Faraday Balance	
	Federal Funds	140,000
	Restricted Funds	60,000
	Total	200,000
dg.	Area Detector Diffractometer	
	Federal Funds	210,000
	Restricted Funds	100,000
	Total	310,000
dh.	High-Speed Digital Signal Processing Development	
	Federal Funds	150,000
di.	Three-Dimensional Scaling Device	
	Federal Funds	100,000
dj.	Garbage Truck Front Loader - Replacement	
	Restricted Funds	165,000
dk.	MB/GT Phospho-Imager	
	Restricted Funds	128,000
dl.	MB Ultracentrifuges	
	Restricted Funds	354,000
dm.	Mass Spectrograph for Oligonucleotide Analysis	
	Restricted Funds	250,000
dn.	Gas Chromatograph Mass Spectrophotometer System	
	Restricted Funds	101,000
do.	Fluor. Microscope with Imaging System	
	Restricted Funds	125,000
dp.	CAD/CAM System (College of Dentistry)	
	Restricted Funds	184,000
dq.	Tabletop H50 Gas Chromatograph Mass Spectrometer	
	Restricted Funds	101,000
dr.	Liquid Filling/Stoppering Line	
	Restricted Funds	351,000
ds.	Encapsulator	

	Restricted Funds	151,000
dt.	Semi-Solid Manufacturing Equipment	
	Restricted Funds	211,000
du.	Terminal Sterilizing Autoclave	
	Restricted Funds	221,000
dv.	Fluorescence Analyzer	
	Restricted Funds	109,000
dw.	High Performance Liquid Chromatography	
	Restricted Funds	131,000
dx.	Image Analysis System	
	Restricted Funds	206,000
dy.	Confocal Microscope	
	Restricted Funds	325,000
dz.	Epi-Fluorescence Microscope	
	Restricted Funds	134,000
ea.	Gas Chromatograph Mass Spectrometer	
	Restricted Funds	258,000
eb.	Flow Cytometry Lab	
	Restricted Funds	375,000
ec.	Ultracentrifuge	
	Restricted Funds	117,000
ed.	9.4 Tessler Scanner	
	Restricted Funds	868,000
ee.	600 MHz NMR System	
	Restricted Funds	1,753,000
ef.	800 MHz NMR System	
	Restricted Funds	2,903,000
eg.	DNA Synthesizer	
	Restricted Funds	103,000
eh.	Fluorescent Activated Cell Sorter	
	Restricted Funds	237,000
ei.	Protein Synthesizer	
	Restricted Funds	206,000
ej.	Research Grade Light Microscope	
	Restricted Funds	103,000
ek.	High Resolution Phosphor Imager	
	Restricted Funds	206,000
el.	DNA Sequencer	

	Restricted Funds	134,000
em.	3T Human Research System	
	Restricted Funds	2,527,000
en.	Mammography X-Ray Unit	
	Restricted Funds	101,000
eo.	Sequence Detection System	
	Restricted Funds	100,000
ep.	Fluor. Microscope and Image Analysis System	
	Restricted Funds	150,000
eq.	Auto. Poly. Chain Reaction Analysis Machine	
	Restricted Funds	150,000
er.	DNA Sequencer	
	Restricted Funds	158,000
es.	Laser Confocal Microscope	
	Restricted Funds	312,000
et.	Inverted Microscope Including Fluoroscope	
	Restricted Funds	155,000
eu.	Image Analyzer System	
	Restricted Funds	206,000
ev.	Electrophysiologic Analysis System	
	Restricted Funds	207,000
ew.	Multiphoton Imaging System	
	Restricted Funds	505,000
ex.	Behavioral Monitoring & Analysis System	
	Restricted Funds	150,000
ey.	Gene Chip Instrument System	
	Restricted Funds	450,000
ez.	Combi. Met. Cart, ECG, Auto BP, Plethysmography	
	Restricted Funds	123,000
fa.	Upgrade Scanner System	
	Restricted Funds	500,000
fb.	Gas Chromatograph Mass Spectrometer	
	Restricted Funds	250,000
fc.	Multiphoton Scanning Microscope	
	Restricted Funds	300,000
fd.	Plot Combine with Weighing System	
	Restricted Funds	125,000
fe.	HPLC/Mass Spectrometer System	

	Restricted Funds	300,000	
ff.	X-Ray Fluorescence		
	Restricted Funds	130,000	
fg.	Transmission Electron Microscope		
	Restricted Funds	200,000	
fh.	Oxymax Open Circuit Calorimeter		
	Restricted Funds	100,000	
fi.	Virtual Environment Simulator		
	Restricted Funds	125,000	
fj.	Fluorescence Activated Cell Sorter		
	Restricted Funds	200,000	
fk.	Inductive Coupled Argon Plasma Unit		
	Restricted Funds	110,000	
fl.	DNA Sequencer/Gene Mapping		
	Restricted Funds	130,000	130,000
fm.	High Throughput DNA Sequencer/Genetic Analyzer		
	Restricted Funds	110,000	
fn.	DNA Chip Analysis System		
	Restricted Funds	160,000	
fo.	Luminometer		
	Restricted Funds	110,000	
fp.	Robotics Pipettor System		
	Restricted Funds	104,000	
fq.	Confocal Microscope		
	Restricted Funds	130,000	
fr.	Ultracentrifuge		
	Restricted Funds	110,000	
fs.	Fluorescent Cell Sorter		
	Restricted Funds	200,000	
ft.	Fluorescent (Luminescent) Imaging System		
	Restricted Funds	105,000	
fu.	Automated DNA Sequencer		
	Restricted Funds	130,000	
fv.	DNA Sequencer		
	Restricted Funds	125,000	
fw.	Confocal Microscope		
	Restricted Funds	150,000	
fx.	Fluoro/Phosphoimager		

	Restricted Funds	120,000
fy.	Genetic Analyzer	
	Restricted Funds	140,000
fz.	Multi-Unit Microbial Containment Chamber	
	Restricted Funds	100,000
ga.	Transmission Electron Microscope	
	Restricted Funds	300,000
gb.	Plot Combine	
	Restricted Funds	125,000
gc.	Forage Harvester System	
	Restricted Funds	150,000
gd.	HPLC-Mass Spectrometer	
	Restricted Funds	217,000
ge.	Plot Combine	
	Restricted Funds	130,000
gf.	Inductive Coupled Plasma Spectrometer System	
	Restricted Funds	120,000
gg.	Mass Spectrometer	
	Restricted Funds	200,000
gh.	Near Infrared Reflectance Spectrometer	
	Restricted Funds	125,000
gi.	Confocal Microscope	
	Restricted Funds	130,000
gj.	Laser Ablation Sampling System	
	Restricted Funds	200,000
gk.	Gas Analyzer	
	Restricted Funds	100,000
gl.	NMR Spectrometer 300 MHz	
	Restricted Funds	400,000
gm.	ESCA - X-Ray Photoelectron Microscope	
	Restricted Funds	400,000
gn.	Fourier-transform Infra-Red Raman Spectrometer	
	Restricted Funds	175,000
go.	Field Emission Scanning Electron Microscope	
	Restricted Funds	175,000
gp.	System for Materials Forming	
	Restricted Funds	180,000
gq.	Instrumentation for Materials Characterization	

	Restricted Funds	150,000
gr.	High Resolution Optical Microscope	
	Restricted Funds	110,000
gs.	Gas Chromatograph/MSD	
	Restricted Funds	110,000
gt.	Networked Printer	
	Restricted Funds	200,000
gu.	Printing System	
	Restricted Funds	200,000
gv.	Digital Orbitor Camera	
	Restricted Funds	250,000
gw.	EKG Management System	
	Restricted Funds	250,000
gx.	Cardiac Cath Laboratory Unit	
	Restricted Funds	9,280,000
gy.	Electrophysiology Laboratory	
	Restricted Funds	1,740,000
gz.	Digital Enhancement	
	Restricted Funds	986,000
ha.	General Radiography Unit	
	Restricted Funds	928,000
hb.	Surgical Microscope	
	Restricted Funds	400,000
hc.	Laboratory Analyzer	
	Restricted Funds	400,000
hd.	Radiation Therapy Unit	
	Restricted Funds	2,088,000
he.	Mobile Fluoroscopy	
	Restricted Funds	200,000
hf.	Surgical Laser	
	Restricted Funds	400,000
hg.	CT Scanner	
	Restricted Funds	1,740,000
hh.	General Radiography/Fluoroscopic Unit	
	Restricted Funds	500,000
hi.	OB Ultrasound	
	Restricted Funds	300,000
hj.	Vascular Ultrasound	



	Restricted Funds	300,000
hk.	Cardiac Ultrasound	
	Restricted Funds	1,600,000
hl.	Endoscopic Video System	
	Restricted Funds	300,000
hm.	Angiography Unit	
	Restricted Funds	1,740,000
hn.	Neuro-Radiography Unit	
	Restricted Funds	1,740,000
ho.	SPECT System	
	Restricted Funds	870,000
hp.	EKG Unit	
	Restricted Funds	400,000
hq.	Radiology Ultrasound	
	Restricted Funds	400,000
hr.	Mobile Radiology Unit	
	Restricted Funds	200,000
hs.	General Radiology Unit	
	Restricted Funds	928,000
ht.	Gamma Knife Upgrade	
	Restricted Funds	2,320,000
hu.	EMG Unit	
	Restricted Funds	200,000
hv.	MRI Upgrade	
	Restricted Funds	500,000
hw.	Digital Radiology	
	Restricted Funds	4,060,000
hx.	Fluoroscopy Unit	
	Restricted Funds	500,000
hy.	Endoscopy Video Ultrasound	
	Restricted Funds	250,000
hz.	Treatment Planning System	
	Restricted Funds	1,392,000
ia.	Angiography Unit	
	Restricted Funds	1,160,000
ib.	ATL Ultrasound	
	Restricted Funds	200,000
ic.	Biplane Angiography	

	Restricted Funds	1,160,000
id.	Cardiac Catheterization Image Management System	
	Restricted Funds	870,000
ie.	C-Arm X-Ray Unit	
	Restricted Funds	250,000
if.	C-Arm X-Ray Unit	
	Restricted Funds	400,000
ig.	C-Arm X-Ray Unit	
	Restricted Funds	350,000
ih.	CR PAC Server	
	Restricted Funds	250,000
ii.	CT Scanners	
	Restricted Funds	3,480,000
ij.	CT Stimulator	
	Restricted Funds	1,160,000
ik.	Digital Radiology	
	Restricted Funds	928,000
il.	Diagnostic Radiology Unit	
	Restricted Funds	300,000
im.	Endoscopic Ultrasound	
	Restricted Funds	400,000
in.	Electrophysiology Lab	
	Restricted Funds	5,800,000
io.	Filmless System	
	Restricted Funds	120,000
ip.	Intracardiac Laser	
	Restricted Funds	500,000
iq.	Linear Accelerator	
	Restricted Funds	1,856,000
ir.	Mammography Unit	
	Restricted Funds	200,000
is.	Minimally Invasive Room	
	Restricted Funds	1,490,000
it.	Mobile CT	
	Restricted Funds	1,000,000
iu.	Nuclear Medicine Camera	
	Restricted Funds	870,000
iv.	OR Perioperative IS Document System	

	Restricted Funds	200,000
iw.	PACS Server	
	Restricted Funds	800,000
ix.	Portal Imaging System	
	Restricted Funds	200,000
iy.	QuadRIS	
	Restricted Funds	600,000
iz.	Radiographic Fluoroscopic Unit	
	Restricted Funds	150,000
ja.	Radiographic Unit	
	Restricted Funds	350,000
jb.	Radiographic Units	
	Restricted Funds	1,250,000
jc.	Steam Autoclave	
	Restricted Funds	375,000
jd.	Sterrad Sterilizer	
	Restricted Funds	375,000
je.	Surgical C-Arm (ISS) System	
	Restricted Funds	550,000
jf.	Teleradiology	
	Restricted Funds	200,000
jg.	Ultrasound Image Management	
	Restricted Funds	700,000
jh.	Vascular Ultrasound	
	Restricted Funds	800,000
ji.	Washer	
	Restricted Funds	230,000
jj.	Digital Imaging	
	Restricted Funds	870,000
jk.	General Chemistry Computerization	
	Restricted Funds	385,000
jl.	Language Lab	
	Restricted Funds	300,000
jm.	Engineering Research Computing System	
	Restricted Funds	440,000
jn.	Network Replacement	
	Restricted Funds	78,000
jo.	Department Computer Upgrade	

	Restricted Funds	225,000	
jp.	Distributed Testbed System		
	Restricted Funds	250,000	
jq.	NSF Fileserver		
	Restricted Funds	150,000	
jr.	Optical Disk Server		
	Restricted Funds	180,000	
js.	Telemedicine Systems		
	Restricted Funds		600,000
jt.	Instructional Multi-Media, Phase II		
	Restricted Funds	1,168,000	730,000
ju.	Compressed Video - Hazard		
	Restricted Funds	141,000	
jv.	Upgrading/Establishing Communication System		
	Restricted Funds	364,000	463,000
jw.	Patient Classification Equipment Rural Health		
	Restricted Funds	260,000	
jx.	Telemedicine Rural Health		
	Restricted Funds	416,000	
jy.	Satellite Uplink Rural Health		
	Restricted Funds	416,000	
jz.	Virtual Reality Computing System		
	Restricted Funds	150,000	
ka.	Database Testbed		
	Restricted Funds	225,000	
kb.	Campus Infrastructure Upgrade		
	Restricted Funds	1,750,000	1,750,000
kc.	UNIX Server		
	Restricted Funds	1,200,000	
kd.	Research Computing		
	Restricted Funds	3,500,000	
ke.	Storage Management Upgrade		
	Restricted Funds	200,000	
kf.	Imaging System Upgrade		
	Restricted Funds		275,000
kg.	Mainframe Upgrade		
	Restricted Funds	1,500,000	
kh.	Video Switch		

	Restricted Funds	250,000
ki.	Upgrade HIS Computing Facilities	
	Restricted Funds	2,900,000
kj.	Clinical Information System	
	Restricted Funds	3,480,000
kk.	Digital Medical Record Expansion	
	Restricted Funds	4,640,000
kl.	Patient System Enterprise	
	Restricted Funds	4,640,000
km.	Managed Care Enterprise	
	Restricted Funds	1,160,000
kn.	Clinical System Enterprise	
	Restricted Funds	5,800,000
ko.	State Communication Enterprise	
	Restricted Funds	3,480,000
kp.	Mass Storage Capability	
	Restricted Funds	200,000
kq.	Upgrade Disk Capacity	
	Restricted Funds	250,000
kr.	Upgrade Telecommunications Facilities	
	Restricted Funds	250,000
ks.	UK Center for Rural Health Reauthorization	
kt.	Classroom Building - Lexington Community College - Planning and Design	
	Restricted Funds	1,000,000
ku.	Animal Science Incinerator Repair	
	Restricted Funds	300,000
9.	University of Louisville	
a.	Code Improvements - Fire Safety Pool	
	Restricted Funds	1,029,000
b.	Americans Disabilities Act (ADA) Project Pool	
	Restricted Funds	2,638,000
c.	Capital Renewal Project Pool	
	Restricted Funds	6,225,000
d.	Support Services Land Acquisition (Northeast)	
	Restricted Funds	4,202,000
e.	Student Services Building Renovation (Houchens)	

	Restricted Funds	5,489,000	
f.	Chemistry Fume Hood Redesign		
	Restricted Funds	5,397,000	
g.	Reynolds Building Renovation - Housing and Support Services		
	Other Funds	15,433,000	
h.	Environmental Health and Safety Project Pool		
	Restricted Funds	360,000	
i.	Sports and Recreation Institute		
	Other Funds	26,247,000	
j.	Life Sciences Lab Ventilation Renovation		
	Restricted Funds	3,638,000	
k.	Multi-Cultural Center Building		
	Restricted Funds		5,096,000
l.	Chlorofluorocarbon Project, Phase III		
	Restricted Funds	1,953,000	
m.	Dental Clinic and Sterilization Renovation		
	Other Funds		3,363,000
n.	Early Childhood "EDUCARE" Center		
	Federal Funds	3,211,000	
o.	HSC Parking Garage - Two Additional Floors		
	Restricted Funds	4,609,000	
p.	Research Resources Center Expansion		
	Other Funds	6,473,000	
	Restricted Funds	2,158,000	
	Total	8,631,000	
q.	MDR Renovation, Phase II, Building 51		
	Restricted Funds		1,619,000
r.	Residence Hall - 600 Beds-Metro Col, Phase II		
	Other Funds (\$27,843,000 - FY 1999-2000)		
s.	Cardinal Park - Natatorium		
	Other Funds	12,373,000	
	Restricted Funds	7,266,000	
	Total	19,639,000	
t.	Purchase & Renovate Building (Home of Innocents)		
	Other Funds		3,553,000
	Restricted Funds		3,553,000
	Total		7,106,000
u.	Research Building (Belknap Campus)		

	Bond Funds	25,000,000	
	Agency Bonds	16,368,000	
	Total	41,368,000	
v.	Stoddard Johnston School Renovation		
	Restricted Funds		6,350,000
w.	Pedestrian Overpass at Stadium (Brook Street)		
	Federal Funds	1,901,000	
	Other Funds	475,000	
	Total	2,376,000	
x.	Window Replacements (Belknap Campus)		
	Other Funds	2,694,000	
y.	Cardinal Park - Practice Field, Multicourts, Cardiopath		
	Other Funds	2,813,000	
z.	Health Sciences Library Infrastructure & Renovation		
	Restricted Funds	2,450,000	
aa.	Purchase Parking Space on Health Sciences Campus		
	Restricted Funds	825,000	
ab.	Ekstrom Library Infrastructure and Renovation		
	Restricted Funds	1,924,000	
ac.	Deferred Maintenance Project Pool		
	Restricted Funds	250,000	
ad.	Guaranteed Energy Cost Savings Project (HB-639)		
	Other Funds	3,000,000	
ae.	Boathouse for Rowing Team		
	Other Funds	2,300,000	
af.	Radiographic/Fluoroscopic Imaging Unit		
	Restricted Funds	195,000	
ag.	Digital Micro-Luminography System for TEM		
	Restricted Funds		120,000
ah.	Electronic Darkroom		
	Restricted Funds	113,000	
ai.	Gel/Blot Image Analysis System		
	Restricted Funds	145,000	
aj.	High Resolution SEM-Backscatter Detector		
	Restricted Funds	160,000	
ak.	Automated DNA Sequencer		
	Restricted Funds		159,000
al.	Eximer Laser		

	Restricted Funds	600,000
am.	Video Diagnostic Analysis System	
	Restricted Funds	154,000
an.	White Blood Cell Velocity Measurement System	
	Restricted Funds	126,000
ao.	Diode Laser	
	Restricted Funds	100,000
ap.	Radiographic/Fluoroscopic X-Ray System	
	Restricted Funds	317,000
aq.	Animal Irradiator	
	Restricted Funds	154,000
ar.	Interm. Voltage Transmission Electron Microscope	
	Restricted Funds	350,000
as.	Nailfold Microvascular Analysis System	
	Restricted Funds	119,000
at.	In Vivo Thrombosis Detection & Quant. System	
	Restricted Funds	168,000
au.	Peptide Sequencer	
	Restricted Funds	151,000
av.	Small Vein In Vivo Diagnostic System	
	Restricted Funds	197,000
aw.	Automated Synthesizer	
	Federal Funds	100,000
	Restricted Funds	100,000
	Total	200,000
ax.	FT IR Spectrometer	
	Federal Funds	75,000
	Restricted Funds	75,000
	Total	150,000
ay.	Scanning Tunneling Microscope	
	Restricted Funds	140,000
az.	Capillary Electrophoresis - Mass Spectrometer	
	Restricted Funds	200,000
ba.	EPR Spectrometer Update	
	Federal Funds	65,000
	Restricted Funds	60,000
	Total	125,000
bb.	NMR Spectrometer (750 MHz NMR)	



	Federal Funds	800,000	
	Restricted Funds	400,000	
	Total	1,200,000	
bc.	Trash Compactor Truck		
	Restricted Funds	135,000	
bd.	SEM Accesories for Elemental Analysis		
	Restricted Funds	165,000	
be.	Peak 3D Comp Motion Measurement & Analysis System		
	Restricted Funds	120,000	
bf.	Atomic Absorption Spectrometer, High-Resolution		
	Restricted Funds	110,000	
bg.	Ultra High Vacuum Chamber		
	Restricted Funds	310,000	
bh.	Metallorganic Chemical Vapor Deposition		
	Restricted Funds	210,000	
bi.	Mechanical Spectrometer - Rheometrics		
	Restricted Funds	160,000	
bj.	Axial/Torsional Tester		
	Restricted Funds	195,000	
bk.	Microelectronics Processing System		
	Restricted Funds	162,000	
bl.	Dynamometer		
	Restricted Funds	122,000	
bm.	IR Spectrometer		
	Restricted Funds	110,000	
bn.	X-Ray Fluorescence Spectrometer		
	Restricted Funds	210,000	
bo.	Micro CT Scanner		
	Restricted Funds	300,000	
bp.	XPS/Auger Spectroscope		
	Restricted Funds	253,000	
bq.	Laser Ablation Unit		
	Restricted Funds		230,000
br.	Sputtering Unit		
	Restricted Funds	162,000	
bs.	Materials Testing System		
	Restricted Funds	189,000	
bt.	Load Application System		

	Restricted Funds	208,000
bu.	Visualization System	
	Restricted Funds	121,000
bv.	CNC Grinding Machine	
	Restricted Funds	169,000
bw.	Correlation Microscope	
	Federal Funds	190,000
	Restricted Funds	5,000
	Total	195,000
bx.	Full Object Scanner	
	Restricted Funds	360,000
by.	Finishing Device	
	Restricted Funds	250,000
bz.	Color Digital Output Engine	
	Restricted Funds	700,000
ca.	Florescent Spectrometer	
	Federal Funds	135,000
	Restricted Funds	135,000
	Total	270,000
cb.	Neuro Scan ESI-128: 128 Channel ERP System	
	Federal Funds	40,000
	Restricted Funds	100,000
	Total	140,000
cc.	X-Ray Diffraction Module	
	Federal Funds	250,000
	Restricted Funds	500,000
	Total	750,000
cd.	Laser Microfabrication Lab	
	Federal Funds	275,000
	Restricted Funds	275,000
	Total	550,000
ce.	Infra-Red Imaging System	
	Federal Funds	50,000
	Restricted Funds	50,000
	Total	100,000
cf.	Large Area Microplating	
	Federal Funds	150,000
	Restricted Funds	150,000

	Total		300,000
cg.	Differential Scanning Calorimeter		
	Federal Funds		50,000
	Restricted Funds		50,000
	Total		100,000
ch.	Circular Dichroism Spectropolarimeter		
	Federal Funds		50,000
	Restricted Funds		50,000
	Total		100,000
ci.	Laser Spectrometer		
	Federal Funds		93,000
	Restricted Funds		100,000
	Total		193,000
cj.	Electronic Journals and Full Text - Libraries		
	Restricted Funds	2,000,000	
ck.	Electronic Journals and Full Text - Libraries		
	Restricted Funds	1,000,000	
cl.	Nuclear Medicine Hot Lab		
	Restricted Funds	107,000	
cm.	Flow Cytometer		
	Restricted Funds	165,000	
cn.	High Performance Q-TOF Spectrometer		
	Restricted Funds	500,000	
co.	HPLC-Ion Resonance Cyclotron		
	Restricted Funds	180,000	
cp.	Microcalorimeter		
	Restricted Funds	137,000	
cq.	Nucleic Acid Microchip Analyzer		
	Restricted Funds		185,000
cr.	Analytical Centrifuge		
	Restricted Funds		139,000
cs.	Inductively Coupled Plasma Spectrometer		
	Restricted Funds		160,000
ct.	Plasmon Resonance Instrument (Biochem - X)		
	Restricted Funds		107,000
cu.	DNA CEQ 2000 Analysis System		
	Restricted Funds		150,000
cv.	Geneotype Nucleic Acid Chip Analyzer		

	Restricted Funds	200,000
cw.	Confocal Microscope (OPTH)	
	Restricted Funds	401,000
cx.	Confocal Microscope (ASN)	
	Restricted Funds	280,000
cy.	Plasmon Resonance Instrument (Biochem - 3000)	
	Restricted Funds	250,000
cz.	MALDI-Reflex-TOF	
	Restricted Funds	310,000
da.	ACUSON - Aspen Ultrasound Imaging System	
	Restricted Funds	176,000
db.	Human Patient Simulator	
	Restricted Funds	1,110,000
dc.	Flow Cytometer/Cell Sorter	
	Restricted Funds	152,000
dd.	NMR Instrument 600 MHz	
	Federal Funds	600,000
	Restricted Funds	1,300,000
	Total	1,900,000
de.	Expand Medical Information Technology Infrastructure	
	Restricted Funds	500,000
df.	Student Records Imaging Storage & Retrieval System	
	Restricted Funds	475,000
dg.	Wiring for Computer Access - Residence Halls	
	Restricted Funds	600,000
dh.	Fiber Optic LAN/Computer-Based Instruction System	
	Restricted Funds	427,000
di.	Compressed Video Conferencing Room and Instruction Lab	
	Restricted Funds	446,000
dj.	Computer Workstations for Libraries	
	Restricted Funds	200,000
dk.	Collaborative Learning Centers - Libraries	
	Restricted Funds	557,000
dl.	OC3 Network Equipment	
	Restricted Funds	315,000
dm.	High Speed Graphics Imaging System	
	Restricted Funds	200,000
dn.	Network Switching System	

	Restricted Funds	300,000	300,000
do.	Digital Communications Network		
	Restricted Funds	1,500,000	
dp.	Voice Automation Enhancements		
	Restricted Funds	250,000	
dq.	Digital Microwave Network		
	Restricted Funds	250,000	
dr.	Computer Processing System		
	Restricted Funds	1,500,000	500,000
ds.	Mainframe Memory		
	Restricted Funds	250,000	250,000
dt.	High Volume Output Devices/Duplicators		
	Restricted Funds	376,000	500,000
du.	Engineering/Scientific Processor		
	Restricted Funds	600,000	500,000
dv.	Client/Server System/File Server(s)		
	Restricted Funds	600,000	500,000
dw.	Specialized Central Processing Unit		
	Restricted Funds	250,000	250,000
dx.	Storage System(s)		
	Restricted Funds	500,000	500,000
dy.	Virtual Reality Display System		
	Federal Funds		100,000
	Restricted Funds		100,000
	Total		200,000
dz.	High Energy Physics Data Analysis System		
	Federal Funds		200,000
	Restricted Funds		200,000
	Total		400,000
ea.	Condensed Matter Theory Computational System		
	Federal Funds		175,000
	Restricted Funds		160,000
	Total		335,000
eb.	Client/Server Alumni/Dev. Information Systems		
	Restricted Funds	750,000	
ec.	Digital Television Production Switcher		
	Restricted Funds	200,000	
ed.	Satellite Uplink Truck		

	Restricted Funds	200,000	
ee.	Intelligent Laser and Lighting System		
	Restricted Funds	360,000	
ef.	Computer Visualization System		
	Restricted Funds	655,000	
eg.	Commonwealth Virtual Univ. Lib Server-Upgrades		
	Restricted Funds	250,000	250,000
eh.	One Card/Phase I & II		
	Restricted Funds	450,000	450,000
ei.	Supercomputing System		
	Restricted Funds	1,500,000	
ej.	Telecommunications Switch		
	Restricted Funds	750,000	
ek.	Schultz Building Lease		
10.	Western Kentucky University		
a.	E & G Capital Renewal/Life Safety Pool		
	Restricted Funds	8,935,000	
b.	Campus Energy Conservation		
	Other Funds	3,750,000	
c.	Ivan Wilson Center Chiller(s) Replacement		
	Restricted Funds	562,000	
d.	Agriculture Exposition Center HVAC Improvements		
	Restricted Funds	731,000	
e.	Public Radio and Television Transmission Tower		
	Restricted Funds	615,000	
f.	Western Kentucky University Primary Electric Svc.		
	Restricted Funds	3,000,000	
g.	Garrett Conference Center HVAC Project		
	Restricted Funds	600,000	
h.	Cravens Repair Leaking Windows		
	Restricted Funds	591,000	
i.	Academic Complex Replace VAV Boxes		
	Restricted Funds	638,000	
j.	Academic Complex ACM Floor Tile Abatement		
	Restricted Funds	957,000	
k.	Van Meter Renovation - Design		
	Restricted Funds	935,000	
l.	Science Complex Renovation and Expansion		

Bond Funds	15,000,000
Restricted Funds	11,000,000
Total	26,000,000

This authorization allows the University to accomplish Phase I of a two-phase project to construct a Science Complex Renovation and Expansion. Phase I involves the planning, design, and partial construction of both phases. The funding provided allows completion of all design work in anticipation of full project.

m.	Gordon Wilson Renovation - Design	
	Restricted Funds	437,500
n.	E S & T Replace Duct Work and HVAC Controls	
	Restricted Funds	633,000
o.	Kentucky Building HVAC Replacement	
	Restricted Funds	880,000
p.	Helm Library Fire Alarm Replacement	
	Restricted Funds	554,000
q.	Ivan Wilson Fine Arts Center Life Safety	
	Restricted Funds	441,000
r.	Telephone Infrastructure	
	Restricted Funds	3,000,000
s.	Digital Television Transmission System	
	Federal Funds	800,000
	Restricted Funds	800,000
	Total	1,600,000
t.	Campus Communications Network Expansion	
	Restricted Funds	750,000
u.	ADA Accessible Shuttle Buses	
	Restricted Funds	360,000
v.	Confocal Microscope	
	Restricted Funds	110,000
w.	Video Server	
	Restricted Funds	800,000
x.	South Campus Building	
	Restricted Funds	10,000,000
11.	Kentucky Community and Technical College System	
a.	West Kentucky College: Roof Replacement	
	Restricted Funds	999,000
b.	Cumberland TC, Harlan Campus: Renovate Building 2	
	Bond Funds	4,114,000
c.	Mayo Technical College: Campus Renovation	
	Bond Funds	7,582,000

d.	Elizabethtown TC: HVAC System Replacement 66 and 75 Building	
	Restricted Funds	834,000
e.	Bowling Green TC: Replace Roofs, Buildings G and H	
	Restricted Funds	532,000
f.	Ashland Technical College: Original Campus Renovation	
	Bond Funds	6,900,000
g.	KCTCS Capital Renewal Project Pool	
	Restricted Funds	10,165,000
h.	Jefferson Technical College: HVAC System Replacement	
	Restricted Funds	2,491,000
i.	Somerset TC: Fire and Sprinkler System	
	Restricted Funds	525,000
j.	KCTCS Deferred Maintenance & Government Mandate Pool	
	Restricted Funds	3,571,000
k.	KCTCS Program Renovation Pool	
	Restricted Funds	5,368,000
l.	Northern KY Community & Technical College, Phase I	
	Bond Funds	10,000,000
m.	Jefferson CC: Renovation of Downtown Campus	
	Bond Funds	8,800,000
n.	Elizabethtown CC - Science Building Renovation	
	Bond Funds	2,200,000
o.	Southeast CC - Newman Hall Renovation	
	Bond Funds	2,000,000
p.	Madisonville CC: Muhlenberg Campus	
	Reauthorization	
q.	Guaranteed Energy Savings Project Pool	
	Restricted Funds	5,000,000
r.	Hazard Technical College: Bulldozer	
	Restricted Funds	478,000
s.	Hazard Technical College: Trackhoe	
	Restricted Funds	150,000
t.	Ashland Technical College: Computer Interfaced Distillation Col.	
	Restricted Funds	114,000
u.	Mayo Technical College: Milling Machine	
	Restricted Funds	130,000
v.	Mayo Technical College: Johnson Phaser - Shape Cutter	
	Restricted Funds	150,000



## M. PUBLIC PROTECTION AND REGULATION CABINET

Budget Unit	2000-01	2001-02
1. Department of Insurance		
a. Franklin County - Lease		
2. Public Advocacy		
a. Franklin County - Lease		
3. Housing, Buildings and Construction		
a. Franklin County - Lease		

## N. REVENUE CABINET

Budget Unit	2000-01	2001-02
1. Office of the Secretary		
a. Network Infrastructure Replacement		
Capital Construction Surplus	200,000	
b. Franklin County - Lease		
c. Franklin County - Lease		
d. Franklin County - Lease		

## O. TOURISM DEVELOPMENT CABINET

Budget Unit	1999-00	2000-01	2001-02
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The total non-General Fund project costs shown do not reflect additions to the operating budget appropriations.

1. Office of the Secretary
  - a. Elizabethtown State Theater
 

Reauthorization and Reallocation (\$1,000,000 - Bond Funds)
  - b. Hardin County Public Library
 

Reauthorization and Reallocation (\$300,000 - Bond Funds)
  - c. Lincoln Trail Domestic Violence Center
 

Reauthorization and Reallocation (\$250,000 - Bond Funds)
  - d. Patton Museum Expansion Project
 

Reauthorization and Reallocation (\$200,000 - Bond Funds)
  - e. Vaughn Reno Starks Community Center
 

Reauthorization and Reallocation (\$200,000 - Bond Funds)
  - f. Wesley Hilltop House
 

Reauthorization and Reallocation (\$50,000 - Bond Funds)

The projects cited immediately above are authorized from a reallocation of the Coca Cola Museum project in Hardin County appropriated by the 1998 Regular Session of the General Assembly in the amount of \$2,000,000 in Bond Funds.

- g. Western Kentucky Information/Tourism Center
 

Reauthorization (\$200,000 - General Fund)
2. Kentucky State Fair Board
  - a. Roof Replacement

	Restricted Funds	800,000	
b.	Freedom Hall - Refurbish Seats		
	Restricted Funds	800,000	
c.	Freedom Hall - Portable Trailers		
	Restricted Funds		1,250,000
d.	Maintenance Pool		
	Restricted Funds	1,000,000	1,000,000
3.	Department of Fish and Wildlife Resources		
a.	Land Acquisition		
	Restricted Funds	500,000	500,000
b.	Maintenance Pool		
	Restricted Funds	200,000	200,000
4.	Kentucky Horse Park		
a.	Muck Processing Facility		
	Bond Funds	375,000	
b.	Maintenance Pool		
	Investment Income	375,000	475,000
5.	Department of Parks		
a.	Maintenance Pool		
	Investment Income	4,200,000	4,200,000
b.	Barren River HVAC Upgrade		
	General Fund		
	Additional	200,000	
c.	Nolin Park - Campground/Infrastructure		
	Reauthorization		
d.	Natural Bridge - Remediation Petroleum Contamination		
	Deferred Maintenance	300,000	
e.	Yatesville - Golf Course Development		
	Reauthorization		
f.	Grayson Lake - Golf Course Design/Development		
	Reauthorization		
g.	Taylorsville Lake - Community Pool Design		
	Reauthorization		
h.	Jefferson Davis Monument- Repairs		
	Emergency Repair Maintenance		
	Additional	2,210,000	
i.	Mineral Mound - Golf Course Development		
	Reauthorization		

- j. Kincaid Lake - Golf Course Development (Nine Hole) and other park improvements  
Reauthorization
- k. Pennyrile - Golf Course Development  
Reauthorization
- l. Dale Hollow - Golf Course Development  
Reauthorization
- m. My Old Kentucky Home - Golf Course Development  
Reauthorization
- n. Columbus - Belmont - Park Development  
Reauthorization
- o. Fort Boonesborough - Reroof Fort Buildings  
Bond Funds 500,000
- p. Lake Barkley - Park Improvements  
Reauthorization

## P. TRANSPORTATION CABINET

Budget Unit	2000-01	2001-02
1. General Administration and Support		
a. Transportation Building Parking Structure - New Construction Bond Funds	20,700,000	
b. Powell County Maintenance Facility Road Fund	900,000	
c. Mason County Maintenance Facility Road Fund		710,000
d. Loadometer & Rest Area Maintenance and Repair Road Fund	600,000	600,000
e. Building Renovation & Emergency Repairs Road Fund	500,000	500,000
f. Painting and Roof Replacement Road Fund	250,000	250,000
g. Various Salt Storage Structures and Repair Road Fund	250,000	250,000
h. Various Waste Treatment & Water Supply Projects Road Fund	100,000	100,000
i. Hydraulic Hoists, Heavy Equipment Road Fund		100,000
j. New Transportation Office Building Reauthorization Bond Funds - Additional	7,500,000	

k.	Campbell County Maintenance Facility		
	Road Fund	500,000	
	Restricted Funds	465,000	
	Total	965,000	
l.	Elizabethtown District Office Building		
	Road Fund	3,810,000	
m.	Road Maintenance/Various Parks		
	Road Fund	2,000,000	1,500,000
Included in the above Road Fund appropriation for Road Maintenance/Various Parks is \$375,000 in fiscal year 2000-2001 to provide the cost of construction of an access culvert for US 68 at Blue Licks State Park.			
n.	Electronic Digital Surveying Systems		
	Road Fund	225,000	
o.	Weigh in Motion/Traffic Data Collection Equipment		
	Road Fund	310,000	320,000
p.	Direct Tension Tester for Asphalt		
	Road Fund	140,000	
q.	Soil Resilient Modulus Testing System		
	Road Fund		264,000
r.	X-Ray Fluorescence & X-Ray Diffraction Analyzers		
	Road Fund	155,000	220,000
s.	Mail Inserter/Burster Machine		
	Road Fund	130,000	
t.	MVE Mobile Computers and Peripherals		
	Road Fund		1,000,000
u.	Conversion & Web Pub. of Microfilm Plans		
	Road Fund		325,000
v.	Boone County Maintenance Building		
	Road Fund		515,000
w.	Cumberland County Highway Maintenance Barn -		
	New Construction		
	Road Fund	500,000	

## Q. WORKFORCE DEVELOPMENT CABINET

Budget Unit	2000-01	2001-02
1. General Administration and Program Support		
a. Maintenance Pool		
Investment Income	250,000	425,000
2. Vocational Rehabilitation		
a. Franklin County - Lease		
b. Carl D. Perkins Center: Rooftop Unit Replacement		

- |    |                                     |         |
|----|-------------------------------------|---------|
|    | Deferred Maintenance                | 369,000 |
| 3. | Department for the Blind            |         |
| a. | Franklin County - Lease             |         |
| 4. | Office of Training and Reemployment |         |
| a. | Franklin County - Lease             |         |

#### R. COMMUNITY DEVELOPMENT PROJECTS

The following projects are placed under the jurisdiction of the Finance and Administration Cabinet. The Secretary of the Finance and Administration Cabinet may reassign projects to another appropriate state agency by Administrative Order after notification has been made to the Interim Joint Committee on Appropriations and Revenue and to the Capital Projects and Bond Oversight Committee. All appropriations are non-recurring and the recipient entity shall bear any future financial responsibility for operating costs. The State Property and Building Commission is authorized to issue all bonds for projects within this section.

#### 1. FINANCE AND ADMINISTRATION CABINET

Budget Unit	General Administration	2000-01	2001-02
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##### Adair County

- |    |  |         |
|----|--|---------|
| 1. | Adair County Fiscal Court - Fire Departments -<br>(Breeding Fire Department, Columbia Fire<br>Department, & Knifley Fire Department - \$30,000 Each) |         |
|    | Bond Funds   | 90,000  |
| 2. | Adair County Park - Renovation and Maintenance   |         |
|    | General Fund   | 25,000  |
| 3. | Adair County EMS - Building Fund   |         |
|    | General Fund   | 20,000  |
| 4. | Adair County Public Library - Equipment  |         |
|    | General Fund   | 10,000  |
| 5. | Tri-County Industrial Park for Water Tower   |         |
|    | Bond Funds   | 250,000 |

##### Allen County

- |     |  |         |
|-----|--|---------|
| 6.  | Allen County Volunteer Fire Department   |         |
|     | Bond Funds   | 125,000 |
| 7.  | Allen County Fiscal Court Facilities Improvement<br>and Equipment at each of six Rural Volunteer<br>Fire Departments |         |
|     | Bond Funds   | 150,000 |
| 8.  | Allen County Fiscal Court - Water Line Extension<br>for Agricultural, Business and Residential Use                   |         |
|     | Bond Funds   | 125,000 |
| 9.  | Allen County Water District  |         |
|     | Bond Funds   | 150,000 |
| 10. | Allen County Schools Vocational Center -   |         |

	New Computer Lab	
	Bond Funds	75,000
11.	Allen County Fiscal Court - Park Improvements	
	Bond Funds	200,000
Anderson County		
12.	Anderson County Park	
	Bond Funds	500,000
13.	Lawrenceburg Library Project	
	Bond Funds	200,000
14.	Anderson County Water Projects	
	Bond Funds	350,000
Ballard County		
15.	Ballard County Volunteer Fire Department	
	Bond Funds	50,000
16.	Bandana Park	
	General Fund	5,000
17.	Ballard County Ambulance	
	Bond Funds	65,000
18.	Ft. Jefferson State Park at Wickliffe - Completion of Construction and Lighting	
	General Fund	50,000
19.	Infrastructure Improvement and Construction of Spec. Building at Wickliffe	
	Bond Funds	450,000
Barren County		
20.	Glasgow Parks Department	
	General Fund	50,000
21.	Highland Games	
	General Fund	100,000
22.	Hiseville City	
	General Fund	25,000
23.	Park City Park	
	General Fund	25,000
24.	Cave City Convention Center and Farmers Market	
	Bond Funds	3,000,000
25.	Barren County Park Improvements	
	Bond Funds	200,000
26.	Glasgow City	

	General Fund	200,000
27.	Barren County Fiscal Court - Fire Departments	
	Bond Funds	200,000
28.	Barren State Park Boat Dock	
	Bond Funds	300,000
Bath County		
29.	Bath County Water Project Extension	
	General Fund	50,000
30.	Flat Creek/Sharpsburg Water Project	
	General Fund	50,000
31.	Pendleton Branch Water Project	
	General Fund	50,000
32.	Preston Sewer Project	
	Bond Funds	150,000
Bell County		
33.	Pine Mountain State Park Golf Course	
	Bond Funds	2,000,000
Boone County		
34.	Big Bone Lick State Park - Land Acquisition and Park Improvements	
	Bond Funds	1,000,000
35.	Boone County Fiscal Court - Water and Sewer Projects	
	Bond Funds	500,000
36.	City of Walton - Sidewalks	
	Bond Funds	100,000
37.	Main Street Florence - Improvements	
	General Fund	50,000
38.	South Fork Park - Improvements	
	Bond Funds	100,000
Bourbon County		
39.	Ball Fields	
	Bond Funds	75,000
40.	Bourbon County Fire Gates Numbers	
	Bond Funds	74,000
41.	Centerville/Hutchinson Volunteer Fire Department	
	Bond Funds	80,000
42.	Centerville Septic System	
	Bond Funds	98,000

43.	Farmers' Market Building	
	Bond Funds	178,000
44.	Hazardous Materials Cleanup	
	General Fund	50,000
45.	Little Rock Water Lines	
	Bond Funds	64,000
46.	Ruddles Mill Water Lines	
	Bond Funds	68,000
47.	Volunteer Fire Departments	
	Bond Funds	313,000

## Boyd County

48.	Ashland National Little League Project	
	General Fund	75,000
49.	Boyd County Parks and Recreation	
	Bond Funds	90,000
50.	Boyd County Volunteer Fire Departments	
	Bond Funds	90,000
51.	Catlettsburg Baseball Field	
	General Fund	25,000
52.	Highlands Museum	
	Bond Funds	200,000
53.	Summer Motion	
	General Fund	50,000
54.	Ashland School System, Boyd School System, and Fairview Independent School System - Athletic Facilities Improvements and Enhancements (\$100,000 each)	
	Bond Funds	300,000
55.	Boyd County Fiscal Court - Boyd County Fair Operations and Improvements	
	General Fund	50,000
56.	Study and Correction of Drainage Problems near I-64, Exit 181	
	Bond Funds	250,000
57.	Paramount Center	
	Bond Funds	3,000,000
58.	Ashland Water Front	
	Bond Funds	200,000

## Boyle County



59.	Millennium Park	
	Bond Funds	475,000
60.	Wilderness Trace Child Development Center	
	General Fund	100,000
61.	Architectural Review of Old Post Office	
	General Fund	25,000
62.	Hub Frankel Building	
	Bond Funds	975,000
63.	Perryville Battlefield State Park	
	Bond Funds	475,000
Bracken County		
64.	Bracken County Water Lines	
	General Fund	30,000
65.	Germantown Fire Department	
	Bond Funds	100,000
66.	City of Brooksville - City Swimming Pool	
	Renovations to be matched locally	
	General Fund	40,000
Breckinridge County		
67.	Breckinridge County Fiscal Court-Ten Fire	
	Departments - \$20,000 each	
	Bond Funds	200,000
68.	Breckinridge County Fiscal Court - County Jail Project	
	Bond Funds	500,000
69.	Breckinridge County Fiscal Court - Sewer and	
	Water Projects	
	Bond Funds	500,000
Bullitt County		
70.	Bullitt County Fiscal Court - Community Development	
	General Fund	250,000
71.	Bullitt County Water and Sewer Line Expansion	
	Bond Funds	2,000,000
72.	Brooks Sewer Plants	
	Bond Funds	300,000
Butler County		
73.	Butler County Water Project	
	Bond Funds	250,000
74.	Butler County Fiscal Court - Various Fire Departments	

	Bond Funds	200,000
Caldwell County		
75.	Caldwell County Airport Expansion	
	Bond Funds	75,000
76.	Caldwell County Historical Society/Amoss House Project	
	General Fund	9,000
77.	Caldwell County Senior Citizens Building	
	Bond Funds	150,000
78.	Caldwell County/Princeton Water District	
	Bond Funds	240,000
79.	Caldwell EMS Ambulance	
	Bond Funds	65,000
80.	Fredonia Fire Department/Jaws of Life	
	Bond Funds	11,000
Calloway County		
81.	East Calloway County Water Extension	
	Bond Funds	100,000
82.	Emergency County Road Improvement	
	General Fund	50,000
83.	Hazel Fire Department	
	Bond Funds	50,000
84.	Murray/Calloway County Fire and Rescue	
	Bond Funds	150,000
85.	Murray/Calloway County Industrial Development/ Business Incubator Project	
	Bond Funds	500,000
86.	Murray/Calloway County Parks Improvement	
	Bond Funds	150,000
Campbell County		
87.	Bellevue Community Center	
	Bond Funds	500,000
88.	Dayton Community Center	
	Bond Funds	500,000
89.	L & N Bridge - Newport	
	Bond Funds	4,000,000
90.	Highland Heights Improvements and Streetscape	
	General Fund	10,000
91.	Alexandria Sidewalks/Parks Improvements	

	General Fund	20,000
92.	City of Bellevue Fire Department	
	Bond Funds	50,000
93.	City of Dayton Fire Department	
	Bond Funds	50,000
94.	City of Newport Fire Department	
	Bond Funds	75,000
95.	City of Southgate Fire Department	
	Bond Funds	50,000
96.	City of Wilder Fire Department	
	Bond Funds	50,000
97.	City of Woodlawn Fire Department	
	Bond Funds	25,000
98.	Northern Kentucky Convention and Visitors	
	Bureau - Market Northern Kentucky for Film Site	
	General Fund	40,000
99.	Fort Thomas Independent School - Assistance With	
	Middle School Construction	
	General Fund	75,000
100.	Bellevue Independent School Remodeling	
	Bond Funds	350,000
101.	Fort Thomas Independent Schools - Highland	
	High School - Science Lab Equipment	
	General Fund	25,000
102.	Eastern Campbell Volunteer Fire Department	
	Bond Funds	10,000
103.	Southern Campbell Volunteer Fire Department	
	Bond Funds	10,000
Carlisle County		
104.	Volunteer Fire Department	
	Bond Funds	50,000
105.	Carlisle County Sewer Project	
	Bond Funds	450,000
Carroll County		
106.	Carroll County Fiscal Court - Fire and EMS	
	Bond Funds	30,000
107.	Carroll County Fiscal Court - Sewer Lines	
	Bond Funds	200,000

## Carter County

108.	Carter County Water Project	
	Bond Funds	1,000,000

## Casey County

109.	Casey County Jail	
	Bond Funds	500,000
110.	Casey County Fiscal Court - Two New Sheriff's Cars	
	Bond Funds	65,000
111.	Casey County Public Library Equipment	
	General Fund	10,000
112.	Casey County Fiscal Court - Seven Fire Departments - \$15,000 Each	
	Bond Funds	105,000
113.	Casey County Senior Citizens Building	
	Bond Funds	175,000
114.	Casey County Police Equipment	
	Bond Funds	62,000
115.	Casey County Recycling Center	
	Bond Funds	65,000

## Christian County

116.	Christian County Convention Center	
	Bond Funds	6,750,000
117.	Christian County Fiscal Court - Feasibility Study for Ethanol Project in South-Central and Western Kentucky	
	General Fund	150,000

## Clark County

118.	State Office Building	
	Bond Funds	1,000,000
119.	Clark County Tourism, Recreation, and Convention Commission - Civil War Site	
	General Fund	25,000
120.	Clark County School Extra Curricular Activities	
	General Fund	10,000
121.	Clark County School Board Technology Improvements	
	General Fund	30,000
122.	Clark County Heritage Commission - Lower Howard's Creek Project	

	General Fund	25,000
123.	College Park Gym Renovation	
	Bond Funds	1,000,000
124.	Clark County YMCA - Program Expansion	
	General Fund	25,000
Clay County		
125.	Clay County Board of Education - Campbell - Reid Alternative School	
	General Fund	250,000
126.	Clay County Board of Education - Clay County High School - Youth Services Dropout Program	
	General Fund	40,000
127.	Clay County Board of Education - Clay County Learning Outreach Program	
	General Fund	40,000
128.	911 Center	
	Bond Funds	110,000
129.	Board of Education - Little League Field	
	General Fund	20,000
130.	Clay County Burchell Softball Little League	
	General Fund	20,000
131.	Burning Springs Park Construction	
	General Fund	20,000
132.	Clay County Community Center/Land Acquisition	
	Bond Funds	300,000
133.	Clay County Historical Society	
	General Fund	10,000
134.	Clay County Library	
	General Fund	15,000
135.	Downtown Manchester	
	General Fund	175,000
136.	Clay County Fiscal Court - Volunteer Fire Department	
	Bond Funds	90,000
137.	Manchester Civic/Education Center	
	Bond Funds	325,000
138.	Manchester Park Revitalization	
	General Fund	20,000
139.	Manchester Water and Waste	

	Bond Funds	300,000
140.	City of Manchester - Manchester Younger Woman's Club Park Revitalization	
	General Fund	20,000
141.	Clay County Senior Citizens	
	General Fund	25,000
142.	City of Manchester Police Car and Equipment	
	Bond Funds	50,000
Clinton County		
143.	Clinton County Sheriff Department	
	Bond Funds	40,000
144.	KCTCS Technical College	
	Bond Funds	2,000,000
145.	Little League Park Improvements	
	Bond Funds	65,000
Crittenden County		
146.	Crittenden County Fire and Rescue Departments	
	Bond Funds	105,000
147.	Crittenden County/Marion Park	
	General Fund	43,000
148.	Marion Sewer Project	
	General Fund	40,000
149.	Crittenden County Ambulance	
	Bond Funds	30,000
150.	Crittenden/Livingston Water	
	Bond Funds	100,000
151.	Telecommunications Training Center	
	General Fund	32,000
Cumberland County		
152.	Cumberland County Board of Education - Renovation	
	Bond Funds	300,000
153.	Cumberland County Sheriff Department	
	Bond Funds	40,000
154.	Dale Hollow State Park - Facility	
	Bond Funds	2,150,000
155.	Cumberland County Day Care/Early Childhood Facility	
	Bond Funds	270,000
Daviess County		

156.	Shelton Freedom Memorial Commission	
	General Fund	50,000
157.	Daviess County Parks Building	
	Bond Funds	195,000
158.	Advanced Technology Center Study	
	Bond Funds	375,000
159.	Ben Hawes State Park Project	
	Bond Funds	1,004,800
159a.	Whitesville Community Park Lighting Project	
	Bond Funds	50,000
160.	Area Museum	
	Bond Funds	1,270,000
161.	Museum of Fine Art	
	Bond Funds	600,000
162.	Daviess County Waterfront Development	
	Bond Funds	1,105,000
163.	English Park Docking Facility	
	Bond Funds	1,300,000
Edmonson County		
164.	Brownsville Natural Gas Line	
	Bond Funds	125,000
165.	Edmonson County Environmental Study	
	General Fund	50,000
166.	City of Brownsville Water and Sewer - Extensions across bridge at Brownsville and other improvements	
	Bond Funds	500,000
167.	Edmonson Parks Commission - New Park at Chalybeate Springs	
	Bond Funds	400,000
168.	Edmonson Parks Commission	
	General Fund	100,000
169.	Edmonson Fiscal Court - Fire Departments	
	Bond Funds	100,000
Elliott County		
170.	Elliott County Board of Education/Pool Project	
	Bond Funds	750,000
171.	Elliott County Public Library	
	General Fund	25,000

172.	Elliott County School Board/Playground and Recreation	
	General Fund	50,000
173.	Sandy Hook Beautification Project	
	General Fund	50,000
174.	Elliott County Ambulance Service - Equipment and Operating	
	General Fund	25,000
175.	Volunteer Fire Departments	
	Bond Funds	100,000

## Estill County

176.	Sewer System Upgrade	
	Bond Funds	400,000
177.	Marcum/Wallace Hospital	
	General Fund	100,000
178.	City of Ravenna - Budget Shortfall	
	General Fund	20,000

## Fayette County

179.	Convention Center/Rupp Arena	
	Bond Funds	15,000,000
180.	Johnson Community Center	
	Bond Funds	1,700,000
181.	Kentucky Aviation Museum	
	Bond Funds	300,000
182.	Bryan Station High School - Wellness/Fitness	
	General Fund	100,000
183.	Northern Elementary - Creative Playground	
	Bond Funds	125,000
184.	Lexington/Fayette County Parks	
	Bond Funds	1,000,000
185.	Horse Park Infrastructure Development	
	Bond Funds	1,550,000
186.	Horse Park Water Line Extension	
	Bond Funds	1,389,000

## Fleming County

187.	Water Resources and Land Acquisition - Department of Parks for Elk Creek Lake. The Department of Parks will grant reasonable water withdrawal for Western Fleming Water District.	
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	Bond Funds	1,000,000
188.	Fleming County Fiscal Court - Environmental Program	
	General Fund	100,000
Floyd County		
189.	Jenny Wiley Scenic Club - Wave Reduction Barrier at Dewey Lake	
	General Fund	50,000
190.	Samuel May House Enhancements	
	General Fund	50,000
191.	Mountain Arts Center - Pay Off Bonds	
	General Fund	2,000,000
192.	Motor Vehicle Commission - New Inspector for Car Lots for East Kentucky	
	General Fund	100,000
193.	Jenny Wiley - Construction and Dredging of new Boat Ramp	
	Bond Funds	500,000
194.	Floyd County Fiscal Court - Martin Community Center - Construction	
	Bond Funds	929,500
195.	Floyd County Fiscal Court - Martin Community Center - Operations	
	General Fund	496,500
196.	Prestonsburg Development Project	
	Bond Funds	3,000,000
197.	East Kentucky Center for Science, Math, and Technology	
	Bond Funds	1,000,000
Franklin County		
198.	Holmes Street Drainage Project	
	Bond Funds	3,000,000
Fulton County		
199.	Fulton County Volunteer Fire Department	
	Bond Funds	50,000
200.	Hickman/Fulton County Riverport	
	Bond Funds	450,000
Gallatin County		
201.	Gallatin County Fiscal Court for Fire/EMS	
	Bond Funds	20,000

202.	Water Line Extension	
	Bond Funds	250,000
203.	Gallatin County Fiscal Court - Sewer Lines	
	Bond Funds	300,000

## Garrard County

204.	City of Lancaster - Garrard County Garden Club Beautification Project	
	General Fund	30,000
205.	Lancaster Rural Water Intake	
	Bond Funds	500,000
206.	Lancaster Ball Park	
	General Fund	25,000
207.	City of Lancaster	
	General Fund	200,000

## Grant County

208.	Grant County Public Library	
	Bond Funds	750,000
209.	Grant County Rural Water Extensions	
	Bond Funds	250,000

## Graves County

210.	Graves County Municipal Building	
	General Fund	250,000
211.	Graves County Volunteer Fire Department	
	Bond Funds	150,000
212.	Mayfield/Graves County Airport	
	Bond Funds	100,000
213.	Mayfield/Graves County Parks Association	
	General Fund	125,000
214.	Mayfield/Graves Youth Soccer	
	Bond Funds	125,000
215.	North Graves Sanitary Sewer Project	
	Bond Funds	400,000
216.	Graves County Board of Education - Recreational Enhancements	
	General Fund	50,000
217.	Women's Group Home	
	Bond Funds	275,000

## Grayson County

218.	Grayson County Fiscal Court - Seven Fire Departments - \$20,000 Each	
	Bond Funds	140,000
219.	Grayson County Fiscal Court - County Jail Project	
	Bond Funds	500,000
220.	Grayson County Fiscal Court - Water and Sewer Project	
	Bond Funds	500,000
221.	Big Clifty Community Center	
	Bond Funds	60,000

## Green County

222.	Fire and Rescue Building - Greensburg	
	Bond Funds	50,000
223.	Green County Water	
	Bond Funds	450,000
224.	Green County Fiscal Court - Fire Departments	
	Bond Funds	100,000

## Greenup County

225.	Greenup County Fiscal Court for Water Projects	
	Bond Funds	500,000
226.	City of Flatwoods - Athletic Complex and Walking Trail	
	Bond Funds	77,500
227.	City of Southshore for Water, Sewer, Roads, Public Safety, and Parks Projects	
	General Fund	25,000
228.	City of Wurtland for Water, Sewer, Roads, Public Safety, and Parks Projects	
	General Fund	22,500
229.	Greenup County Fiscal Court - Addington Ball Field Road	
	General Fund	10,000
230.	Greenup County Fiscal Court - Fairgrounds	
	General Fund	10,000
231.	Greenup County Volunteer Fire Departments	
	Bond Funds	72,500
232.	Greenup County Fiscal Court - (Winified Sewer Project - \$50,000; City of Raceland Water & Sewer - \$25,000; City of Russell Water & Sewer - \$75,000; City of Worthington Water & Sewer - \$25,000)	
	Bond Funds	175,000

233.	Russell Independent - Russell Primary Playground	
	General Fund	35,000
234.	Russell Independent - Russell Primary School Based Council	
	General Fund	7,500
235.	Russell Independent - Russell Middle School Based Council	
	General Fund	7,500
236.	Russell Independent - McDowell Playground	
	General Fund	15,000
237.	Russell Independent - McDowell School Based Council	
	General Fund	7,500
238.	Russell Independent - Russell High School Based Council	
	General Fund	7,500
239.	Raceland Schools - Raceland High School Based Council	
	General Fund	7,500
240.	Raceland Schools - Worthington Elementary School	
	Based Council	
	General Fund	7,500
241.	Raceland Schools - Campbell Elementary School	
	Based Council	
	General Fund	7,500
242.	Greenup County Schools - Argillite Elementary School	
	Based Council	
	General Fund	7,500
243.	Greenup County Schools - Greenup County High School	
	Based Council	
	General Fund	7,500
244.	Greenup County Schools - Greysbranch Elementary	
	School Based Council	
	General Fund	7,500
245.	Greenup County Schools - Lynn Elementary School	
	Based Council	
	General Fund	7,500
246.	Greenup County Schools - McKell Elementary School	
	Based Council	
	General Fund	7,500
247.	Greenup County Schools - McKell Middle School	
	Based Council	
	General Fund	7,500

248.	Greenup County Schools - Wurtland Elementary School Based Council General Fund	7,500
249.	Greenup County Schools - Wurtland Middle School Based Council General Fund	7,500
250.	Raceland Schools - Worthington Elementary Walk-in Freezer General Fund	5,000
251.	Greenup County Fiscal Court - County Fairgrounds Ballpark General Fund	5,000
252.	City of Worthington - Worthington Park General Fund	5,000
253.	City of South Shore - Stan Spence Baseball General Fund	5,000
254.	Greenup County Fiscal Court - Greenup Youth Soccer General Fund	8,000
255.	Russell/Flatwoods Jr. Football General Fund	5,000
256.	Greenup County Fiscal Court - Raceland/Worthington Jr. Football General Fund	5,000
257.	Greenup County Fiscal Court - Greenup County Jr. Football General Fund	5,000
258.	City of Russell - Public Safety General Fund	20,000
259.	Greenup County Schools - Greenup County High Site Based Council - (To be divided equally among the science instructors to purchase instructional materials, participate in science competitions, or purchase equipment.) General Fund	2,000
260.	Greenup County Schools - McKell Middle School Based Council - (To be divided equally among the science instructors to purchase instructional materials, participate in science competitions, or purchase equipment.) General Fund	2,000
261.	Greenup County Schools - Wurtland Middle School Based Council - (To be divided equally among the science instructors to purchase instructional materials, participate in science competitions, or purchase equipment.)	

	General Fund	2,000
262.	Raceland Schools - Raceland High School Based Council - (To be divided equally among the science instructors to purchase instructional materials, participate in science competitions, or purchase equipment.)	
	General Fund	2,000
263.	Russell Independent - Russell High School Based Council - (To be divided equally among the science instructors to purchase instructional materials, participate in science competitions, or purchase equipment.)	
	General Fund	2,000
264.	Russell Independent - Russell Middle School Based Council - (To be divided equally among the science instructors to purchase instructional materials, participate in science competitions, or purchase equipment.)	
	General Fund	2,000
264a.	Greenup County Fiscal Court - Junior Basketball	
	General Fund	10,000
264b.	Greenup County Fiscal Court - Juvenile Detention Cost	
	General Fund	10,000
Hancock County		
265.	Hancock County Fire and Rescue Building	
	Bond Funds	40,000
266.	Hancock County Rescue Squad Truck	
	Bond Funds	20,000
267.	Hancock County Water Project	
	Bond Funds	115,000
Hardin County		
268.	Adult Day Rehabilitation Program Facility	
	Bond Funds	75,000
269.	After - School and Recreational Programs - Upton	
	General Fund	75,000
270.	Annual "Golden Armor Festival"	
	General Fund	25,000
271.	Challenger Learning Center	
	Bond Funds	760,000
272.	Chamber Meeting and Exhibition Room	
	General Fund	25,000

273.	City Hall Improvement	
	General Fund	50,000
274.	Community Center, Vine Grove	
	Bond Funds	300,000
275.	Duvall Softball/Baseball Park	
	General Fund	5,000
276.	Elizabethtown Community College	
	General Fund	40,000
277.	Fire Department Rescue Truck and Facility Renovation	
	Bond Funds	50,000
278.	Elizabethtown Community Adult Crisis Stabilization Program	
	General Fund	300,000
279.	Helping Hand Organization	
	General Fund	25,000
280.	Kids Voting Program of Hardin County	
	General Fund	50,000
281.	Mobile Command Post for Fire and Police Department	
	Bond Funds	50,000
282.	New Hope Missionary Baptist Church	
	General Fund	25,000
283.	One Four Wheel - Drive Police Vehicle	
	Bond Funds	25,000
284.	Playground Equipment for Woodland Elementary	
	General Fund	25,000
285.	Radcliff City Park	
	General Fund	50,000
286.	Hardin County Historical Society	
	General Fund	10,000
287.	Sidewalks for Cecilia	
	Bond Funds	100,000
288.	Sister City Program	
	General Fund	5,000
289.	Veterans Programs	
	General Fund	5,000
290.	Volunteer Fire Departments	
	Bond Funds	390,000
291.	YMCA Feasibility Study	

	General Fund	20,000
292.	Kentucky Food Bank	
	General Fund	115,000
293.	Hardin County Public Library	
	General Fund	300,000
294.	Patton Museum Expansion Project	
	Bond Funds	100,000
295.	Hardin County Water District #2 - Rineyville Project	
	Bond Funds	1,200,000
296.	Hardin County Water District #2	
	Bond Funds	421,500
297.	Radcliff Industrial Park	
	Bond Funds	1,000,000
298.	Elizabethtown State Theater Renovation	
	Bond Funds	500,000
299.	Rineyville Sport Field	
	General Fund	50,000
300.	Glendale Recreation Program	
	General Fund	50,000
301.	Saunders Springs Walking Trail and Park	
	General Fund	25,000
302.	Westpoint City Hall Renovation	
	Bond Funds	70,000
303.	Upton Community Building	
	General Fund	35,000

## Harlan County

304.	Tri - City Clinic (Appalachian Regional Hospital)	
	Cumberland	
	Bond Funds	500,000
305.	Harlan County Jail Design and Construction	
	Bond Funds	500,000
306.	Harlan County Garage	
	Bond Funds	200,000
307.	Black Mountain Water District - Water Line Extension	
	Bond Funds	500,000
308.	Cawood Water District - Extend Water Lines from	
	Ross Point to Letcher County	
	Bond Funds	500,000



309.	Harlan County and City of Cumberland jointly to extend water lines from Ross Point to Letcher County Bond Funds	500,000
310.	Green Hill Water District - Water Line Extension - Isaacs Creek, Big Low Road, and Little Shephard Trail Bond Funds	500,000
311.	Appalachian Development Center (Southeast Community College) General Fund	500,000
Harrison County		
312.	Industrial Park Road Bond Funds	1,000,000
313.	KCTCS Education Building Bond Funds	200,000
Hart County		
314.	Civil War Battlefield Project General Fund	100,000
315.	Hart County Fire Departments - Distribute to Seven Fire Departments Bond Funds	300,000
316.	Hart County Waterlines Bond Funds	500,000
317.	Hart County Historic Thomas House Bond Funds	100,000
318.	Hart County Fiscal Court - Water and Sewer Project Bond Funds	500,000
Henderson County		
319.	Henderson County Technology Bond Funds	1,500,000
Henry County		
320.	Henry County Disaster and Emergency Services Office Building Bond Funds	150,000
321.	Henry County Water Line Extensions - Campbellsburg Sewer Project Bond Funds	350,000
Hickman County		
322.	Hickman County Volunteer Fire Department	

	Bond Funds	50,000
323.	Columbus/Belmont State Park Enhancement	
	Bond Funds	450,000
Hopkins County		
324.	Dawson Springs Swimming Pool	
	Bond Funds	650,000
325.	Madisonville Community College Renovation	
	Bond Funds	850,000
Jackson County		
326.	Jackson Fiscal Court - Four Fire Departments - \$15,000 Each	
	Bond Funds	60,000
Jefferson County		
327.	Cardinal Park	
	Bond Funds	350,000
328.	Exploited Children Help Organization (ECHO)	
	General Fund	9,000
329.	Home of the Innocents	
	Bond Funds	7,000,000
330.	Iroquois Amphitheater	
	Bond Funds	4,600,000
331.	Louisville Oral School	
	Bond Funds	1,000,000
332.	Neighborhood House	
	Bond Funds	700,000
333.	Presbyterian Community Center	
	Bond Funds	300,000
334.	Project for Women	
	General Fund	25,000
335.	St. Williams Center	
	Bond Funds	200,000
336.	Summerbridge	
	General Fund	150,000
337.	Visually Impaired Preschool	
	General Fund	100,000
338.	Beechmont Youth Sports	
	General Fund	12,000
339.	Beechmont Neighborhood Association	

	General Fund	15,000
340.	South End Teen Court	
	General Fund	25,000
341.	City of Louisville Police Horse Patrol	
	General Fund	40,000
342.	City of Shively Fire Trucks	
	Bond Funds	300,000
343.	St. Anthony Outreach Center	
	General Fund	100,000
344.	Prospect City Library	
	General Fund	100,000
345.	St. Stephen Family Life Center, Inc.	
	General Fund	40,000
346.	Office of Technology and Information - Two Pilot Projects	
	Bond Funds	250,000
347.	Lil Angels Child Care Center Expansion	
	General Fund	100,000
348.	West Louisville Talent Education Center - Musical Equipment	
	General Fund	10,000
349.	Kentucky Autism Center University of Louisville	
	General Fund	500,000
350.	Rosenberger House Renovation	
	Bond Funds	100,000
351.	Farnsley Kaufman House Renovation	
	Bond Funds	115,000
352.	Belle of Louisville - Operations, Maintenance, Equipment	
	General Fund	400,000
353.	Project Women GED	
	General Fund	50,000
354.	House of Ruth	
	General Fund	50,000
355.	Wilder Park Neighborhood Association - Roofing/Parking Maintenance	
	General Fund	25,000
356.	St. John Vianney Community Day Care -	

	Interpreter Pool	
	General Fund	40,000
357.	St. John Vianney Community Day Care	
	Maintenance Pool	
	General Fund	40,000
358.	Harbor House Building Funds	
	General Fund	100,000
359.	City of Shively Community Center	
	Bond Funds	400,000
360.	Neighborhood Housing Services	
	General Fund	58,000
361.	Kentucky One Church/One Child	
	General Fund	100,000
362.	Kling Center Community Outreach	
	General Fund	200,000
363.	Kentucky State Fair and Exposition Center	
	Bond Funds	4,000,000
364.	African - American Heritage Museum	
	Bond Funds	3,000,000
365.	Muhammad Ali Center	
	Bond Funds	7,000,000
366.	Louisville Waterfront Development Corporation Phase II	
	Bond Funds	12,500,000
367.	Louisville Medical Center Development	
	Bond Funds	5,000,000
Jessamine County		
368.	Jessamine County Park and Aquatic Center	
	Bond Funds	775,000
369.	Roy Peterson Study Center	
	General Fund	50,000
370.	All God's Children Home	
	General Fund	50,000
371.	High Bridge Fire Department	
	Bond Funds	10,000
372.	Wilmore Ichthus Park Entrance	
	Bond Funds	100,000
373.	Jessamine County Humane Society Building	
	Bond Funds	125,000

## Johnson County

374.	Johnson County Water Lines	
	Bond Funds	500,000

## Kenton County

375.	Covington Youth Sports Complex	
	Bond Funds	200,000
376.	Independence City Park	
	Bond Funds	200,000
377.	Taylor Mill Pride Park	
	Bond Funds	150,000
378.	Talking Library for Kenton County Library	
	General Fund	35,000
379.	Elsmere Senior Citizens Center Parking Lot	
	General Fund	50,000
380.	Edgewood Sidewalk Turkey Foot Road	
	General Fund	10,000
381.	Edgewood School Crossing Lights	
	General Fund	5,000
382.	Edgewood Veterans Memorial	
	General Fund	15,000
383.	Crestview Hills - Turn Lane Turkey Foot	
	Bond Funds	100,000
384.	Crestview Hills - Sidewalks Dixie Highway	
	Bond Funds	100,000
385.	Villa Hills Sidewalks - Collins Road	
	Bond Funds	100,000
386.	Ft. Wright Sidewalks - Highland Avenue	
	General Fund	35,000
387.	Ft. Wright Amsterdam Road Street Repair	
	General Fund	100,000
388.	Lakeside Park Sidewalk - Dixie Highway	
	General Fund	20,000
389.	Lakeside Park Street Repair	
	General Fund	20,000
390.	Ft. Mitchell Sidewalks - Royal Drive	
	General Fund	50,000
391.	Ft. Mitchell Park at Crescent	
	Bond Funds	150,000

392.	Crescent Springs - Basketball Court	
	General Fund	15,000
393.	Crescent Springs - Crisler Avenue	
	General Fund	40,000
394.	Crescent Springs Periwinkle Street	
	General Fund	28,000
395.	Crescent Springs Drain Sewers	
	General Fund	10,000
396.	Park Hills - Notre Dame to St. Joseph - Sidewalks	
	General Fund	35,000
397.	Park Hills - Covington Catholic to Arlington - Sidewalks	
	General Fund	35,000
398.	City of Erlanger Mobile Data Terminal	
	Bond Funds	200,000
399.	City of Elsmere - Three Laptop Computers for DARE	
	General Fund	10,000
400.	City of Elsmere - Leaf Collector	
	General Fund	10,000
401.	City of Visalia Water Project for Fire Department	
	Bond Funds	300,000
402.	Lakeside Park - Veterans Memorial	
	General Fund	25,000

## Knott County

403.	Hindman City Hall	
	Bond Funds	100,000
404.	Hindman Water Tank	
	Bond Funds	200,000
405.	Troublesome Creek Sewer	
	Bond Funds	600,000
406.	Knott County KCTCS Parking	
	Bond Funds	1,000,000
407.	Pedestrian Walkway	
	Bond Funds	100,000

## Knox County

408.	Water Project - Barbourville Water and Electric - Johnson Hollow	
	General Fund	10,000

409.	Water Project - Barbourville Water and Electric - Hammons Fork General Fund	20,000
410.	Water Project - Barbourville Water and Electric - Turkey Creek Bond Funds	60,000
411.	Water Project - Barbourville Water and Electric - Emanuel General Fund	10,000
412.	Water Project - Barbourville Water and Electric - Shephen Trace Bond Funds	75,000
413.	Water Project - Barbourville Water and Electric - Hunting Shirt General Fund	5,000
414.	Water Project - Barbourville Water and Electric - N. HWY II - Main Line Extension General Fund	10,000
415.	Water Project - Corbin City Water - Hart Road General Fund	40,000
416.	Water Project - East Knox Water - Buckeye General Fund	10,000
417.	Water Project - East Knox Water - Macro Branch General Fund	7,500
418.	Water Project - East Knox Water - Davis Branch General Fund	7,500
419.	Water Project - East Knox Water - Morse Creek General Fund	10,000
420.	Water Project - East Knox Water - Rickett Branch General Fund	7,500
421.	Water Project - East Knox Water - Goodin Branch General Fund	20,000
422.	Water Project - East Knox Water - Lick Branch General Fund	10,000
423.	Water Project - East Knox Water - Stoney Fork General Fund	20,000
424.	Water Project - East Knox Water - Laure Branch General Fund	5,000

425.	Water Project - East Knox Water - Big Creek 718	
	General Fund	10,000
426.	Water Project - East Knox Water - J. Goodin Branch	
	General Fund	6,000
427.	Water Project - East Knox Water - Trace Branch	
	General Fund	6,500
428.	Knox County Health Department	
	General Fund	50,000
429.	Knox County Ambulance Service - Purchase Ambulance	
	Bond Funds	50,000
430.	Knox County EOC Community Action	
	General Fund	20,000
431.	Knox County EOC Community Action -	
	Emergency Fund	
	Service for purchase of computer	
	General Fund	5,000
432.	Fire Department - Divide equally among eight	
	Fire Departments	
	Bond Funds	50,000
433.	Knox County General Hospital	
	General Fund	750,000
434.	Knox County Fiscal Court - Eight Fire Departments -	
	\$15,000 Each	
	Bond Funds	120,000
435.	Barbourville Independent School System Activity	
	Bond Funds	3,000,000

## Larue County

436.	Buffalo Fire Department	
	Bond Funds	65,000
437.	Hodgenville Fire Department	
	Bond Funds	65,000
438.	Magnolia Fire Department	
	Bond Funds	65,000
439.	Larue County Water	
	Bond Funds	250,000
440.	Purchase Lincoln Boyhood Home	
	Bond Funds	500,000

## Laurel County



441.	Laurel County Water	
	Bond Funds	250,000
442.	Laurel County Fiscal Court - Eleven Fire	
	Departments - \$15,000 Each	
	Bond Funds	165,000
443.	Laurel County Senior Citizens	
	General Fund	25,000
444.	Laurel County Fire Department	
	Bond Funds	50,000
445.	Laurel County Drop Out	
	General Fund	50,000
446.	Levi Jackson State Park	
	Bond Funds	250,000
Lawrence County		
447.	Blaine Community Center and Park Enhancement	
	Bond Funds	110,000
448.	Lawrence County Fiscal Court Stella/Moore Rec. Complex	
	Bond Funds	75,000
449.	Lawrence County School System Recreational	
	Improvements	
	Bond Funds	160,000
450.	Lawrence County Volunteer Fire Department	
	Bond Funds	105,000
451.	Louisa Beautification and September Festival	
	General Fund	50,000
452.	State Highway 32 Sewer Project	
	Bond Funds	500,000
453.	Lawrence County Fiscal Court - Community	
	Development Building	
	Bond Funds	300,000
Lee County		
454.	City of Beattyville	
	Bond Funds	150,000
455.	Lee County Water and Sewer Expansion	
	Bond Funds	200,000
456.	Lee County Fiscal Court - Four Fire Departments -	
	\$5,000 Each	
	Bond Funds	20,000

457.	Lee County Fiscal Court - Emergency Services Building	
	Bond Funds	100,000
458.	Lee County Fiscal Court - Purchase & Development of Park	
	General Fund	30,000
459.	Beattyville/Lee County Water Tank Construction	
	Bond Funds	100,000

## Leslie County

460.	City of Hyden	
	General Fund	50,000
461.	Leslie County Board of Education	
	General Fund	110,000
462.	Leslie Senior Citizens	
	General Fund	25,000
463.	Leslie Vocational Tech Center	
	General Fund	17,000
464.	Leslie Volunteer Fire Department	
	Bond Funds	50,000
465.	Leslie County School Board Extra Curricular Activities	
	General Fund	30,000

## Letcher County

466.	Letcher County Water	
	Bond Funds	250,000
467.	Community Park at Ashcamp	
	Bond Funds	100,000
468.	Volunteer Fire Departments	
	Bond Funds	300,000
469.	Public Library in Jenkins	
	Bond Funds	200,000
470.	Water Line Extensions for Whitesburg	
	Bond Funds	500,000

## Lewis County

471.	Concord Water Line Extension	
	Bond Funds	350,000
472.	Lewis County Water Project	
	Bond Funds	100,000
473.	Lewis County State Park Study	
	General Fund	50,000
474.	Lewis County Fiscal Court - Divide Equally	

Among Volunteer Fire Departments	
Bond Funds	100,000
Lincoln County	
475. Lincoln County Technology Center	
Bond Funds	2,500,000
476. Broughtontown - Remodel and upgrade of School Building for existing Community Center	
Bond Funds	150,000
477. Lincoln County Fiscal Court - Divide Equally among Volunteer Fire Departments	
Bond Funds	60,000
Livingston County	
478. Crittenden/Livingston Water District	
Bond Funds	100,000
479. Grand River Water District	
General Fund	50,000
480. Livingston County Fire Districts	
Bond Funds	60,000
481. Livingston County Recreational Complex and Boat Ramps	
General Fund	40,000
482. Livingston Convalescence Center	
General Fund	35,000
483. Livingston EMS Ambulance	
Bond Funds	65,000
Logan County	
484. Logan Todd Water Commission Project	
Bond Funds	1,000,000
485. Logan County Industrial Park	
Bond Funds	200,000
Lyon County	
486. Lyon County Water Projects	
Bond Funds	200,000
487. Lyon County Fire and Rescue	
Bond Funds	25,000
Madison County	
488. Richmond Area Arts Center	
General Fund	200,000
489. Richmond Salvation Army	

	General Fund	250,000
490.	Madison County Fiscal Court - Equal Distribution to Volunteer Fire Departments	
	Bond Funds	100,000
491.	Ducannon Lane Water Project	
	Bond Funds	2,400,000
492.	Madison County Rural Sanitary Sewer	
	Bond Funds	2,400,000
493.	Berea Artisans Center	
	Bond Funds	1,400,000
494.	Madison County Library - Property Acquisition	
	Bond Funds	100,000
Magoffin County		
495.	Magoffin County Administrative Office Building	
	Bond Funds	300,000
496.	Magoffin County Community Program	
	General Fund	20,000
497.	Magoffin Volunteer Fire Department	
	Bond Funds	80,000
498.	Senior Citizens	
	General Fund	50,000
499.	Senior Citizens Vehicles	
	General Fund	50,000
500.	Magoffin County Park Renovation	
	General Fund	50,000
Marion County		
501.	Emergency Service Center	
	Bond Funds	500,000
502.	Kedron Bridge	
	Bond Funds	500,000
503.	Bradfordsville Community Center	
	General Fund	80,000
504.	City of Lorretto Park Improvements	
	Bond Funds	71,500
505.	Gravel Switch Community Center	
	General fund	80,000
506.	Police Building	
	Bond Funds	150,000

507.	Raywick Community Center	
	General Fund	25,000
Marshall County		
508.	City of Benton Sewer Restoration	
	Bond Funds	500,000
509.	Sewer Extension Calvert City Annexed Area/I - 24 to Ky Dam Village State Park	
	Bond Funds	300,000
510.	Kentucky Dam Village State Park Marina Repair	
	Bond Funds	1,750,000
Martin County		
511.	Martin County Community Center	
	Bond Funds	500,000
512.	Martin County Water Projects	
	Bond Funds	500,000
513.	Martin County Fiscal Court - Park Improvements	
	Bond Funds	100,000
Mason County		
514.	Maysville Convention Center	
	Bond Funds	450,000
515.	Maysville Underground Railroad Building Renovation	
	Bond Funds	150,000
McCracken County		
516.	Reidland Community Center	
	General Fund	50,000
517.	Metropolitan Hotel Renovation - Match Federal Grant	
	Bond Funds	100,000
518.	Priority I Sewer Projects, Paducah - McCracken Joint Sewer Agency	
	Bond Funds	395,000
519.	Paducah/McCracken County Convention Center	
	Bond Funds	200,000
520.	Four Rivers Center	
	Bond Funds	8,000,000
521.	Challenger Learning Center - Equipment & Improvements	
	Bond Funds	150,000
McCreary County		
522.	McCreary County Sheriff Department	

	Bond Funds	40,000
523.	McCreary County/Somerset Community Center	
	Bond Funds	2,500,000
McLean County		
524.	Island Wooden Bridge Park	
	General Fund	50,000
525.	Livermore River Park	
	General Fund	40,000
526.	Calhoun Fire Department Building	
	General Fund	35,000
527.	McCleary County Senior Citizens Center	
	General Fund	10,000
528.	Sacramento Battlefield	
	General Fund	40,000
Meade County		
529.	Tourism and Economic Development	
	General Fund	250,000
530.	Meade County Fiscal Court - Seven Fire	
	Departments - \$20,000 Each	
	Bond Funds	140,000
531.	Expansion Meade County Water System	
	Bond Funds	500,000
532.	Meade County Ambulance Service Emergency	
	Medical Technician Building	
	Bond Funds	100,000
533.	Meade Olin Park Improvements, Concession Stands	
	Locker Rooms, Bathroom Facilities	
	Bond Funds	100,000
534.	Meade County Industrial Park Development of 24	
	Acre Site and Building	
	Bond Funds	250,000
535.	City of West Point - Develop and Promote Tourism	
	and Economic Development Commission	
	General Fund	50,000
536.	Meade County Public Library - Installation & Upgrade	
	of Technical Information Services	
	General Fund	50,000
537.	City of Brandenburg - Completion of Water	

	Treatment Plant	
	Bond Funds	200,000
538.	Meade County Fiscal Court - Water & Sewer Project	
	Bond Funds	500,000
Menifee County		
539.	Frenchburg & Menifee County Regional Water Project	
	General Fund	50,000
540.	Regional Water and Sewer Project	
	Bond Funds	500,000
Mercer County		
541.	Burgin Drinking Water Enhancement	
	Bond Funds	100,000
542.	Mercer County Senior Citizen Center	
	General Fund	75,000
543.	Mercer County Park Improvements	
	Bond Funds	800,000
544.	Boone Drama	
	General Fund	75,000
545.	Mercer County Fair Board - Barn Replacement	
	Bond Funds	75,000
546.	Burgin Independent Schools	
	General Fund	25,000
Metcalf County		
547.	City of Edmonton	
	Bond Funds	200,000
548.	Metcalf County Fiscal Court - Water & Sewer	
	Bond Funds	500,000
549.	Metcalf County Fiscal Court - Fire Departments	
	Bond Funds	100,000
Monroe County		
550.	Monroe County Sheriff Department	
	Bond Funds	40,000
551.	Monroe County Industrial Park	
	Bond Funds	250,000
552.	Monroe County Fiscal Court - Water Lines	
	Bond Funds	500,000
553.	Old Mulkey State Park	
	Bond Funds	250,000

## Montgomery County

554.	Community Center Funding - Multi - County Workforce Training Center	
	Bond Funds	2,000,000
555.	Montgomery and Morgan Mid School Tech Project	
	Bond Funds	140,000

## Morgan County

556.	Morgan County Bridge Project	
	Bond Funds	200,000
557.	Morgan County Water	
	Bond Funds	800,000
558.	Morgan County High Technology Center - Construction	
	Bond Funds	4,400,000
559.	Morgan County Community Center	
	General Fund	440,000

## Muhlenberg County

560.	City of Greenville Sewer Plant Expansion	
	Bond Funds	500,000
561.	Muhlenberg County Water District	
	Bond Funds	100,000
562.	Powderly Sewer Collection System	
	Bond Funds	200,000
563.	Lake Malone State Park - Campsites	
	General Fund	20,000
564.	Muhlenberg Community College Satellite Site	
	Bond Funds	700,000

## Nelson County

565.	Wickland Mansion Project	
	Bond Funds	500,000
566.	Rolling Fork Fire District Filling Stations	
	Bond Funds	18,500
567.	Nelson County Waterlines - Water extensions as follows: KY 605 (Manton Rd.), Borders Lane, Pottershop, Leslie Ballard, US 150, Hilton Lane, Tom Greer, Woodlawn Rd., R.L. Greer, Shumsti, Lesmon Ford, Greenwill Ford, Vittitow Ford, Leo Crume.	
	Bond Funds	1,000,000
568.	Bloomfield Sidewalks	



	Bond Funds	175,000
569.	Old Bardstown Village	
	Bond Funds	100,000
Nicholas County		
570.	Dixie Highway Water Lines	
	Bond Funds	60,000
571.	Johnson Road Water Lines	
	Bond Funds	60,000
572.	Milltown Water Project	
	Bond Funds	65,000
573.	Nicholas County Health Department	
	Bond Funds	250,000
Ohio County		
574.	Ohio County Water Funds	
	Bond Funds	250,000
575.	Ohio County Fiscal Court - Nine Fire Departments - \$20,000 Each	
	Bond Funds	180,000
576.	Ohio County Judge/Executive	
	General Fund	82,400
577.	Ohio County Fiscal Court - Water System	
	Bond Funds	200,000
Oldham County		
578.	Oldham County Fair Grounds	
	General Fund	30,000
579.	Oldham County Parks	
	Bond Funds	500,000
580.	Oldham County Fiscal Court - Fire/EMS	
	Bond Funds	50,000
581.	Oldham County Business Park (Technology)	
	Bond Funds	200,000
582.	Oldham County Fiscal Court - Water & Sewer Projects	
	Bond Funds	150,000
Owen County		
583.	Road Barn and Ambulance Center	
	Bond Funds	225,000
584.	Water and Sewer Line Extensions to Owen County High School	

	Bond Funds	275,000
Owsley County		
585.	Booneville/Owsley County Fire Truck	
	Bond Funds	40,000
586.	Booneville Sewer Expansion	
	Bond Funds	500,000
587.	Board of Education - Education Center	
	General Fund	90,000
Pendleton County		
588.	Pendleton County Civic Center	
	General Fund	250,000
589.	Sewer District Project	
	Bond Funds	200,000
590.	City of Butler - Repair of Flood Damage	
	General Fund	20,000
591.	Pendleton County Fiscal Court - Water and Sanitation Lines	
	Bond Funds	400,000
592.	Pendleton County Fiscal Court - Volunteer Fire Departments	
	Bond Funds	30,000
Perry County		
593.	Buckhorn's Children Foundation - Displace Workers Training Center	
	General Fund	50,000
594.	Southeast Kentucky - Connie Mack program	
	General Fund	20,000
595.	Perry County Board for Appalachian Regional Theater Society	
	General Fund	15,000
596.	City of Vicco Water Projects	
	Bond Funds	150,000
597.	Viper Volunteer Fire Department Water Projects	
	Bond Funds	100,000
598.	Perry County Board Extracurricular Activities	
	General Fund	150,000
599.	Hazard City Schools Extracurricular Activities	
	General Fund	50,000
600.	Perry Central High School - Resource Parking Lot	

	General Fund	50,000
601.	Challenger Learning Center of Kentucky Board	
	Bond Funds	200,000
602.	Hazard City Schools - Renovation of Roy G. Eversole Gym	
	General Fund	50,000
603.	Center for Rural Health	
	Bond Funds	4,000,000
Pike County		
604.	Hardy Park - Renovation and Maintenance	
	General Fund	60,000
605.	Straight Hollow Water	
	Bond Funds	110,000
606.	Stone Cold Water	
	Bond Funds	86,000
607.	South Williamson Sewer Project	
	Bond Funds	200,000
608.	Eastern Kentucky Exposition Center	
	Bond Funds	6,900,000
609.	Ballfork and Mayfork Water	
	Bond Funds	127,000
610.	Grapevine Park Improvement	
	General Fund	20,000
611.	Phelps Park Improvement	
	General Fund	20,000
612.	Blackberry Park Improvement	
	General Fund	20,000
613.	Feds Creek Park Improvement	
	General Fund	20,000
614.	Long Fork Park Improvement	
	General Fund	20,000
615.	Elkhorn City Heritage Council	
	General Fund	5,000
616.	Pike County Fiscal Court - Thirty-three Volunteer Fire Departments - \$5,000 Each	
	Bond Fund	165,000
Powell County		
617.	Powell County Ambulance Service	

	Bond Funds	500,000
Pulaski County		
618.	Pulaski County Public Library - Equipment	
	General Fund	10,000
619.	Pulaski County Fiscal Court - Fifteen Fire	
	Departments - \$15,000 Each	
	Bond Funds	225,000
620.	County Health Department - Building Improvement Needs	
	Bond Funds	150,000
621.	Southeast Pulaski Water District - Water Lines	
	Bond Funds	150,000
622.	Western Pulaski Water District - Water Lines	
	Bond Funds	150,000
623.	Southeast Water Association	
	Bond Funds	350,000
624.	Burnside State Park - Lodge Feasibility Study	
	General Fund	15,000
Robertson County		
625.	Mt. Olivet Police Department	
	Bond Funds	10,000
626.	Robertson County Life Squad	
	Bond Funds	65,000
627.	Robertson County Public Library	
	Bond Funds	175,000
Rockcastle County		
628.	Rockcastle County Fiscal Court - Five Fire	
	Departments - \$15,000 Each	
	Bond Funds	75,000
629.	Rockcastle County Technology Center	
	General Fund	25,000
630.	Country Music Museum	
	Bond Funds	1,500,000
631.	Livingston Community Center Renovation	
	Bond Funds	100,000
Rowan County		
632.	City of Lake View Heights	
	Bond Funds	75,000
633.	Rowan Regional Industrial Park Fire Department	

	Bond Funds	400,000
634.	Morehead/Rowan County Rt. 32 North Volunteer Fire Department	
	Bond Funds	30,000
635.	Morehead City Water Expansion	
	Bond Funds	525,000
636.	Rowan County/Morehead Child Advocacy Center	
	Capital Construction	
	General Fund	45,000
637.	Morehead State University Radiological Imaging Equipment	
	Bond Funds	100,000
Russell County		
638.	Star Theater - prop Storage Building	
	General Fund	10,000
639.	Russell County Public Library - Equipment	
	General Fund	10,000
640.	Russell County Fiscal Court - Four Fire Departments - \$15,000 Each	
	Bond Funds	60,000
641.	Jamestown Water Project	
	Bond Funds	150,000
642.	Russell Springs Sewer and Water	
	Bond Funds	175,000
643.	Lake Cumberland State Park - Design and Renovation	
	Bond Funds	192,000
Scott County		
644.	Buffalo Spring Park	
	Bond Funds	80,000
645.	Cultural Arts Center	
	General Fund	55,000
646.	Depot Restoration	
	General Fund	40,000
647.	Scott County Reservoir	
	Bond Funds	825,000
Shelby County		
648.	Shelby County Vocational Education School Remodeling	
	Bond Funds	1,000,000
Simpson County		

649.	Franklin/Simpson Industrial Park Development		
	Bond Funds	750,000	
650.	Goodnight Memorial Library		
	Bond Funds	250,000	
651.	Franklin Park Improvements		
	Bond Funds	150,000	
652.	Franklin/Simpson Technical Center		
	Bond Funds	1,000,000	
Spencer County			
653.	Spencer County Fiscal Court - Recreation Facility		
	Bond Funds	250,000	
654.	City of Taylorsville Water Works		
	Bond Funds	1,250,000	
Statewide			
655.	Blanton Forest Acquisition		
	General Fund	600,000	
656.	KY Civil War Museum - Vicksburg, Miss		
	General Fund	250,000	
657.	Rails to Trails Program		
	General Fund	422,500	
658.	Telemedicine (HB 177)		
	General Fund	1,100,000	
659.	Commission on Small Business Advocacy (HB 588)		
	General Fund	300,000	
660.	County Livestock Fund (HB 947)		
	General Fund	90,000	
661.	Aquaculture Infrastructure Components		
	Bond Funds	2,000,000	2,000,000
662.	Various State Parks - Technology Upgrades		
	Bond Funds	588,000	
663.	Area Technical Center Equipment		
	Bond Funds	2,998,800	
Taylor County			
664.	Technology Learning Center		
	Bond Funds	350,000	
665.	City of Campbellsville - Water and Sewer		
	Improvements/Expansions		
	Bond Funds	900,000	

## Todd County

666.	Logan Todd Regional Water Project	
	Bond Funds	500,000

## Trigg County

667.	Industrial Park and Water Sewer Improvements	
	Bond Funds	200,000
668.	Trigg Rural Fire Department	
	Bond Funds	50,000

## Trimble County

669.	Trimble County Highway Barn	
	Bond Funds	50,000
670.	Trimble County Fiscal Court - Fire/EMS	
	Bond Funds	20,000
671.	Trimble County Fiscal Court - County Parks	
	Bond Funds	200,000

## Union County

672.	21st Century Training Classroom	
	Bond Funds	500,000
673.	Union County Fairgrounds Convention Center & Pavilion	
	Bond Funds	500,000
674.	Union County Agricultural Fair - Arnold Arena and Convention Center Completion	
	Bond Funds	900,000

## Warren County

675.	Bowling Green Sidewalks	
	General Fund	30,000
676.	Gott Community Center, Inc.	
	General Fund	15,000
677.	Oakland Street Repairs and Paving	
	General Fund	100,000
678.	Plum Springs Street Improvements	
	General Fund	50,000
679.	Smiths Grove City Hall Expansion	
	Bond Funds	75,000
680.	Bowling Green Community Action	
	General Fund	500,000
681.	National Corvette Museum - Roof for Outdoor Stage	
	General Fund	50,000

682.	L&N Depot Restoration and Bowling Green Public Library Joint Effort Bond Funds	800,000
683.	Warren County - Additional Community Projects General Fund	250,000
684.	Boyce Community Center General Fund	10,000
685.	Capitol Arts Center - Bowling Green Bond Funds	6,750,000
Washington County		
686.	Mackville Community Park Bond Funds	180,000
687.	Willisburg Community Park Bond Funds	380,000
688.	Springfield Water & Sewer Commission - Water and Sewer Improvements & Expansions - Includes \$300,000 for the St. Catherine Sewer Extension. Bond Funds	1,500,000
Wayne County		
689.	Wayne County Fire Protection District #1 Bond Funds	190,000
690.	City of Montecello Downtown Stabilization Project Bond Funds	700,000
691.	Wayne County Sheriff's Department Bond Funds	40,000
Webster County		
692.	Sebree Spring Park Swimming General Fund	35,000
693.	City of Clay - Equipment Replacement General Fund	40,000
694.	City of Providence Youth Program General Fund	20,000
695.	City of Wheatcroft - Caboose Restoration General Fund	5,000
696.	Slaughters Fire Department - New Truck Bond Funds	50,000
697.	Webster County Fire Departments Bond Funds	150,000



## Whitley County

698.	City of Williamsburg Park Development	
	Bond Funds	1,000,000
699.	Whitley County Sheriff's Department	
	Bond Funds	40,000
700.	Corbin Tech Center - Design	
	General Fund	75,000
701.	Whitley County Water	
	Bond Funds	1,000,000
702.	Whitley County 911 Tower Replacement	
	Bond Funds	10,000
703.	Corbin Center for Technology & Community Activities	
	Bond Funds	6,000,000

## Wolfe County

704.	Campton Library	
	Bond Funds	175,000
705.	City of Campton Equipment Purchase	
	General Fund	50,000
706.	Volunteer Fire Department	
	Bond Funds	50,000
707.	Water Plant Renovation	
	Bond Funds	175,000
708.	West Campton Water Pump Station	
	General Fund	50,000

## Woodford County

709.	Community Center - Versailles	
	Bond Funds	1,000,000
710.	Bluegrass Railroad Museum - Bridgework, Rail Work, Signs, Miscellaneous	
	Bond Funds	250,000
711.	Versailles Water Project	
	Bond Funds	1,000,000
712.	Woodford County Hospital District Board	
	General Fund	500,000

## 2. JUDICIAL BRANCH

Budget Unit Court of Justice

Local Facility Fund

713.	Barren County Courthouse	
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	Bond Funds	500,000
714.	Bath County Courthouse Renovation	
	Bond Funds	100,000
715.	Bracken County Courthouse Elevator	
	Bond Funds	230,000
716.	McLean Courthouse Renovation	
	Bond Funds	225,000
717.	Trigg County Courthouse Annex	
	Bond Funds	250,000
718.	Trimble County Courthouse Improvements	
	Bond Funds	200,000

## S. COAL SEVERANCE TAX PROJECTS

Notwithstanding KRS 42.4588(2) and (4), the following projects are authorized and appropriated from Local Government Economic Development Fund moneys from the respective single county fund pursuant to KRS 42.4592 for public purposes in the following coal-producing counties in the manner and amounts enumerated. These projects are determined by the General Assembly to be important to the furtherance of the public policy objectives and economic development purposes for which the Local Government Economic Development Program was established. The amounts appropriated are estimates. Actual expenditures and encumbrances shall be limited to the actual receipts realized and available in the respective single county fund. These amounts are comprised of estimated receipts for fiscal year 2000-2001 and fiscal year 2001-2002 in combination with prior unobligated balances in the respective single county funds. Total expenditures from this source in fiscal year 2000-2001 and fiscal year 2001-2002 shall not exceed the amounts listed for any project or any county enumerated below.

## (1) GOVERNMENT OPERATIONS

a.	Budget Unit	Local Government	2000-01	2001-02
Bell County				
1.	Bell County Fiscal Court (County Projects)			
	Restricted Funds		650,000	
2.	City of Middlesboro Community Projects			
	Restricted Funds		450,000	
3.	Bell County Waterline Construction/ Wastewater Treatment/Infrastructure			
	Restricted Funds		750,000	
4.	Bell County Industrial Foundation Industrial Park Developments			
	Restricted Funds		1,000,000	
5.	City of Pineville (City Projects)			
	Restricted Funds		250,000	
Boyd County				
6.	Boyd County Water/Sewer Projects			
	Restricted Funds		150,000	185,000
Breathitt County				
7.	City of Jackson - Water Plant Renovation and Water Line Extension			

	Restricted Funds	500,000	
8.	City of Jackson – Intergenerational Center		
	Restricted Funds	125,000	125,000
9.	City of Jackson – City Hall Project		
	Restricted Funds	100,000	100,000
10.	Regional Performing Arts/Instructional Center		
	Restricted Funds	200,000	100,000
11.	County Court Clerk Computer Upgrade		
	Restricted Funds	40,000	
12.	Mt. Carmel River Launching Facility		
	Restricted Funds	50,000	
13.	Middle Kentucky River Student Headstart Bus		
	Restricted Funds	40,000	
14.	Breathitt County High School Field House		
	Restricted Funds	250,000	
15.	Jackson Independent School Recreation Field		
	Restricted Funds	250,000	
16.	Breathitt County Schools - Video Learning		
	Restricted Funds	100,000	
Butler County			
17.	Fire Department Radios		
	Restricted Funds	110,000	
18.	Butler County Water Project		
	Restricted Funds	100,000	
Caldwell County			
19.	Debt Repayment/Existing Spec Building		
	Restricted Funds	139,500	
Carter County			
20.	Hanna Lane Water Project		
	Restricted Funds	230,000	
21.	Carter County Jail		
	Restricted Funds	213,000	
22.	Olive Hill Historical Society Museum		
	Restricted Funds	62,000	88,000
23.	Connector Road from US 60 in Olive Hill to Fire Station		
	Restricted Funds	100,000	
Christian County			

24.	Christian County Water Project		
	Restricted Funds	150,000	
Clay County			
25.	Shammrock Property		
	Restricted Funds	450,000	
26.	Clay County Civic Center		
	Restricted Funds	100,000	
27.	Little Goose Industrial Property		
	Restricted Funds	75,000	
Daviess County			
28.	Daviess County Park and Visitor Center		
	Restricted Funds	250,000	
Edmonson County			
29.	Edmonson County - Boat Ramp - Alexander Creek Road to Green River		
	Restricted Funds	13,300	
Elliott County			
30.	Elliott County Economic Development Projects		
	Restricted Funds		150,000
31.	Elliott County Parks and Recreation		
	Restricted Funds	90,000	
32.	County Garage Building Project		
	Restricted Funds	68,000	
Floyd County			
33.	Floyd County Water Projects		
	Restricted Funds	450,000	500,000
34.	Industrial Site Expansions		
	Restricted Funds	200,000	
35.	Parks and Recreation Improvements		
	Restricted Funds	150,000	
36.	Floyd County Courthouse Renovations		
	Restricted Funds	100,000	
37.	Betsy Lane High School Football Field Renovations		
	Restricted Funds	100,000	
38.	Allen Central High School Football Field Renovations		
	Restricted Funds	100,000	
39.	Wayland Community Center Equipment		

	Restricted Funds	25,000	
40.	David School Equipment		
	Restricted Funds	25,000	
41.	McDowell Flood Control Project		
	Restricted Funds	200,000	
42.	Sugar Loaf Flood Control Project		
	Restricted Funds	40,000	
43.	Martin Flood Control Project		
	Restricted Funds	60,000	
44.	John M. Stumbo Community Park		
	Restricted Funds	25,000	
45.	Garth Landfill		
	Restricted Funds	50,000	
Greenup County			
46.	Greenup Fiscal Court - Greenup County War Memorial		
	Restricted Funds	10,200	
47.	Diederich Boulevard - Rt. 693 - Flood Abatement		
	Restricted Funds	134,800	85,200
Harlan County			
48.	City of Harlan Regional Sewer		
	Restricted Funds	300,000	400,000
<del>49.</del>	<del>Black Mountain Utility District - Sewer/Waterline</del>		
	<del>and Infrastructure</del>		
	<del>Restricted Funds</del>	<del>1,275,000</del>	<del>750,000</del>
50.	Cawood Water District Expansion		
	Restricted Funds	50,000	
51.	Sunshine School – Operating for Child Care Programs		
	Restricted Funds	50,000	50,000
52.	Tri-City Little League – Park Improvements		
	Restricted Funds	5,000	10,000
53.	City of Wallins - Recreational Improvements		
	Restricted Funds	5,000	5,000
54.	Sunshine Volunteer Fire Department Equipment		
	Restricted Funds	5,000	5,000
55.	New Covenant Kitchen		
	Restricted Funds	15,000	5,000
56.	East Kentucky Social Club – Roof		
	Restricted Funds	15,000	10,000

57.	Harlan Downtown Revitalization		
	Restricted Funds	25,000	25,000
58.	City of Cumberland – Sewer Plant Equipment		
	Restricted Funds	5,000	10,000
59.	Yoakum Creek Volunteer Fire Department – Renovations/Equipment		
	Restricted Funds	15,000	10,000
60.	Cloverfork Multi-Purpose Center – Renovation		
	Restricted Funds	10,000	15,000
61.	City of Evarts – Various Community Developments		
	Restricted Funds	10,000	15,000
62.	City of Loyall – City Operations and Maintenance		
	Restricted Funds	10,000	15,000
63.	Martin's Fork Volunteer Fire Department Equipment		
	Restricted Funds	5,000	5,000
64.	Cloverfork Museum Facility – Renovation		
	Restricted Funds	5,000	5,000
65.	Harlan County Rescue Squad – Equipment		
	Restricted Funds	10,000	10,000
66.	City of Cumberland		
	Restricted Funds	25,000	25,000
67.	Green Hill Community Park		
	Restricted Funds	20,000	20,000
68.	City of Lynch – Various Community Developments		
	Restricted Funds	15,000	10,000
69.	Tri-City Rescue Squad – Equipment		
	Restricted Funds	10,000	10,000
70.	Bledsoe Volunteer Fire Department – Equipment		
	Restricted Funds	5,000	10,000
71.	Coldiron Fire Department - Purchase of Equipment		
	Restricted Funds	5,000	10,000
72.	City of Benham - Various Community Development Projects		
		15,000	10,000
73.	City of Cumberland - Fire Department		
	Restricted Funds	5,000	10,000
<del>74.</del>	<del>Harlan County Fiscal Court – Purchase of Road Equipment</del>		

	<del>Restricted Funds</del>	<del>70,000</del>	<del>60,000</del>
75.	Hands Across Mountain - Various Projects		
	Restricted Funds	3,000	2,000
76.	Harlan County Senior Citizens		
	Restricted Funds	15,000	15,000
77.	Wallins Volunteer Fire Department - Purchase of Equipment		
	Restricted Funds	5,000	10,000
78.	Cloverfork Rescue Squad - Purchase of Equipment	5,000	10,000
79.	Lower Cloverfork Fire Department - Purchase of Equipment		
	Restricted Funds	5,000	10,000
80.	Evarts Fire Department - Purchase of Equipment	5,000	10,000
81.	Upper Cloverfork Fire Department - Purchase of Equipment - Homes Mill		
	Restricted Funds	5,000	10,000
82.	Harlan County Sheriff Department - Purchase of Vehicle		
	Restricted Funds	15,000	10,000
<del>83.</del>	<del>Harlan County Fiscal Court - Purchase of Equipment</del>		
	<del>Restricted Funds</del>	<del>50,000</del>	<del> }</del>
84.	Benham of Volunteer Fire Department - Purchase of Equipment		
	Restricted Funds	5,000	10,000
85.	Pathfork Community Park - Development of a local park		
	Restricted Funds	15,000	15,000
86.	Totz Community Park - Development of a park	15,000	15,000
87.	Putney Volunteer Fire Department - Purchase of Equipment		
	Restricted Funds	5,000	10,000
88.	Harlan Shrine Club for Putney Park		
	Restricted Funds	5,000	10,000
89.	Harlan County Jail - Repairs		
	Restricted Funds	100,000	
90.	Harlan County Clerk - Office Equipment		
	Restricted Funds	10,000	15,000

91.	Loyall Fire Department - for Building		
	Restricted Funds	15,000	10,000
<del>92.</del>	<del>Appalachian Heritage Art Guild</del>		
	<del>Restricted Funds</del>	<del>25,000</del>	<del>25,000</del>
Henderson County			
93.	Henderson County Road Bore Water Project		
	Restricted Funds	225,000	
94.	Melton Road Waterlines		
	Restricted Funds	16,500	
95.	Birk City Road Water Project		
	Restricted Funds	21,000	
96.	Middle Delaware Road Water Project		
	Restricted Funds	22,700	
97.	Water and Sewer Lines – Henderson Fairground		
	Restricted Funds	44,800	
98.	Water and Sewer Department Merger Study		
	Restricted Funds	20,000	
Hopkins County			
99.	Madisonville Post Office – Acquisition/Renovation		
	Restricted Funds	800,000	
Johnson County			
100.	Mountain Home Place Project – Redirect to City of Paintsville Reauthorization/Reallocation (\$300,000 – Restricted Funds)		
101.	Paintsville City Hall Project – Renovation		
	Restricted Funds	150,000	
102.	Paintsville Tourism Welcome Center – Development		
	Restricted Funds	150,000	
103.	Highway Lighting (US 460 and 321)		
	Restricted Funds	30,000	
104.	Johnson County Senior Citizens Center – Renovation/Equipment		
	Restricted Funds	50,000	
105.	Johnson County Public Library Renovation		
	Restricted Funds	250,000	
106.	Johnson County Industrial Development Project		
	Restricted Funds	400,000	



107.	Paintsville High School Recreation	
	Field Improvements	
	Restricted Funds	50,000
108.	Paintsville Golf Course Project - Development	
	Restricted Funds	50,000
109.	Johnson County Board of Education - Academic Team	
	Restricted Funds	50,000
110.	Van Lear Historic Society	
	Restricted Funds	25,000

## Knott County

111.	Knott County - Regional Water Development and Caney Creek Water Sewer Board		
	Restricted Funds	450,000	200,000
112.	Mallie Water Project		
	Restricted Funds	150,000	150,000
113.	Bill Hall Mountain Water Project		
	Restricted Funds	200,000	200,000
114.	Owens Branch Water Project		
	Restricted Funds	75,000	75,000
115.	Short Branch Water Project		
	Restricted Funds		50,000
116.	Knott County Youth Center – Development		
	Restricted Funds		200,000
117.	Right Beaver/Caney Creek/Carr Creek Recreation Project		
	Restricted Funds		250,000
118.	Emma Lena/Carrie/Clear Creek Recreation Facility		
	Restricted Funds		50,000
119.	Lotts Creek Community Center Recreation Field Lighting and Development		
	Restricted Funds	100,000	
120.	Knott County Central Community Recreation Complex		
	Restricted Funds	100,000	
121.	Jones Fork Park		
	Restricted Funds	15,000	
122.	Ball Creek Park		

	Restricted Funds	15,000	
123.	Right Beaver-Kite Park		
	Restricted Funds	15,000	
124.	Hindman Park		
	Restricted Funds	15,000	
125.	Red Fox Community Park		
	Restricted Funds	15,000	
126.	Dry Creek Park		
	Restricted Funds	15,000	
Knox County			
127.	Knox County Fiscal Court Water Projects		
	Restricted Funds	858,000	198,000
Laurel County			
128.	Laurel County Fiscal Court Waterline Projects		
	Restricted Funds	260,000	
Lawrence County			
129.	Lawrence County Fiscal Court Water/Sewer Projects		
	Restricted Funds	300,000	
130.	Lawrence County Parks and Recreation – Various		
	Restricted Funds	350,000	
131.	Lawrence County Economic Development Projects – Various		
	Restricted Funds	365,300	184,700
Lee County			
132.	County Multi-Purpose Center Project		
	Restricted Funds	300,000	
Leslie County			
133.	Leslie County Fiscal Court Water Projects – Various		
	Restricted Funds	950,000	950,000
134.	Leslie County Fiscal Court - Road Construction and Equipment		
	Restricted Funds	450,000	450,000
135.	Leslie County Education Center – Construction/Equipment/Services		
	Restricted Funds	425,000	25,000
136.	Cutshin Senior Citizens Center		
	Restricted Funds	200,000	200,000

137.	Nixon EOC 911 Project		
	Restricted Funds	750,000	
138.	Leslie County Volunteer Fire Departments – Equipment/ Vehicles		
	Restricted Funds	60,000	10,000
139.	Leslie County - Courthouse Renovations and Equipment		
	Restricted Funds	125,000	125,000
140.	Leslie County -Economic Development Incentive Grants/ Spec. Building		
	Restricted Funds	400,000	
Letcher County			
141.	Letcher County - Waterline/Sewer Replacement		
	Restricted Funds	600,000	
142.	Childs Branch Industrial Park – Development		
	Restricted Funds	471,000	
143.	Jenkins Fire Department – Equipment		
	Restricted Funds	50,000	
144.	Blackey/Isom Water Project – Improvements		
	Restricted Funds	1,000,000	
145.	City of Neon Downtown Beautification		
	Restricted Funds	50,000	
146.	Colson Multi-Purpose Center – Construction		
	Restricted Funds	50,000	
147.	Gordon Multi-Purpose Center – Acquisition/ Construction		
	Restricted Funds	100,000	
148.	Southeast Community College (SECC) Walk Bridge		
	Restricted Funds	100,000	
149.	Industrial/Infrastructure Development – Various		
	Restricted Funds	1,000,000	1,000,000
McCreary County			
150.	McCreary County Federal Prison Project – Infrastructure		
	Restricted Funds	450,000	
McLean County			
151.	Purchase Acreage for Industrial Park #2 - City of Island		
	Restricted Funds	125,000	
152.	Debt Service and Installation of		

	Natural Gas Pipeline to Perdue Farms, Industrial Park #1 and #2		
	Restricted Funds	220,000	
153.	Sewer Line Extension – Calhoun and Rumsey		
	Restricted Funds		60,000
154.	Water Plant Renovation – Livermore		
	Restricted Funds	50,000	
155.	Waterline Extensions Industrial Park #2- City of Island		
	Restricted Funds	70,000	
156.	One Stop/Adult Education/Workforce Investment Act (WIA) Training Center		
	Restricted Funds	60,000	
157.	Fire Trucks – Acquisition		
	Restricted Funds	55,000	45,000
Magoffin County			
158.	Salyersville Wastewater Project – Improvements		
	Restricted Funds	200,000	
159.	Magoffin County - EOC Vehicle		
	Restricted Funds	36,000	
160.	Magoffin County - Waterline Construction		
	Restricted Funds	200,000	
161.	Magoffin County Administrative Office Bldg.		
	Restricted Funds		200,000
Martin County			
162.	Martin County Community Center – Development		
	Restricted Funds	2,000,000	2,000,000
163.	Health Clinic		
	Reauthorization (\$1,000,000 – Restricted Funds)		
164.	Sheldon Clark Athletic Field – Development/Expansion		
	Restricted Funds	100,000	
165.	Martin County Rescue Squad – Renovation/Equipment		
	Restricted Funds	60,000	
166.	Pigeon Roost Community Center – Development		
	Restricted Funds	30,000	
167.	City of Warfield Community Projects – Various		
	Restricted Funds	100,000	
168.	City of Inez Walking Trail – Development		

	Restricted Funds	100,000
169.	Martin County Senior Citizens Center – Renovation/ Equipment	
	Restricted Funds	100,000
170.	Warfield County Park Project – Development	
	Restricted Funds	30,000
171.	Grassy/Tomahawk Walking Trails Project – Development	
	Restricted Funds	75,000
Morgan County		
172.	Morgan County Parks	
	Restricted Funds	40,000
Muhlenberg County		
173.	Community College Satellite at Central City Road Construction	
	Restricted Funds	100,000
174.	Muhlenberg County Courthouse Dome Repair	
	Restricted Funds	200,000
175.	Construction of Interstate Ramp at Highway 175 and Western Parkway at Graham	
	Restricted Funds	500,000
176.	Courthouse Elevators	
	Restricted Funds	100,000
177.	Senior Citizens and Retraining Center Facilities Driveway	
	Restricted Funds	50,000
178.	Senior Citizens and Retraining Center Facilities Sewage Collector Lines	
	Restricted Funds	50,000
179.	Muhlenberg County Airport Runway for Accommodation of Jets	
		100,000
Ohio County		
180.	Fordsville Water and Sewer – Upgrade	
	Restricted Funds	300,000
181.	Centertown Water and Sewer/Ohio County Water Projects	
	Restricted Funds	800,000
182.	County Water District Projects – Upgrade	

	Restricted Funds		280,000
Perry County			
183.	Appalachian Regional Hospital Project – Corporate Expansion		
	Restricted Funds	1,350,000	
184.	Typo, Krypton, Yerkes, and Williard Water Projects – Expansion		
	Restricted Funds	400,000	
185.	Feds Fork Water Project		
	Restricted Funds	150,000	
186.	Lower Second Creek Water Project		
	Restricted Funds	75,000	
187.	Perry County Ambulance		
	Restricted Funds	25,000	
188.	Perry County Schools Technology Money		
	Restricted Funds	50,000	
189.	City of Buckhorn Community Improvements – Various		
	Restricted Funds		75,000
190.	Thirteen Volunteer Fire Departments – To Split		
	Restricted Funds	260,000	
191.	Arts Culture Community Center – Expansion/Renovation		
	Restricted Funds	50,000	
192.	Hazard/Perry County Community Ministries –		
	Restricted Funds	10,000	
193.	Viper Volunteer Fire Department – Water Project		
	Restricted Funds	100,000	
194.	Hazard/Perry County Senior Citizens		
	Restricted Funds	50,000	
195.	Hazard City Schools		
	Restricted Funds	50,000	50,000
196.	City of Vicco Community Improvements		
	Restricted Funds	75,000	
197.	City of Hazard		
	Restricted Funds	449,000	
198.	Perry County School Systems		
	Restricted Funds	350,000	
199.	Southeast Kentucky Connie Mack		
	Restricted Funds	15,000	

200.	Perry County Board of Education - Hazard/ Perry Youth Soccer Restricted Funds	10,000	
201.	City of Vicco ACUP Water Project Restricted Funds		107,000
202.	Hazard Christian Academy Restricted Funds	5,000	
203.	Wabaco Christian Academy Restricted Funds	5,000	
204.	Perry County Board of Education - Perry County Youth Football Restricted Funds	15,000	
205.	Perry County Sheriff's Department Restricted Funds	50,000	
206.	Disabled American Veterans' Chapter 64 Restricted Funds	25,000	
207.	County Clerk Office - Updating of Computer System Restricted Funds	18,000	
208.	Perry County Board of Education - Appalachian Regional Theater Society Restricted Funds	16,000	
209.	City of Vicco - Georges Branch Water Project Restricted Funds	50,000	
210.	City of Hazard - Planning on Golf Course Restricted Funds	50,000	
211.	Hazard City Schools Technology Money Restricted Funds	50,000	
Pike County			
212.	Mountain Water District Projects – Various Restricted Funds	579,000	579,000
213.	Dorton Little League Field – Development Restricted Funds	100,000	
214.	Earl Sullivan Community Park – Development Restricted Funds	100,000	
215.	Camp Creek Water District Restricted Funds	22,500	22,500
216.	Hurricane Water District		

	Restricted Funds	69,500	69,500
217.	Majestic Water District		
	Restricted Funds	68,000	68,000
218.	Paul Taylor Fort Water District		
	Restricted Funds	46,000	46,000
219.	Rockhouse Water District		
	Restricted Funds	35,000	35,000
220.	Wolfpit Water District		
	Restricted Funds	80,000	80,000
221.	Little Robinson Creek Water Project		
	Restricted Funds	60,000	
Pulaski County			
222.	Southeastern Water Project – Expansion		
	Restricted Funds	104,700	
Rockcastle County			
223.	Match for Appalachian Community Initiative Grant (Community Development Initiative)		
	Restricted Funds	245,000	
Union County			
224.	New Building and Equipment for Technology Center at High School		
	Restricted Funds	500,000	
225.	Old Officers Club on Camp Breckinridge – Renovation		
	Restricted Funds	300,000	
Webster County			
226.	Webster County Water/Sewer		
	Restricted Funds	300,000	
227.	Webster County Courthouse Renovations		
	Restricted Funds	1,000,000	
227a.	Webster County Ambulances		
	Restricted Funds	200,000	
Whitley County			
228.	Whitley County Water Projects – Various		
	Restricted Funds	540,000	540,000
Wolfe County			
229.	Wolfe County Industrial Property Acquisition		
	Restricted Funds	150,000	
230.	Wolfe County Road Equipment		



	Restricted Funds	65,000	35,000
231.	Courthouse Renovations		
	Restricted Funds	25,000	
232.	Wolfe County Volunteer Fire Departments – Equipment		
	Restricted Funds	30,000	
(2)	FINANCE AND ADMINISTRATION CABINET		
a.	Budget Unit General Administration	2000-01	2001-02
	Knott County		
233.	Red Fox Project – Continued Development		
	Restricted Funds	175,000	175,000
	Letcher County		
234.	Red Fox Project – Continued Development		
	Restricted Funds	250,000	
	Perry County		
235.	Red Fox Project - Continued Development		
	Restricted Funds		197,300
	Pike County		
236.	East Kentucky Exposition Center Project – Continued Development		
	Restricted Funds	1,734,000	1,766,000

## CAPITAL PROJECTS BUDGET PROVISIONS

## FOR PART II, CAPITAL PROJECTS

1. All appropriations to existing line-item capital construction projects expire on June 30, 2000, unless reauthorized in this Act with the following exceptions: (1) a construction contract for the project shall have been awarded by June 30, 2000; (2) permanent financing or a short-term line of credit sufficient to cover the total authorized project scope shall have been obtained in the case of projects authorized for bonds; (3) grant or loan agreements, if applicable, shall have been finalized and properly signed by all necessary parties. Notwithstanding the criteria set forth in this section, the disposition of 1998-2000 appropriated maintenance pools shall remain subject to the provisions of KRS 45.770(4)(c) and (d). Purchases of major items of equipment require reauthorization if a purchase order has not been executed by June 30, 2000.

2. Bond projects authorized for the first time in this section which have debt service supported by state General Fund appropriations are authorized in the first year of the biennium and a partial amount of the annual debt service required has been provided so that preliminary work on the projects may proceed. The full amount of annualized debt service has been included at the beginning of fiscal year 2001-2002. Therefore, the sale of any permanent bonds to finance these projects shall occur after January 1, 2001.

3. If any authorized capital construction or major equipment projects are canceled, any General Fund appropriated debt service for those same projects shall lapse to the credit of the General Fund.

4. Notwithstanding the provisions of KRS 45.750 to 45.782, the General Assembly has determined that certain individual capital projects identified in this Act as eligible for funding from the Emergency Repair, Maintenance and Replacement Fund or the Deferred Maintenance Fund require a direct appropriation from the Emergency Repair, Maintenance and Replacement Fund and that certain projects require a direct appropriation from the Deferred Maintenance Fund in this Act. KRS 45.782 notwithstanding, certain of the Deferred Maintenance projects identified in Part II of this Act exceed \$400,000 each.

5. Investment income earned from bond proceeds beyond that which is required to satisfy Internal Revenue Service arbitrage rebates and penalties and excess bond proceeds upon the completion of a bond financed capital

project may be used to pay debt service according to the Internal Revenue Service Code and accompanying regulations. Notwithstanding the provisions of KRS 48.720, KRS 48.010, or any section of this Act, any funds appropriated but not required to pay debt service because of this fund source substitution shall be credited to the Deferred Maintenance Pool Account each year or alternatively may be used as a General Fund substitute resource for Community Development Bond Funds supported projects if the Secretary of the Finance and Administration Cabinet determines that available General Fund resources are more appropriate than debt finance for selected project items. Determinations made by the Secretary under this authorization shall be reported to the Interim Joint Committee on Appropriations and Revenue and the Capital Projects and Bond Oversight Committee in a timely manner, after consultation and approval by the State Budget Director consistent with KRS 48.400 to 48.800. Unneeded debt service resulting due to any other circumstance shall lapse in accordance with KRS 48.720, KRS 48.010, and other provisions of this Act except for the following: if the fund balance in the Emergency Repair, Maintenance and Replacement Fund falls below \$5,000,000 in fiscal year 2000-2001, any debt service lapse necessary to bring the fund balance to \$5,000,000 shall be credited to the Emergency Repair, Maintenance and Replacement Fund. If the Emergency Repair, Maintenance and Replacement Fund remains at \$5,000,000 or above, the first \$2,000,000 in fiscal year 2000-2001 in debt service lapse shall be deposited to the statutory Deferred Maintenance Pool Account. No transfer to the Emergency Repair, Maintenance and Replacement Fund or the Deferred Maintenance Pool shall be made based on the above provisions if the lapse from other General Fund accounts is insufficient to meet appropriations approved in other parts of this Act.

6. Investment income earned from funds credited to the Technology Trust Fund account in the Finance and Administration Cabinet shall accrue to the Capital Construction and Equipment Purchase Contingency Account established in KRS 45.770.

7. The Council on Postsecondary Education subheading in this Part includes a project entitled "Agency Bond Pool." For the Agency Bond Pool, \$35,000,000 in projects are authorized to be funded from Restricted Funds-supported bonds. This pool provides funding for individual projects to be recommended by the Council on Postsecondary Education to the Secretary of the Finance and Administration Cabinet from the project listings previously identified and recommended by the Council for funding in the 2000-2002 biennium.

The provisions of KRS 45.750 to 45.816 notwithstanding, capital construction projects at institutions of higher education involving no state or federal funds may be authorized between regular sessions of the General Assembly if the projects receive prior approval from both the Council on Postsecondary Education and the Secretary of the Finance and Administration Cabinet, and the Capital Projects and Bond Oversight Committee receives prior notification.

8. Before any economic development bonds are issued, the proposed bond issue shall be approved by the Secretary of the Finance and Administration Cabinet and the State Property and Buildings Commission under the provisions of KRS 56.440 to 56.590. In addition to the terms and conditions of KRS 154.12-100, administration of the Economic Development Bond program by the Secretary of the Cabinet for Economic Development is subject to the following guideline: project selection shall be documented when presented to the Secretary of the Finance and Administration Cabinet. Included in the documentation shall be the rationale for selection and expected economic development impact.

9. Inasmuch as the identification of specific projects in a variety of areas of the state government cannot be ascertained with absolute certainty at this time, amounts are appropriated for specific purposes to projects which are not individually identified in this Act in the following areas: Land Acquisition, Purchase of Agricultural Conservation Easements (PACE), Repair of State-Owned Dams, Property Demolition, Guaranteed Energy Savings projects, Phase I Tobacco Settlement Agricultural Development Initiative, Economic Development projects which shall include authorizations for the High-Tech Construction Pool and the High-Tech Investment Pool, Infrastructure projects, Employment Services Facilities projects authorized in Part IX of this Act, Asbestos Abatement projects, Technology Trust Fund projects, systems, and initiatives authorized in Part III of this Act, and the Council on Postsecondary Education Agency Bond Pool and Capital Renewal and Maintenance Pool. Any projects estimated to cost over \$400,000 and equipment estimated to cost over \$100,000 shall be reported to the Capital Projects and Bond Oversight Committee. All moneys transferred to the Finance and Administration Cabinet for capital construction from any appropriations, including income from investments, shall be expended, accounted for, and otherwise treated in the same manner as funds appropriated directly to the Finance and Administration Cabinet for capital construction.

10. The Council on Postsecondary Education subheading in this Part includes a project entitled "Capital Renewal and Maintenance Pool." For the Capital Renewal and Maintenance Pool, \$60,000,000 in projects are authorized to be funded from \$30,000,000 in General Fund supported bonds and matched with \$30,000,000 in Restricted Funds. This pool provides funding for individual projects to be recommended by the Council on

Postsecondary Education to the Secretary of the Finance and Administration Cabinet from the project listings previously identified and recommended by the Council for funding in the 2000-2002 biennium. Council recommendations may include groupings of projects such as "Life Safety Projects in E&G Buildings." However, if such groupings do not constitute a single construction project, any individual subproject exceeding \$400,000 must be separately identified.

The Council on Postsecondary Education subheading in this Part includes a project entitled "Equipment Replacement Pool." For the Equipment Replacement Pool \$20,000,000 in projects are authorized to be funded from General Fund supported bonds. Allocations from the pool will be determined by the Council, based on the proportional institutional expenditures for instruction and research. Institutions will be required to match research, but not instructional, equipment on a dollar-for-dollar basis. Council recommendations for funding from the pool will be made to the Secretary of the Finance and Administration Cabinet.

11. The General Fund amount of \$75,000 authorized in 1998 Kentucky Acts, Chapter 615, Part II (House Bill 321) for the Estill County Board of Education Swimming Pool renovation is reauthorized in fiscal year 2000-2001 and shall be redirected to finance other initiatives.

12. The Business and Technology Building Project under Eastern Kentucky University (L.3.) and the Southeast Kentucky Center for Business Technology and Innovation Project under the Economic Development Cabinet's Economic Development Bond Pool and the funding for these projects, in addition to other available capital facilities funding resources, may be combined and consolidated within a total project scope not to exceed \$15,000,000. The Secretary of the Finance and Administration Cabinet, with the approval of the State Budget Director, may perform actions necessary for implementation of this authorization. Action taken under this provision shall be reported in writing to the Interim Joint Committee on Appropriations and Revenue and the Capital Projects and Bonds Oversight Committee.

13. The South Campus Building Project under Western Kentucky University (L.10.) and the South Central Kentucky Technology Center Project under the Economic Development Cabinet's Economic Development Bond Pool and the funding for these projects, in addition to other available capital facilities funding resources, may be combined and consolidated within a total project scope not to exceed \$10,000,000. The Secretary of the Finance and Administration Cabinet, with the approval of the State Budget Director, may perform actions necessary for implementation of this authorization. Action taken under this provision shall be reported in writing to the Interim Joint Committee on Appropriations and Revenue and the Capital Projects and Bonds Oversight Committee.

14. Language provisions relating to Section R, Community Development Projects:

a. Item 1, Project 327, Cardinal Park. The portion of the park related to this appropriation shall be named: This Park was built in honor of Don Fightmaster and individuals with disabilities.

b. Item 1, Project 363, Kentucky State Fair and Exposition Center. Funds are provided to complete all planning and construction documents for the proposed expansion of the South Wing. In addition, funds may be used to replace the Astro-Turf in Cardinal Stadium.

c. Item 1, Project 365, Muhammad Ali Center. The museum shall focus on Muhammad Ali's philanthropic and athletic achievements. The Secretary of the Finance and Administration Cabinet is directed to make necessary agreements and arrangements that will enable the Economic Development Bond proceeds totaling \$3,000,000 which were previously authorized and issued for the Jefferson County Project (Vencor) to be applied toward the Muhammad Ali Center project.

d. Item 1, Project 55, Boyd County Fiscal Court - Boyd County Fair Operations and Improvements. Included in the General Fund appropriation in fiscal year 2000-2001 is \$25,000 to be continued into fiscal year 2001-2002, notwithstanding KRS 45.229.

e. Item 1, Project 173, Sandy Hook Beautification Project. Included in the General Fund appropriation in fiscal year 2000-2001 is \$25,000 to be continued into fiscal year 2001-2002, notwithstanding KRS 45.229.

f. Item 1, Project 192, Motor Vehicle Commission - New Inspector for Car Lots for East Kentucky. Included in the General Fund appropriation in fiscal year 2000-2001 is \$50,000 to be continued into fiscal year 2001-2002, notwithstanding KRS 45.229.

g. Item 1, Project 194, Floyd County Fiscal Court - Martin Community Center - Construction. It is the Intent of the General Assembly that the funds for the Floyd County-Martin Community Center be used to establish and promote substance abuse programs for elementary and high school students and to continue the "Junior Pro"

Floyd County basketball program. The use of the construction funds will include the purchase of a building, property, renovation costs, security and fire system, recreational equipment, resource library, and office equipment.

h. Item 1, Project 195, Martin Community Center - Operations. Included in the General Fund appropriation in fiscal year 2000-2001 is \$496,500 to be continued into fiscal year 2001-2002, notwithstanding KRS 45.229.

i. Item 1, Project 349, Kentucky Autism Center U of L. Included in the General Fund appropriation in fiscal year 2000-2001 is \$250,000 to be continued into fiscal year 2001-2002, notwithstanding KRS 45.229.

j. Item 1, Project 352, Belle of Louisville - Operations, Maintenance, and Equipment. Included in the General Fund appropriation in fiscal year 2000-2001 is \$200,000 to be continued into fiscal year 2001-2002, notwithstanding KRS 45.229.

k. Item 1, Project 353, Project Women GED. Included in the General Fund appropriation in fiscal year 2000-2001 is \$25,000 to be continued into fiscal year 2001-2002, notwithstanding KRS 45.229.

l. Item 1, Project 354, House of Ruth. Included in the General Fund appropriation in fiscal year 2000-2001 is \$25,000 to be continued into fiscal year 2001-2002, notwithstanding KRS 45.229.

m. Item 1, Project 356, St. John Vianney Community Day Care -Interpreter Pool. Included in the General Fund appropriation in fiscal year 2000-2001 is \$40,000 to be continued into fiscal year 2001-2002, notwithstanding KRS 45.229.

n. Item 1, Project 362, Kling Center Community Outreach. Included in the General Fund appropriation in fiscal year 2000-2001 is \$100,000 to be continued into fiscal year 2001-2002, notwithstanding KRS 45.229.

o. Item 1, Project 451, Louisa Beautification and September Festival. Included in the General Fund appropriation in fiscal year 2000-2001 is \$25,000 to be continued into fiscal year 2001-2002, notwithstanding KRS 45.229.

p. Item 1, Project 489, Richmond Salvation Army. Included in the General Fund appropriation in fiscal year 2000-2001 is \$125,000 to be continued into fiscal year 2001-2002, notwithstanding KRS 45.229.

q. Item 1, Project 655, Blanton Forest Acquisition. Included in the General Fund appropriation in fiscal year 2000-2001 is \$300,000 to be continued into fiscal year 2001-2002, notwithstanding KRS 45.229.

r. Item 1, Project 657, Rails to Trails Program. Included in the General Fund appropriation in fiscal year 2000-2001 is \$175,500 to be continued into fiscal year 2001-2002, notwithstanding KRS 45.229.

s. Item 1, Project 658, Telemedicine (HB 177). Included in the General Fund appropriation in fiscal year 2000-2001 is \$600,000 to be continued into fiscal year 2001-2002, notwithstanding KRS 45.229.

t. Item 1, Project 659, Commission on Small Business Advocacy (HB 588). Included in the General Fund appropriation in fiscal year 2000-2001 is \$175,000 to be continued into fiscal year 2001-2002, notwithstanding KRS 45.229.

u. Item 1, Project 660, County Livestock Fund (HB 947). Included in the General Fund appropriation in fiscal year 2000-2001 is \$45,000 to be continued into fiscal year 2001-2002, notwithstanding KRS 45.229.

15. Language Provisions relating to Section S, Coal Severance Tax Projects:

a. Item 1, Project 233, Match for Appalachian Community Initiative Grant (Community Development Initiative). If this grant is not forthcoming, funds totaling \$245,000 shall be reallocated for the purpose of purchasing additional property for the Rockcastle County Industrial Park.

b. The Christian County Fiscal Court may utilize up to \$200,000 from the single county fund for the local Economic Development Council for the purpose of obtaining a facility for temporary office space for new industries relocating to Hopkinsville.

### PART III

#### GENERAL PROVISIONS

1. Restricted Funds designated in the biennial budget bills are classified in the state financial records and reports as the Agency Revenue Fund, State Enterprise Funds (State Parks, State Fair Board, Industries for the Blind, Insurance Administration, and Kentucky Horse Park), Internal Services Funds (Fleet Management, Computer Services, Correctional Industries, Central Printing, Risk Management and Property Management), and selected

Fiduciary Funds (Unemployment Compensation and Other Expendable Trust Funds). Separate funds records and reports shall be maintained in a manner consistent with the branch budget bills.

The sources of Restricted Funds appropriations in this Act shall include all fees (which includes fees for room and board, athletics, and student activities) and rentals, admittances, sales, bond proceeds, licenses collected by law, gifts, subventions, contributions, income from investments, and other miscellaneous receipts produced or received by a budget unit, except as otherwise specifically provided, for the purposes, use, and benefit of the budget unit as authorized by law. Restricted Funds receipts shall be credited and allotted to the respective fund or account out of which a specified appropriation is made in this Act. All receipts of Restricted Funds shall be deposited in the State Treasury and credited to the proper account as provided in KRS Chapters 12, 42, 45, and 48.

The sources of Federal Funds appropriations in this Act shall include federal subventions, grants, contracts, or other Federal Funds received, income from investments, and other miscellaneous federal receipts received by a budget unit, except as otherwise provided, for the purposes, use, and benefit of the budget unit as authorized by law. Federal Funds receipts shall be credited and allotted to the respective fund account out of which a specified appropriation is made in this Act. All Federal Funds receipts shall be deposited in the State Treasury and credited to the proper account as provided in KRS Chapters 12, 42, 45, and 48.

2. If receipts received or credited to the Restricted Funds accounts or Federal Funds accounts of a budget unit during fiscal year 2000-2001 or fiscal year 2001-2002, and any balance forwarded to the credit of these same accounts from the previous fiscal year, exceed the appropriation made by specific sum for these accounts of the budget unit as provided in Part I, Operating Budget, of this Act for the fiscal year in which the excess occurs, the excess funds in the accounts of the budget unit shall become available for expenditure for the purpose of the account during the fiscal year only upon compliance with the conditions and procedures specified in KRS 48.400 to 48.800 and this Act, and with the authorization of the State Budget Director of the Office of State Budget Director and approval of the Secretary of the Finance and Administration Cabinet.

3. Except as otherwise provided in KRS 48.630(9) and (10) and in this Act, a budget unit may requisition for expenditure from its Restricted Funds accounts or Federal Funds accounts, through the Finance and Administration Cabinet, during the fiscal year ending June 30, 2001, and during the fiscal year ending June 30, 2002, all receipts placed to the credit of its funds accounts in each respective year, in addition to any balance which the budget unit may have had forwarded from the preceding year on or before August 31, of the then current fiscal year, by the Finance and Administration Cabinet.

On or before the beginning of each fiscal year, and, if applicable, during each fiscal year, each budget unit shall document and submit to the Finance and Administration Cabinet, the Governor's Office for Policy and Management, and the Legislative Research Commission a record of Restricted Funds and Federal Funds for each budget unit showing the most current estimates of receipts by sources and expenditures by uses, a comparative statement of any revised estimated receipts and proposed expenditures with appropriation sums specified in the enacted Budget of the Commonwealth, and statements which explain the cause, source, and use for a variance which may exist.

Each budget unit shall submit its reports in print and electronic format consistent with the Restricted Funds and Federal Funds records contained in the FB 2000-2002 Branch Budget Request Manual and according to the following schedule in each fiscal year: (1) on or before the beginning of each fiscal year; (2) on or before October 1; (3) on or before January 1; and (4) on or before April 1.

4. Funds appropriated in this Act shall not be expended for any purpose not specifically authorized by the General Assembly in this Act nor shall funds appropriated in this Act be transferred to or between any cabinet, department, board, commission, institution, agency, or budget unit of state government unless specifically authorized by the General Assembly in this Act and the provisions of KRS 48.400 to 48.800. Compliance with the provisions of this subsection shall be reviewed and determined by the Interim Joint Committee on Appropriations and Revenue.

5. No state agency, cabinet, department, office, or program shall incur any obligation against the General Fund or Road Fund appropriations contained in this Act unless the obligation may be reasonably determined to have been contemplated in the enacted budget and is based upon supporting documentation considered by the General Assembly, legislative and executive records, and the statutory budget memorandum.

6. Any General Fund or Road Fund appropriation made in anticipation of a lack, loss, or reduction of Federal Funds shall lapse to the General Fund or Road Fund Surplus Account respectively to the extent the Federal Funds otherwise become available.

7. A state agency entitled to Federal Funds which would represent one hundred percent (100%) of the cost of a program shall conform to KRS 48.730.

8. Pursuant to KRS 48.720, any excess General Fund or Road Fund debt service shall lapse to the respective surplus account unless otherwise directed in this Act.

9. No appropriation from any fund source shall exceed the sum specified in this Act until the agency has documented the necessity, purpose, use, and source, and the documentation has been submitted to the Interim Joint Committee on Appropriations and Revenue for its review and action in accordance with KRS 48.630. Proposed revisions to an appropriation contained in the enacted State/Executive Budget or allotment of an unbudgeted appropriation shall conform to the conditions and procedures of KRS 48.630 and this Act.

Notwithstanding KRS 48.630(3), (4), and (5), any proposed and recommended actions to increase appropriations for funds specified in Section 3 of this Part shall be scheduled consistent with the timetable contained in that section in order to provide continuous and timely budget information.

10. Allotments within appropriated sums for the activities and purposes contained in the enacted State/Executive Budget shall conform to KRS 48.610 and may be revised pursuant to KRS 48.605 and this Act.

11. All statutory continuing appropriations in existence at the time this Act takes effect are discontinued and suspended by this Act except as provided by Chapters 42, 96A, 164, 183, 278, and 441 of the Kentucky Revised Statutes. All statutes and portions of statutes in conflict with any of the provisions of this Section, to the extent of the conflict, are suspended, unless otherwise provided by this Act.

12. Except as otherwise explicitly authorized by this Act, nothing in this Act shall be construed to repeal any appropriation made herebefore or hereafter for the fiscal year ending June 30, 2000, and nothing in this Act is to be construed as amending or altering the provisions of Chapters 42, 45, and 48 of the Kentucky Revised Statutes pertaining to the duties and powers of the Secretary of the Finance and Administration Cabinet except as otherwise provided in this Act.

13. Appropriations in this Act are made to the individual budget units for the operations, services, and activities that are stated in this Act and that are detailed and explained in the enacted statutory budget memorandum as adopted as a joint resolution of the 2000 General Assembly under the provisions of KRS 48.300. The statutory budget memorandum adopted under the provisions of KRS 48.300 is law and has the force and effect of law for the duration of the fiscal biennium, and determinations under KRS 48.500 shall conform.

14. All questions that arise in interpreting any appropriation in this Act as to the purpose or manner for which the appropriation may be expended shall be decided by the Secretary of the Finance and Administration Cabinet pursuant to KRS 48.500.

15. The State Budget Director shall cause the Governor's Office for Policy and Management, within sixty (60) days upon adjournment of the 2000 Regular Session of the General Assembly, to publish a final enacted budget document, styled the Budget of the Commonwealth, based upon the recommended State/Executive Budget, Judicial Budget, and Legislative Budget as enacted by the 2000 Regular Session of the General Assembly as well as other Acts which contain appropriation provisions for the 2000-2002 biennium, and based upon supporting documentation and legislative records as considered by the 2000 Regular Session of the General Assembly and the statutory budget memorandum. This document shall include for each agency and budget unit a consolidated budget summary statement of available regular and continuing appropriated revenue by fund source, corresponding appropriation allocations by program or subprogram as appropriate, budget expenditures by principal budget class and for the State/Executive Budget, any other fiscal data and commentary considered necessary for budget execution by the Governor's Office for Policy and Management and oversight by the Interim Joint Committee on Appropriations and Revenue. The enacted State/Executive Budget shall be revised or adjusted only upon approval by the Governor's Office for Policy and Management as provided in each part of this Act and by KRS 48.400 to 48.800, and upon review and action by the Interim Joint Committee on Appropriations and Revenue.

16. Pursuant to KRS 48.400, the Secretary of the Finance and Administration Cabinet shall monitor and report on the financial condition of the Commonwealth.

17. The Secretary of the Finance and Administration Cabinet is authorized to establish a system or formula or a combination of both for prorating the administrative costs of the Finance and Administration Cabinet, the Department of Treasury, and the Office of the Attorney General relative to the administration of programs in which there is joint participation by the state and federal governments for the purpose of receiving the maximum amount of participation permitted under the appropriate federal laws and regulations governing the programs. The receipts and allotments under this section shall be reported to the Interim Joint Committee on Appropriations and Revenue prior to any transfer of funds.

18. The Secretary of the Transportation Cabinet shall use Road Fund resources to meet the lease rental payments to the Kentucky Turnpike Authority for Resource Recovery Road projects in the amount certified by the Secretary of the Transportation Cabinet. However, if Road Fund resources are not sufficient to meet lease rental payments, the additional amount required for meeting lease rental payments as certified by the Secretary of the Transportation Cabinet under KRS 143.090 shall be transferred from coal severance tax receipts to meet the obligation.

19. Nothing in this Act shall be construed to confirm or ratify, under KRS 12.027 or 12.028, any executive reorganization order unless the executive order was confirmed or ratified by appropriate amendment to the Kentucky Revised Statutes in another Act of the 2000 Regular Session of the General Assembly. If any executive reorganization order issued from sine die adjournment of the 1998 Regular Session to sine die adjournment of the 2000 Regular Session is not confirmed by the 2000 Regular Session of the General Assembly, the Secretary of the Finance and Administration Cabinet shall, in consultation with agency heads and with notification to the Legislative Research Commission, transfer the balance of funds for any affected program or function for fiscal year 1999-2000 and any related appropriations and funds for each of the next two fiscal years from the budget unit in which the program or function was placed by the executive reorganization order to the budget unit in which the program or function resided prior to the reorganization action or in which it was placed by action of the 2000 Regular Session of the General Assembly. The Legislative Research Commission shall forward the documentation to the appropriate committees.

20. Notwithstanding KRS 48.705(2), there shall be no General Fund surplus revenue receipts or unexpended balances of appropriations deposited in the Budget Reserve Trust Fund Account for fiscal year 2000-2001 or fiscal year 2001-2002 except as otherwise provided in this Act. Existing funds in the account in an amount specified in this Act may be used as provided otherwise in this Act or as designated in Part VI, General Fund Budget Reduction Plan, if General Fund receipts during fiscal year 2000-2001 or fiscal year 2001-2002 are not sufficient to meet the level of General Fund appropriations included in biennial budget bills or any enactment by the 2000 General Assembly which contains an appropriation provision.

21. Notwithstanding KRS 61.565, the employer contribution rate for the Kentucky Employees Retirement System from July 1, 2000, through June 30, 2002, shall be no more than 5.89 percent for nonhazardous duty employees and 18.84 percent for hazardous duty employees; for the same period, the employer contribution for employees of the State Police Retirement System shall be no more than 21.58 percent.

22. By August 15, 2001, the Finance and Administration Cabinet, in conjunction with the Consensus Forecast Group, shall provide to each branch of government, pursuant to KRS 48.117, a budget planning report.

23. By October 15, 2001, the Finance and Administration Cabinet shall provide to each branch of government detailed estimates for the General Fund and Road Fund for the current and next two fiscal years of the revenue loss effected by tax expenditures. The Revenue Cabinet shall provide assistance and furnish data which is not restricted by KRS 131.190. "Tax expenditure" means an exemption, exclusion, or deduction from the base of a tax, a credit against the tax, a deferral of a tax, or a preferential tax rate. The estimates shall include for each tax expenditure the amount of revenue loss, a citation of the legal authority for the tax expenditure, the year in which it was enacted, and the tax year in which it became effective.

24. Any appropriation item and sum in Part I to Part XI of this Act and in an appropriation provision in another Act of the 2000 Regular Session which constitute a duplicate appropriation shall be governed by KRS 48.312.

25. KRS 48.313 shall control when a total or subtotal figure in this Act conflicts with the sum of the appropriations of which it consists.

26. Appropriation items and sums in Part I to Part XI of this Act shall conform to KRS 48.311. If any section, any subsection, or any provision is found by a court of competent jurisdiction in a final, unappealable order to be invalid or unconstitutional, the decision of the courts shall not affect or impair any of the remaining sections, subsections, or provisions.

27. It is the intent of the General Assembly that the Executive Branch implement actions necessary to achieve cost savings as intended, authorized, and directed by 1998 Kentucky Acts, and 1998 House Bill 321 (1998 Ky. Acts ch. 615, Part X), by authorizing the Executive Branch, within the limitations provided for in this Act, to transfer General Fund appropriation amounts related to Technology Trust Fund savings from one budget unit to another budget unit solely within the Cabinets for Families and Children, Finance and Administration, Health Services, Justice, Natural Resources and Environmental Protection, and Workforce Development, and the Department of Education. Any transfer of General Fund appropriation amounts related to Technology Trust Fund savings from one budget unit to another budget unit shall be made only within each specified Cabinet and the Department of

Education and shall be limited to the General Fund cost savings amounts identified in the 2000-2002 agency budget request and executive records. The Secretary of any of the specified cabinets and the Commissioner of the Department of Education may submit requests to the State Budget Director of the Governor's Office for Policy and Management for the transfer of General Fund appropriation authority. Such requests shall specify the need for the transfer of General Fund appropriation authority and the manner in which such a transfer would better achieve the General Fund cost savings. Any transfers made under this provision for any of the cabinets identified above or the Department of Education shall result in no change to the total value of the General Fund cost savings amounts as identified in the agency budget request records recommendation and executive records for the individual cabinets specified above or the Department of Education. Any transfer made under this provision shall be made pursuant to KRS 48.500 and shall be reported, in writing, to the Interim Joint Committee on Appropriations and Revenue.

28. For fiscal year 2000-2001 and fiscal year 2001-2002, the first \$6,000,000 of any unclaimed prize money held in the corporate operating account of the Kentucky Lottery Corporation shall be added to the pool from which future prizes are to be awarded or used for special prize promotions, and any amount in excess of \$6,000,000 shall be transferred to the Affordable Housing Trust Fund established by KRS 198A.710.

29. Notwithstanding the provisions in Parts I, II, IX, or X of this Act, the amount from the undesignated fiscal year 2000-2001 General Fund balance (General Fund Surplus Account, KRS 48.700) that is carried forward to fiscal year 2001-2002 for budgeted purposes shall be specified in the statutory budget memorandum. This amount may be adjusted in accordance with KRS 48.120(3).

30. Notwithstanding KRS 142.311(2), the dispensing or delivering of outpatient prescription drugs in this state shall be taxed at the rate of fifteen cents (\$0.15) per prescription for which any initial payment is received after June 30, 1999, through June 30, 2000. There shall be no tax on outpatient prescriptions after June 30, 2000.

31. Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, to the extent that any governmental agency purchases motor vehicle liability insurance, sovereign immunity shall be waived to the extent of the insurance coverage.

32. (a) The Technology Trust Fund is the Technology Trust Fund established by the 1996 Ky. Acts ch. 380, Part X, to empower Kentucky state government through technology and redesigned business systems. The provisions of this Section apply to that Technology Trust Fund and any additional amounts made available and appropriated to it by the 1998 Regular Session in House Bill 321 (1998 Ky. Acts ch. 615, Part X). The General Assembly has determined that the provisions of this Section shall apply to all General Fund appropriations to the Technology Trust Fund originally authorized and appropriated by the 1996 Ky. Acts ch. 380, Part X and renewed and expanded by the 1998 Kentucky Acts and House Bill 321 (1998 Ky. Acts ch. 615, Part X).

(b) Appropriations allotted from the Technology Trust Fund for each project, initiative, or system, as well as all other associated resources made available from regular appropriations for the same purpose from a budget unit shall be transferred and credited to, and accounted for and expended from a discrete account established for the individual project, initiative, or system item.

(c) In addition to the General Fund appropriations for the Technology Trust Fund, Restricted Funds, Federal Funds, the Road Fund, private funds, and any matching fund appropriations required are appropriated in support of the projects and priorities identified by the Redesign Steering Committee. However, KRS 45.760(14), 45.770, 45.780, and 45.800 notwithstanding, no funds from the Emergency Repair, Maintenance and Replacement Account shall be used for Technology Trust Fund projects, systems, or initiatives. Allocations from the Capital Construction and Equipment Purchase Contingency Account may be used for Technology Trust Fund projects and systems, but notwithstanding KRS 45.770 and 45.800, the total amount of allocations from the Account for Technology Trust Fund projects and systems shall not exceed \$2,500,000.

33. The Kentucky Revenue Cabinet may enter into discussions with states regarding development of a multi-state, voluntary, streamlined system for sales and use tax which would have the capability to determine the taxability of a transaction and provide a method for collecting and remitting the taxes to the state. The system may provide compensation for the costs of collecting and remitting sales and use taxes. Following these discussions, the Cabinet may proceed to issue a Joint Request for Information.

The Cabinet may participate in a sales tax pilot project with other states and selected businesses to test means for simplifying sales and use tax administration and may enter into joint agreements for this purpose, subject to the following conditions.



(a) Agreements to participate in the test shall establish provisions for the administration, imposition and collection of sales and use taxes resulting in revenues paid that are the same as would be paid under KRS Chapter 139.

(b) Parties to the agreements are excused from complying with the provisions of KRS Chapter 45A to the extent a different procedure is required by the agreements.

(c) Agreements authorized under this Section, if any, shall terminate no later than December 31, 2001.

Return information submitted to any party or parties acting for and on behalf of the state shall be treated as confidential taxpayer information. Disclosure of confidential information necessary under any agreement shall be pursuant to a written agreement between the Cabinet and other party or parties. Other party or parties shall be bound by the same requirements of confidentiality as the Cabinet under KRS 131.190.

By March 1, 2001, the Cabinet shall report to the Governor and the Legislative Research Commission on the status of multi-state discussions and, if a proposed system is agreed upon by participating states, shall also recommend whether the state should participate in the system.

34. There is created in the State Treasury the Rape Crisis and Spouse Abuse Centers' Professional Development Fund to be administered by the Finance and Administration Cabinet for the purpose of supporting professional development initiatives for staff in these centers. Moneys secured by the Office of the Attorney General from the settlement of civil litigation between states, commonwealths, territories, and possessions through their respective Attorneys General and the Nine West Group, Inc. (Civil Action No. 00 CIV 1707, United States District Court for the Southern District of New York, dated March 6, 2000) shall be deposited into the Rape Crisis and Spouse Abuse Centers' Professional Development Fund. Any interest earned on moneys held in the Fund shall accrue to the Fund, notwithstanding KRS 41.300.

The Governor's Council on Domestic Violence and Sexual Assault shall allocate these funds to create and finance accessible training opportunities and to provide merit-based educational stipends for Rape Crisis Center and Spouse Abuse Center staff to access educational opportunities. Upon receiving written notification from the Governor's Council on Domestic Violence and Sexual Assault, the Finance and Administration Cabinet shall take necessary action to transfer funds to the appropriate state agency to execute contractual agreements in accordance with KRS Chapter 45A.

35. The provisions relating to executive branch strategic planning and a performance budgeting pilot project shall be implemented as follows:

(a) The managers of each executive branch cabinet level budget unit shall develop a four-year strategic plan to meet the broad goals outlined by the Governor, and shall submit an electronic copy of the full plan and a brief summary of that plan with the FB 2002-2004 budget request.

(1) Each strategic plan shall state the cabinet's mission, identify goals for the next four years, specify objectives for meeting the goals, and define performance indicators to measure progress toward meeting objectives.

(2) The State Budget Director shall designate an entity to develop and conduct a training course in strategic planning and shall make the course available to the individuals responsible for completing a strategic plan under this section.

(3) The Governor's Office of Technology shall establish a uniform electronic strategic plan submission form and a procedure that allows all plans to be entered into a searchable electronic database. The database shall comply with KRS 48.950 to 48.960.

(b) The Auditor of Public Accounts shall study the flow of budget information from executive branch budget units to commissioners, cabinet secretaries, the Governor's Office of Policy and Management, the Governor, the Legislative Research Commission, and the General Assembly. By September 30, 2000, the Auditor shall submit an evaluation report on the results of the study to the Governor and the Legislative Research Commission, who shall distribute the report to the appropriate legislative committees for review. The report shall particularly focus on a detailed baseline description of the features and cost of the budgeting structure of the budget units selected for the pilot program.

(c) The State Budget Director shall design and implement a state performance budgeting pilot program, with no less than three nor more than six budget units in the executive branch. Detailed records of the cost of implementation shall be maintained. Draft budget forms for the pilot budget units shall meet the provisions of KRS 48.040.

(1) A performance budgeting pilot project fund shall be established in the office of the State Budget Director to defray extraordinary expenses related to the pilot project. The State Budget Director shall make disbursements from the fund to units that incur costs related to the pilot project. Information about each disbursement, including the reason for the disbursement, a description of how the expense is related to performance budgeting, and a discussion of why the expense cannot be covered within the normal cost of budget information reporting, shall be reported quarterly beginning October 15, 2000, to the Auditor and the Legislative Research Commission, who shall forward the information to the Interim Joint Committee on Appropriations and Revenue and the Program Review and Investigations Committee.

(2) Each budget unit selected for the pilot project shall submit a performance-based budget request for FY 2002-2004, in addition to its regular budget request.

(3) The Auditor of Public Accounts shall monitor the progress of the performance budgeting pilot project and shall, by February 1, 2002, present an evaluation report to the Governor and the Legislative Research Commission, who shall forward the report to the appropriate legislative committees for review.

(d) The Program Review and Investigations Committee shall give high priority to directing its ongoing attention and resources to efforts to evaluate and improve the effectiveness, efficiency, and accountability of agencies of the Commonwealth.

36. Notwithstanding the amendment to KRS 18A.225 contained in 2000 Senate Bill 288, any funds in flexible spending accounts of employees of local school districts that remain after all reimbursements have been processed shall remain in the respective local school district.

37. Notwithstanding KRS 138.510, tracks with an average daily handle of one million two hundred thousand dollars (\$1,200,000) or more shall be allowed a tax credit equal to six thousand dollars (\$6,000) multiplied by the number of racing days at the track for the fiscal year beginning after June 30, 2000, and ending June 30, 2001, and twelve thousand dollars (\$12,000) multiplied by the number of racing days at the track for the fiscal year beginning after June 30, 2001, and ending June 30, 2002, if an amount equal to at least fifty percent (50%) of the credit is used for capital improvements and at least fifty percent (50%) is used for horsemen's incentives. Capital improvement means any addition, replacement, or remodeling of a structural unit of the track, including but not limited to the construction of barns used for the track, backstretch facilities for horsemen, paddock facilities, new pari-mutuel and totalizator or equipment, new access roads, new parking facilities, the reconstruction, reshaping, or leveling of the racetrack, the installation of permanent new heating or air conditioning, and installations of a permanent nature forming part of the track structure. Fifty percent (50%) of the amount of the tax credit for the horsemen's incentives shall be allocated to purses at the track and fifty percent (50%) allocated for stabling and transportation costs. The method of dispersal of the stabling and transportation costs shall be agreed upon by the track receiving the tax credit and the horsemen's group or groups contracting with the track. If a track fails to complete a qualifying capital improvement or make qualifying expenditures for horsemen's incentives, the Kentucky Economic Development Finance Authority as created under KRS 154.20-010 shall order the track to repay to the state all or any portion of the amount of the tax credit received by the track. The track receiving the credit shall report quarterly to the Interim Joint Committee on Appropriations and Revenue on the amounts of qualifying capital improvements and expenditures for horsemen's incentives made for which the credit is claimed.

38. Notwithstanding KRS 138.510, if a track licensed by the Kentucky Racing Commission has a total annual handle on live racing of two hundred fifty thousand dollars (\$250,000) or less, the excise tax imposed under KRS 138.510(2) shall be reduced to two and one-half percent (2.5%) for fiscal year 2000-2001 and to two percent (2%) for fiscal year 2001-2002. The amount representing the difference between the tax as imposed under this provision and the tax as imposed under KRS 138.510(2) shall be retained by the track to promote and maintain its facilities and its live meet.

39. The Transportation and Natural Resources and Environmental Protection Cabinets may receive and accept grants, contributions of money, property, labor, or other things of value from any governmental agency, individual, nonprofit organization, or private business to be used for the Adopt-a-Highway Litter Program or other statewide litter programs. Any contribution of this nature shall be deemed to be a contribution to a state agency for a public purpose and shall be treated as restricted funds under KRS Chapter 45 and reported according to KRS Chapter 48, and shall not be subject to restrictions set forth under KRS Chapter 11A.

40. Notwithstanding the provisions of KRS Chapter 139, there shall be exempt members of the genus cervidae used for the production of hides, breeding stock, meat, and cervid by-products. Feed and feed additives, insecticides, fungicides, herbicides, rodenticides, and other chemicals used in this pursuit shall be exempt from the tax imposed under KRS Chapter 139. In addition, on-site facilities, including equipment, machinery, attachments, repair

and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities used in this pursuit shall be exempt from the tax imposed under KRS Chapter 139. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into the real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities.

#### PART IV

##### STATE SALARY/COMPENSATION AND EMPLOYMENT POLICY

1. Notwithstanding KRS 18A.010(2), for the 2000-2002 fiscal biennium, the total number of filled permanent positions in the agencies of the Executive Branch is limited to the number authorized in the enacted State/Executive Budget of the Commonwealth for the 2000-2002 fiscal biennium. The provisions of this section do not apply to the employees of the General Assembly, the Legislative Research Commission, or the Court of Justice.

2. On July 1, 2000, the Personnel Cabinet shall establish a record of budgeted permanent and other equivalent positions based upon the enacted State/Executive Budget of the Commonwealth and any adjustments authorized by provisions in this Act. The total number of filled and vacant positions of full-time, part-time and interim employees shall not exceed the authorized complements pursuant to this section. When an agency head certifies that an emergency employment situation exists for a limited time within a fiscal year, the State Budget Director may approve, and the Secretary of Personnel may authorize, the employment of individuals in addition to the authorized complement for the duration of the limited time period so authorized within the fiscal year. A copy of records, certifications, and actions authorized in this section shall be provided to the Interim Joint Committee on Appropriations and Revenue on a monthly basis.

3. Pursuant to KRS 18A.355, an increment of five percent (5%) is provided in both fiscal year 2000-2001 and fiscal year 2001-2002 on the base salary or wages of each eligible state employee on their anniversary date.

4. Effective July 1 of each year of the 2000-2002 biennium, the base salary or wage of each state employee that is not in initial probationary status shall be no less than 105 percent of the entry level salary or wage for the grade assigned to each employee's job classification.

The individual appropriation units defined in Part I of this Act include funds to implement the above provisions of the Wage Equity Plan.

On July 1, 2000, classifications that have been determined by the Personnel Cabinet to be five pay grades too low will be raised three pay grades, classifications that are four pay grades too low will be raised two pay grades, and classifications that are three grades too low will be raised one pay grade. Employees that are paid less than 105 percent of the entry level salary or wage shall receive a pay raise to bring their salary or wage to 105 percent of the entry level salary or wage.

#### PART V

##### FUNDS TRANSFER

1. It is the finding of the General Assembly of the Commonwealth of Kentucky that the financial condition of state government requires the following action.

2. Notwithstanding the requirements of the statutes set forth below, there is transferred from the Restricted Funds enumerated below to the General Fund the following amounts in fiscal year 1999-2000, fiscal year 2000-2001, and fiscal year 2001-2002.

	1999-2000	2000-2001	2001-2002
1. Crime Victims Compensation Board (KRS 346.185)			2,700,000
2. Department of Insurance (KRS 304.2-400)		461,400	898,600
3. Fire and Tornado Insurance Fund (KRS 56.095; 56.150; 56.180)		3,000,000	3,000,000
4. Department of Financial Institutions		900,000	900,000

	(KRS 287.485)			
5.	Charitable Gaming Regulatory Account		700,000	740,000
	(KRS 238.570)			
6.	Underground Petroleum Storage Tank Environmental Assurance Fund/Interest Income		8,000,000	8,400,000
	(KRS 224.60-130 to KRS 224.60-155)			
7.	Housing, Buildings and Construction			300,000
	(KRS 198B.060; 198B.615; 198B.676; 227.620; 236.130; 318.136)			
8.	Mines and Minerals			200,000
	(KRS 351.110(2) and KRS 353.590)			
9.	Secretary of State-Limited Liability Companies Program	1,000,000	500,000	500,000
	(KRS 14.140)			
10.	Technology Trust Fund		2,500,000	2,500,000
	(1998 Ky. Acts ch. 615, Part X, Sec. 5 II. 4)			
11.	Fleet Management Fund		1,500,000	1,500,000
	(1998 Ky. Acts ch. 615, Part III, Sec. 1)			
12.	Capital Construction Investment Income	42,000,000	22,800,000	11,562,400
	(KRS 42.500(12))			
13.	Teacher's Retirement System-Return of Fiscal Year 1999 Excess Appropriation	3,900,000		
	(KRS 161.550)			
	Total	46,900,000	40,361,400	33,201,000

## PART VI

## GENERAL FUND BUDGET REDUCTION PLAN

Pursuant to KRS 48.130 and 48.600, a General Fund Budget Reduction Plan is enacted for state government in the event of an actual or projected deficit in estimated General Fund revenue receipts of \$6,569,000,000 in fiscal year 1999-2000, \$6,908,699,900 in fiscal year 2000-2001, and \$7,298,822,800 in fiscal year 2001-2002 as modified by related Acts and actions of the General Assembly in an extraordinary or regular session. Direct services, obligations essential to the minimum level of constitutional functions, and other items that may be specified in this Act, are exempt from the requirements of this Plan. No budget revision action shall be taken by a branch head in excess of the actual or projected deficit.

The Governor, the Chief Justice, and the Legislative Research Commission shall direct and implement reductions in allotments and appropriations only for their respective branch budget units as may be necessary as well as take other measures which shall be consistent with the provisions of this Part and general branch budget bills.

In the event of a revenue shortfall under the provisions of KRS 48.120, General Fund budget reduction actions shall be implemented in the following sequence:

(1) The Local Government Economic Assistance and the Local Government Economic Development Funds shall be adjusted by the Secretary of the Finance and Administration Cabinet to equal revised estimates of receipts pursuant to KRS 42.4582 as modified by the provisions of this Act. The Secretary shall also adjust the Phase I Tobacco Settlement Funds to equal revised estimates of receipts as stated in Part XI of this Act.

(2) At the close of fiscal year 1999-2000, consistent with the policy direction and operating assumptions for the SEEK program General Fund appropriation as enacted in House Bill 321 (1998 Ky. Acts ch. 615), \$20,600,000 from the Support Education Excellence in Kentucky (SEEK) Program shall lapse to the surplus account of the General Fund.

(3) At the close of fiscal year 1999-2000, the General Fund amounts derived from reduced debt service that shall lapse to the General Fund is not less than \$25,000,000. All other excess General Fund appropriations derived from reduced debt service requirements shall lapse pursuant to the provisions in this Act.

(4) Transfers of excess unappropriated and unbudgeted Restricted Funds other than fiduciary funds shall be applied as determined by the head of each branch for its respective budget units.

(5) Excess General Fund appropriations which accrue as a result of personnel vacancies and turnover, and reduced requirements for operating expenses, grants, and capital outlay shall be determined and applied by the heads of the executive, judicial, and legislative departments of state government for their respective branches. The branch heads shall certify the available amounts which shall be applied to budget units within the respective branches and shall promptly transmit the certification to the Secretary of the Finance and Administration Cabinet and the Legislative Research Commission. The Secretary of the Finance and Administration Cabinet shall execute the certified actions as transmitted by the branch heads.

Branch heads shall take care, by their respective actions, to protect, preserve, and advance the fundamental health, safety, legal and social welfare, and educational well-being of the citizens of the Commonwealth.

(6) Funds available in the Budget Reserve Trust Fund shall be applied in an amount not to exceed twenty-five percent (25%) of the trust fund balance in fiscal year 2000-2001 and fifty percent (50%) of the trust fund balance in fiscal year 2001-2002.

(7) If the actions contained in subsections (1) through (6) of this section are insufficient to eliminate a revenue shortfall of up to five percent (5%) of the enacted General Fund revenue receipts, then the Governor is empowered and directed to take necessary actions with respect to the Executive Branch budget units to balance the budget by such actions conforming with the criteria expressed in the preceding subsection and subject to the limit imposed under KRS 48.130 and 48.600.

## PART VII

### ROAD FUND BUDGET REDUCTION PLAN

Pursuant to KRS 48.130, there is established a Road Fund Budget Reduction Plan for fiscal year 2000-2001 and fiscal year 2001-2002. In the event of an actual or projected deficit in Road Fund revenue receipts of five percent (5%) or less than the revenue estimates of \$1,123,210,300 in fiscal year 2000-2001 and \$1,163,161,200 in fiscal year 2001-2002 as determined under KRS 48.120(3), the Governor shall implement sufficient reductions as may be required to protect the highest possible level of service in accordance with KRS 48.130. No budget revision action shall be taken in excess of the actual or projected deficit.

## PART VIII

### ROAD FUND SURPLUS EXPENDITURE PLAN

Notwithstanding KRS 48.140 and pursuant to KRS 48.710, there is established a plan of expenditures from the Road Fund Surplus Account. All moneys in the Road Fund Surplus Account shall be deposited in the State Construction Account and utilized to support projects in the 2000-2002 Biennial Highway Construction Program.

## PART IX

### SPECIAL PROVISIONS

#### GOVERNMENT OPERATION

##### 1. GOVERNOR'S OFFICE OF TECHNOLOGY

a. Office of Statewide 911 Coordination: The Office of Statewide 911 Coordination is established within the Governor's Office of Technology. The Office of Statewide 911 Coordination shall have the responsibility for

monitoring, enforcing, and coordinating 911 and enhanced 911 system compliance and implementation statewide. The office shall include a statewide 911 coordinator along with appropriate staff to accomplish the objectives as stated in this section. The office shall provide education, training, and technical assistance for public safety answering points and private telephone system owners and operators. The 911 coordinator shall collect data from public safety answering points and private telephone system owners and operators and shall make a report to the Legislative Research Commission in August of each year preceding the regular session. The report shall contain recommendations concerning necessary modifications to compliance requirements occasioned by technological and other advances or changes in telephone system equipment.

## 2. ATTORNEY GENERAL

a. Legal Services Contracts: The Attorney General may present proposals to state agencies specifying legal work that is presently accomplished through Personal Service Contracts that indicate the Office of the Attorney General's capacity to perform the work at a lesser cost. State agencies may agree to make arrangements with the Attorney General to perform the legal work and compensate the Attorney General for the legal services.

b. Deputy and Assistant Attorneys General Salaries: Notwithstanding KRS 15.100, the Attorney General may set the salary for the deputy attorney general and the salary for the two (2) assistant deputy attorneys general at a rate less than that required in KRS 15.100.

c. Health Care Rate Intervention: In addition to such funds as may be appropriated, this Office may request from the Finance and Administration Cabinet, as a necessary government expense, such funds as may be necessary for expert witnesses pursuant to KRS 304.17A-095. The Finance and Administration Cabinet shall approve up to \$175,000 for the 2000-2002 biennium for this purpose to the Office of the Attorney General. The Department of Insurance shall provide the Office of the Attorney General any available information to assist in the preparation of a rate hearing pursuant to KRS 304.17A-095.

d. Asbestos Litigation Fund: Restricted Funds which were appropriated to the Office of the Attorney General by House Bill 321 (1998 Ky. Acts ch. 615) for asbestos litigation administrative costs shall lapse and shall be transferred to the General Fund Surplus Account.

e. Annual and Sick Leave Service Credit: Notwithstanding any statutory or regulatory restrictions to the contrary, any former employee of the Unified Prosecutorial System who has been appointed to a permanent full time position under KRS Chapter 18A shall be credited annual and sick leave based on service credited under the Kentucky Retirement System, solely for the purpose of computation of sick and annual leave. This provision shall only apply to any new appointment or current employee as of July 1, 1998.

f. Prosecutors Advisory Council Administrative Functions: The Prosecutors Advisory Council shall approve compensation for employees of the Unified Prosecutorial System subject to the appropriation in the Act.

g. Victims Witness Protection Funds: The General Fund appropriation to the Office of the Attorney General for the operation of the Victim Witness Protection Program shall not lapse, notwithstanding KRS 45.229, and shall be carried forward into fiscal year 2000-2001 for the same purpose.

h. Child Sexual Abuse Exams: The Department for Medicaid Services shall develop a reimbursement schedule to compensate participating health care providers for the full cost of providing child sexual abuse examinations for eligible children to the extent funds are available, effective July 1, 2000. The provisions of this section shall not mandate any services or payments that are not otherwise provided in the Medicaid Benefits budget in Part I, Operating Budget. The reimbursement schedule shall not be reduced under any Managed Care Agreement. The Department may require participating health care providers to meet specific training and experience requirements. The Office of the Attorney General may utilize proceeds from the sale and renewal of child victims special license plates. Notwithstanding KRS 186.1867, the Transportation Cabinet shall review the costs related to the distribution of child victims license plates. Any revenue received from the sale or renewal of these plates in excess of costs shall be transferred to the Child Victims Trust Fund on an annual basis.

i. Public Funds: Notwithstanding any provision of common law or statutory law to the contrary, any funds or other assets of any kind or nature, including but not limited to public funds as defined in KRS 446.010, court-ordered settlement agreements under KRS Chapter 367, multi-state settlements, and private funds or assets recovered in a legal action on behalf of the general public, the Commonwealth, or its duly elected statewide public officials shall be deemed public funds, and shall be deposited in the General Fund Surplus Account. The Attorney General shall provide notice to the Governor's Office of Policy and Management and the Legislative Research Commission of the nature of any funds deposited in this account and no funds shall be disbursed without a specific legislative appropriation by the General Assembly while in a regular or special legislative session. This provision shall not apply

to any funds or other assets recovered by judgment, settlement, or legal action by or on behalf of the Commonwealth, or other actions filed by a duly elected statewide public official, if the recovery sought and received is for specific individuals, identified as parties to the action, or persons for whom the recovery is received if identified specifically. Identification includes but is not limited to identification either by individual Social Security numbers, or other identifying number, or by proper name.

### 3. AUDITOR OF PUBLIC ACCOUNTS

a. State Agencies Audit Services Contracts: No state agency shall enter into any contract with a nongovernmental entity for an audit unless the Auditor of Public Accounts has declined in writing to perform the audit or has failed to respond within thirty (30) days of receipt of a written request. The agency requesting the audit shall furnish the Auditor of Public Accounts a comprehensive statement of the scope and nature of the proposed audit.

b. Audit Records and Status Reports: The Auditor of Public Accounts shall report in writing each sixty (60) days to the Interim Joint Committee on Appropriations and Revenue the progress of all state audits, together with copies of all completed audits. The auditor shall maintain a record of all time and expenses for each audit or investigation.

c. Charges for Federal, State, and Local Audits: Any additional expense incurred by the Auditor of Public Accounts for auditing Federal Funds, when the audits are mandated by a cognizant federal audit agency, shall be charged to the audited agency when the costs may be charged against Federal Funds. The Auditor of Public Accounts is authorized to increase the audit fees for conducting county audits if additional revenues are needed to continue the operation of the office. The Auditor shall maintain a record of all costs and expenditures associated with this provision.

Each quarter, the Auditor of Public Accounts shall notify the Finance and Administration Cabinet concerning the collection status of the fees charged for county audits. If a county government is delinquent in its payment to the Auditor of Public Accounts, the Finance and Administration Cabinet shall withhold any moneys due that county government for the term of one hundred twenty (120) days or until the Auditor of Public Accounts has received full payment from the county. The Auditor of Public Accounts is authorized to increase the audit fees for conducting county audits if additional revenues are needed to continue the operations of the office.

The "Single Audit Act of 1984" and the "Single Audit Act Amendments of 1996" (OMB Circular No. A-128) have changed the method by which federal moneys to state agencies are audited. As a result of this federal change, the Auditor of Public Accounts is budgeted to receive additional agency receipts which shall be allotted by the Governor's Office for Policy and Management for programs authorized in the enacted budget for the Auditor of Public Accounts by the 2000 General Assembly, subject to the conditions and procedures provided in this Act.

Any expenses incurred by the Auditor of Public Accounts for auditing a state or local government agency or other entity upon its request, or when the audit is required by statute, or when the audit is not required by those standards governing the audit of the Commonwealth's Comprehensive Financial Report, or the provisions contained in the "Single Audit Act of 1984" and the "Single Audit Act Amendment Act of 1996," shall be charged to the agency or entity audited.

Any expense incurred by the Auditor of Public Accounts for auditing individual governmental entities shall be charged to the agency receiving audit services when expenses are mutually agreed upon.

d. EMPOWER Kentucky Audit Expenses: The Auditor of Public Accounts shall charge for any consultation, training, and technology upgrade expenses incurred because of EMPOWER Kentucky and shall be paid by the client agencies.

### 4. AGRICULTURE

a. Agriculture - PACE Program: The PACE board may contract directly with land surveyors, real estate appraisers, and other licensed professionals as necessary.

### 5. PERSONNEL BOARD

a. Administrative Hearings Notice: Notwithstanding KRS 13B.050(2), the Personnel Board shall send notices of administrative hearings by first-class mail.

### 6. LOCAL GOVERNMENT

a. Flood Control Matching Fund Project Review: The Department for Local Government shall transmit a copy of the application for a flood-related project to be funded from the flood control matching fund to the Natural

Resources and Environmental Protection Cabinet with a request for a review of the project pursuant to KRS Chapter 151.

7. GOVERNOR'S OFFICE OF VETERANS' AFFAIRS

a. Weekend and Holiday Premium Pay Incentive: The Veterans' Centers are authorized to provide a weekend and holiday premium pay incentive for the fiscal biennium 2000-2002.

ECONOMIC DEVELOPMENT

8. OFFICE OF THE SECRETARY

a. East and West Kentucky Corporations' and Regional Offices' Strategic Plan: The East and West Kentucky Corporations shall each submit an annual plan to the Interim Joint Committee on Appropriations and Revenue and to the Cabinet for Economic Development defining and outlining their respective roles and responsibilities as they relate to, but do not duplicate, the programs of the Cabinet for Economic Development. The Cabinet for Economic Development shall provide to the Interim Joint Committee for Appropriations and Revenue an annual plan for the Regional Offices defining and outlining their efforts toward maximizing return on investments and reducing duplicative efforts with other regional development groups.

b. Coal County Development Office Reports: The Office of Coal County Development shall provide a biannual progress report of the Local Government Economic Development Fund to the Legislative Research Commission for referral to the appropriate committees. The biannual report shall include, but may not be limited to, a progress report of the Regional Industrial Park Program and a summary report of the distribution of grants within the single county accounts.

c. Kentucky Woods Product Competitiveness Corporation Reports: Notwithstanding KRS 154.47-035, beginning on or before January 15, 2001, and every year thereafter, the Kentucky Woods Product Competitiveness Corporation shall submit a written status report on its projects and activities to the Legislative Research Commission for referral to the appropriate committees. The annual report shall also include the amount of expenditure by activity within each county and the number of employees and relative salaries within the Corporation.

d. Funding for New Commissioner: Notwithstanding KRS 154.20-030 to KRS 154.20-570, interest income earned on balances in the High-Technology Construction Pool and the Kentucky Economic Development Finance Authority High-Technology Investment Fund shall be used to support the Office of Commissioner for the New Economy, which shall be attached to the Cabinet for Economic Development. Pursuant to KRS 12.050, the Governor shall appoint the Commissioner with the approval of the Economic Development Partnership Board.

e. Knowledge-Based Economy Initiatives: Funds provided for the Manufacturing Modernization project shall be used to assist small and medium-sized manufactures to become more competitive in the global marketplace. In addition, funds provided to support the Strategic Technology Capacity Initiative Study shall be used to: a) develop a knowledge-based economy strategy, b) recruit research and development companies, c) attract high-tech research and development centers, d) support growth and creation of high-tech, innovative companies, and e) build and promote networks of technology-driven and research-intensive industries.

9. FINANCIAL INCENTIVES

a. Bluegrass State Skills Corporation: The Bluegrass State Skills Corporation shall submit quarterly progress reports for the training investment credits program to the Legislative Research Commission for referral to appropriate committees.

b. High-Tech Construction Pool: Notwithstanding KRS 154.20-030 to KRS 154.20-570, \$20,000,000 of the Kentucky Economic Development Finance Authority funds are authorized to support a High-Technology Construction Pool. This construction pool will be used for projects with a special emphasis on the creation of high-technology jobs. The Commissioner of the Office for the New Economy shall administer the Pool and recommend distribution of funds and projects to the Kentucky Economic Development Finance Authority for its approval. The Commissioner shall recommend any designated amount of Pool funds to be set aside for any match requirement. Any funds used for matching purposes may include public and private funds. Individual projects may be identified and authorized from this High-Technology Construction Pool consistent with the provisions and reporting requirements set forth in Part II, Capital Projects Budget Provisions, Section 9, of this Act.

c. High-Tech Investment Pool: Notwithstanding KRS 154.20-030 to KRS 154.20-570 or any other Kentucky statute to the contrary, \$20,000,000 of the Kentucky Economic Development Finance Authority funds are authorized to be used to build and promote networks of technology-driven and research-intensive industries as well as



their related suppliers with the goal of creating clusters of innovation-driven industries in Kentucky as embodied in House Bill 572 as considered by the 2000 Regular Session of the General Assembly. These funds are authorized to be used to support loans and grants, or to secure an equity position in industrial networks of this character. The Commissioner of the Office for the New Economy shall administer the pool and shall recommend projects to the Kentucky Economic Development Finance Authority for its approval.

d. **Economic Development Reports:** The Economic Development Cabinet shall submit quarterly project status summary reports by project of each Grant, Tax Credit, Loan, and Economic Development Bond Pool Fund support, or any other public funds to be used as an economic development incentive, including job training, as approved by the Kentucky Economic Development Finance Authority, the Economic Development Cabinet, or any other authority or board within the Cabinet, to the Legislative Research Commission for referral to the appropriate committees. The quarterly project status summary report shall include but not be limited to: the name of the participating company; the value and type of development assistance provided; employee projections; the costs per job; the average hourly pay; the total project cost; and the potential tax credit assigned to the project.

#### 10. COMMUNITY DEVELOPMENT

a. **Regional Offices:** The Regional Offices shall submit quarterly program and status reports to the Legislative Research Commission for referral to the appropriate committees.

b. **Flexible Manufacturing Network Program Reports:** The Cabinet shall continue to provide quarterly program and financial status reports of the Flexible Manufacturing Network program to the Legislative Research Commission for referral to the appropriate committees.

#### DEPARTMENT OF EDUCATION

#### 11. SUPPORT EDUCATION EXCELLENCE IN KENTUCKY (SEEK) PROGRAM

a. **Allocation of Support Education Excellence in Kentucky Funds:** The General Fund appropriations to the base Support Education Excellence in Kentucky (SEEK) program are intended to provide a base guarantee of \$2,994 per student in average daily attendance in fiscal year 2000-2001 and \$3,066 per student in average daily attendance in fiscal year 2001-2002 as well as to meet the other requirements of KRS 157.360, notwithstanding KRS 157.360(2)(c).

Notwithstanding any statutory provisions to the contrary, the vocational education deduct factor shall be fifteen percent (15%) in fiscal year 2000-2001 and zero percent (0%) in fiscal year 2001-2002.

Nothing in this legislation shall be construed as prohibiting the contracting out of pupil transportation services.

For purposes of implementing the provisions of House Bill 469 (1998 Ky. Acts ch. 254), the percent increase in the average annual Consumer Price Index for all urban consumers between the two most recent calendar years refers to calendar year 1999 compared to calendar year 1998; the resulting 2.2% increase shall be applicable in both fiscal year 2000-2001 and fiscal year 2001-2002.

Funds appropriated to the Support Education Excellence in Kentucky program shall be allotted to school districts in accordance with KRS 157.310 to 157.440, except that the total of the funds allotted shall not exceed the appropriations for this purpose except as provided in this Act. The total appropriation for the Support Education Excellence in Kentucky (SEEK) program shall be measured by, or construed as, estimates of the state expenditures required by KRS 157.310 to 157.440. If the required expenditures exceed these estimates, the Secretary of the Finance and Administration Cabinet, upon the written request of the Commissioner of Education and with approval of the Governor, may increase the appropriation by such amount as may be available and necessary to meet, to the extent possible, the required expenditures under the cited sections of the Kentucky Revised Statutes, but any increase of the total appropriation to the Support Education Excellence in Kentucky program is subject to Part III, General Provisions, of this Act, and the provisions of KRS Chapter 48. If funds appropriated to the Support Education Excellence in Kentucky program are insufficient to provide the amount of money required under KRS 157.310 to 157.440, allotments to local school districts may be reduced in accordance with KRS 157.430.

b. **Minimum Statewide Salary Schedules:** The following is the minimum statewide salary schedule for fiscal year 2000-2001 and fiscal year 2001-2002.

Rank	I	II	III	IV	V
Experience					
0-3 years	25,200	22,580	19,910	17,150	15,810
4-9 years	27,840	25,200	22,580	17,150	15,810

10-14 years	31,260	28,600	25,950	17,150	15,810
15-19 years	32,260	29,610	26,950	17,150	15,810
20 years and over	32,760	30,110	27,450	17,150	15,810

c. Allocation of Support Education Excellence in Kentucky Lapse Funds: Funds allocated for the SEEK base and its adjustment factors that are not needed for the base or a particular adjustment factor may be allocated to other adjustment factors, if funds for that adjustment factor are not sufficient. Excess funds that exist after the SEEK base and all SEEK adjustment factors have been fully funded shall be reallocated for the purpose of providing additional SEEK funding to local school districts. The reallocation of excess funds shall be in accordance with 702 KAR 3:270 promulgated under KRS 157.310 to KRS 157.440. Supplemental SEEK payments during fiscal biennium 2000-2002 shall not become part of the continuing SEEK base. The Governor, upon the written recommendation of the Secretary of the Finance and Administration Cabinet and the written request of the Commissioner of Education, shall certify that excess funds are available.

## 12. EXECUTIVE POLICY AND MANAGEMENT

a. Employment of Personnel: Notwithstanding KRS 18A.115, the Department of Education may fill, through memoranda of agreement, not more than fifty percent (50%) of its existing authorized positions below the division director level with individuals employed as school administrators and educators in Kentucky.

b. Employment of Leadership Personnel: Notwithstanding KRS 18A.005 to 18A.200 and the provisions of 2000 House Bill 728, the Kentucky Board of Education shall have sole authority to determine the employees of the Department of Education who are exempt from the classified service and to set their compensation comparable to the competitive market.

## 13. MANAGEMENT SUPPORT SERVICES

a. Funding for Employer Health and Life Insurance and Retirement Contributions: If the costs for health insurance or life insurance coverage for employees of local school districts exceed the levels of appropriated funds, any unexpended Support Education Excellence in Kentucky appropriations may be used to offset the unbudgeted costs. Any transfer shall be subject to approval of the Governor upon the written recommendation of the Secretary of the Finance and Administration Cabinet pursuant to the written request of the Commissioner of Education. If the appropriations for either local school district teachers' retirement employer match or local district health and life insurance fall short of statutory requirements, any surplus funds from the other appropriation unit may be transferred to the appropriation unit experiencing the shortfall. Any transfer shall be subject to approval of the Governor upon the written recommendation of the Secretary of the Finance and Administration Cabinet pursuant to the written request of the Commissioner of Education. Notwithstanding the provisions of KRS 45.229, any unexpended local school district teachers' retirement employer match funds shall not lapse at the end of fiscal year 2000-2001 but shall be available if needed in fiscal year 2001-2002. Included within the General Fund appropriation for local school district employee health and life insurance is funding to cover costs associated with the Personnel Cabinet's administrative activities including providing life and health insurance for local school district employees. Accordingly, the sum of \$4 per month per employee participating in the state-provided life and health insurance program in fiscal year 2000-2001 and \$4 per month per employee participating in the state-provided life and health insurance program in fiscal year 2001-2002 shall be remitted to the Personnel Cabinet by the Department of Education from the General Fund appropriation for local school district health and life insurance.

b. Kentucky Education Technology System: Area Vocational Education Centers shall be fully eligible to participate in the Kentucky Education Technology System. Notwithstanding KRS 157.650 to 157.665, the School Facilities Construction Commission in consultation with the Kentucky Board of Education and the Kentucky Department of Education shall develop administrative regulations which identify a methodology by which the average daily attendance for Area Vocational Education Centers may be equated to the average daily attendance of other local school districts in order that they may receive their respective distributions of these funds.

c. Family Resource and Youth Services Centers: Funds appropriated to establish Family Resource and Youth Services Centers shall be transferred in fiscal year 2000-2001 and in fiscal year 2001-2002 to the Cabinet for Families and Children consistent with the intent of KRS 156.497. The Cabinet for Families and Children is authorized to use, for administrative purposes, no more than three percent (3%) of the total funds transferred from the Department of Education for the Family Resource and Youth Services Centers. The Department of Education is authorized to retain \$76,900 in fiscal year 2000-2001 and \$79,700 in fiscal year 2001-2002 from the funds appropriated for the Family Resource and Youth Services Centers. If a certified person is employed as a director or

coordinator of a Family Resource or Youth Services Center, that person shall retain his or her status as a certified employee of the school district.

If seventy percent (70%) or more of the funding level provided by the state is utilized to support the salary of the director of a center, that center shall provide a report to the Cabinet for Families and Children identifying the salary of the director. The Cabinet for Families and Children shall transmit any reports received from Family Resource and Youth Service Centers pursuant to this provision to the Legislative Research Commission.

d. Allocation of Safe Schools Funds: Notwithstanding KRS 158.446, the General Fund appropriations in this Act in Part I, C., Section 24, Management Support Services, the Center for School Safety shall develop and implement allotment policies for all moneys received for the purposes of KRS 158.440 to 158.442 and KRS 158.445 to 158.446.

e. Education Professional Standards Board System Infrastructure/Database System: The capital project authorized in Part II, Section C, Item g. of this Act shall, to the maximum degree possible, provide the Kentucky Department of Education with capacity for data warehousing for student, financial, and related data needs as well as providing teacher quality data.

#### 14. LEARNING SUPPORT SERVICES

a. School Rewards Trust Fund: Distribution of rewards to local schools shall be based on policy established by the Kentucky Board of Education.

b. Kentucky Education Technology System: The School for the Deaf and the School for the Blind shall be fully eligible, along with local school districts, to participate in the Kentucky Education Technology System in a manner that takes into account the special needs of the students of these two schools.

c. Education Professional Standards Board (EPSB): Notwithstanding any statute to the contrary, the EPSB may collect fees for the issuance of certifications. EPSB may charge the following fees at the corresponding amounts: issuance or reissuance (renewal) of regular certificate (to include all previously issued certifications and endorsements) - \$50; each transaction to add area(s) of certification or rank - \$50; issuance of five-year substitute certificate - \$15; issuance of duplicate certificate - \$25; reissuance of limited certification - \$35.

d. Area Centers and Vocational Departments Funding Formula: All funds appropriated in the budget for supplementing the programs and operations of the area centers and vocational departments of the following districts shall be distributed by a weighted formula that is promulgated in an administrative regulation by the Kentucky Board of Education: Allen County, Ballard County, Bowling Green Independent, Boyd County, Carter County, Christian County, Covington Independent, Edmonson County, Fayette County, Fleming County, Franklin County, Grayson County, Henderson County, Lawrence County, Lewis County, Livingston County, Magoffin County, Marshall County, McCreary County, Newport Independent, Powell County, Simpson County, Trigg County, Union County, and Jefferson County. The weighted formula shall take into consideration the different costs of programs based on requirements for facilities, materials, and equipment to meet program standards, the number of students enrolled, and the number of hours students are enrolled. If the funding formula results in a reduction of funds from the fiscal year 1999-2000 allocation for a center or department that has maintained the same number and category of programs and meets all other criteria, the center shall receive no less than 70% of its fiscal year 1999-2000 allocation.

### EDUCATION, ARTS, AND HUMANITIES

#### 15. TEACHERS' RETIREMENT SYSTEM

a. Highly Skilled Educators' Retirement Benefits: Notwithstanding KRS Chapter 158 and KRS Chapter 161, salary supplements received by persons selected as highly skilled educators on or after July 1, 2000, shall not be included in the total salary compensation for any retirement benefits to which the employee may be entitled.

#### 16. SCHOOL FACILITIES CONSTRUCTION COMMISSION

a. Local Districts Facilities Plans: Notwithstanding the provisions of KRS 157.622(3), funds allocated by the School Facilities Construction Commission to local school districts for fiscal year 2000-2001 and fiscal year 2001-2002 shall be applied to the projects listed in the most current facility plan approved for the district by the Kentucky Board of Education and the funds shall be applied to projects in the priority order listed in the plan.

b. Offers of Assistance: Notwithstanding any provisions of KRS 157.611 to 157.665 to the contrary, the School Facilities Construction Commission is authorized to make offers of assistance to eligible schools in an amount not to exceed \$100,000,000 during the fiscal 2000-2002 biennium.

c. Bond Sales: Bond sales prior to June 30, 2000, are limited to the amount that can be supported on an annual basis by the amount of debt service appropriated in Part I of this Act.

d. Extending Offers of Assistance: Notwithstanding KRS 157.622(5), a local school district may accumulate credit, subject to the availability of funds, for its unused state allocation for a period not to exceed six (6) years.

e. Additional Growth Nickel Levy: The Facilities Support Program of Kentucky is fully funded in fiscal biennium 2000-2002. Notwithstanding KRS 157.621(3), local school districts may exercise authority expressed in KRS 157.621(1) and (2).

#### 17. DEPARTMENT FOR LIBRARIES AND ARCHIVES

a. Library Facilities Fund: There is established a Public Library Facilities fund for library improvements. The Department for Libraries and Archives is authorized to enter into long-term written memoranda of agreement with local libraries to assist in construction and renovation, including providing debt service payments. Such agreements shall specify the rights, duties, and obligations of both the local public library and the Department. The Department shall promulgate administrative regulations to establish the application process, criteria for selecting projects for assistance, and the process to be followed in the construction of facilities. The Department shall report assistance awards to the Interim Joint Committee on Appropriations and Revenue within 30 days of execution of any memorandum of agreement.

### FAMILIES AND CHILDREN

#### 18. CABINET FOR FAMILIES AND CHILDREN

a. Maximizing Federal Funds: Pursuant to compliance with the State/Executive Budget Bill and the Statutory Budget Memorandum, the Cabinet shall maximize all Federal Funds for programs within the Cabinet.

b. Legislative Oversight: To provide legislative oversight, the Cabinet for Families and Children shall apply the provisions of KRS 48.630 to the program level including the following programs: Temporary Assistance to Needy Families (TANF), Medical Assistance, State Supplementation, Welfare to Work, Child Support, Energy, Child Care, Family Based Services, Adult Services, and Alternatives for Children; and Appropriation Units: Administration Services and Disability Determinations.

#### 19. COMMUNITY BASED SERVICES

a. Energy Assistance Trust Fund: Notwithstanding KRS 42.560, only those Restricted Funds necessary to supplement Federal Funds in order to maintain program levels as appropriated, are authorized from the Energy Assistance Trust Fund for fiscal year 2000-01 for the Home Energy Assistance and Weatherization programs.

b. Education for Recipients of Public Assistance: The Department for Community Based Services shall make available to a minimum of 7% of total adult public assistance recipients placements in Postsecondary or Vocational education. The recipients shall receive all support services provided to employed public assistance recipients including transportation and child care. The funding source shall be determined by the Cabinet for Families and Children. Work requirements shall include those required by the Postsecondary or Vocational educational placement as part of the required program of study or financial assistance. If allowable by Federal regulations related to Welfare Reform work participation rates, work requirements shall be limited to those required by the Postsecondary or Vocational educational placement as part of the required program of study or financial assistance.

c. Emergency Shelter: The General Fund appropriation for Alternatives for Children Program includes \$450,000 each fiscal year for Private Child Care Emergency Shelter at the Home for the Innocents for temporary emergency services.

d. Outreach Programs: A General Fund appropriation of \$225,000 each fiscal year is provided for Outreach Resource Centers Services for adults and children services expansion through the Mountain Outreach in McRoberts (\$150,000 operating expenses each fiscal year) and Sarah's Place Women's Resource Center in Sandy Hook (\$75,000 operating and renovation expenses each fiscal year).

e. Salary Improvements: An appropriation of \$189,004,900 in fiscal year 2000-2001 is provided for Salary and Fringe Benefits costs in Community Based Services. Any appropriation for Salary and Fringe Benefits costs unexpended for Salary and Fringe Benefits costs in fiscal year 2000-2001 shall not lapse and shall be carried forward into the next fiscal year, notwithstanding KRS 45.229, in compliance with the General Provisions of this Act, to provide salary increases for employees in the Social Service Worker I and Social Service Worker II classifications.

f. Funds Transfer: To the extent allowed by federal regulations and the provisions of KRS 48.630, the Cabinet for Families and Children may transfer Temporary Assistance to Needy Families (TANF) funds to the Department for Public Health in the Cabinet for Health Services in exchange for Phase I Tobacco Settlement dollars targeted for the home visitation program. Such transfer up to \$3,000,000 per year is permitted on a dollar for dollar basis. This transfer, subject to the consent of both Cabinets, shall be permitted so long as allowed by federal regulations in order to enable the Cabinet for Families and Children to further leverage funds which could be used in the Alternatives for Children subprogram.

## 20. ADMINISTRATION SERVICES

a. Salary Improvements: An appropriation of \$24,216,300 in fiscal year 2000-2001 is provided for Salary and Fringe Benefits costs in Administration Services. Any appropriation for Salary and Fringe Benefits costs unexpended for Salary and Fringe Benefits costs in fiscal year 2000-2001 shall not lapse and shall be carried forward into the next fiscal year, notwithstanding KRS 45.229, in compliance with the General Provisions of this Act, to provide salary increases for employees in the Social Service Worker I and Social Service Worker II classifications in Community Based Services.

b. Workplace Improvements: The Cabinet for Families and Children may expend up to \$500,000 in fiscal year 2000-2001 and \$1,400,000 in fiscal year 2001-2002 for lease expansions.

c. Funds Transfer: To the extent allowed by federal regulations and the provisions of KRS 48.630, the Cabinet for Families and Children may transfer Temporary Assistance to Needy Families (TANF) funds to the Department for Public Health in the Cabinet for Health Services in exchange for Phase I Tobacco Settlement dollars targeted for the home visitation program. Such transfer up to \$3,000,000 per year is permitted on a dollar for dollar basis. This transfer, subject to the consent of both Cabinets, shall be permitted so long as allowed by federal regulations in order to enable the Cabinet for Families and Children to further leverage funds which could be used in the Alternatives for Children subprogram.

## HEALTH SERVICES

### 21. CABINET FOR HEALTH SERVICES

a. Maximizing Federal Funds: Pursuant to compliance with the State/Executive Budget Bill and the statutory budget memorandum, the Cabinet shall maximize all Federal Funds for programs within the Cabinet.

b. Identification of Maximized Federal Funds: The Cabinet shall attach a listing, by Department, to the Agency Budget Request of additional Federal Funds obtained during the biennium through maximizing Federal Funds.

### 22. MEDICAID ADMINISTRATION

a. Health Insurance Portability Act: It is the intent of the General Assembly that the Secretary of the Cabinet for Health Services be permitted to transfer from Medicaid Benefits to Medicaid Administration a total of up to \$3,500,000 over the biennium of the General Fund or Restricted Funds appropriations from the Medicaid Benefits budget to the Medicaid Administration budget to be used for technical assistance and costs associated with achieving Health Insurance Portability Act (HIPA) compliance for the Medicaid Management Information System. The Secretary shall recommend any proposed transfer to the State Budget Director for review and concurrence prior to transfer. Upon concurrence of the State Budget Director and prior to the transfer, the Secretary shall present the proposed plan to the Interim Joint Committee on Appropriations and Revenue.

b. Dental Reimbursement: The Department for Medicaid Services shall increase dental reimbursement by \$11,160,000 in fiscal year 2000-2001 and \$11,144,900 in fiscal year 2001-2002.

c. Medicaid Nursing Facility Allocation: The Medicaid Nursing Facility allocation for fiscal year 1999-2000 of \$551,000,000 shall be increased a minimum of 3.1% in each year of the biennium to cover normal inflationary costs of operation. In addition to this inflationary base adjustment, \$1,000,000 in General Fund support in fiscal year 2000-2001 and \$2,000,000 in fiscal year 2001-2002 in General Fund support is provided to implement the revised Nursing Facility Prospective Payment System.

d. Optometrists' Reimbursement: The Department for Medicaid Services shall increase optometrists' reimbursement by \$473,400 in fiscal year 2000-2001 and \$472,800 in fiscal year 2001-2002.

e. Kentucky Patient Access to Care Program (KenPAC) Reimbursement: The Medicaid Benefits Budget includes funds to implement an Enhanced Kentucky Patient Access to Care Program (KenPAC) with reimbursement to gatekeeper providers on a sliding scale of \$3 to \$9 per member per month based upon performance and quality

criteria. The Department for Medicaid Services shall promulgate administrative regulations to implement an enhanced KenPAC program to be effective July 1, 2000.

f. Acquired Brain Injuries with Neurobehavioral Disorders - The Department for Medicaid Services shall work with entities providing care for individuals with acquired brain injuries accompanied by psychiatric disorders to explore options including waivers, alternative funding mechanisms and facility reclassification that may result in individuals with these conditions who qualify for Medicaid support being served in facilities in Kentucky using state and federal matching funds. If a feasible funding mechanism can be developed within the existing Medicaid Benefits framework, the Department for Medicaid Services shall be authorized to institute a pilot project to develop and implement a neurobehavioral treatment program in Kentucky. Maximum total expenditures for such a pilot program shall be limited to \$1,600,000 in each year of the biennium. If the Department for Medicaid Services institutes such a pilot project, prior to beginning the project, the Department shall submit a description of the project, including projected cost, funding sources and number of individuals to be served which shall be forwarded to the Interim Joint Committee on Health & Welfare and the Interim Joint Committee on Appropriations & Revenue. Quarterly progress reports shall be submitted to the Interim Joint Committee on Health & Welfare and the Interim Joint Committee on Appropriations & Revenue.

g. Medicaid Service Category Expenditure Information: No Medicaid managed care contract shall be valid, and no payment to a Medicaid managed care vendor by the Finance and Administration Cabinet or Cabinet for Health Services shall be made, until the Medicaid managed care contract contains a provision that the contractor shall collect Medicaid expenditure data by the categories of services paid for by the Medicaid program. Actual statewide Medicaid expenditure data by all categories of Medicaid services, including mandated and optional Medicaid services and special expenditures/offsets, shall be compiled by the Department for Medicaid Services for all Medicaid providers and forwarded to the Interim Joint Committee on Appropriations and Revenue on a quarterly basis. Projections of Medicaid expenditures by categories of Medicaid services shall be provided to the Interim Joint Committee on Appropriations and Revenue upon request. The Department for Medicaid Services, by July 1, 2000, shall promulgate administrative regulations to implement the provisions of this Section.

h. Medicaid Managed Care Administrative Costs: The Department for Medicaid Services shall collect information on Medicaid managed care organization administrative costs for each contracting entity and forward this information to the Interim Joint Committee on Appropriations and Revenue on a quarterly basis. No Medicaid managed care entity's administrative costs shall exceed 15% of the total Medicaid managed care contract cost.

### 23. MEDICAID SERVICES - BENEFITS

a. Hospital Indigent Patient Reporting: Hospitals shall report indigent inpatient and outpatient care for which, under federal law, the hospital is eligible to receive disproportionate share payments.

b. Hospital Indigent Patient Billing: Hospitals shall not bill patients for services where the services have been reported to the Cabinet and the hospital has received disproportionate share payments for the specific services.

c. Provider Tax Information: Any provider who posts a sign or includes information on customer receipts or any material distributed for public consumption indicating that they have paid provider tax shall also post, in the same size type set as the provider tax information, the amount of payment received from the Department for Medicaid Services during the same period the provider tax was paid. Providers who fail to meet this requirement shall be excluded from the Disproportionate Share Hospital and Medicaid Program. The Division of Licensing and Regulation shall include this provision in facilities' annual licensure inspection.

d. Indigent Care Posting: Any provider who receives payment from the Disproportionate Share Hospital Program shall post a sign conspicuously in the lobby, in at least a 16-point type set, stating that they participate in the Disproportionate Share Hospital Program and are consequently required to provide indigent care. Failure to comply with this provision shall result in suspension from the Disproportionate Share Hospital Program. The Division of Licensing and Regulation shall include this provision in facilities' annual licensure inspection.

e. Settlement of Obligations Incurred Prior to Prepaid Capitation: The Department is authorized to fulfill financial obligations incurred prior to implementation of prepaid capitation.

f. Disproportionate Share Hospital Payments: Disproportionate Share Hospital payments shall not exceed the maximum amounts established in the Federal Balanced Budget Act of 1997.

g. Quality and Charity Care Trust Fund: No hospital may be reimbursed from both the Quality and Charity Care Trust Fund and the Disproportionate Share Program (DSH) for the same service to the same patient. Any hospital that willfully violates this provision shall be subject to a penalty equal to three times the amount of the

improper charge to the funds, which amount shall be credited to the General Fund. The Secretary of the Cabinet for Health Services shall have the authority to secure the patient information as needed from the participating facilities in order to determine compliance and enforce this provision. Each facility billing and receiving reimbursements from the Quality and Charity Care Trust Fund shall be required to identify each patient by Social Security number and indicate whether the patient is classified as indigent or medically needy. Notwithstanding any other provision of this Act or law, in any fiscal year for which all the parties to the Quality and Charity Care Trust Agreement so agree, the General Fund appropriation to fulfill the Commonwealth's contractual obligation relating to the Quality and Charity Care Trust Agreement or any portion thereof, together with any other funds paid to the Quality and Charity Care Trust contractual obligation of the parties, or any portion thereof, shall be transferred to the Department for Medicaid Services as part of its Restricted Funds appropriation for Benefits. In any fiscal year for which all the parties to the Quality and Charity Care Trust Agreement do not agree to transfer all or any portion of the Trust's revenues to the Department of Medicaid Services for Benefits, the Quality and Charity Care Trust shall operate pursuant to its contractual provisions.

h. **Medicaid Budget Analysis Reports:** The Department for Medicaid Services shall submit a quarterly budget analysis report to the Interim Joint Committee on Appropriations and Revenue. The report shall provide monthly detail of actual expenditures, eligibles, and average monthly cost per eligible by eligibility category along with current trailing 12 month averages for each of these figures. The report shall also provide actual figures for all categories of noneligible-specific expenditures such as Supplemental Medical Insurance premiums, Kentucky Patient Access to Care, nonemergency transportation, drug rebates, cost settlements, and Disproportionate Share Hospital payments. The report shall compare the actual expenditure experience with those underlying the enacted or revised enacted budget and explain any significant variances which may occur.

#### 24. DEPARTMENT FOR PUBLIC HEALTH

a. **Core Public Health Functions:** Kentucky Public Health Departments shall, to the extent possible, perform the following core public health functions: enforcement of public health regulations; surveillance of public health; communicable disease control; public health education; public health policy development; reduction of risk to families and children; and disaster preparedness.

b. **Local Health Department Transition Training Program Carryforward:** Any General Fund appropriation unexpended in fiscal year 2000-2001 for the Local Health Department Funding Transition Training within the Department for Public Health shall not lapse, but shall be carried forward into fiscal year 2001-2002, notwithstanding KRS 45.229.

c. **Kentucky Regional Poison Control Center:** The contract for the operation of the Kentucky Regional Poison Control Center shall equal at least \$1,000,000 in each fiscal year, absent of any pass-through to any other entities.

d. **Manchester Wellness Centers:** General Fund support totaling \$30,000 in fiscal biennium 2000-2002 for the Wellness Program in Manchester to be equally divided between the communities of Fogertown, Brightshade, and Oneida (Clay County).

e. **Abstinence Education:** The department shall use federal funds and state matching funds under Title V of the Federal Social Security Act, 42 U.S.C. sec. 710, in the following manner: Ninety-five percent (95%) shall be used for community-based grants to institute abstinence education programs; five percent (5%) shall be used to administer and evaluate the effectiveness of the program; and if funds are available after funding community-based programs, the remainder shall be used to promote abstinence education by other means, including an advertising and marketing campaign.

f. **Funds Transfer:** To the extent allowed by federal regulations and the provisions of KRS 48.630, the Cabinet for Families and Children may transfer Temporary Assistance for Needy Families (TANF) funds to the Department for Public Health in exchange for Phase I Tobacco Settlement dollars targeted for the home visitation program. A transfer up to \$3,000,000 per year may be permitted so long as allowed by federal regulations in order to enable the Cabinet for Families and Children to further leverage funds which could be used in the Alternatives for Children subprogram.

#### 25. DEPARTMENT FOR MENTAL HEALTH/MENTAL RETARDATION

a. **Disproportionate Share Hospital Funds:** Mental health Disproportionate Share funds are budgeted at the maximum amounts permitted by the Balanced Budget Act of 1997 in the amount of \$30,900,000 in fiscal year 2000-2001 and \$29,200,000 in fiscal year 2001-2002.

b. Restricted Funds Carry Forward: Any Restricted Funds carryforward, up to \$900,000 each fiscal year, may be used by the Department for Mental Health and Mental Retardation Services for planned replacement of computers and software in the Residential Services Program.

c. Kentucky Early Intervention System Analysis Reports: The Department for Mental Health/Mental Retardation shall submit a quarterly budget analysis report for the Kentucky Early Intervention Services program to the Interim Joint Committee on Appropriations and Revenue. The report shall provide the number of children enrolled, the average number of service units by category of service, and the average cost per service, by category of services, and compare actual expenditure experience with those underlying the enacted or revised enacted budget and explain any significant variances which may occur.

d. Castlewood Prader Willis Syndrome Group Home: The contract for the operation of the Castlewood Prader Willis Syndrome Group Home shall equal at least \$233,000 in each fiscal year, absent any pass-throughs to any other entities.

e. The Healing Place Homeless Shelter: The total contract amount for the operation of the Healing Place Homeless Shelter shall be paid by the Department for Mental Health/Mental Retardation directly to the Healing Place Homeless Shelter and shall not pass through any other entity.

f. Elizabethtown Comprehensive Care Board Washington County Duplex: The contract for the operation of the Elizabethtown Comprehensive Care Board Washington County Duplex shall equal at least \$150,000 each fiscal year beginning in fiscal year 2001-2002.

## 26. CERTIFICATE OF NEED

a. Voluntary Relinquishment of a Certificate of Need or Licensure: For twenty-four (24) months following the voluntary closure, revocation of a certificate of need, or the revocation of licensure, the beds, equipment, and services provided by the closed facility shall be reserved for applications for any certificate of need to reestablish the same services, in whole or part, in the same county as the closed health facility.

## 27. AGING SERVICES

a. Local Match from Contracting Entities: Notwithstanding KRS 205.460, entities contracting with the Cabinet to provide essential services under KRS 205.455 and this provision shall provide equal to or greater local match than the amount in effect during fiscal year 1999-2000. Local match may include any combination of materials, commodities, transportation, office space, personal services, or other types of facility services or funds. The Secretary of the Cabinet for Health Services shall prescribe the procedures to certify the local match assurance.

## 28. ADMINISTRATIVE SUPPORT

a. Licensing Personnel: Federal Funds support totaling \$1,851,100 in fiscal year 2000-2001 and \$1,851,100 in fiscal year 2001-2002 is provided for licensing personnel.

# JUSTICE

## 29. JUSTICE ADMINISTRATION

a. Legal Aid Restrictions: These funds shall be used for providing and arranging civil legal representation for eligible low-income Kentuckians who are currently underserved and for purposes consistent with federal law and regulations. These funds shall not be used for lobbying on issues related to abortion. The recipient of this appropriation shall report annually to the Interim Joint Committee on Appropriations and Revenue on the dispositions of the grant.

b. The Urban League of Lexington-Fayette County Reporting Requirement: The Urban League of Lexington-Fayette County shall report annually on the expenditures of state and federal funds provided through this Act to the Interim Joint Committee on Appropriations and Revenue and the Office of the Secretary in the Justice Cabinet. The Secretary of Justice shall supplement the General Fund appropriation with Federal funds up to a combined total of \$300,000 each year if the program meets the federal grant guidelines of grants administered by the Justice Cabinet. The Urban League of Lexington-Fayette County shall be subject to any federal grant requirements that are required upon receiving federal moneys.

## 30. STATE POLICE

a. State/Local Emergency Phone Service Agreement: The Department of State Police may enter into agreements with the governing body of the city, county, urban-county government, or any combination thereof, to provide 911 emergency telephone service.



- b. Background Checks: The State Police shall charge \$10 for each criminal background check.

### 31. CORRECTIONS MANAGEMENT

a. Reimbursement to Counties for Interstate Inmate Detainees: The Department of Corrections shall reimburse fifty percent (50%) of documented expense claims for prior year costs incurred by counties for holding interstate inmate detainees awaiting transfer in local jails and the sum of \$40,000 in fiscal year 1999-2000 is included in the General Fund appropriation for this purpose.

b. Adjustment of Appropriations Between Appropriation Units: The General Assembly has determined that the Department of Corrections shall be permitted to adjust appropriations between and among the following appropriation units in fiscal year 2000-2001 and in fiscal year 2001-2002 not to exceed \$3,000,000: Community Services and Local Facilities and Adult Correctional Institutions. Only adjustments necessary to manage the diverse mix of inmate classifications, custody levels, probation and parole caseloads, and population increases and/or decreases shall be permitted. Any appropriations transferred or otherwise directed between and among these appropriation units shall be documented and justified in writing. No adjustments may be made except upon the prior written concurrence of the State Budget Director of the Governor's Office for Policy and Management who shall report such adjustment to the Interim Joint Committee on Appropriations and Revenue.

### 32. ADULT INSTITUTIONS

a. Inmate Projection/Bed Status and Financial Reports: The Justice Cabinet, Department of Corrections, shall provide a quarterly report regarding inmate population projections relating to state prisoners to the Interim Joint Committee on Appropriations and Revenue. The Justice Cabinet, Department of Corrections, shall provide a monthly status of all bed space utilized to house state prisoners, including state penitentiaries, adult correctional facilities, local jails, regional jails, halfway houses, community confinement programs, and diversion programs. The Justice Cabinet, Department of Corrections, shall provide a quarterly program and financial status report which identifies the expenditure of these funds to the Interim Joint Committee on Appropriations and Revenue. The report shall provide, at a minimum, the purpose for which the expenditure was made; the projected goal to be accomplished and outcomes, and their status; and the number of participants.

b. Reporting Requirements: The Department of Corrections shall require and Private Prison Bed Contractors shall provide to the Department of Corrections an annual report that contains, at a minimum, personnel data that includes a pay scale/job classification structure for all employees; information detailing salaries of personnel and related benefits by pay scale/job classification structure; and the minimum, average, and maximum salary, plus fringe benefits provided for all employed persons. The information provided shall be consistent with the Department of Corrections pay scale and job classification structure for all Department of Corrections employees. Fringe benefits shall be identified separately from salary expense. The Department of Corrections shall annually furnish a report containing the above information plus like data for persons employed in comparable positions within Adult Correctional Facilities statewide to the Personnel Cabinet and Legislative Research Commission.

## NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

### 33. GENERAL ADMINISTRATION AND SUPPORT

a. Budget Administration: If the Secretary determines that the functions and responsibilities of the Surface Mining Reclamation and Enforcement budget unit can be performed with fewer positions than budgeted for the biennium, the positions and associated costs may be transferred to the General Administration and Support budget unit for the purpose of employing essential positions, replacing or upgrading information technology equipment, and the replacement of vehicles. The Secretary shall present the proposed plan to the State Budget Director and the Interim Joint Committee on Appropriations and Revenue prior to transferring any positions and funding.

### 34. DEPARTMENT FOR NATURAL RESOURCES

a. Budget Administration: If the Secretary determines that the functions and responsibilities of the Surface Mining Reclamation and Enforcement budget unit can be performed with fewer positions than budgeted for the biennium, the positions and associated costs may be transferred to the Natural Resources budget unit for the purpose of employing essential positions, replacing or upgrading information technology equipment, and the replacement of vehicles. The Secretary shall present the proposed plan to the State Budget Director and the Interim Joint Committee on Appropriations and Revenue prior to transferring any positions and funding.

### 35. DEPARTMENT FOR ENVIRONMENTAL PROTECTION

a. Budget Administration: If the Secretary determines that the functions and responsibilities of the Surface Mining Reclamation and Enforcement budget unit can be performed with fewer positions than budgeted for the biennium, the positions and associated costs may be transferred to the Environmental Protection budget unit for the purpose of employing essential positions, replacing or upgrading information technology equipment, and the replacement of vehicles. The Secretary shall present the proposed plan to the State Budget Director and the Interim Joint Committee on Appropriations and Revenue prior to transferring any positions and funding.

b. Clean Air Task Force: The Clean Air Task Force membership and reporting requirements established by the 1992 General Assembly shall be continued. The Task Force shall include representatives of the industry, the environmental community, and the Cabinet, and shall report quarterly to the Legislative Research Commission for referral to appropriate committees.

c. Hazardous Waste Assessments: Notwithstanding KRS 224.46-580(7), hazardous waste assessments shall continue to be charged and collected in fiscal biennium 2000-2002.

### 36. DEPARTMENT FOR SURFACE MINING RECLAMATION AND ENFORCEMENT

a. Budget Administration: If the Secretary determines that the functions and responsibilities of the Surface Mining Reclamation and Enforcement budget unit can be performed with fewer positions than budgeted for the biennium, the positions and associated costs may be transferred to the General Administration and Support budget unit, the Natural Resources budget unit, and the Environmental Protection budget unit for the purpose of employing essential positions, replacing or upgrading information technology equipment, and the replacement of vehicles. The Secretary shall present the proposed plan to the State Budget Director and the Interim Joint Committee on Appropriations and Revenue prior to transferring any positions and funding.

b. Surface Coal Mining Permits: The permit block provisions of KRS 350.085(6) shall apply to either the applicant or any person who owns or controls the applicant who is currently in violation. The Cabinet shall continue in effect the current state regulations regarding ownership and control provided that a due process hearing shall be afforded at the time that the Cabinet makes a preliminary determination to impose a permit block.

The Cabinet shall conditionally issue a permit, permit renewal, or authorization to conduct surface coal mining and reclamation operations, if the Cabinet finds that a direct administrative or judicial appeal is presently being pursued, in good faith, to contest the validity of the determination of ownership and control linkage. The Cabinet shall conditionally issue permits where the applicant submits proof, including a settlement agreement, that the violation is being abated to the satisfaction of the issuing state or federal agency. Where the initial judicial appeal affirms the ownership or control linkage, the applicant shall have thirty (30) days to submit proof that the violation has been or is in the process of being corrected. Nothing herein shall preclude the applicant from seeking further judicial relief.

### 37. KENTUCKY RIVER AUTHORITY

a. Water Withdrawal Fees: The water withdrawal fees imposed by the Kentucky River Authority shall not be subject to state and local taxes. Notwithstanding that portion of the provision of KRS 151.710(10) that directs the Natural Resources and Environmental Protection Cabinet to provide administrative services for the Kentucky River Authority, Tier I water withdrawal fees shall be used to support the operations of the Authority and for contractual services for water supply and quality studies. The Kentucky River Authority shall continue the same rate level in fiscal biennium 2000-2002 as is currently assessed in fiscal biennium 1998-2000.

### 38. ENVIRONMENTAL QUALITY COMMISSION

a. Administrative Accountability: The Environmental Quality Commission shall be attached to the Secretary's Office, but shall remain a separate budget unit. The Secretary, with the approval of the Commissioners of the Environmental Quality Commission, shall employ a director and other necessary Commission staff who shall serve at the pleasure of the Commission and the Secretary.

## POSTSECONDARY EDUCATION

### 39. COUNCIL ON POSTSECONDARY EDUCATION

a. Regional Postsecondary Education Centers: The Council on Postsecondary Education shall resolve any disputes between or among institutions in the design, planning, or use of each Regional Postsecondary Education Center previously authorized by the 1998 General Assembly.

b. Research Challenge Trust Fund Account: The proceeds of the endowment program authorized in Part X, Section 1 of this Act shall be deposited in the Research Challenge Trust Fund Account and invested at the direction of the Council on Postsecondary Education until such time as the Council receives a certification from the

President of the University of Kentucky or from the President of the University of Louisville stating that cash or a binding written contract or agreement has been secured by the respective universities to provide the matching requirements as determined by the Council. Upon receipt of the certification, the Council shall transfer the endowment funds from the account to the respective universities for management and investment by the university foundations if the foundations have been previously created to manage and invest private gifts and donations on behalf of the universities over time, otherwise by the university itself. The proceeds of the Research Challenge Trust Fund Account transferred to the universities shall not be managed or invested by an independent board or foundation separate from the foundations previously created to manage and invest funds on behalf of the respective universities.

c. Endowment Program Private Match: It is the intent of the General Assembly that the Council on Postsecondary Education should establish a fair and reasonable method of dispersing the Endowment Program funding of the Research Challenge Trust Fund to the universities in such a way that requires the private match to be available in cash or a binding written contract or agreement to qualify for the disbursement of state funds. It is the intent of the General Assembly that the method of disbursement should not impede the ability of the universities to prudently and expeditiously raise private funds.

d. Regional University Excellence Trust Fund: The proceeds of the endowment program authorized in Part X, Section 1 of this Act shall be deposited in the Regional University Trust Fund Account and invested at the direction of the Council on Postsecondary Education until such time as the Council receives a certification from the Presidents of Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Northern Kentucky University, and Western Kentucky University stating that cash or a binding written contract or agreement has been secured by the respective universities to provide the matching requirements as determined by the Council. Upon receipt of the certification, the Council shall transfer the endowment funds from the account to the respective universities for management and investment by the university foundations if the foundations have been previously created to manage and invest private gifts and donations on behalf of the universities over time, otherwise by the university itself. The proceeds of the Regional Excellence Trust Fund transferred to the universities shall not be managed or invested by an independent board or foundation separate from the foundations previously created to manage and invest funds on behalf of the respective universities.

e. Workforce Development Trust Fund: Notwithstanding KRS 164.7925, the General Assembly directs that Lexington Community College shall be eligible to apply for funding through the Kentucky Community and Technical College System from the \$6,000,000 General Fund appropriations each fiscal year, to postsecondary institutions in Part I, Section L, Operating Budget, in the Workforce Development Trust Fund, for initiatives to provide workforce training programs.

f. Kentucky Commonwealth Virtual University: The Kentucky Commonwealth Virtual University is encouraged to acquire on-line courses and degree programs which are available from a Kentucky public postsecondary institution.

g. Board of Regents Employee Exemption: Notwithstanding KRS 164.360(2), any person employed at a public postsecondary education institution at least 36 months before the person's relative was appointed to the board of regents of that institution and the individual is currently serving as a Regent shall continue to be an employee of that institution.

h. Maintenance and Operation Funds for New Postsecondary Education Facilities: The General Fund appropriations to postsecondary institutions in Part I, Section L, Operating Budget includes the amounts of \$2,067,900 in fiscal year 2000-2001 and \$19,030,700 in fiscal year 2001-2002 allocated for maintenance and operation of new facilities at each institution authorized by 1998 Kentucky Acts, Chapter 615, Part II (HB 321). Any corresponding unexpended amounts for this purpose shall not lapse, notwithstanding KRS 45.229, but shall be allotted to the respective institutions for program purposes.

#### 40. MOREHEAD STATE UNIVERSITY

a. Space Allocation: Morehead State University shall provide sufficient classroom, open laboratory, teaching laboratory and other space necessary for the Kentucky Community and Technical College System and other public entities to provide course offerings to assist in meeting the academic and workforce training needs of the region within the West Liberty Extended Campus Building authorized by 1998 Kentucky Acts, Chapter 615, Part II (HB 321).

#### 41. MURRAY STATE UNIVERSITY

a. Breathitt Veterinary Center: Included in the General Fund appropriation is \$2,375,500 in fiscal year 2000-2001 and \$2,432,500 in fiscal year 2001-2002 for the Breathitt Veterinary Center. Included in the Restricted Funds appropriation is \$242,700 in each fiscal year for the Breathitt Veterinary Center. Notwithstanding KRS 48.130 and 48.600, there shall be no reduction in funding for these programs. These funds shall be expended solely for the programs of the Breathitt Veterinary Center.

42. UNIVERSITY OF KENTUCKY

a. Lexington Community College: The University of Kentucky shall place the highest priority on improving the salaries of the Lexington Community College faculty and nonexecutive and nonmanagement staff.

43. KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

a. Kentucky Community and Technical College System Faculty and Staff Salaries: The number-one budget request priority of the Kentucky Community and Technical College System is to correct the historically low salaries of the faculty and staff. The average 1998-99 salary of a community college faculty member is approximately \$2,800 less than the midpoint between the average 1998-99 salary of a Kentucky K-12 teacher and the average salary of a faculty member in Kentucky's other state-supported higher education institutions. The Kentucky Community and Technical College System shall place the highest priority on improving the salaries of the Kentucky Community and Technical College System faculty and nonexecutive and nonmanagement staff.

PUBLIC PROTECTION AND REGULATION

44. HOUSING, BUILDINGS AND CONSTRUCTION

a. Fire Dispatcher Training: The Commission on Fire Protection Personnel Standards and Education shall pay all expenses for fire dispatchers to attend dispatcher training at the Department of Criminal Justice Training at Eastern Kentucky University.

45. PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND

a. General Fund Transfer: Interest earnings up to the amounts of \$8,000,000 in fiscal year 2000-2001 and \$8,400,000 in fiscal year 2001-2002 shall be transferred to the General Fund, notwithstanding KRS 224.60-100 to 224.60-160.

REVENUE

46. PROPERTY VALUATION ADMINISTRATORS

a. Annual and Compensatory Leave: Notwithstanding the provisions of KRS 18A.110 to 18A.355 and KRS 61.510 to 61.705, the cabinet shall promulgate administrative regulations allowing property valuation administrators and their deputies to receive lump-sum payments for accrued annual leave and compensatory time when separated from employment because of termination by the employer, resignation, retirement, or death.

TOURISM DEVELOPMENT

47. OFFICE OF THE SECRETARY

a. Tourism Development Loan Program: Funds from the Tourism Development Loan Program shall be provided for direct loans for new tourism business start-ups or expansion of tourism businesses. A local financial institution shall service all loans which shall be on a cash match basis. The maximum state loan amount shall be \$250,000 and all loan proceeds must be for fixed costs only. The Secretary of Tourism shall establish a Tourism Development Finance Authority and establish criteria for disbursement and collection of the funds. The Cabinet shall provide a biannual progress report of the Tourism Development Loan Program to the Legislative Research Commission for referral to the appropriate committees.

48. DEPARTMENT OF PARKS

a. Jenny Wiley Trail Task Force: The Jenny Wiley Trail Task Force shall continue to maintain and manage the Jenny Wiley Trail. The Task Force shall provide a progress report to the Legislative Research Commission for referral to the appropriate committees by December first of each year.

b. Golf Course Construction Reports: The Department of Parks shall provide a biannual status report to the Legislative Research Commission for referral to the appropriate committees summarizing the progress of the Golf Course Development projects.

c. Entrance to E.P. Tom Sawyer State Park: The Department of Parks is prohibited from permitting the Transportation Cabinet from constructing a new entrance to E.P. Tom Sawyer State Park from either the Lakeland Road or Old Whipps Mill Road.

49. KENTUCKY HORSE PARK

a. Leasing of Horse Park Property: No group which leases portions of the Horse Park property for recreational purposes for a nominal fee may sublet any portion of the leased property to another group for recreational purposes for any more than a nominal fee.

TRANSPORTATION CABINET

50. CABINET WIDE

a. Biennial Highway Construction Programs: Notwithstanding KRS 45.245, 45.246, 45.247, and 45.248, and KRS 176.430 and 176.440, to the extent a provision may be in conflict with the provisions in this Section, the General Assembly has appropriated budgetary funds in this Act in addition to prior designated and undesignated fund balances, to be used only for the fiscal biennium 1998-2000 and fiscal biennium 2000-2002 Biennial Highway Construction Programs enacted by the General Assembly in addition to the regular program operations of the Transportation Cabinet.

The Secretary of Transportation is directed to produce a single document that contains two separately identified sections, as follows:

Section 1 shall detail the enacted fiscal biennium 2000-2002 Biennial Highway Construction Program and Section 2 shall detail the Highway Preconstruction Program Plan for fiscal year 2002-2003 through fiscal year 2005-2006 as recommended by the Executive Branch to the 2000 General Assembly. This document shall mirror in data type and format the fiscal year 2001-2006 Recommended Six Year Highway Plan as submitted to the 2000 General Assembly. The document shall be published and distributed to members of the General Assembly and the public within sixty (60) days of adjournment of the 2000 General Assembly.

No legislative action is taken by the 2000 General Assembly on Section 2 of this Plan. The 2000 General Assembly only enacts the fiscal biennium 2000-2002 Biennial Highway Construction Program and takes no action on the fiscal year 2002-2003 to fiscal year 2005-2006 Preconstruction Program Plan.

No executive authority shall expend, or otherwise commit in any manner, available fiscal biennium 2000-2002 Road Fund resources for a project designated as a State Project in the fiscal year 2002-2003 through fiscal year 2005-2006 Highway Preconstruction Program Plan. In the event that federally funded projects contained in the enacted fiscal biennium 2000-2002 Biennial Highway Construction Program are delayed due to unforeseen circumstances, or if additional federal funds are received in excess of the amounts contemplated in this Act, the Transportation Cabinet may advance projects from the Highway Preconstruction Plan only to the extent required to assure that the Commonwealth makes full use of all available federal funds.

The Secretary of Transportation is further directed to report monthly to the Legislative Research Commission as prescribed by KRS 177.430(8) of all activity relating to all projects with open activity conducted by the Transportation Cabinet during the biennium including the year each project phase was enacted in a Six Year Highway Plan. Pursuant to KRS 48.800(5), the Transportation Cabinet shall submit the electronic monthly report in a format prescribed by the Legislative Research Commission.

Notwithstanding KRS 176.440(2) any project additions or modifications that the 2000 General Assembly may make to the fiscal year 2001-2006 Recommended Six Year Road Plan shall carry the same force of law as projects that were included in the fiscal year 2001-2006 Recommended Six Year Road Plan as submitted by the Executive Branch.

b. Pre-financing Road Projects: The Secretary is directed to develop and implement a program to address the policy of the General Assembly to expeditiously initiate and complete projects in the 2000-2002 Biennial Highway Construction Plan. Notwithstanding the provisions of KRS Chapter 45, specifically including provisions of KRS 45.242 and 45.244, the Secretary may concurrently advance projects in the Biennial Highway Construction Plan by employing management techniques that maximize the Cabinet's ability to contract for and effectively administer the project work. The Secretary is directed to continuously ensure that the unspent project and fund balances are sufficient to satisfy project expenditures consistent with appropriations provided.

~~[ c. Contingency Funds: The Secretary is directed to utilize Contingency Funds in the event projects in the 2003-2006 years of the Highway Construction Plan are moved forward to the 2000-2002 Biennial Construction Plan years.]~~

#### 51. AIR TRANSPORTATION

a. Maximize Federal Funds: The Transportation Cabinet shall utilize state Restricted Funds to maximize the matching of Federal Funds. ~~[Any funds appropriated to the Air Transportation budget unit shall be used to support the Airport Development projects identified in the Statutory Budget Memorandum.]~~

b. Certified Air Carriers and Cap on Sales and Use Tax: The sales and use tax credit shall be an amount equal to the Kentucky sales and use tax otherwise applicable to aircraft fuel, including jet fuel, purchased by the certificated air carrier for its storage, use, or other consumption during the annual period, less one million dollars (\$1,000,000). The one million dollar (\$1,000,000) amount shall be increased to reflect the Kentucky sales and use tax on aviation fuel attributable to operations of any other company purchased, merged, acquired, or otherwise combined with the certificated air carrier after the base period. The amount of the increase shall be based on the Kentucky sales and use tax applicable to such aircraft fuel purchased during the twelve (12) month period immediately preceding the purchase, merger, or other acquisition by or combination with the certificated air carrier.

c. Bluegrass Field Airport: No appropriations made to the Air Transportation Budget shall be utilized for the purpose of studying, planning, or construction of an additional runway at Bluegrass Field Airport.

d. General Aviation Entitlements: General Aviation Entitlements may be utilized to fund projects as itemized in the Statutory Budget Memorandum. Any project funds being replaced by General Aviation Entitlement Funds shall be allocated to that airport for use on other projects approved by the local Airport Board and the Kentucky Division of Aeronautics.

~~[ e. Cost Overruns: Projects may overrun up to fifteen percent (15%) if approved by the Division of Air Transportation. If additional Federal Funds become available for Air Transportation related activities, the funds shall be used to support overruns on the above projects around the state. Any balance remaining shall be retained for fiscal biennium 2002-2004 appropriations.]~~

#### 52. VEHICLE REGULATION

a. Reflectorized License Plates: Notwithstanding KRS 186.240, the Transportation Cabinet shall dedicate the fifty cents (\$0.50) collected on every license plate issued to defray the cost to reflectorize the plate, to a special fund that is to be used to issue new reflectorized license plates every five (5) years. The Transportation Cabinet shall report the amounts deposited and expended on an annual basis to the Interim Joint Committee on Appropriations and Revenue.

#### 53. GENERAL ADMINISTRATION AND SUPPORT

a. Transportation Cabinet Office Building Provisions: The Transportation Cabinet shall relinquish the rights to the existing State Office Building in return for the General Fund-supported previously authorized but unissued \$18,900,000 bonds that are reauthorized in Part II, Section P, 1.k. of this Act. The General Assembly declares that the new Transportation Cabinet Office Building shall be owned by the Transportation Cabinet and that any surplus bond proceeds or debt service appropriations shall be deposited in the State Construction Account. Any revenue generated from the leasing of office space in the new Transportation Cabinet Office Building shall be deposited in the Road Fund.

#### 54. HIGHWAYS

a. State Match Provisions: The Transportation Cabinet is authorized to utilize state construction moneys to match federal highway moneys in the event that unanticipated additional federal funds are provided to Kentucky and the state match appropriations have been exhausted.

b. Excess Debt Service/Lease-Rental Appropriations: Any Road Fund appropriations that are not needed to pay lease-rental payments to the Kentucky Turnpike Authority or debt service on the new Transportation Cabinet Office Building shall be credited in the State Construction Account.

c. Federal Aid Highway Funds: If additional federal highway moneys are made available to Kentucky by the United States Congress, the funds shall be used according to the following priority: (a) any demonstration or project specific money shall be used on the project identified; and (b) all other funds shall be used to insure that projects in the 2000-2002 Biennial Highway Construction Plan are funded.

If additional federal moneys remain after these priorities are met, or if federally funded projects contained in the enacted fiscal biennium 2000-2002 Biennial Highway Construction Program are delayed due to unforeseen circumstances, the Transportation Cabinet may advance projects from the Highway Preconstruction Program Plan only to the extent required to assure that the Commonwealth makes full use of all available federal funds.

d. **Demonstration Projects:** The Transportation Cabinet is authorized to select up to five design/build demonstration projects relating to roads. For procurement purposes, the Transportation Cabinet shall utilize a qualifications-based bidding process within the context of the provisions of KRS Chapter 176, notwithstanding any conflicting provisions of KRS Chapters 45A, 176, and 177. The Secretary of Transportation shall determine the nature and scope of each design/build project.

The Transportation Cabinet shall provide a quarterly program and financial status report which identifies the expenditure of any funds for the five demonstration projects, to the Interim Joint Committee on Appropriations and Revenue. The report shall provide, at a minimum, the amount and purpose for which the expenditure was made, the projected goals to be accomplished and outcomes, and their status.

e. **"ZVARIOUS" Projects:** The Transportation Cabinet shall report on a quarterly basis to the Interim Joint Committee on Appropriations and Revenue on the expenditure of moneys provide for "ZVARIOUS" projects. The report shall include, but not be limited to, the county, type of work, route, costs, and the month in which the activity was performed.

f. **E. P. "Tom" Sawyer State Park:** The Department of Parks is prohibited from permitting the Transportation Cabinet from constructing a new entrance to E.P. "Tom" Sawyer State Park in Jefferson County, Kentucky, from either Lakeland Road or Old Whipps Mill Road.

~~g. **Daniel Boone Parkway Tolls:** The Transportation Cabinet shall remove the tolls from the Daniel Boone Parkway no later than June 30, 2002.~~

h. **Switzer Bridge:** Notwithstanding KRS Chapter 45A, the Transportation Cabinet shall make the necessary adjustments to the Switzer Bridge as provided in the Biennial Highway Construction Program using the same contractor who reconstructed the previous historical structure.

i. **Contingency Fund:** The Cabinet shall utilize Contingency Fund to support projects as identified in the Statutory Budget Memorandum.

## WORKFORCE DEVELOPMENT CABINET

### 55. DEPARTMENT FOR TECHNICAL EDUCATION

a. **Participation in the Education Technology Program by Area Vocational Education Centers:** Area Vocational Education Centers shall be fully eligible to participate in the Kentucky Education Technology System. Notwithstanding KRS 157.650 to 157.665, the School Facilities Construction Commission in consultation with the Kentucky Board of Education and the Kentucky Department of Education shall develop administrative regulations which identify a methodology by which the average daily attendance for Area Vocational Education Centers may be equated to the average daily attendance of other local school districts in order that they may receive their respective distributions of these funds. The School Facilities Construction Commission shall include Area Vocational Education Centers in any offers of assistance to local school districts for technology assistance during the 2000-2002 fiscal biennium.

b. **Area Technical Center Equipment:** Included in the Area Technical Center Equipment, Community Development Projects, as provided in Part II, Capital Projects are the following: \$127,000 in fiscal year 2000-2001 for the Floyd County Area Technology Center for equipment and \$125,000 in fiscal year 2000-2001 for the West Liberty Computer Repair Center.

~~c. **One Stop Center:** The General Assembly directs \$150,000 be expended for design of a One Stop Center to be located in Rowan County under the provisions of the Employment Service's Facility Replacement and Renovation Policy.~~

### 56. EMPLOYMENT SERVICES

a. **Facility Replacement/Renovation Policy:** The Department for Employment Services is authorized to develop and implement a facility replacement and renovation program the purposes of which are to improve the quality of Workforce Development Cabinet facilities used by the Department for Employment Services and its clients, and to reduce departmental reliance on lease/rental properties.

The Department is directed to coordinate this program with the Secretary of the Finance and Administration Cabinet and the Department for Facilities Management in the Finance and Administration Cabinet. The Department is authorized to expend any proceeds acquired from the sale, transfer, or other disposition of the existing Department for Employment Services facilities toward the purchase, construction, renovation, equipping, and furnishing of replacement facilities. Expenditures authorized by this provision are limited to the use of funds solely derived from the sale of Cabinet-owned facilities, which equity rights are shared between both the state and federal government. Any project estimated to cost over \$400,000 shall be reported to the Capital Projects and Bond Oversight Committee by the Secretary of the Finance and Administration Cabinet.

## PART X

### GENERAL FUND SURPLUS EXPENDITURE PLAN

1. Pursuant to KRS 48.700 and notwithstanding KRS 48.140, there is established a plan for the expenditure of General Fund surplus moneys pursuant to a General Fund Surplus Plan contained in this Part for fiscal years 2000-2001 and 2001-2002. Pursuant to the enactment of the Surplus Expenditure Plan, General Fund moneys in the General Fund undesignated fund balance (General Fund Surplus Account, KRS 48.700) are appropriated to the following: Endowment Fund, the Capital Facilities Fund, and the Court-Ordered Judgments Funding Account as established in this Part of this Act; and the Budget Reserve Trust Fund established in KRS 48.705. Collectively, these four component funds make up the General Fund Surplus Expenditure Plan for fiscal years 2000-2001 and 2001-2002.

2. The General Fund amount appropriated to the Surplus Expenditure Plan from the undesignated fund balance in the General Fund at the close of fiscal year 1999-2000 and fiscal year 2000-2001 respectively shall not exceed the total for the appropriations made for fiscal years 2000-2001 and 2001-2002 combined. If the undesignated fund balance in the General Fund at the close of fiscal year 1999-2000 and at the close of fiscal year 2000-2001 totals less than the total combined Surplus Funds appropriation amounts for fiscal year 2000-2001 and fiscal year 2001-2002, the amount available for appropriation for fiscal year 2000-2001 and for fiscal year 2001-2002 pursuant to this section shall be the total undesignated fund balance amount at June 30, 2000, and at June 30, 2001, for the respective years. These amounts are appropriated in fiscal year 2000-2001 and in fiscal year 2001-2002, and shall be allocated in the following manner: 83.33 percent of the total General Fund surplus balance to the Endowment program of the Research Challenge Trust Fund of the Council on Postsecondary Education, and 16.67 percent to the Endowment program of the Regional University Excellence Trust Fund of the Council on Postsecondary Education not to exceed a total of \$120,000,000. In the event that the total General Fund surplus balance at the close of fiscal year 1999-2000 shall be less than \$120,000,000, a proportional amount of the General Fund surplus balance shall be allocated to each of the Trust Funds. In the event that the total General Fund surplus balance exceeds \$120,000,000 at the close of fiscal year 1999-2000, the amount up to \$10,000,000 that exceeds \$120,000,000 shall be credited to the Capital Facilities Fund. In the event that the total General Fund surplus income balance exceeds \$130,000,000 at the close of fiscal year 1999-2000, the amount up to \$6,000,000 that exceeds \$130,000,000 shall be credited to the Court-Ordered Judgments Funding Account. In the event that the total General Fund surplus income balance exceeds \$136,000,000 at the close of fiscal year 1999-2000, the amount of the balance that exceeds \$136,000,000 shall be credited to the Budget Reserve Trust Fund.

3. The Secretary of the Finance and Administration Cabinet shall determine, within thirty (30) days after the close of fiscal year 1999-2000, and the close of fiscal year 2000-2001, based on the official financial records of the Commonwealth, the amount of actual General Fund undesignated fund balance for the General Fund Surplus Account that may be available for expenditure pursuant to the Plan respectively in fiscal year 2000-2001 and fiscal year 2001-2002.

The Secretary of the Finance and Administration Cabinet shall certify the amount of actual General Fund undesignated fund balance available for expenditure to the Legislative Research Commission.

Subsequent to June 30, 2000, funds that are certified as being available in the actual General Fund undesignated fund balance for the General Fund Surplus Account are appropriated for expenditure in fiscal year 2000-2001 pursuant to the Plan.

4. To the extent that projects are enumerated in the priority ranking and sufficient General Fund moneys are not certified to be available for expenditure and appropriation in fiscal year 2000-2001, the remaining projects in the same priority order set forth in this Part are appropriated from the actual General Fund undesignated fund balance for the General Fund Surplus Account effective July 1, 2001, for fiscal year 2001-2002.

5. Individual project priority rankings have been established as follows:



<u>Priority</u>	<u>General Fund Surplus Appropriations</u>
I. ENDOWMENT FUND	
A. Council on Postsecondary Education	
Budget Unit Research Challenge Trust Fund	
1. Endowment Program	100,000,000
The total amount is appropriated in fiscal year 2000-2001.	
Budget Unit Regional Universities Excellence Trust Fund	
2. Endowment Program	20,000,000
The total amount is appropriated in fiscal year 2000-2001.	
Endowment Fund subtotal	120,000,000
II. CAPITAL FACILITIES FUND	
A. Department of Facilities Management	
1. Emergency Repair, Maintenance and Replacement Fund	4,500,000
2. Capital Construction and Equipment Contingency Fund	5,500,000
Capital Facilities Fund subtotal	10,000,000
III. COURT-ORDERED JUDGMENTS FUNDING ACCOUNT	
A. Finance and Administration Cabinet	
Budget Unit Miscellaneous Appropriations - Judgments	
1. Judgments Funding Account	6,000,000
6. To the extent that the available General Fund Surplus in fiscal year 1999-2000 exceeds the total component fund amounts allocated to fiscal year 2000-2001, then the additional available General Fund Surplus amount is appropriated for fiscal year 2001-2002 allocation to the component priorities.	
7. Figures for amounts in all determinations, authorizations, and appropriations under the Plan shall be rounded to the lower hundredth dollar.	

Notwithstanding KRS 48.140 and the provisions of Part X 1. to 5. above, if the total undesignated fund balance in the General Fund in fiscal year 1999-2000 and 2000-2001 respectively exceeds the total combined General Fund Surplus Plan appropriation amount, there is appropriated in fiscal year 2001-2002 to the Budget Reserve Trust Fund an amount that enables the Budget Reserve Trust Fund to contain a fund balance up to five percent (5%) of the actual General Fund revenue in fiscal year 2000-2001 which is an additional \$105,605,500 under current forecast.

## PART XI

### PHASE I TOBACCO SETTLEMENT FUNDING PROGRAM

This Part of the Act prescribes fiscal policy provisions which implement the national settlement agreement between the tobacco industry and the collective states as anticipated by the 1998 Regular Session of the General Assembly in House Bill 321, Part III, item 29. In furtherance of that agreement, the General Assembly recognizes that the Commonwealth of Kentucky is a party to the Phase I Master Settlement Agreement (MSA) between the Participating Tobacco Manufacturers and 46 Settling States which provides reimbursement to states for smoking related expenditures made over time.

1. The Commonwealth's share of the MSA is equal to 1.7611586% of the total settlement amount. Payments under the MSA are to be made to the states in January and April of each year. The Commonwealth has already received the first such payment from which no funds have been expended pursuant to the policy set forth by the 1998 General Assembly.

2. The total settlement amount to be distributed each payment date is subject to change pursuant to several variables provided in the MSA, including inflation adjustments, volume adjustments, and previously settled states adjustments.

3. The General Assembly has determined that it shall be the policy of the Commonwealth that all Phase I Tobacco Settlement funds shall be deposited to the credit of the General Fund and shall maintain a distinct identity as Phase I Tobacco Settlement funds that shall not lapse to the credit of the General Fund surplus, but shall continue forward from each fiscal year to the next fiscal year to the extent that any balance is unexpended.

4. Based on the current estimates as reviewed by the Consensus Revenue Forecasting Group, the amount of MSA payments expected to be received in fiscal year 1999-2000 is \$137,800,000. It is recognized that payments to be received by the Commonwealth are estimated and are subject to change. Any appropriations made from the estimated receipts are subject to adjustments based on actual receipts as received and certified by the Secretary of the Finance and Administration Cabinet.

5. The estimated \$137,800,000 receipts in fiscal year 1999-2000 are appropriated for the following major purposes:

a. General Fund Surplus Plan Endowment Program: Fifty percent (50%) of the MSA payments received in fiscal year 1999-2000, which is estimated to be \$68,900,000, is appropriated and credited in fiscal year 1999-2000 to the General Fund Surplus Account.

(1) Eighty-three and thirty-three hundredths percent (83.33%) of this amount is dedicated for appropriation to the Endowment Program of the Research Challenge Trust Fund of the Council on Postsecondary Education as specified in Part X of this Act.

(2) Sixteen and sixty-seven hundredths percent (16.67%) of this amount is dedicated for appropriation to the Endowment Program of the Regional University Excellence Trust Fund of the Council on Postsecondary Education as specified in Part X of this Act.

b. Agricultural Development Initiatives Reserve: Fifty percent (50%) of the MSA payments received in fiscal year 1999-2000, which is estimated to be \$68,900,000, is continued and appropriated in fiscal year 2000-2001 to the Agricultural Development Initiatives Reserve to ensure that recipients of payments from the National Tobacco Grower Settlement Trust (Phase II Settlement) in calendar years 2000 and 2001 are compensated at a level not less than the compensation received from the Phase II Settlement in calendar year 1999.

6. The estimated MSA Phase I Tobacco Settlement Funding Program receipts amounting to \$101,100,000 in fiscal year 2000-2001 and \$121,600,000 in fiscal year 2001-2002 are appropriated for the following major purposes:

a. Childhood Development Initiatives: Twenty-five percent (25%) of the MSA payments received in fiscal year 2000-2001, estimated to be \$25,275,000, and in fiscal year 2001-2002, estimated to be \$30,400,000, is appropriated for Childhood Development Initiatives as specified below.

b. Health Care Initiatives: Twenty-five percent (25%) of the MSA payments received in fiscal year 2000-2001, estimated to be \$25,275,000, and in fiscal year 2001-2002, estimated to be \$30,400,000, is appropriated for Health Care Initiatives as specified below.

c. Agricultural Development Initiatives: Fifty Percent (50%) of the MSA payments received in fiscal year 2000-2001, estimated to be \$50,550,000, and in fiscal year 2001-2002, estimated to be \$60,800,000, is appropriated for Agricultural Development Initiatives as specified below.

#### A. AGRICULTURAL DEVELOPMENT INITIATIVES APPROPRIATIONS

##### GENERAL FUND - PHASE I TOBACCO SETTLEMENT FUNDS

#### 1. GOVERNMENT OPERATIONS

Budget Unit	Office of the Governor	2000-01	2001-02
a.	Phase I Tobacco Settlement Funds -		
	Agricultural Development Initiatives	109,192,000	44,253,000

#### 2. FINANCE AND ADMINISTRATION

Budget Unit:	Debt Service	2000-01	2001-02
a.	Kentucky Infrastructure Authority-		

	Water Resources Development		
	Bond Program Debt Service		5,031,000
b.	Rural Development Bond Fund		
	Debt Service	1,258,000	2,516,000
3.	NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION		
Budget Unit:	Department for Natural Resources	2000-01	2001-02
a.	Division of Conservation - Environmental		
	Stewardship Program	9,000,000	9,000,000
	TOTAL AGRICULTURAL INITIATIVES	119,450,000	60,800,000
	B. EARLY CHILDHOOD INITIATIVES APPROPRIATIONS		
	GENERAL FUND - PHASE I TOBACCO SETTLEMENT FUNDS		
1.	GOVERNMENT OPERATIONS		
Budget Unit	Office of the Governor	2000-01	2001-02
a.	Office of Early Childhood Development	2,559,100	3,157,700
2.	CABINET FOR FAMILIES AND CHILDREN		
Budget Unit	Community Based Services	2000-01	2001-02
a.	Early Childhood Development Program	7,597,800	9,082,800
3.	CABINET FOR HEALTH SERVICES		
Budget Unit	Public Health	2000-01	2001-02
a.	Adult and Child Health - HANDS Program	5,586,700	9,522,300
b.	Adult and Child Health - Folic Acid Program	2,030,600	1,522,400
c.	Epidemiology and Health Planning -		
	Universal Children's Immunization	2,000,000	2,000,000
d.	Adult and Child Health - Healthy Start		
	Expansion	2,000,000	2,100,000
Budget Unit	Mental Health and Mental Retardation	2000-01	2001-02
a.	Substance Abuse Treatment Program for		
	Medicaid-eligible Women with		
	Dependent Children	1,000,000	1,000,000
Budget Unit	Commission for Children with Special		
	Health Care Needs	2000-01	2001-02
a.	Handicapped Children's Program -		
	Universal Newborn Hearing Screening	1,100,800	605,300
Included in the above appropriation is \$50,000 in fiscal year 2000-2001 and \$100,000 in fiscal year 2001-2002 for parent and provider training activities.			
4.	POSTSECONDARY EDUCATION		
Budget Unit	Kentucky Higher Education Assistance		
	Authority	2000-01	2001-02
a.	Early Childhood Scholarship Program	1,400,000	1,409,500

TOTAL EARLY CHILDHOOD INITIATIVES	25,275,000	30,400,000
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## C. HEALTH CARE INITIATIVES APPROPRIATIONS

## GENERAL FUND - PHASE I TOBACCO SETTLEMENT FUNDS

## 1. GOVERNMENT OPERATIONS

Budget Unit	Office of the Governor	2000-01	2001-02
a.	Ky. Agency for Substance Abuse Policy-		
	Smoking Cessation Program	2,500,000	2,500,000

## 2. CABINET FOR HEALTH SERVICES

Budget Unit	Public Health	2000-01	2001-02
a.	Adult and Child Health -		
	Smoking Cessation Program	2,527,500	3,040,000

## 3. POSTSECONDARY EDUCATION

Budget Unit	Council on Postsecondary Education	2000-01	2001-02
a.	Research Challenge Trust Fund -		
	Lung Cancer Research Program	5,055,000	6,080,000

## 4. PUBLIC PROTECTION AND REGULATION

Budget Unit	General Operations	2000-01	2001-02
a.	Kentucky Access Program	15,192,500	18,780,000
TOTAL HEALTH CARE INITIATIVES		25,275,000	30,400,000

## TOTAL PHASE I TOBACCO SETTLEMENT

FUNDING PROGRAM	170,000,000	121,600,000
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~~[7. As used in this Part, the following words mean, unless the context requires otherwise:~~

~~—— a. "Board" means the Agricultural Development Board created in this Part;~~

~~—— b. "Fund" means the agricultural development fund established by the 2000 Regular Session, which may be called the "Rural Development Fund" in this Part;~~

~~—— c. "Rural Development Bond Fund" means a fund established by the General Assembly to provide for the financing of programs created in this Part.~~

~~—— d. "Subcommittee" means the Agricultural Development Oversight Committee created in this Part;~~

~~—— e. "Council" means an agricultural development council required by this Part;~~

~~—— f. "Master Settlement Agreement" means the settlement agreement dated November 23, 1998, entered into by the Commonwealth of Kentucky and major United States tobacco product manufacturers; and~~

~~—— g. "Phase II Agreement" means the National Tobacco Grower Settlement Trust Agreement dated July 19, 1999, entered into by tobacco states and major tobacco companies to compensate tobacco growers and quota owners for losses resulting from the Master Settlement Agreement.~~

~~—— 8. a. Fifty percent (50%) of the moneys received in the tobacco settlement agreement fund created in KRS 248.654, along with accrued interest, shall be allocated on the effective date of this Part and July 1 of each year thereafter for the life of Master Settlement Agreement payments to the agricultural development fund.~~

~~—— b. Thirty five percent (35%) of the moneys received in the agricultural development fund shall be allocated to a "Counties Account" within the fund for distribution to applicants within counties. The amount allocated to each county within the account shall be determined by the formula established in this Part. Counties shall be assured of receiving at least as much as determined by the formula. When a county's allocation is exhausted, applicants from that county may apply for funds from the other sixty five percent (65%) of the moneys in the agricultural development fund.~~

~~c. Interest earned on any moneys in any fund, account, or allocation created in this Part shall accrue to that fund, account, or allocation until transferred to another fund or account created or referenced in this Part.~~

~~d. None of the moneys left at the end of a fiscal year in any fund, account, or allocation created or referenced in this Part shall lapse, but shall stay with the fund, account, or allocation as long as the fund, account, or allocation exists, or until the moneys are transferred to another fund or account created or referenced in this Part. In the case of any fund, account, or allocation created in this Part that is terminated with a remaining balance, the balance shall remain in the agricultural development fund.~~

~~9. The Agricultural Development Board is created as a political subdivision of the Commonwealth to perform essential governmental and public functions by administering funds to provide economic assistance to the agriculture community of the Commonwealth. The board shall be a public agency within the meaning of KRS 61.805, KRS 61.870, and other applicable statutes. The board shall consist of seventeen members as follows:~~

~~a. Four voting members or their designees, as follows:~~

~~(1) The Governor of the Commonwealth of Kentucky, who shall serve as chair;~~

~~(2) The Commissioner of the Kentucky Department of Agriculture, who shall serve as vice chair and shall serve as chair in the absence of the Governor;~~

~~(3) The secretary of the Cabinet for Economic Development; and~~

~~(4) The director of the Cooperative Extension Service;~~

~~b. Twelve voting members appointed by the Governor, who shall be geographically distributed throughout the state and subject to confirmation by the House of Representatives and Senate as provided in KRS 11.160(2). The members shall be as follows:~~

~~(1) Six active farmers, at least three of whom shall be from counties that are substantially tobacco-impacted, as determined by a formula that includes tobacco income as a percentage of total personal income in the county, and at least one of whom shall have experience in agricultural diversification; one representative of the Kentucky Farm Bureau; one representative of the Kentucky Chamber of Commerce, who shall be an agribusiness person; one representative of the Kentucky League of Cities; one representative of the Kentucky Association of Counties; one attorney with farm experience and familiarity with agricultural policy; one agricultural lender; and the State Treasurer who shall serve as a nonvoting member.~~

~~(2) The members appointed from organizations shall be chosen from a list of three nominees submitted to the Governor by each of the respective organizations.~~

~~(3) Consideration shall be given to racial and gender equity in the appointment of board members.~~

~~(4) The majority of the voting members shall be active farmers.~~

~~(5) Members of the board shall be reimbursed for expenses incurred in the performance of their duties.~~

~~(6) The terms of the members appointed by the Governor shall be for two years.~~

~~(7) The Governor shall convene the first meeting of the board by August 1, 2000.~~

~~(8) The board shall meet quarterly, or at the call of the chair or a majority of the voting members.~~

~~(9) A quorum of the board shall consist of nine (9) voting members. A majority of the voting members present may act upon matters before the board.~~

~~(10) The board shall be attached to the Governor's Office for administrative purposes.~~

~~10. The board's duties shall include, but not be limited to:~~

~~a. Administering the Rural Development Fund, except as provided in this Part. The Agriculture Development Board may approve an application for funds from the Rural Development Bond Fund for any state or local initiative that contributes to the strengthening of the farm economy and agricultural development including but not limited to the Purchase of Conservation Easements (PACE) program as administered by the Department of Agriculture and PACE Board, or by local governments which have enacted local PACE/purchase of development rights ordinances. Any application approved for local government PACE/purchase of development rights ordinance programs shall require a dollar for dollar match by the local government. An application approved by the board shall be submitted to the Finance and Administration Cabinet to be considered for any award out of the Rural Development Bond Fund.~~

~~—— b. Receiving requests and applications for funds and authorizing the distribution of funds. The board may receive applications from institutions of public postsecondary education for financial and technical assistance in conducting alternative crop development research. The board shall assist the applicants in obtaining any necessary federal permits that may be required to conduct alternative crop research. A recipient institution shall report the status and progress of the alternative crop development research to both the board and the Interim Joint Committee on Agriculture and Natural Resources and the Agricultural Development Oversight Committee. The board shall promulgate administrative regulations relating to growing and researching alternative crops at the selected postsecondary institution, and shall adopt any applicable federal regulations.~~

~~—— c. Developing guidelines and criteria for eligibility for and disbursement of funds, the types of direct and indirect economic assistance to be awarded, and procedures for applying for funds and reviewing applications for assistance.~~

~~—— d. Ensuring that each county agricultural development council's plans and county recommendations and applications receive major consideration in decisions on use of a county's funds.~~

~~—— e. Completing a comprehensive plan that shall propose short and long term goals, strategies, and investments in Kentucky agriculture that will assist farmers in remaining competitive in existing and new enterprises. The comprehensive plan shall identify a diversified mix of enterprises that are profitable to farmers and shall determine the investments necessary to support the viability of those enterprises. The plan of action shall be devised to meet the immediate needs of the Commonwealth's farmers and tobacco impacted communities most adversely affected by tobacco losses. A set of priorities shall be established in the plan of action to implement and fund programs to meet these needs.~~

~~—— f. Preparing a biennial budget request in accordance with KRS Chapter 48.~~

~~—— g. Working with other governmental agencies to maximize the financial and economic impact that the programs implemented by the board will have and to maximize receipt of federal and other funds to the agriculture community in the Commonwealth.~~

~~—— h. Promulgating administrative regulations relating to carrying out the purposes of this Part.~~

~~—— i. Hiring a director to carry out the will of the board.~~

~~—— j. Performing other necessary actions that accomplish the purpose of this Part.~~

~~—— k. Providing at least quarterly reports to the Agricultural Development Oversight Committee created by this Part. These reports shall contain detailed information relating to each expenditure by the board and detailed information on each application for funding a project or initiative by the board and decision by the board regarding each proposal.~~

~~—— l. Submitting an annual written report to the Governor, the Commissioner of Agriculture, the Agricultural Development Oversight Committee, and the Legislative Research Commission regarding the administrative, financial, and programmatic activities of the board.~~

~~—— m. Making recommendations to the General Assembly through the Legislative Research Commission on possible adjustments to the funding formula for county allocations and the percent allocated to counties as provided in this Part.~~

~~—— 11. a. Criteria to be used in considering applications for state funds shall include, but not be limited to:~~

~~—— (1) Assistance to tobacco farmers and communities in counties most affected by the loss in tobacco income;~~

~~—— (2) Assistance to communities most dependent on agriculture;~~

~~—— (3) Enhancement and promotion of agriculture in the Commonwealth;~~

~~—— (4) Merits of the proposal in the application;~~

~~—— (5) Compatibility with state and local agriculture related comprehensive plans;~~

~~—— (6) Documentation of measures likely to ensure soundness of the proposal such as cash flow, security, market evaluation, and infrastructure considerations;~~

~~—— (7) Promotion of diversification;~~

~~—— (8) Regional orientation;~~

~~\_\_\_\_\_ (9) Cooperation among entities involved in the project and application process; and~~

~~\_\_\_\_\_ (10) Effect on the economic viability of family farms.~~

~~\_\_\_\_\_ b. Uses and restrictions on the funds in the counties account shall include, but not be limited to, the following:~~

~~\_\_\_\_\_ (1) Funds may be used for deferred or no or low interest venture capital loans to enhance farms' revenues by initiating current farming techniques or practices improvements or new farming ventures on the farm;~~

~~\_\_\_\_\_ (2) Funds used for loans shall be administered through a duly licensed or chartered financial institution.~~

~~\_\_\_\_\_ (3) Terms of the loans may include a limit on deferral of payment of interest or principal to five years, and a limit on the interest rates. Repaid loans and interest shall be credited to the appropriate county's allocation within the counties account;~~

~~\_\_\_\_\_ (4) Funds may be used as grants for local agricultural economic development projects;~~

~~\_\_\_\_\_ (5) Funds may be used as grants for water line extension to farms or for a fifty percent (50%) match for water improvements on farms;~~

~~\_\_\_\_\_ (6) Funds may be used for programs to assist farmers in transitioning from one type of farming to another or from farming to another vocation;~~

~~\_\_\_\_\_ (7) Eligibility for funds in this subsection shall require that tobacco farmers be given priority, applicants have sufficient equity to assure a reasonable chance of success of the action proposed for funding, small farmers have as equal access to the funds as large farmers, and consideration be given to what percent of a county's allocation of moneys an applicant is requesting.~~

~~\_\_\_\_\_ c. In administering the fund under this Part, the board shall be governed by the following principles:~~

~~\_\_\_\_\_ (1) Individuals, groups, educational institutions, governmental entities, cooperatives, and other agriculturally related entities are eligible to receive moneys from the fund; and~~

~~\_\_\_\_\_ (2) No more than one percent (1%) of the fund's annual receipts shall be expended on the administrative costs of the board.~~

~~\_\_\_\_\_ (3) Notwithstanding the provisions of any other enactment by the 2000 Regular Session, county allocations may be used for projects before the completion of a comprehensive plan or strategic plan if those projects are of an emergency nature as determined by the board or if they fall under the conditions described in this Part, or meet the criteria of this Part.~~

~~\_\_\_\_\_ 12. The board shall create committees, including, but not limited to, Access to Capital Committee, Environmental Cost Share Committee, Marketing and Entrepreneurship Committee, Technology, Infrastructure, and Training Committee, Farmland Preservation Committee, and Technical Issues Advisory Committee.~~

~~\_\_\_\_\_ a. The committees shall assist the board in developing programs and criteria for programs to be considered by the board and may utilize nonboard members with expertise in the jurisdictional area of the committee for assistance.~~

~~\_\_\_\_\_ 13. Programs that shall be created by the board and overseen and implemented by the board or committees include:~~

~~\_\_\_\_\_ a. Programs that receive direct funding from the board:~~

~~\_\_\_\_\_ (1) A Phase II Supplement Program to ensure that payments to tobacco quota owners and growers are maintained at the same level as Kentucky's 1999 Phase II Agreement funding level of one hundred fourteen million dollars (\$114,000,000) for the calendar years 2000 and 2001. The board shall use information provided by the Kentucky Tobacco Settlement Trust Corporation in determining the payments to quota owners and growers;~~

~~\_\_\_\_\_ (2) A Farm Market Development and Infrastructure Program to develop regional, integrated farm markets, and regional or community capital projects;~~

~~\_\_\_\_\_ (3) An Agricultural Entrepreneurship Program overseen by the board to support small farm agricultural diversification through technical assistance, business mentoring, and financial incentives; and~~

~~\_\_\_\_\_ (4) A program or programs requiring debt service. The board shall utilize, from the agriculture development fund, debt service for bonds to utilize for one or more programs it may undertake.~~

~~\_\_\_\_\_ b. Programs that receive direct authorization for moneys from the agricultural development fund by the General Assembly;~~

~~————— (1) An Environmental Stewardship Program to provide cost share assistance to farmland owners for compliance with the state agriculture water quality plan and other environmental compliance requirements. Moneys appropriated to the Division of Conservation in the Natural Resources and Environmental Protection Cabinet for each year of the biennium shall be used for agricultural environmental compliance and compliance with the agriculture water quality plan; and~~

~~————— (2) A Rural Water Line Extension Program to provide municipal water in areas of high agricultural activity or need. Bonds shall be issued by the Kentucky Infrastructure Authority for this program.~~

~~————— c. The board may create and fund other agricultural assistance programs in addition to those created under this Part among these an environmental cleanup program for cost share assistance to tobacco warehouse operators for demolition and abatement of environmental hazards associated with tobacco warehouse structures.~~

~~————— 14. The board is authorized to establish a Center for Entrepreneurship to operate under the Agricultural Entrepreneurship Program provided in this Part. The duties of the center shall include:~~

~~————— a. Primarily identifying and coordinating with existing agencies in order to develop and deliver entrepreneurial assistance. The center shall be primarily a clearinghouse requiring little or no capital construction;~~

~~————— b. Assisting local individuals and entities and regional and statewide entities in developing and carrying out entrepreneurial efforts relating to agriculture; and~~

~~————— c. Advising the Agricultural Development Board on the fiscal soundness and other aspects of entrepreneurial proposals.~~

~~————— 15. a. Each county shall establish an agricultural development council to evaluate the needs of the local agricultural economy and to devise a plan for the county that would identify programs best suited for the agricultural development of the county. The council shall assist prospective applicants in the council's county in obtaining moneys from the agricultural development fund. Consideration shall be given to racial and gender equity in the appointment of council members. Each council shall consist of eight members as follows:~~

~~————— (1) Two farmers selected by the Farm Service Agency county committee;~~

~~————— (2) Two members selected by the board or boards of the soil conservation district or districts serving the county;~~

~~————— (3) Two members selected by the county extension council, one of whom shall have experience in agricultural diversification; and~~

~~————— (4) Two young farmers between the ages of twenty one (21) and forty (40), selected by the six members in paragraphs (1) to (3) above.~~

~~————— b. Members of the councils shall be initially appointed by August 1, 2000. These members shall serve until June 30, 2002.~~

~~————— c. Each council shall be attached to the county cooperative extension service for administrative support.~~

~~————— d. Each council shall receive guidance and assistance from the board as the council devises plans and assists applicants.~~

~~————— e. Councils shall be responsible for developing local strategies for enhancing agricultural opportunities and assisting local farmers.~~

~~————— f. Each council shall utilize the resources of the Agricultural Entrepreneurship Program and the Kentucky Small Business Development Center Network for assistance and support in aiding prospective applicants in obtaining moneys from the fund.~~

~~————— g. Each county council shall provide the board its plan.~~

~~————— h. The allocation within the counties account in the agricultural development fund for each county shall be assured for use in each county and shall be based on the following weighted factors:~~

~~————— (1) Fifty percent (50%) weight to the county's percentage of the state's tobacco allotment based on 1999 data;~~

~~————— (2) Twenty five percent (25%) weight to the county's number of farms with tobacco quotas in the county as a percentage of farms with tobacco quotas statewide, based on 1999 data; and~~



~~\_\_\_\_\_ (3) Twenty five percent (25%) weight to the economic impact index for each county which shall be calculated in the following manner:~~

~~\_\_\_\_\_ (a) The tobacco income for each county (1997 burley tobacco production times average burley market price) divided by the total personal income for each county. The data used shall reflect the year most recently available for total personal income.~~

~~\_\_\_\_\_ (b) The percentage derived in subsection h (3a) of this section (tobacco income as a percentage of total personal income for each county) shall then be summed across all counties.~~

~~\_\_\_\_\_ (c) The economic impact index amount shall be each county's tobacco income as a percentage of total personal income, divided by the aggregate percentage stated in subsection h (3b) of this section.~~

~~\_\_\_\_\_ 16. There is created a subcommittee of the Legislative Research Commission to be known as the Agricultural Development Oversight Committee. The subcommittee shall be composed of twelve members and shall include six members of the House of Representatives and six members of the Senate. The subcommittee shall include members of the minority party as nearly proportional to their membership in the General Assembly as mathematically possible. The Legislative Research Commission shall appoint, from the membership of each house of the General Assembly, the members of the subcommittee for terms of two years. The members so appointed shall elect one (1) of their number to serve as chair. Any vacancy that may occur in the membership of the subcommittee shall be filled by the Legislative Research Commission at its next regularly scheduled meeting after the vacancy occurs.~~

~~\_\_\_\_\_ a. The subcommittee shall review each project being submitted to the board. In reviewing the projects, the subcommittee shall determine whether the criteria developed for the programs have been met.~~

~~\_\_\_\_\_ b. If the subcommittee determines that any of the criteria or requirements required by this Part have not been met, the subcommittee may recommend to the board in writing that a project not be approved. If the subcommittee determines that all relevant criteria have been met for proposals not approved by the board, the subcommittee can recommend approval.~~

~~\_\_\_\_\_ c. The reasons for recommending that a project be approved or not approved shall be stated in correspondence from the subcommittee, which shall be issued within sixty (60) days of receiving the recommendation from the board.~~

~~\_\_\_\_\_ d. If the board approves a project that the subcommittee has recommended in writing not be approved, or refuses to approve a project that the subcommittee has recommended in writing to be approved, the board shall provide a written explanation to the subcommittee as to why the board took such action on the project. The written explanation shall be sent within thirty (30) days of receiving the subcommittee's notification.~~

~~\_\_\_\_\_ e. The subcommittee shall maintain records of its findings and determinations. The records shall be transmitted to the appropriate interim joint committees of the Legislative Research Commission and to the General Assembly when next convened.~~

~~\_\_\_\_\_ f. The subcommittee may also provide a forum for discussion and possible resolution of differences between the board and an applicant, and differences between the board and counties over a county's plan.~~

~~\_\_\_\_\_ 17. Agencies and educational institutions that receive agriculturally related funding under the provisions of this Part, and those that receive state funding relating to assisting agriculture and farmers in this state shall devote efforts to revitalization and diversification of tobacco farms. Each agency or institution shall issue a semiannual report on the details of the efforts it is carrying out to revitalize and diversify tobacco farms. The report shall include details of successes that have been achieved and shall be provided to the subcommittee created in this Part.~~

~~\_\_\_\_\_ 18. The Rural Development Bond Fund contained in Part II, Capital Projects Budget, shall be administered by the Finance and Administration Cabinet.]~~

## PART XII

### STATE/EXECUTIVE BRANCH BUDGET SUMMARY

#### OPERATING BUDGET

	1999-2000	2000-2001	2001-2002
General Fund	10,912,900	6,796,064,700	7,113,686,400
Restricted Funds	24,583,200	3,090,326,800	3,179,103,600
Federal Funds	827,600	4,950,859,000	5,093,053,000

## ACTS OF THE GENERAL ASSEMBLY

Road Fund		1,130,172,800	1,158,248,600
Subtotal	36,323,700	15,967,423,300	16,544,091,600

## CAPITAL PROJECTS BUDGET

	1999-2000	2000-2001	2001-2002
General Fund	700,000	*21,756,400	
Restricted Funds	2,160,000	787,830,600	*62,433,600
Federal Funds		23,579,400	2,250,500
Bond Funds		*933,490,600	2,000,000
Road Fund		10,370,000	6,654,000
Agency Bonds		117,525,000	
Capital Construction Surplus		2,219,000	248,000
Investment Income		16,806,000	16,540,000
Deferred Maintenance		7,169,000	
Other Funds	27,843,000	144,299,000	7,216,000
Emergency Repair, Replacement and Maintenance	2,210,000	5,379,000	
Subtotal	32,913,000	*2,070,424,000	*97,342,100

## TOTAL-STATE/EXECUTIVE BUDGET

	1999-2000	2000-2001	2001-2002
General Fund	11,612,900	6,817,295,600	7,113,686,400
Restricted Funds	26,743,200	3,878,157,400	*3,241,537,200
Federal Funds	827,600	4,974,438,400	5,095,303,500
Road Fund		1,140,542,800	1,164,902,600
Bond Funds		*933,490,600	2,000,000
Agency Bonds		117,525,000	
Capital Construction Surplus		2,219,000	248,000
Investment Income		16,806,000	16,540,000
Deferred Maintenance		7,169,000	
Other Funds	27,843,000	144,299,000	7,216,000
Emergency Repair, Replacement and Maintenance	2,210,000	5,379,000	
TOTAL FUNDS	69,236,700	*18,037,847,300	*16,641,433,700

The above capital projects are directly funded in Part II, Capital Projects Budget, of this Act.

**Legislative Research Commission Note (4/27/2000).** Bracketed material within this bill represents text vetoed by Governor Paul E. Patton on April 26, 2000.

**Legislative Research Commission Note (5/15/2000).** KRS 48.313 provides that "[i]f a total or subtotal conflicts with the sum of the appropriation figures of which it consists, the amounts of the individual appropriations shall control" and directs the Reviser of Statutes to substitute corrected total or subtotals in the Acts and journals of the General Assembly and in the Kentucky Revised Statutes. Under the procedure set out in that statute, the

following items have been corrected on page 200 of this Act, with the amounts that have been substituted preceded by an asterisk within the text of the Act:

The fiscal year 2000-2001 total figure under Capital Projects Budget for the General Fund;

The fiscal year 2000-2001 total figure under Capital Projects Budget for Bond Funds;

The fiscal year 2000-2001 Subtotal figure under Capital Projects Budget;

The fiscal year 2000-2001 total figure under Total-State/Executive Budget for the General Fund;

The fiscal year 2000-2001 total figure under Total-State/Executive Budget for Bond Funds;

The fiscal year 2000-2001 Total Funds figure under Total-State/Executive Budget;

The fiscal year 2001-2002 total figure under Capital Projects Budget for Restricted Funds;

The fiscal year 2001-2002 Subtotal figure under Capital Projects Budget;

The fiscal year 2001-2002 total figure under Total-State/Executive Budget for Restricted Funds; and

The fiscal year 2001-2002 Total Funds figure under Total-State/Executive Budget.

**Approved in part, vetoed in part, April 26, 2000**